BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.	))))	R.11-05-005

CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION REPLY COMMENTS ON ADMINISTRATIVE LAW JUDGE'S RULING ON IMPLEMENTATION OF NEW PORTFOLIO CONTENT CATEGORIES FOR THE RENEWABLE PORTFOLIO STANDARD

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In accordance with the *Administrative Law Judge's Ruling Requesting Comments on Implementation of New Portfolio Content Categories for the Renewable Portfolio Standard Program* ("ALJ Ruling"), dated July 12, 2011, the California Municipal Utilities Association ("CMUA") respectfully submits these reply comments on behalf of its members.

I. OVERALL OBERSVATIONS ON PARTY COMMENTS

On certain questions posed in the ALJ Ruling, parties were requested to respond to how the implementation of SB 2 (1X) would affect or be guided by previous California Public Utilities Commission ("Commission") decisions.[1] This is not surprising, since the Commission's previous decisions will likely inform and guide Commission regulations. However, given the new statutory requirements, incorporating these past practices into this implementation with the expectation that it will have broader applicability is problematic.

CMUA is concerned that certain parties appear to be raising issues and positions borne out of prior Commission debates, rather than the statutory language. CMUA members are not

[1] *See e.g.,* ALJ Ruling at 5, 8. Questions 5, 17, 18 all reference previous Commission Decisions.

under Commission jurisdiction, and CMUA has no position on how the Commission chooses to implement SB2 (1X) on retail sellers. However, importing prior policy determinations that do not appear to be based on the current statutory requirements undercuts the ability of CMUA, on behalf of POUs, to seek consensus on broader issues that may have market-wide application.

An example of the problems associated with looking to prior policy determinations is found in the TURN Comments on Questions 12-16, which deal broadly with "firmed and shaped" resources, or "Bucket 2."[2] TURN sets forth a litany of requirements for "firmed and shaped" resources that are not in the statute, including pricing requirements, location of the firming or shaping energy source, and temporal scheduling requirements. CMUA opposes these limitations, which are not found in the law. Regardless of past Commission decisions dealing with these issues, if there is any intent for these discussions to lay a foundation for broader application, the Commission must reject attempts to augment or circumvent the statutory language in such a manner.

II. DISCUSSION OF PARTY COMMENTS ON QUESTIONS POSED IN THE ALJ RULING

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

CMUA simply notes on reply that the major parties agree that there are five Balancing Authorities that qualify as California Balancing Authorities ("CBAs"): (1) the Balancing Authority of Northern California ("BANC")[3]; (2) the California Independent System Operator Corporation; (3) the Imperial Irrigation District; (4) the Los Angeles Department of Water and Power; and (5) the Turlock Irrigation District. Independent Energy Producers ("IEP") observe

[2] TURN Comments at 7-9.

[3] Some parties refer to the Sacramento Municipal Utility District Balancing Authority. BANC assumed registration and certification of the SMUD balancing authority effective May 1, 2011.

that the number, identity, or configuration of CBAs may change from time to time. IEP's observation on this matter is undoubtedly correct.

Question 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.

A review of the Comments on this question reveals that clarification is required in order to ensure that the content definitions, procurement, and grid operation realities are aligned.

As Pacific Gas and Electric ("PG&E") points out, Bucket 1 resources include those that are scheduled into a CBA.[4] However, not all scheduled electricity is actually delivered. This is due to transmission or operational constraints at either the source Balancing Authority, or the sinking CBA, or at a Balancing Authority in between the source and the sink.[5]

Schedule cuts can be due to transmission curtailments or generation conditions in any relevant Balancing Authority that will not allow the delivery of the full amount of scheduled power pursuant to contract. The commercial arrangement may call for the supplier to make up the power delivery from unspecified sources. This is not a firmed and shaped product because it is not designed to respond to the characteristics of the underlying resource. Instead this arrangement simply ensures that the product delivered is as commercially viable as possible and that it can be relied upon by the POU or the retail seller as part of their Day-Ahead or Day-Of power scheduling operations.

