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)

SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) OPENING COMMENTS ON THE ADMINISTRATIVE LAW JUDGE'S JULY 12, 2011 RULING REQUESTING COMMENTS ON IMPLEMENTATION OF NEW PORTFOLIO CONTENT CATEGORIES FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

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I. INTRODUCTION AND BACKGROUND

In accordance with the Rules of Practice and Procedure of the California Public Utilities Commission (the "Commission" or "CPUC") and the *Administrative Law Judge's Ruling Requesting Comments on Implementation of New Portfolio Content Categories For the Renewables Portfolio Standard Program* dated July 12, 2011 (the "ALJ Ruling"), San Diego Gas & Electric Company ("SDG&E") hereby submits these comments in response to areas of inquiry set forth in the ALJ Ruling regarding implementation of new portfolio content categories for the Renewable Portfolio Standard ("RPS") program.

Senate Bill ("SB") 2 (1X) ("SB 2") was signed by the Governor in April, 2011, and will become effective 90 days after the conclusion of the Legislature's 2011-2012 First Extraordinary Session.[1/] SB 2 makes numerous modifications to the RPS Program, including, *inter alia*, the definition of eligible renewable energy resource electricity products that may be used for RPS compliance. These products are separated into three "portfolio content categories" with

[1/] SB 2 (1X) (Stats. 2011, Ch. 1).

quantitative rules for the use of transactions in each category for RPS compliance by RPS-obligated load-serving entities ("LSEs").[2/]

The ALJ Ruling solicits comments regarding implementation of the new portfolio content categories and poses several specific questions which SDG&E addresses below.

II.
DISCUSSION – SDG&E'S RESPONSES TO THE QUESTIONS IN THE ALJ RULING

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"?**

   RESPONSE:

   "Electricity products" should be interpreted as referring to the various types of products that arise out of RPS procurement transactions that will qualify for the RPS program.

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."**

   RESPONSE:

   Yes. Category 1 products can meet any of the three standards listed in this section. The interpretation provided in this ruling is also helpful in clarifying that biogas products can be included in Category 1. Biogas is often produced out of state, but is converted to electricity at an RPS-eligible generation facility producing electricity that meets one of the three standards outlined in this section (first point of interconnection to a California balancing authority ("CBA") or distribution facility or scheduled into a CBA). It is the facility producing the

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[2/] These rules are codified at California Public Utilities Code § 399.16(b).

electricity that must comply with the locational requirements of § 399.16(b)(1)(A) ("Category 1").

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

RESPONSE:

SDG&E agrees with the list of CBAs provided in the "RPS Product Matrix - Reference Proposal Outlining Areas of Broad Consensus and Open Issues" attached as Appendix A to these comments (the "Reference Proposal"). SDG&E notes that this is the list of CBAs as they exist today, and that this list may narrow or expand based on changes to the structure of such entities.

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.**

RESPONSE:

SDG&E generally agrees with the discussion of this topic at page 5 of the Reference Proposal, and seeks confirmation that imbalance energy is not a form of substitution energy unless the monthly net imbalance energy for an eligible renewable energy resource ("ERR") import is positive at the end of the month.

Imbalance energy is the real-time energy that balancing authorities (including CBAs such as the California Independent System Operator ("CAISO")) use to match total system supply with total system demand after the hour-ahead submission of supply and demand schedules (including interchange schedules). However, imbalance energy is not procured specifically to support interchange schedules – for example, such schedules can be cut if the source generator is curtailed. Imbalance energy can be positive (incremental) or negative (decremental) for the balancing authority ("BA") system depending on the combined effect of load, generation and

energy schedules in real time. Over time, imbalance energy amounts for individual generators should converge toward zero as they seek to avoid costly imbalance charges. Therefore, imbalance energy should not be considered substitute energy unless the generator did not compensate for decremental imbalance energy within the month.

