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 CALPINE CORPORATION ON PORTFOLIO CONTENT CATEGORIES

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Calpine Corporation ("Calpine") submits the following comments in response to the July 12, 2011 *Administrative Law Judge's Ruling Requesting Comments on Implementation of New Portfolio Content Categories for the Renewables Portfolio Standard Program* ("ALJ Ruling").[1] The ALJ Ruling requests responses to a number of questions related to "the addition of 'portfolio content categories' and quantitative rules for the use of transactions in each category" for compliance with the Renewables Portfolio Standard ("RPS") program."[2]

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. As it is used in section 399.16(b),[3] "electricity products" should be interpreted to mean "RPS" procurement transactions that encompasses the full range of portfolio content categories set forth in Section 399.16(b).[4] Given the range of portfolio content categories

[1] Calpine is a member of the Independent Energy Producers Association ("IEP") and participated in development of IEP's comments to the ALJ Ruling. Accordingly, Calpine comments will not address every issues raised in the ALJ Ruling. Although Calpine is not responding to every question, the questions will be numbered to match the numbering in the ALJ Ruling.

[2] ALJ Ruling at 2.

[3] Unless otherwise noted, all statutory references are to the Public Utilities Code.

[4] Question 1 references section 399.16(b)(1); however, the term "eligible renewable energy resource electricity products" is also used in sections 399.16(b)(2) (firmed and shaped products) and section 399.16(b)(3) (renewable energy credit ("REC") transactions that do not qualify under 399.16(b)(1) and (2)).

addressed in Section 399.16(b), the Commission's interpretation of "electricity products" as "RPS" procurement transactions should explicitly recognize procurement of both RPS eligible energy *and* RECs.

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. Section 399.16(b)(1)(A) correctly makes the distinction between (1) RPS-eligible generation facilities that are physically "interconnected" to the transmission or distribution system; and (2) the electricity produced by an RPS-eligible generation facility that is "scheduled" from a non-California Balancing Authority into a California Balancing Authority ("CBA") without substituting electricity from another source. In both cases, the "electricity product" associated with either the interconnected facility or the scheduled energy satisfies the content category requirements in section 399.16(b)(1) and can be used for RPS compliance purposes in the amounts provided for in section 399.16(c)(1).

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.

The "electricity product" associated with "scheduled [energy] from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source" satisfies the content category requirements in section 399.16(b)(1) and may be used for RPS compliance purposes in the amounts provided for in section 399.16(c)(1). This includes energy scheduled from an eligible renewable energy resource that is located out-of-state.

Section 399.16(b)(1)(A) does not specify the entity, person or party responsible for scheduling the RPS-eligible energy into a CBA or dictate the structure of the scheduling arrangement. Thus, RPS procurement transactions which contemplate that the RPS-eligible energy will be scheduled into a CBA in one or more steps satisfies the content category requirements in section 399.16(b)(1). One example of such a transaction would be where the RPS-eligible energy is scheduled from the eligible renewable energy resource to a delivery point outside a CBA (*e.g.*, out-of-state) at which point title to the RPS-eligible energy is transferred and the buyer schedules and imports the energy into a CBA. In this situation, the RPS-eligible energy is "scheduled" into a CBA and the deliveries can be subsequently verified "source to sink."

In addition, the intermittent nature of renewable generation may require the use of ancillary services in "real-time" to stabilize deliveries on an hourly or sub-hourly basis. Consistent with section 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" is a practical necessity and should not be deemed "substituting electricity from another source" for purposes of satisfying the content category requirements in section 399.16(b)(1). Furthermore, given the substantial reliability benefits associated with providing firm deliveries of RPS-eligible energy, hybrid facilities (facilities capable of generating both RPS-eligible and non RPS-eligible energy), should satisfy the content category requirements in section 399.16(b)(1). Specifically, if metering allows specific and auditable measurement of RPS-eligible energy and the output for RPS compliance purposes is limited to the lesser of the metered RPS-eligible output or e-tag (as discussed below), the legislative intent has been satisfied.

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?[5]

Ordering Paragraph 26 of Decision 10-03-021 directed Energy Division to oversee steps on how "transactions for RPS procurement that include firm transmission arrangements . . . [in]to a California balancing authority" should be classified.[6] Section 399.16(b)(1)(A), however, does not reference firm transmission rights. Thus, scheduled energy from an eligible renewable energy resource into a CBA satisfies the content category requirements in section 399.16(b)(1) and may be used for RPS compliance purposes in the amounts provided for in section 399.16(c)(1) irrespective of firm transmission rights.

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 California Energy Commission ("CEC") can track and verify energy scheduled from an eligible renewable energy resource into a CBA by relying on Western Renewable Energy Generation Information System ("WREGIS") Certificates and North American Electric Reliability Corporation ("NERC") e-tags. Specifically, WREGIS certificates confirm the RPS eligibility of the renewable resource and NERC e-tags identify the path of the energy generated by an RPS-eligible resource between source and sink, which can be used to track and verify the transmission path into a CBA. Transmission schedules could also be used to show transfer rights from source to sink.

[5] For example, the staff workshop held on April 23, 2010, and the post-workshop comments and reply comments.
[6] Calpine did not directly participate in the subsequent work done in response to Ordering Paragraph 26.

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.

The "fraction of the schedule actually generated by the eligible renewable resource" should be established by metering at the RPS-eligible generator terminals. For example, if the output of RPS-eligible energy is metered at 50 MW, but the delivered schedule is 75 MW (with 25 MW provided either by on-site firming from a hybrid plant or balancing energy from the host BA), only 50 MW would qualify for RPS compliance purposes. The 50 MW would satisfy the content category requirements in section 399.16(b)(1) and could be used for RPS compliance purposes in the amounts provided for in section 399.16(c)(1).

