

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue
Implementation and Administration of
California Renewable Portfolio Standard
Program.

Rulemaking 11-05-005
(Filed May 5, 2011)

**OPENING COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES
IN RESPONSE TO ADMINISTRATIVE LAW JUDGE'S SIMON'S
PROPOSED DECISION IMPLEMENTING PORTFOLIO CONTENT CATEGORIES
FOR THE RENEWABLES STANDARD PORTFOLIO (RPS) PROGRAM**

DIANA L. LEE
Attorney for the Division of Ratepayer
Advocates

California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-4342
Fax: (415) 703-2262
E-mail: diana.lee@cpuc.ca.gov

YULIYA SHMIDT
Analyst for the Division of Ratepayer
Advocates

California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-2719
Fax: (415) 703-2262
E-mail: yuliya.shmidt@cpuc.ca.gov

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I. INTRODUCTION AND BACKGROUND

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) submits the following comments on the Proposed Decision of Administrative Law Judge (ALJ) Simon "Implementing Portfolio Content Categories for The Renewables Standard Portfolio Program" (PD), issued October 7, 2011.

The PD would:

- Adopt definitions for the three product categories delineated in Senate Bill (SB) 2(1x); and
- Clarify a host of technical issues pertaining to delivering RPS-eligible energy under the new legislation and demonstrating compliance with the product categories

DRA agrees with the PD on most points but recommends that the Commission clarify certain aspects of Category 2 requirements and reconsider the PD's strict interpretation of Category 2 products.¹ DRA's proposed changes to the definitions are in Appendix A.

II. DISCUSSION

A. **The Commission should clarify that while the energy associated with the Renewable Energy Credit (REC) of Category 2 transactions must be available to the buyer at the time of purchase, the buyer may sell the energy at any time after the purchase**

DRA agrees with the PD's characterization of Category 2 (Firmed and Shaped) transactions, as follows:

"[F]irmed and shaped transactions should be seen as fundamentally providing substitute energy in the same quantity as the contracted-for RPS-eligible generation, in order to fulfill the scheduling into a California balancing authority of the RPS-eligible generation, which can be set in a manner that meets the timing and quantity requirements of the retail seller."²

¹ DRA uses the terms "Category 1" to refer to products procured pursuant to Section 399.16(b)(1), "Category 2" to refer to products procured pursuant to Section 399.16(b)(2), and "Category 3" to refer to products procured pursuant to Section 399.16(b)(3).

² Proposed Decision of ALJ Simon, pp.39-40.

The PD would require Category 2 transactions to fulfill the following three elements: 1) simultaneous purchase of energy and its associated Renewable Energy Credits (RECs); 2) availability of the purchased energy to the buyer; and, 3) acquisition of the substitute energy at the time of or prior to the acquisition of the RPS-eligible energy. While the required elements appear reasonable. DRA recommends clarification of the second required element, the availability of purchased energy to the buyer, so that the PD clearly states that the energy associated with the REC must be available at the time of purchase but can be resold at any time after the purchase.

To require that the energy associated with the RECs be available to the buyer at the time the buyer purchases the energy is consistent with differentiating category 2 transactions (firming and shaping) from category 3 transactions (transactions for only RECs, and other transactions that do not meet the requirements of category 1 and 2 transactions). Otherwise, there would be no significant difference between a firming and shaping transaction and a transaction in which a buyer purchased only RECs. However, the Commission should make it clear that the buyer can resell the energy it purchased along with the REC at its discretion. Forcing the buyer to wait to sell the energy would add an additional requirement to Category 2 transactions, yet would provide no additional value to ratepayers. Inherent in Category 2 transactions is the expectation that the buyer will sell the electricity it acquired with the REC (hence the need for substitute electricity), and whether the buyer sells the electricity immediately at the time of purchase or at a later time seems to only make a difference insofar as administrative costs are concerned.

B. The Commission should clarify its definition of the incremental requirement of Category 2 transactions.

DRA agrees with the PD's interpretation that the incremental requirement of substitute energy as part of Category 2 transactions can be simply defined as "energy that is newly procured by the retail seller for the firming and shaping transaction."³ The PD clarifies that the substitute electricity must be scheduled into a California balancing authority within the same calendar year.⁴ However, the PD is silent on whether the newly procured substitute electricity must be procured for the same term in years as the purchase of the RPS-eligible electricity. The

³ PD, p.43.

⁴ PD, Conclusion of Law 16, p.60.

Decision should clarify the required term now so that Energy Division's review of advice letters can proceed smoothly and that utilities submitting contracts for review understand the requirements in advance of executing purchased power agreements.

III. CONCLUSION

DRA supports the PD's resolution of issues related to portfolio content categories for the renewables standard program, but recommends that the Commission clarify the PD's proposed requirements for Category 2 transactions consistent with DRA's comments above.

Respectfully submitted,

/s/ DIANA L. LEE

Diana L. Lee

Attorney for the Division of Ratepayer Advocates

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-4342
Fax: (415) 703-2262
Email: Diana.lee@cpuc.ca.gov

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APPENDIX A

Proposed Changes to Conclusion of Law and Ordering Paragraph of the PD

Conclusion of Law

16. 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)(2), 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 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); but this requirement does not prevent the buyer from reselling the energy purchased from the RPS-eligible generation facility at any time after the purchase from the RPS-eligible generation facility.
- the buyer acquires the substitute energy at the same time as it acquires the RPS-eligible energy.

Ordering Paragraph

2. A retail seller claiming that procurement for compliance with the California renewables portfolio standard from a contract signed on or after June 1, 2010 counts in the portfolio content category described in Pub. Util. Code § 399.16(b)(2), as effective December 10, 2011, must provide information to the Director of Energy Division sufficient to demonstrate that 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 renewables portfolio standard, and that the substitute electricity provides incremental electricity, if the following conditions are met:

- the buyer simultaneously purchases energy and associated renewable energy certificates (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), but this requirement does not prevent the buyer from reselling the energy purchased from the RPS-eligible generation facility at any time after the purchase from the RPS-eligible generation facility
- the buyer acquires the substitute energy at the same time as it acquires the renewables portfolio standard-eligible energy.

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 compliance with the California renewables portfolio standard are met by the procurement.