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)

THE DIVISION OF RATEPAYER ADVOCATES' REPLY COMMENTS ON IMPLEMENTATION OF NEW PORTFOLIO CONTENT CATEGORIES FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

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I. INTRODUCTION

The Division of Ratepayer Advocates (DRA) respectfully submits these Reply Comments pursuant to the July 12, 2011 Administrative Law Judge (ALJ) Ruling[1] requesting party comments on the implementation of new "portfolio content categories" for the California renewables portfolio standard (RPS) program pursuant to certain amendments to Public Utilities Code §399.16 per Senate Bill (SB) 2 1X.

II. DISCUSSION

DRA offers the following responses to the replies of other parties to some of the questions posed by the July 12, 2011 Ruling.

> 1) *Section 399.16(b)(1) describes "eligible renewable energy resource electricity products" that meet certain criteria. "Electricity products" is not defined in the statute. Should this term be interpreted as meaning "RPS procurement transactions"?*

DRA agreed[2] that the phrase "electricity products" should be interpreted as meaning "RPS procurement transactions." Pacific Gas and Electric Company (PG&E) proposed a broader definition, contending that the phrase "electricity products" in Section 399.16(b)(1) "refers generally to the output (both tangible and intangible) of an eligible renewable energy resource ('ERR')."[3] PG&E claimed that "electricity products" as used in Section 399.16(b)(1) should include (but not be limited to) "contracts for unbundled RECs [renewable energy credits]."[4] The Commission should reject PG&E's attempt to allow compliance through unbundled RECs, even if those RECs are produced by generators whose bundled electricity would qualify for compliance with Section 399.16(b)(1).

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[1] *Administrative Law Judge's Ruling Requesting Comments on Implementation of new Portfolio Content Categories for the Renewables Portfolio Standard Program*, June 27, 2011 (July 12, 2011 Ruling or Ruling), p. 3.

[2] Division of Ratepayer Advocates' Comments on Implementation of New Portfolio Content Categories for the Renewables Portfolio Standard Program, August 8, 2011 (DRA Comments), p. 1.

[3] Pacific Gas and Electric Company's Comments on Administrative Law Judge's Ruling Requesting Comments on Implementation of New Portfolio Content Categories for the Renewables Portfolio Standard Program, August 8, 2011, (PG&E Comments) p. 6.

[4] PG&E Comments, p. 7.

The Utility Reform Network (TURN), which agreed that the reference to "electricity products" is equivalent to "RPS procurement transactions," correctly observed,

> "The statutes clearly require that the Commission examine the form of a given procurement transaction rather than merely noting the underlying eligibility of the original generator. The Legislature intended to define distinct 'products' based on the attributes and value provided to the purchasing load-serving entity. This distinction is important with respect to defining 'unbundled renewable energy credits' pursuant to §399.16(b)(3)."[5]

Unbundled RECs provide less value to retail sellers than RECs bundled with renewable energy, so the Commission should allow their use in compliance with Section 399.16(b)(3), which provides for compliance through unbundled renewable energy credits and other transactions that do not meet the requirements of Section 399.16 (b) (1) and (2).

DRA agrees with Southern California Edison's comment that "RPS procurement transaction" should be construed broadly enough to include both those products procured by sellers and publicly-owned utilities ("POUs"), and products generated through utility-owned generation,[6] but disagrees that the mere use of the word "transaction" would negate the overriding requirement that RPS compliance be reported on the basis of megawatt hours (MWh).[7]

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

DRA agrees[8] that that California Independent System Operator, the Los Angeles Department of Water and Power, Turlock Irrigation District, the Imperial Irrigation District, and the Balancing Authority of Northern California (formerly Sacramento Municipal Utility District) are California Balancing Authorities (CBAs) within the meaning of the Public Utilities Code Section 399.12(d)'s definition of a CBA as a balancing authority with control of a balancing authority area "primarily located within the state…." DRA also agrees that given the

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[5] Opening Comments on Implementation of the Utility Reform Network on the Implementation of New Portfolio Content Categories for the Renewables Portfolio Standard Program, August 8, 2011 (TURN Comments), p. 1.

[6] Southern California Edison Company's Comments to Administrative Law Judge's Renewables Portfolio Standard Categories Ruling Dated July 12, 2011, p. 6.

[7] *See* Section 399.15 (a): " …the commission shall establish a renewables portfolio standard requiring all retail sellers to procure a minimum quantity of electricity products from eligible renewable energy resources as a specified percentage of total kilowatthours…"

[8] *See e.g.,* TURN Comments p. 2; PG&E Comments, p. 8.

requirement that the CBA be "primarily located" within the state, that a reasonable metric for determining whether any additional balancing authorities should be included in the future is the requirement that at least half of its load should be located in California.[9]

4) *How should the phrase in new §399.16(b)(1)(A) "[Eligible renewable energy resource electricity products that are]. . . scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source" be interpreted? Please provide relevant examples.*

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?*

DRA noted in its opening comments that both the intent and language of Section §399.16(b)(1)(A) require that, in order to qualify in this category of eligible resource transaction, 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) as being scheduled to the point of interconnection as close to simultaneously as is technically and economically feasible.[10] At least one party[11] contends that the use of substitute energy from other eligible renewable resources should be allowed. DRA disagrees, because allowing such substitution is inconsistent with (SB) 2 1X's goal of preventing transactions in which the energy is "remarketed or swapped as part of the delivery schedule."[12]

DRA reiterates its position that no substitution is permissible irrespective of source including other eligible renewable energy resources. DRA encourages the Commission to adhere to a strict interpretation of the statute, as this is the simplest and most easily implemented approach.

