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 POWEREX CORPORATION ON THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE SIMON

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Article 14 of the Commission's Rules of Practice and Procedure (Rules), Powerex Corporation ("Powerex") hereby respectfully submits it comments on the Proposed Decision ("PD") of Administrative Law Judge Ann E. Simon issued October 7, 2011. Powerex's comments are limited to addressing certain sections of the PD, as specifically referenced below.

A. Section 3.4 - §399.16(b): RPS Portfolio Requirements

As noted in the PD, subsequent compliance determinations by the Commission staff will require all retail sellers to provide to Energy Division staff appropriate and adequate documentation demonstrating that the procurement at issue does in fact meet the criteria of the portfolio content category in which the procurement is claimed.[1] Further, the PD authorizes the Director of the Energy Division to develop a methodology for both the "upfront showings" required for IOUs as well as "compliance determination demonstrations"[2] for all retail sellers.

[1] PD at 12.
[2] PD at 27.

With respect to the "upfront showings" necessary for Commission evaluation of "consistency with portfolio content category rules and requirements,"[3] Powerex recommends that the detailed information required by the Energy Division should include a delivery plan in the advice letter to allow the Commission to adequately determine the likelihood that a product will meet the requirements of §399.16 (b)(1)(A). In order for the Commission to adequately assess the "risks involved"[4] with respect to a particular contract as well as "the range of value to ratepayers"[5] associated with a contract, the Commission must be able to satisfy itself that the contract meets the criteria for the subject portfolio content category (Category 1), which for imports would include direct delivery on an hourly or sub-hourly basis.

In order for the Commission to reasonably do so, Powerex believes the delivery plan must include proof of any applicable rights to a continuous transmission path from the point of interconnect of the eligible renewable energy resource ("ERR") in the source balancing authority to a California balancing authority ("CBA"). To enhance the Commission's ability to assess the likelihood of a contract meeting the portfolio content criteria of 399.16 (b)(1)(A), the delivery plan component of the advice letter should be made public so that the Commission may receive comments from public stakeholders on the viability of the delivery plan.

In earlier comments filed in this proceeding, Powerex discussed some of the potential risks and costs associated with assuming prospectively that an out-of-state resource will qualify any portion of its output as a Category 1 product by relying on non-firm transmission to directly deliver to a CBA. These risks and costs need to be assessed

[3] PD at 12
[4] PD at 13
[5] Id.

and transparent when the Commission is considering approval of a contract as well as comparing the potential costs and risks associated with different contracts submitted for approval.

As noted in the PD, "firm transmission is likely to have an influence on the price and terms of the transaction, and on the likelihood that the procurement will ultimately meet the criteria for § 399.16(b)(1)."[6] While a contract that reflects firm transmission as a component of its delivery plan may have a higher cost compared to a contract with a delivery plan that does not include firm transmission, the actual overall value to ratepayers of the latter contract may turn out to be lower in the event that only a fraction of the contract meets Category 1 product requirements for delivery from the ERR to a CBA in real-time.

B. Section 3.4.1.1.4.3 - Without Substituting Electricity from Another Source

Powerex supports the PD's determination that energy may not be substituted from another source, even if that source is an ERR. Powerex would, however, like to seek clarification that it may be permissible for an LSE to enter into an RPS contract for a pre-defined pool of ERRs provided that the resources and the contract meet all other requirements of RPS eligibility.

Pre-defined Pool of ERRs within a single contract:

In a case where a contract for a pre-defined pool of resources is approved, the actual amounts generated and scheduled from each of the ERRs in the pool will vary on an hourly basis. By pooling a group of ERRs, there may be some operational efficiencies and cost savings that could make contracts for a pool of resources

[6] PD at 22.

advantageous to LSEs. For these reasons, Powerex suggests any ERR from an approved contract containing a pool of ERRs, should qualify under Category 1, provided there is an hourly schedule from the ERRs to into a CBA, and provided hourly revenue meter data verifies that the ERR generated during that hour.

Powerex also agrees with the PD's conclusion that:

> "the schedule must be from the RPS-eligible generator, not from "another source" providing generation that will actually be used in place of ("substituting" for) the RPS-eligible generator's output to meet the schedule."[7]

Powerex would, however, point out that in some cases an ERR or group of ERRs may be part of a pool of resources, e.g. within a balancing authority ("BA") that includes non-RPS eligible facilities. Clarification of the categorization of output from such a pool of resources from RPS and non-RPS eligible facilities is needed.

