

**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)

**REPLY 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**

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The County Sanitation Districts of Los Angeles County (Sanitation Districts) respectfully submit the following reply comments in response to the *Administrative Law Judge's Ruling Requesting Comments On Implementation Of New Portfolio Content Categories For The Renewables Portfolio Standard Program* (Ruling), issued on July 12, 2011.

**I. THE SANITATION DISTRICTS ARE IN AGREEMENT WITH THE  
COMMENTS SUPPORTING INCLUSION OF QUALIFYING UNBUNDLED  
RECS IN CATEGORY ONE**

In its opening comments, the Sanitation Districts recommended that unbundled renewable energy credits (RECs) associated with renewable energy produced by facilities meeting the requirements of the first portfolio content category (Category One) described in § 399.16(b)(1) and consumed onsite should count as Category One products, as addressed in Issue Ten of the Ruling. More than two-thirds of the parties that responded to Issue Ten support inclusion of qualifying unbundled REC transactions in Category One. The Sanitation Districts are in agreement with these supporting comments.

**A. There is Agreement on the Key Facts that Support Inclusion of Qualifying Unbundled RECs in Category One**

The comments provided by the parties in support of including qualifying unbundled RECs in Category One are consistent with the language of SB 2 (1x) and the intent of the legislation, and recognize the benefits that qualifying unbundled RECs provide to California and its electricity customers. These parties base their support for this position on the following key facts:

1. Unbundled RECs generated by a renewable electrical generation facility that has a “first point of interconnection with a California balancing authority” or “with distribution facilities used to serve end users within a California balancing authority area” meet the criteria for Category One electricity products set forth in § 399.16(b)(1).<sup>1</sup>
2. Section 399.16(b)(1) does not make any reference either to unbundled RECs or bundled power in specifying the products that qualify for Category One.<sup>2</sup>
3. Section 399.16(b)(3) specifically refers to unbundled RECs that do not meet the criteria of Category One or Two, and therefore does not preclude unbundled RECs from being included in Category One.<sup>3</sup>

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<sup>1</sup> See Comments of the California Municipal Utilities Association (CMUA) at 5-6; Comments of Calpine Corporation (Calpine) at 6; Comments of the Independent Energy Producers Association (IEP) at 6-7; Comments of Pacific Gas & Electric Company (PG&E) at 17; Comments of Southern California Edison Company (SCE) at 13; Comments of San Diego Gas & Electric Company (SDG&E) at 10-11; Comments of the California Wastewater Climate Change Group (CWCCG) at 3-4; Comments of the Green Power Institute (GPI) at 2; Comments of Shell Energy North America (Shell Energy) at 5-6; Comments of Noble Americas Energy Solutions (Noble Solutions) at 5; Comments of Evolution Markets (Evolution) at 3-4.

<sup>2</sup> See CMUA comments at 6; Calpine comments at 7; IEP comments at 7; PG&E comments at 17; SDG&E comments at 11; Comment of the Union of Concerned Scientists (UCS) at 3.

<sup>3</sup> See GPI comments at 2; IEP comments at 7; SDG&E comments at 10-11; Noble Solutions comments at  
*(footnote continued)*

4. Unbundled RECs that meet the criteria of § 399.16(b)(1) provide benefits to California including those listed in § 399.11<sup>4</sup> and help meet Governor Brown’s renewable “localized electricity generation” goals<sup>5</sup>.
5. Characterization and verification of Category One unbundled RECs can be handled through WREGIS.<sup>6</sup>
6. Including qualifying unbundled RECs in Category One will help retail sellers comply with the RPS and decrease compliance costs.<sup>7</sup>

**B. Comments from a Broad Range of Parties Support Inclusion of Qualifying Unbundled RECs in Category One**

The Sanitation Districts specifically agree with the following comments that were made regarding Issue Ten.

- The Sanitation Districts are in agreement with Southern California Edison that, “The definition of a Bucket 1 product provides that the ERR (eligible renewable energy resource) be directly interconnected to a CBA (California balancing authority) at the transmission or distribution level, directly scheduled into a CBA, or dynamically transferred into a CBA. There are no other limits associated with Bucket 1. As such, the

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5; Comments of the Center for Energy Efficiency and Renewable Technologies (CEERT) at 9-11; CWCCG comments at 5.

