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 NORTHWEST ENERGY SYSTEMS COMPANY ON IMPLEMENTATION OF NEW PORTFOLIO CONTENT CATEGORIES FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

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Pursuant to the Administrative Law Judge's Ruling Requesting Comments on Implementation of New Portfolio Content Categories for the Renewables Portfolio Standard Program issued on July 12, 2011 ("ALJ Ruling"), Northwest Energy Systems Company ("NESCO") submits these comments.

NESCO is a limited liability company with offices in Bellevue, Washington. NESCO is currently developing and intending to construct, own, operate and maintain a qualifying biomass facility in Klamath Falls, Oregon. NESCO is also actively developing other potential qualifying biomass facilities within Oregon. Each of the NESCO biomass facilities will generate Renewables Portfolio Standard ("RPS")-eligible power and be certified by the California Energy Commission ("CEC") as a RPS-eligible renewable resource.[1] As one potential option that it is considering, NESCO may sell the power and associated Green Attributes from these RPS-eligible facilities to California retail sellers.

Should NESCO choose to sell its power and associated Green Attributes to a California purchaser, NESCO would physically deliver the power by obtaining transmission rights and thus be able to have a Delivery Point for its sale of power within a California balancing authority.

[1] The California Energy Commission has "pre-certified" the NESCO Klamath Falls facility as an eligible renewable resource (RPS ID: 61234C) with an eligibility date of September 27, 2010 for participation in the RPS program.

The commercial transaction that NESCO may enter would be two party, directly with a California load-serving entity; there would be no need for any third-party participation or for any "buy-sell" or other such peripheral transactions with any intermediary or other third-party participant.

The NESCO power would be scheduled into the California Independent System Operator ("CAISO") markets. NESCO would be operationally and financially responsible for any failure of its RPS facility to generate power and similarly have full responsibility for any failure by or inability of its Transmission Provider(s) to deliver its RPS power to the Delivery Point within a California balancing authority to the California purchaser at the MW levels scheduled. With respect to scheduling, payment and contractual rights and obligations, from the perspective of the California purchaser, the CAISO, and the California electric consumer, RPS power generated by and delivered from the NESCO project, and the Green Attributes associated with such power generation, will be indistinguishable from RPS power generated and delivered in state.

NESCO provides these comments to enable the Commission to comply fully with the legislative mandate that RPS power generated out of state, but sold to a California purchaser in one integrated transaction, delivered to a Delivery Point within a California balancing authority "without substituting electricity from another source" satisfies the procurement content criteria section 399.16(b)(1)(A) establishes. Any possible concerns relating to the RPS-eligibility of power generated out of state, but able to be delivered through transmission rights to a Delivery Point within a California balancing can be readily resolved by conventional contractual provisions and commercial arrangements common in energy transactions.

A "policy" determination by this Commission dictating the near prohibition of such transactions from the California RPS market is unwarranted. Any such near-summary exclusion would contravene the legislative directive in section 399.16(1)(A), inhibit the development of a robust and competitive RPS market, and arbitrarily deny California electric consumers additional

sources of RPS power.

With this as background, NESCO provides these comments to a few of the specific questions that the ALJ Ruling raises. For those questions which NESCO has not provided a response, NESCO reserves the right to provide comment through its reply comments.

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."

Yes. The first sentence of section 399.16(b)(1)(A) should be interpreted as the ALJ Ruling suggests in this question. An RPS transaction that satisfies any one of the three criteria ((i) first point of interconnection with a California balancing authority; (ii) first point of interconnection with distribution facilities serving California retail load; or (iii) scheduled into a California balancing authority) should be categorized as a section 399.16(b)(1)(A) ("Category 1") transaction.

Thus an RPS procurement transaction which involves power generated out of state, but scheduled "into a California balancing authority area," (*e.g.*, physical power and Green Attributes from an out-of-state RPS generator delivered into California) and "without substituting electricity from another source" qualifies under the Category 1 criteria.

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.

A. Section 399.16(b)(1)(A) Must Be Construed to Include RPS Transactions Involving Transmission Rights

This section 399.16(b)(1)(A) Category 1 criteria must be interpreted as designed to include transactions involving the sale to a California purchaser of physical power and the Green Attributes associated with such generation that an out-of-state RPS-eligible generation facility

has scheduled for delivery, and then directly delivers through the use of contractual rights to transmission capacity, to a contractually-designated Delivery Point located within a California balancing authority.[2] Transmission rights, even those that do not guarantee 100 percent 24/7 transmission access, provide the out-of-state RPS generator the contractual right to direct the Transmission Provider to deliver its RPS power to a Delivery Point located within a California balancing authority.

