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 CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES ON IMPLEMENTATION OF SB 2 RPS PORTFOLIO CONTENT CATEGORIES

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The Center for Energy Efficiency and Renewable Technologies (CEERT) respectfully submits these Comments on the implementation of new portfolio content categories for the Renewable Portfolio Standard (RPS) Program pursuant to Senate Bill (SB) 2 (1x) (Simitian).[1] These Comments are timely filed and served pursuant to the Commission's Rules of Practice and Procedure and the Administrative Law Judge's (ALJ's) Ruling issued in this rulemaking on July 12, 2011 (July 12 ALJ's Ruling).

I. INTRODUCTION

Pursuant to the July 12 ALJ's Ruling, CEERT offers its responsive comments. CEERT has organized these comments using the numbering adopted by the July 12 ALJ's Ruling for the issues to be addressed. For those sections not addressed by these comments, CEERT reserves the right to respond on these topics in reply comments, as indicated.

CEERT notes at the outset, however, that the "Guiding Principles" for this exercise require revision to include applicable and established principles of statutory construction. In this regard, the July 12 ALJ's Ruling states that it is not necessary to reproduce in full the questions

[1] SB 2 (Stats 2011, Ch. 1), adding or amending portions of the RPS Program (Public Utilities (PU) Code §399.11, et seq.)

on which it seeks responses.[2] However, it is actually the way in which these questions are phrased, especially where individual words, sections, or phrases are stated in a piecemeal fashion or taken out-of-order or out-of-context, that reflects the perils of ignoring established principles of statutory construction. For this reason, the questions are repeated herein in full, except where a response is reserved to reply comments.

II.
REQUIRED ADDITION TO "GUIDING PRINCIPLES" TO ENSURE ADHERENCE TO APPLICABLE PRINCIPLES OF STATUTORY CONSTRUCTION.

The issues raised by the July 12 ALJ's Ruling relate to "one set of changes" to the RPS Program statute resulting from recently enacted SB 2.[3] Specifically, the ruling focuses 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."[4]

This exercise of implementing PU Code §399.16 is fundamentally a legal one that is subject to the well-established principles of statutory construction adopted by the courts and routinely followed by this Commission.[5] Those principles include (1) giving words used in a statute a plain and common sense meaning consistent with the statute's "legislative purpose,"[6] (2) ascertaining the intent of the legislature so as to effectuate the purpose of the law,[7] and (3) construing "a statute in context, keeping in mind the nature and purpose of the legislation," including reference to "the legislative history of the statute and the wider historical

[2] July 12 ALJ's Ruling, at pp. 3-4.
[3] July 12 ALJ's Ruling, at p. 2.
[4] Id.
[5] See, e.g., Decision (D.) 01-11-031, at p.6.
[6] *California Teachers Assn.* v. *Governing Bd. of Rialto United School Dist.* (1997) 14 Cal.4th 627, 633; *People* v. *Valladoli* (1996) 13 Cal.4th 590, 597, 599, 602.
[7] *California Teachers Assn., supra*, 14 Cal.4th at 632; *Dyna-Med, Inc.* v. *Fair Employment Housing Com.* (1987) 43 Cal.3d 1379, 1386.

circumstances of its enactment."[8] These principles stem from a clear understanding of the "judicial role" in a democratic society, which is "to interpret laws, not to write them," a power reserved to the legislative branch, and, in turn, to interpret statutes in accordance with the "expressed" intention of the Legislature.[9] In fact, administrative regulations that seek to alter a statute or "enlarge" its scope are void.[10]

Unfortunately, *none* of the four "guiding principles" that the July 12 ALJ's Ruling asks parties to "take into account" in responding to the issues it raises make any provision for this preeminent legal requirement in interpreting and implementing a statute, such as PU Code Section 399.16. Instead, the principles focus on "fair, efficient, and transparent administration of the RPS Program," RPS market certainty, transaction cost impacts, and clarity in proposals. CEERT does not dispute that these are important principles, but none of them directly relate to the starting point for any comments on the implementation of Section 399.16 – namely, that offered interpretations must be based on established principles of statutory construction, as noted above. In fact, the perils of ignoring these principles is reflected in the order and approach of the questions posed in the July 12 ALJ's Ruling, *e.g.*, addressing terms out of order or isolated from the statute as a whole, thereby confusing the direction, intent, and context of the statute.

