

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Continue
Implementation and Administration of California
Renewables Portfolio Standard Program.

Rulemaking 11-05-005
(Filed May 5, 2011)

**REPLY COMMENTS OF POWEREX CORPORATION ON
IMPLEMENTATION OF NEW PORTFOLIO CONTENT CATEGORIES
FOR THE RENEWABLE PORTFOLIO STANDARD PROGRAM**

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Pursuant 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, Powerex Corporation (“Powerex”) submits these Reply Comments to the Opening comments filed on August 8, 2011.¹

Powerex offers its reply comments on the following general topics:

- Definitions for Renewable Portfolio Standard (“RPS”) energy Buckets/Categories;
- Interim verification of Bucket energy; and
- Transmission issues.

A. Definitions for RPS Energy Buckets/Categories

The Commission has requested comments on how to define the RPS categories generally described as Categories 1, 2, and 3 in Powerex’s comments and Buckets 1, 2, and 3 in the comments of others. In these Reply Comments, Powerex will adopt the “Buckets” terminology

¹ Powerex will not respond to all comments made in Opening Comments. Neither agreement nor disagreement is implied on topics not addressed by Powerex.

as analogous to the “Categories” terminology used in Powerex’s comments filed on August 8, 2011.

Powerex strongly agrees with the suggestion of Southern California Edison Company (“SCE”) that:

“[t]he three-tiered approach to product categorization within the new RPS law is most easily understood if one considers Bucket 1 to encompass those renewable products that can provide electricity to a CBA on an hourly basis. Bucket 2 is most easily generalized as those renewable products that can provide electricity to a CBA on a time frame longer than an hour and shorter than a year. Bucket 3 is most easily generalized as evidence that a renewable generator produced electricity, although that electricity may not have been provided to a CBA in a manner allowed by the statute.”²

To assure the greatest degree of regulatory certainty, Powerex believes that Bucket 1 should consist solely of hourly deliveries which, as discussed in Powerex’s Opening Comments, consist of the lower of the hourly metered generation or the hourly schedule. This bright-line definition, supported by other commenting parties,³ creates a simple administrative rule that is easy to understand and that establishes a straightforward compliance standard.

Powerex also supports the position advanced by parties such, as Iberdrola Renewables, Inc. and SCE,⁴ that any hourly metered generation that exceeds the hourly schedule can be delivered as a firm and shaped product in Bucket 2, provided that it is delivered within the same calendar year. As Powerex and others have proposed, renewable energy falling within

² *Southern California Edison Company’s Comments to Administrative Law Judge’s Renewables Portfolio Standard Categories Ruling Dated July 12, 2011*, p. 14 (August 8, 2011).

³ See, for example: *Comments of Iberdrola Renewables, Inc. on Implementation of New Portfolio Content Categories*, pgs. 9-10 (August 8, 2011); and *San Diego Gas & Electric Company 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*, Response to Question 4 (August 8, 2011).

⁴ Iberdrola Comments, pgs. 15-16; SCE Comments, pgs. 16, 18-19.

Bucket 2 is intended to include energy delivered on a time frame longer than an hour and up to a year.⁵

Powerex has previously suggested that there may be administrative rules or safeguards that would allow RECs accumulated in hours when the hourly metered generation inadvertently exceeds the hourly schedule, to convert the additional energy generated, but not delivered concurrently, into Bucket 1 energy. However, upon reviewing the comments of other participants, and upon further reflection, Powerex believes that allowing such true-ups for Bucket 1 would eliminate the bright-line approach proposed by SCE and others, and would conflict with the clear intent of the legislation. Moreover, it would create potential for abuse through innovative scheduling practices and create other potential unintended outcomes.

B. Interim Verification of Bucket Energy

If the simplified definitions for the Buckets are adopted, Powerex and others have proposed certain verification procedures that could be implemented over time to “automate” many of the verification procedures to determine into which Bucket RPS energy falls. SCE suggests that for regulatory simplicity, prior to the commercial development of third-party verification, such as enhancements to WREGIS, that the LSE be allowed to merely submit showings but not the detail supporting the showings unless requested by the Commission.⁶

Powerex suggests that the level of detail that needs to be retained by retail sellers to support their Bucket showings should be clearly specified and that an independent third party auditor verify the data and submit a verification report to the Commission/CEC in a similar

⁵ *Id.* Also see, *Comments of the Alliance for Retail Energy Markets on Administrative Law Judge’s Ruling Seeking Comments on Implementation of New Portfolio Content Categories for the Renewables Portfolio Standard*, p. 12 (August 8, 2011); *Opening Comments of NextEra Energy Resources, LLC in Response to Administrative Law Judge’s Ruling Requesting Comments on Implementation of New Portfolio Content Categories for the Renewables Portfolio Standard Program*, p.6 (August 8, 2011); and RPS Product Matrix, Reference Proposal Outlining Areas of Broad Consensus and Open Issues.

⁶ SCE Comments, pgs. 4-5.

manner to the California Air Resources Board GHG-verification process for energy generated and consumed in California. Powerex suggests that as a minimum, retail sellers must retain hourly approved e-tags and corresponding hourly eligible renewable energy resource (“ERR”) metered generation.

