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 SOLAR ALLIANCE, THE CALIFORNIA SOLAR ENERGY INDUSTRIES ASSOCIATION, AND THE VOTE SOLAR INITIATIVE ON THE PROPOSED DECISION TO IMPLEMENT NEW PORTFOLIO CONTENT CATEGORIES FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

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Pursuant to Rule 14 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), the Solar Alliance,[1] California Solar Energy Industries Association (CalSEIA) and Vote Solar Initiative (collectively the "Joint Solar Parties") comment on the Proposed Decision Implementing New Portfolio Content Categories for the Renewables Portfolio Standard Program issued in the above referenced proceeding on October 7, 2011 (Proposed Decision or PD).

I. INTRODUCTION

The Joint Solar Parties comments are limited to two areas of the PD: (1) the appropriate categorization of "behind the meter" renewable energy credits (RECs) and, even more specifically, to RECs associated with net metered systems; and (2) categorization of pipeline biomethane. With respect to the first area, the PD determines that strict interpretation of the applicable statutory language dictates that a vast percentage of such RECs fall within § 399.16(b)(3) category, with only the RECs associated with an AB 920 transaction meeting the

[1] The comments contained in this filing represent the position of the Solar Alliance as an organization, but not necessarily the views of any particular member with respect to any issue.

criteria of § 399.16(b)(1). As illustrated below, the PD errs in its analysis. With respect to the second area, the PD concludes that if the CEC determines that pipeline biomethane is an eligible renewable resource and if the generating facility is interconnected to a California balancing authority, then the transaction should be classified as falling within § 399.16(b)(1). The Joint Solar Parties contend that this is an incorrect assessment of the pipeline biomethane transaction, overlooking the fact that the biomethane fuel is not the actual fuel used in the generation facility. Accordingly such transactions should be categorized under Section 399.16(b)(3).

II. RECs ASSOCIATED WITH BEHIND-THE-METER GENERATORS FALL WITHING THE PARAMETERS OF PU CODE SECTION 399.16(b)(1)

In assessing the appropriate content category of unbundled RECs the PD states:

> Unbundled RECs, as TURN points out, are identified as belonging in § 399.16(b)(3) and are mentioned only in § 399.16(b)(3). The statutory text itself, therefore, places unbundled RECs in that portfolio content category. Since the categories are separate, that is where unbundled RECs belong. *There 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).*[2]

The PD's statutory analysis, by, in essence, viewing all unbundled RECs the same, does not give effect to the clearly stated language of Sections §§ 399.16(b)(3) and 399.16 (b) (3).

Section 399.16 (b) (1) (A) provides, in applicable part, that eligible renewable energy resource electricity products that meet the following criteria fall within that statutory provision:

> (A) Have a first point of interconnection with a California balancing authority, have a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area, or are scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source.

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[2] Proposed Decision at p. 32 (emphasis added).

Thus the key qualifying criteria to fall within Section 399.16(b)(1) (A) is that the eligible renewable energy resource product have its first point of interconnection with a California balancing authority (CBA) or has a first point of interconnection with distribution facilities used to serve end users within a CBA. In setting forth this criterion, the legislature did not specifically exclude transactions for unbundled RECs from the eligible renewable energy resource electricity products. Accordingly, if an unbundled REC meets the limiting criteria of § 399.16(b)(1) (A), then it should fall within such categorization.

Behind-the-meter generators, including net metered systems, producing the eligible renewable resource have their first point of interconnection to a California distribution system. The generator uses the electricity associated with the RECs to serve its own load but the RECs should retain a § 399.16(b)(1) (A) categorization because the generation facility producing the REC has its first point of interconnection within a CBA.

The PD asserts that such arguments fail to take account of the nature of an unbundled REC, i.e., once a REC is unbundled, the underlying electricity with which it was originally associated may not be used for RPS compliance (it is the REC that carries the compliance value).[3] No party is disputing the fact that, in such circumstance, it is the REC which carries the compliance value. Indeed such assures that the resource will only be counted once in category one – either the underlying electricity will have the § 399.16(b)(1) (A) categorization compliance value *or* the REC will attain such value.

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[3] Proposed Decision at p. 33.

The PD also asserts that statutory text places unbundled RECs in the third portfolio content category and thus there is no basis for finding that any unbundled RECs qualify for category one.[4] That is an incorrect reading of the statute.

Section 399.16 (b)(3) is a catchall category for any eligible renewable energy resource product that does not meet the criteria of the other two product categories. The specific statutory language is:

> (3) 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).

