BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program	Rulemaking 11-05-005 (Filed May 5, 2011)

COMMENTS OF THE COALITION OF CALIFORNIA UTILITY EMPLOYEES ON THE ALJ'S RULING REQUESTING COMMENTS ON IMPLEMENTATION OF NEW PORTFOLIO CONTENT CATEGORIES FOR THE RPS PROGRAM

Pursuant to the Administrative Law Judge's July 12, 2011 Ruling Requesting Comments on the Implementation of New Portfolio Content Categories for the Renewables Portfolio Standard Program, the Coalition of California Utility Employees ("CUE") offers these comments.

I. INTRODUCTION

For most of three years, the Legislature was the setting for vigorous debate over what would ultimately become Senate Bill 2, in the First Extraordinary Session ("SB 2 (1x)"). The debate was not whether California should set a requirement for 33 percent renewable generation by 2020, it was not whether all retail sellers should have the same requirements, it was not whether the types of generation qualifying as renewable should be changed, it was not whether existing contracts should be "grandfathered," and it was not whether there should be cost controls. Rather, the primary debate for nearly three years was over the definitions of the portfolio content categories and the allowable percentages of each type of electricity product in those categories that would be permitted. The predecessor to SB 2 (1x) signed by Governor Brown, was SB 14. That bill was vetoed by Governor Schwarzenegger because, he said, it was "limiting the importation of cost-effective renewable energy from other states in the West."[1] In the Sacramento vernacular, this was a struggle over what types of renewable energy products would fall into

[1] SB 14 Veto message, October 12, 2009.

each of the three "buckets" and how much renewable procurement was required to be in each "bucket." Fortunately, after a three year debate, the Legislature reached clear conclusions and Governor Brown signed SB 2 (1x).

As a central participant, CUE was heavily involved in the debate over the portfolio content categories and the allowable percentages. The single redeeming feature of the extended discussions was that the ultimate resolution provided in the bill was clearly understood by the Legislature and the stakeholders. Many of those stakeholders recently met and produced the RPS Product Matrix attached to these and other comments. This Matrix accurately represents the resolution reached by the Legislature on these central issues. Thus, there is no dispute over any of the items in the "consensus" columns. This matrix answers many of the questions posed in the ALJ's Ruling Requesting Comments, leaving only a few areas where there is not widespread common understanding of how the Legislature resolved these questions.

II. ANSWERS TO SPECIFIC QUESTIONS

Many of the questions posed in the ALJ's Ruling are answered in the Consensus columns in the Matrix. CUE fully supports the statements in the consensus columns. We will not repeat that information. We offer answers to some of the open issues and other questions in the ALJ's Ruling. We do not attempt to answer all of the questions posed in the ALJ's Ruling, but may respond to comments by others in our reply comments.

A. Imports from generators <u>not</u> having a first point of interconnection to a California balancing authority

The most important open issue in the matrix (page 5), which is also reflected in questions 4, 5 and 16, relates to energy from a generator that does <u>not</u> have a first point of interconnection with a California balancing authority. The questions relate to scheduling this energy, while the matrix phrases the question as "over what period of time may the facility's meter data be netted against the final adjusted E-tags from the contract? Hourly? Monthly?"

According to the words of the statute, if a generator not having a first point of interconnection to a California balancing authority schedules its output into a California balancing authority using "an hourly or subhourly import schedule,"[2] then the lesser of the amount generated from the renewable generator and the amount successfully delivered to the customers of the retail seller may be claimed as bucket 1 generation. In other words, energy from a non-renewable resource may be used, but only "to provide ***real-time*** ancillary services to maintain an hourly or subhourly import schedule," and that ancillary service energy does not count as renewable. The Legislature recognized the current practice of using real-time non-renewable energy to firm hourly or subhourly imports and authorized this practice because the portion of the import that was renewable energy was electrically equivalent to renewable generation from a facility whose first point of interconnection was with the California balancing authority. Although there were many proposals to allow netting imports over periods longer than one hour, such as 24 hours, monthly and even annually, the Legislature rejected those proposals and specifically prohibited "substituting electricity from another source" in bucket 1. The only exception to this prohibition is to maintain hourly or subhourly import schedules, and even then, "only the fraction of the schedule actually generated by the eligible renewable energy resource shall count toward this portfolio content category [bucket 1]."[3]

The Legislature did not entirely reject the idea of firming and shaping imported energy over periods longer than one hour, it simply categorized them as "[f]irmed and shaped eligible renewable energy resource products providing incremental electricity and scheduled into a California balancing authority."[4] That is, bucket 2.

This answers question 4 (how to interpret "scheduled from the eligible renewable energy resource into a California balancing authority without

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[2] P.U. Code Section 399.16(b)(1)(A).
[3] Ibid.
[4] Section 399.16(B)(2).

substituting electricity from another resource") and answers question 5 as "yes" – the firmness of transmission is no longer relevant. If there is an hourly or subhourly schedule, the actual renewable energy reaching the retail seller can be claimed. Firm transmission is neither required, nor alone sufficient. It also answers question 16 (regarding scheduling without substituting electricity from another source) as "yes" – no firmed and shaped electricity meets the requirements of bucket 1. Only real-time ancillary services to maintain an hourly or subhourly schedule are allowed in bucket 1. Any netting, or firming and shaping over a longer period is bucket 2.

B. Renewable Energy Credits

Question 9 asks whether an "unbundled REC" should be interpreted to mean "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?" The answer is "yes." While many of the technical details of the statute were not well understood, the Legislature clearly understood that when a REC and the energy are separated, that is an "unbundled REC" that falls into bucket 3. So in the open issue listed in the RPS Matrix (on pages 3-4) concerning RECs generated on the customer side of the meter associated with a California balancing authority area, the only way those RECs can be part of the bundled bucket 1 is if they are sold to the retail seller that is also providing energy to that customer. In other words, only the utility or other load serving entity serving that customer can classify those RECs as bucket 1; for anyone else, those RECs are unbundled and fall into bucket 3.

This also answers question 10, and the open issues on the RPS Matrix pages 3 and 4 – once a REC is separated from the entity supplying the energy, the REC is unbundled and part of bucket 3. The Legislature knew what an unbundled REC was and classified it as bucket 3.

C. Effective date

Question 19 asks about the effective date of the portfolio content limitations set forth in Section 399.16(d). The answer is in Section 399.16(c): Contracts

executed after June 1, 2010 must meet those requirements.[5] Regardless of when the statute takes effect, the law is explicit.

Question 24 asks whether the Commission should "carry forward the existing RPS rule through the calendar year 2011?" No. Assuming that SB 2 (1x) becomes effective at some point, the Commission must enforce the requirements for the compliance period that includes the year 2011 as written in the statute.

III. CONCLUSION

CUE looks forward to continuing to work with the Commission and other parties to successfully implement SB 2 (1x).

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Respectfully submitted,

/s/

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[5] Section 399.16(d).