Such an integrated sales transaction has only two participants-- the out-of-state RPS generator and the California purchaser-- and *per se* does not require or involve "substituting electricity from another source." The Seller's use of its own transmission capacity rights negates the need for any third-party intermediary to effectuate through peripheral arrangements a "delivery" into California; the Seller's use of its transmission capacity rights enables the California purchaser to procure physical power and Green Attributes in one direct and fully integrated transaction and, as contemplated by section 399.16(b)(1)(A), at a Delivery Point within a California balancing authority.

The physical flow of power and corresponding commercial relationship between the Seller and the California purchaser are exactly the same as if the RPS generation facility is physically located in California – the physical power and corresponding Green Attributes are produced by the Seller and then scheduled for delivery and delivered to the California purchaser at the Delivery Point designated in a power purchase agreement and within a California balancing authority.

The dual requirements of this prong of section 399.16(b)(1)(A) (the RPS power be both (i) "scheduled into a California balancing authority" and (ii) delivered "without substituting energy from another source") are intended to distinguish RPS transactions using transmission rights to physically deliver the power to a Delivery Point within a California balancing authority

[2] *See* section B to the response to Question #4, *infra* at 5.

from other possible commercial arrangements involving RPS power generated out of state. For instance, it may be possible to schedule out-of-state RPS power to a California Delivery Point through the use of various "buy-sell," "firming and shaping" or other creative multiple-party arrangements.

These transactions, however, require some form of substitution of energy from other sources (at least some portion of the time). In contrast, the RPS power generated by an out-of-state generator holding transmission rights to deliver the power to a Delivery Point within a California balancing authority is able to be delivered as a direct two-party contractual obligation, and without any need for "substituting energy from another source."

B. The Legislature Did Not Limit Eligibility for Section 399.16(b)(1)(A) Status to only RPS Power Delivered with Firm Capacity Transmission Rights

Section 399.16(b)(1)(A) indisputably allows RPS transactions involving the delivery into California through the use of firm transmission rights to be eligible for inclusion in that section. Importantly, in drafting section 399.16(b)(1)(A), the Legislature also did not restrict the eligibility for out-of-state generation employing transmission rights to deliver its power to a Delivery Point within a California balancing authority to only those RPS generators holding firm transmission rights.

On the contrary, section 399.16(b)(1)(A) focuses on the function and results – an out-of-state generator who through the use of transmission rights can schedule its RPS generation to a Delivery Point within a California balancing authority, and "without substituting electricity from another source," can also qualify as a Category 1 RPS transaction, and without regard to the characterization of its transmission rights.

Issues regarding the "firmness" or the "intermittency" of the availability of transmission capacity should not raise any threshold policy issue regarding RPS eligibility. For instance, wind and solar generators are capable of delivering power at capacity rates at the 30 to 40 percent

level and are accorded full RPS stature; an out-of-state RPS generator who can deliver power 90 percent of the time, despite holding "non-firm" transmission rights is entitled to the same RPS status. Any concern regarding the quality and availability of the RPS Seller's transmission rights can be readily resolved through the Commission and/or the Seller requiring the necessary protections in the power purchase agreement.

Neither California law nor Commission policy warrants excluding an otherwise eligible RPS project based on its perceived failure to physically deliver its RPS power 100 percent of the time. The inability of an RPS generator at certain times to deliver its power either because of the inability to 1) generate or 2) deliver, does not diminish the value of the RPS power actually delivered. Accordingly, there is no distinction between the RPS status of two in-state generators employing wind technology, even though one has a capacity factor of 20 percent and the other has a capacity factor of 40 percent. All the power that is generated is undoubtedly RPS-eligible; the issues are simply commercial and contractual: (i) does the 20 percent capacity generator deliver sufficient power; and (ii) do the parties allocate the risks and benefits of performance in a manner fair and beneficial to electric consumers?

