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)

COMMENTS OF THE LEAF EXCHANGE LLC ON PROPOSED DECISION IMPLEMENTING PORTFOLIO CONTENT CATEGORIES FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

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Pursuant to Rule 14.3 of the California Public Utilities Commission ("CPUC") Rules of Practice and Procedure, The Leaf Exchange LLC ("Leaf Exchange") submits these comments on the proposed decision ("PD") implementing new portfolio content categories for the Renewables Portfolio Standard ("RPS") program. Leaf Exchange appreciates the efforts made in the PD to equitably implement Public Utilities Code section 399.16 ("§399.16"). However, Leaf Exchange believes that the PD fails to appropriately classify unbundled renewable energy credits ("RECs") from in-state distributed generation ("DG") renewable resources.

I. LEAF EXCHANGE

Leaf Exchange is a California Limited Liability Company formed in April of 2010 and located in San Diego, California. Leaf Exchange is a REC brokerage and exchange service for California solar system owners. Leaf Exchange has been a registered "Generating Unit Aggregator" and "Broker" in the Western Renewable Energy Generation Information System ("WREGIS") since June of 2010.

Leaf Exchange educates DG solar system owners on RECs. Leaf Exchange is committed to disseminating objective and accurate information on the topic of RECs. In addition, Leaf Exchange assists DG solar system owners with initial registration of their solar systems at

WREGIS and ongoing reporting. Ultimately, Leaf Exchange intends to provide an equitable and transparent venue for these DG system owners to receive the best possible value for their RECs.

II. THE PORTFOLIO CONTENT CATEGORIES' "FIXED" BOUNDARIES DO NOT LIMIT UNBUNDLED RECS TO §399.16(B)(3)

The PD sets forth unequivocally that "[l]ooking at the structure of § 399.16, it is clear that the portfolio content categories have fixed boundaries."[1] The PD further correctly instructs that "it is necessary to give meaning to every part of the statute, and to ensure that interpretation of each part is consistent with the statute as a whole."[2] However, in an attempt to create fixed boundaries, the PD mistakenly finds that "[t]here is no reason, textual or otherwise, to believe that the Legislature specifically identified unbundled RECs as belonging in §399.16(b)(3), but really intended some of them to belong in §399.16(b)(1)."[3]

§399.16(b)(1) and (b)(2) do define a set of specific products, thus creating fixed boundaries as the PD suggests. However, §399.16(b)(3) does not define a set of specific products with its own "fixed boundary." The plain language of §399.16(b)(3) provides a "catch-all" category that instead ensures any eligible RPS products "that do not qualify under the criteria of paragraph (1) or (2)" are captured and counted.

A. All "Unbundled RECs" Are Not Limited to §399.16(b)(3)

The PD justifies limiting all unbundled RECs to §399.16(b)(3) by the fact that "[u]nbundled RECs… are identified as belonging in §399.16(b)(3) and are mentioned only in §399.16(b)(3)." As the statute is constructed, the phrase "including unbundled renewable energy credits," modifies the term, "eligible renewable energy resource electricity products." The phrase, "including unbundled renewable energy credits," does <u>not</u> modify the entire section

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[1] PD, at 31 (footnote omitted).
[2] PD, at 31 (citation omitted).
[3] PD, at 32 (footnote omitted).

"eligible renewable energy resource electricity products… that do not qualify under the criteria of paragraph (1) or (2)."

The August 2 version of SB 2 (1x) was written with the phrase "including unbundled renewable energy credits" at the end of the sentence, but the August 16th version of SB 2 (1x) specifically moved the phrase to its current and codified position modifying the term "eligible renewable energy resource electricity products" only. Had §399.16(b)(3) remained as "[e]ligible renewable energy resource electricity products, or any fraction of the energy generated, that do not qualify under the criteria of paragraph (1) or (2)*, including unbundled renewable energy credits*," then it would have captured all unbundled RECs. Instead, the codified construction of §399.16(b)(3) has the phrase, "including unbundled renewable energy credits," modifying the term "eligible renewable energy resource electricity products" in order to highlight that unbundled RECs are in fact one type of eligible renewable energy resource electricity products. Given that the term "unbundled renewable energy credits" does not appear anywhere else in the statute, the existence of the term here is the only reason that the same parties that are currently arguing that unbundled RECs must be §399.16(b)(3) products do not argue that unbundled RECs are not eligible renewable energy resource electricity products at all.

Given that unbundled RECs are one type of "eligible renewable energy resource electricity product," it is other distinguishing criteria that create the fixed boundaries as to whether certain unbundled RECs qualify as §399.16(b)(1) or (b)(2) products. Given that in-state DG facilities, like rooftop solar panel systems on homes and businesses, clearly "[h]ave 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," unbundled RECs from in-state DG facilities must count as a §399.16(b)(1) product.

