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 Sec. 399.20 program (Filed May 5, 2011)

COMMENTS OF THE WESTERN POWER TRADING FORUM ON THE IMPLEMENTATION OF NEW PORTFOLIO CONTENT CATEGORIES FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

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I. INTRODUCTION AND SUMMARY

In accordance with the directives provided in the June 12, 2011, Administrative Law Judge's Ruling Requesting Comments on Implementation of New Portfolio Content Categories for the Renewables Portfolio Standard Program ("Ruling"), the Western Power Trading Forum ("WPTF")[1] respectfully submits to the California Public Utilities Commission ("Commission") the following comments on the issues raised and questions posed by Administrative Law Judge ("ALJ") Anne E. Simon. The June 12 Ruling notes that SB 2 (1x) makes numerous changes to the RPS program and requests that parties provide comments on the addition of "portfolio content categories" and quantitative rules for the use of transactions in each category for RPS compliance by retail sellers, set out in new Pub. Util. Code § 399.16. WPTF offers herein preliminary comments dealing with the questions raised by the Ruling. However, we reserve the right to address more fully any or all topics in the reply comments that are due on August 19.

[1] WPTF is a California non-profit, mutual benefit corporation. It is a broadly based membership organization dedicated to enhancing competition in Western electric markets in order to reduce the cost of electricity to consumers throughout the region while maintaining the current high level of system reliability. WPTF actions are focused on supporting development of competitive electricity markets throughout the region and developing uniform operating rules to facilitate transactions among market participants.

As a preliminary observation, SB 2 (1X) defines three portfolio content categories, which have been commonly referred to as "buckets." WPTF understands that each bucket can be defined as follows: Bucket 1 transactions (a) have a first point of interconnection with a California Balancing Authority ("CBA" or "California BA"); or (b) are scheduled from the eligible renewable resource into a California BA on an hourly or sub-hourly basis without substituting electricity from another source (the use of another source to provide real-time ancillary services required to maintain an hourly or sub-hourly schedule into a California BA is permitted, but only the fraction of the schedule actually generated by the eligible renewable energy resource shall count toward Bucket 1); or (c) involve external renewable resources with a dynamic transfer agreement with a California BA. Bucket 2 transactions involve firmed and shaped eligible renewable energy resource electricity products providing incremental electricity and scheduled into a California balancing authority. Finally, Bucket 3 transactions include other qualifying arrangements that do not fall under Bucket 1 or Bucket 2. These definitions are relevant to a portion of the discussion that follows, so it is important to have the definitions firmly fixed.

II. COMMENTS

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"?

WPTF suggests that the term "Eligible renewable energy resource electricity products" should mean the "output" from any "eligible renewable energy resource," which is a defined term in P.U. Code Section 399.12(e). The term "electricity product" should mean the output of an eligible renewable energy resource, regardless of whether the output is identified with a specific "RPS procurement transaction."

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."**

WPTF concurs with this interpretation. The cited section of the P.U. Code refers to an RPS-eligible generation facility, while the second cited clause refers to the electricity produced at the facility.

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

The California balancing authorities ("CBA") currently located within the State of California include the following

- California ISO
- Imperial Irrigation District (IID)
- Balancing Authority of Northern California (formally Sacramento Municipal Utility District)
- Los Angeles Department of Water and Power (LADWP)
- Turlock Irrigation District (TID)

This does not prohibit other entities from seeking to become a balancing authority at a later date. WPTF suggests that rather than work to define upfront criteria for being considered a California BA in this proceeding, that the Commission consider the eligibility of any new California BA for purposes of Bucket 1 eligibility on a case by case basis. This will allow the Commission to consider the case specific arguments and judge the consistency with statute.

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 main definitional components to assess whether the transaction meets the Bucket 1 threshold for scheduled hourly or sub-hourly without substitution into a California BA should include: (1) energy must be scheduled from an eligible renewable resource to a California BA as demonstrated by a North American Electric Reliability Corporation's ("NERC") e-tag; (2) no specific transmission arrangement are required; and (3) only the energy from the eligible renewable resource can count toward Bucket 1.

In essence there are two key data sets that should be used to ascertain the net amount of energy produced from an eligible renewable resource scheduled into California that is not substituted from another source. The data sets are: (1) the RECs produced in WREGIS associated with actual energy production ; and (2) the energy delivered into California represented by a NERC e-tag.