<sup>4</sup> See CMUA comments at 6; Calpine comments at 7; IEP comments at 7; Evolution comments at 3-4; UCS comments at 3; CWCCG comments at 4-5.

<sup>5</sup> See [http://www.jerrybrown.org/sites/default/files/6-15%20Clean\\_Energy%20Plan.pdf](http://www.jerrybrown.org/sites/default/files/6-15%20Clean_Energy%20Plan.pdf)

<sup>6</sup> See CMUA comments at 7; Calpine comments at 7; CWCCG comments at 6; Comments of the Los Angeles Department of Water and Power (LADWP) at 10; PG&E comments at 17; Comments of the Western Power Trading Forum (WPTF) at 7; Shell Energy comments at 6; Comments of NV Energy (NVE) at 8; UCS comments at 3; Comments of the Alliance for Retail Energy Markets (AReM) at 9.

<sup>7</sup> See Comments of the Center for Resource Solutions (CRS) at 3-4; WPTF comments at 7; NVE comments at 8; Comments of the City and County of San Francisco (CCSF) at 3-4; Evolution comments at 3.

definition of Bucket 1 products includes unbundled RECs – as long as the ERR that created the unbundled RECs meets the minimum requirements for a Bucket 1 product.”<sup>8</sup>

- The Sanitation Districts are in agreement with the California Municipal Utilities Association that, “California Public Resources Code section 25740.5(c) (section 4 of SB2 (1X)) provides:

The program objective shall be to increase, in the near term, the quantity of California’s electricity generated by renewable electrical generation facilities located in this state, while protecting system reliability, fostering resource diversity, and obtaining the greatest environmental benefits for California residents.

Including unbundled as well as bundled RECs within section 399.16(b)(1) would promote the development of generation facilities in California by increasing the options that a California RPS-eligible generator would have for taking full economic advantage of its project. Conversely, excluding the generator’s product from section 399.16(b)(1) if the associated REC were sold on an unbundled basis would diminish the economic value of the project.”<sup>9</sup>

- The Sanitation Districts are in agreement with Pacific Gas & Electric that, “where an LSE purchases RECs from a generator located in a CBA and that generator used the electricity associated with the RECs to serve its own load “behind the meter,” the RECs should retain a Bucket 1 attribute because the generation facility has a first point of interconnection within a CBA.”<sup>10</sup>
- The Sanitation Districts are in agreement with the Center for Energy Efficiency and Renewable Technologies that § 399.16 should be read as “identifying what each

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<sup>8</sup> See SCE comments at 13.

<sup>9</sup> See CMUA comments at 6.

<sup>10</sup> See PG&E comments at 17-18.

Category *includes*, not what it excludes. If in the course of any permitted transaction under Categories 1 or 2 a transfer of an unbundled REC results, such a circumstance does not mean that the transaction does not meet the criteria of those categories. Instead, the procurement or transaction should be assessed to determine the applicable category criteria. Thus, this language should be interpreted in context with Section 399.16(b)(3) and read to mean that any certificate registered within the Western Renewable Generator Information System (WREGIS) that does not qualify as Category 1 or Category 2 would be a Category 3 “unbundled renewable energy credit.” No energy or capacity need be associated with this type of transaction.”<sup>11</sup>

- The Sanitation Districts are in agreement with the Union of Concerned Scientists that, “Any time a REC is unbundled from its underlying electricity and sold separately, all renewable and environmental attributes remain with the REC. This means that any owner of an electricity generation system that sells its RECs and electricity separately is no longer able to claim renewable or environmental attributes about its electricity. Since the WREGIS certificate associated with the REC will contain an RPS code that identifies the source of its electricity, the WREGIS certificate should also be able to indicate whether its underlying electricity comes from a facility that meets the requirements of § 399.16(b)(1).”<sup>12</sup>

## **II. COMMENTS OPPOSED TO INCLUSION OF ANY UNBUNDLED RECS IN CATEGORY ONE INCORRECTLY INTERPRET THE STATUTORY LANGUAGE AND DO NOT HAVE FACTUAL BASIS**

A minority of parties commented in opposition to including any unbundled RECs in Category One. The reasoning used for this position is contrary to the clear intent of the

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<sup>11</sup> See CEERT comments at 10-11.

legislation and the facts surrounding the benefits of including qualifying unbundled RECs in Category One. A number of specific reasons were given in opposition to including any unbundled RECs in Category One that the Sanitation Districts do not agree with.