Schedules from a Pool of Resources that includes ERR(s) within single contract:

With regard to a pool of resources including both RPS and non-RPS eligible resources, Powerex seeks clarification that a schedule with a source point that is a pool of resources, all of which are separately metered, ***and includes the ERR***, will meet the requirements of Category 1 - provided there is clear evidence the ERR generated electricity during that hour (via the revenue meter), there is an hourly schedule into a CBA, and there is an approved contract with a California LSE for the output of the ERR. In such a circumstance in which the schedule may come from a pool of resources – which includes an ERR or ERRs and non-RPS eligible resources - Powerex believes that

[7] PD at 20.

only the lower of the amount generated by the ERR and the amount scheduled to a CBA should count towards Category 1.

Any energy on the schedule from non-RPS eligible facilities could not be *used in place of or substituted* for the generation from the ERR for the purposes of counting towards Category 1. Powerex seeks clarification that the energy from non-RPS eligible facilities that is scheduled with energy from an ERR is not categorized as "substitute electricity" if it is not used in place of the energy from the ERR. In these circumstances and in accordance with its comments previously submitted in this proceeding, Powerex suggests that the *lesser* of the hourly revenue meter data from the ERR and the scheduled volume, as measured by the e-Tag, should count towards Category 1.

To further illustrate the example above, Powerex would like clarification from the Commission that the following is NOT considered a schedule that includes substitute electricity:

- An ERR is included within a pool of generation resources, which includes non-RPS resources
- The schedule includes energy from the pool of generation resources (within a generating BA) to a CBA
- Qualified Category 1 deliveries for a given hour are the minimum of:
-
    - Actual ERR metered generation for the hour
    - Scheduled deliveries to a CBA for the same hour

In these cases and under these circumstances,, non-RPS energy, including real-time ancillary services, may be scheduled or delivered with the energy from the ERR but the non-RPS energy does not meet the requirements of Category 1 and therefore, is

not used in place of the energy from the ERR and is not categorized as substitute electricity.

Powerex believes that while WREGIS does not collect data on an hourly level, WREGIS still has an essential role in verifying total RPS eligible generation and that ultimately WREGIS could be adapted to manage hourly data.

The following example shows several ways in which pooled resources could be evaluated and categorized with respect to the different RPS portfolio content categories.

100 MW of transmission is acquired from the pool of resources to CBA. The pool of resources includes 3 plants, all separately metered:

- ERR "A" has a nameplate of 60 MW.
- ERR "B" has a nameplate of 80 MW.
- Plant "C" (a non-RPS eligible facility) has a nameplate of 100 MW.

In **Scenario 1**, 100 MW of energy is generated from the pool of resources containing ERR A, ERR B, and Plant C for the hour. ERR A generates 15 MW in the hour, ERR B generates 35 MW in the hour, and Plant C generates 50 MW in the hour. Based on the metered generation at ERR A and ERR B, the two ERRs are credited with 15 MW and 35 MW in Category 1. The 50MW from Plant C would not count towards Category 1 (or any other portfolio content category). In scenario 1there are no Category 2 and Category 3 products.

In Scenario **2**, ERR A generates 50 MW, ERR B generates 70 MW and Plant C generates 0 MW. Based on the fact that the combined metered generation from ERR A and ERR B exceeded the 100 MW transmission reservation, one approach may

be to credit the two ERRs with their pro-rata shares of the 100 MW, with ERR A getting credit for 41.66 MW and ERR B getting credit for 58.34 MW in Category 1. The excess hourly generation of 20 MW would be credited to Category 2 or 3 depending on contract arrangements and or any product content category limitations of the RPS buyer.

In both scenarios, the use of metered data for each ERR ensures that Category 1 energy is appropriately credited to the relevant party importing the RPS energy and no energy is substituted from another source.

C. Section 3.4.1.2 - Upfront Showing and Compliance Determination

The PD suggests that "it is unclear whether e-Tags can be used to demonstrate that specific RPS-eligible generation was delivered to a particular California balancing authority."[8] Although Powerex agrees e-Tags alone are not sufficient to track and verify what counts as Category 1, Powerex strongly feels that e-Tags are absolutely necessary as a reliable and proven industry mechanism, approved by FERC, NERC and WECC, for demonstrating the delivery path and scheduled quantity of physical energy from a generator or group of generators in one BA to a load in another BA. Therefore e-tags ought to be used as a key component for determining compliance with the requirements of section 399.16(b)(1)(A).

