

**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 THE LARGE-SCALE SOLAR ASSOCIATION
ON PORTFOLIO CONTENT CATEGORIES**

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The Large-scale Solar Association (“LSA”) respectfully submits these reply comments on the July 12, 2011, Administrative Law Judge’s *Ruling Requesting Comments on Implementation of New Portfolio Content Categories for the Renewables Portfolio Standard Program* (“Ruling”). At the outset, LSA reiterates its position that the Commission should ensure that the rules it adopts to implement the new portfolio content categories are clear, transparent and easy to apply.

These reply comments focus on three issues addressed in the opening comments submitted in response to the Ruling: (1) what the requirements should be for characterizing a particular transaction as firmed and shaped such that it qualifies for Bucket 2, including a definition of “incremental energy”; (2) whether unbundled RECs, originally associated with a bundled Bucket 1 product or net metering, are appropriately characterized as Bucket 1 or Bucket 3 products; and (3) whether pre-June 1, 2010, grandfathered transactions qualify for banking across compliance periods.¹

¹ To the extent any member of LSA has submitted individual comments in this proceeding taking a position(s) inconsistent with the views expressed herein, the member should be considered as excluded from those portions of LSA’s comments.

I. INCREMENTAL ENERGY AND FIRMED AND SHAPED TRANSACTIONS

LSA generally supports the definition of incremental electricity proposed by the Union of Concerned Scientists (“UCS”) in response to Question 14 of the Ruling. Specifically, LSA supports the notion that incremental electricity should be considered any electricity imports that are not otherwise part of a load-serving entity (“LSE”)’s portfolio at the time the “firmed and shaped” contract is executed. In other words, the contract or physical arrangement for incremental electricity must occur contemporaneously with or subsequent to the execution of the “firmed and shaped” renewable product contract.

LSA notes that many parties have proposed various definitions for the terms “firmed” and “shaped” that run the gamut from restricting contract duration and contract price to providing little or no guidance as to whether any particular transaction may qualify as a “firmed and shaped” transaction. In alignment with various parties’ comments, LSA proposes that, at a minimum, the transaction should (1) meet the requirement related to incremental electricity and (2) contain a fixed price for the combined purchase of renewable energy credits and the electricity import.² It is crucial for a firmed and shaped transaction to include a fixed price for the combined renewable energy credits and the electricity import so that the “hedging” value that is presumed to be associated with renewable energy purchases accompanies the more valuable Bucket 2 status (relative to Bucket 3)³ and so that the Commission can compare products on a more equal basis. This can only be done if the full cost of the transaction is known.

² See UCS Comments at 7, and TURN comments at 8.

³ See UCS Comments at 8, and TURN comments at 7.

Recognizing that it may be impractical in today's market to enter into an energy hedging arrangement that lasts for the full term of the underlying renewable product transaction, LSA proposes that the Commission evaluate the energy hedge as if it were at market rates after the initial fixed price arrangement is concluded. However, in order to remain eligible for Bucket 2 treatment, new fixed price arrangements would need to be executed upon expiration of the initial and subsequent fixed price arrangements; if a fixed price arrangement expires and is not replaced with a new one, the transaction would default to Bucket 3 because there is no longer any hedging value to support the premium Bucket 2 value.

It is difficult to specify with precision all of the other characteristics of a firmed and shaped transaction beyond the two outlined above. A more exacting definition may unduly restrict firming and shaping in a way that creates unnecessary disincentives in the market for the procurement of firmed and shaped products. Some measure of guidance is nevertheless necessary. Accordingly, LSA suggests that the Commission adopt a fairly broad definition of "firmed and shaped" while also including in the definition examples of transactions that clearly qualify as "firmed and shaped" to provide at least a modicum of certainty in the market. For instance, one "safe harbor" example may be a transaction that meets the requirements outlined above and includes a fixed price arrangement lasting five years or more. This essentially converts the requirement proposed by parties like TURN and UCS into a safe harbor condition.⁴

II. UNBUNDLED RECS

Despite the fact that the language of SB 2 (1x) explicitly classifies unbundled RECs as Bucket 3 products, several parties assert in response to Question 10 of the

⁴ See UCS Comments at 7, and TURN comments at 8.

