

**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)

**INITIAL COMMENTS OF TRANSWEST EXPRESS LLC**

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Dated: August 8, 2011

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Pursuant to the July 12, 2011, Administrative Law Judge’s (“ALJ”) Ruling Requesting Comments on Implementation of New Portfolio Content Categories for the Renewables Portfolio Standard Program (“July 12 Ruling”), TransWest Express LLC (“TransWest”) respectfully submits its initial comments regarding administration of the California Renewables Portfolio Standard program (“RPS”) pursuant to the recently signed California Senate Bill (SB) 2 (1X).<sup>1</sup>

As discussed below, TransWest welcomes the opportunity to submit comments in this proceeding, and urges prompt adoption of appropriate rules implementing SB 2 (1X) to facilitate the ability of those entities subject to the 33% RPS standard to meet their procurement targets on both a timely and cost-effective basis.

**I. BACKGROUND AND INTRODUCTION**

**A. TransWest**

TransWest is developing an approximately 725-mile, 600 kV direct-current (DC)

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<sup>1</sup> Senate Bill 2 (2011-12 First Extraordinary Session, Stats 2011, Ch 1) (“SB 2 (1X)”). TransWest Express LLC (“TransWest”) filed a Motion of TransWest Express LLC for Party Status (“Motion”) on May 31, 2011. The Motion was granted pursuant to the ALJ’s Ruling Granting Motions for Party Status dated June 9, 2011.

transmission system (“Project”) that will be capable of delivering 20,000 GWh/yr of high quality, low cost, Wyoming wind energy directly to California markets. TransWest’s Project can supply enough renewable energy to serve more than 1.8 million homes per year and support the reduction of an estimated 8.2 million metric tons of greenhouse gas (GHG) emissions per year. This is equivalent to taking 1.5 million cars off the road.

TransWest provides a critical link between Rocky Mountain wind power and California, offering the shortest, most economic route to deliver some of the best wind resources in the nation to California. TransWest’s line will have capacity to deliver 3,000 MW of renewable energy on a direct, point-to-point transmission path from its northern terminal in Wyoming to substations under the operational control of California Balancing Authority Areas (“CBAAs”) near the Nevada-California border, including the California Independent System Operator Corporation (“CAISO”) and the Los Angeles Department of Water & Power (“LADWP”).<sup>2</sup>

TransWest will add capacity and stability to the larger Western Interconnection, enhancing reliability by using the latest HVDC technology available to transmit efficiently (*e.g.*, with far fewer line losses than AC lines) large amounts of renewable energy over long distances with a small environmental footprint. To date, TransWest has made substantial progress in the environmental review and permitting of its Project.<sup>3</sup>

## **B. Summary of Comments**

TransWest’s initial comments address several issues integral to the implementation of the RPS pursuant to SB 2 (1X).

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<sup>2</sup> At TransWest’s southern terminal in Eldorado, Nevada it will also have the ability to interconnect with substations allowing for the delivery of renewable energy to other areas of the Southwest, including Nevada and Arizona.

<sup>3</sup> More information regarding the Project and its planned path is available at [www.transwestexpress.net](http://www.transwestexpress.net).

As a threshold matter, TransWest underscores that several of these issues do not require significant further “implementation” rulings by the Commission because the statutory language is unambiguous and should accordingly be implemented with minimal delay. Among the key points TransWest believes merit particular focus and resolution by the Commission in the near term are:

- Question 24 raises the issue of when Commission-adopted revisions to the RPS rules required by provisions of SB 2 (1X) should become effective.
  - TransWest believes that many of the mandates of the new legislation speak for themselves, and do not require significant administrative proceedings to further interpret or implement them. It is important that—to the greatest extent feasible—any modifications to RPS rules related to the “high priority” issues identified in this process be implemented by the time SB 2 (1X) may become effective, and that such implementation not be suspended pending any rehearings of the CPUC order(s) adopting new RPS rules. Regulatory certainty is very important for contracting parties attempting to make decisions regarding infrastructure investments needed to meet the 33% requirement.
- Question 4 addresses questions related to the interpretation of the new product category for scheduled imports of eligible renewable energy imported into a California BAA.
  - As described below, this product category comprises three straightforward elements, namely, eligible renewable energy that is: (i) scheduled on an hourly or subhourly basis into a “sink” BAA that is a CBAA; (ii) actually generated in the same hour it is scheduled; and (iii) appropriately tagged and measured through metering, as needed for verification to ensure no substitution of non-eligible energy. There should be no need for lengthy administrative debate over the meaning of this product category, given the guidance on the definition already provided by the plain language of the statute.
- Question 5 raises the issue of whether further work may need to be done similar to that which was commenced by Energy Division staff concerning use of firm transmission to support bundled imports in the tradable renewable energy credits proceeding leading to Decision (D.) 10-03-021.
  - As described further below, the short answer is “no” because the legislature has made a clear determination that scheduled imports into a CBAA that do not substitute electricity from any other source fully “count” (without annual percentage limitations) for RPS procurement purposes.

