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)

OPENING COMMENTS OF THE UNION OF CONCERNED SCIENTISTS ON THE PROPOPOSED DECISION IMPLEMENTING PORTFOLIO CONTENT CATEGORIES FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

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Dated: October 27, 2011

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Pursuant to the October 7, 2011 *Proposed Decision Implementing Portfolio Content Categories for the Renewables Portfolio Standard Program* ("Proposed Decision" or "PD"), the Union of Concerned Scientists ("UCS") respectfully submits these initial comments.

UCS appreciates the time and effort that Energy Division staff, the ALJs assigned to this proceeding, and the Commissioners and their staff have put into thinking through these complex issues on a timely schedule. UCS believes that the Proposed Decision generally provides a foundation to guide future renewable energy transactions but would benefit from several clarifications. UCS offers suggestions for how to clarify the language of the PD as well as comments about how certain transactions should be verified to comport with the requirements of the statute.

I. Commission should clarify that the two "tenets" do not override RPS verification authority or restrict the ability of a retail seller to sell RECs into the compliance or voluntary markets.

The Proposed Decisions offers two basic "tenets" to structure the process to determine how certain electricity transactions for the California Renewables Portfolio Standard ("RPS") program fit within the portfolio content categories created by SB 2 (1X) and contained in Public Utilities Code Section 399.16(b). Those two tenets are: "What you buy is what you have" and "What you have is what you retire for RPS compliance."[1] UCS does not believe that the Commission intends to use these tenets to override or restrict any RPS verification authority or allowable RPS transactions, but if taken literally, the words may pose that risk. For instance, "What you buy is what you have" could be interpreted to mean that a renewable energy credit ("REC") would be allowed to count for RPS compliance even if the California Energy Commission ("CEC") or the Commission ultimately determined that the REC had been sold elsewhere and was at risk of being double counted. The phrase "What you buy is what you retire" could be interpreted to mean that any time a utility procures RECs, it forfeits its ability to

[1] CPUC Proposed Decision, October 7, 2011, p.14.

sell those RECs to another entity in the voluntary or compliance renewable energy markets. UCS does not believe that the Commission intends for parties to draw such conclusions from the tenets in the Proposed Decision, but to ensure there is no confusion, UCS requests that the Commission clarify that the tenets themselves create no guarantee of RPS eligibility or restrict an entity from buying or selling RECs in the renewable energy compliance or voluntary markets.

II. Real-time ancillary services should not be required to be sourced from the balancing authority that hosts the RPS-eligible generator.

In the Proposed Decision, the Commission defines "real-time ancillary services" as electricity that is "provided by the host balancing authority."[2] UCS believes the statute is clear that in order for an RPS transaction to meet the criteria contained in Pub. Util. Code § 399.16(b)(1), the RPS-eligible electricity must be delivered to a California balancing authority on a real-time basis and the only permissible portion of non-renewable electricity is that electricity required to "maintain an hourly or sub-hourly import schedule into a California balancing authority…"[3] UCS believes that in all likelihood, real-time ancillary services for these types of transactions will come from the balancing authority that hosts the RPS-eligible generator, but if a real-time energy imbalance market develops, this criterion might be unnecessarily strict. For this reason, UCS requests that the Commission remove the restriction that real-time ancillary services must be provided by the host balancing authority.

III. All Pub. Util. Code § 399.16(b)(1) RPS transactions should be verified with hourly metered data from the RPS-eligible generation facility.