Similarly, all power generated by an out-of-state RPS-qualifying baseload biomass generator that is delivered to a Delivery Point within a California balancing authority via a transmission arrangement should unquestionably qualify under the criteria set forth in section 399.16(b)(1)(A). The fact that RPS power is delivered with less than firm transmission rights does not alter the facts that (a) the power was generated by an RPS-qualified facility; and (b) the physical power and associated Green Attributes are scheduled for delivery, and physically delivered, to the California purchaser at a Delivery Point within a California balancing authority and in one direct integrated (*i.e.*, the generator sells directly to the California purchaser and without the need a of a third party intermediary) transaction. The totality of the consequences of the generator holding less than firm transmission rights are simply that the percentage of time

that it actually delivers its RPS power to the California purchaser will likely be less than if the generator held firm transmission rights– this difference is exactly the type of difference that is anticipated with deliveries between the two California-located wind generators with differing capacity factors.

Just as the purchasing utility can obtain the contractual provisions necessary to protect ratepayers in a purchase from an in-state wind generator with a 20 percent capacity factor, the utility purchasing RPS power from an out-of-state generator holding less than firm transmission rights can ensure through contractual obligations that the generator is fully at risk and subject to exacting financial penalties if it is unable to deliver power to the requisite Delivery Point within a California balancing authority due to any temporary inability to obtain transmission access. Moreover, the purchasing utility (and the Commission) will have the opportunity to independently assess whether the quality of the transmission rights will be sufficient. It is simply arbitrary and unnecessary to *per se* exclude potentially cost-effective transactions from the California RPS market on the basis that the generator decided that it can offer the most cost-effective RPS product by electing to purchase less than firm transmission capacity.

Contractual obligations ensure that any out-of-state RPS generator power is appropriately scheduled and delivered to an in-state Delivery Point in a California balancing authority. The California purchaser, the CAISO and the California electric consumer will be indifferent as to whether the power is scheduled and delivered with some variant of interruptible transmission, as opposed to absolute firm transmission or if the RPS power was generated and delivered in state. There is no difference between a generator being unable to deliver RPS power due to lack of transmission capacity or due to the failure of the wind to blow or the sun to shine. The burden and financial responsibility remains on the generator to have its power scheduled with the CAISO for delivery to a Delivery Point within a California balancing authority consistent with its ability to actually generate and deliver the MWh of scheduled power.

Thus, there is no reason to *per se* disqualify transactions with out-of-state projects that hold transmission rights which are less than 100 percent firm from being considered as a section 399.16(b)(1)(A) Category 1 RPS transaction. Moreover, there is no basis in the statutory language to support this Commission construing section 399.16(b)(1)(A) in a manner which arbitrarily prohibits otherwise viable out-of-state RPS projects holding rights to viable and *bona fides* transmission rights from qualification under this section.

C. Definition and Scope of a California Balancing Authority

The meaning of the term "California balancing authority" is critical to any interpretation of section 399.16(b)(1)(A). Senate Bill 2 (1x) introduces this term into the California Public Utilities Code in section 399.16(b)(1)(A) and other provisions.

It is thus incumbent on the Commission to interpret the Legislature's intended meaning of the term. Consistent with the tenets of statutory interpretation, the Commission should interpret the term "California balancing authority" by utilizing its plain meaning,[3] and it may not simply assume that the Legislature intended to limit the term "California balancing authority" to the CAISO, LADWP, SMUD, and a few other organizations. For instance, the Legislature could have, but did not, limit the term to "balancing authorities located exclusively within California." This Commission would exceed its limited authority to interpret the legislative intent if it were to arbitrarily read any such limitation into the statute.

The plain meaning of the term "California balancing authority" requires that the Commission construe it to include any balancing authority that has a presence within California. This interpretation would include those balancing authorities whose retail customers include California residents, even if their service territory also encompasses a state in addition to California (*e.g.*, the PacifiCorp balancing authority is located in both Oregon and California)

[3] *See Wolski v. Fremont Investment & Loan* 127 Cal.App.4th 347, 351 (2005); *Whaley v. Sony Computer Entertainment America, Inc.* 121 Cal.App.4th 479, 485 (2004).

Thus consistent with the language the Legislature selected, the Commission should consider a delivery of physical power to a designated Delivery Point located within the PacifiCorp balancing authority, even outside of California, as a delivery into a "California balancing authority."

This interpretation appropriately recognizes the engineering and operating realities of an integrated electric grid. Subordinating the definition of electricity operating areas to lines drawn for any combination of political reasons and historical happenstance is an arbitrary delineation divorced from the physical and electrical reality of the interconnected electric grid. Transmission and distribution facilities are designed to optimize the flow of power and without regard to state or other political boundaries. Accordingly, numerous balancing authorities encompass electrical facilities in multiple states.

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?