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B. The Legislature Intended to Include Certain Unbundled RECs As §399.16(b)(1) Products

Section 399.16(b)(1)(A) includes eligible renewable energy resource electricity products from generators having "a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area." Not allowing unbundled RECs from in-state DG providers would make the Legislature's inclusion of this phrase unnecessary.

As the PD interprets that phrase, a bundled product of both energy and RECs, which would not involve a generator having its "first point of interconnection with a California balancing authority" but would involve a generator having its "first point of interconnection with distribution facilities used to serve end users within a California balancing authority area" would qualify under §399.16(b)(1). In other words, a RPS generator would have to make a retail sale to a customer over distribution facilities that are not interconnected with a California balancing authority. Retail customers are concerned with procuring energy, not RECs, and have no desire for a bundled product that increases their costs. Thus, the PD's interpretation presents a completely unlikely commercial scenario and could not have been the type of transactions that the Legislature intended to capture.

Given the Legislature's strong support of in-state renewable DG development, the Legislature must have intended to qualify unbundled RECs associated with generation consumed on-site under §399.16(b)(1). Thus, the PD should be modified to reflect that unbundled RECs are a subset of eligible renewable energy resource electricity products that qualify as §399.16(b)(1) products as long as the unbundled RECs are associated with generation from generators that meet the criteria of §399.16(b)(1)(A).

III. INCLUSION OF UNBUNDLED RECS FROM IN-STATE RENEWABLE DG AS §399.16(B)(1) PRODUCTS WILL LOWER THE COST OF RPS COMPLIANCE TO RATEPAYERS

The PD is concerned that inclusion of unbundled RECs as §399.16(b)(1) products "could lead to the repeated sale of RECs at premium prices" and that this "would simply drive up the cost to ratepayers (or indeed for any customers of retail sellers) and unnecessarily increase the costs of complying with the state's RPS goals without providing any additional value, since the electricity can be consumed only once and the REC can be retired for RPS compliance only once."[4] While it is hypothetically possible that RECs could be sold repeatedly at premium prices, the PD offers no support for this scenario. It is just as likely that repeatedly sold RECs could be sold at a lower cost each time. There is simply no evidence to support the PD's conclusion that inclusion of unbundled RECs from generators that meet the criteria of §399.16(b)(1)(A) will result in a market that fosters the "unlimited trading of unbundled RECs at a premium price."[5] Tradability is irrelevant to the final net cost of a REC; ultimately, a retail seller will only incur the costs of the RECs that it actually retires.

Utilities and load serving entities hold all market power. They dictate pricing, and not intermediaries like REC aggregators, marketers, or asset managers. Thus, a high level of purchase and resale in the California market should not be expected. This further rebuts the argument that the "tradability" aspect of RECs would lead to a higher net cost.

Instead, the principles of supply and demand make it far more likely that inclusion of additional products that qualify as §399.16(b)(1) products will drive down the costs of procurement of products that qualify as §399.16(b)(1) products. As supply of those products increase with the inclusion of unbundled RECs from in-state renewable DG, retail sellers with

[4] PD, at 33.
[5] PD, at 33.

RPS compliance obligations have additional flexibility. Given that the vast majority of a retail seller's RPS procurement must be from §399.16(b)(1) products,[6] any downward pressure on the costs of such procurement will ultimately be to the benefit of ratepayers and any other customers of retail sellers.

IV. THE PD SHOULD APPROPRIATELY VALUE UNBUNDLED RECS ASSOCIATED WITH IN-STATE RENEWABLE DG

The PD states that "[c]onferring an additional value on the unbundled RECs by considering them to meet the 'first point of interconnection to distribution system' criterion is not warranted by any statutory language or Commission decision."[7] To the contrary, in-state generation consumed on site "provide[s] unique benefits to California" like "[d]isplacing fossil fuel consumption within the state," "[r]educing air pollution in the state," and "[m]eeting the state's climate change goals by reducing emissions of greenhouse gases associated with electrical generation."[8] These attendant benefits should be recognized in the value of the unbundled RECs associated with such generation as compared to unbundled RECs associated with generation that do not create these same benefits.