**A. The Explicit Reference to Unbundled RECs in § 399.16(B)(3) Does Not Mean that Unbundled RECs are Excluded from Category One**

Opposing parties argued that unbundled RECs cannot qualify for Category One since unbundled RECs are explicitly included in the scope of § 399.16(b)(3) but not explicitly included in § 399.16(b)(1)<sup>13</sup>. The Utility Reform Network (TURN) stated that, “This explicit reference means that any transaction in which the retail seller procures an unbundled REC counts towards this category regardless of whether the underlying generation resource is directly connected to a CBA.”<sup>14</sup> TransWest Express stated that, “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.”<sup>15</sup> And the Large-scale Solar Association (LSA) stated that, “Had the Legislature intended to include in-state unbundled RECs in § 399.16(b)(1), it most certainly would have done so explicitly, as it did with the inclusion of unbundled RECs in § 399.16(b)(3).”<sup>16</sup>

These comments ignore the construct of the wording in § 399.16(b)(3), which describes the third portfolio content category as, “Eligible 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).” This wording clearly does not mean or even imply that unbundled RECs cannot qualify under the criteria of paragraph (1) or (2). If this

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<sup>12</sup> See UCS comments at 3.

<sup>13</sup> See Comments of the Coalition of California Utility Employees at 4.

<sup>14</sup> See Comments of The Utility Reform Network (TURN) at 5.

<sup>15</sup> See Comments of TransWest Express LLC at 12.

<sup>16</sup> See Comments of the Large-scale Solar Association (LSA) at 2-3.

were the case, the phrase “that do not qualify under the criteria of paragraph (1) or (2)” would need to be written differently, such as “that are not eligible for inclusion in the categories described in paragraph (1) or (2)”.

The logical interpretation of § 399.16(b)(3) is that it refers to products that do not already “qualify under the criteria of paragraph (1) or (2).” In this way, Category Three is a catchall for any “eligible renewable energy resource electricity product” that does not qualify for either Category One or Two based on their criteria. By implication then, any product, including unbundled RECs, that does meet the criteria of Category One or Two, is included in that Category. To say it in another way, the test for whether an eligible renewable energy resource electricity product is a Category Three product is that it does not qualify for Category One or Two. Unbundled RECs are mentioned in § 399.16(b)(3) only to make it explicitly clear that these products are eligible for inclusion in Category Three, not to exclude them from the other two categories.

Furthermore, to suggest that unbundled RECs would need to be explicitly mentioned in § 399.16(b)(1) for them to be included in Category One is also an incorrect interpretation. Category One has a clear set of criteria. If the eligible renewable energy resource electricity product meets either of the criteria, it qualifies for Category One. There is no need to mention specific products that qualify.

**B. Category One Unbundled RECs are Distinct and Can Be Subject to a Robust and Straightforward Verification Process**

TURN claims that inclusion of any unbundled RECs in Category One “would eliminate any meaningful distinction between bundled and unbundled REC transactions and seriously



complicate efforts to determine compliance”<sup>17</sup>. However, several comments in favor of including qualified unbundled RECs in Category One have indicated that there is in fact a clear distinction and that compliance determination would be very straightforward<sup>18</sup>.