The inclusion of the three discrete RPS transactions characterized in #4 within the section 399.16(b)(1)(A) Category 1 appropriately reflects and builds upon the work done and record established by the Energy Division staff in response to Ordering Paragraph 26 of D.10-03-021. Through that established record, the Commission can conclusively resolve the issues explored by Energy Division staff and the parties regarding RPS transactions in which an out-of-state generator has scheduled and delivers RPS-eligible power to a Delivery Point within a California balancing authority through the use of its transmission rights.

In D.10-03-021, the Commission expressed its "policy preference to accept RPS procurement transactions using firm transmission arrangements as 'bundled' RPS procurement."[4] At that time, the Commission's designation of a firm transmission transaction as "bundled" meant that for RPS product classification purposes, firm transmission transactions would be

[4] D.10-03-021, mimeo at 36, quotations added.

placed in the same category as transactions involving RPS power generated in state and RPS power generated out of state, but involving "dynamic scheduling" and "pseudo-tie" arrangements.[5]

The Legislature recognized in SB 2 (1x) this Commission's preference for transactions involving the delivery of RPS power generated out of state to the California purchaser at a Delivery Point within a California balancing authority through the use of firm transmission by qualifying all RPS transactions which can be scheduled into a California balancing authority and without the substitution of energy from another source for section 399.16(b)(1)(A) eligibility. As stressed in NESCO's response to Question # 4 above, however, the Legislature expanded on the Commission's initial preference for "firm transmission" by deeming eligible for section 399.16(b)(1)(A) any RPS transaction which is "scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source."

The Commission did condition its tentative decision in D.10-03-021 to include firm transmission transactions within the preferred bundled status on the favorable resolution of two concerns which it directed the Energy Division to conduct a workshop to address:

> First, the buyer of firm transmission is not required to use it; in that case, the transmission provider can sell the transmission to another entity. Second, even when firm transmission is used to bring energy to a California balancing authority scheduling point, the buyer could enter into an arrangement to remarket the electricity from that point.[6]

The Energy Division convened a workshop to address these issues on April 23, 2010 (the "Workshop"). The participants at the Workshop comprehensively addressed and sufficiently resolved these two concerns. No party in any presentation, written or oral, advocated that the concerns raised by D.10-03-021 warrant the Commission to deny in-state bundled status (*i.e.*, the

[5] *Id.*, mimeo at 33.
[6] *Id.*, mimeo at 35.

equivalent of the transaction qualifying as a section 399.16(b)(1)(A) transaction) to otherwise eligible out-of-state RPS generators employing firm transmission rights to deliver their physical power into a California balancing authority. Moreover, although not technically on the agenda, many participants at the Workshop advocated that the Commission should also designate RPS transactions involving out-of-state RPS generators who deliver their power into a California balancing authority through the use of transmission arrangements other than absolutely firm as also eligible for the preferred "bundled" status. These advocates explained that transactions utilizing non-firm transmission arrangements contained all the characteristics of a transaction involving firm transmission capacity; the only distinguishing characteristic is that there would be less contractual certainty that transmission capability would be available on a firm 24/7/365 basis.

In any event, the concerns the Commission expressed in D.10-03-021 can be resolved through commonly used commercial provisions, and without regard to whether the transmission rights are absolutely firm or of a lesser quality. An out-of-state RPS generator that sells its transmission capacity (firm or otherwise) to a third party would be unable to satisfy its obligations under its power purchase agreement ("PPA") to deliver to the contractually-designated Delivery Point within a California balancing authority. At a minimum, such an out-of-state RPS generator who deploys its transmission rights for a purpose other than delivering power to its California purchaser will suffer substantial financial penalties[7] under the PPA. If its sales of transmission capacity continued for any period, the out-of-state RPS generator would also likely be in material breach of the PPA. Such a breach would subject the PPA to

[7] *See* PG&E 2011 pro forma RPS PPA, Appendix VII (obligating the RPS Seller to pay substantial liquidated damages (a minimum of $20/MWh) for failing to deliver the requisite amount of RPS MWh).

termination and inevitably obligate the out-of-state RPS generator's payment of a substantial amount as a Termination Payment.[8]

Correspondingly, the expressed concern that a California purchaser may divert RPS power delivered to a Delivery Point within a California balancing authority via transmission capacity rights (firm or otherwise) for a commercial purpose other than serving its retail load is hard to comprehend. The fact that transmission rights would be used to deliver the RPS power does not provide the California purchaser any greater ability to sell RPS purchased power to a third party – the California purchaser can divert any RPS power (including all in-state generation) it procures whether firm or any other transmission capacity rights plays any part in the delivery of that RPS power.

