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 UTILITY REFORM NETWORK ON THE IMPLEMENTATION OF NEW PORTFOLIO CONTENT CATEGORIES FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

Matthew Freedman
The Utility Reform Network
115 Sansome Street, 9th floor
San Francisco, CA 94104
415-929-8876 x304
matthew@turn.org

August 19, 2011

REPLY COMMENTS OF THE UTILITY REFORM NETWORK ON THE IMPLEMENTATION OF NEW PORTFOLIO CONTENT CATEGORIES FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

Pursuant to the July 12 ruling of ALJ Simon, The Utility Reform Network (TURN) hereby submits these reply comments on the new portfolio content categories required pursuant to changes to Public Utilities Code §399.16 enacted in SBx2 (Simitian). Due to the extremely high volume of opening comments, and the relatively short time for responses, TURN only addresses some of the issues raised by parties.

I. REQUIREMENTS FOR PRODUCT CATEGORY 1 RESOURCES

Most parties appear to agree about the basic requirements for bundled electricity products satisfying the requirements of §399.16(b)(1). This product category requires direct delivery of energy into a California Balancing Authority (CBA), a showing that can be satisfied by either demonstrating that the bundled product comes from a renewable generator with a first point of interconnection to the CBA or that the bundled product is directly scheduled into a CBA essentially in real-time from a resource located in another balancing authority.

IEP correctly notes that the Legislature intended §399.16(b)(1) to encompass "real-time or simultaneous deliveries" such that "the energy would be scheduled into a CBA within the same scheduling interval as it is generated".[1] This concept is reinforced by the explicit statutory prohibition on including any quantities of substitute electricity in the total amounts credited toward this product. The Commission must rely on these principles in developing rules for the first product category.

[1] IEP opening comments, page 3.

Despite this common understanding, TURN is concerned by the comments of various parties that appear to suggest a monthly true-up period for determining whether an out-of-CBA resource has actually satisfied the requirements of this section. Under this approach, PG&E proposes that

> an LSE would 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).[2]

Other parties appearing to endorse this monthly approach include Shell, Powerex, and the Los Angeles Department of Water and Power.[3] In a similar vein, Duke argues for a yearly true-up period and Ormat suggests a monthly period with an allowance for up to 10% substitute power.[4] SDG&E also supports a monthly true-up and claims that an hourly accounting for "imbalance energy" would require additional costs associated with 3rd party vendors that track the data with sufficient granularity.[5]

All of these proposals violate SBx2 by allowing the use of substitute energy to be included in the quantity of energy deemed scheduled from the renewable generator into a CBA on an hourly or subhourly basis. The use of monthly netting represents a variant of 'firming and shaping' by allowing a resource to receive credit based on energy actually delivered to a CBA from another source at another time. Under this approach, the amount actually generated by the renewable generator on an hourly or sub-hourly basis would be irrelevant. Instead, the retail seller would simply show the number of E-Tags associated with renewable energy delivered to a CBA in a

[2] PG&E opening comments, pages 11-12.
[3] See Shell opening comments; Powerex opening comments, pages 8-9; LADWP opening comments, pages 7-8.
[4] Duke opening comments, page 8; Ormat opening comments, page 8.
[5] SDG&E opening comments, page 4. SDG&E does not attempt to quantify the additional costs.

given month.

The Legislature expressly prohibited any substitute energy from counting towards this product category and clarified that reliance on "real-time ancillary services" shall be permitted but must be deducted from the "hourly or subhourly import schedule" (§399.15(b)(1)(A)). In other words, the netting of any ancillary services must occur on an hourly or subhourly basis. It cannot be extended to a monthly period which would effectively allow ancillary services provided in some hours to be included in the monthly total quantities of renewable generation.

TURN agrees with Sempra Generation that "the e-Tag trail should be verified for each same scheduling interval (current hourly intertie scheduling intervals may be evolving into more granular scheduling intervals) involving the renewable resource generation, to confirm contemporaneous delivery."[6] This approach should ensure that the renewable generation unit is actually providing the energy to the CBA during the timeframe covered by the schedule in order to ensure a real-time correlation.

The Legislature established a separate category for firmed and shaped renewable energy products in §399.16(b)(1)(B). This section was not accidental but rather intentional and the result of countless hours of negotiations. Any attempt to calculate net substitute energy over a period longer than an hour should be considered within the scope of that second product category.

