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)

SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) REPLY COMMENTS ON THE ADMINISTRATIVE LAW JUDGE'S JULY 12, 2011 RULING REQUESTING COMMENTS ON IMPLEMENTATION OF NEW PORTFOLIO CONTENT CATEGORIES FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

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I.
INTRODUCTION

In accordance with the Rules of Practice and Procedure of the California Public Utilities Commission (the "Commission" or "CPUC") and the *Administrative Law Judge's Ruling Requesting Comments on Implementation of New Portfolio Content Categories For the Renewables Portfolio Standard Program* dated July 12, 2011 (the "ALJ Ruling"), San Diego Gas & Electric Company ("SDG&E") hereby submits these reply comments to address the arguments and proposals made by other parties in their respective opening comments, submitted on August 8, 2011 in the above-captioned proceeding. The issues discussed concern certain areas of inquiry in the ALJ Ruling regarding implementation of new portfolio content categories for the Renewable Portfolio Standard ("RPS") program. The sections below are numbered in accordance with the original numbering set forth in the ALJ ruling.

II.
DISCUSSION

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.**

RESPONSE: Various parties attempt to define "substitute energy." The Utility Reform Network ("TURN") suggests that substitute energy refers to "mix and match" products developed to satisfy the minimal delivery requirements previously established by the California Energy Commission ("CEC"), and argues that ancillary services can qualify for Category 1 but system power cannot.[1] The Division of Ratepayer Advocates ("DRA") suggests that to avoid being classified as substitute energy, the electricity and the associated renewable energy certificate ("REC" or "e-tag") should be identifiable as both (1) originating at the same source and (2) being scheduled to the point of interconnection as close to simultaneously as is technically and economically feasible.[2] The Coalition of California Utility Employees ("CUE") suggests that "netting imports over periods longer than one hour" results in the delivery of substitute energy.[3] SDG&E agrees with TURN's general concept that Category 1 should not include products where RECs are "e-tagged" to imports of system power. These transactions should count towards Category 2. SDG&E also agrees with DRA's general concept that only the megawatt-hours ("MWHs") from the eligible renewable energy resource ("ERR") delivered in any particular hour should count towards Category 1. However, SDG&E disagrees with CUE's proposal that such deliveries must be netted within each hour instead of monthly. Netting on a monthly basis allows the ERR a reasonable margin of error in scheduling its energy as close to simultaneously as is technically and economically feasible as DRA supports, while avoiding the

[1] TURN Opening Comments at 3-4.
[2] DRA Opening Comments at 2.
[3] CUE Opening Comments at 3.

unnecessary complication of tracking short-term fluctuations between scheduled and generated quantities inherent in ERR operation. Therefore, SDG&E proposes that such MWHs be tracked at the end of the month. This allows for imbalance energy services to serve their intended purpose, which is to balance transient under- and over-generation of all system resources within a balancing authority relative to their hourly schedules to meet load obligations. Tracking monthly also allows for less administrative burden and cost. SDG&E does not believe that the Legislature intended to make imbalance energy services a Category 2 product.

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.

RESPONSE: TURN explains in opening comments that any transaction involving the transfer of the RECs to the retail seller serving the net metered customers should count as a § 399.16(b)(1) product since the customer generator is being compensated for both the energy provided to the retail seller and the RECs associated with the energy.[4] SDG&E agrees, and points out that this logic also applies to transactions where the retail seller is purchasing energy from an ERR under one contract and purchasing RECs – *from the same ERR* - under a separate contract.[5] In both transactions, the generator is being compensated for both the energy provided to the retail seller and the associated RECs. Such transactions clearly should be included in § 399.16(b)(1).

[4] TURN Opening Comments at 6.
[5] SDG&E Opening Comments at 10.

In addition, unbundled REC transactions with renewable generating facilities that meet the interconnection or delivery requirements also should be included in § 399.16(b)(1). Category 3 only applies to cases where a resource does not otherwise meet the statutory criteria for either of the other two categories. The determining factor of whether a product may be included in § 399.16(b)(1) is not "the form of the last transaction" as proposed by TURN, but whether the renewable generating facility meets one of two criteria: (i) the facility has a first point of interconnection with a California Balancing Authority ("CBA"); or (ii) the facility otherwise provides for actual delivery, including dynamic transfer.[6] The legislation does not distinguish between bundled or unbundled transactions when determining eligibility for § 399.16(b)(1).

