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 INDEPENDENT ENERGY PRODUCERS ASSOCIATION ON THE PROPOSED DECISION ON PORTFOLIO CONTENT CATEGORIES

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One of the significant initial challenges the Commission confronts as it implements the provisions of Senate Bill 2 of the First Extraordinary Session of the 2011-2012 legislative session (SB 2X) is the further definition of the portfolio content categories of section 22 of SB 2X. The Proposed Decision of Administrative Law Judge Anne Simon, issued on October 7, 2011 (PD) takes on the challenging assignment of making sense of statutory provisions that are less than crystal clear. The PD does an admirable job of sorting through the various statutory elements. However, the PD's misinterpretation of a key concept leads it to disregard the statutory language and the touchstone of statutory construction--to"look to the statute's words and give them their usual and ordinary meaning."[1]

In particular, the PD treats renewable energy produced by eligible facilities and the Renewable Energy Credits (RECs) created when renewable energy is generated as discrete, physical "eligible renewable energy resource electricity products." While it is true that RECs and the associated renewable energy can be traded separately, a REC in reality is simply a

[1] PD, p. 6, quoting *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 387-388.

representation that one MWh of eligible renewable energy was generated at a specific time and place, using a certain renewable generation technology. Thus, a REC is inextricably tied to a certain physical fact (*i.e.,* energy was generated at a specific time and place, using a specific technology), and it retains the characteristics of the associated renewable energy until it is retired or expires.

The failure to appreciate the link between RECs and the renewable generation that created them leads the PD into constructions that conflict with the statutory language and create internal contradictions within the PD. A clearer understanding of the relationship between RECs and the associated renewable generation leads to constructions that are consistent with the statutory language and more in harmony with the statutory goals. For the reasons explained in these comments of the Independent Energy Producers Association (IEP), the PD should be modified to correct these constructions and to conform to the specific language the Legislature adopted and the Governor approved.

I. BACKGROUND

The overall goal of SB 2X is to promote the development of renewable energy resources so that they will supply 33 percent of California's retail sales by 2020.[2] The statute also calls for a balanced portfolio of eligible renewable energy resource "products" that "may be differentiated by their impacts on the operation of the grid in supplying electricity."[3] To that end, the statute establishes three portfolio content categories. The definitions of the portfolio content categories, or "buckets," should be read to reflect the differentiation described in the statute, *i.e.,* their different impacts on the operation of the grid operated by California Balancing Authorities (CBAs).

[2] New § 399.11(a).
[3] New § 399.16(a), (b).

One issue that affects each of these portfolio content categories is the treatment of RECs. In distinguishing among the three product categories, the PD takes the approach that "RECs that are separated from the electricity from which they were originally associated" are unbundled RECs[4] and that all unbundled RECs, *i.e.,* all RECs that are separated from the electricity from which they were originally associated, belong in Bucket 3, the third portfolio content category defined in new section 399.16(b)(3) of the Public Utilities Code.[5] The PD reaches this conclusion after finding "no reason, textual or otherwise," to conclude differently.[6]

In fact, a careful reading of the statutory language and an appreciation of the unique relationship between renewable energy and the RECs it creates lead to a different conclusion—that the distinguishing characteristic in distinguishing a transaction's impact on the CBAs that make up the California grid is the temporal connection between the creation of the energy underlying the REC and the actual delivery of that energy to a CBA.

II. THE NATURE OF RECS

SB 2X defines a REC in new section 399.12(h):

> (1) "Renewable energy credit" means a certificate of proof associated with the generation of electricity from an eligible renewable energy resource . . . that one unit of electricity was generated and delivered by an eligible renewable energy resource.
>
> (2) "Renewable energy credit" includes all renewable and environmental attributes associated with the production of electricity from the eligible renewable energy resource . . . .[7]

The link between a REC and the renewable energy it represents is underscored in several ways. Most significantly, the statutory definition ties a REC with the generation of

[4] PD, p. 31.

[5] All subsequent section references are to the Public Utilities Code. Sections from SB 2X are referred to as new; existing sections are referred to as existing.

[6] PD, p. 32.

[7] Similar language appears in existing § 399.12(e).

electricity from an "eligible renewable energy resource" twice in two sentences. In addition, the Commission and the California Energy Commission have concluded that the certificates issued by the Western Renewable Energy Generation Information System (WREGIS) can be used to track and verify renewable generation for purposes of compliance with the Renewables Portfolio Standard (RPS) and can meet the conditions established in existing section 399.16(a)(1) for the commencement of REC trading.