DRA's opening comments supported the use of firm transmission as necessary in order to qualify in this category of eligible resource transaction under §399.16(b)(1)(A).[13] However,

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[9] *See e.g.,* PG&E Comments, p. 8.

[10] DRA Comments, p. 2.

[11] Opening Comments Of SolarReserve, LLC in Response to Ruling Requesting Comments on Implementation of New Portfolio Content Categories for the Renewables Portfolio Standard Program Issued July 12, 2011, August 8, 2011, p. 5.

[12] TURN Comments, p. 3.

[13] DRA Comments, p. 3.

DRA now agrees with TURN's observation that the Commission "look beyond firm transmission arrangements and consider other forms of transmission that can be used to satisfy the requirements of this product category" and therefore supports TURN's recommendation to consider this topic at a workshop.[14] To the extent that the use of other types of transmission arrangements would allow the delivery of renewable power to California consistent with the requirements of Section §399.16(b)(1)(A) but at a lower overall cost, the Commission should consider those transmission arrangements.

> *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.*

DRA opposed the notion that any unbundled RECs, even in-state unbundled RECs, meet the criteria of the new §399.16(b)(1) category (Bucket 1).[15] The comments of some parties supported unbundling, and contended that such in-state RECs should receive Bucket 1 status.[16] Other parties argued that, once the product is unbundled, the associated REC falls into the Bucket 3 category as described in Section 399.16(b)(3). DRA agrees that the REC associated with a bundled product from Bucket 1 should become a Bucket 3 product once the REC is sold separately.

DRA interprets the legislation as assigning a higher value to in-state renewable generation and intentionally limiting lower-value renewable products such as unbundled out-of-state RECs. Even if generated in-state, unbundled RECs freely sold and traded on the market are

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[14] TURN Comments, p. 3.

[15] Bucket 1 resources are in-state, have a first point of interconnection with a California Balancing Authority (CBA), or are able to deliver to the state without displacing any other electricity. DRA Comments, p. 5.

[16] Comments of the California Wastewater Climate Change Group on Implementation of New Portfolio Content Categories for the Renewable Portfolio Standard Program, August 8, 2011, pp. 3-4; Comments of the County Sanitation Districts of Los Angeles County on the Administrative Law Judge's Ruling Requesting Comments on Implementation of New Portfolio Content Categories for the Renewables Portfolio Standard Program, August 8, 2011, pp. 4-5.

a compliance product, not actual electricity. Their value lies in the flexibility they provide to the utilities to meet their RPS goals, rather than in encouraging new renewable generation or allowing hedging against fossil fuel costs. DRA supports the use of tradable RECs for the flexibility they allow for compliance with the RPS, but it would be a misinterpretation of SB 2 1X to essentially allow unlimited trading of unbundled in-state RECs by designating them a Bucket 1 product.

Questions 12, 13 and 14 are addressed concurrently.

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;*
- *whether there are or should be any more particular relationships between the generation of the RPS-eligible electricity and the scheduling of the "firmed and shaped" incremental electricity into a California balancing authority (for example, the electricity must be scheduled into a California balancing authority within one month of its generation; or, the energy that is delivered must come from generators in the same balancing authority area as the RPS-eligible generation).*
- *whether the definition proposed is based on contract terms or on the characteristics of the electricity that is ultimately delivered into a California balancing authority.*

Please provide relevant examples.

Questions 12 and 13 seek responses regarding firming and shaping, which is one of the defining characteristics of Bucket 2 products. Question 14 seeks responses regarding the other defining characteristic of Bucket 2 products; the import of "incremental electricity" into California. As DRA pointed out in its Opening Comments, it is very difficult to draw a line when it comes to the required characteristics of firming and shaping.[17] However, drawing no

[17] DRA Comments, pp.6-7

line at all, as some parties recommend, leaves little meaningful distinction between Buckets 2 and 3.

An important distinction between Buckets 2 and 3 is the requirement that Bucket 2 products be coupled with incremental electricity. Another distinction between Buckets 2 and 3 is the requirement of firming and shaping for Bucket 2 products, which means the attachment of the renewable power to some brown power for importing into California. DRA proposed that the utility identify the contract or contracts for brown power that it plans to use to firm and shape a renewable contract in its filing for approval of the renewable contract. Many other parties suggested the same and also proposed that the brown power contract be at least five years in length.[18] DRA supports this five-year minimum contract length proposal because it would allow the brown power to be "matched up" to the renewable power for a significant portion of the term of the renewable contract. Requiring a brown power contract for the entire length of the renewable contract may be overly restrictive; therefore, a five-year minimum length appears to be a good compromise.