- Question 6 addresses tracking and verification of the scheduled import transactions being addressed in Question 4, and the roles of the Commission and California Energy Commission (“CEC”).
  - While there may be various ways of implementing transaction verification mechanisms adequate to address appropriate auditing and/or compliance concerns of the Commission and CEC, the key sources of information are small in number and provide assurance of accuracy and reliability.
  - In particular, for TransWest’s Project, transaction parties will be able to track hourly scheduled electricity imports—including the breakdown of the renewable and non-renewable components of such imports—through a combination of three elements: (1) hourly or subhourly import schedules, (2) NERC etag transaction records, and (3) hourly revenue quality meters located at the renewable generator. While some further details of verification rules may need to be considered for certain specific types of out-of-CBAA import configurations, these should be the basic elements needed to assure appropriate tracking and verification.

Comments of TransWest on other questions are set forth below.

## II. COMMENTS

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"?**<sup>4</sup>

No. There is nothing in the text of the statute that suggests the term “electricity products” should be defined to mean “RPS procurement transactions,” which could have the effect of needlessly and unjustifiably narrowing the meaning of the term. In the first sentence of Section 399.16(a), the legislature made clear that the term should not be redefined more narrowly, stating: “*Various electricity products* from eligible renewable energy resources” would be eligible to comply with the State’s RPS requirements,<sup>5</sup> indicating an intent to capture broadly multiple products (*e.g.*, physical electric energy, unbundled renewable energy credits, etc.) but without specifically associating the RPS procurement process with the “electricity

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<sup>4</sup> Transwest submits comments at this time only to certain issues outlined in the July 12 Ruling. For ease of reference, the original numbering contained within the “Issues to be Addressed” section of the ruling has been retained in this submission.

<sup>5</sup> Section 399.16(a) (emphasis added).

products” term.

To the extent any further “defining” needs to be done, the more important terms to focus on are certain details of the language describing the criteria for the three portfolio content categories in subsections (b)(1), (2) and (3) of Section 399.16, and *not* the general term “electricity products” which the legislation intended would encompass *various* products, including products that might not originate from an “RPS procurement transaction.”

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."**

No. The first sentence of paragraph (A) of subsection (b)(1) directly follows a reference to products from an “Eligible renewable energy resource,” which is a defined term within SB 2 (1X).<sup>6</sup> Thus, there is no need to read the underscored language “The RPS-eligible generation facility producing the electricity” into the statute and the use of the additional undefined term, “RPS-eligible generation facility,” would create unwarranted ambiguity, potentially contrary to legislative intent.

With respect to the interpretation of the types of products included within paragraph (A), the “or has” and “or” language is particularly important. Any Commission order in this proceeding that addresses interpretation of this provision must make explicit that subsection (b)(1)(A) of Section 399.16 sets forth *three distinct options* and that *any one of the three* is—by itself—a product that qualifies for the “paragraph (1), subdivision (b)” product content requirement, *i.e.*, products that must make up a minimum of 75% of retail sellers’

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<sup>6</sup> See Section 399.12(e).

balanced portfolio for periods after the compliance year ending December 31, 2016.<sup>7</sup>

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

Section 399.12(d) contains a detailed definition which, among other things, requires that CBAAAs be “primarily located in [the] state and operating for retail sellers.”<sup>8</sup> TransWest believes there should be relatively strong consensus as to which CBAAAs are primarily located within the State, which would clearly include CAISO and BAAs such as LADWP, the Balancing Authority of Northern California (SMUD), Turlock Irrigation District and the Imperial Irrigation District.

**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.**

The last clause of the first sentence of subsection (b)(1)(A) and the following sentence of (b)(1)(A) referencing real-time ancillary services, together provide a specific definition relating to hourly scheduled imports (“Hourly Scheduled Import Product”) that meet the requirements of this subsection (b)(1)(A) portfolio content category. Specifically, the phrase “. . . scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source” should be interpreted to mean eligible renewable energy that is: (i) scheduled on an hourly or subhourly basis into a “sink” BAA that is a CBAA; (ii) actually generated in the same hour it is scheduled; and (iii) appropriately tagged and measured through metering, as needed for verification to ensure no substitution of non-eligible energy. Such generation is eligible to qualify in the subsection (b)(1)(A) portfolio content category.