The PD tends to gloss over the link between a REC and the physical characteristics of the renewable generation that the REC represents. Instead, the PD emphasizes the separation between an unbundled REC and its associated renewable energy. Once a REC is seen as divorced from the physical generation that created it, it becomes conceptually easier for the PD to view RECs as completely fungible products that should all be placed in Bucket 3.

To give meaning to all of the statutory language, however, a REC should be thought of as a certificate that 1 MWh of energy was produced by an eligible renewable generation facility at a certain time and location, using a specific eligible technology or fuel. Although a REC may be traded separately from the renewable energy that created it, the REC continues to symbolize the characteristics of that associated generation. The WREGIS certificate that documents the REC specifies the time, location, and technology or fuel of the actual renewable generation that the REC represents, and those elements do not change if title to the REC changes hands.

The connections to the underlying generation remain even if the REC and energy are unbundled. RECs are a convenient currency for reporting and retiring the renewable qualities of eligible generation in compliance with the RPS obligations of retail sellers, but a

REC has no intrinsic value or meaning apart from the characteristics (time, location, and technology or fuel) of the energy that created it.

When a REC is retired for purposes of RPS compliance or voluntary action, the retail seller or other entity is certifying to regulators that one MWh of eligible renewable energy, as described in the information contained in the REC certificate, was generated at a specific time and place, using a specified technology or fuel. In compliance with new section 399.21(a), no REC may be counted twice. WREGIS ensures that the MWh of certified eligible renewable energy production represented by the REC (WREGIS certificate) is retired and counted only once for purposes of RPS compliance.

III. THE NATURE OF THE PORTFOLIO CONTENT CATEGORIES

SB 2X contemplates a variety of "electricity products from eligible renewable energy resources" that may be "differentiated by their impacts on the operation of the grid" and divides these products into three portfolio content categories, or buckets.

Bucket 1 consists of resources (1) that are directly interconnected to the grid at the transmission or distribution level, (2) that schedule energy into a CBA within the hourly or subhourly period it is generated, or (3) that dynamically transfer electricity to a CBA (which is effectively equivalent to being interconnected to a CBA).[8] The focus of the Bucket 1 product criteria is on the interconnection to a CBA, either directly or through a dynamic transfer. The impacts on the CBA grid of these products are those of a resource directly interconnected to the CBA grid.

[8] New § 399.16(b)(1). As the PD notes, "The term 'dynamic transfer' refers to a range of methods by which a balancing authority receiving electricity generated in another balancing authority are may provide some of all of the functions and services typically provided by the balancing authority in which the generation facility is interconnected." PD, p. 28.

RECs associated with energy generated by Bucket 1 facilities retain the characteristics of the eligible generating resource (time/location/technology), even if the RECs and associated energy are traded in separate transactions. For example, when RECs associated with energy from a Bucket 1 facility are traded separately from the associated energy, the physical impacts on the CBA grid of the electrical generation are exactly the same as when the REC is bundled with the energy and traded as a bundle as the energy is generated. In each case, eligible renewable energy is consumed by customers within the CBA as it is generated (and as the associated RECs are created). In each case, the RECs that represent the generation of eligible renewable energy at a particular time and place are transferred to a retail seller for use in compliance with the retail seller's RPS obligations. The only difference between these two scenarios is the timing of the transfer of the REC from one holder to another, and the physical impact on the CBA grid is unaffected by the transfer of the representation of the renewable attributes (*i.e.,* the REC).

Bucket 1 RECs can be unbundled from the associated renewable energy in three basic situations: First, when the retail seller purchases an energy/REC bundle and decides to sell the RECs after the renewable energy has been consumed by customers; second, when the renewable energy and RECs are initially sold by the eligible generator in separate transactions, and third, when renewable energy is consumed by the generator on site, leaving the associated RECs available for a separate transaction.

