BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

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

REPLY COMMENTS OF DUKE ENERGY CORPORATION ON IMPLEMENTATION OF NEW PORTFOLIO CONTENT CATEGORIES FOR THE RENEWABLE PORTFOLIO STANDARD PROGRAM

Seth D. Hilton
STOEL RIVES LLP
555 Montgomery Street, Suite 1288
San Francisco, CA 94111
Telephone: (415) 617-8913
Email: sdhilton@stoel.com

Attorneys for Duke Energy Corporation

Phillip C. Grigsby
SVP Commercial Transmission, Strategy & Policy
Duke Energy Corporation
400 S. Tryon Street, Mail code: ST-06I
Charlotte, NC 28201-1007
Telephone: 704-382-2091
Email: Phillip.grigsby@duke-energy.com

Dated: August 19, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

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

REPLY COMMENTS OF DUKE ENERGY CORPORATION ON IMPLEMENTATION OF NEW PORTFOLIO CONTENT CATEGORIES FOR THE RENEWABLE PORTFOLIO STANDARD PROGRAM

Duke Energy Corporation ("Duke Energy") submits the following reply comments in response to Administrative Law Judge Anne Simon's July 12, 2011 Ruling concerning portfolio content categories for the Renewable Portfolio Standard program.

I. INTRODUCTION

Administrative Law Judge Anne Simon's July 12, 2011 Ruling produced a wealth of comments from numerous parties. Duke Energy's own comments are in agreement with many of the positions taken by parties in those comments, including the matrix submitted jointly by Pacific Gas and Electric ("PG&E") and other parties. However, Duke Energy is concerned that a number of parties proposed requirements for satisfying the first and second portfolio content categories that appear nowhere in Senate Bill ("SB") 2 (1x). These additional requirements, as discussed in detail below, are inconsistent with the Legislature's intent as expressed in SB 2 (1x), are unnecessary for achieving the goals of SB 2 (1x), and risk increasing compliance costs by imposing unnecessary restrictions on the market. Duke Energy urges the Commission to

implement SB 2 (1x) as written, and to decline the invitation to supplement the statute with additional requirements beyond those adopted by the Legislature.

II. RESPONSE TO QUESTIONS

Duke Energy provides additional responses to the questions below to address issues raised by the parties in initial comments.

A. Response to Questions 1

As Duke Energy noted in its opening comments, Section 399.16(b)(1) is ambiguous in that it frequently uses the term "product" or "products" when it appears that the intent is to refer to eligible renewable energy resources, not the product of those resources. Duke Energy suggested that products in certain cases should be read as referring to the eligible renewable energy resources themselves, not the products of those resources. PG&E, in its opening comments, stated that generally "electricity products" should be defined as the output from an RPS-eligible generating facility.[1] PG&E further commented that compliance verification through WREGIS is done on the basis of products, i.e., RECs, rather than by transaction. Duke Energy also notes that a single transaction might potentially involve products that could qualify for different portfolio content categories, and SB 2 (1x) should not be read as requiring a single transaction to be placed in a single portfolio content category. Based upon its own earlier comments and PG&E's opening comments, Duke Energy suggests that the first sentence of Section 399.16(b)(1), which states "Eligible renewable energy resource electricity products that meet either of the following criteria:…" should be read as: "Products produced by eligible renewable energy facilities that meet either of the following criteria:…"

[1] *See* PG&E Comments, p. 6.

B. Response to Question 3

Numerous parties provided a comprehensive list of all "California balancing authorit[ies]" as defined by Section 399.12(d). A few parties went farther, however, and suggested some criteria that could be used to determine whether a new balancing authority was a "California balancing authority" within the meaning of Section 399.12(d). Duke Energy agrees with NextEra[2] and others[3] that stated that establishing such criteria would be premature. If and when a new balancing authority is created, the Commission can then consider whether it meets the definition of "California balancing authority" while considering the specific facts of that particular balancing authority, rather than trying to establish the criteria in a vacuum.

Duke Energy does note, however, that the borders of a California balancing authority such as the CAISO may change over time. For example, a recent market notice from the CAISO indicated that it had signed a memorandum of understanding with Valley Electric Association, a cooperative providing retail electric service to its members in Nevada and California, as a first step in Valley Electric becoming a member of the CAISO. Such expansions should not jeopardize a balancing authority's status as a California balancing authority. Furthermore, the expanded balancing authority area should be recognized when determinations are made concerning which portfolio content category should apply to a certain product. For example, if and when Valley Electric becomes a member of the CAISO, having a first point of

[2] *See* NextEra Comments, p. 3.

[3] *See* San Diego Gas and Electric Co. ("SDG&E") Comments, p. 3; Iberdrola Comments, p. 3; IEP Comments p. 3.

interconnection with Valley Electric should qualify a resource as meeting the requirements of Section 299.16(b)(1)(A).