Ruling that a REC originating from a Bucket 1 bundled product that is subsequently unbundled should retain its Bucket 1 classification. In its opening comments to the Ruling, LSA responded to Question 10 by focusing on the legal argument that unbundled RECs are expressly included within the scope of Bucket 3 and therefore cannot also meet the requirements of Bucket 1. Several other parties offered additional arguments consistent with LSA's views and, rather than repeating these arguments here, LSA hereby joins in and supports these comments.⁵

One proposal expressed in opening comments that requires reply, however, is the notion that unbundled RECs associated with net metering transactions, if sold by the customer/generator back to the utility in whose service territory the generator is located, should qualify under Bucket 1.⁶ While LSA is sympathetic to the desire to provide further incentives for distributed generation, this proposal is simply not reconcilable with the plain meaning of SB 2 (1x). Because the customer/generator is consuming the energy generated by the on-site generating facility, it cannot sell a bundled product back to the utility (or anyone else for that matter). Since, by definition, the product is an unbundled REC, it should count towards Bucket 3.

Counting these net metered RECs for compliance in Bucket 3 confers significant value to these net metered projects above other renewable projects by allowing them to both reduce the initial compliance obligation (as they are accounted for as a reduction in demand) and count towards meeting that reduced compliance obligation. In addition to the benefits of the energy cost savings and the incentives under the SGIP and CSI

⁵ *E.g.*, TURN comments at 5-6; Division of Ratepayer Advocates comments at 5; Coalition of California Utility Employees comments at 4.

⁶ *See* TURN comments at 6.

programs, the Bucket 3 classification of unbundled RECs from net metering provides a dual RPS compliance benefit for these projects.

III. BANKING OF GRANDFATHERED TRANSACTIONS ACROSS COMPLIANCE PERIODS

LSA supports The Utility Reform Network (“TURN”)’s position that transactions executed prior to June 1, 2010, are subject to the banking restrictions in §399.13(a)(4)(B). The suggestion by other parties of a link between the “count in full” language of §399.16(d) and the banking restrictions in §399.13(a)(4)(B) is unfounded. These parties appear to read §399.16(d) as stating that contracts executed prior to June 1, 2010, shall “count in full” for general compliance purposes. To the contrary, §399.16(d) states, “[a]ny contract or ownership agreement originally executed prior to June 1, 2010, shall count in full towards the procurement requirements established pursuant to this article . . .” (emphasis added). This language refers specifically to the balanced portfolio procurement requirements set forth in the section directly preceding §399.16(d), §399.16(c) (e.g. not less than 50% Bucket 1, not more than 50% Bucket 2, and not more than 25% Bucket 3 products by 2013). Accordingly, while it is clear that the Legislature intended that transactions executed prior to June 1, 2010, count in full for purposes of §399.16(c), Section 399.13(a)(4)(B) includes independent limits on banking unrelated to the language of §399.16(d). Thus, the language of §399.16(d) has no bearing on whether transactions executed prior to June 1, 2010, should be exempted from the banking restrictions in §399.13(a)(4)(B), and LSA agrees with TURN that grandfathered transactions should not be exempted from such restrictions.

IV. CONCLUSION

For the reasons stated above, the California Public Utilities Commission should (1) define incremental electricity as electricity imports that are not otherwise part of an LSE's portfolio at the time the "firmed and shaped" contract is executed; (2) define the terms "firmed" and "shaped" broadly but include in the definitions clear examples of certain transactions that would qualify as "firmed and shaped" transactions; (3) provide strict guidance that any unbundled REC, regardless of whether the REC originated from a bundled product that at one time was eligible for inclusion in Bucket 1, will be considered an unbundled REC included in Bucket 3; and (4) clarify that transactions executed prior to June 1, 2010, are subject to the banking restrictions in §399.13(a)(4)(B).

Dated: August 19, 2011

Respectfully Submitted,

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VERIFICATION

I, Kristin Burford, am the Policy Director of the Large-scale Solar Association. I am authorized to make this Verification on its behalf. I declare under penalty of perjury that the statements in the foregoing copy of *Reply Comments of the Large-scale Solar Association on Portfolio Content Categories* are true of my own knowledge, except as to the 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 that the foregoing is true and correct.

Executed on August 19, 2011 at San Rafael, California.

/s/ Kristin Burford

Kristin Burford

Policy Director, Large-scale Solar Association