The reference to unbundled renewable energy credits is recognition that they are an eligible renewable energy resource. Just like any other renewable energy resource, to the extent that they do not qualify under the criteria of Sections 399.16 (b)(1) or (b) (2), then they would fall within category 3. As illustrated above, unbundled RECs associated with net energy metering generators meet the criteria of Section 399.16 (b)(1)(A) and therefore they do not fall within the catchall Section 399.16 (b)(3).

Finally, the PD notes that in considering the role of such unbundled distributed generation RECs, that "it is also important to recognize that the on-site consumption of the electricity from the DG system 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" and therefore "[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."[5] The fact that distributed

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[4] Proposed Decision at p. 32.

[5] Proposed Decision at p. 35

generation systems provide the added benefit of reducing the utilities retail sales level (thus lowering the amount of renewables needed to reach the 33 percent requirement) has nothing to do with the classification of the renewable credit associated with that generation. Distributed generation should not be penalized by being found to be outside the parameters of Section 399.16 (b)(1)(A) due to the fact that it provides duel benefits to the state's renewable efforts – i.e., reduction in load and the creation of a renewable attribute.

For all the above stated reasons, the Joint Solar Parties respectfully request that the Proposed Decision be modified that unbundled RECs associated with net metering generators fall within the parameters of Public Utilities Code Section 399.16 (b)(1)(A).

III. PIPELINE BIOMETHANE TRANSACTIONS SHOULD BE CATEGORIZED AS UNBUNDLED PURSUANT TO PUBLIC UTILITIES CODE §399.16(B)(3)

The PD rightly concludes that, "the CEC's determination of RPS eligibility is the definitive first step"[6] in its categorization into the appropriate portfolio content category. However, it is only the first step. For California IOUs, this Commission must make the actual determination of renewable product categorization for transactions involving pipeline biomethane pursuant to PUC §399.16(b).

Pipeline biomethane involves a contractual relationship, or tolling agreement, in which biomethane is injected into the natural gas pipeline and "nominated" for use at a generating facility in a separate location. Once injected into the pipeline, the biomethane cannot be distinguished from natural gas. The fuel consumed at the generating facility is nothing more than natural gas. The contract between the biomethane producer and the generating facility merely transfers the renewable attributes of the biomethane to the purchaser, but not the physical

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[6] Proposed Decision at p. 36

product. Therefore, pipeline biomethane transactions represent unbundled transactions and for RPS accounting purpose should be considered category 3 products. The PD asserts that if the CEC determines that pipeline biomethane is an eligible renewable resource and if the generating facility is interconnected to a California balancing authority, then the transaction should be classified as category 1. This narrow view overlooks the fact that the biomethane fuel is not the actual fuel used in the generation facility. In the case of pipeline biomethane, where the fuel and not the generating electricity facility determines RPS eligibility, the Commission must consider the source of the renewable fuel the same way it considers the source of renewable electricity credits in determining product category.

In declining to consider the source of pipeline biomethane, the PD states that "it is not necessary to determine whether the use of pipeline biomethane does or does not further certain environmental goals."[7] To the contrary, the statute requires the Commission to consider multiple state goals, including but not limited to environmental goals, in implementing the RPS. Public Utilities Code §399.11(b) enumerates nine goals of the RPS program, and §399.16(b) requires the Commission to implement the portfolio content categories consistent with those goals. Pipeline biomethane does not result in additional electrical generating facilities nor does it assist with the state's resource adequacy requirements,[8] since it is likely to be contracted for by existing natural gas plants. Furthermore, pipeline biomethane from outside of California does not displace fossil fuel consumption within the state, does not reduce air pollution within the state, and does not reduce GHG emissions associated with electrical generation within the state.[9]

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7 Proposed Decision at p. 36.

8 PUC §399.11(b)(2) and (7).

9 PUC §399.11(b)(1), (3), and (4).

Relative to in-state bundled resources, pipeline biomethane does not provide the same benefits to California. The intent of the product category limitations is to ensure the greatest benefit to California from RPS procurement and to limit procurement of eligible resources that cannot provide those benefits.

The PD should be modified to reflect that pipeline injected biomethane, transactions represent unbundling of renewable energy attributes from electricity generation and therefore that such transactions should be subject to the procurement limitations of PUC §399.16(b)(3).

IV. CONCLUSION

For the above stated reasons the Proposed Decision should be modified to such that (1) unbundled RECs associated with net metering generators fall within the parameters of Public Utilities Code Section 399.16 (b)(1)(A); and (2) unbundled RECS associated pipeline biomethane fall within Public Utilities Code Section 399.16 (b)(3).

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