CEERT, therefore, asks that the "guiding principles" of the July 12 ALJ's Ruling be corrected to ensure that any resulting interpretation of Section 399.16 by the Commission adhere to the established principles of statutory construction. CEERT has based its comments on compliance with those legal standards.

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[8] *Dyna Med, Inc.*, *supra,* 43 Cal. 3d at 1387, *People V. Valladoli, supra*, 13 Cal. 4th at 602; *Squaw Valley Ski Corp.* v. *Superior Court,* (1992) 2 Cal. App. 4th 1499, 1511.
[9] *California Teachers Ass'n*, *supra*, 14 Cal.4th at 633.
[10] *Dyna Med, Inc.*, *supra*, 43 Cal.3d at 1389.

III.
CEERT RESPONSES TO ISSUES POSED BY JULY 12 ALJ'S 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"?

As noted above, interpretation of statutes starts with giving words used in a statute a plain and common sense meaning consistent with the statute's "legislative purpose," construing a statute "in context," and ascertaining the intent of the legislature so as to effectuate the purpose of the law.[11] In this case, subsection (b) *follows* a first, subsection (a). In that subsection (§399.16(a)), the phrase "electricity products" is *in fact* described and defined and, in turn, that description would flow to all other subsequent subsections of Section 399.16, such as subsection (b). Thus, "electricity products," at issue in Section 399.16, by the terms of subsection (a), are those that come "*from* eligible renewable resources located within the WECC transmission network service area" and are "eligible to comply with the [RPS] *procurement* requirements in Section 399.15."[12] With that statutory direction, Section 399.16(b)(1) is referring to the *procurement* of electricity products *from* "eligible renewable energy resources" that count toward RPS compliance. If given that meaning, "RPS procurement transactions" can serve as an applicable, short-hand description of "electricity products."

[11] *California Teachers Ass'n*, *supra*, 14 Cal.4th at 632, 633; *Dyna-Med, Inc.*, *supra*, 43 Cal.3d at 1386; *People* v. *Valladoli* , *supra*, 13 Cal.4th at 597, 599, 602.
[12] PU Code §399.16(a); emphasis added.

2. ***Should the first sentence of §399.16(b)(1)(A) be interpreted as meaning: "<u>The RPS-eligible generation facility producing the electricity has</u> a first point of interconnection with a California balancing authority, <u>or has</u> a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area, or <u>the electricity produced by the RPS-eligible generation facility is</u> scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source."*** **(Emphasis original.)**

CEERT does not believe this is a correct interpretation of this section (§399.16(b)(1)(A)). As noted above, "electricity products" refers both to the resource (eligible renewable resources) and RPS-eligible procurement transactions (see, Answer to Question 1 above). As such, this section should be interpreted as follows:

(1) The "eligible renewable energy resource electricity products" are procured from an eligible renewable generator that is directly interconnected either (a) to a California Balancing Authority (CBA) or (b) to the distribution system located within a CBA's area, with "directly interconnected" referring to both a facility located within the CBA or connected by "gen-tie" (a transmission line connecting the generation unit to a CBA), *or*

(2) The "eligible renewable energy resource electricity products" are procured through a commercial transaction that requires this energy to be scheduled into a CBA from an eligible renewable resource within the WECC or through an intermediate balancing authority where the schedules match the actual deliveries without substitution and the energy is appropriately documented ("tagged" or "E-tag" information for "generator source" and "delivery sink" (see, CEERT Answer to Question 6 below)) and adjusted to ensure that "the fraction of the schedule actually generated by the eligible renewable energy resource [is] count[ed] toward portfolio content category."[13]

[13] PU Code §399.16(b)(1)(A).

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

California balancing authorities (CBAs) known to CEERT include the California Independent System Operator (CAISO), Los Angeles Department of Water and Power (LADWP), Turlock Irrigation District (TID), Imperial Irrigation District (IID), and Balancing Authority of Northern California (formerly, Sacramento Municipal Utility District (SMUD)). CEERT, however, reserves the right to further address this issue in reply to the comments of other parties.

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.

CEERT's Answer to Question 2 above is incorporated herein. CEERT does not have relevant examples to provide at this time.

