

**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 TRANSWEST EXPRESS LLC
TO PROPOSED DECISION**

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Dated: October 27, 2011

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Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.))))	Rulemaking 11-05-005 (Filed May 5, 2011)
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Pursuant to Rule 14.3 of the California Public Utility Commission’s (“CPUC”) Rules of Practice and Procedure, TransWest Express LLC (“TransWest”) provides its comments to Administrative Law Judge Simon’s Decision Implementing Portfolio Content Categories For The Renewables Portfolio Standard Program (“Proposed Decision”) in the above-captioned proceeding. The Proposed Decision focuses on new Section 399.16 of the Public Utilities Code under California Senate Bill (SB) 2 (1X),¹ which establishes portfolio content categories for Renewables Portfolio Standard (“RPS”) procurement, including limitations on procurement for certain categories.

As TransWest indicated in its Initial Comments² to the July 12, 2011, ruling requesting comments on these issues, prompt adoption of rules regarding the product content categories is a critical part of overall implementation of the new 33% RPS standard. Because of the procurement limitations placed on some categories, and the unlimited procurement associated

¹ Senate Bill 2 (2011-12 First Extraordinary Session, Stats 2011, ch. 1) (effective Dec. 10, 2011) (“SB 2 (1X)”).

² Initial Comments of TransWest Express LLC (filed Aug. 8, 2011) (“August 8 Comments”). A detailed discussion of TransWest and description of its 725-mile, 600 kV direct-current (DC) transmission line development from Wyoming to substations under the operational control of California Balancing Authority Areas is set forth in these comments. *See* August 8 Comments at 1-2.

with others, it is particularly important that the lines between categories be delineated as clearly as possible.

SB 2 (1X) established a sound policy that affords retail sellers subject to California's RPS the flexibility of meeting the 33% obligation—without limits on the amount procured—with out-of-state resources that meet specified operational criteria, namely, out-of-state generation scheduled directly into a California balancing authority without substitution from any other source, or transactions scheduled into a California balancing authority through a dynamic transfer arrangement. SB 2 (1X) limits procurement relying on other types of transactions, for example, transactions that utilize substitute electricity (*i.e.*, “firmed and shaped” products under Section 399.16(b)(2)) and transactions where only renewable attributes are procured, without associated energy (*i.e.*, “unbundled RECs” products under Section 399.16(b)(3)). The Proposed Decision correctly rejected proposals by some parties that, in this regard, would have deviated from the clear intent of the legislation.³

TransWest appreciates the priority given to these issues and strongly supports the approach taken by the Proposed Decision. Below, TransWest sets forth limited comments that it urges the Commission to incorporate in its final Decision to ensure needed clarity when implementing product content categories.

I. COMMENTS

A. Paragraph 5 Of The Findings Of Fact Should Be Modified To Add Reference To Real-Time Ancillary Services

Paragraph 5 of the Findings of Fact describes one of two product content categories that are set forth in Section 399.16(b)(1)(A), *i.e.*, transactions scheduled into a

³ *See, e.g.*, Proposed Decision at 32-35 (rejecting comments that would have permitted some types of unbundled RECs—which are specifically mentioned only under Section 399.16(b)(3)—also to be eligible to be counted under the Section 399.16(b)(1)(A) product content criteria).

California balancing authority without substituting electricity from another source. As defined in the statute and described on pages 18-19 of the Proposed Decision, one component of this category is that it permits use of real-time ancillary services required to maintain an hourly or subhourly import schedule. Paragraph 5 of the Findings of Fact omits any reference to this.

Accordingly, it should be amended as follows:

5. Electricity from a generation facility located outside the boundaries of a California balancing authority may be scheduled into a California balancing authority on an hourly or subhourly basis without the substitution of energy from another source by using real-time ancillary services supplied by the non-California balancing area.

B. The Commission Should Clarify That “Firmed and Shaped” Transactions That May Be Facilitated By A Dynamic Transfer Are Not Eligible To Be Classified Under Section 399.16(b)(1) And Paragraph 1.d Of The Ordering Paragraphs Should Be Amended

As discussed above, TransWest supports Commission adoption of the Proposed Decision and believes that it has correctly defined product categories under Section 399.16. However, because SB 2 (1X) made a policy determination directing the Commission to limit procurement for certain product categories, it is critical to minimize any potential overlap or ambiguity between content categories. In that regard, TransWest requests the Commission to add one clarification regarding the distinction between “firmed and shaped” products (procurement of which is limited) and out-of-state resources dynamically transferred to a California balancing authority area (“BAA”) (which are not subject to any procurement limitations).⁴ In addition, TransWest requests that the description of dynamic transfers in Paragraph 1.d of the Order be amended.

The Proposed Decision correctly describes firmed and shaped transactions as

⁴ See SB 2 (1X), § 399.16(c).

including procurement of energy and RECs from an RPS-eligible facility combined with the substitution of energy actually scheduled into a California BAA.⁵ With respect to dynamic transfers, the Proposed Decision appropriately determined that at the compliance determination stage, the retail seller must be able to show that “the dynamic transfer mechanism was in place and effective at the time of the generation claimed, and that the generation was actually dynamically transferred”⁶—thus, there can be no substitution involved. TransWest notes it is possible parties may structure some firmed and shaped transactions to be facilitated by a dynamic transfer arrangement between the out-of-state BAA and a California BAA. A transaction that includes the elements of a firmed and shaped product, *i.e.*, it includes substitute energy—and that also happens to be facilitated by a dynamic transfer arrangement—should not be deemed to fall under the dynamic transfer category under Section 399.16(b)(1)(B).