II. REQUIREMENTS FOR PRODUCT "FIRMED AND SHAPED" (PRODUCT CATEGORY 2) RESOURCES

Parties offer a range of positions on the definition of a "firmed and shaped" product

[6] Sempra Generation opening comments, pages 4-5.

in §399.16(b)(2) and the appropriate interpretation of the requirements for "incremental energy". Some parties (such as WPTF and Evolution Markets) suggest that the Commission should defer to the California Energy Commission and its existing requirements, under the 20% RPS program, for demonstrating delivery of energy to California.[7] Others parties (such as CEERT and UCS) propose an interpretation with specific conditions relating to fixed pricing, a 5-year minimum duration, and new transactions to facilitate energy imports.[8]

TURN strongly urges the Commission to reject the *laissez faire* approach advocated by parties arguing to allow the existing CEC rules to stand. As the Commission is painfully aware, the IOUs have executed a wide range of transactions for products described as "firmed and shaped". Many of these deals functionally replicate unbundled REC transactions through stripping mechanisms, wash trades of energy and 'delivery' using legacy import contracts for resources such as the Palo Verde nuclear plant and SDG&E's El Dorado CCGT plant. Allowing these types of transactions to count as "firmed and shaped" is tantamount to a decision to eliminate any meaningful distinction between the second and third product categories.

As explained in opening comments, TURN believes that a firmed and shaped product should be distinguished by the timely provision of new physical electric imports into a CBA at fixed prices that provide hedging value to the procuring retail seller. Moreover, the energy used to "firm and shape" the generation should be provided from the same system as the renewable generation. TURN therefore urges the Commission to adopt the four key "firming and shaping" requirements outlined in opening comments.[9]

---

[7] WPTF opening comments, page 8; Evolution Markets opening comments, answer to question 12.
[8] CEERT opening comments, page 14.
[9] The requirements proposed by TURN are: (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. (2) Any energy used for compliance with

The definition of "incremental electricity" is addressed by many parties. At the extreme end, parties like CMUA and WPTF assert that this requirement has no particular meaning and should be ignored.[10] The IOUs all argue that any energy import transaction executed after June 1, 2010 should presumptively be deemed "incremental" and allowed to count for purposes of §399.16(b)(2).[11] Others suggest that an incremental import arrangement should be executed after the date of the PPA for a category 2 product and "expressly identify the associated new power purchase agreement with the utility."[12]

The Commission should categorically reject the extreme positions offered by CMUA and WPTF. The inclusion of the words "incremental electricity" was not an accidental occurrence. This section is the product of intense and prolonged negotiations between a wide range of stakeholders. It would be contrary to law for the Commission to deem this phrase to be meaningless.

The position of the IOUs should also be rejected. There is no rational basis for linking the "incremental electricity" requirement for firming and shaping transactions to the June 1, 2010 grandfathering date for renewable energy contracts executed under the 20% RPS program. The IOUs neither cite any legislative history in support of their position nor offer a compelling rationale for this outcome. Moreover, it would be unreasonable to allow a retail seller to execute a firming and shaping contract with a renewable generator in 2019 tied to an "incremental

---

this product category must be scheduled into a California balancing authority within the same calendar year as generation originally occurring at the facility. (3) Any firming and shaping electricity must be provided from the same Balancing Authority (or WECC subregion) where the renewable generator is located and cannot be provided under any supply agreement that predates the original execution of the renewable generation contract. (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.

[10] WPTF opening comments, pages 8-9; CMUA opening comments, page 11.

[11] PG&E opening comments, page 21; SCE opening comments, page 18; SDG&E opening comments, page 12).

[12] BP Wind opening comments, page 11.

electricity" import agreement originally executed on June 2, 2010. Yet this result would be permissible under the proposed IOU interpretation.

SBx2 establishes a long-term renewable energy procurement obligation spanning at least the next decade. The "incremental electricity" requirement was enacted in the wake of revelations that some so-called "firmed and shaped" transactions did not result in any new energy imports into a CBA, but instead relied upon previously executed power contracts or ownership agreements. The inclusion of "incremental electricity" was intended to assure that any category 2 product results in a new transaction for the import of electricity into a CBA. To effect this intent, the Commission should require that any "incremental electricity" transaction occur on or after the date of any associated contract for the underlying renewable energy, match the duration of the associated renewable energy contract with the generator, effectively result in a fixed price for energy delivered to a CBA over the duration of the underlying renewable PPA, and be sourced within the same Balancing Authority or WECC subregion as the renewable generation unit.