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?

CEERT reserves the right to address this issue in reply to the comments of other parties.

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.

The transactions permitted under PU Code §399.16(b)(1)(A) should be documented through the use of E-tags and information produced by the generating facility's meter. As noted below, the California Energy Commission (CEC) retains authority for determining RPS-eligibility as well as establishing the means of tracking and verifying that status. The CEC has authorized the Western Renewable Energy Generation Information System (WREGIS) for that purpose.[14] The most recent version of the CEC's RPS Eligibility Guidebook is dated January 2011.[15]

[14] This authority has been re-confirmed in SB 2, which amends and renumbers the original section authorizing the CEC to determine RPS eligibility, including tracking and verification (originally, PU Code §399.13), to PU Code

As CEERT has long maintained, it is of paramount importance that any interpretation or application of the RPS law, including Section 399.16, adopted by the Commission must be consistent with the CEC's eligibility (certification), tracking, and verification definitions, rules, and process.[16] CEERT has repeatedly called for joint hearings between the two agencies to remedy and avoid conflicts to ensure that RPS rules and criteria are developed '"on a consistent basis and record and in a manner designed to incentive renewable development and RPS compliance."'[17]

From CEERT's perspective, Section 399.16, as currently written, is an outgrowth of confusion between the two agencies on, among other things, what constitutes RPS-eligible "delivery." While that particular term has been removed from the statute by SB 2, nothing has changed the CEC's authority for defining, verifying, and tracking RPS-eligible energy. For this reason, CEERT urges this Commission to reflect the CEC's rules in any implementation of Section 399.16 and, to the extent questions exist, to coordinate any resolution of those issues with the CEC.

CEERT notes that a key means of tracking the eligibility of the "products" defined in Section 399.16 is through "e-Tags." Specifically, the e-Tag, part of North American Electric Reliability Corporation's (NERC's) electronic Transaction Information System (TIS), documents a "physical interchange transaction and its associated participants."[18]

Section 399.25. Pursuant to Section 399.25, it is the CEC that is to "certify eligible renewable energy resources that it determines meet the criteria" for an "eligible renewable energy resource" for RPS compliance, as defined in PU Code §399.12(e), referencing Public Resources Code §25741. In addition, it remains the CEC's responsibility to design and implement the accounting system to verify and track RPS compliance by obligated retail sellers (i.e., investor-owned utilities (IOUs)), including verification of the "generation of electricity associated with each renewable energy credit" (PU Code §399.25(c)).

[15] See: http://www.energy.ca.gov/2010publications/CEC-300-2010-007/CEC-300-2010-007-CMF.PDF .

[16] See, e.g., CEERT Comments on Proposed Decision of Commissioner Peevey Modifying and Lifting Stay of Decision 10-03-021 (September 27, 2010), at pp. 4-9.

[17] Id., at p. 7.

[18] NERC Electronic Tagging Functional Specification, Version 1.8.0.

The CEC's 2011 RPS Eligibility Guidebook specifically addresses the electricity procurement into California as being "made consistent with [NERC] rules and documented with a NERC e-Tag…."19 The Guidebook sets out the process and requirements for using a NERC e-Tag, including compliance with the NERC identification system that includes "the Source point name, an alpha-numeric code the generator uses to identify itself when it registers with the Transmission Services Information Network (TSIN)," which is "mandatory for participation in the NERC tagging system."[20] Among other things, compliance with this "tagging" approach requires identification of the following:

> "a. The 'Source' or 'Point of Receipt' located outside California and within the WECC.
>
> "b. The final 'Point of Delivery' or load center in California known as the 'sink.'
>
> "c. The California RPS-certification number of the facility or facilities with which the delivered energy is being 'matched.' The California RPS-certification number must be shown on the Miscellaneous field of the NERC e-Tag.
>
> "d. The amount of electricity delivered per month." [21]

The use of NERC e-Tags by the CEC is also embedded in WREGIS.[22] CEERT, therefore, recommends that the CEC's already adopted approach for "tagging" RPS eligible generation should apply to the products as defined in Section 399.16 and, for purposes of clarity and continuity, the Commission should rely on the definitions already adopted by the CEC for key terms used related to application and content of "e-Tags."

