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 COUNTY SANITATION DISTRICTS OF LOS ANGELES COUNTY ON THE PROPOSED DECISION IMPLEMENTING PORTFOLIO CONTENT CATEGORIES FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

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The County Sanitation Districts of Los Angeles County (Sanitation Districts) respectfully submit the following comments in response to the *Proposed Decision Implementing Portfolio Content Categories For The Renewables Portfolio Standard Program* (PD), issued on October 7, 2011.

In its opening and reply comments to the *Administrative Law Judge's Ruling Requesting Comments On Implementation Of New Portfolio Content Categories For The Renewables Portfolio Standard Program* (Ruling), the Sanitation Districts recommended that unbundled renewable energy credits (RECs) associated with renewable energy produced by facilities meeting the criteria of the first portfolio content category (Category One) described in § 399.16(b)(1) of SB 2 (1X) and consumed onsite should count as Category One products. The PD errs in concluding that, "There is no reason, textual or otherwise, to believe that the Legislature intended some [unbundled RECs] to belong in § 399.16(b)(1)."[1] In fact, several reasons, textual and otherwise, which are described in these comments, support the conclusion

[1] PD, p. 32.

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that unbundled RECs from resources that meet the criteria of Category One remain Category One products even if the energy is consumed on the site of the resource.

I. THE PD ERRS IN ITS INTERPRETATION OF THE PLAIN MEANING OF THE STATUTE REGARDING UNBUNDLED RECS

A. Unbundled RECs that Belong in Category Three are Only Those that Do Not Meet the Criteria of Category One or Two

Regarding the place of unbundled RECs in the portfolio content categories, Part 3.4.3 of the PD states the following:

> Unbundled RECs, as TURN points out, are identified as belonging in § 399.16(b)(3) and are mentioned only in § 399.16(b)(3). The statutory text itself, therefore, places unbundled RECs in that portfolio content category. Since the categories are separate, that is where unbundled RECs belong. There is no reason, textual or otherwise, to believe that the Legislature specifically identified unbundled RECs as belonging in § 399.16(b)(3), but really intended some of them to belong in § 399.16(b)(1).[2]

This statement misinterprets the plain meaning of § 399.16(b)(3). The statutory description of Category Three 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.*, Category One or Two). The PD ignores the modifying phrase, "that do not qualify under the criteria of paragraph (1) or (2)", as it relates to unbundled RECs. As a matter of grammar, the fact that this modifying phrase is placed directly following the reference to unbundled RECs means that it should be read to modify the reference to unbundled RECs. This modification clearly means that the unbundled RECs that belong in Category Three are only those that do not already qualify for Category One or Two.

Furthermore, in Part 3.6, the PD interprets § 399.16(b)(3) to contain three elements:

> 1. "[e]ligible renewable energy resource electricity products. . .that do not qualify under the criteria of paragraph (1) or (2);"
> 2. "any fraction of the electricity generated" that does not qualify under the criteria of paragraph (1) or (2); and

[2] PD, p. 33.

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3. "unbundled renewable energy credits".[3]

Here, the PD incorrectly reads the modifying phrase as if it skipped over the reference to unbundled RECs and referred only to the first two elements. This is an inconsistent and forced interpretation that does not adhere to the grammatical construct of § 399.16(b)(3). By ignoring the modifying phrase in Part 3.4.3 and Part 3.6, the PD ignores the plain language and clear intent of the statute in terms of its treatment of unbundled RECs.

B. All Eligible Renewable Energy Resource Electricity Products, Including Unbundled RECs, that Meet the Interconnection Criteria of §399.16(b)(1) Belong in Category One

The Legislature would not refer to "unbundled renewable energy credits, that do not qualify under the criteria of paragraph (1) or (2)" (*i.e.*, Category One or Two) in § 399.16(b)(3) if unbundled RECs could not belong in Category One or Two. A clear reading of § 399.16(b)(1) shows that unbundled RECs can in fact qualify for Category One. Nothing in the criteria of § 399.16(b)(1) suggests that a Category One product must be a bundle of energy and RECs. If the Legislature had intended to limit Category One to bundled transactions, it could have done so. Instead, it defined Category One in terms of the resources that are directly or effectively connected to a CBA.

Furthermore, the PD recognizes that SB 2 (1X) eliminates the delivery requirement for RPS eligibility by amending Pub. Res. Code §25471 to remove the references to delivery.[4] Therefore, SB 2 (1X) does not require that the RECs be "acquired with the RPS-eligible energy from a generator with a first point of interconnection with a California balancing authority with which the RECs are associated"[5] for the transaction to meet the criteria of Category One. In addition, any eligible renewable energy resource electricity product that meets the

[3] PD, pp. 44-45.
[4] PD, p. 8.
[5] PD, pp. 36-37.