There are two requirements that merit some additional comment. First, the reliance on fixed pricing for delivery of energy to the CBA will protect California consumers against potential price volatility in Western market trading hubs. TURN is very concerned about the potential for poorly constructed "firmed and shaped" agreements to force ratepayers to bear the risks of hourly market price volatility outside of a CBA. If the retail seller is forced to remarket renewable energy in a local market hub and then pays an index-based price for subsequent delivery of energy into a CBA, it transfers potentially significant market risks to the buyers. Alternatively, if the "firmed and shaped" transaction guarantees price stability for energy scheduled into a CBA, the buyer is insulated from volatility in other parts of the WECC.

Second, restricting the firming and shaping energy to sources located in the same area as the renewable generator ensures that the transaction is consistent with the notion that energy is being transmitted from the generation unit to a CBA. To date, California IOUs have managed to create "firmed and shaped" transactions where there is no rational relationship between the renewable generation unit and the source of import energy. If the renewable resource is located in Alberta and sells its energy into the local market while the firming and shaping energy is scheduled from a coal plant in Arizona to Palo Verde, there is no reasonable nexus between these transactions. Allowing this type of transaction to count as "firmed and shaped" makes a mockery of the entire concept. The Commission should therefore require that any substitute energy be provided from the same Balancing Authority or WECC subregion as the generator in order to ensure that there is at least a credible export path from the generator to the CBA.

III. DEFINITION OF AN "UNBUNDLED RENEWABLE ENERGY CREDIT"

Most parties appear to agree that procurement of an unbundled REC means a transaction in which the REC is transferred separately from the associated energy produced by the underlying renewable generating facility. This definition would prevent 'mix and match' products involving RECs and system power from being considered as a bundled product. The only exception to this principle relates to firmed and shaped products where unrelated energy may be substituted for the original energy produced by the renewable generating facility subject to specific constraints.

The Commission must be very wary about the potential gaming of the product definitions. Absent a requirement that the REC be transferred with the original associated energy produced by the underlying renewable generating facility, sellers could easily construct "bundled" transactions by attaching fixed price RECs to

unrelated index-priced energy. In such a case, the buyer can instantaneously remarket the energy at the same index price and strip off the REC – the same result as if the transaction had only involved the sale of a fixed price REC. This practice, known as creating "synthetic RECs", has become popular in recent years and allowed California retail sellers to effectively procure unbundled RECs despite the ban on the use of TRECs by the Commission. This type of creative compliance should not be allowed to continue under the new SBx2 regime.

Although most parties agree with the Commission's proposed definition of an unbundled REC, they disagree as to whether every unbundled REC transaction should be assigned to the third product category (§399.16(b)(3)). SCE, PG&E and IEP all propose that a REC associated with an energy transaction initially deemed compliant with Section 399.16(b)(1) should forever retain this product status regardless of whether the REC subsequently trades as an unbundled commodity.[13]

TURN disagrees with these suggestions. The legislation explicitly requires that all unbundled REC transactions be attributed to the third product category (§399.16(b)(3)). There is no other reference in the entire statutory scheme to "unbundled renewable energy credits", therefore it is not credible to argue that the Legislature intended for unbundled RECs to be considered within the first product category. For example, the Senate floor analysis of SBx2 offers the following description of the relationship between the product category definitions, banking rules and unbundled RECs:

> Going forward all contracts for an electricity product would be required to meet the requirements of a "loading order" that mandates minimum and maximum quantities of three product categories (or "buckets") which includes renewable resources directly connected to a California balancing authority or provided in real time without substitution from another energy source, energy

[13] SCE opening comments, pages 12-13; PG&E opening comments, page 17; IEP opening comments, page 8.

> not connected or delivered in real time yet still delivering electricity, and unbundled renewable energy credits. (page 3)
> *Senate Floor Analysis of SBx2, February 23, 2011*
>
> This bill allows IOUs and ESPs to apply excess generation from any compliance period to a subsequent compliance period if the generation source is from contracts of more than 10 year's duration, not including unbundled RECs. This is commonly referred to as banking. (page 4)
> *Senate Floor Analysis of SBx2, February 23, 2011*

In order to honor the intent of the Legislature and the clear language of the statute, the Commission should conclude that any transaction should be classified within the third product category if it involves the procurement of a REC separately from the associated energy produced by the underlying renewable generating facility.

IV. RENEWABLE ENEGRY CREDITS ASSOCIATED WITH DISTRIBUTED GENERATION AND REBUNDLING TRANSACTIONS

Although the statutory language is clear with respect to the treatment of unbundled RECs, the Commission should take this opportunity to clarify the classification of transactions that rebundle RECs with their original energy and the procurement of RECs associated with renewable distributed generation.