Moreover, to the extent the existing pro forma RPS PPAs do not already fully resolve these concerns, the addition of routine commercial provisions into the form RPS PPAs can resolve each of these concerns. For instance, Section 3.1(b) of the PG&E 2011 pro forma RPS PPA currently prohibits the Seller from "sell[ing] Product from the Project to a third party …." The following additional constraint could be added to Section 3.1(b):

> Seller currently holds firm transmission capacity rights in the amount sufficient to deliver its delivery obligation of __ MW to the Delivery Point; Seller shall not use these __ MW of firm transmission rights on X system for any purpose other than to deliver power to Buyer at the Delivery Point and in accordance with the terms and conditions of this Agreement.

Similarly, any concern the Commission may have about a California purchaser diverting RPS power delivered through the use of transmission capacity rights can be negated through contract. A provision could be readily added in which the Buyer covenants with the Seller that it shall use all power delivered to the Delivery Point within a California balancing authority for the

[8] *See* PG&E 2011 pro forma RPS PPA, Section 5.3.

exclusive purpose of serving its retail load and that it shall not resell any such power to any other entity for any other purpose.[9]

In any event, the written comments and oral presentations at the April 2010 Workshop created a full record supporting a finding by the Commission that for RPS classification purposes, RPS power generated out of state, but delivered into a California balancing authority, through the use of transmission capacity rights in an integrated and direct two-party transaction and without substituting electricity from another source, should be considered the "functional equivalent" of RPS power generated and delivered within a California balancing authority.

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.

Section 399.25(c) charges the California Energy Commission ("CEC") with:

> "[e]stablish[ing] a system for tracking and verifying renewable energy credits that, through the use of independently audited data, verifies the generation of electricity associated with each renewable energy credit and protects against multiple counting of the same renewable energy credit. The [California] Energy Commission shall consult with other western states and with the WECC in the development of this system."

Thus, the CEC is responsible for ensuring that the transactions characterized in #4 above are tracked and verified.

Iberdrola's presentation at the April 2010 Workshop ("Iberdrola April 2010 Workshop Presentation") explained the procedures and protocols by which NERC E-tags provide *auditable* information to track and verify RPS-eligible generation and associated Green Attributes that have been delivered to a California balancing authority.

The Iberdrola April 2010 Workshop Presentation explained that the NERC E-tag protocols provide the following information to assist in tracking and verifying the deliveries:

[9] The Commission could also condition a utility purchaser's right to rate recovery on the basis that the utility purchaser use any such RPS purchased power for the exclusive purpose of servicing its retail load.

- The source and sink control areas
- The purchase and selling entities involved
- The source of energy, the transmission paths, and associated points of receipt and points of delivery
- The type of transmission product being used
- The scheduling entities
- A contract ID that links the E-tag with the California Energy Commission (CEC) renewable facility certification number
- The Token field that includes the RPS Identifier with the CEC Renewable Facility Certification number
- The date and hours of the delivery
- The amount of energy delivered[10]

For deliveries utilizing any form of transmission, E-tags demonstrating delivery of energy may be matched with metered output data from the generator to quantify the amount of RECs that may be claimed from the facility.[11] This ability to track and audit the delivery of Green Attributes is available without regard to the whether the transmission capacity used to deliver the power is absolutely firm or otherwise.

Beyond the tracking and verification offered by E-tags, the current form of California pro forma RPS PPAs contain commercial provisions designed to ensure that the California purchaser procures verified Green Attributes in transactions characterized in #4 above. Various provisions obligate the out-of-state RPS generator to comply fully with any WREGIS or WECC requirements necessary for the out-of-state RPS generator to be able to convey the Green Attributes associated with its generation to the California purchaser.[12] For instance, the Commission obligates all RPS-eligible PPAs to include the following non-modifiable provision:

> Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.[13]

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[10] *See* Iberdrola Renewables, Inc. presentation titled: *Renewable Energy Delivery, Scheduling, and Firming/Shaping,* at the April 2010 Workshop and Post Workshop Comments of Iberdrola Renewables, Inc., R.08-08-009 (April 30, 2010), at 4.

[11] Post Workshop Comments of Iberdrola Renewables, Inc., R.08-08-009 (April 30, 2010), at 4-5.