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

Yes. The interpretation correctly acknowledges that the owner/operator of the RPS-eligible generation facility is the counterparty to dynamic transfer agreements. However, there could be circumstances where the owner and operator are different legal entities. Eligibility should not be denied when the dynamic scheduling agreement is with an *agent* of the "generation facility."

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. An "unbundled renewable energy credit" should be interpreted as "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." However, for RPS compliance purposes, unbundled RECs should be treated consistent with the content category characteristics of the underlying electricity product. Thus, as discussed in more detail in response to Question 10, an unbundled REC that is associated with (1) RPS-eligible generation facilities that are physically "interconnected" to the transmission or distribution system; (2) the electricity produced by an RPS-eligible generation facility that is "scheduled" into a CBA without substituting electricity from another source; or (3) RPS-eligible energy that is dynamically transferred to a CBA satisfies the content category requirements in section 399.16(b)(1) and can be used for RPS compliance purposes in the amounts provided for in section 399.16(c)(1).

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.

Section 399.16(b)(1) should include transactions that transfer only RECs but not the RPS-eligible energy with which the RECs are associated if the underlying RPS-eligible energy is (1) generated by facilities that are physically "interconnected" to the transmission or distribution system; (2) produced by an RPS-eligible generation facility that is "scheduled" into a CBA without substituting electricity from another source; or (3) dynamically transferred into a CBA.

In all of these situations, the underlying physical characteristics of the "electricity product" is the same irrespective of whether the REC is transferred separately or part of a bundled transaction. As is the case with bundled REC transactions, such REC-only transactions would, among other benefits, "[d]isplace fossil fuel consumption within the state,"[7] "reduc[e] air pollution within the state,"[8] and help meet[] the state's climate change goals by reducing emissions of greenhouse gases associated with electric generation."[9] Thus, such REC-only transactions would satisfy the same policy goals as bundled transactions. Furthermore, REC-only transactions could be tracked through WREGIS (to confirm the RPS eligibility of the resource) and verified through the use of on-site meters at the RPS-eligible generation facility. Accordingly, REC-only transactions associated with RPS-eligible energy that otherwise satisfies the content category requirements in section 399.16(b)(1) should be used for RPS compliance purposes in the amounts provided for in section 399.16(c)(1).

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?

RPS-eligible energy generated outside the boundaries of a CBA should not, simply by virtue of its location, be assigned to the content category in section 399.16(b)(2). As discussed above in response to Question 4, energy "scheduled" from an out-of-state eligible renewable energy resource into a CBA that uses "another source to provide real-time ancillary services required to maintain an hourly or sub hourly import schedule" satisfies the content category

[7] *See* section 399.11(b)((1).
[8] *See* section 399.11(b)((3).
[9] *See* Section 399.11(b)((4).

requirements in section 399.16(b)(1) and can be used for RPS compliance purposes in the amounts provided for in section 399.16(c)(1).

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.

No. The requirement in Section 399.16(b)(1)(A) that the generation be "scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source" should not be interpreted to mean that no firmed and shaped electricity may be considered as meeting the requirements of Section 399.16(b)(1)(A). The real-time ancillary services recognized as an exception to the substitution requirement in Section 399.16(b)(1)(A) may resemble a firmed and shaped transaction under Section 399.16(b)(2) (*see* response to Question 7). However, to satisfy the content category requirements in section 399.16(b)(1), the real-time ancillary services used to stabilize delivery of intermittent renewable energy must be provided on an hourly or sub hourly basis.

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)) 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) for minimum procurement from contracts of at least 10 years' duration;**

c. **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.**

All (100%) of the eligible renewable energy or RECs procured from an eligible renewable resource pursuant[10] to a contract or ownership agreement executed prior to June 1, 2010 should count for RPS compliance purposes and not be subject to the content category limitations in section 399.16(c).

For contracts executed prior to June 1, 2010 to count in full towards procurement requirements, section 399.16(d)(3) prohibits certain types of modifications:

> Any contract amendments or modifications occurring after June 1, 2010, do not increase the nameplate capacity or expected quantities of annual generation, or substitute a different renewable energy resource. The duration of the contract may be extended if the original contract specified a procurement commitment of 15 or more years.

Section 399.16(d)(3) should not be read to prohibit an amendment to a contract executed prior to June 1, 2010 that would increase capacity or expected quantities if such amendment relates to a procurement transaction that would otherwise satisfy the requirements of 399.16(b). In other words, if the amendment relates to a resource that satisfies the content category

[10] Status as an "eligible renewable resource" is determined under the rules in place as of the date when the contract was executed. *See* section 399.16(d)(1).

requirements in section 399.16(b) then the amendment should be allowed, consistent with the amounts provided for in section 399.16(c).

Respectfully submitted,

/s/

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Dated: August 8, 2011

Attorneys for Calpine Corporation

VERIFICATION

I am the attorney for the Calpine Corporation, and I have been authorized to make this verification on the behalf of Calpine Corporation. Said party is located outside of the County of San Francisco, where I have my office, and I make this verification for said party for that reason.

I have read the foregoing document and based on information and belief, believe the matters in the application to be true.

I declare under penalty of perjury that the foregoing is true and correct and executed on August 8, 2011, at San Francisco, California.

/s/
Jeffrey P. Gray