Sanitation districts, CWCGG and others assert that behind the meter renewable generation provides value that is consistent with the goals of the statutory scheme and therefore RECs sold by those facilities should automatically be considered within the first product category. TURN strongly disagrees. The classification of a particular transaction is based on the explicit statutory language including the requirement that all unbundled REC transactions be placed within the third product category.

The real question is whether the procurement of RECs from these facilities is properly classified as bundled or unbundled. Consistent with TURN's proposal in

opening comments, a transaction should count as bundled if the retail seller serving the customer with distributed generation procures the RECs and compensates the customer for the associated energy produced by providing the facility with a retail rate credit. Under this arrangement, the retail seller entering into this arrangement is purchasing a bundled renewable energy product and the transaction should not be considered equivalent to unbundled renewable energy credits. So long as the underlying generation facility meets the relevant interconnection or scheduling requirements, the retail seller may count the transaction towards the first product category. If the procurement of RECs occurs without compensation for the associated energy produced by the distributed generation facility, then the transaction should be treated as unbundled and assigned to the third product category.

This approach can also be applied to the situations identified by SCE and SDG&E. Both of these utilities propose that a transaction be considered bundled even if the REC and the associated energy are procured via separate contractual arrangements.[14] TURN agrees. In this instance, the product includes the RECs and associated energy from the underlying generation facility.[15] The fact that these components are obtained through separate contractual arrangements is of no consequence. So long as the energy and RECs are coming from the same generation resource, the transaction should be considered bundled.

The Wastewater parties devote their opening comments to concerns that the classification of unbundled REC transactions as category 3 products would reduce the amount of money they can expect for the operation of their existing facilities.[16] In order to increase the value of their existing facilities, they seek to be able to sell their

[14] SCE opening comments, pages 12-13; SDG&E opening comments, pages 8-9.
[15] It is important to note that the purchase of unrelated energy would fail this test.
[16] County Sanitation Districts of Los Angeles County opening comments, page 2.

RECs as category 1 products.[17] The Commission should not make decisions about the classification of behind-the-meter RECs merely to enhance the cash flows and wishful expectations of existing facilities.

Under the approach outlined by TURN, wastewater plants would be able to sell their RECs to their retail seller and the transaction would be eligible for category 1 product treatment so long as the retail seller is compensating the plants with a credit to retail rates for the energy output of the generation. If the wastewater plants prefer to sell their RECs to unrelated retail sellers, the transaction would not include the associated electricity and would be classified within product category 3.

TURN's approach avoids the excessive complications of creating various flavors of unbundled RECs with different compliance values. The Commission should reject efforts to 'slice and dice' unbundled RECs in the manner proposed by other parties and instead adopt the simple, easily administered, and legally permissible approach outlined in TURN's opening and reply comments.

V. TREATMENT OF CONTRACTS EXECUTED PRIOR TO JUNE 1, 2010

Various retail sellers offer their opinions on the preferred method of implementing the "count in full" provision of §399.16(d). TURN agrees that any contract executed prior to June 1, 2010 should be exempt from the procurement limitations in §399.16(c) for the life of the agreements. This treatment would be consistent with the understanding the parties working to craft this provision in SBx2.

PG&E, SCE and IEP further argue that such transactions should also be exempt from the §399.13(A)(4)(B) limitations on banking category 3 products or contracts of less

[17] California Wastewater Climate Change Group opening comments, page 5

than 10 years in duration.[18] Such treatment is unwarranted and unnecessary. The banking limitations in this section are wholly independent of §399.16 and were intended to establish limits on all transactions regardless of their original execution date. The Commission should not allow the narrow language of §399.16(d) to override the explicit prohibitions in §399.13(A)(4)(B).

Various Electric Service Providers (ESPs) argue that the June 1, 2010 date is not relevant to them and should be superseded by the January 13, 2011 grandfathering date adopted in D.11-01-025 for limits associated with TREC procurement.[19] This request is illegal and should be summarily rejected. There is nothing in the statutory language suggesting that the Commission should adopt different rules for ESPs or defer to the grandfathering provisions of D.11-01-025, and no basis for the Commission selectively enforcing a requirement that applies to all retail sellers.