In contrast to Bucket 1 transactions, **Bucket 2** products are transactions in which the eligible renewable facility is not directly interconnected to a CBA and its energy is not dynamically transferred to a CBA but can be scheduled into a CBA on a "firmed and shaped" basis. Typically, these products derive from the arrangements for scheduling electricity from

intermittent renewable generation facilities for delivery to a CBA, and the products include the sale of energy and RECs. The renewable energy, documented by an associated REC (representing time/location/technology), may be scheduled directly to the CBA. However, due to the intermittency of the resource, the scheduled renewable energy may be replaced with incremental substitute energy to meet scheduling requirements. Over a specific period (*e.g.,* a calendar year) the energy actually scheduled and delivered to the CBA is measured against the RECs symbolizing the renewable energy actually generated by the facility. The buyer receives RPS credit only for the RECs actually generated by the facility and retired. The critical distinction between a Bucket 1 and Bucket 2 transaction is that a Bucket 2 facility has only an indirect impact on the CBA.

Bucket 3 transactions are associated with eligible resources that do not qualify for Bucket 1 or 2. These include, for example, transactions that involve resources not directly or effectively connected to a CBA (*i.e.,* not Bucket 1) and transactions that do not deliver incremental energy into a CBA on a firmed and shaped basis (*i.e.,* not Bucket 2). The impact on the grid, if any, of Bucket 3 transactions will vary with the details of the transaction, but typically the transaction will not have an impact on the operation of the grid. Nevertheless, the RECs associated with Bucket 3 transactions continue to retain the characteristics of the generating resource that created them. A Bucket 3 REC simply documents that a MWh of eligible renewable energy was generated in the WECC at a specific time and specific location, using a specific technology. This generation displaced other generation (probably fossil-fired) on the WECC grid. However, the energy associated with the creation of the REC has no impact on a CBA.

IV. THE PD ERRS BY MISCONSTRUING THE STATUTE AND DIVORCING A REC FROM THE RESOURCE THAT CREATED THE REC

The PD concludes that "there is no reason, textual or otherwise, to believe that the Legislature . . . intended some [unbundled RECs] to belong" in Bucket 1. In fact, several reasons, textual and otherwise, support the conclusion that RECs from Bucket 1 resources remain Bucket 1 products even if they are traded separately from the energy that resulted in their creation.

A. The Words of the Statute

First, the words of the statute refute the PD's conclusion that all unbundled RECs must be categorized as Bucket 3 products. The statutory description of Bucket 3 refers to "eligible renewable energy resource electricity products, . . . including unbundled renewable energy credits, that do not qualify under the criteria of paragraph (1) or (2)" (*i.e.,* Bucket 1 or 2). Why would the Legislature refer to RECs that do not qualify as Bucket 1 or 2 if no such products exist? The PD ignores this modifier and reads this provisions as if it read "Unbundled renewable energy credits and eligible renewable energy resource electricity products . . . that do not qualify under the criteria of paragraph (1) or (2)."[9] But that is not the wording that the Legislature enacted and the Governor approved. As a matter of grammar, the fact that this phrase is placed directly following the reference to unbundled RECs means that it should be read to modify what precedes it. The PD reads the modifying phrase as if it skipped over the reference to RECs and referred only to eligible products.

Moreover, the Legislature considered but ultimately rejected language that would have clearly classified all unbundled RECs as Bucket 3 products. The language that became

[9] See PD, pp. 32, 44-45.

section 399.16(b) in SB 2X originated in Senate Bill (SB) 722. In early August 2010, the definition of Bucket 3 resources in SB 722 read:

> (3) Eligible renewable energy resource electricity products, or any fraction of the electricity generated, that do not qualify under paragraph (1) or (2), including unbundled renewable energy credits.[10]

This language is consistent with the PD's construction that the restriction "that do not qualify under the criteria of paragraph (1) or (2)" refers to "eligible renewable energy resource electricity products" but not to "unbundled renewable energy credits."

However, this provision was amended on August 16, 2011 to read:

> (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) ~~, including unbundled renewable energy credits~~ .[11]

(Inserts shown in italics, deletions in strikethrough.) This amendment, moving the reference to unbundled RECs so that it too is subject to the restriction "that do not qualify under the criteria of paragraph (1) or (2)" clarifies that the only unbundled RECs that fall in Bucket 3 are those that do not qualify for Bucket 1 or 2. If the Legislature did not intend to restrict Bucket 3 RECs in this way, there would have been no need to rearrange this provision. Conversely, if the Legislature intended that all unbundled RECs would fall within Bucket 3, as the PD concludes, it would not have moved the reference to unbundled RECs to a place in the paragraph where it is modified by "that do not qualify under the criteria of paragraph (1) or (2)." Moreover, the

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[10] Aug. 2, 2010 amendments to SB 722, § 20, p. 36, available at http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0701-0750/sb_722_bill_20100802_amended_asm_v93.pdf .