In order to clarify Powerex' position on e-Tags, Powerex would like to address some of PacifiCorp's rational for objecting to "the use of NERC e-Tags to track and verify specific generator output and deliveries into a California balancing authority."[9]

[8] PD at 24.
[9] PacifiCorp Reply Comments at 3

E-Tags and Actual ERR Generation:

While Powerex agrees with PacifiCorp's statement that e-Tags were not "intended to document actual generator output with specificity,"[10] Powerex points out that parties have suggested that revenue meter data may be used to verify the actual hourly output of an ERR, and e-Tags maybe used to demonstrate the total energy that flowed on a transmission path from an ERR, or as per Powerex's examples outlined in these comments, from pool of resources containing an ERR to a CBA, on a real-time basis. Powerex suggests that a notation in the miscellaneous/token field or memo field on the e-Tag could be included to track the contract associated with the ERR.

E-Tag Accuracy in Verification:

PacifiCorp argues that the "e-Tag process lacks the controls necessary to ensure that the documentation is authoritative"[11] in part due to the fact that the source on an e-Tag may be a pool of resources or an entire BA's system. While e-Tags in and of themselves cannot act as the single "authority" on generation, title transfer and delivery, e-Tags are the most reliable method in WECC of verifying that energy was scheduled and delivered on a transmission path between two BAs. When combined with revenue meter data and an approved contract, together they act as authoritative documentation.

E-Tag Requirements: Pool of Resources or Facility Specific:

Powerex does not interpret the language in §399.16 (b)(1)(A) as prohibiting a schedule that comes from a pool of resources located in the same BA from counting towards Category 1 and has asked for clarification from the Commission on this matter earlier in these comments.

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[10] PacifiCorp Reply Comments at 4
[11] PacifiCorp Reply Comments at 4

Based on its interpretation of the language in §399.16 (b)(1)(A) as permitting schedules from a pool of resources, Powerex does not share PacifiCorp's perspective that e-Tags may not be used to track and verify deliveries of RPS products due to the fact that e-Tags may be from a pool of generating resources. Powerex interprets the statute as permitting a schedule from a single ERR or a pool of resources which includes the ERR or a number of ERRs, provided there is a continuous path from the ERR or ERRs to a CBA.

In the case where the schedule comes from a pool of resources, the source point, for example ("BC Power Supply") in the e-Tag is a group of generating units that includes the ERR or ERRs. The e-Tag may be used to determine the total amount of energy delivered from the pool of resources that includes the ERR and the meter data will determine the quantity of that hourly schedule that was generated by the ERR and thus counts as Category 1. Whether the schedule is from a pool of resources or from a single ERR, only the fraction of the schedule generated by ERRs, as measured by revenue meter data, would count in product content Category 1.

Powerex agrees with PacifiCorp that the adaption of a requirement to e-Tag directly from specific ERRs on a stand-alone basis would be costly, burdensome and onerous as it would mandate an inefficient use of the transmission system and increase delivered costs to ratepayers.

> For example, a 100MW wind facility (with a 30% capacity factor) and a 100MW large hydro facility could have the same source point. In periods where the output of both resources is being imported into California as a total 100MW delivery, it may be practical and efficient to schedule 100MW from the "pool of resources" consisting of the RPS eligible wind facility and a non-RPS eligible hydro facility, on a continuous firm transmission path from the source point to CBA. If in a particular hour 100MW was scheduled and during that hour the wind facility only generates 20MW (as per revenue meter data) then only 20MW would count

> towards Category 1 and the balance of the hourly schedule, 80MW would be comprised of energy from the large hydro facility and real-time ancillary services, which would not qualify for RPS compliance purposes.[12]

If the Commission created a requirement that parties must e-Tag directly from ERRs on a standalone basis this would create a situation, using the above example, where 100MW of transmission would need to be held open for the wind project - which generates 30MW on average -- and an additional 100MW of transmission would be held open for the hydro facility. This will effectively strand transmission on paths to California on an ongoing basis. Such inefficient use of the transmission system would increase costs to California ratepayers, hamper California's progress towards is renewable goals, and potentially undermine broader wholesale electricity market efficiency in the WECC region at the expense of all ratepayers.