The ESPs have been on notice since 2009 that limits on TREC transactions were being litigated at the CPUC and that restrictions on certain renewable product types were included in various legislative vehicles. SB 722 (Simitian, 2010) originally included the June 1, 2010 date and was on the verge of enactment at the end of the 2010 session. SBx2 maintained this provision with no changes. The ESPs and their trade associations were well aware of this language since they actively lobbied against both SB 722 and SBx2 in the Legislature. It is disingenuous to assert that this cutoff date was unknown to the ESPs.

The Commission must honor the principle of promulgating equal rules for all retail sellers under the RPS program. Unless there is a statutory provision granting flexibility to treat any subgroup of retail sellers differently from electrical

[18] PG&E opening comments, page 26; SCE opening comments, page 23; IEP opening comments, page 15.
[19] Shell opening comments, page 9; Noble opening comments, pages 2-3.

corporations, the Commission has no discretion and may not apply a different grandfathering date for ESPs.

VI. PIPELINE BIOMETHANE SHOULD BE CLASSIFIED AS A BUCKET 3 PRODUCT

One party requests that the Commission clarify the treatment of electricity products procured from fossil generating facilities when there is an associated purchase of pipeline biomethane. Clean Energy Renewable Fuels (CERF) argues that this transaction is presumptively a bundled renewable energy product within category 1.[20] CERF further asserts that this Commission and the Energy Commission have already concluded that such a transaction should receive this product classification.[21]

TURN disagrees with CERF. This Commission has not yet implemented SBx2 and therefore could not have made any determinations regarding the treatment of pipeline biomethane transactions under §399.16. The mere fact that the Energy Commission has certified this fuel as eligible for participation in the RPS program does not relate to its classification within the product categories.

TURN urges the Commission to find that any procurement of electricity generated with pipeline biomethane is a category 3 product. The use of pipeline biomethane is akin to the trading of renewable attributes and does not necessarily result in any change in the actual operation of any generation connected to, or scheduling energy into, a CBA.

The purchase of pipeline biomethane may not displace any in-state fossil fuel use, does not result in any reduction of local air pollution, does not add any new

[20] Clean Energy Renewable Fuels opening comments, page 2.
[21] CERF opening comments, page 3.

generating capacity and does not contribute to meeting Resource Adequacy requirements. Under CEC guidelines, pipeline biomethane can be "delivered" to California by scheduling against the physical flow of an interstate pipeline. This means that the transaction is akin to the purchase of an unbundled REC from a facility in the WECC that cannot actually demonstrate the delivery of its electricity into a CBA. To the extent that the renewable generator must engage in a swap involving the substitution of another source, the Commission may not classify it within the first product category.

The use of pipeline biomethane may well lead to increased air pollution in California since any reductions in local air pollution associated with the initial capture of the biomethane could occur in Texas, Pennsylvania or Colorado. The burning of additional natural gas in California (the result of a biomethane transaction) results in incremental in-state pollution. This outcome is not consistent with the goals of the RPS program.

Notwithstanding the claims made by CERF, there is no evidence that new capacity is being developed for the purpose of burning pipeline biomethane.[22] The notion that inefficient "mothballed gas-fired peaking power plants" would be used in conjunction with pipeline biomethane is nonsensical given their high heat rates. Any rational buyer would tag the pipeline biomethane to an existing operating CCGT facility with the lowest possible heat rate. In fact, this is the strategy being pursued by the IOUs and POUs. Because pipeline biogas transactions utilize existing generating units these transactions do not add new generating capacity to CA (or the WECC) and thereby fail to assist with meeting local or statewide Resource Adequacy requirements.[23]

[22] CERF opening comments, page 6.
[23] See Cal. Pub. Util. Code §399.11(b).

TURN strongly urges the Commission to conclude that pipeline biomethane is an exercise in trading renewable attributes and therefore classified as an unbundled REC subject to the procurement limitations associated with product category 3.

Respectfully submitted,

MATTHEW FREEDMAN

_____/S/_____

Attorney for
The Utility Reform Network
115 Sansome Street, Suite 900
San Francisco, CA 94104
Phone: 415-929-8876 x304
matthew@turn.org

Dated: August 19, 2011

VERIFICATION

I, Matthew Freedman, am an attorney of record for THE UTILITY REFORM NETWORK in this proceeding and am authorized to make this verification on the organization's behalf. The statements in the foregoing document are true of my own knowledge, except for those matters which are stated on information and belief, and as to those matters, I believe them to be true.

I am making this verification on TURN's behalf because, as the lead attorney in the proceeding, I have unique personal knowledge of certain facts stated in the foregoing document.

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

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

_____/S/_____

Matthew Freedman
Staff Attorney