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<sup>7</sup> See Section 399.16(c)(1).

<sup>8</sup> See Section 399.12(d).

Notably, one of the distinct benefits that TransWest's Project brings to the State's RPS program is the ability to provide retail customers a direct "pipeline" to economic, robust wind resources from its northern terminal in Wyoming to a CBAA delivery point ensuring that renewable resource energy is not "substituted" with electricity from any other source.<sup>9</sup>

TransWest discusses certain elements regarding scheduling and data acquisition mechanics in more detail below. In addition, TransWest's comments to Question 6 further explain workable and reliable tracking and verification solutions for these Hourly Scheduled Import Products. With respect to scheduled imports, there is a straightforward scheduling mechanism for hourly (or subhourly) deliveries that do not substitute energy from a non-renewable resource. This is based on well-established industry practice and can clearly account for and differentiate the renewable energy supply from other energy supply resources, including real-time ancillary services (issues discussed further in Questions 6 and 7).

Three basic elements are required to track and verify Hourly Scheduled Import Products. These three elements are (i) hourly or subhourly import schedules, (ii) NERC etag transaction records, and (iii) hourly revenue quality meters located at the renewable generator.

The hourly or subhourly import schedule will be set one or more hours in advance of the transaction hour, or sub-hour, and will be based on a forecast of the renewable energy resources output for confirmed, tagged, delivery in that transaction hour. (It should be noted that, in contrast to the "firmed and shaped" portfolio content category in subsection (b)(2) of Section 399.16, the import schedule will not be based on the import need or load need). Real-time separately accounted-for ancillary services will make up for any shortfall between the hourly import schedule and the actual output of the renewable energy resource. The amount of

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<sup>9</sup> SB 2 (1X) provides that the use of real-time ancillary services, which may be from non-renewable resources, is permitted. Section 399.16 (b)(1)(A).



eligible renewable resource energy for the transaction hour will be either equal to the import schedule or will be less by the amount that actual production is below the import schedule. Such hourly, or subhourly, schedules are an import mechanism used by balancing area operators to maintain a reliable interconnected transmission system and to comply with associated NERC/WECC Reliability Standards. These schedules allow the operators to anticipate and plan for the balancing actions that may be required at any time to maintain system reliability.

Given the importance of this information, the National Electricity Reliability Council (NERC) has established a standard methodology to record these schedules and the underlying transactions, which leads to the second key tracking and verification element. NERC electronic tags or ‘etags’ are tools that track each MWh of scheduled inter-balancing authority electricity flow, tracking where power is generated and consumed, the volume, and the responsible entities in the generation and movement of that power. Before an etag can be requested, the associated energy must have a confirmed transmission reservation or equivalent transmission rights. Because etags are a part of NERC’s reliability “toolbox” for grid management, the entire etag process is subject to strict compliance and verification protocols.<sup>10</sup> These etags include information about the “source” specific resource being delivered to the receiving/“sink” BAA, the transaction hour, and the scheduled amount of power. This etag information provides positive verification of the scheduled delivery between a renewable energy resource and a CBAA.

Finally, the third key element is revenue quality meters that measure and record hourly energy flows at the renewable energy resource located outside a CBAA that will measure the output from the facility for each hour, and at 15 minute intervals (metering similar to that

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<sup>10</sup> See, e.g., *Powerex Corp., Post-Workshop Comments*, R. 06-02-012 (April 30, 2010) at 2-3; *SCE Post-Workshop Comments*, R. 06-02-012 (April 30, 2010) at 4-5.

used for renewable facilities within a CBAA). This hourly revenue meter will be used for comparison with the hourly schedule to determine the amount of eligible renewable resource and non-eligible real-time ancillary resource used to meet the hourly schedule. This clear accounting methodology will produce clear verification of the actual eligible renewable production similar to eligible renewable generation located within the state of California. This scheduling and metering information will be made available on a going forward basis to the California utility.

These scheduling and data acquisition conventions have been used in everyday operations of WECC, including within the California power system, for over 20 years by utility and later CAISO operations. Indeed, transfers of electricity currently facilitated by the CAISO from sources outside of California, such as Hoover Dam to CAISO and Palo Verde to CAISO are operating, real time examples of the fixed and dynamic schedule arrangement discussed above.

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? [citation omitted]**

The inclusion of Hourly Scheduled Import Products fully resolves issues addressed by parties and Energy Division Staff in response to Ordering Paragraph 26 of D.10-03-021. To be clear, the Legislature has expressly found that hourly imports scheduled into a CBAA will fully “count” for RPS compliance purposes in all compliance years and this decision resolved the debate in proceedings leading to D.10-03-021 as to whether renewable energy supported by firm transmission should count for RPS compliance purposes.