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interconnection criteria of § 399.16(b)(1) must qualify for inclusion in Category One, regardless of whether it is a bundled or unbundled product.

C. The Legislative History of SB 2 (1X) and its Predecessor Bill, SB 722, Demonstrate the Legislative Intent to Include Qualifying Unbundled RECs in Category One

The Legislature considered but ultimately rejected language that would have clearly classified all unbundled RECs as Category Three products. SB 722 was the predecessor bill to SB 2 (1X). The definitions of the portfolio content categories in § 399.16(b) of the final version of SB 722 are identical to those in § 399.16(b) of SB 2 (1X). The legislative history of SB 722 includes an evolution of § 399.16(b) as it pertains to the definitions of the portfolio content categories. The August 2, 2010 version of SB 722 defined Category One and Category Three resources as follows:

> (A) Have a first point of interconnection with a California balancing authority or are scheduled from the eligible renewable energy resource on an hourly or within-the-hour basis into a California balancing authority without substituting electricity from another source. Any fraction of the electricity generated by an eligible renewable energy resource satisfying this criterion shall count toward this product category.[6]

> (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.[7]

This language did not allow resources interconnected at the distribution level to qualify for Category One. In addition, the language here is consistent with the PD's incorrect interpretation of SB 2 (1X) that the modifying phrase "that do not qualify under the criteria of paragraph (1) or (2)" does not refer to "unbundled renewable energy credits". This language clearly places all unbundled RECs in Category Three.

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[6] August 2, 2010 amendments to SB 722, § 20, p. 35, available at http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0701-0750/sb_722_bill_20100802_amended_asm_v93.pdf

[7] August 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

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The August 16, 2010 amendments to SB 722 incorporated changes to the treatment of unbundled RECs in SB 722 that were carried over to SB 2 (1X) and allowed for the eligibility of unbundled RECs in Category One. The eligibility criteria of § 399.16(b)(1) were amended to include "have a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area", as follows:

> Section 399.16(b)(1)(A) Have a first point of interconnection with a California balancing authority, *have a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area,* or are scheduled from the eligible renewable energy resource ~~on an hourly or within the hour basis~~ into a California balancing authority without substituting electricity from another source. ~~Any fraction of the electricity generated by an eligible renewable energy resource satisfying this criterion shall count toward this product category.~~[8]

(Inserts shown in italics, deletions in strikethrough.) This change made way for resources that provide power for onsite consumption, many of which are interconnected at the distribution level, to be included in Category One.

The definition of Category Three in § 399.16(b)(3) was also amended in the August 16, 2010 amendments to move the reference to unbundled RECs from after the modifying phrase, "that do not qualify under paragraph (1) or (2)", to before the modifying phrase, as follows:

> 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~~.[9]

This amendment caused the reference to unbundled RECs to be subject to the modifying phrase and clarifies that the only unbundled RECs that belong in Category Three are those that do not qualify for Category One or Two. Conversely, this enables unbundled RECs that qualify for Category One or Two based on their criteria to be included in those Categories.

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[8] August 16, 2010 amendments to SB 722, § 20, p. 38, available at http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0701-0750/sb_722_bill_20100816_amended_asm_v92.pdf.

[9] August 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.

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These amendments, which were carried over unmodified into the final version of SB 2 (1X), clearly indicate the intent of the Legislature to include unbundled RECs that qualify under the criteria of § 399.16(b)(1) in Category One. There is simply no other compelling reason why these amendments to SB 722 would have been made. If the Legislature had intended for all unbundled RECs to belong in Category Three, as the PD concludes, the August 2, 2010 version of SB 722 would have made this intention clear, and the amendments in the August 16, 2010 version would not have been made.

II. THE PD ERRS IN ITS REPONSE TO POLICY ARGUMENTS IN FAVOR OF CATEGORY ONE RECS

A. There is a Clear Distinction Regarding Which Unbundled RECs Qualify for Category One

In establishing the basis for its position on the categorization of unbundled RECs, the PD states that, "it is clear that the portfolio content categories have fixed boundaries."[10] It further states that the "limitations on the use of procurement in each category for RPS compliance do not make sense, and could not be administered, unless there are bright lines separating the portfolio content categories."[11] The PD apparently takes the position that allowing different unbundled RECs to belong in different portfolio content categories would somehow blur the "fixed boundaries" of the categories and dim the "bright lines separating the portfolio content categories." This position leads to the PD to conclude that, "Since the categories are separate, that [§ 399.16(b)(3)] is where unbundled RECs belong."[12]

However, allowing unbundled RECs that are associated with a resource that meets the interconnection criteria of § 399.16(b)(1) to belong in Category One would not blur the "fixed boundaries" or dim the "bright lines" of the portfolio content categories. There is in fact a very

[10] PD, p. 31.
[11] PD, pp. 31-32.
[12] PD, p. 32.

