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 Sec. 399.20 program (Filed May 5, 2011)

REPLY COMMENTS OF THE WESTERN POWER TRADING FORUM ON THE IMPLEMENTATION OF NEW PORTFOLIO CONTENT CATEGORIES FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

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I. Introduction and Summary

In accordance with the directives provided in the July 12, 2011, Administrative Law Judge's Ruling Requesting Comments on Implementation of New Portfolio Content Categories for the Renewables Portfolio Standard Program ("Ruling"), the Western Power Trading Forum ("WPTF")[1] respectfully submits to the California Public Utilities Commission ("Commission") the following reply comments on the issues raised and questions posed by Administrative Law Judge ("ALJ") Anne E. Simon. Our reply comments relate to the opening comments filed by The Utility Reform Network ("TURN"), the Division of Ratepayer Advocates ("DRA") and the Coalition of California Utility Employees ("CUE").

It is clear that the Commission's task of interpreting Senate Bill 2, passed in the First Extraordinary Session ("SB 2 (1x)"), is complex. In developing the implementing regulations, WPTF suggests that the Commission to the greatest extent possible be guided by two

[1] WPTF is a California non-profit, mutual benefit corporation. It is a broadly based membership organization dedicated to enhancing competition in Western electric markets in order to reduce the cost of electricity to consumers throughout the region while maintaining the current high level of system reliability. WPTF actions are focused on supporting development of competitive electricity markets throughout the region and developing uniform operating rules to facilitate transactions among market participants.

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overarching principles. First, the RPS market that will develop in the coming years needs to be standardized, efficient, liquid and transparent, as this will benefit all market participants and especially benefit the ultimate consumers of renewable power, California's end-users. Second, the Commission should ensure that the impact on the cost of RPS compliance is a factor that is given appropriate consideration and weight in its implementation of the statute. Suggestions by several parties to this proceeding, if adopted, would undoubtedly lead to higher than necessary prices for the renewable power to serve California ratepayers. The Commission should look for ways to assist the state in achieving its ambitious renewable power goals while also performing its historical role of ensuring that customers are served under rates that are both just and reasonable.

II. Reply to TURN

A. The definitions of firmed and shaped and incremental energy should not require that any firming and shaping electricity must be provided from the same Balancing Authority (or WECC subregion) where the renewable generator is located, nor should a mandated minimum duration or fixed pricing be required.

TURN states that the Legislature did not explicitly define the terms "firmed," "shaped" or "incremental electricity" in §399.16(b)(2) and that therefore the Commission must adopt definitions of these concepts and issue rules to ensure that the definitions are enforced. Then, in its response to Questions 12-16 TURN proposes that "Any firming and shaping electricity must be provided from the same Balancing Authority (or WECC subregion) where the renewable generator is located."[2] TURN also recommends that such contracts must have a minimum five years duration and contain fixed pricing.[3] To WPTF, these recommendations seem primarily

[2] TURN, at p. 8.

[3] Ibid.

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based on TURN's repeated efforts to make it difficult, if not impractical, for parties to import renewable power to California.

Firming and shaping is designed to resolve transmission congestion between the source Balancing Authority ("BA") and the sink BA in California; intermittency of the renewable resource when a firm delivery commitment is needed to ensure load is served; and timing mismatches between generation and load, as when a renewable resource generates at high rates when load is low (late nights, spring and fall "shoulder" seasons). Firming and shaping deals, generally, are designed so that all energy from a contracted, out-of-state renewable resource is disposed of somewhere when it is generated. This must occur even if the energy is not needed in California at that time, or is unable to reach California due to transmission congestion or other reasons. Potential problems which firming and shaping is designed to resolve include transmission congestion between the source BA and the sink BA in California, intermittency of the renewable resource when a firm delivery commitment is needed to ensure load is served and timing mismatches between generation and load, as when a renewable resource generates at high rates when load is low (late nights, spring and fall "shoulder" seasons).