While there may be outstanding details to address regarding how either the CPUC or CEC will oversee, verify and/or audit retail sellers’ compliance obligations, those details should not distract from the threshold fact that real-time, hourly scheduled imports fully qualify

for compliance with the 33% RPS mandate.<sup>11</sup>

**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.**

Appropriate tracking and verification of Hourly Scheduled Import Product transactions described in Question 4 will require processes to confirm a fixed hourly transmission reservation between a renewable energy resource and a CBAA, and to link this reservation with actual hourly production from the same renewable energy resource for the same hour. While this may require a combination of a few verification steps, accurate and reliable mechanisms exist to assure tracking and verification. The basic verification steps should include the following.

NERC etags will provide data that will track and verify the transmission reservation, the transaction hour, the generation resource, the 'sink' BAA and the amount of scheduled delivery. Hourly revenue quality meters at the same generation resource will provide the actual output of the renewable energy resource and will serve to verify the amount of renewable resource energy from the Hourly Import Schedule Product transaction for any given transaction hour. Details about the hourly tracking and verification process for these transactions can be included as part of the transaction description available for review, approval and audit as deemed necessary by the utilities and regulators.

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<sup>11</sup> In fact, with respect to hourly energy imports appropriately supported by transmission and subject to etags, there was wide consensus that such transactions would count as "bundled" deliveries of renewable energy (and renewable energy credits ("RECs")) into California, and that those should fully count for RPS procurement compliance purposes. *See, e.g., Powerex Corp., Post-Workshop Comments*, R. 06-02-012 (April 30, 2010) at 4-6 (discussing that the use of hourly delivery of renewable energy may be counted for RPS purposes and concluding that the NERC etag is evidence of the transaction schedule from the RPS-eligible resource to the California balancing authority area), 7-8 (explaining that the elements of firm transmission are consistent with the guiding principles of the TREC market in California); *Iberdrola Renewables, Inc., Post-Workshop Comments*, R. 06-02-012 (April 30, 2010) at 7-8 (describing the circumstances under which firm transmission arrangements should create a presumption that the product delivered is bundled).

TransWest does not at this time take a position as to the specific breakdown of verification tasks as between this Commission and the CEC. However, by ensuring that appropriate etag information is tracked and associated records retained, along with retention of hourly metering data, the appropriate agency staff will have the tools available to them to require any necessary periodic compliance reporting and/or auditing of utilities subject to the 33% RPS requirement.

**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.**

The approach described in response to Question 6 above provides a means to calculate both the delivery of renewable energy and real-time ancillary service energy. This approach (etags combined with metering data) will yield the amount or fraction of the total delivered energy in each hour that is renewable and RPS compliant, as well as the amount of non-renewable energy that is not.

As an example, if the fixed hourly schedule set for a particular transaction is 500 MW for hour 0100 on day 1 and the actual metered output of the renewable energy resource for that same hour and day is 475 MWh, then the 475 MWh of energy would be the fraction (or  $475/500 = 95\%$ ) of the (500 MW) schedule that shall count toward this portfolio content category. If in hour 0200 the fixed hourly schedule is set at 480 MW and the actual metered output of the renewable energy resource is 490 MWh for that hour, then 480 MWh of energy would be the fraction (100%) of the schedule that shall count toward this portfolio content

category.

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."**

No. This interpretation needlessly implicates a more narrow definition, *i.e.*, that there would always be a single “agreement” between the eligible generation facility and a CBAA. Other arrangements, including arrangements between neighboring BAAs, arrangements implemented through applicable tariff provisions, or other types of contractual arrangements may satisfy requirements for dynamic transfers. This Commission’s rulemaking should not constrain BAA operators’ and contracting parties’ flexibility in a manner that might needlessly limit delivery options. Moreover, see response to Question 2 above, discussing the use of the term “RPS-eligible generation facility.”

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"?**

Yes.

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.**

No. The only specific reference within Section 399.16 to the unbundled renewable energy credits portfolio content category (“unbundled RECs”) is in subsection (b)(3). The specific citation of this category in subsection (b)(3) evidences a deliberate intent by the Legislature to place unbundled RECs into a specific product content category. Under generally

accepted rules of statutory construction, where the Legislature “has employed a term or phrase in one place and excluded it in another, it should not be implied where excluded.”<sup>12</sup> Applying this well-established principle dictates that the inclusion of unbundled RECs is not implied in subsection (b)(1).

**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”?**

Yes.