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clear and unambiguous distinction with very "bright lines" regarding which unbundled RECs belong in Category One. It is only those unbundled RECs that are associated with a resource that meets the criteria of § 399.16(b)(1). Any unbundled REC that does not meet any of these criteria (or any of the criteria for Category Two) would be considered a Category Three product.

The PD's emphasis on "fixed boundaries" and "bright lines" also relates to the PD's position that, "The portfolio content category that RECs from a particular RPS procurement transaction fall into should not depend on tracing the history of the RECs (which may be freely sold) through a variety of transactions."[13] The PD assumes that repeated sales of RECs would complicate the compliance determination of the RECs when they are retired. However, there are simple remedies to this issue. The WREGIS certificate that accounts for the creation of a REC already specifies the time, location, and technology or fuel of the actual renewable generation that the REC represents. It was identified by several parties in comments to the Ruling that the WREGIS certificate can easily be adapted to indicate the portfolio content category for which the REC qualifies[14]. Specifically, the Union of Concerned Scientists (which the PD incorrectly identified as being against inclusion of unbundled RECs in Category One[15]) stated:

> Since the WREGIS certificate associated with the REC will contain an RPS code that identifies the source of its electricity, the WREGIS certificate should also be able to indicate whether its underlying electricity comes from a facility that meets the requirements of § 399.16(b)(1).[16]

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[13] PD, p. 37.
[14] *See* California Municipal Utilities Association (CMUA) Opening Comments at 7; Calpine Corporation (Calpine) Opening Comments at 7; California Wastewater Climate Change Group (CWCCG) Opening Comments at 6; Los Angeles Department of Water and Power (LADWP) Opening Comments at 10; Pacific Gas and Electric Company (PG&E) Opening Comments at 17; Western Power Trading Forum (WPTF) Opening Comments at 7; Shell Energy North America (Shell Energy) Opening Comments at 6; NV Energy (NVE) Opening Comments at 8; Union of Concerned Scientists (UCS) Opening Comments at 3; Alliance for Retail Energy Markets (AReM) Opening Comments at 9.
[15] PD, fn. 48.
[16] *See* UCS Opening Comments at 3.

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With this indication on the WREGIS certificate, there is no need to trace the history of the RECs through various transactions for the final compliance determination when the RECs are retired.

B. Inclusion of Unbundled RECs that Meet the Interconnection Criteria of § 399.16(b)(1) in Category One would Not Drive Up Costs to Ratepayers

The PD states that including unbundled RECs in Category One "could lead to the repeated sales of RECs at premium prices"[17] and that , "This would simply drive up the cost to ratepayers… and unnecessarily increase the costs of complying with the state's RPS goals without providing any additional value."[18] The PD concludes that, "This scenario would not be a good deal for ratepayers."[19]

The notion that repeated trading of unbundled RECs before retirement would drive up the cost of RPS compliance to ratepayers has no basis. 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 a stable market, the price will remain the same, regardless of how many times a REC is traded before it is retired. In addition, if Category One unbundled RECs have a greater market value than Category Three unbundled RECs, any such difference will be a result of the limits the Legislature placed on the use of Category Two and Three products for RPS compliance.

Contrary to the PD's conclusion, including unbundled RECs that meet the interconnection criteria of § 399.16(b)(1) in Category One would likely decrease the cost of compliance. Including unbundled RECs that are associated with Category One resources whose energy is consumed onsite in Category One would increase the supply of Category One products.

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[17] PD, p. 33.
[18] PD, p. 33.
[19] PD, p. 33.

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According to the basic economic principle of supply and demand, if the supply of Category One products is increased, the cost of those products will naturally decrease.

The Center for Resource Solutions identified the economic benefits of trading Category One unbundled RECs in its opening comments:

> Permitting some trading of unbundled RECs will reduce the overall costs of the RPS program while promoting the development of renewable energy resources interconnected to California. Given that RECs are recorded and transacted on paper or electronically, trading RECs is far easier than trading actual electricity. Thus, using RECs can reduce transmission costs by allowing projects to avoid actual delivery of electricity over limited transmission paths.[20]

In addition, there would always be an inherent cap on the price for a Category One unbundled REC – the price of purchasing an additional Category One bundled REC. Retail sellers would only buy a Category One unbundled REC if it were at or below this cost. A liquid market for Category One REC trading creates flexibility for compliance and enables retail sellers to pursue the most economical compliance solution.