"Firming and shaping", at its core, is designed to ensure that an equivalent amount of power delivered into the grid by a renewable resource, and contractually owned by a California LSE, is ultimately physically delivered into the state of California. In some cases, such power will be directly delivered via source to sink scheduling via transmission schedules for which e-tags will be created. However, "firming and shaping" services are designed to deliver the same power when such a straightforward "real-time" scheduling approach is not feasible.

Given these physical realities, and the underlying purpose of "firming and shaping," we believe it is clear that the alternative power delivered under a firming and shaping arrangement,

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as a practical matter, will hardly ever originate from the same BA as the underlying renewable energy source; indeed, in most cases, it cannot originate from the same BA.

The TURN recommendations that (1) any firming and shaping electricity must be provided from the same BA or WECC subregion where the renewable generator is located; (2) that such contracts must have a minimum five years duration; and (c) that such contracts contain fixed pricing will obstruct, rather facilitate, the creation of a liquid and well-functioning market. TURN was not able to convince the framers of the legislation to include these requirements and the Commission should not err by adopting them at this time. These are not the "meaningful conditions" that TURN describes. Rather, they constitute meaningful barriers. WPTF reiterates the recommendation contained in its opening comments. Namely, rather than seeking to develop an independent definition, WPTF recommends that the Commission should incorporate the California Energy Commission's ("CEC") articulated guideline definition of "firmed" and "shaped" products on which existing contracts currently rely. Doing so will have dual benefits. It will both provide continuity to market participants and their understanding of the applicable rules and also save the Commission the trouble of re-inventing the wheel on this topic.

B. The "Product Attribute" of a Renewable Energy Credit should not change because it has been traded.

The RPS Product Matrix attached to TURN's comments notes that an unresolved issue for which there was no consensus is whether the "Product" attribute of a renewable energy credit ("REC") remain with the REC until it is retired for compliance, no matter how many times it is traded as an unbundled product in the secondary market. And further, if so, how the Product attribute of a REC can best be tracked. In its response to Question 10, TURN answers this question by arguing that the form of the last recorded transaction (bundled or unbundled) is an independent factor that determines the appropriate product category. TURN further suggests that

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any other interpretation of this provision would "eliminate any meaningful distinction between bundled and unbundled REC transactions and seriously complicate efforts to determine compliance."[4]

To the contrary, a number of parties, including notably the three utilities, the Independent Energy Producers Association and WPTF believe that the TURN interpretation of the statute is strained and will lead to a less efficient and more costly market. WPTF believes that a REC's product attribute should remain with the REC for the entire thirty-six months of its shelf life. Another way of stating this is that if a REC is initially classified as a Product 1 transaction, it should not be considered unbundled even if it is traded separately at a later date.

As noted in our opening comments, WPTF's approach has two advantages: (1) increased market liquidity; and (2) buyers that purchase a premium Product 1 product can manage their portfolios and fluctuating compliance requirements without losing the value of the product. This should in turn reduce compliance costs for California load-serving entities ("LSEs") and subsequently ratepayers. Regarding "tracking," the CEC currently has the tools to determine eligibility based on the statute and can simply review the data LSEs supply to ensure compliance. This issue is discussed more fully in the reply to CUE in Section IV below.

C. TURN's desired implementation of the statute prior to its effective date should be rejected.

In its response to Question 24, TURN argues implausibly that the timing of the effective date of SB2 (1X) should not have any impact on the content of implementation rules developed by the Commission. They argue that all retail sellers are aware of the changes in law and that the Commission should proceed under the assumption that SB2 (1X) is intended to apply to

[4] TURN, at p. 5.

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compliance beginning on January 1, 2011.[5] This is an impractical and unreasonable suggestion that takes no account of the need for load-serving entities and other market participants to have certainty as to the requirements that are applicable to them.