The legislative history to SB 2 also makes clear that unbundled REC transactions can quality as Category 1 products. The discussion of the "Renewable Loading Order" in the Senate Energy, Utilities and Communications Committee's February 15, 2011 bill analysis makes clear that an unbundled REC can qualify for *any* product category depending on the extent to and manner in which associated energy comes into the State – direct delivery (Category 1), firmed and shaped (Category 2) or other (Category 3). The important point is that if unbundled RECs that are not directly connected to a CBA can be considered Category 2, as the bill analysis suggests, then unbundled RECs that *are* directly connected to a CBA must necessarily be considered as a Category 1 product.[7] SDG&E understands that SB 2 was not amended after this committee analysis was issued.

[6] TURN Opening Comments at 5.
[7] SB 2 (1X) (Stats. 2011, Ch. 1) *See* Legislative history:
http://info.sen.ca.gov/pub/11-12/bill/sen/sb_0001-0050/sbx1_2_cfa_20110214_141136_sen_comm.html

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

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

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. Please provide relevant examples. Please also address: 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). Please provide relevant examples. Please also address: 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. Please provide relevant examples.**

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?**

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.**

RESPONSE: SDG&E agrees with TURN's suggestion that "firmed and shaped" (Category 2) products should provide more value than a Category 2 product.[8] However, TURN's proposal to impose new criteria – not otherwise included in the statute - for products to qualify under Category 2 places unnecessary limitations that could result in increased costs to ratepayers. Although it is important to clarify what the legislation means and to determine how

[8] TURN Opening Comments at 8.

best to implement the provisions of SB 2, this rulemaking process will not benefit from adding new concepts that were not contemplated by the lawmakers. SDG&E supports the comments of DRA -- that any definition of "incremental" must not be overly restrictive so as to increase the transaction costs that are ultimately borne by the ratepayer.[9] Such an approach also is consistent with one of the "guiding principles" identified in the ALJ Ruling: "Proposals should avoid creating unnecessary transaction costs for buyers and sellers in RPS procurement transactions and should encourage least-cost and best-fit procurement."[10]

SDG&E responds to TURN's specific suggestions below.

> *(1) The product 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 renewable energy credits and electricity at the generator busbar. The purchase agreement must cover a duration of not less than 5 years.*

RESPONSE: SDG&E believes that ratepayers will benefit from allowing retail sellers to negotiate firming and shaping transactions separately from the purchase of RECs. Coming to terms on both the REC and power portions of a Category 2 transaction at the same time creates unnecessary complexity in the negotiating process, especially if the products come from different providers. In order to allow for the most efficient negotiation process, retail sellers should have the flexibility to execute the renewable deal and then find the appropriate firming and shaping product.

> *(2) Any energy used for compliance with this product category must be scheduled into a California balancing authority within the same calendar year as generation originally occurring at the facility.*

RESPONSE: The discussion of the appropriate time frame for power deliveries to occur should happen in conjunction with the discussion of the definition of incremental energy. The size of the pool of available imports will impact the retail seller's ability to utilize such resources

[9] DRA Opening Comments at 8.
[10] ALJ Ruling at 3.

within a specific time frame. The more restrictive the time frame, the less opportunity will be available for providing the least expensive transaction for ratepayers.

> *(3) Any firming and shaping electricity must be provided from the same Balancing Authority (or WECC sub-region) where the renewable generator is located and cannot be provided under any supply agreement that predates the original execution of the renewable generation contract.*

RESPONSE: As long as the firming and shaping resource comes from an arrangement that was executed after June 1, 2010, the retail seller should not be precluded from utilizing existing arrangements. TURN's suggestion to limit such resources to those that are entered into after the execution of the original renewable power agreement is unnecessary and could result in increased ratepayer costs by requiring the utility to enter into additional firming and shaping transactions instead of utilizing cost effective deals that may already be in place.

> *(4) The product shall result in a fixed price delivery of energy and RECs to a California Balancing Authority over the life of the contract.*

RESPONSE: The addition of a "fixed price" requirement for Category 2 products does not allow retail sellers to take advantage of all of the hedging products that are available in the market, nor does it recognize the portfolio-wide hedging that IOUs currently perform. The retail seller could combine a REC purchase with a firming and shaping deal based on market prices, and then separately procure a hedging product. RPS rules should provide enough flexibility for retail sellers to provide the most economical deal for ratepayers.