Categorizing hourly imbalance energy as substitution energy would impose significant administrative burdens on all parties. Hourly imbalance energy is not displayed on interchange schedules and would need to be derived as the difference between the schedule and meter – a cumbersome task for all parties because its calculation relies on parsing hourly data not found in the electronic tags ("E-tags"). Although it is possible to track E-tag quantities on an hourly basis, such data would require additional fees to be paid to an existing or new vendor. Therefore, to avoid such burdens and costs, and to establish the appropriate treatment of hourly imbalance energy within the context of the RPS, SDG&E urges the Commission to adopt the proposed standard for substitution energy described here.

In summary, SDG&E proposes that E-tags that record interchange schedules be used to determine whether substitution energy was provided from another source by comparing the monthly total scheduled versus generated by the ERR. If in a given hour the physical path shows the ERR to be the sole source of the energy scheduled and delivered to a CBA through an intermediate BA, then this quantity is free of substitute energy for that hour. The lower of metered and E-tag total volumes at the end of a calendar month should be counted towards Category 1.

Example - Imbalance Energy:

In hour 1 on day 1

- The RPS-eligible generator schedules 110 megawatt-hour ("MWhs") and produces 100 MWhs.

- The additional 10 MWhs that was scheduled are provided by the balancing authority as imbalance energy.
- The E-tag shows that 110 MWhs were delivered.

In hour 2 on day 1
- The RPS-eligible generator schedules 90 MWhs and produces 100 MWhs.
- The surplus 10 MWhs that was generated contributes to the balancing authority's imbalance energy.
- The E-tag shows that 90 MWhs were delivered.

Case A: At the end of the month, assume the E-tag monthly total is 72,000 MWhs while the RPS-eligible generator total is 71,000 MWhs. The net imbalance energy over the month is positive 1,000 MWhs, which should be considered substitution energy for this month and such quantities should not count towards Category 1.

Case B: At the end of the month, assume the E-tag monthly total is 72,000 MWhs while the RPS-eligible generator total is 73,000 MWhs. The net imbalance energy over the month is negative 1,000 MWhs, therefore there is no substitution energy for this month. 72,000 MWhs should count towards Category 1 and the extra 1000 MWhs can count towards Category 2 or 3.

SDG&E also observes that imbalance energy is provided by the host BA under its Open Access Transmission Tariff ("OATT"). However, this is not the same as "firmed and shaped" energy that is designated to supplement deliveries from a specific ERR to maintain its interchange schedule. Without an explicit "firmed and shaped" service, the BA may cut interchange schedules if deliveries deviate sufficiently from the scheduled quantity. On the other hand, if the energy is "firmed and shaped, the delivery quantity is guaranteed and the interchange schedule cannot be cut. Therefore imbalance energy does not "firm" or "shape" deliveries of energy from ERRs.

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 D.10-03-021, regarding transactions from firm transmission?**[3]

RESPONSE:

This Order Instituting Rulemaking ("OIR") process should subsume the work referred to above. Although parties discussed these issues at a workshop and provided post-workshop comments on similar issues, no resolution was reached.

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.**

RESPONSE:

- These transactions should be tracked by evaluating the ERR's meter data and E-tags on a monthly basis.

The lesser of ERR metered quantities and the E-tag quantities, as measured on a monthly basis, should comply with § 399.16(b)(1)(A). Measuring the discrepancy between meter data and E-tag quantities any more often than monthly will cause unnecessary administrative burdens for retail sellers, the California Energy Commission ("CEC") and the CPUC. First, although it is possible to track E-tag quantities on an hourly basis, SDG&E does not currently have access to this data. Access would require additional fees to be paid to an existing or new vendor. Second, it would be more difficult for the CEC and/or CPUC to audit hourly data rather than monthly data and doing so would impose significant administrative burdens and costs.

- It is not necessary to track these transactions on an hourly basis.