To be sure, a tracking mechanism is required to ensure that the energy from the renewable resource, and not from non-renewable resources, is what is counted for RPS compliance purposes. However, recognizing that "scheduled" and "delivered" are not

[4] PG&E Comments at 9-10.
[5] *Id.*

synonymous is an important starting point, and there is no rationale for excluding such commercial arrangements from Bucket 1.

Question 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?

A number of parties opined on whether firm transmission is relevant to the counting of a resource in Bucket 1 as scheduled in a CBA without substituting electricity from another source. Section 399.16 does not mandate a firm transmission requirement, yet DRA, for example, supports a firm transmission requirement.[6] TURN's Comments are ambiguous, but raise the question of whether firm transmission should be required.[7] Many parties, such as IEP and Southern California Edison ("SCE"), correctly note that the statute does not require firm transmission.[8] The Coalition of Utility Employees ("CUE") acknowledges that firm transmission is no longer relevant to the statutory requirement.[9] CMUA agrees with IEP, SCE, and others that there is no firm transmission requirement in the statute; nor should there be based on sound policy reasons. Accordingly, the implementation of SB 2 (1X) should not include a firm transmission requirement.

As the Commission moves forward with its policy development, CMUA notes that the definition of "firm" is not universally agreed upon. Further, the industry is developing non-traditional transmission products in response to renewable developer urging, such as "contingent

[6] DRA Comments at 3.
[7] TURN Comments at 3.
[8] *See e.g.,* SCE Comments at 9; IEP Comments at 4.
[9] CUE Comments at 3-4.

firm"[10] products that may allow better utilization of transmission while still providing a commercially viable product. Indeed, the CAISO's own Locational Margin Pricing-based market model does not provide for reserved transmission paths, but instead treats delivered energy prices to sources and sinks as financial price differentials to be resolved among buyers and sellers. The CAISO operates a pooled, security constrained, dispatched system with no guarantees of resource delivery from a specified resource.

It is easy to conceive of several varieties of firm transmission service from neighboring regions to CBAs, and none should inadvertently discount or disallow the counting of a particular resource in Bucket 1. In summary, there is no firm transmission requirement in the statute, and there is no policy rationale for creating an additional layer of extra-statutory restriction that will further erode buyer flexibility and render fewer transactions cost effective.

Question 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.

Based on a review of the comments submitted by several parties, CMUA urges a tracking and verification regime that builds upon and adopts as much as possible of the tracking and verification mechanisms that are in place under current RPS programs. While it is true that WREGIS is not currently designed to differentiate among SB 2 (1X) buckets, that is no reason to not consider potential changes to WREGIS that could better accommodate California's RPS program. It seems likely that augmentation of WREGIS capabilities is preferable to weaving a new tracking mechanism from whole cloth.

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[10] The Bonneville Power Administration ("BPA") initiated a public process in 2010 to discuss with stakeholders "whether VER schedules should be identified as 'firm contingent' under the applicable Northwest Power Pool rules . . . ." Comments of the Bonneville Power Administration, April 12, 2010, FERC Docket No. RM10-11-000, at 61. This process has subsequently been delayed, however, BPA is continuing to consider these issues. *See* Bonneville Power Administration, *Transmission Services: Firm contingent proposal delayed,* October 10, 2010, *available at* http://transmission.bpa.gov/Customer_Forums/firm_contingent/sept_wit_and_web_posting_100110.pdf

Question 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."

Based on its review of several parties' comments, CMUA submits this reply to hopefully clarify potential confusion on this point. It appears that, even when parties respond with opposite positions on the ALJ Ruling's reformation of the statutory language, they often say similar things.

A dynamic transfer is foundationally a Balancing Authority to Balancing Authority arrangement to account for the power output or consumption of a source or a sink within the Balancing Authority Area Control Error calculation, a primary standard by which Balancing Authorities' reliability standard compliance is judged. In this regard, SCE and LADWP have it right. The question, as posed in the ALJ Ruling, assumes that the generation facility itself will have an agreement to facilitate the dynamic transfer. This may or may not be the case. If a Balancing Authority is both a CBA and a generation facility owner in a neighboring Balancing Authority, it could have an arrangement that covers all dynamic transfers between those Balancing Authorities that is not facility-specific.