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[19] CEC RPS Eligibility Guidebook, at p. 38.
[20] Id., at pp. 39-40 and n. 63 (p. 39).
[21] Id., at p. 40.
[22] Id., Appendix A. See also, CEC Joint Agency Staff Report on Tracking System Operational Determination (2008) at http://www.energy.ca.gov/2008publications/CEC-300-2008-001/CEC-300-2008-001-SF.PDF .

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.

As noted above, interpretation of Section 399.16 cannot be undertaken on a piecemeal, phrase-by-phrase basis, but requires consideration of the language as a whole to ensure proper statutory construction. Thus, the phrase pulled from Section 399.16(b)(1)(A) above must be read in the context of the provisions of Section 399.16 as a whole. For CEERT, in doing so, this language permits energy procured from an eligible renewable energy resource to count toward RPS compliance if it is firmed within the hour through the use of ancillary service markets, including intra-hour balancing services.

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."***

Consistent with the appropriate statutory construction of Section 399.16 addressed in CEERT's Answer to Question 2 above, this statute is intended to apply to the RPS eligibility of *procurement* of "electricity products from eligible renewable energy resources," defined as to type and amount. Thus, this section is in fact directed at transactions to procure the defined products, which, in this instance, would require a commitment or agreement that the electricity is being dynamically transferred.

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"?

Like many of the previously posed questions, this question must also be answered in the context of the entirety of Section 399.16. Category 3 (PU Code §399.16(b)(3)) is the "bucket" for all electricity products from eligible renewable energy resources that are not otherwise included as either Categories 1 or 2. Under these circumstances, the product identified as an "unbundled renewable energy credit" would be the procurement of a REC, as defined by PU Code §399.12(h)(1), that did not meet the criteria of procurement identified in either Categories 1 or 2. As defined PU Code §399.12(h)(1), a REC is a "certificate of proof associated with the generation of electricity from an eligible renewable energy resource" issued through the CEC's adopted accounting and tracking system (WREGIS).

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.

CEERT incorporates by reference its answers above. CEERT urges the Commission to read Section 399.16 as identifying what each Category *includes*, not what it excludes. If in the course of any permitted transaction under Categories 1 or 2 a transfer of an unbundled REC results, such a circumstance does not mean that the transaction does not meet the criteria of those categories. Instead, the procurement or transaction should be assessed to determine the applicable category criteria. Thus, this language should be interpreted in context with Section

399.16(b)(3) and read to mean that any certificate registered within the Western Renewable Generator Information System (WREGIS) that does not qualify as Category 1 or Category 2 would be a Category 3 "unbundled renewable energy credit." No energy or capacity need be associated with this type of transaction.

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.***

CEERT incorporates by reference its Answer to Question 19 above. CEERT repeats that the responsibility for tracking and verifying RPS compliant procurement lies with the CEC, as discussed repeatedly herein. Given the existence of this authority outside of the Commission, CEERT again urges the Commission to coordinate its implementation of Section 399.16 with the CEC to ensure consistency and continuity with the CEC's eligibility, tracking, and verification rules, including WREGIS.

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

As noted above, it is the CEC that is to determine the eligibility of electric generation for RPS compliance purposes. While SB 2 may not have defined "firmed," it most certainly re-confirmed that it is the CEC's job to define, track, and verify the eligibility of renewable generation procurement for RPS purposes.[23]

[23] PU Code §399.25.

At the time of the enactment of SB 2, the CEC had in fact defined "firmed and shaped" RPS-compliant energy, a circumstance that would have been known to those drafting and enacting SB 2. SB 2 makes no change to the CEC's definitions on those terms. Thus, any statutory construction of the term "firmed" or "shaped" in the context of SB 2 must be made with reference to the definition of such terms by the CEC. In the case of what constitutes "firmed and shaped" RPS compliant energy, the CEC has defined both as follows: "Firming and shaping refers to the process by which resources with variable delivery schedules may be backed up or supplemented with delivery from another source to meet customer load."[24]

Examples provided in the CEC's current RPS Eligibility Guidebook that seek to identify "firmed and shaped" transactions that "do not constitute tradable RECs [renewable energy credits]" have been the subject of controversy and largely ignored by this Commission in issuing its decision authorizing tradable RECs (D.10-03-021, as modified by D.11-01-025). However, this circumstance does not alter the definition adopted by the CEC for "firmed and shaped" eligible renewable energy resource electricity products and is a further reminder of the need to ensure that, whatever definitions are adopted by this Commission, each is consistent with those used by the CEC, especially for determining whether the product is RPS eligible and can count toward RPS compliance.