Tracking these transactions on an hourly basis does not advance any policy goals that are not met by tracking on a monthly basis. This provision was drafted with the goals of: 1) encouraging the construction of new renewable facilities; and 2) offsetting the retail seller's need to procure conventional power. One way that the first goal is accomplished is when a retail

[3] For example, the staff workshop held on April 23, 2010, and the post-workshop comments and reply comments.

seller purchases a bundled product. For the transactions described in Question 4 above, the retail seller has purchased a bundled product, and has, therefore, provided a power purchase agreement ("PPA") that will allow a new renewable project to be financed. Whether the energy from that facility is counted on an hourly or monthly basis is irrelevant to the goal of encouraging new renewable development. Similarly, the second goal of displacing the retail seller's need to purchase conventional power is also met when the retail seller signs a PPA to purchase bundled renewable power from the facility. Every MWh that is delivered from the ERR offsets a MWh of conventional energy that the retail seller would have otherwise purchased. Whether the deliveries from that ERR are tracked on an hourly or monthly basis has no impact on the facility's ability to displace conventional procurement.

- The role of the CEC and the Commission.

The E-tag and meter data should be verified through the Western Renewable Energy Generation Information System ("WREGIS"). The capability currently exists for WREGIS to true up meter and E-tag data on an annual basis, which data is currently used to ensure that sufficient imports exist to match with deliveries from out-of-state renewable resources. WREGIS will need to expand its capabilities in order to track meter and E-tag data on a monthly basis. This would allow WREGIS to track metered deliveries from renewable resources and ensure that no additional ancillary service or imbalance energy deliveries are counted towards RPS.

WREGIS should create a monthly report for such data that the retail sellers would then submit to the CEC for verification, similar to the process that is currently in place for the annual verification reports that are currently submitted to the CEC to track out of state projects.

In general, the CEC should establish whether a project is eligible for California's RPS program and track the ownership of the RECs created by such project. The CEC established WREGIS to accomplish these tasks. Once the CEC has established that a project is RPS eligible and has determined who owns the REC, the CPUC should determine whether it can be used for compliance by verifying the category of procurement that it falls into and ensuring that deliveries from the project do not exceed the relevant caps.

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.**

RESPONSE:

SDG&E proposes that to the extent (non-RPS) energy from real-time ancillary services (for example Operating Reserve) is delivered to a CBA as a specific interchange schedule to support an ERR import, such energy quantities would not apply toward Category 1.

Example:

a. ERR schedules 100 MWhs into a CBA as a unit-contingent interchange schedule and delivers all 100 MWhs.
b. ERR further schedules 5 MW of Operating Reserve into the same CBA to offset the CBA's operating reserve requirement resulting from the unit-contingent import.
c. During the hour, the CBA calls upon the delivery of 5 MW under the Operating Reserve schedule due to a system contingency; the exporting BA delivers such (non-RPS) energy over the course of the hour, totaling 5 MWh.
d. A total of 105 MWh associated with the ERR has been delivered into the CBA; however, the 5 MWh delivered under the Operating Reserve schedule, *and subsequently reflected in after-the-fact E-tag (showing the non-RPS facility as the source) that is separate from the ERR's E-tag (showing the ERR as the source)*, would not be counted toward meeting Category 1 requirements. Only the energy produced by the ERR should be counted towards Category 1. The amount should be determined by the methodology described in response to Questions 4 and 6.

SDG&E emphasizes that hourly imbalance energy would not be subject to this provision but rather by the process outlined in response to Question 4. Among other factors discussed in that response, imbalance energy is not captured as a delivered quantity of energy under the interchange schedule and is not denoted on the E-tag; therefore SDG&E proposes that if a net positive quantity of imbalance energy was delivered over a monthly period, to exclude such quantities from Category 1.

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."**

SDG&E agrees that it is the ERR facility producing the electricity that must have a dynamic transfer agreement, but notes that either the buyer or seller could obtain such agreement.

