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 10, 2011)

COMMENTS OF ENXCO DEVELOPMENT CORPORATION ON THE PROPOSED DECISION OF ALJ SIMON IMPLEMENTING PORTFOLIO CONTENT CATEGORIES FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

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In accordance with Rule 14.3 of the Commission's Rules of Practice and Procedure, enXco Development Corporation ("enXco") submits these comments on the Proposed Decision of Administrative Law Judge Anne E. Simon ("PD") regarding "Implementing Portfolio Content Categories for the Renewables Portfolio Standard Program."

I. INTRODUCTION

enXco appreciates this opportunity to comment on the PD. While we generally support the PD, enXco requests that the Commission make minor modifications to the PD in order to:

- Clarify the level of assurance that will be required for the upfront showing and compliance determination, giving due consideration to the difficulty in long-term forecasting for variable generation;
- Clarify the requirement for the procurement of "substitute energy" in association with the "firmed and shaped" content category; and
- Recognize that allowing the resale of RECs representing all on-site energy consumption (as opposed to a fraction that reflects the RPS compliance impact of the on-site generation), would have the effect of reducing the RPS requirements

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associated with the customer-generator load, which would be to the detriment of the RPS program and its goals, and therefore limit the amount of such RECs that may be sold to 66% of the customer-generator's consumed on-site production.

II. LEVEL OF UP-FRONT ASSURANCES REQUIRED FROM DEVELOPERS

The PD would require investor-owned utilities (IOUs) that submit for approval proposed contracts meeting the criteria of Pub. Util. Code § 399.16(b)(1)(A) to make an up-front showing either (1) that the RPS generator's first point of interconnection is within the transmission or distribution system boundaries of a California balancing authority, or (2) that where the contract provides for hourly scheduling into a California balancing authority, "substitution of electricity for another source is unlikely to occur."[1] With respect to the second criterion, clarification is needed regarding the level of assurance to be required for the upfront showing and compliance determination, particularly given the difficulty in long-term forecasting for variable generation and wind and solar generation in particular.

There is the very real possibility that many PPAs will entail the allocation of contract output to more than one content category, particularly depending upon the ability to schedule energy into a California balancing authority on an hourly basis relative to the output of variable generation such as wind or solar generation. For example, a PPA may entail X% of expected output to coincide with hourly scheduled energy deliveries into a California balancing authority over a 20-year period ("hourly" delivery), Y% of expected output to coincide with scheduled energy deliveries over a calendar year to a California balancing authority ("firmed and shaped"), and Z% to not coincide with schedule energy deliveries within a calendar year to a California balancing authority ("everything else" including REC-only transactions).

[1] PD, p. 26.

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The simple fact of the matter is that, for purposes of the required up-front assurance to be required as part of contract approval requests, the "state of the art" in wind and solar output forecasting does not afford a high enough level of certainty in output on an hourly basis over a 20-year period, which is the period applicable to many PPAs submitted to the Commission for review. There will certainly be variation in actual output versus forecasted output on an hourly basis during a 20-year period. The PD's requirement of an upfront showing of forecasted output among the different content categories is reasonable, but only as long as the Commission recognizes that the showing will be a forecast, with limitations on its ultimate accuracy. Therefore, assuming the information for the required showing is to be included in an advice letter for PPA approval from an IOU, enXco requests clarification on the up-front assurances that the Commission would expect in the allocation of generation's output to the various procurement portfolio content categories ("content categories").

More specifically, enXco requests that the PD be modified to clarify that in evaluating the aforesaid showings, the Commission recognizes and will take into consideration the following:

1. There is inherent uncertainty in ensuring guaranteed output on an hourly or even annual basis over a 20-year period.
2. Therefore, any upfront showing should be based on "best efforts" in forecasting and matching of output with scheduled energy into a California balancing authority, with recognition that there will be variances from the forecast.
3. Consequently, the IOU and the generator/supplier should use commercially reasonable efforts to address such variances to the extent possible, with the IOU being

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ultimately responsible for managing the overall fulfillment of the IOU's content category compliance requirements.

We add that there will be a strong market-based incentive to deliver RPS-eligible energy under contract with specific goals for each content category, for two reasons. First, compliance is based upon actual delivery of RPS-eligible generation, rather than forecasted delivery. Second, we expect that pricing for energy will likely differ among the content categories, with the uncapped § 399.16(b)(1)(A) likely to earn a higher price relative to the more limited content categories. The Commission should be mindful of this likely market differentiation, and even be supportive of it in the PPA approval process, thereby further putting the responsibility of meeting delivery requirements and resolving any variances in content category deliveries on the generator and the IOU.

Ultimately, IOUs should have the flexibility to manage the forecast-actual output variability dynamic without the need or right or power to force PPA holders to amend or terminate contracts because of deviations from the upfront assurances required by the CPUC, especially where the variance is an artifact of changes in weather/climate and/or later breakthroughs in forecasting techniques and technologies. Market-based incentives should prevail in incentivizing that the generator maximizes actual deliveries among the different content categories.

III. PROCUREMENT OF "SUBSTITUTE ENERGY"

While we generally support the PD's view that "substitute energy" must be procured at the same time as the acquisition of RPS-eligible energy, enXco has identified one important point that needs to be clarified. For very sound commercial and economic reasons, contracts for "substitute energy" in relation to, for example, 20-year PPAs very rarely entail up-front, 20-year

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contracts with the entity or entities that will be supplying the substitute energy. It much more often is the case that the generator will enter into numerous contracts over the period of the PPA to ensure that they meet their contractual requirements with the IOU at the lowest available costs over time. Entering into a one-shot, 20-year agreement for substitute energy would entail a much higher risk of higher costs for ratepayers (due to the need to nail down a specific provider of substitute energy over such a long period of time, with an attendant premium from the provider of substitute energy for ensuring their services over such a long period of time).