The PD also states that the value of the unbundled RECs associated with DG systems does not need to be valued because the generation "has already produced an RPS benefit: it reduces the total retail sales of the interconnected utility, and thus reduces the amount of RPS-eligible procurement the utility requires."[9] Yet, the PD does not allow the DG system actually producing that RPS benefit to capture the additional value of its generation by allowing it to sell

[6] §399.16(c)(1) provides that §399.16(b)(1) products must account for "not less" than 50 percent of RPS procurement for the compliance period ending December 31, 2013; 65 percent of RPS procurement for the compliance period ending December 31, 2016; and 75 percent of RPS procurement thereafter.
[7] PD, at 35.
[8] See §399.11(b).
[9] PD, at 35 (citation omitted).

its unbundled RECs at a slight premium when compared to another RPS generator selling its unbundled RECs that does not reduce the total retail sales of a California utility.

Not allowing unbundled RECs from in-state renewable DG solar systems to be classified as §399.16(b)(1) products will result in fewer California renewable DG solar systems being built. As the California Solar Initiative incentive program reaches its final stages, the high administrative cost associated with participation in REC markets will likely limit development of renewable DG solar system projects, especially residential solar systems, unless these renewable DG solar systems receive the appropriate value for their RECs.

V. CONCLUSION

Unbundled RECs from in-state DG solar systems should be considered §399.16(b)(1) products.

Respectfully submitted,

/s/

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Dated: October 27, 2011

Appendix A
Proposed Revisions to Proposed Decision

Conclusions of Law

- Conclusions of Law No. 12 should be revised to state:
  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)(1), as effective December 10, 2011, if the generation facility from which the electricity is procured is certified as eligible for the California RPS and has its first point of interconnection to the WECC transmission grid within the metered boundaries of a California balancing authority area, regardless of whether ~~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 met.
- Conclusions of Law No. 13 should be revised to state:
  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)(1), as effective December 10, 2011, if the generation facility from which the electricity is procured is certified as eligible for the California RPS and has its first point of interconnection with the electricity distribution system used to serve end user customers within the metered boundaries of a California balancing authority area, regardless of whether ~~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 met.
- Conclusions of Law No. 14 should be revised to state:
  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)(1), 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 scheduled into a California balancing authority without substituting electricity from any other source, regardless of whether ~~so long as all~~ 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 met; and provided that, if another source provides real-time ancillary services required to maintain an hourly or subhourly import schedule into the California balancing authority only the fraction of the schedule actually generated by the generation facility from which the electricity is procured may count toward this portfolio content category.

Ordering Paragraphs

- The last sentence in Ordering Paragraph 1 should be revised to state:
  The retail seller must also demonstrate ~~that the renewable energy credits originally associated with the electricity have not been unbundled and transferred to another owner, and~~ that all other requirements for procurement for compliance with the California renewables portfolio standard are met by the procurement.

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- Ordering Paragraph 3 should be revised to state:
  A retail seller claiming that procurement for compliance with the California renewables portfolio standard from a contract signed on or after June 1, 2010 should be counted in the portfolio content category described in Pub. Util. Code § 399.16(b)(3), as effective December 10, 2011, must provide information to the Director of Energy Division sufficient to demonstrate that ~~either of the following conditions is met, so long as all other procurement requirements for compliance with the California renewables portfolio standard are met:~~
  - ~~The procurement consists of unbundled renewable energy credits originally associated with generation eligible under the California renewables portfolio standard; or~~
  - ~~T~~the procurement consists of any generation eligible under the California renewables portfolio standard that does not quality to be counted in either the portfolio content category described in Pub. Util. Code § 399.16(b)(1), as effective December 10, 2011, or the portfolio content category described in Pub. Util. Code § 399.16(b)(2), as effective December 10, 2011.
- Ordering Paragraph 14 should be revised to state:
  Procurement from contracts signed prior to June 1, 2010, and meeting the conditions set out in Pub. Util. Code § 399.16(d), as effective December 10, 2011, may be counted 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, provided that, if any renewable energy credits from a contract signed prior to June 1, 2010 are unbundled and sold separately after June 1, 2010, the underlying energy may not be counted for compliance with the California renewables portfolio standard and the unbundled renewable energy credits must be counted in accordance with the limitations on procurement ~~in the~~ for each portfolio content category ~~of Pub. Util. Code § 399.16(b)(3)~~, as set out in Pub. Util. Code § 399.16(c), as effective December 10, 2011~~.~~

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VERIFICATION

I am the attorney for The Leaf Exchange LLC, and I have been authorized to make this verification on behalf of The Leaf Exchange LLC. Said party is located outside of the County of San Francisco, where I have my office, and I make this verification for said party for that reason.

I have read the foregoing document and based on information and belief, believe the matters in the application to be true.

I declare under penalty of perjury that the foregoing is true and correct and executed on October 27, 2011, at San Francisco, California.

/s/
Vidhya Prabhakaran