[12] *See, e.g.,* PG&E 2011 pro forma RPS PPA, at Section 3.1(g).

[13] The Commission required the inclusion of this non-modifiable provision in all RPS PPAs in D.11-01-025.

Thus, as with the other concerns expressed about the use of transmission capacity rights to deliver RPS power into a California balancing authority, the issues regarding the actual delivery of the RPS power and the validity of the Green Attributes associated with the generation are commercial and operational. The current form of Commission-approved pro forma RPS PPAs or minor revisions to these contracts can resolve these commercial and operational issues. No policy concerns warrant the summary exclusion of these integrated RPS transactions from Category 1 status.

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 Commission's adherence to the legislative directive to include RPS transactions with out-of-state RPS generators involving utilizing transmission capacity rights as Category 1 section 399.16(b)(1)(A) transactions will provide significant benefits to California purchasers, out-of-state RPS generators, and the electric consumers of California. The California purchaser and its electric consumers each benefit from an increased supply of transactions that qualify under Category 1. Allowing the supply of RPS power to be included in Category 1 to correspond with the Legislature's intent will best ensure a substantial supply of Category 1 power; conversely artificially restricting the RPS supply eligible for Category 1 status will reduce supply and thus necessarily increase prices.

From an out-of-state RPS generator's perspective, having a transaction qualify under Category 1 first promises savings in transaction costs (allowing lesser price bids) as the RPS power and the associated Green Attributes can be conveyed in one integrated transaction. Second, designating a transaction for Category 1 status enables the out-of-state RPS Seller to compete for the largest, and potentially unlimited, portion of the California RPS market. Thus, it is to everyone's benefit to not bar qualifying RPS transactions with out-of-state generators utilizing transmission capacity rights that are electrically equivalent, both functionally and

physically, of RPS power generated and delivered within a California balancing authority from Category 1 status.

Furthermore, there are no incremental costs, direct or indirect, to California purchasers or electric consumers associated with the Commission implementing the Legislature's intent that transactions with out-of-state RPS generators utilizing transmission capacity rights be designated as a section 399.16(b)(1)(A) Category 1 transaction. The costs for an out-of-state RPS generator to deliver its power and Green Attributes to a Delivery Point within a California balancing authority have been, and will continue to be, borne entirely by the out-of-state RPS generator under the PPA.[14] These costs may be reflected in the out-of-state RPS generator's overall bid price, but delivery costs are included in every Seller's overall bid price whether the Seller is in state or out of state. In any event if the transmission costs cause the out-of-state generator's bid to be too high relative to competing bids, the California purchaser will select among the other lower price options. From the standpoint of the California purchaser or electric consumers presented with competing bids from various sellers, qualifying transactions with out-of-state RPS generators utilizing transmission rights under Category 1 creates no additional costs and ensures additional competition.

Additionally, providing California purchasers with the discretion to participate in RPS transactions in which the power is delivered to the Delivery Point utilizing transmission capacity rights other than absolutely firm should increase the overall RPS supply competing to serve the California demand and should lead to reduced prices. As emphasized previously, the California purchasers have the ability to assess whether the quality of the transmission capacity rights will enable the Seller to deliver the RPS power with the requisite level of reliability, and the Commission will have the full opportunity to review a utility's assessment of this issue.

[14] *See, e.g.,* PG&E 2011 pro forma RPS power purchase agreement, at Section 3.1(b) (directing that "Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point").

Moreover, enabling RPS transactions involving the delivery of RPS eligible power from out-of-state generators into a California balancing authority through the use of transmission capacity will lead to greater utilization of existing transmission resources throughout the Western Region to be dedicated to RPS-eligible power. For instance, in each instance in which an out-of-state RPS generator with transmission rights executes a PPA with a California purchaser, the generator becomes obligated itself to use its transmission capacity rights to deliver RPS power to a Delivery Point within a California balancing authority. This obligation ensures that some incremental portion of scarce transmission capacity into a California balancing authority will more likely be used for the delivery of RPS eligible power.

Respectfully submitted,

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Dated: August 8, 2011

Attorneys for Northwest Energy Systems Company

VERIFICATION

I am the attorney for the Northwest Energy Systems Company, and I have been authorized to make this verification on the behalf of Northwest Energy Systems Company. Said party is located outside of the County of San Francisco, where I have my office, and I make this verification for said party for that reason.

I have read the foregoing document and based on information and belief, believe the matters in the application 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.

/s/
Steven F. Greenwald