The legislation already requires that the REC “certificate of proof” be “issued through the accounting system established by the Energy Commission”<sup>19</sup>, which is currently WREGIS. The Union of Concerned Scientists correctly stated, “Since the WREGIS certificate associated with the REC will contain an RPS code that identifies the source of its electricity, the WREGIS certificate should also be able to indicate whether its underlying electricity comes from a facility that meets the requirements of § 399.16(b)(1).”<sup>20</sup> In this way, PG&E identified that WREGIS functionality could be added to allow the recording of the category attribute of each REC on its WREGIS certificate to ensure that these attributes can be tracked and verified<sup>21</sup>. Such functionality would greatly simplify the verification of Category One REC compliance, since upon retirement of the REC, the WREGIS certificate would clearly indicate which category the REC belongs in.

**C. Category One Unbundled RECs Provide the Benefits that Are the Purpose of SB 2 (1x)**

Opposing parties claim that unbundled RECs do not provide California customers with the same value as bundled transactions<sup>22</sup> and that inclusion of any unbundled RECs in Category One would be discriminatory<sup>23</sup>. However, as the Independent Energy Producers Association

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<sup>17</sup> See TURN comments at 5.

<sup>18</sup> See CMUA comments at 7; Calpine comments at 7; CWCCG comments at 6; LADWP comments at 10; PG&E comments at 17; WPTF comments at 7; Shell Energy comments at 6; NVE comments at 8; UCS comments at 3; AReM comments at 9.

<sup>19</sup> See Public Utilities Code § 399.12(h)(1).

<sup>20</sup> See UCS comments at 3.

<sup>21</sup> See PG&E comments at 17.

<sup>22</sup> See TURN comments at 5-6; Comments of Sempra Generation at 6.

<sup>23</sup> See TURN comments at 6; Comments of Iberdrola Renewables (Iberdrola) at 10.

(IEP) identified, “facilities interconnected with a CBA or with a distribution system within a CBA’s area provide the “unique benefits” listed in § 399.11(b) regardless of whether they are selling the RECs associated with the output of their plants in a bundled transaction or in a separate sales of RECs”<sup>24</sup>. These benefits include:

- Displace fossil fuel consumption within the state;
- Reduce emissions of greenhouse gases associated with electrical generation;
- Help meet the state’s need for a diversified and balanced energy generation portfolio;
- Help meet the state’s resource adequacy requirements; and
- Contribute to the safe and reliable operation of the electrical grid.

Including unbundled RECs from these facilities in Category One also fulfills the program objectives listed in section 25740.5 of the Public Resources Code (section 5 of SB 2 (1x)):

- Increase the quantity of California’s electricity generated by renewable electrical generation facilities located in this state, while protecting system reliability, fostering resources diversity, and obtaining the greatest environmental benefits for California residents.
- Support emerging renewable technologies in distributed generation applications that have the greatest near-term commercial promise and that merit targeted assistance.

By contrast, RECs in Category Three (*i.e.*, those from facilities that do not have their first point of interconnection to a California balancing authority or a distribution system within a California balancing authority) do not offer these benefits to California or fulfill these program objectives. That difference is precisely why transactions for RECs from facilities qualifying as

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<sup>24</sup> See IEP comments at 7.

Category One resources are grouped with other transactions that provide comparable benefits to California, and transactions for RECs from facilities that are not Category One resources are classified as Category Three transactions.

Therefore, unbundled RECs do in fact provide California customers with comparable value as bundled transactions, and it is not discriminatory to include qualifying unbundled RECs in Category One since in-state unbundled RECs clearly provide benefits to California customers that out-of-state unbundled RECs do not.

**D. Inclusion of Qualifying Unbundled RECs in Category One Would Provide Flexibility to Comply With the RPS Requirements and Therefore Contribute to Lower Compliance Costs**

Opposing parties claim that inclusion of any unbundled RECs in Category One would undermine the price stability that bundled renewable generation would otherwise bring to end users<sup>25</sup>. Multiple parties, however, have commented in favor of including unbundled RECs in Category One expressly because this would provide greater flexibility to comply with RPS requirements and therefore contribute to lower compliance costs.<sup>26</sup> By expanding the potential supply of Category One products, the cost of compliance will naturally decrease. Furthermore, Category One unbundled RECs also provide a convenient and inexpensive way for retail sellers to fill gaps or unexpected shortfalls in their RPS procurement program.