CEERT, therefore, again urges this Commission to rely on definitions adopted by the CEC to avoid creating unnecessary uncertainty in the RPS market. Such uncertainty, especially on a point so important as to whether the "product" being procured is RPS-eligible, must be avoided if California is to achieve the goal established by SB 2 of meeting 33% of total retail sales of electricity with RPS eligible generation by December 31, 2020.

[24] CEC RPS Eligibility Guidebook (2011), at p. 37.

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

CEERT's answer is the same as its response to Question 12 above. The CEC, as authorized by the RPS statute, has defined "firmed and shaped" for purposes of RPS eligibility and that definition should be maintained by this Commission.

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.***

Again, to the extent that the Commission embarks on defining terms that are intended to determine RPS eligibility, CEERT asks that the Commission look first to the CEC's RPS Eligibility Guidebook to ensure that any adopted definition is consistent with the CEC's guidance. In addition, the term should also be in keeping with its "ordinary" dictionary definition as a starting point.

Thus, the ordinary meaning of "incremental" is an adjective describing the addition or increase in the amount or size of something, in this case, electricity. With respect to out-of-state RPS eligible generation, the CEC has described an out-of-state facility as producing "incremental generation due to project expansion or repowering" after a specific date.[25] This aspect of "incremental" similarly connotes an increase in the amount of power that has otherwise been produced.

[25] CEC RPS Eligibility Guidebook, at p. 57.

This concept, of an "increase," is mirrored in Section 399.16, but instead of referring to an increase in historical generation of an RPS eligible facility, the "incremental electricity" referenced in Section 399.16 instead refers to an increase in the amount of RPS-eligible electricity that the RPS-obligated retail seller is otherwise procuring. Thus, with respect to "firmed and shaped eligible renewable energy resource electricity products providing incremental electricity and scheduled into a [CBA]" (PU Code §399.16(b)(2)), this electricity product should derive from eligible renewable energy resources located within the WECC, the renewable energy credit (REC) must be "E-tagged" to energy scheduled for delivery to a CBA, and energy to which the REC is "e-tagged" must be "incremental," that is, represent an increase in the RPS-compliant electric generation otherwise in the portfolio of the RPS-obligated retail seller.

Further, CEERT believes that this procurement product is RPS compliant if it is procured through a transaction, which requires the combined purchase of RECs and electricity that is not otherwise in the portfolio of the RPS retail seller and scheduled into a CBA, which purchase agreement shall not be less than 5 years in duration. Each qualifying procurement transaction shall contain a fixed price for the combined purchase of the REC and electricity import over the life of the contract. In keeping with PU Code §399.16(b)(1)(A), if the generation is firmed and shaped within the hour, the procurement is RPS eligible and can count toward RPS compliance.

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?***

These questions suggest some apparent confusion by the Commission regarding the intent and meaning of SB 2 that, again, stems from failing to account for all of the provisions of Section 399.16 as a whole. In this case, this question seems to ignore the language of Section *399.16(b)(1)(A)*, which clearly provides that "eligible renewable energy resource electricity products" that have "a first point of interconnection with a California balancing authority" are Category 1, not Category 2, products, as this question implies. As noted in CEERT's Answer to Question 2 above, the "eligible renewable energy resource electricity products" included in Category 1 are those that are procured from an eligible renewable *generator* that is directly interconnected either (a) to a California Balancing Authority (CBA) or (b) to the distribution system located within a CBA's area, with "directly interconnected" referring to both a facility located within the CBA or connected by "gen-tie" (a transmission line connecting the generation unit to a CBA).

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.

No. "Firmed and shaped" renewable electricity products are not excluded from Category 1. Procurement pursuant to Section 399.16(b)(1)(A) is permissible for any eligible renewable resource as long as it meets the criteria set forth, including direct interconnection (located within or gen-tie) to a CBA or scheduled to a CBA (located within the WECC) on a day-ahead, hourly,

or sub-hourly basis, with documenting using E-tag information for generator source and delivery sink. By its own terms, Category 1 includes import schedules that can be firmed within the hour through the use of ancillary service markets, including intra-hour balancing services

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. . ."