An E-Tag's Physical Path demonstrates Delivery not necessarily Title:

PacifiCorp points out that transmission providers, which are responsible for approving e-Tags, do not have contractual information needed to assess the entries in the purchasing-selling entity ("PSE") field of the e-Tag, which can result in incorrect PSE information in an approved tag. For these reasons PacifiCorp states that e-Tags cannot be used to "demonstrate the establishment of or transfer of title to the renewable energy."[13]

Powerex is concerned this statement may actually confuse the issue as parties have proposed to use e-Tags to authoritatively track deliveries, and not to authoritatively verify title of energy. E-tags have substantial validation and enforcement rules in place to determine the source generation pool of resources, the transmission path,

[12] PacifiCorp Reply Comments at 5.
[13] PacifiCorp Reply Comments at 4

and the delivery location, which are the relevant components to establish delivery between balancing authorities.

Title transfer for a renewable energy product is specified in the contract between the buyer and the seller, approved by the Commission. When the contact is combined with hourly revenue meter data and delivery data (as supported by the e-Tags), the entire chain of generation, title transfer and delivery can be demonstrated. A lack of validation mechanism on the PSE field in the physical path of the e-Tag for the associated BAs does not impact whether or not renewable energy was generated and delivered to a CBA. While the Commission has not stated that the PSE field in the physical path would be used for tracking of Category 1 deliveries, if the Commission did choose to utilize this field, controls are simply not necessary. The Commission's contract approval process authoritatively determines which party is eligible to claim the renewable energy product. For this reason there is no benefit to participants of filling in the PSE information incorrectly, only the potential lost opportunity of the parties to demonstrate delivery for the appropriate RPS Category. In other words, incorrect PSE entries may only result in a lost opportunity to claim Category 1 deliveries for which a party is rightfully entitled. It cannot result in a party receiving credit for Category 1 deliveries for which a party is not entitled. For this reason, Powerex feel that controls are simply not necessary on this field.

If the Commission decides that e-Tags do have a role to play in demonstrating delivery to a CBA, there are a number of fields that may be used to track and organize relevant data without any changes to the e-Tag's reliability function: such as

the Miscellaneous Token Field (on each row of the physical path of the e-Tag), which has been used by the CEC to verify RPS delivery requirements, and the e-Tag comment field.

Powerex would also like to point out to the Commission that e-Tags are expected to be used in California's cap-and-trade program to determine the entity responsible for any carbon compliance obligations associated with energy imports into the State. Powerex feels that, where practical, the Commission should ensure that the RPS rules are consistent with the rules for the cap-and-trade program.

As stated in previously submitted comments Powerex believes that tracking and verification of Category 1 quantity may be determined by counting the lesser of the revenue meter data for the ERR for the generation hour and the e-Tag from the interconnection point of the ERR in the source BA to a CBA.

Third Party Verification Increases the Integrity of the Program and Reduces Workload on CPUC Staff

The Commission notes SCE's suggestion that "each retail seller retain information from WREGIS, e-Tags, transmission schedules, and generation facility metering data in an "auditable" form to be able to show the Commission compliance with the required criterion and proposes adoption of SCE's proposal on an interim basis.[14] Powerex suggests a cost effective, timely and reliable solution may be to rely on third party verification. Powerex would like to point out Open Access Technology International, Inc. ("OATI") currently collects publically available e-Tag data, to comply with FERC and NAESB requirements, and suggests the Commission consider approaching OATI to determine whether it may be appropriate for OATI to store e-Tag data for LSE's RPS compliances requirements.

[14] PD at 25.

The California Air Resources Board already has developed a robust program for using third-party verifiers with a complementary skill set. CPUC staff could develop guidelines for verifiers and continue to conduct spot audits as required.

D. Section 3.6 - §399.16(b)(3) Unbundled RECs and Electricity That Does Not Qualify Under §§399.16(b)(1) or (2))

In the PD, the Commission refers to Powerex' suggestion in its initial comments that RECs associated with over-generation may be used in accordance with §399.16(b)(1). Powerex wishes to point out that in its reply comments it reconsidered this position based on reviewing proposals from other parties and upon further reflection Powerex concluded that allowing for true-ups of RECs in product content Category 1 would conflict with the legislation and could create potential for abuse through innovative scheduling practices.

Powerex appreciates the opportunity to provide its comments on the PD as well as the Commission's anticipated consideration of its comments.

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

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