RPS transactions that qualify for the portfolio content category described in Pub. Util. Code § 399.16(b)(1) require that if the RPS-eligible generation facility is not directly interconnected to a California balancing authority and the electricity is not scheduled pursuant to a dynamic transfer agreement, it may still qualify if the electricity is scheduled into a California balancing authority without substituting electricity from another source, unless another source provides real-time ancillary services to maintain an hourly or sub-hourly import schedule in a California balancing authority. The Proposed Decision confirms this requirement in Conclusion of Law #14 and Ordering Paragraph #1. The Proposed Decision discusses data requirements that

[2] *Id.* at 19.
[3] Pub. Util. Code § 399.16(b)(1)(A)

will be necessary to confirm that transactions meet the requirements of Pub. Util. Code § 399.16(b)(1). In the PD, the Commission acknowledges that relying on WREGIS and e-Tags "may not in fact be possible at this time."[4] This is because WREGIS collects generation data on a monthly basis. The statute requires and "the parties agree that the schedule for this criterion is no longer than hourly."[5]

The Commission rejects several proposals for how to verify hourly transactions, including Pacific Gas and Electric's proposal to simply submit aggregated monthly data and Southern California Edison's proposal to collect hourly data in an auditable form in case Energy Division staff or CEC staff have the time to request and sift through data to verify transactions. UCS agrees with these rejections. Yet, the Commission stops short of proposing a standardized method for verifying such transactions and leaves the door open to further discussion and development of rules for how such transactions should be verified: "It is apparent, however, that effective and efficient administration of the portfolio content mandates of SB 2(1X) will require modifying existing systems or developing new ones."[6] UCS believes this is problematic because the PD fails to eliminate uncertainty regarding how these transactions will be verified. In addition, UCS believes the statute is quite clear that in order for an RPS transaction to qualify for Pub. Util. Code § 399.16(b)(1), proof of an hourly or sub-hourly generation schedule from the RPS-eligible generation facility must be submitted to the CEC. This process is not yet automated and collecting such data is an added burden on the utilities, but not an impossible task. UCS suggests that the Commission continue to work with WREGIS to identify ways to automate such data collection in the future.

IV. The Commission should clarify several requirements for RPS transactions in order to meet the requirements of Pub. Util. Code § 399.16(b)(2).

A. The Commission should not permit RPS transactions that sell energy back to the original RPS generator to meet the requirements of Pub. Util. Sec. § 399.16(b)(2).

Throughout the discussion of portfolio content categories in this proceeding, and the tradable RECs discussion in R.06-02-012, UCS has maintained that transactions in which a utility buys RECs and energy from an RPS-eligible generator, but sells the energy back to the

[4] CPUC Proposed Decision, Oct. 7, 2011, p.23.
[5] *Id.* at 24.
[6] *Id.* at 26.

generator in order to keep the RECs and bundle them with an electricity import, should not be permitted to qualify as a "firmed and shaped" transaction or a transaction that meets the criteria of Pub. Util. Code § 399.16(b)(2).[7] This "no return sale" concept is important because unless the retail seller is purchasing the RECs *and* the electricity from an RPS-eligible generator, the transaction is functionally equivalent to an unbundled REC sale. Therefore, UCS agrees with the Commission that Pub. Util. Code § 399.16(b)(2) transactions should contain the following element: "the buyer's simultaneous purchase of energy and associated RECs from the RPS-eligible generation facility without selling the energy back to the generation;"[8] However, UCS believes the last word in that phrase should be *generator*, not generation. In addition, it's not clear if the Commission is strictly referring to retail sellers in the use of the word "buyer's" or if the same criterion would apply to retail sellers if the first "buyer" was an electricity aggregator that planned to sell RPS-eligible electricity products to utilities. UCS requests that the Commission clarify that the "buyer" in this case is the retail seller with an RPS compliance obligation. Finally, while the Commission agrees that the "no return sale" concept is important in the PD's discussion section, the concept is omitted from the Conclusions of Law. Below, UCS proposes a change to Conclusion of Law #16 and Ordering Paragraph #2 to remedy this.

B. The Commission should clarify the language that defines the word "incremental"

Pub. Util. Code § 399.16(b)(2) specifies that "firmed and shaped" RPS transactions must provide "incremental electricity and [be] scheduled into a California balancing authority." UCS agrees with the Commission's rejection of the utility proposal to define incremental electricity as any electricity that was procured after June 1, 2010.[9] There is no evidence of the Legislature's intent to connect the meaning of "incremental" to the grandfathering date for procurement content limitations.