CEERT reserves the right to address this issue in reply to the comments of other parties.

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).

Any Commission decision implementing PU Code §399.16 should expressly supersede any prior Commission decision that defines or limits transactions for "unbundled renewable energy credits" based on prior law. Thus, the "product" categories enacted in PU Code §399.16 govern the RPS eligibility of all RPS eligible procurement and govern this issue, as to type and amount, once implemented.

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)?

Consistent with CEERT's Answer to Question 24 below, the Commission should commit to implementing the SB 2 "product" requirements set forth in PU Code §399.16 in a final decision issued as soon as possible. Given that the effective date of this law will be this fall, the Commission should avoid continuing to apply "RPS rules" that have been altered by this statute.

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?***

Please see CEERT's Answers to Questions 2, 6, 9, 12 and 13 above. The CEC retains authority for determining RPS-eligibility, including the tracking and verification of that status, with the most recent version of the CEC's RPS Eligibility Guidebook issued in January 2011.[26] Any change in the definition of terms or actions that qualify as RPS eligible starts with action taken by the CEC. CEERT urges the Commission to work with the CEC to ensure a smooth transition for any change in the applicable guidebook and certification process.

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?

CEERT reserves the right to address this issue in reply to the comments of other parties.

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?***

Again, the CEC is responsible for determining RPS eligibility, verification and tracking. SB 2 did not change that responsibility and authorization. The Commission needs to coordinate with

[26] See, footnotes 14, 15, *supra*.

the CEC on this issue, as noted in CEERT Answers to Questions 2, 6, 9, 12 and 13. This coordination is essential to avoid uncertainty in the renewables market or undermine achievement of the 33% RPS by 2020 goal set by SB 2.

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.

This exercise is *not* one the Commission is required to undertake in its implementation of Section 399.16. Instead, the Legislature itself has *already* made the determination of the "value to the buyer, the seller, and ratepayers of transactions in each portfolio content category" by expressly defining the products that belong in each category and the percentage of each that are to be procured over time. By doing so, the Legislature has expressly directed and intended that these products are to be "valued" according to the ranking and percentages adopted for each category of procurement. Namely, those "products" are to be ranked in preference as follows: Category 1 (direct and firm transmission path interconnection), followed by Category 2 products ("firmed and shaped" transactions), followed by Category 3 ("RECs"). By doing so, the Legislature has imbued a higher value for renewable generation that is directly interconnected with CBAs (Category 1) that may have resulted from environmental and economic considerations. The Commission is not required to further quantify such benefits or, alternatively, direct or indirect "costs" associated with this ranking to either ignore or alter any of the terms of Section 399.16.

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?

Consistent with CEERT's Answer to Question 19 above, the Commission should commit to implementing the SB 2 "product" requirements set forth in PU Code §399.16 in a final decision issued as soon as possible. Given that the effective date of this law will be this fall, the Commission should avoid continuing to apply "RPS rules" that have been altered by this statute.

III.
CONCLUSION

CEERT appreciates the opportunity to offer its opening comments on the implementation of the SB 2 RPS Portfolio Content Categories. In addition to CEERT's specific interpretations of the law (Section 399.16) above, CEERT strongly urges the Commission to include the established principles of statutory construction among its "guiding principles" and actively coordinate with the CEC, in recognition of its RPS eligibility, verification, and tracking authority, on any interpretation of this law, especially to ensure the consistent use of definitions and rules between the two agencies.

Respectfully submitted,

August 8, 2011

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VERIFICATION

(Rule 1.11)

I am the attorney for the Center for Energy Efficiency and Renewable Technologies (CEERT). Because CEERT is absent from the City and County of San Francisco, California, where I have my office, I make this verification for said party for that reason. The statements in the foregoing Comments of the Center for Energy Efficiency and Renewable Technologies on Implementation of SB 2 RPS Portfolio Content Categories, have been prepared and read by me and are true of my own knowledge, except as to matters which are therein stated on information or 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 and executed on August 8, 2011, at San Francisco, California.

Respectfully submitted,

/s/ SARA STECK MYERS

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