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"?**

RESPONSE:

In construing a statute to ascertain the intent of the Legislature, first and foremost, the Commission should give effect to the plain meaning of the language in the statute.[4/] The interpretation proposed above -- that an unbundled REC is a REC procured separately from and *by a different entity than* the purchaser of the associated renewable energy -- is based upon logic and common sense. However, where RECs and the associated renewable energy are procured by the *same* party, the transaction is, in effect, bundled, regardless of whether the RECs and associated energy were conveyed through the same instrument or at the same time.

[4/] *See Collection Bureau of San Jose v. Rumsey,* 24 Cal.4th 301, 310 (2000).

Accordingly, SDG&E submits that a transaction should be deemed "unbundled" if:

- the REC is procured separately from the underlying energy; and
- the REC and underlying energy are purchased by different entities

In addition, SDG&E submits that the following type of transaction involving contracts administered on behalf of the California Department of Water and Power ("CDWR") should **not** be classified as "unbundled:"

- Retail seller has an existing CDWR contract with an ERR that has its first point of interconnection to a CBA.
- Pursuant to the existing contract, retail seller procures only the energy and not the RECs from the ERR.
- Later, retail seller and the ERR sign a separate contract pursuant to which the retail seller purchases the RECs associated with prior and current deliveries from the ERR.

In this example, the REC is procured separately from the underlying energy, but the same entity (retail seller) has purchased both the REC and the underlying energy. Since this transaction furthers the goal of encouraging the continued operation of a renewable energy facility by providing a steady stream of revenues for both the REC and the underlying energy, it should be considered a "bundled" transaction.

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.

RESPONSE:

Yes. Unbundled REC transactions with renewable generating facilities that meet the interconnection or delivery requirements may be included in § 399.16(b)(1). Category 3 only

applies to cases where a resource does not otherwise meet the criteria for either of the other two categories.

Category 1 requires a resource to meet one of two criteria: (i) the facility has a first point of interconnection with a CBA; or (ii) the facility otherwise provides for actual delivery, including by dynamic transfer. The key point of concern is to ensure that the energy produced by the eligible renewable resource is delivered into California. That can be accomplished through **either** a bundled transaction or an unbundled transaction with a facility that delivers renewable generation to serve California load to one buyer and RECs separately to a different buyer. Nothing in the Category 1 provision indicates that unbundled resources would not qualify under this provision to the same degree as bundled resources.

Accordingly, the following type of transaction should be considered a Category 1 purchase:

- The REC is procured separately from the underlying energy;
- The REC and underlying energy are purchased by different buyers;
- The generating facility has a first point of interconnection with a California balancing authority *or* the facility otherwise provides for actual delivery, including by dynamic transfer.

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.

RESPONSE:

The phrase "or any fraction of the electricity generated" should be interpreted as meaning "any fraction of the electricity generated by the eligible renewable energy resource." This situation would arise when a product is supplemented with ancillary services or imbalance energy as discussed in Question 4 above, or when a project is "firmed or shaped" as defined below in Questions 12 and 13. Please see the response to Question 6 above for a discussion of how this procurement should be documented and the roles of specific entities.

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

RESPONSE:

A "firmed" transaction means:

- Power that is delivered to a CBA that is not of a non-firm or unit-contingent nature. That is, the scheduled energy will not be curtailed if the resource cannot meet its delivery obligation, because other generation in the exporting BA is dispatched to maintain the scheduled delivery *specifically of that resource*. If a resource is not supported with a firming service, its schedule energy can be curtailed by the BA if the resource is unable to meet its scheduled delivery obligation.
- The intent of the transaction is to ensure that the scheduled energy quantity is delivered into a CBA, thereby avoiding mid-hour schedule cuts, after-the-fact E-tag adjustments and inefficient use of transmission capacity otherwise associated with intermittent power.
- Firmed deliveries do not include instances where imbalance energy or ancillary services are used by the source BA to support the reliable operation of its transmission system, including aggregate power flows to and from adjacent BAs. (these are Category 1 transactions where only the energy actually produced by the ERR qualifies for Category 1).

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

RESPONSE:

A shaped transaction provides a predetermined delivery profile for intermittent renewable energy to better match the buyer's supply needs.