C. The Legislature's Recent Actions with Respect to Customer-Side Distributed Generation Do Not Apply to this Case

The PD addresses the argument that unbundled RECs originally associated with RPS-eligible distributed generation (DG) on the customer side of the meter should belong to Category One because of the high value of DG in implementing RPS policy and providing for RPS compliance without additional investment in expensive transmission projects. The PD's response to this argument is that it "does not take into account the Legislature's actions with respect to customer-side DG, most saliently Assembly Bill 920".[21] In referring to AB 920's treatment of the sale of surplus electricity from customer-side DG as bundled RECs and its

[20] *See* Center for Resource Solutions (CRS) Opening Comments at 3.
[21] PD, p. 34.

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treatment of the ownership of unbundled RECs associated with electricity from a DG system that is consumed onsite, the PD concludes the following:

> Thus, the statute specifically recognized that the sale of RECs associated with the on-site use of electricity from an RPS-certified DG facility is different from the sale by the system owner of both energy and RECs to a retail seller.[22]

While AB 920 does treat the sale of bundled RECs differently than unbundled RECs, this does not set any precedent for whether unbundled RECs associated with facilities that meet the interconnection criteria of §399.16(b)(1) should be included in Category One. AB 920 was enacted prior to the passage of SB 2 (1X) which legislates new rules for the treatment of unbundled RECs. Prior CPUC decisions established rules for unbundled RECs (where the terminology used was "tradable RECs") that were in line with the treatment of unbundled RECs in AB 920.[23] However, past rules, laws, and decisions are not necessarily a guideline for how to interpret the meaning of SB 2 (1X). In fact, using the treatment of unbundled RECs in past legislation to guide the interpretation of the treatment of unbundled RECs in SB 2 (1X) violates the standard identified in the PD, that the Commission must "look to the statute's words and give them their usual and ordinary meaning. The statute's plain meaning controls the court's interpretation unless its words are ambiguous."[24] As described above, the plain meaning of the statue's words indicate that unbundled RECs from facilities that meet the interconnection requirements of Category One count as Category One products. The words of SB 2 (1X) are not ambiguous in this regard, therefore AB 920 does not apply to this case and has no bearing on the treatment of unbundled RECs in SB 2 (1X).

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[22] PD, p. 35.
[23] *See* D.11-01-025 and D.10-03-021.
[24] PD, p. 6, quoting *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal. 4th 381, 387-388.

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III. PLACING ALL RECS IN CATEGORY THREE WOULD DISCOURAGE DEVELOPMENT OF RENEWABLE DISTRIBUTED GENERATION, CONTRARY TO THE OBJECTIVES OF SB 2 (1X) AS WELL AS STATE POLICY AND GOALS

The PD's placement of all unbundled RECs in Category Three would likely create very little incentive for the development of in-state renewable DG. Early indications are that the price of Category Three RECs will be low and unstable due to the decreasing limits placed on Category Three products in §399.16(c)(2) and a large supply of out-of-state unbundled RECs. This price uncertainty will discourage the development of in-state renewable DG. This is contrary to the objectives of SB 2 (1X) as well as State policy and goals. Section 5 of SB 2 (1X) specifically states that:

> (c) The program objective shall be to increase, in the near term, the quantity of California's electricity generated by renewable electrical generation facilities located in this state, while protecting system reliability, fostering resource diversity, and obtaining the greatest environmental benefits for California residents.
> (d) An additional objective of the program shall be to identify and support emerging renewable technologies in distributed generation applications that have the greatest near-term commercial promise and that merit targeted assistance.

Including unbundled RECs from in-state DG facilities in Category One will help fulfill these program objectives.

In addition, unbundled RECs from DG associated with Category One facilities provide several of the "unique benefits to California" listed in new §399.11(b) that cannot be provided by unbundled RECs from resources that do not meet the criteria of Category One or Two. RECs associated with DG facilities can provide the following listed benefits.

- Displace fossil fuel consumption within the state,
- Reduce air pollution in the state,
- Help meet the state's climate change goals by reducing emissions of greenhouse gases associated with electrical generation,

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- Promote stable retail electricity rates,
- Contribute to a diversified and balanced energy generation portfolio,
- Contribute to resource adequacy, and
- Support the safe and reliable operation of the grid.