- **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.**

TransWest has not developed a specific position at this time.

- **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.**

TransWest has not developed a specific position at this time.

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

“Firmed” and “shaped” transactions are those in which variable delivery schedules are backed-up or supplemented with delivery from another source to meet schedules or customer load over periods longer than hourly (e.g. monthly or yearly). While firmed and shaped transactions may take different forms over different periods of time (including firming and shaping intermittent resources over a calendar year), such transactions are *in contrast to* renewable generation actually generated and scheduled into a CBAA on an hourly basis using

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<sup>12</sup> *Pasadena Police Officers Assn. v. City of Pasadena*, 51 Cal.3d 564, 576 (1990).

real-time ancillary services required to maintain an hourly or subhourly import schedule into a CBAA.

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

See response to Question 12 above.

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?**

No and No. There is no need to read a distinction as to production performance or where the energy is generated into the statutory language.

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 firm 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.**

Based on the definition of "firmed" and "shaped" transactions as described in response to Question 12 above, the requirements in § 399.16(b)(1)(A) should be interpreted to mean that no firm and shaped electricity may be considered as meeting the requirements of § 399.16(b)(1)(A). More specifically, the definition of "firmed and shaped transactions" described in response to Question 12 allows for delivery schedules that are supplemented with delivery from another source to meet schedules or customer load over periods longer than hourly (e.g. monthly or yearly). Such a transaction does not meet the requirements of § 399.16(b)(1)(A) of the statute. As described in TransWest's response to Question 4, the renewable energy eligible under § 399.16(b)(1)(A) is energy actually generated and scheduled into a CBAA on an hourly basis using real-time ancillary services required to maintain an hourly or subhourly import

schedule. Should the Commission define “firmed and shaped transactions” differently than the definition set out in response to Question 12, TransWest would need to reconsider its response in light of the definition.

- 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?**

See response to Question 6 above. It is anticipated that descriptions of the metering and data acquisition systems, along with a description of how this data and NERC etag data can be communicated and provided to a Commission-jurisdictional retail seller, can and will be presented to the Energy Division staff in a manner adequate to confirm that the retail seller has designated the correct portfolio content category associated with a particular transaction.

- 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.**

*See Attachment A.*

- 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?**

TransWest greatly appreciates the efforts of the Presiding Administrative Law Judges to date to place this proceeding on a fast track and issue a decision on high priority issues by the end of this year. Commission rulings on high priority issues that require further interpretation should, to the greatest extent feasible, be issued so as to ensure implementation at the time SB 2 (1X) becomes effective. More specifically, the Commission should provide that its decision implementing rules concerning Section 399.16 is effective upon issuance, thereby ensuring that any potential appeals of the Commissions’ decision, including via applications for



rehearing pursuant to Rule 16.1 of the Commission’s Rules of Practice and Procedure, do not suspend the Commission’s decision and unduly delay the implementation of the RPS pursuant to SB 2 (1X) contrary to the intent of the State Legislature.<sup>13</sup>

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<sup>13</sup> See Rules of Practice and Procedure, Title 20, Division 1, California Code of Regulations, Rule 16.1(b) (“Filing of an application for rehearing shall not excuse compliance with an order or decision.”); Public Utilities Code § 1735 (“An application for rehearing shall not excuse any corporation or person from complying with and obeying any order to decision, or any requirement of any order or decision of the commission theretofore made, or operate in any manner to stay or postpone the enforcement thereof.”). See also Decision Approving Four Power Purchase Agreements with Existing Qualifying Facilities, Application 10-10-005, 2011 WL 1099669 (Mar. 10, 2011) (discussing the application of Rule 16.1(b) and explaining that due to the fact that a prior Commission decision “was made effective immediately upon issuance . . . applications for rehearing do not suspend it.”). TransWest is continuing to review this issue and fully reserves the right to modify and/or supplement its recommendations regarding the timing of implementation.

### III. CONCLUSION

TransWest urges the Commission to take into consideration the foregoing comments in its prompt adoption of appropriate rules implementing SB 2 (1X) in order to facilitate the ability of those entities subject to the 33% RPS standard to meet their procurement targets on both a timely and cost-effective basis.

Respectfully submitted,

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*On behalf of TransWest Express LLC*

Dated: August 8, 2011

**VERIFICATION**

I am an officer of TransWest Express LLC, and am authorized to make this verification on its behalf. I have read the foregoing *Initial Comments of TransWest Express LLC* dated August 8, 2011. The statements in the foregoing document 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.

Executed on this 8<sup>th</sup> day of August, 2011 at Denver, Colorado.



Roxane J. Perruso  
Vice President  
TransWest Express LLC