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.

    RESPONSE:

Incremental electricity should be defined as any contract for the import of power into a CBA that is signed after June 1, 2010. A particular transaction can be characterized as providing incremental electricity if the transaction displaces the need for the purchase of conventional power to serve California's load.

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?

    RESPONSE:

Only intermittent resources located outside of California would be subject to this requirement, since generation from in-state resources would fall into Category 1. While energy generated within a CBA could arguably be used as firming or shaping energy (for example, if a

LSE wanted to provide a firm energy schedule from an in-state intermittent resource or sell customers a block of RPS energy), the in-state firming and shaping scenario seems unlikely. The more rational and cost effective approach would be to count the in-state generation as Category 1, even if the deliveries are firmed and shaped by another resource. This would allow power producers and retail sellers the flexibility they need to provide cost effective products that accomplish two important goals: (1) incentivizing renewable development by paying the developer for both the REC and the underlying power; and (2) incentivizing delivery of renewable power into California, and thereby displacing the need to purchase conventional power to serve California load.

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.**

    RESPONSE:

    A firmed and shaped transaction qualifies for Category 1 if the ERR is listed as the source in the physical path of the E-tag.

    For example, a power producer is able to guarantee physical delivery of 50 MWs from its 500 MW fleet of non-CBA solar ERRs during on-peak hours. This 50 MW quantity can be sold as a firmed and shaped product delivered into a CBA that meets the requirements of Category 1.

17. **Section 399.16(d) provides that: "any contract or ownership agreement originally executed prior to June 1, 2010, shall count in full toward 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 the consideration of:

a) **the requirements in D.07-05-028 (implementing current § 399.14(b)[5]) 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)[6] 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.**

RESPONSE:

The phrase "ownership agreement" should be interpreted to mean a contractual relationship other than a PPA whereby the retail seller has an ownership interest in the renewable facility. These types of arrangements could include:

- Retail seller signs a Build/Own/Transfer ("BOT") agreement with the renewable developer so that the developer builds the project and then transfers it to the retail seller upon completion.
- Retail seller signs an Engineering/Procurement & Construction contract with a developer who then builds the renewable project on behalf of the retail seller.

The reference to "count in full" was intended to grandfather transactions already entered into by June 1, 2010 and to ensure that existing contracts did not affect, and were not affected by, the product limitations contained in Section 399.16. Thus, if a transaction meets the criteria of paragraph (d), then the product would be treated as contributing toward meeting the RPS obligation and would not be treated as impacting obligations or restrictions created by any of the product limitations contained in Section 399.16. The product of those transactions should not be

[5] Current § 399.14(b) provides: "The Commission may authorize a retail seller to enter into a contract of less than 10 years' duration with an eligible renewable energy resource, if the commission has established, for each retail seller, minimum quantities of eligible renewable energy resources to be procured either through contracts of at least 10 years' duration or from new facilities commencing commercial operations on or after January 1, 2005."

[6] New § 399.13(b) provides: "A retail seller may enter into a combination of long- and short-term contracts for electricity and associated renewable energy credits. The commission may authorize a retail seller to enter into a contract of less than 10 years' duration with an eligible renewable energy resource, if the commission has established, for each retail seller, minimum quantities of eligible renewable energy resources to be procured through contracts of at least 10 years' duration."

de-rated or otherwise treated as of lesser value in contributing toward meeting the compliance obligations. Furthermore, in the event that the CEC or the legislature changed the definition of an "eligible renewable," that change would have no effect on any of these pre-existing transactions.