The statute is not yet effective and therefore WPTF reiterates its previous recommendation that the existing rules should be maintained at least through the end of 2011. This means, as noted by the Alliance for Retail Energy Markets ("AReM") in its opening comments, that, "procurement from contracts executed prior to the effective date of the legislation should continue to count toward compliance in any of the three Product Portfolio content categories at the discretion of the retail seller for the duration of those contracts."[6]

Furthermore, if the effective date of the statute is after January 1, 2012, then the relevant effective date should determine when the new rules become effective. Maintaining the existing rules through the end of 2011 will provide parties with greater certainty and facilitate a smooth transition to the modified RPS framework under SB2 (1X). This recommendation is also consistent with DRA's position that, "DRA prefers to reduce the administrative burden and recommends that the provisions of SB 2 1X come into effect at the beginning of calendar year 2012."[7] Further, PG&E also advocates that, "Assuming that SB 2 (1X) becomes effective no later than the end of 2011, the Commission and the CEC should simply continue to carry forward the existing RPS rules until the legislation is effective."[8]

[5] TURN at p. 12.

[6] AReM, at p. 15.

[7] DRA, at p. 13.

[8] PG&E, at p. 36.

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III. Reply to DRA

A. DRA's Product 1 definition should be rejected insofar as it mandates the use of firm transmission.

As a preliminary point, WPTF's position with regard to the question of what constitutes a "firmed and shaped" transaction, and what parameters should be required to have it qualify as a "firmed and shaped Product" is discussed thoroughly in our Paragraph 1 response to TURN, above. With respect to the Bucket 1 Product, DRA takes the position that "firm transmission rights are necessary for out-of-state projects to satisfy the above statutory language regarding this transaction type."[9] Adopting a requirement for firm transmission as a prerequisite for Product 1 eligibility is inconsistent with the statute and would unnecessarily impede the legitimate use of out-of-state resources for Product 1. Moreover, it is not a necessary construct to preserve the integrity of Product 1 because verification of deliveries using e-tags will provide all the information necessary to ensure that Product 1 claims are consistent with the statutory requirement that there has been no substitution of the underlying energy.

WPTF recommends that there should never be a requirement for energy to be delivered via firm transmission. Rather, the criterion should be scheduled transmission. Use of interruptible transmission in no way delegitimizes the physical delivery chain from resource to California BA as the delivery path is equally valid using either class of transmission and in either case, an e-tag will be generated. Therefore, the DRA assertion that firming and shaping transactions require firm transmission should be rejected.

[9] DRA, at p. 3.

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B. The Commission should confirm that in-state resources should get a product 1 designation without a need for bundling.

In-state renewable resources serve California load and should automatically receive a Product 1 designation. Under locational marginal pricing, all in-state generation is scheduled to the California ISO regardless of the contractual arrangements so there is no bundling or unbundling necessary. The CEC, as part of its verification process, can confirm that any output from an eligible renewable generator located in California or directly connected to the ISO qualifies as product one.

IV. Reply to CUE

A. If a REC is initially classified as a Product 1 transaction, it should not be considered unbundled even if it is traded separately at a later date.

In response to Question 9, CUE contends that the Legislature "clearly understood that when a REC and the energy are separated, that is an "unbundled REC" that falls into Product 3."[10] Therefore, unbundled RECs can only be part of the bundled Product 1 is if they are sold to the retail seller that is also providing energy to that customer. CUE argues that only the utility or other load serving entity serving the customer can classify those RECs as Product 1 and that for anyone else, the RECs are unbundled and fall into Product 3.

As noted above, WPTF replies by strongly recommending that if a REC is initially classified as a Product 1 transaction, it should not be considered unbundled even if it is traded separately at a later date. The "Product attribute" of the REC should remain with the REC until it is ultimately retired for compliance. This point will have significant impacts on market liquidity. What CUE (and TURN at p. 5 of its reply) are advocating will lead to inefficient,

[10] CUE, at p. 4.

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opaque and ultimately more costly compliance markets for California LSE's and ultimately ratepayers.

Should the Commission adopt CUE's and TURN's approach on this topic, the original purchasing entity will necessarily be placed in the position of having to retire it, since any re-sale prior to retirement would cause the Product 1 status to be lost, potentially making the REC significantly less valuable. This will seriously constrain the liquidity and fungibility of Product 1 RECs. If only RPS obligated entities can purchase Product 1 RECs (since only this way could the Product 1 attribute be transferred), market intermediaries will be effectively shut out from the Product 1 market.