Current dynamic transfers take different forms. Calpine, for example, has no agreement with its host Balancing Authority, BANC, for the pseudo-tie (a form of dynamic transfer) arrangement of its Sutter Plant to the CAISO; the relevant agreements are between BANC and the CAISO. The parties to the pseudo-tie agreement for the New Melones facility are between BANC, the CAISO, PG&E as the transmission provider, and the Western Area Power Administration ("Western"). However, the facility owner and operator is the United States Bureau of Reclamation, and Western merely markets the output of the federal facilities.

As TransWest Express explains clearly,[11] dynamic transfer arrangements are in flux and how these mechanisms will be implemented is not set in stone. The CAISO has an ongoing stakeholder process,[12] and there are Westwide efforts[13] as well. It is premature to constrain the contractual form by which these arrangements may be implemented by requiring a specified generator facility agreement. CMUA is concerned that the reformulated statutory language in the ALJ Ruling Question 8 does exactly that.

Question 10: 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)? If yes, please also address how a particular transaction can be characterized and verified as belonging in a particular portfolio content category.

CMUA strongly opposes the arguments of DRA, CUE, and TURN that seek to add a requirement that sales directly connected to CBAs be bundled in order to count in Bucket 1.

First, this is not an interpretation supported by statute. Nowhere does section 399.16(b)(1) state that the renewable attribute for resources scheduled to or directly connected to a CBA must be bundled to the other power attributes from that particular facility. CMUA agrees with SCE:

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[11] TransWest Express Comments at 12.

[12] The CAISO initiated a stakeholder process in November of 2009 to consider the expansion of the expansion of dynamic transfer services in the CAISO tariff to include intermittent resources. *See* CAISO, *Dynamic Transfer Issue Paper: Provided in Support of 2009-2010 Stakeholder Process to Consider Expansion of Dynamic Transfer Service in ISO Tariff*, November 30, 2009. The CAISO released its final proposal on May 2, 2011, and is currently finalizing proposed tariff language. *See Third Draft Tariff Language - Dynamic Transfers,* July 21, 2011 *available at* http://www.caiso.com/Documents/ThirdDraftTariffLanguage-DynamicTransfers.pdf

[13] The Western Electricity Coordinating Council ("WECC") is currently considering an Efficient Dispatch Toolkit. *See generally*, WECC Staff, *White Paper: WECC Efficient Dispatch Toolkit Cost Benefit Analysis*, June 22, 2011. Additionally, the Northern Tier Transmission Group and ColumbiaGrid formed the Wind Integration Study Team ("WIST"), which has created a Dynamic Transfer Capability Task Force to explore the limits of the dynamic transfer. The task force recently released its *Phase 2 Report,* dated July 20, 2011, *available at* http://www.columbiagrid.org/DTCTF-documents.cfm.

> The definition of a Bucket 1 product provides that the [eligible renewable energy resources (ERR)] be directly interconnected to a CBA at the transmission or distribution level, directly scheduled into a CBA, or dynamically transferred into a CBA. There are no other limits associated with Bucket 1. As such, the definition of Bucket 1 products includes unbundled RECs – as long as the ERR that created the unbundled RECs meets the minimum requirements for a Bucket 1 product (i.e., directly interconnected to a CBA's transmission or distribution level transmission, directly scheduled into a CBA, or dynamically transferred into a CBA).[14]

CMUA also agrees with CEERT that the procurement content categories need to be read by what they include, not by what they exclude: "if in the course of any permitted transaction under Categories 1 or 2 a transfer of an unbundled REC results, such a circumstance does not mean that the transaction does not meet the criteria of those categories. Instead, the procurement or transaction should be assessed to determine the applicable category criteria."[15]