C. Transmission Issues

Powerex provides the following reply comments addressing two issues relating to the relevancy of firm transmission in ensuring long-term deliverability of renewable energy.

First, Powerex takes note of PG&E’s comments that “firm transmission is not relevant for power imports into the CAISO-controlled grid... because imports must competitively bid supply at the interties, and only the lowest price offers are accepted for scheduling by the CAISO, regardless of transmission quality...”⁷ Although Powerex agrees with PG&E and other parties that the language in 399.16 (b)(1)(A) does not create a requirement for the use of any specific quality of transmission, Powerex feels that it is important to point out that transmission rights from the source generator to California interties and the quality of that transmission are relevant factors for ensuring that the output of an ERR may be delivered into a California balancing authority (“CBA”) in a manner that will qualify for Bucket 1. Gaining access to the CAISO through a competitive bid process is a significant part, but only part, of the mechanism for obtaining delivery rights into the CAISO. Furthermore, access to the CAISO is not applicable for delivery to non-CAISO CBAs.

Although the CAISO determines which entities are allocated transmission on the CAISO’s grid, the CAISO does not determine which entities flow on transmission paths from the generator to the intertie points with California. On the transmission paths from the generator to

⁷ *Pacific Gas and Electric’s Comments on Administrative Judge’s Ruling Requesting Comments on Implementation of New Portfolio Content Categories for the Renewables Portfolio Standard Program*, p. 13 (August 8, 2011).

California interties, access to transmission and priority on those transmission paths is determined solely by the external transmission provider through its Open Access Transmission Tariff (“OATT”). Entities with higher quality transmission undisputedly have priority over those entities with lower quality transmission. For example, during periods of transmission congestion outside of the CAISO grid, an entity scheduling on firm transmission will have priority over entities scheduling on non-firm transmission. In short, CAISO import awards are essentially awards to sell energy to serve CAISO load, plus an award of transmission rights on the CAISO grid – not an award of transmission outside of the CAISO grid.

In cases where there are transmission constraints between the generator and the CAISO, non-firm transmission may be unavailable - non-firm transmission is transmission which generally only becomes available, in the spot market, when firm rights holders choose to not use their transmission. By securing firm transmission in advance, an entity greatly increases the likelihood of being able to schedule energy to an intertie and therefore be in a position to bid into the CAISO or to meet its delivery obligation to a non-CAISO CBA. In short, the quality of transmission outside the CAISO is not relevant for energy scheduled into CBAs on an after-the-fact basis, but the quantity of firm transmission secured in advance will have a material impact on the amount of bundled renewable energy that can be expected to be delivered into California on an hourly basis and qualify for Bucket 1.

Transactions that rely on the use of non-firm transmission and are entered into and approved as Bucket 1 may result in a relatively low Bucket 1 “capacity factor” or delivery rate, which would result in a greater proportion of the transaction qualifying for either Buckets 2 and/or 3, to the extent that the limitations on those buckets have not yet already been exceeded by the LSE. In the event that: (i) deliveries under a contract that was intended to meet Bucket 1

do not ultimately qualify for Bucket 1; (ii) the LSE has already exceeded its maximums for Buckets 2 and 3, and (iii) the RECs in the contract are not bankable, a portion of the contract may not count for RPS purposes. This would have the unintended consequence of increasing costs for RPS compliance.

Secondly, the Commission has approved a number of transmission upgrades and reinforcements within California to ensure that ERRs developed within California are deliverable.⁸ The proponents of these transmission projects and the ERRs have stressed that these transmission projects are required for delivery certainty. Powerex believes that when comparing similarly situated out-of-state ERRs, the CPUC should consider the underlying quality of the transmission upon which the ERR energy will be delivered to the CBA. While Powerex understands there has been no final decision on the quality of transmission, Powerex believes that having a preference for ERRs with firm transmission to the CBA in the RPS rules would provide an incentive to invest in transmission outside of California and ensure deliverability of ERRs, which is not dissimilar to how the CPUC has treated transmission projects associated with in-state ERRs.

Powerex appreciates the opportunity to provide these Reply Comments and looks forward to participating in the Commission's implementation of the new RPS legislation.

⁸ See, for example, the Tehachapi Renewable Transmission Project (D.09-12-044) and the Sunrise Powerlink Transmission Project (D.08-12-058).

VERIFICATION OF COUNSEL

I, James D. Squeri, declare:

I am an attorney at law, duly admitted and licensed to practice before all courts of this state, and I have my professional office at Goodin, MacBride, Squeri, Day & Lamprey, LLP, 505 Sansome Street, Suite 900, San Francisco, California 94111.

I am an attorney for Powerex Corporation (“Powerex”) in the above-entitled matter.

No officer of Powerex is present in the county in which I have my office and, for that reason, I am making this verification on behalf of Powerex.

I have read the foregoing REPLY COMMENTS ON IMPLEMENTATION OF NEW PORTFOLIO CONTENT CATEGORIES FOR THE RENEWABLE PORTFOLIO STANDARD PROGRAM and know the contents thereof.

I am informed and believe that the matters stated therein are true and, on that ground, I allege that the matters stated therein are true.

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

Executed at San Francisco, California, on this 19th day of August, 2011.

/s/ James D. Squeri

James D. Squeri