The fundamental definition of a liquid market is that it is a market with many bid and ask offers.[11] If the Product 1 attribute may only be transferred to LSEs, this fundamental aspect will not be achieved because there will be a paucity of buyers interested in participating in Product 1 transactions. The TURN proposal effectively transforms Product 1 RECs into Product 3 RECs for the overwhelming majority of renewable market participants. This in turn will result in increased costs for California ratepayers.

This CUE/TURN approach also would make the verification process far more complex than it needs to be. In fact, their positions are reminiscent of when energy trading first started. At that time, whenever parties traded energy on the market, counterparties insisted on knowing "which unit" and "which transmission path"' it was coming from, even if the deal was for three years in the future. This insistence provided for no flexibility and thus unnecessary higher costs. Since that time, the market has now evolved to a point where the path and the unit are determined closer to delivery and that flexibility has allowed the market to grow into a

[11] See http://www.investopedia.com/terms/l/liquidmarket.asp#axzz1VMKGVRNm

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standardized, more efficient, liquid market where transparency benefits everyone. The CUE and TURN approach is antiquated and passé. If accepted, it will lead to a less efficient market and higher costs for California consumers.

B. The Commission should reject the CUE argument that any netting over a period longer than an hour must be categorized as Product 2.

CUE contends that, "Only real-time ancillary services to maintain an hourly or subhourly schedule are allowed in bucket 1. Any netting, or firming and shaping over a longer period is bucket 2."[12] However, other parties comments, most notably PG&E and NextEra Energy Resources ("NextEra") have presented specific arguments as to why Bucket 1 resources should be allowed a netting period that is longer than hourly. For instance, in its opening comments, NextEra states:

> NextEra believes that the simplest and most durable approach is to show the netted figure on a monthly basis (demonstrated in the annual CEC compliance filings). This approach streamlines compliance demonstration and is consistent with the variable nature of many renewable resources. In addition, the CAISO market in its renewable integration process is moving to more granular, within hour, schedules at the interties *(e.g.,* elimination of the hour ahead market and 15 minute schedules). 2 This process is beneficial for variable resources because the closer in time that the schedule is submitted to actual energy production, the less variability and deviation that results. Therefore, rather than build in a requirement for hourly netting, which is likely to require adjustment as the CAISO moves to more granular, intra-hour schedules, a superior approach is to simply net the meter data against the E-tagged amount on a monthly basis. NextEra also believes that the CEC is in the best position to verify the amount of energy that was delivered without substitution in the annual compliance reports.[13]

PG&E argues that an LSE should be

> responsible for comparing the total metered generation for a calendar month from a specific non-CBA generator with the final, adjusted E-Tags showing the scheduled deliveries in the same calendar month, and the lesser of the two should count in Bucket 1(c). This approach is illustrated in the example calculation methodology provided at Appendix B. Because it appears that existing services

[12] CUE, at p. 4.

[13] NextEra, at p. 5-6.

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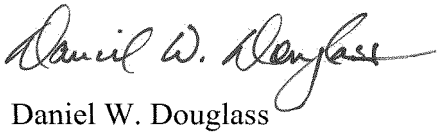
> and systems may not currently allow for an hour-byhour comparison of these data sets, this proposal will further the Commission's goal of easing the verification of categorization of RPS procurement and avoiding the creation of unnecessary transaction costs by requiring LSEs to create or contract for new database systems.[14]

WPTF believes that PG&E and NextEra have raised valid issues with respect to netting provisions applicable to Bucket 1 resources that are located out-of-state, to which the Commission should give further consideration.

V. Conclusion

SB 2 (1x) has imposed a vast new array of changes to the RPS program and as a result, to RPS compliance obligations for many different parties. So that these parties can meet these new obligations, the Commission must act swiftly to provide the necessary interpretations and establish the implementing protocols and rules. WPTF thanks the Commission for its consideration of these comments and urge that the Commission act expeditiously to consider and implement the recommendations discussed herein.

Respectfully submitted,



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[14] PG&E, page 11-12.

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