C. Response to Question 4

Several parties, including the Division of Ratepayer Advocates, proposed that energy "scheduled into a California balancing authority without substituting electricity from another source" for purposes of Section 399.16(b)(1)(A) must use firm transmission.[4] As PG&E[5] and others noted, however, nothing in SB 2 (1x) requires a particular quality or type of transmission. Duke Energy urges the Commission to decline to adopt additional requirements such as firm transmission where such requirements do not have a statutory basis. Non-firm transmission or conditional firm transmission could potentially be used by itself or in combination with firm transmission to meet the requirements of Section 399.16(b)(1)(A), and such transactions could be verified just as transactions using firm transmission would be verified. Limiting the options of facilities located outside of California by imposing unnecessary and expensive requirements such as firm transmission will only increase the overall cost to utilities and ratepayers to comply with SB 2 (1x). Furthermore, the use of non-firm transmission or conditional firm transmission could more efficiently utilize the transmission system.

D. Response to Question 7

For purposes of calculating the "fraction of the schedule actually generated by the eligible renewable energy resource", numerous parties noted that a comparison of the NERC E-tag with the metered output of the eligible renewable energy facility would provide the necessary

---

[4] *See* Division of Ratepayer Advocates ("DRA") Comments, p. 3.

[5] *See* PG&E Comments, p. 11.

information. In its initial comments, Duke Energy suggested that such a comparison be done over a reasonable time period, over which the lesser of the metered output or the scheduled imports would count for California RPS compliance purposes. A few parties suggested, however, that the comparison be done on an hourly, or even a sub hourly basis (LSA[6], CUE[7]). Doing so, however, would be at a minimum difficult and costly, and is potentially impossible presently, as noted in SDG&E's[8] and PG&E's[9] comments.

Furthermore, hourly or sub-hourly comparisons are not required by SB 2 (1x). The relevant language reads as follows: "The use of another source to provide real-time ancillary services required to maintain an hourly or subhourly import schedule into a California balancing authority shall be permitted, but only the fraction of the schedule actually generated by the eligible renewable energy resource shall count toward this portfolio content category." "Hourly" or "sub hourly" refers only to the import schedule, not to how the fraction of the schedule actually generated by the eligible renewable energy resource should be calculated. That is left to the discretion of the Commission. Duke Energy suggests that the Commission follow the recommendations of Duke Energy,[10] PG&E,[11] NextEra,[12] SDG&E[13] and others and compare the

---

[6] *See* Large Scale Solar Association ("LSA") Comments, p. 4.

[7] See Coalition of California Utility Employees ("CUE") Comments, p. 3.

[8] *See* SDG&E Comments, p. 4.

[9] *See* PG&E Comments, p. 11.

[10] *See* Duke Energy Comments, p. 8 (calendar year).

[11] *See* PG&E Comments, p. 11 (monthly).

[12] *See* NextEra Comments, p. 5 (monthly).

import schedule with the metered output of the eligible renewable energy resource on a monthly, quarterly or yearly net basis. Such an approach is reasonable, workable, and complies with the provisions of SB 2 (1x).

IEP also notes, as Duke Energy did in its opening comments, that if the generation providing ancillary services is itself an eligible renewable energy resource, then there should be no reduction of the eligible generation to account for the provision of ancillary services. [14] Similarly, if the ancillary services are provided by storage *charged* with energy from eligible renewable energy resources, there should be no reduction of the eligible generation to account for the provision of ancillary services.

E. Response to Question 10

Although Duke Energy did not respond to this question initially, many parties have noted that the purchase of RECs only from a facility directly interconnected to a California balancing authority area would qualify under Section 399.16(b)(1), not (b)(3). Duke Energy agrees. Section 399.16(b)(1) refers to any facility having a first point of interconnection with a California balancing authority, or with distribution facilities used to serve end users within a California balancing authority. The statute includes no requirement that a transaction qualifying under these provisions involve the transfer of energy as well as RECs. Duke Energy urges the Commission to implement SB 2 (1x) without imposing additional requirements for the portfolio content categories beyond those contemplated by the Legislature.

(. . . continued)

[13] *See* SDG&E Comments, p. 3 (monthly).

[14] *See* IEP Comments, p. 6.

F. Response to Question 12, 13, 14

Section 399.16(b)(2) defines the second portfolio content category as "firmed and shaped eligible renewable energy resource electricity products providing incremental electricity and scheduled into a California balancing authority." As Duke Energy explained in its initial comments, energy is "firmed and shaped" when an amount equal to energy generated by a eligible renewable energy facility is delivered into a California balancing authority as a firm and flat product. The firmed and shaped energy would typically be provided by another source. SB 2 (1x) requires that firmed and shaped products provide "incremental electricity" and be scheduled into a California balancing authority. No further requirements apply.

Yet despite this rather clear list of criteria for qualifying under Section 399.16(b)(2), a number of parties have suggested that additional requirements for firmed and shaped transactions, or inappropriately imbedded additional requirements within the definition of "incremental," including the following: (1) the firmed and shaped energy must come from the same WECC sub-region (or balancing authority area) as the renewable energy resource it is firming and shaping[15]; the product in this category must be purchased by means of an agreement or set of agreements between a renewable generator and a load serving entity for the combined purchase of RECs and electricity at the generator busbar[16]; the purchase agreement must have a term of not less than five years; [17] the purchase agreement must be for a fixed price for at least

---

[15] *See* The Utility Reform Network ("TURN") Comments, p. 8.