"Firm" transmission is not a prerequisite to demonstrate that an out-of-State eligible renewable energy resource has been scheduled to a California BA without substituting electricity from another source, since the NERC e-tag can be used to verify the energy flow whether or not firm or interruptible transmission has been utilized to effect delivery. Therefore, firm transmission is not required to demonstrate that out-of-State eligible renewable energy resource qualify under P.U. Code Section 399.16(b)(1)(A). Furthermore, the cited code section also covers the output from any eligible renewable energy resource located within the boundaries of a California BA since it is scheduled without substituting electricity from another source. In other words, renewable energy produced in California must be delivered directly to California without any substitution, and therefore all renewable production in California should qualify as Bucket 1.

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**

Since the NERC e-tag tracks the renewable energy from source to California BA, it is inconsequential whether firm or interruptible transmission has been used. This should be viewed as being the "definitive determination" required in Ordering Paragraph ("OP") 26 of D.10-03-021, as modified by D.11-01-025. Furthermore, the CAISO draft tariff on dynamic transfers distinguishes which agreements require firm transmission and which do not.

6. **How would transaction characterized in #4, above, be tracked and verified? Please address the roles and responsibilities of both the CEC and the Commission.**

The CEC is responsible for tracking and verifying renewable energy delivered into a California BA;[2] certifying the eligibility of renewable energy resources; designing and implementing RPS compliance verification requirements for load-serving entities ("LSEs") and by local publicly owned electric utilities;[3] and developing a system for tracking and certifying the eligibility of RECs for RPS compliance.[4] Given these clear responsibilities, WPTF recommends that the CEC's compliance verification process should be relied upon by the Commission to determine compliance with the relevant product content categories.

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.**

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[2] See P.U. Code Section 399.21(a)(5) and Section 399.25(a), (c) and (d).

[3] See P.U. Code Section 399.21(a)(5).

[4] See P.U. Code Section 399.25(c) and (d).

WPTF believes that this phrase should be interpreted to mean that only the net amount of energy between scheduled and generated energy should be eligible for the Bucket 1 designation. As a hypothetical example, if 100 MW was scheduled from a renewable facility yet only 95 MW were actually generated, then only the lower figure count as Bucket 1. In other words, actual meter data should be the determinative factor with regard to the portfolio content category under P.U. Code Section 399.16(b)(1)(A). We note that fractional amounts are accounted for by WREGIS on a monthly basis, which is carried forward. Accounting is based on meter data from the renewable resource, matched to specific e-tags that will verify whether the delivery of energy was done without substitution (Bucket 1), or with firmed and shaped substitution (Bucket 2).

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."**

If eligible renewable energy resource is subject to an agreement between the host control area, the California BA, and any intervening control areas, this should be deemed to represent an "agreement to dynamically transfer electricity." Among other requirements, the dynamic transfer agreement provides that the California BA agrees to assume provision of regulation and associated ancillary services for the generator and the generator operates as if it were physically located in the California BA.

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"?**

WPTF agrees that P.U. Code Section 399.12(h) defines what constitutes a REC, which may be either bundled with the energy generated at an eligible renewable energy resource or procured separately, i.e., "unbundled." Furthermore, if a REC is initially classified as a Bucket 1 transaction, it should not be considered unbundled even if it is traded separately at a later date.

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.

As noted previously, unbundled RECs satisfy the code definition if the eligible renewable energy resource is located within the boundaries of a California BA. Since the energy is generated in California and directly delivered into the California grid, the CEC can verify through WREGIS that the REC was created when the energy was generated at an eligible renewable energy resource.

WPTF also recommends that the transfer of RECs associated with a bundled transaction that qualifies for Bucket 1 should always be Bucket 1 whether resold or re-traded. This approach has two advantages: (1) increased market liquidity; and (2) buyers that purchase a premium Bucket 1 product can manage their portfolios and fluctuating compliance requirements without losing the value of the product. This should in turn reduce compliance costs for California LSEs.

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). "

Currently, WREGIS certificates are issued only in increments of full MW and partial MW may be carried over monthly in order to aggregate to a full MW. If otherwise eligible renewable energy or RECs do not qualify under Section 399.16(b)(1)(A) or Section 399.16(b)(2), the fractional MW of the electricity generated should be included under Section 399.16(b)(3).