The Proposed Decision also rejects several parties' suggestion that the requirements of Pub. Util. Code § 399.16(b)(2) can be met by simply purchasing RECs and tagging them to substitute electricity procured by the retail seller. Such relaxed requirements would allow transactions to qualify as "firmed and shaped" when they are functionally equivalent to

[7] *See* "UCS Comments on the Implementation of the New Portfolio Content Categories for the Renewables Portfolio Standard Program", August 8, 2011, p.6.
[8] CPUC Proposed Decision, Oct. 7, 2011, p.40.
[9] *Id.* at 41.

unbundled REC purchases. The Legislature took the deliberate step of distinguishing between "firmed and shaped" and "unbundled RECs" in SB 2(1X) and the Commission is correct to reject simple "tagging" proposals.

The discussion section of the PD also finds that for the purposes of defining "incremental," "finding that the substitute electricity is newly procured by the retail seller as part of the firming and shaping transaction is sufficient."[10] UCS believes that the phrase "the substitute energy is newly procured by the retail seller" is a more clear and straightforward way to describe the incremental requirement as opposed to the language contained in the second bullet of Conclusion of Law #16 and Ordering Paragraph #2. In addition, the current Conclusion of Law #16 and Ordering Paragraph #2 appear to apply the "incremental" requirement to the electricity that comes from the RPS-generation facility (aka the "green electrons") rather than the substitute energy. The statute requires that firmed and shaped transactions provide incremental electricity to California, and therefore the word "incremental" should modify the substitute electricity. In addition, the language appears to require that the energy is incremental to "another party" but not the retail seller itself. Below, UCS makes several suggestions to address these concerns.

C. *The Commission should clarify that contracts for RPS-eligible electricity and substitute electricity do not have to be the same length.*

UCS believes that a transaction meeting the requirements of Pub. Util. Code § 399.16(b)(2) must contain, together, a set of agreements to acquire RPS-eligible electricity and acquire substitute electricity. In other words, a utility must present a complete plan for firming and shaping an electricity product in its advice letter, rather than simply purchasing the RECs from a renewable energy facility and figuring out how to firm and shape and import new electricity at a later date. UCS believes that the Commission means to reflect that principle in the third bullet of Conclusion of Law #16 and Ordering Paragraph #2: "the buyer acquires the substitute energy at the same time as it acquires the RPS-eligible energy."[11] Combining *together* a contract to purchase RPS-eligible electricity with a contract to purchase substitute energy will bring all parties involved in the firmed and shaped transaction to the table and encourage the

[10] *Id.* at 41.
[11] *Id.* at 60 and 63.

retail sellers to ensure the renewable electricity is actually sold into the local market.[12] However, UCS is concerned that by itself, the phrase "at the same time" is too vague. While UCS strongly believes that firmed and shaped contracts should be long-term commitments for RPS-eligible electricity and at minimum, for at least five years,[13] UCS does not believe it is necessary for the substitute electricity contracts to be the exact same length as the RPS electricity contracts. For this reason, UCS requests that the Commission clarify that the length of the RPS electricity contract and the length of the substitute electricity contract do not have to be the same length.

Under no circumstances should the Commission allow substitute electricity under a firming and shaping agreement to expose ratepayers to a higher level of price volatility than they would otherwise experience. UCS believes that a fundamental difference between firmed and shaped transactions and unbundled REC transactions should be that the firmed and shaped transactions protect ratepayers from hourly market price volatility in Western markets. The Commission rejected UCS's request that all firmed and shaped transactions contain a fixed price for the substitute electricity delivered into California because utilities effectively hedge against price volatility for their entire portfolios. UCS requests that the Commission analyze the potential price volatility risks associated with new firmed and shaped contracts and modify pricing requirements if ratepayers appear exposed to higher levels of price volatility as a result of firmed and shaped transactions.