**E. Section 399.16(b)(1) Does Not Require Energy Delivery for Products to Qualify for Category One**

The Arizona Public Service Company claims that, “The portfolio content category in § 399.16(b)(1) is reserved for transactions under which the eligible energy is physically delivered

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<sup>25</sup> See TURN comments at 5-6, Iberdrola comments at 10-11.

<sup>26</sup> See CRS comments at 3-4; WPTF comments at 7; NVE comments at 8; CCSF comments at 3-4; Evolution comments at 3.

or dynamically transferred to a California balancing authority.”<sup>27</sup> And LSA stated that, “the focus of all of § 399.16(b) is on the electricity product being procured; nowhere, other than in § 399.16(b)(3), does the REC concept, bundled or unbundled, arise. As such, the Legislature clearly envisioned that what is counting towards each portfolio content category is the energy from the renewable resource that carries with it the associated environmental attributes. For § 399.16(b)(1), it is energy that is delivered directly to a California balancing authority (including via dynamic transfer) or delivered indirectly but without substituting electricity from other sources. In other words, no unbundled RECs are allowed.”<sup>28</sup>

However, a clear reading of the legislation indicates that electricity products include energy and associated RECs, which may be sold either separately or together in a bundle. Section 399.16(b)(3) in fact states that “eligible renewable energy resource electricity products” include unbundled RECs. Therefore the definition of this term is not exclusive to the physical delivery of energy. If the term “eligible renewable energy resource electricity products” is defined to include unbundled RECs in § 399.16(b)(3), it stands to reason that the same term used in § 399.16(b)(1) also includes unbundled RECs (which must meet the criteria of § 399.16(b)(1) to qualify for inclusion in Category One).

Furthermore, the statutory language does not state that delivery of energy is required for inclusion in Category One. In fact, § 399.16(b)(1) makes no reference either to RECs or bundled power in specifying the products that qualify for Category One. The criteria for Category One products include 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 area”. Nowhere do these criteria include a requirement for energy to be transacted. As identified

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<sup>27</sup> See Comments of Arizona Public Service Company at 5-6.

by IEP, “regardless of whether the facility’s output is sold as a bundle of energy and RECs or in a REC-only transaction, the physical characteristics are identical; that is, the energy produced by the facility is most likely consumed within the CBA, and the REC... is transferred to an obligated retail seller for use in the RPS compliance accounts”<sup>29</sup>. If a renewable electrical generation facility has its first point of interconnection to a California balancing authority or a distribution system within a California balancing authority, all of its products should be included in Category One, and it is irrelevant whether the facility’s output is sold as a bundle of energy and RECs or in a REC-only transaction.

### **III. CONCLUSION**

SB 2 (1x) places products from eligible renewable resources connected to California balancing authorities at the transmission or distribution level in Category One of the portfolio content categories. The Sanitation Districts respectfully urge the Commission to examine the statutory language carefully and to conclude that transactions for unbundled RECs associated with renewable energy produced by an RPS-eligible generator that is interconnected with a California balancing authority at the transmission or distribution level are Category One transactions. Comments opposed to this conclusion incorrectly interpret the statutory language. Recognizing that renewable self-generation within the areas of the California balancing authorities provides the same benefits to California as bundled transactions will stimulate even more investment in biogas-powered generation facilities at California wastewater treatment plants, help fulfill the RPS objectives and provide benefits to California at large.

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<sup>28</sup> See LSA comments at 2-3.

<sup>29</sup> See IEP comments at 7.

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

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By           /s/ Mark McDannel            
          Mark McDannel

## VERIFICATION

I am the Supervising Engineer for the County Sanitation Districts of Los Angeles County, and am authorized to make this verification on its behalf. I have read the attached “Reply 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,” dated August 8, 2011. I am informed and believe, and on that ground allege, that the matters stated in this document are true.

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

Executed on this 19th day of August, 2011, at Whittier, California.

*/s/ Mark McDannel*

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Mark McDannel

Mark McDannel, P.E. BCEE  
Supervising Engineer

COUNTY SANITATION  
DISTRICTS OF  
LOS ANGELES COUNTY