[11] Aug. 16, 2010 amendments to SB 722, § 20, p. 39, available at http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0701-0750/sb_722_bill_20100816_amended_asm_v92.pdf .

language incorporated in SB 2X, as enacted by the Legislature and approved by the Governor, is exactly the language in the August 16 amendment.[12]

In addition, nothing in the criteria for Bucket 1 suggests that a bundle of energy and RECs is the only Bucket 1 product. If the Legislature had intended to limit Bucket 1 to only bundled transactions, it could have said so. Instead, it defined Bucket 1 in terms of the resources that are directly or effectively connected to a CBA.

B. The Purpose of the Statute

Unbundled RECs created by generation from Bucket 1 resources provide several of the "unique benefits to California" listed in new section 399.11(b) that cannot be provided by unbundled RECs from resources that do not meet the criteria of Bucket 1 or 2. RECs associated with generation from Bucket 1 resources, can (1) displace fossil fuel consumption within the state, (2) reduce air pollution in the state, (3) help meet the state's climate change goals by reducing emissions of greenhouse gases associated with electrical generation, (4) promote stable retail electricity rates, (5) contribute to a diversified and balanced energy generation portfolio, (6) contribute to resource adequacy, and (7) support the safe and reliable operation of the grid. By contrast, true unbundled Bucket 3 RECs that are not associated with Bucket 1 generation provide none of these benefits.

The PD's conclusion implies that properly metered generation from an eligible renewable resource directly interconnected to either the transmission or distribution system of a CBA, or dynamically scheduled into a CBA, is more valuable to California if it is sold through a utility rather than used directly to serve load on-site. Nothing in the legislation supports this

[12] In its reply comments, SDG&E cite a bill analysis prepared for the Senate Energy, Utilities and Communications Committee from Feb. 15, 2011, that supports this construction and refers specifically to unbundled RECs from Bucket 2 See SDG&E's Reply Comments, August 19, 2011, p. 4 and fn.7. The PD dismisses this report because its terminology is slightly different from that of SB 2X. PD, p. 32, fn.53.

conclusion. Furthermore, as a matter of physics, the impact on the CBA grid is the same for a transaction for a bundled product of renewable energy and associated RECs as for a transaction for RECs associated with properly metered generation consumed on site. In each case, the energy produced by the eligible facility will follow the line of least resistance to the nearest load, and the REC—the certificate of the renewable attributes of the associated energy—will be conveyed to the purchaser for eventual retirement as part of compliance with the statute.

C. The PD's Conception of RECs Creates Inconsistency and Contradiction

The PD's conclusion that unbundled RECs are "RECs that are separated from the electricity from which they were originally associated" and that all unbundled RECs fall under Bucket 3 creates an internal inconsistency that would render Bucket 2 meaningless. If RECs become Bucket 3 products when they are separated from the associated renewable energy, then the RECs associated with a Bucket 2 transaction that provides "substitute energy in the same quantity as the contracted-for RPS-eligible generation" so that "the original RPS-eligible generation is consumed elsewhere,"[13] *i.e.,* a firmed and shaped Bucket 2 transaction, would be immediately transformed into Bucket 3 products.

The Legislature did not intend such an illogical result. SB 2X must be read in a way that gives meaning to every part of the statute, and ensures that interpretation of each part is consistent with the statute as a whole, as the PD notes.[14] If RECs are viewed as retaining the characteristics of the renewable generation that created them and the existence of Bucket 1 and 2 RECs is acknowledged, the inconsistency disappears, *i.e.,* Bucket 2 RECs retain the time, place, and eligible technology characteristics of the associated generation, even if the REC and associated energy are separated as part of the firmed and shaped transaction.

[13] PD, pp. 39-40.

[14] PD, p. 31, citing *Latkins v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 658-659.

D. RECs Can Help Contain the Costs of RPS Compliance

The PD also expresses a fear that if the Commission recognized the existence of Bucket 1 RECs, "repeated sale of RECs at premium prices" would drive up the cost to ratepayers of RPS compliance. This concern is misplaced. The price of RECs will be set in the market, according to supply and demand. The market price will not always increase with multiple transactions, as the PD assumes; in fact, in a stable market, the price will remain level, regardless of how many times a REC is traded before it is retired. Allowing Bucket 1 RECs to be unbundled and traded separately from the associated energy will increase the supply of compliance options for obligated entities, and this increase in supply will lower the costs of compliance.