Section 399.16 recognizes that "electricity products may be differentiated by their impacts on the operation of the grid in supplying electricity, as well as, meeting the requirements of this article." Unbundled RECs from DG associated with Category One facilities clearly provide an impact on the operation of the grid and on meeting the requirements of the legislation in ways that cannot be provided by unbundled RECs from resources that do not meet the criteria of Category One or Two. These impacts are the same regardless of whether the power is consumed onsite or sold as a bundled product. The PD's conclusion implies that generation from an eligible renewable resource that meets the interconnection criteria of Category One is more valuable to California if it is sold through a utility rather than used directly to serve load onsite. Nothing in the legislation supports this conclusion.

Renewable resources that produce energy that is consumed onsite also contribute to Governor Brown's Clean Energy Jobs Plan (Plan), which calls for the state to produce an additional 12,000 MW of renewable "localized electricity generation", defined as onsite or small energy systems located close to where energy is consumed.[25] The Plan highlights the benefits of localized generation, stating that it "can be constructed quickly (without new transmission lines) and typically without any environmental impact." As a whole, it is stated that the plan "will produce a half a million new jobs in the next decade". Including renewable generation that is

[25] *See* http://www.jerrybrown.org/sites/default/files/6-15%20Clean_Energy%20Plan.pdf

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consumed onsite in Category One will help encourage the growth of localized generation, furthering the goals of Governor Brown's Plan and creating California jobs.

Placing all unbundled RECs in Category Three could create unintended effects. This condition could create an incentive for onsite renewable generators that meet the interconnection criteria of Category One to export the power as a bundled Category One product, then buy back power from the grid. This type of arrangement, while potentially profitable to the owner of the facility, would create unnecessary inefficiencies in terms of increased transaction costs, a greater burden on the transmission and distribution system, and an increase in the RPS requirement of the utility.

Placing unbundled RECs associated with base load renewable onsite generation in Category Three will lower the value of these RECs, and could prevent new facilities from being built or encourage the closure of existing facilities. For each MW of base load biogas power that is not brought to the RPS market, four MW of wind or solar facilities must be built, which will require additional transmission facilities and increase costs for ratepayers.

A 2009 Staff Paper[26] from the California Energy Commission recognizes the significant potential that exists at California wastewater treatment plants to expand onsite biogas power resources. The report estimates that an additional 90 MW of renewable capacity is available based on the anaerobic digestion of conventional wastewater solids and an additional 450 MW of capacity is available through co-digestion of other high strength organic wastes, such as food and dairy waste. Since the wastewater treatment process consumes a significant amount of energy, most of this biogas power would be consumed onsite and create unbundled RECs. Placing these unbundled RECs in Category One will enable California wastewater treatment plants to tap into

[26] Kulkarni, Pramod. 2009. *Combined Heat and Power Potential at California's Wastewater Treatment Plants*. California Energy Commission. CEC-200-2009-014-SF.

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this unmet potential, significantly expand biogas-powered onsite renewable generation capacity, decrease the need for remote renewable facilities and associated transmission, and help California meet its RPS goals.

IV. CONCLUSION

The conclusion of the PD to place all unbundled RECs in Category Three conflicts with the statutory language. A careful reading of §399.16(b) shows that unbundled RECs associated with renewable energy produced by facilities meeting the interconnection criteria of Category One and consumed onsite should count as Category One products. Furthermore, unbundled RECs that belong in Category Three are only those that "do not qualify under the criteria" of Category One or Two. The Sanitation Districts respectfully urge the Commission to modify the PD to correct the treatment of unbundled RECs to conform to the statutory language of SB 2 (1X). In particular, the PD should be modified to recognize the existence of Category One unbundled RECs and to remove the conclusion that all unbundled RECs belong in Category Three. These modifications respect the statutory language, simplify compliance, help contain the costs of the RPS program, and conform to the goals of the legislation and state policy to encourage the development of in-state renewable onsite power resources. These modifications can serve as a solid foundation for future decisions on SB 2 (1X) and the RPS program.

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

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By */s/ Mark McDannel*
Mark McDannel

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VERIFICATION

I am the Supervising Engineer for the County Sanitation Districts of Los Angeles County, and am authorized to make this verification on its behalf. I have read the attached "Comments of the County Sanitation Districts of Los Angeles County on the Proposed Decision Implementing Portfolio Content Categories for the Renewables Portfolio Standard Program," 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 Whittier, California.

/s/ Mark McDannel
Mark McDannel

Mark McDannel, P.E. BCEE
Supervising Engineer

COUNTY SANITATION
DISTRICTS OF
LOS ANGELES COUNTY