Specifically, in order to be "counted in full", a transaction must have the following characteristics:

- Signed before June 1, 2010
  - This means that the retail seller and the ERR entity must have executed a power purchase or ownership agreement on or before June 1, 2010.
- The renewable energy resource was eligible under the rules in place as of the date when the contract was executed.
  - This means that the resource must have been eligible pursuant to the CEC's eligibility rules that were in place as of the date the contract was executed. The requirements in D.07-05-028, new § 399.13(b) and new § 399.13(a)(4)(B) that restrict the procurement of short term contracts do not impact whether or not the resource was eligible pursuant to the CEC's rules.
- For an electrical corporation, the contract has been approved by the commission, even if that approval occurs after June 1, 2010.
  - This means that the CPUC will consider all rules in place at the time the contract was executed to determine whether the contract should be approved for RPS compliance. It would follow that the CPUC would consider the requirements in D.07-05-028 regarding short terms contracts, but it would not consider the requirements of new § 399.13(b) and new § 399.13(a)(4)(B).
- 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.
  - This means that if a Commission-approved contract was subsequently amended to increase the quantities, change the resource, or extend the duration (if the original duration was less than 15 years), then it is not eligible for grandfathering.
  - However, if a contract submitted for Commission approval is amended while the Advice Letter requesting approval is still pending – i.e., amended *prior* to Commission approval of the contract – this subsection does not apply. In other words, this provision applies *only* where the amendment or modification is to a contract that has *already* been approved by the Commission.

For example, an original contract is signed before June 1, 2010 for 100 MWhs/year and an advice letter submitted requesting approval of the contract. The contract is then amended in January of 2011 - while the advice letter is still under review at the CPUC - to increase deliveries to 200 MWhs/year. The Commission subsequently approves the entire transaction. This transaction should be eligible for grandfathering. Since the CPUC was able to review the transaction as a whole and approved the expanded deliveries, it should not be restricted from counting in full towards compliance under the new legislation.

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).**

RESPONSE:

With regard to the original approval process for grandfathered contracts, the rules for the use of TRECs set out in D.10-03-021 *et seq.* would have been considered by the Commission at the time it determined whether to approve the contract for which grandfathering treatment is requested. In order to "count in full" under § 399.16(d), the contract must have been approved by the Commission. In order for the Commission to have approved such contract, it would have had to meet the requirements of D.10-03-021 *et seq.*

With regard to RPS compliance on a going-forward basis, the currently effective rules for counting TRECs for RPS compliance (*i.e.*, the rules adopted pursuant to D.10-03-021, *et seq.*) should be eliminated and replaced with the compliance accounting framework adopted pursuant to SB 2. Requiring adherence to existing rules in addition to new rules adopted pursuant to SB 2 would create an unreasonable level of complexity and administrative burden.

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)?**

RESPONSE:

Since SB 2 provides procurement targets starting in 2011, the portfolio content limitations set forth in Section 399.16(d) should apply to all 2011 procurement. Thus, the portfolio content limitations set forth in Section 399.16(d) should go into effect on January 1, 2011.

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.[7] The requirement for delivery is implemented by the CEC in its *Renewables Portfolio Standard Eligibility Guidebook (RPS Eligibility Guidebook)* (3d ed. December 19, 2007).[8] It is also incorporated into the characterization of a REC in D.08-08-028.**

    a) **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)?**

RESPONSE:

Existing CEC eligibility rules (such as the delivery requirement) should end as of January 1, 2011. At this point, SB 2 rules should apply even if the CEC has not yet updated its Eligibility Guidebook reflecting the repeal. This would eliminate the delivery requirement as of January 1, 2011.

    b) **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?**

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[7] This is accomplished by eliminating both current Pub. Res. Code § 25741(a) (defining "delivered" and "delivery") and current Pub. Res. Code § 25741(a)(2)(B)(iii) (requiring that RPS-eligible energy be delivered to an in-state location).

[8] The *RPS Eligibility Guidebook* is available at http://www.energy.ca.gov/2007publications/CEC-300-2007-006/CEC-300-2007-006-ED3-CMF.PDF.

RESPONSE:

In order to promote administrative clarity, the delivery requirement should end as of January 1, 2011 for all contracts, regardless of whether they were already approved by the Commission.

c) **How should the plan you propose be applied to ESPs? To CCAs?**

RESPONSE:

SDG&E believes that the same rules should apply to all energy providers.