In light of these commercial realities and high risk to ratepayers from long-term, fixed-rate "substitute energy" contracts , enXco recommends that the Commission clarify that the requirement to purchase substitute energy at the same time as the acquisition of RPS-eligible energy is **not** equivalent to a requirement to make an upfront demonstration of having in place a forward-contract for substitute energy for the entire length of the PPA, but rather is equivalent to requiring the IOUs to state that provision will be made for the procurement of substitute energy per the "commercial elements" listed on page 40 of the PD, in which substitute energy:

1. Will not entail "selling the energy back for the generation," nor
2. Will not entail energy that is "committed in consumption by another party."

In the absence of this clarification, we are concerned that the language of the PD will be interpreted as requiring a contract in place for all substitute energy during the entire PPA period to be provided upfront, which will unnecessarily and, from a ratepayer's perspective, imprudently increase cost risks in the name of avoiding a couple of different transactional circumstances of concern to the Commission that can best be avoided by a commitment to avoid specifically those circumstances.

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IV. THE ON-SITE REC PROBLEM

enXco supports the PD's recognition that "on-site consumption of the electricity from the DG system has already produced an RPS benefit: it reduces the total sales of the interconnected utility, and thus reduces the amount of RPS-eligible procurement the utility requires."[2] Elsewhere the PD says that "conferring an additional value on the unbundled RECs by considering them to meet the 'first point of interconnection to distribution system" criterion is not warranted."[3] What we think is even more important to consider is whether or not to confer RECs for the entire amount of RPS-eligible energy consumed on-site.

In our view, allowing the sale of RECs representing all of the on-site energy consumption by a customer-generator would, as a practical matter, be equivalent to allowing the migration of customer load from under the RPS requirements, a presumably unexpected outcome that has not been endorsed by the Legislation and which would represents an erosion of the RPS program's goals and impact. SB 2(1x) never exempted consumers of on-site generation from the 33% RPS. However, by allowing the RECs associated with the entire amount of RPS-eligible energy to be sold, with the consumer receiving all revenues, the PD is leaving the consumer with "underlying energy" that "may not be counted for RPS compliance" due to the stripping off of RECs associated with the underlying energy.[4]

If the on-site consumer is served entirely by "underlying energy" that cannot go towards RPS compliance, then that consumer is not complying with the 33% RPS. While this clearly raises equity issues versus those customers who do not own on-site generation and whose bills do include costs associated with implementation of the 33% RPS, it also raises the question of

[2] PD, p. 35.

[3] PD, p. 32.

[4] See PD, p. 30.

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where in SB 2(1x) is migration of load from RPS requirements permitted. We see no such language. Furthermore, as clearly reasoned in the PD, the IOU is already gaining a benefit from such on-site consumption due to a reduction in load and an associated reduction in its RPS requirement (i.e., by a third of the lost load). By conferring "full tradable REC value" to total on-site consumption of RPS-eligible generation, and therefore granting the opportunity for the consumer to sell all associated RECs to another entity, the Commission would essentially exempt the consumer from SB 2(1x) since all they would retain would be "REC-less" underlying energy. The approach would also unintentionally grant extra "RPS compliance value" to that generation, when including reduced RPS compliance requirements for the IOU (i.e., a "compliance value" of 1.33 MWh for every MWh supplied on-site). The straightforward arithmetic results in less eligible energy delivered to the grid for California ratepayers.

One solution to this issue is to restrict the trading of RECs for RPS-eligible generation delivered for on-site consumption to 66% of such generation, and require that 33% of the RECs associated with such generation remain with—and be retired for compliance by—the consumer-generator. By retaining 33% of REC output, the consumer will effectively comply with the 33% RPS. The consumer will still benefit from potential revenues associated with REC sales, thereby placing a positive, RPS-based economic value for their on-site generation. However, the limit of such sales to 66% of all generated RECs avoids migration of such load from the 33% RPS, and does not run afoul of SB 2(1x). Verification of a consumer's compliance with this limit could be done by comparing the sale of WREGIS-registered RECs from the consumer relative to on-site consumption as reported via the consumer's bill or derivation from metered data for the generation.

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V. CONCLUSION

For the reasons above, enXco requests that the Commission modify the PD to:

- Clarify the level of assurance that will be required for the upfront showing and compliance determination, giving due consideration to the difficulty in long-term forecasting for variable generation;
- Clarify the requirement for the procurement of "substitute energy" in association with the "firmed and shaped" content category; and
- Limit the amount of RECs associated with on-site generation that may be sold to 66% of the customer-generator's consumed on-site production.

We thank you for your consideration of our comments.

Respectfully submitted,

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VERIFICATION

I, Gregory S.G. Klatt, am counsel for the enXco, Inc. and am authorized to make this Verification on its behalf. I declare under penalty of perjury that the statements in the foregoing copy of Comments of enXco Development Corporation on the Proposed Decision of ALJ Simon Implementing Portfolio Content Categories for the Renewables Portfolio Standard Program, filed in R.11-05-005, are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters I believe them to be true.

Executed on October 27, 2011, at Woodland Hills, California.

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