E. On-site Generation and RECs

In Decision (D.) 05-05-011 and D.07-01-018, the Commission determined that the RECs originally associated with electricity from a distributed generation (DG) system that is consumed on site belong to the system owner. In addition, the PD notes that on-site consumption of the electricity from the DG system has already produced an RPS benefit by reducing the total retail sales of the interconnected utility and thus reducing the amount of eligible procurement the utility needs to meet its RPS obligation. However, the PD's concerns about conferring "additional value" on the unbundled RECs associated with on-site consumption of energy produced by an eligible renewable resource are unwarranted.

In D.10-03-021, the Commission stated that for RECs from any source to be available for RPS compliance, they must be recognized in WREGIS. The requirements for WREGIS are set forth in the WREGIS Operating Rules. The intent of the rules is to ensure that all RECs tracked through WREGIS have an equivalent integrity. For that reason, RECs cannot be recognized in WREGIS unless the energy associated with the RECs is metered to a specified

accuracy. DG installations that do not provide metering accuracy to that level are not currently eligible for the creation of a WREGIS Certificate.

If generation consumed on site is not properly metered, then the on-site consumption will not create a RPS-eligible WREGIS certificate. In recognition that residential, rooftop photovoltaic energy installations may not be suitable for the metering requirements demanded by the RPS program, the Commission and the Legislature created the California Solar Initiative (CSI) program as a distinct and separate program from the RPS. The CSI program supplements, but does not supplant, the RPS program as a means to move to a greener electric sector. Keeping the CSI program separate from the RPS from a counting perspective, while recognizing that on-site consumption is available for counting against the RPS **if** it is properly metered, addresses the issues raised by the PD. This approach retains the integrity of the WREGIS Certificate in RPS counting, treats eligible renewable resources in a common manner, and provides the basis for enabling metered, on-site generation from an eligible renewable resource directly interconnected or dynamically transferred to a CBA, to be treated as a Bucket 1 transaction.

V. A PROPER CONCEPTION OF RECS SUPPORTS AND ADVANCES THE STATUTORY SCHEME

In addition to being consistent with the language of SB 2X, a proper conception of RECs supports and advances the goals of SB 2X and solves some of the potential problems that arise under the PD's view of RECs:

- Because RECs retain the characteristics of the associated renewable generation, the accounting for RECs that are traded separately from the energy is simplified. The after-the-fact compliance determination is simplified because the REC retains the portfolio classification assigned in the upfront

showing, and that classification can be easily verified through the WREGIS certificate and e-tags.

- The inconsistency in the PD's treatment of Bucket 2 products is resolved, *i.e.,* RECs associated with renewable energy traded in as a Bucket 2 product are not reclassified as Bucket 3 RECs if they are separated from the associated renewable energy and attached to substitute energy.
- The exceptional treatment of RECs associated with contracts entered into by the Department of Water Resources (or similar transactions executed after June 1, 2010) becomes unnecessary.[15] RECs associated with Bucket 1 resources remain Bucket 1 products and can be transferred and retired as Bucket 1 products without the need for exceptions or conceptual contortions about whether RECs can be reattached to their associated energy.
- Transactions involving Bucket 1 RECs are greatly simplified. If a retail seller has an excess of Bucket 1 resources, the PD's approach would compel the seller either to pursue a sale of a bundled product of energy and RECs, whether or not the potential buyer needed energy, or to forgo the added value that the statute attributes to Bucket 1 resources. Under a proper understanding of the function of RECs, Bucket 1 RECs could be sold as a Bucket 1 product apart from any energy and would not lose their Bucket 1 status.

VI. CONCLUSION

IEP has devoted the bulk of its comments to an issue—the nature of RECs—that might be dismissed as arcane. In this case, however, the resolution of this arcane issue will have significant direct implications for the RPS program. The PD's conception of RECs can be maintained only by disregarding the language of SB 2X and glossing over some critical internal contradictions. The vision IEP offers, by contrast, respects the statutory language, avoids internal contradictions, simplifies compliance, and helps contain the costs of the RPS program.

For the reasons stated above, IEP respectfully urges the Commission to:

[15] See PD, pp. 46-48, A.09-09-015, SDG&E Advice Letters 2118-E, 2188-E-A, and 2188-E-B.