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

The CEC's RPS Eligibility Guidebook describes what is meant by "firmed" and "shaped" products as part of the definition of "delivery" under the existing RPS statute.[5] Since SB2 (1X) eliminates the definition of "delivery," the CEC's classification of "firmed" and "shaped" products in the RPS Eligibility Guidebook should control. Rather than seeking to develop an independent definition, WPTF recommends that the Commission should defer to the CEC's articulated definition of "firmed" and "shaped" products.

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

This issue is discussed in the WPTF response to Question 12, above.

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.**

This reference should be interpreted to mean that a REC generated at any out-of-state eligible renewable energy resource must be matched with energy delivered to a CBA within the same year in which the REC is generated. The term "incremental" should be interpreted to mean that "but for" the RPS-eligible firmed and shaped transaction, no additional energy would be

[5] See SB 1078.

scheduled to the CBA to serve California load. Furthermore, we note that incremental energy for a Bucket 2 transaction should clearly include the concept that the renewable energy produced from the out-of-state resource is matched with substitute energy delivered to the CBA, as verified by the e-tag.

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?

Although "firmed" and "shaped" products refer only to energy generated outside the boundaries of a California BA, as discussed above, renewable energy or RECs generated within the boundaries of a California BA qualify under P.U. Code Section 399.16(b)(1)(A) because the energy is scheduled into a California BA and consumed by California consumers. In the California BA the market provided balancing. Therefore, firming and shaping are only applicable to resources outside the California BA. Furthermore, imports only schedule hourly whereas the California market balanced the market in the real-time, 5 minute market. If the renewable energy or REC is already located in state, there is no need either to "firm" or to "shape" such a transaction.

WPTF does not agree that this section should be interpreted as applying only to transactions where the RPS-eligible generation is intermittent. Since firmed and shaped products under P.U. Code Section 399.16(b)(2) may include renewable generation from any eligible renewable energy resource that meets the definition of a "renewable electrical generation facility" under Pub. Res. Code Section 25741, such facilities may produce either intermittent or non-intermittent energy consistent with the provisions of Pub. Res. Code Section 25741(a)(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.

As discussed above, WPTF supports a comparison between the e-tag and the REC generated by WREGIS for determining the amount of energy from an external eligible renewable resource that can count toward Bucket 1. The distinguishing feature between a Bucket 1 transaction and a Bucket 2 transactions is the source of energy on the e-tag. For Bucket 1, it is the actual resource while for Bucket 2, the energy can be from another source.

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?**

WPTF suggests that the term "ownership agreement" should mean any agreement or transaction reflecting ownership of the output (including both energy and/or associated RECs from an eligible renewable energy resource. The term "count in full" should mean that the renewable energy or REC subject to a pre-June 1, 2010 agreement is eligible to meet an LSE's RPS procurement requirement, without respect to the bucket that it would otherwise qualify for. LSEs should have unlimited ability to use these renewable resources for RPS compliance. The Commission should explicitly provide that if the output of a pre-June 1, 2010, RPS agreement was eligible for RPS compliance under the rules in place as of the date the contract was executed,[6] the limitations set forth in various provisions of SB2 (1x)do not apply. Similarly, renewable energy and RECs purchased under a qualifying pre-June 1, 2010 contract are not

[6] See P.U. Code Section 399.16(d)(1).

subject to the "bucket" limits set forth in P.U. Code Section 399.16(c), the limitations on "banking" excess procurement applied to contracts less than 10 years in duration under P.U. Code Section 399.13(a)(4)(B), or to any other greater limitation on the use of RPS contracts less than 10 years in duration (under P.U. Code Section 399.13(b)) than existed at the time the contract was executed.

This means that the term "count in full" should be interpreted so as to provide full effect to the legitimate expectations of the parties to an "ownership agreement" entered into prior to June 1, 2010. The statute must be interpreted and implemented in a manner that provides RPS market participants with regulatory certainty and that assures continuity in the value of a contract throughout its term. Pre-June 1, 2010 contracts must be fully honored and fully eligible for RPS compliance.

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).

The cited language should be read in conjunction with both the language of D.10-03-021, as modified by D.11-01-025, as well as with the language of D.11-01-026. In the first decision, the Commission "preserved the intent of treating approved contracts as bundled" for IOUs[7] and "recognize[d] the legitimate expectations" of the parties to contracts that were signed prior to the date of the Commission's decision for electric service providers ("ESPs").[8] (Furthermore, P.U. Code Section 399.16(d) also honors the expectations of the parties to contracts signed before June 1, 2010.