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?**

RESPONSE:

The utility should provide as part of the advice letter a description of how a transaction with a resource located outside of California and not interconnected to a CBA will be structured, including a description of any firming and shaping or of any selling off of energy or RECs after an initial purchase of bundled energy and RECs. If the resource will be dynamically scheduled into a CBA, the status of the dynamic transfer should be included in the discussion of the interconnection and transmission.

The utility should also state up front its intentions regarding the category of compliance it envisions the contract to be in, and supporting discussion of how and why the contract meets those requirements. If a transaction is proposed as a firmed and shaped deal, or as delivered to a CBA without substituting energy from another resource, the utility should be able to produce upon request any relevant documentation that is available, such as firming and shaping contracts or transmission service agreements.

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?**

RESPONSE:

Any verification that is done should focus on the compliance report submitted by the affected entity, rather than on the contract. The Resolution approving the contract could contain a preliminary and non-binding finding of what compliance category the Staff believes is appropriate. Operational results may vary from contract expectations such that a portion of deliveries from a transaction that was originally proposed to qualify for Category 1 by delivering to a CBA without substituting electricity from another resource needs to be firmed and shaped with substitute energy and would then qualify for Category 2, as described in Case B of the response to Question 4 above. Any verification/auditing that the Commission undertakes should apply equally to all the entities that it regulates, and should be directed by the Commission, rather than by the CEC.

a) **What information would be required for such verification**

RESPONSE:

Generator meter data, NERC E-tags, copies of transmission service agreements, interconnection agreements, and firming and shaping agreements. Some of the required information would likely be contained in the utilities' energy resource recovery account ("ERRA") filings.

b) **Would any changes be needed to WREGIS to accommodate your proposal?**

RESPONSE:

WREGIS is the proper tool for tracking E-tags and meter data, but it is unclear at this point exactly what changes would need to be made to accommodate this proposal. The

capability currently exists for WREGIS to true-up meter and E-tag data on an annual basis, which data is currently used to ensure that sufficient imports exist to match with deliveries from out-of-state renewable resources. WREGIS will need to expand its capabilities in order to track meter and E-tag data on a monthly basis.

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.**

RESPONSE:

	Value to Buyer	Value to Seller	Value to Ratepayer	Direct Costs	Indirect Costs
Category 1	Unlimited procurement allowed	Revenue stream for both RECs and underlying power	Increased renewable development; displaced need to procure conventional power to serve California load	Cost of bundled power	Potential intra-hour firming and shaping services
Category 2	Flexible procurement limitation; improved operating flexibility	Revenue stream for both RECs and underlying power	Increased renewable development; displaced need to procure conventional power to serve California load; improved operating flexibility can improve costs to customers	Cost of renewable attribute	Potential firming and shaping services
Category 3	Near term deliveries available	Revenue stream for RECs	Increased renewable development; cost effective RPS compliance	Cost of renewable attribute	none

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?**

RESPONSE:

As discussed in the response to Question 19, the Commission should not carry forward the existing RPS rules through calendar year 2011 because SB 2 sets targets for 2011 procurement. The Commission should not choose one set of rules for procurement targets and another set of rules for compliance.

III.
CONCLUSION

SDG&E appreciates the opportunity to provide these comments and supports the Commission's efforts to expeditiously implement the numerous changes SB 2 makes to the RPS program.

Respectfully submitted this 8th day of August, 2011.

/s/ *Steven C. Nelson*

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Appendix A

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."			

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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."	

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AFFIDAVIT

I am an employee of the respondent corporation herein, and am authorized to make this verification on its behalf. The matters stated in the foregoing **SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) COMMENTS ON RULING REGARDING IMPLEMENTATION OF NEW PORTFOLIO CONTENT CATEGORIES FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM DATED JULY 12, 2011** are true of my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed this 8th day of August, 2011, at San Diego, California

Hillary Hebert
Partnerships & Programs Manager