17. Section 399.16(d) provides that: "any contract or ownership agreement originally executed prior to June 1, 2010, shall count in full toward the procurement requirements established pursuant to this article, if [certain] conditions are met…"

• How should the phrase "ownership agreement" be interpreted in this context? Please provide relevant examples.

• How should the phrase "count in full" be interpreted? Include the consideration of:

- **the requirements in D.07-05-028 (implementing current § 399.14(b)[11]) that, in order for procurement from a short-term contract with an existing facility to count for RPS compliance, a minimum quantity of contracts longer than 10 years and/or contracts with new facilities must be signed in the same year as the short-term contract sought to be counted;**
- **The requirement in new § 399.13(b)[12] for minimum procurement from contracts of at least 10 years' duration;**
- **The restrictions set out in new § 399.13(a)(4)(B) on the use of procurement from contracts of less than 10 years' duration and on procurement meeting the portfolio content of § 399.16(b)(3) in accumulating excess procurement that can be applied to subsequent compliance periods**.

RESPONSE: As explained in SDG&E's opening comments,[13] the reference "count in full" was intended to grandfather transactions already entered into by June 1, 2010 and to ensure that existing contracts were not de-rated or otherwise treated of lesser value in contributing toward meeting the compliance obligations. TURN's proposal to limit the ability to bank grandfathered transactions disrupts the commercial expectations of contracts that are already effective and, as such, should be rejected. Contracts signed prior to June 1, 2010 were executed under a regime that allowed for both banking and earmarking as flexible compliance methods, and did not restrict the use of short term contracts for flexible compliance. SB 2, on the other hand, limits the use of short terms contracts and Category 3 products for banking. With this in mind, the "count in full" language in § 399.16(d) serves to ensure that contracts that were signed with the assumption that the product included the full flexible compliance value under the old

[11] Current § 399.14(b) provides: "The Commission may authorize a retail seller to enter into a contract of less than 10 years' duration with an eligible renewable energy resource, if the commission has established, for each retail seller, minimum quantities of eligible renewable energy resources to be procured either through contracts of at least 10 years' duration or from new facilities commencing commercial operations on or after January 1, 2005."

[12] New § 399.13(b) provides: "A retail seller may enter into a combination of long- and short-term contracts for electricity and associated renewable energy credits. The commission may authorize a retail seller to enter into a contract of less than 10 years' duration with an eligible renewable energy resource, if the commission has established, for each retail seller, minimum quantities of eligible renewable energy resources to be procured through contracts of at least 10 years' duration."

[13] SDG&E Opening Comments at 15.

rules should not be subject to the flexible compliance limitations under the new rules. Any other interpretation poses a direct conflict with the "count in full" language and will increase ratepayer costs by requiring additional RPS procurement.

DRA takes the position that contracts executed prior to June 1, 2010 that contain subsequent amendments should be viewed as re-executed and subject to the new rules.[14] DRA's proposal ignores the plain language and direct intent of the statute and should be rejected. As explained by SDG&E in its opening comments,[15] as long as a pre-June 2010 contract meets the statutory criteria set forth in Section 399.16(d), that contract should be grandfathered and "count in full."

III.
CONCLUSION

SDG&E appreciates the opportunity to provide these reply comments and supports the Commission's efforts to expeditiously implement the numerous changes SB 2 makes to the RPS program.

Respectfully submitted this 19th day of August, 2011

/s/ *Steven C. Nelson*

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[14] DRA Opening Comments at 10.
[15] SDG&E Opening Comments at 15-17.

VERIFICATION

I am an employee of the respondent corporation herein, and am authorized to make this verification on its behalf. The matters stated in the foregoing **SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) REPLY COMMENTS ON THE ADMINISTRATIVE LAW JUDGE'S JULY 12, 2011 RULING REQUESTING COMMENTS ON IMPLEMENTATION OF NEW PORTFOLIO CONTENT CATEGORIES FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM** are true of my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters I believe them to be true.

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

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

Hillary Hebert
Partnerships & Programs Manager