- Affirm that RECs retain the characteristics (time, locations, technology) of the energy with which they are associated, even if they are traded separately from the associated renewable energy;
- modify the PD to conform to the language of SB 2X and in particular to recognize the existence of Bucket 1 and Bucket 2 RECs;
- modify the PD to remove the conclusion that all unbundled RECs fall in the third portfolio content classification.

The modifications that IEP suggests are not simple to make, because the erroneous conception of RECs permeates the PD. Nevertheless, it is worthwhile to put the effort in now to develop a decision that can serve as a solid foundation for future decisions on SB 2X and the RPS program. Proposed modifications to the PD's findings and conclusions are attached.

Respectfully submitted this 27th day of October, 2011 at San Francisco, California.

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Findings of Fact

* * *

8. Once a REC is separated from the renewable generation with which it was originally associated, the electricity with which the REC was originally associated ~~is not RPS-eligible~~ may not be used for RPS compliance.

* * *

Conclusions of Law

12. Procurement of eligible renewable energy resource electricity products 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~~ producing 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, 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.

13. Procurement of eligible renewable energy resource electricity products 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~~ producing 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, 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.

14. Procurement of eligible renewable energy resource electricity products 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~~ producing the electricity 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, 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.

15. Procurement of eligible renewable energy resource electricity products 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~~ producing 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 pursuant to a dynamic transfer agreement between the balancing authority where the generation facility is interconnected and the California balancing authority into which the generation is scheduled, 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.

16. Procurement of eligible renewable energy resource electricity products 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~~ producing 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:

- the buyer simultaneously purchases energy and associated RECs from the RPS-eligible generation facility;
- the energy purchased from the RPS-eligible generation facility is available to the buyer (i.e., the purchased energy must not in practice be already committed to consumption by another party);
- the buyer acquires the substitute energy at the same time as it acquires the RPS-eligible energy.

17. Procurement of eligible renewable energy resource electricity products 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)(3), as effective December 10, 2011, if either of the following conditions is met, so long as all other procurement requirements for compliance with the California RPS are met:

- The procurement consists of unbundled renewable energy credits ~~originally~~ associated with renewable energy produced by a generation facility that is eligible under the California renewables portfolio standard and that does not qualify 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; or

- ☐ The procurement consists of eligible renewable energy resource electricity products ~~any generation eligible under the California renewables portfolio standard~~ that do~~es~~ not ~~quality~~ qualify 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.

18. ~~In the unique and limited circumstance of the contracts signed by DWR during the energy crisis with Cabazon Wind Partners LLC and Whitewater Hill Wind Partners LLC,~~ SDG&E should be allowed ~~an exception to the general rules about unbundled RECs in order~~ to acquire the RECs separately from the energy produced by Cabazon Wind Partners LLC and Whitewater Hill Wind Partners LLC, ~~but~~ and receive RPS compliance credit ~~as though they had been purchased together~~.

19. ~~In the unique and limited circumstance of the contracts signed by DWR during the energy crisis with Mountain View Power Partners,~~ SCE should be allowed ~~an exception to the general rules about unbundled RECs in order~~ to acquire the RECs separately from the energy produced by Mountain View Power Partners ~~but~~ and receive RPS compliance credit ~~as though they had been purchased together~~.

* * *

21. Procurement from contracts signed prior to June 1, 2010 and meeting the conditions set out in new § 399.16(d) should be counted 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, provided that, if any RECs from a contract signed prior to June 1, 2010, are unbundled and sold separately after June 1, 2010, the underlying energy should not be used for RPS compliance and the unbundled RECs should be counted in accordance with the limitations on procurement in the portfolio content category ~~of Pub. Util. Code § 399.16(b)(3), as~~ set out in Pub. Util. Code § 399.16(c)(2).

* * *

VERIFICATION

I am the attorney for the Independent Energy Producers Association in this matter. IEP is absent from the City and County of San Francisco, where my office is located, and under Rule 1.11(d) of the Commission's Rules of Practice and Procedure, I am submitting this verification on behalf of IEP for that reason. I have read the attached "Comments of the Independent Energy Producers Association on the Proposed Decision on Portfolio Content Categories," dated October 27, 2011. I am informed and believe, and on that ground allege, that the matters stated in this document are true.

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

Executed on this 27th day of October, 2011, at San Francisco, California.

/s/ Brian T. Cragg
Brian T. Cragg

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