[16] *Id.*

[17] *See* TURN Comments, p. 8; Sierra Club Comments, p. 5-6; Union of Concerned Scientists ("UCS") Comments, p. 7.

five years[18] or the life of the contract;[19] and firmed and shaped energy must be delivered to California within the same calendar year as the energy generated at the renewable facility that created the RECs.[20]

These newly proposed requirements appear nowhere in SB 2 (1x), and are unnecessary. For example, the requirement that the firming and shaping energy come from the same balancing authority area only limits the options that a eligible renewable energy resource has for finding a firming and shaping party, without providing any benefits to California or its ratepayers. Rather, limiting a facility's options in this manner may increase the costs of obtaining renewable energy by either driving up the cost of firming and shaping services or by preventing relatively inexpensive firmed and shaped resources from being delivered to California. Such costs which may in turn be passed on to California ratepayers.

As Duke Energy noted in its opening comments, firmed and shaped renewable energy provides numerous benefits, including reductions in greenhouse gas emissions by offsetting fossil-fuel fired generation, and allowing for a more efficient use of the existing transmission infrastructure, reducing the need to construct new transmission lines. Duke Energy urges the Commission to carefully consider the suggested additional requirements for firmed and shaped transactions, including evaluating whether those requirements provide any benefits to California or its ratepayers, and whether those requirements are supported in any way by the language of

---

[18] *See* IEP Comments, p. 12.

[19] *See* TURN Comments, p. 8; Sierra Club Comments, p. 5-6; UCS Comments, p. 7.

[20] *See* TURN Comments, p. 8; IEP Comments, p. 12.

SB 2 (1x). To the extent these requirements provide no benefits, or are not supported by the language of SB 2 (1x), they should be rejected.

Duke Energy further notes that firming and shaping services may be provided by energy storage facilities that are *charged* with renewable energy, with the stored renewable energy then being used to firm and shape deliveries. The Commission's rules concerning firming and shaping should recognize that intermittent renewable energy firmed and shaped by stored renewable energy should be treated as being in the first portfolio content category. Duke Energy urges the Commission to use a similar approach when accounting for renewable energy, or stored renewable energy, that is used to balance schedules into California. These concepts will also be relevant to R.10-12-007, the Commission's AB 2514 proceeding.

G. Response to Question 21

As Duke Energy noted in its initial comments, historically it has been sufficient for the utility seeking approval of the power purchase agreement to provide a description or diagram of the transaction in order to establish that the delivery requirement has been met. This practice should be continued, with the burden placed on the utility to provide a sufficiently detailed explanation of the transaction to show how the transaction should be categorized. Several parties (IEP, Sempra Generation) have suggested that a utility might also be required to submit any relevant firming and shaping agreement.[21] Requiring additional documentation would be problematic, however, in that the utility may not have access to documents such as the firming and shaping agreement. Past practice has been to provide the utility with a copy of the firming and shaping agreement with the commercial terms redacted. However, there has historically

[21] *See* IEP Comments, p. 17; Sempra Generation Comments, p. 11.

been no requirement that the utility provide such documentation to the Commission, nor is it necessary now. Verification of post-contract deliveries, consistent with current practice, would provide sufficient insurance that power was actually being procured consistent with the claimed categorization.

III. CONCLUSION

Duke Energy thanks the Commission for the opportunity to provide opening and reply comments on the portfolio content categories, and looks forward to working with the Commission in the future as it moves forward with implementation of SB 2 (1x).

DATED: August 19, 2011

/s/ Seth D. Hilton
Seth D. Hilton
STOEL RIVES LLP
555 Montgomery Street, Suite 1288
San Francisco, CA 94111
Telephone: (415) 617-8913
Email: sdhilton@stoel.com

Attorneys for Duke Energy Corporation

VERIFICATION

I am the attorney for Duke Energy Corporation and am authorized to make this verification on Duke Energy's behalf. Duke Energy is unable to verify the foregoing document in person as Duke Energy is located outside of the County of San Francisco, where my office is located. I have read the foregoing **REPLY COMMENTS OF DUKE ENERGY CORPORATION ON IMPLEMENTATION OF NEW PORTFOLIO CONTENT CATEGORIES FOR THE RENEWABLE PORTFOLIO STANDARD PROGRAM** and am informed and believe, and on that ground allege, that the matters stated are true and correct to the best of my knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 19th day of August, 2011, at San Francisco, California.

/s/ Seth D. Hilton
Seth D. Hilton
STOEL RIVES LLP
555 Montgomery Street, Suite 1288
San Francisco, CA 94111
Telephone: (415) 617-8913
Email: sdhilton@stoel.com

Attorneys for Duke Energy Corporation