However, other potential requirements– ranging from carbon intensity[19] to energy block requirements[20] as well as geographic considerations[21] – would unduly limit utilities in their procurement of cost-effective renewables. Although utilities can presumably do whatever is demanded in this area by Commission regulations, each new requirement reduces the competitiveness of the market by narrowing the type of product that is eligible for Bucket 2. Thus, additional requirements will increase ratepayer costs without necessarily providing more value. One exception is the proposal that the brown power imports have the attribute of a fixed price, which may indeed provide additional value for ratepayers and serve to distinguish

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[18] TURN Comments, p.8.

[19] Comments of Sierra Club California on Implementation of New Portfolio Content Categories for the Renewable Portfolio Standard Program, August 8, 2011, p. 3.

[20] Comments of BP Wind Energy North America Inc. on Implementation of New Portfolio Content Categories for The Renewable Portfolio Standard Program, 2011, August 8, 2011, p. 10.

[21] Comments of Enxco Development Corporation on the Implementation of New Portfolio Content Categories for the Renewables Portfolio Standard Program, August 8, 2011, p. 13 ("A geographic requirement for the location of the renewable energy resource and the tie point for bundled energy deliveries into a California BA would do little to enhance ratepayer value.").

Bucket 2 and 3 products.[22] DRA supports this possibility because of the additional value it provides for ratepayers.

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?*

DRA interprets §399.16(b)(2), Bucket 2, as applicable to any renewable energy products that qualify for that Bucket 2 but not Bucket 1. Bucket 2 is for out-of-state resources that are firmed and shaped. In short, if a product satisfies the requirements of §399.16(b)(2), but does not satisfy §399.16(b)(1), irrespective of location or intermittency, the product should fall into Bucket 2.

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.

DRA agrees that no firmed and shaped electricity, as set forth in §399.16(b)(2), should be considered as meeting the requirements of §399.16(b)(1)(A).[23] This means that "Bucket 1" is applicable only to bundled – not re-bundled – renewable energy. Thus, any transaction that seeks to join unbundled RECs and unbundled electricity is by definition not eligible for inclusion under § 399.16(b)(1). However, a qualitative difference exists in regards to ancillary services required to maintain hourly and sub-hourly resource scheduling, and these resources should not be considered as firming and shaping products. Ancillary services that generate their own RECs should count as part of the total utility compliance in Bucket 1 definition.

19) When should the portfolio content limitations set forth in § 399.16(d) go into effect (for example, January 1, 2011; or the effective date of SB 2 (1x); or the date of the Commission decision implementing § 399.16)?

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[22] TURN Comments, p. 8.

[23] DRA Comments, p. 9.

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?

DRA initially recommended that the portfolio content categories to go into effect on the date of the Commission decision deciding these issues. This would allow parties to act in accordance with the Commission's expectations of the transactions they were negotiating. However, upon further consideration, DRA recommends that the effective date of portfolio content limitations be the same for all the other requirements of SB 2 1X, on January 1, 2012.

DRA agrees with the observation of Western Power Trading Forum that:

> SB2 (1X) does not become effective until ninety days after the end of the Legislature'sFirst [Extraordinary] Session. It remains unclear as to when the First Extraordinary Session will end, but the very earliest that SB2 (1X) could become effective is the middle of November of this year (if the [Extraordinary] Session is closed as soon as the Legislature returns from the summer break). This creates an obvious timing issue since although the implementation rules for the statute will not be adopted until the end of this year, P.U. Code Section 399.15(b) provides for an initial compliance period that commences on January 1, 2011. Given this uncertainty, WPTF strongly recommends that the Commission maintain the existing RPS regulatory structure through at least the end of this year. After the statute becomes effective, the portfolio content classifications, compliance processes, procurement limitations, flexible compliance rules and reporting requirements can be made effective, but not before January 1, 2012… In the meantime, until the statute becomes effective and the Commission clarifies its implementation, all LSEs should be required to continue to meet the RPS procurement obligations and reporting obligations under existing regulations... Maintaining the current RPS procurement requirements and compliance program through the end of 2011 will provide regulatory certainty and allow the market to move relatively seamlessly to the new market structure in 2012.[24]

III. CONCLUSION

For the reasons discussed above, the Commission should adopt DRA's recommendations contained in its opening and reply comments including the requirements that:

- Bucket 1 products must be bundled, otherwise they are Bucket 3 products

[24] Comments of the Western Power Trading Forum on the Implementation of New Portfolio Content Categories for the Renewables Portfolio Standard Program, August 8, 2011, pp. 11-12.

- Compliance products in Bucket 2 should have an associated incremental brown power contract with a minimum length of five years

Respectfully submitted,

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VERIFICATION

I, Diana L. Lee, am an attorney for the Division of Ratepayer Advocates which is a party herein, and am authorized to make this verification on DRA's behalf. The statements in the foregoing document 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 that the foregoing are true and correct.

Executed on August 19, 2011 at San Francisco, California.

/s/ DIANA L. LEE

Diana L. Lee
Staff Counsel