Increasingly, retail sellers and POUs will place diminishing value on the capacity and energy generated by new sources in order to reliably meet load requirements. The valuable commodity is the REC. Allowing unbundled RECs to count in Bucket 1 makes commercial and economic sense. Moreover, not only is it supported by the plain meaning of the statute, it is fully consistent with the intent of the Legislature to foster renewable development to spur economic development and job creation in California, and to bring co-benefits by potentially displacing fossil resources, increasing fuel diversity, and improving air quality.[16]

In its Comments, TURN seeks to distinguish net metering arrangements and allow unbundled RECS from those arrangements to count in Bucket 1.[17] TURN provides no policy rationale for this distinction between net metered arrangements and any other development of resources scheduled or directly interconnected to a CBA, such as a basic power purchase

[14] SCE Comments at 13.
[15] CEERT Comments at 10.
[16] Cal. Pub. Util. Code § 399.11(b),(e).
[17] TURN Comments at 6.

agreement or a REC-oriented feed-in tariff. Indeed, TURN's attempt to make this distinction undercuts their attempt to exclude Bucket 1 unbundled RECs.

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

See response to question 13.

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

If the discussions being held in this Rulemaking, as well as in the proceeding at the California Energy Commission and before the POU governing boards are to form at least a partial basis for some consistency across product definitions, the definitions used by these agencies must be based on the statutory language. As noted above, CMUA is highly concerned that concepts from prior Commission proceedings have been improperly imported into this proceeding to limit firmed and shaped products. To the extent any proposed additional limitations are not found in the statute, they should not be utilized in implementing SB 2 (1X).

Section 399.16(b)(2) is succinct, and counts in Bucket 2 "firmed and shaped eligible renewable energy resource electricity products providing incremental electricity and scheduled into a California balancing authority." Contrary to the arguments of TURN, the statute contains no limitations on where the firming and shaping capacity is located, the allowable scheduling period, netting period, nor any fixed price requirement.

To the extent that TURN is urging that these rules be applied by the Commission to retail sellers, CMUA has no comment. However, as these restrictions are wholly created outside of the direction and plain meaning of SB 2 (1X), CMUA is concerned that their inclusion in the Commission's implementation of the statute could result in confusion and inconsistencies.

Question 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 areas 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.**

In its Comments, CMUA urged a common sense and plain meaning interpretation of the term "incremental," to mean that actual additional power resulting from a transaction, as distinguished from an unbundled REC.[18] CMUA notes that others took similar positions. CEERT, for example, urges the Commission to use its "ordinary" dictionary definition as a starting point.[19] San Diego Gas and Electric ("SDG&E") also proposes a straight-forward interpretation of this term.[20] Consistent with the parties' comments, a "plain meaning" approach to the term incremental is appropriate.

[18] CMUA Comments at 10-11.
[19] CEERT Comments at 13.
[20] SDG&E Comments at *13.

Question 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?

- **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?**

CMUA's position that firmed and shaped products should not be limited to intermittent resources is supported by several parties.[21] As SCE explains:

> "Bucket 2" products are not defined by a generator's delivery profile. Bucket 2 products are defined by where the generator is interconnected, and whether firming and shaping take place over a period longer than an hour but within a calendar year. As such, whether a resource is intermittent or not, is not a defining characteristic for Bucket 2 products. Bucket 2 therefore includes some products that are intermittent generation and some that are non-intermittent.[22]

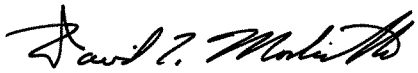
This is a sound policy conclusion based on commercial realities and system operations and should be followed by the Commission when implementing SB 2 (1X).

III. CONCLUSION

CMUA appreciates the opportunity to submit these reply comments.

Dated: August 19, 2011

Respectfully submitted,



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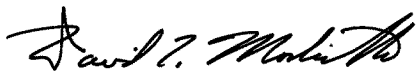
[21] *See, e.g.,* SCE Comments at 21; PG&E Comments at 22-23; LADWP Comments at 14.
[22] SCE Comments at 21.

VERIFICATION

I am an officer of the California Municipal Utilities Association, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information or 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 Sacramento, California.



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