[7] See D.11-01-025 at p. 17.

[8] See D.11-01-026 at p. 17

In summary, WPTF believes that any Commission-approved RPS contract entered into by an retail seller prior to June 1, 2010, should "count in full" toward the IOU's RPS compliance obligation, regardless of the date of Commission approval. Moreover, an RPS contract that was signed by an ESP prior to January 13, 2011 (the date of D.11-01-026) should "count in full" toward the ESP's RPS compliance obligation. This approach reconciles the provisions of P.U. Code Section 399.16(d) with the terms of the Commission's January 2011 decisions, and provides certainty to RPS market participants that the regulatory structure that existed when they entered into contracts will continue to be honored. Any other interpretation would impair the obligations and expectations of the parties under the RPS contracts and constitute a "taking."

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)?

SB2 (1X) does not become effective until ninety days after the end of the Legislature's First Extraordinary Session. It remains unclear as to when the First Extraordinary Session will end, but the very earliest that SB2 (1X) could become effective is the middle of November of this year (if the Extradordinary Session is closed as soon as the Legislature returns from the summer break). This creates an obvious timing issue since although the implementation rules for the statute will not be adopted until the end of this year, P.U. Code Section 399.15(b) provides for an initial compliance period that commences on January 1, 2011. Given this uncertainty, WPTF strongly recommends that the Commission maintain the existing RPS regulatory structure through at least the end of this year. After the statute becomes effective, the portfolio content classifications, compliance processes, procurement limitations, flexible compliance rules and reporting requirements can be made effective, but not before January 1, 2012. In the mean time, until the statute becomes effective and the Commission clarifies its implementation, all LSEs

should be required to continue to meet the RPS procurement obligations and reporting obligations under existing regulations. This means that existing rules applicable to TREC definition; TREC usage limitations; banking and flexible compliance; and reliance on contracts with a term less than 10 years in duration should remain in place at least through the end of this year. Maintaining the current RPS procurement requirements and compliance program through the end of 2011 will provide regulatory certainty and allow the market to move relatively seamlessly to the new market structure in 2012.

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

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

WPTF believes that the CEC's RPS Eligibility Guidebook should continue to define the products that qualify as "firmed" and "shaped," whether or not a "delivery" requirement is explicitly provided in the statute.

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?

WPTF has no response to Question 21 at this time, but reserves the right to discuss the topic in the reply comments due on August 19.

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?

- **What information would be required for such verification?**
- **Would any changes be needed to WREGIS to accommodate your proposal?**

The CEC certifies eligible renewable energy resources and verifies LSEs' compliance with the RPS requirements.[9] Any "post-contracting verification" of the portfolio content category should also be performed by the CEC.

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.

WPTF believes that the market will and should determine the relative value of "electricity products" in each portfolio content category ("bucket"). The identification of direct or indirect costs associated with RPS transactions in each category simply is not a necessary exercise, as these costs will be reflected in the agreed upon price and contract terms.

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?

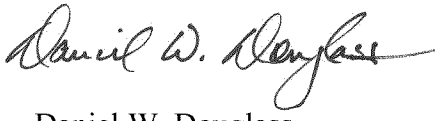
[9] See P.U. Code Section 399.25(a) and Section 399.21(a)(5).

WPTF has previously recommended that the existing rules should be maintained at least through the end of 2011. If the effective date of the statute is after January 1, 2012, then the relevant effective date should determine when the new rules become effective. As noted above, RPS market participants require regulatory certainty that will facilitate their ability to secure contracts to meet their 2011 RPS procurement obligations. Maintaining the existing rules through the end of 2011 will provide LSEs with greater certainty and facilitate a smooth transition to the modified RPS framework under SB2 (1X).

III. CONCLUSION

SB 2 (1X) has imposed a vast new array of changes to the RPS program and as a result, to RPS compliance obligations for many different parties. So that these parties can meet these new obligations, the Commission must act swiftly to provide the necessary interpretations and establish the implementing protocols and rules. WPTF thanks the Commission for its consideration of these comments and urge that the Commission act expeditiously to consider and implement the recommendations discussed herein.

Respectfully submitted,



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