To address the concerns identified in this section, UCS requests that Conclusion of Law #16 be modified in the following ways:

> 16. Procurement from contracts signed on or after June 1, 2010 may be counted in the portfolio content category described in Pub. Util. Code § 399.16(b)(2), as effective December 10, 2011, if the generation facility from which the electricity is procured is certified as eligible for the California RPS and the generation from that facility is firmed and shaped with substitute electricity scheduled into a California balancing authority within the same calendar year as the generation from the facility eligible for the California RPS, and if the substitute electricity provides incremental electricity, if the following conditions are met, so long as the renewable energy credits originally associated with the electricity have not been unbundled and transferred to another owner, and all other procurement requirements for compliance with the California RPS are also met:

[12] *See* "UCS Comments on the Implementation of the New Portfolio Content Categories for the Renewables Portfolio Standard Program", August 8, 2011, pp.7-8.
[13] *Id.*

- the buyer simultaneously purchases energy and associated RECs from the RPS-eligible generation facility without selling the energy back to the generator;
- the substitute energy purchased from the RPS-eligible generation facility is newly procured by the retail seller as part of a firming or shaping transaction ~~available to the buyer~~ (i.e., the purchased energy must not in practice be already committed to consumption by the retail seller or another party);
- the buyer acquires the substitute energy at the same time as it acquires the RPS-eligible energy.

Similarly, UCS requests the Commission modify Ordering Paragraph #2 in the following ways:

> 2. A retail seller claiming that procurement for compliance with the California renewables portfolio standard from a contract signed on or after June 1, 2010 counts in the portfolio content category described in Pub. Util. Code § 399.16(b)(2), as effective December 10, 2011, must provide information to the Director of Energy Division sufficient to demonstrate that the generation from that facility is firmed and shaped with substitute electricity scheduled into a California balancing authority within the same calendar year as the generation from the facility eligible for the California renewables portfolio standard, and that the substitute electricity provides incremental electricity, if the following conditions are met:
>
> - the buyer simultaneously purchases energy and associated renewable energy certificates (RECs) from the RPS-eligible generation facility without selling the energy back to the generator;
> - the substitute energy purchased from the RPS-eligible generation facility is newly procured by the retail seller as part of a firming or shaping transaction ~~available to the buyer~~ (i.e., the purchased energy must not in practice be already committed to consumption by the retail seller or another party);
> - the buyer acquires the substitute energy at the same time as it acquires the renewables portfolio standard-eligible energy.

V. Conclusion of Law #20 should clarify that only certain utilities that meet the requirements of Pub. Util. Code § 399.17(a) are exempt from the portfolio content limitations established by Pub. Util. Code § 399.16(b).

UCS requests that the Commission clarify that only the small and multi-jurisdictional utilities that meet the requirements of Pub. Util. Code § 399.17(a) shall be exempt from the procurement content limitations contained in Pub. Util. Code § 399.16(b). Therefore, UCS suggests the Commission modify Conclusion of Law #20 in the following way:

> 20. The ruling of the Scoping Memo that RPS procurement of small and multi-jurisdictional utilities that meet the requirements of Pub. Util. Code § 399.17(a) should count for RPS compliance without regard to the limitations on use of each

portfolio content category established by Pub. Util. Code § 399.16(b), as effective December 10, 2011, should be confirmed.

Similarly, UCS requests the Commission modify Ordering Paragraph #13 in the following way:

> 13. The procurement of small and multi-jurisdictional utilities that meet the requirements of Pub. Util. Code § 399.17(a) should count for compliance with the California renewables portfolio standard without regard to the limitations on the use of each portfolio content category established by Pub. Util. Code § 399.16(c), as effective December 10, 2011, so long as all other procurement requirements for compliance with the California renewables portfolio standard are also met.

VI. Conclusion

UCS thanks the Commission for this opportunity to comment on the Proposed Decision and respectfully requests that the Commission adopt the suggestions described above.

Respectfully submitted,

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Dated: October 27, 2011

VERIFICATION

I, Laura Wisland, am a representative of the Union of Concerned Scientists and am authorized to make this verification on the organization's behalf. The statements in the foregoing document are true to the best of my knowledge, except for those matters which are 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 is true and correct.

Executed on October 27, 2011 in Berkeley, California.

Laura Wisland