The final Decision should at a minimum provide an appropriate clarification addressing this issue. In addition, TransWest recommends adding clarifying language in the description of compliance demonstration requirements for dynamic transfers in Ordering Paragraph 1.d. Suggested language is included in Paragraph 1.d as set forth below and in the Appendix.

In addition to the above concern, TransWest notes that Paragraph 1.d of the Order should be modified to refer specifically to “dynamic transfer” agreements. Currently, Paragraph 1.d describes only generation from a facility scheduled “into a California balancing authority pursuant to an agreement between the balancing authority where the generation facility is located and the California balancing authority ...”⁷ The paragraph never mentions “dynamic

⁵ Proposed Decision at 40.

⁶ *Id.* at 29.

⁷ Proposed Decision at 63 (emphasis added).

transfer” even though Section 399.16(b)(1)(B) specifically uses this term.⁸ To correct this, and to address the clarification concern discussed above, Paragraph 1.d of the Order should be modified as follows:

- 1.d. the generation from that facility is scheduled into a California balancing authority (without substituting electricity from another source) pursuant to a dynamic transfer agreement between the balancing authority where the generation facility is located and the California balancing authority into which the generation is scheduled.

C. The Decision Should Clarify That, In The Conclusions of Law And The Order, Language Referring To Procurement Through “Contracts” Is Not Intended To Restrict Procurement Through Utility-Owned Generation Pursuant to Section 399.14

Section 18 of SB 2 (1X) (new Section 399.14 of the Public Utilities Code)

provides that under certain circumstances electrical corporations may apply to the Commission for approval to construct, own, and operate an eligible renewable energy resource for purposes of meeting RPS obligations.⁹ Accordingly, some RPS procurement may be through utility-owned generation rather than under contracts with third-party suppliers—including procurement that may not fall under the Section 399.16(b)(1)(A) category of having a first point of interconnection with a California BAA. In other words, product content category analysis may be relevant to any Commission review of an electrical corporation’s application for approval of generation under Section 399.14.

TransWest believes the Proposed Decision itself refers to RPS procurement in a manner sufficiently general to include any utility-owned generation that may count toward RPS requirements under Section 399.14. However, several Conclusions of Law and Ordering paragraphs use more narrow language referring to “contracts” or “procurement from contracts

⁸ By contrast, for example, the Proposed Decision includes the term “dynamic transfer agreement” in its description of that category in Paragraph 15 of the Conclusions of Law. *See* Proposed Decision at 59.

⁹ *See* SB 2 (1X), Section 399.14.

signed” which could be interpreted to be restricted to procurement by buyers under purchase agreements with third-party suppliers.¹⁰ As a practical matter, product content distinctions may be less relevant for utility-owned RPS generation in the sense that a utility would likely be expected to develop such generation to be owned and operated in a manner that falls under a Section 399.16(b)(1) category, not subject to procurement limitations on “firmed and shaped” or unbundled RECs transactions. To lessen any potential ambiguity on this issue, however, the Commission should include a clarification in the Decision that language referring to “contracts” in the Conclusions of Law and the Order is not intended to exclude procurement from generation developed by an electrical corporation pursuant to Commission authorization under Section 399.14.

¹⁰ These paragraphs include Paragraphs 6, 10, 12, 13, 14, 15 and 16 of the Conclusions of Law and Paragraphs 1, 2, 3, 4, 6 and 14 of the Ordering paragraphs.

II. CONCLUSION

With the limited clarifications set forth above, TransWest urges the Commission promptly to adopt the Proposed Decision issued in this proceeding.

Respectfully submitted,

/s/ Jared W. Johnson

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On behalf of TransWest Express LLC

Dated: October 27, 2011

Appendix

Proposed Findings of Fact

5. Electricity from a generation facility located outside the boundaries of a California balancing authority may be scheduled into a California balancing authority on an hourly or subhourly basis without the substitution of energy from another source by using real-time ancillary services supplied by the non-California balancing area.

Proposed Ordering Paragraphs:

IT IS ORDERED that:

1. A retail seller claiming that procurement for compliance with the California renewables portfolio standard from a procurement contract signed on or after June 1, 2010 counts in the portfolio content category described in Pub. Util. Code § 399.16(b)(1), as effective December 10, 2011, must provide information to the Director of Energy Division sufficient to demonstrate that the generation facility from which the electricity is procured is certified as eligible for the California renewables portfolio standard and either:

- a. has its first point of interconnection to the Western Electricity Coordinating Council transmission grid within the metered boundaries of a California balancing authority area; or
- b. has its first point of interconnection with the electricity distribution system used to serve end users within the metered boundaries of a California balancing authority area; or
- c. the generation from that facility is scheduled into a California balancing authority without substituting electricity from any other source, 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; or
- d. the generation from that facility is scheduled into a California balancing authority (without substituting electricity from another source) pursuant to a dynamic transfer agreement between the balancing authority where the generation facility is located and the California balancing authority into which the generation is scheduled.

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

VERIFICATION

I am an officer of TransWest Express LLC, and am authorized to make this verification on its behalf. I have read the foregoing *Comments of TransWest Express LLC to Proposed Decision* dated October 27, 2011. The statements in the foregoing document 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. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 27th day of October, 2011 at Denver, Colorado.

/s/ Roxane J. Perruso
Roxane J. Perruso
Vice President
TransWest Express LLC