BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.	R.11-05-005

OPENING COMMENTS OF SHELL ENERGY NORTH AMERICA (US), L.P. ON PRESIDING JUDGE SIMON'S PROPOSED DECISION IMPLEMENTING PORTFOLIO CONTENT CATEGORIES FOR THE RPS PROGRAM

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SUMMARY OF RECOMMENDATIONS

1. The classification of an RPS-eligible transaction will remain the same when the transaction is transferred, as long as the structure of the transaction remains the same and the REC has not been retired for RPS compliance.

2. Unbundled RECs may be eligible under P.U. Code Section 399.16(b)(1) or (b)(2). Unbundled RECs are not limited to Section 399.16(b)(3).

3. "Firmed and shaped" products qualify under P.U. Code Section 399.16(b)(2) as long as the substitute energy is "scheduled into a CBA" within the same calendar year that the RPS-eligible energy is generated. Replacement of the substitute energy by a subsequent purchaser is permitted if the replacement energy is scheduled within the same calendar year.

4. An RPS contract entered into prior to December 10, 2011 satisfies the requirements under Section 399.16(b)(2) if, at the time of the contract, the transaction met the "delivery" requirements in the CEC's RPS Eligibility Guidebook.

5. The "implementation" date for SBX1 2 shall be January 1, 2012.

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In accordance with Rule 14.3 of the Commission's Rules, Shell Energy North America (US), L.P. ("Shell Energy") submits its opening comments on Presiding Judge Simon's October 7, 2011 proposed decision ("PD"). The PD addresses implementation of the "portfolio content categories" for the Renewable Portfolio Standard ("RPS") program. Shell Energy is a registered energy service provider ("ESP") and a "Respondent" in this proceeding. Shell Energy's comments address factual, legal and technical errors in the PD.[1]

I.

INTRODUCTION

Clear standards are required for the portfolio content categories under P.U. Code Section 399.16(b). Buyers and sellers of RPS-eligible products must have certainty as to the classification of the products they are purchasing and selling. In addition, market participants must have confidence that a renewable product purchased at the wholesale level will retain its

[1] Proposed revised findings of fact, conclusions of law and Ordering Paragraphs are included in Appendix A.

product classification when that product is transferred to another entity, including but not limited to a load-serving entity ("LSE"). Some of the PD's recommended conditions for product classification appear to limit the transferability of certain RPS-eligible products. Clarifications to the PD should be made to ensure RPS product transferability and promote liquidity in the RPS market.

In its opening comments, Shell Energy will address the following clarifications that are required in the PD:

1. Transferability of RPS-Eligible Products: The PD must be clarified to ensure that when a Seller and Buyer enter into a transaction that meets the criteria under Section 399.16(b)(1) (in-State) or Section 399.16(b)(2) (firmed and shaped), the classification will continue to apply even if and when the Buyer transfers the transaction to another entity. When the physical flow of renewable energy under the transaction is the same, a product that qualifies under Section 399.16(b)(1) should not lose its status when it is transferred to another entity. Similarly, a firmed and shaped product should not lose its status under Section 399.16(b)(2) if the substitute energy is replaced with qualifying energy (scheduled into a CBA) when the transaction is transferred. Transferability of an RPS product is critical in order to maintain liquidity in the RPS market.

2. Treatment of Unbundled RECs: The PD's recommendation to classify all unbundled RECs under Section 399.16(b)(3) should be rejected. Unbundled RECs from "in-State" RPS-eligible generators qualify under Section 399.16(b)(1)(A). Unbundled RECs from out-of-State facilities, when combined with substitute energy delivered to a CBA, may qualify as "firmed and shaped" products under Section 399.16(b)(2). Section 399.16(b)(3) applies only to those RPS-eligible products that do not qualify under Section 399.16(b)(1) or (b)(2). Section 399.16(b)(3) is a residual provision that does not apply to all unbundled RECs.

3. Firmed and Shaped Products: The PD should be clarified to provide that in a "firmed and shaped" product that qualifies under Section 399.16(b)(2), "substitute" energy may be scheduled into a CBA at any time within the same calendar year that the RPS-eligible energy is generated. Moreover, substitute energy may be "replaced" with other qualifying energy when the transaction is transferred. In addition, the PD should be clarified to ensure that there are no restrictions on where or to whom the Buyer sells the energy from an RPS-eligible facility in a firmed and shaped transaction.

4. "Grandfathered" Contracts: The PD properly recommends that eligible contracts entered into prior to June 1, 2010 should "count in full" toward an LSE's RPS compliance, without the limitations (under Section 399.16(c)) associated with specific portfolio content categories. PD at p. 52. The Commission must address, on an expeditious basis, the meaning of "count in full" with respect to unlimited forward banking, earmarking and other matters of RPS procurement and flexible compliance. The Commission should consider these issues as soon as possible in order to enable LSEs and other RPS market participants to know the RPS-eligible products they are selling and buying, and to enable them to make the investments that are necessary to meet RPS compliance obligations.

5. Effective Date: The PD recommends that the Commission determine that the legal requirement for "delivery" ceases to exist once SBX1 2 is effective on December 10, 2011. PD at p. 9. The PD states that this change shall not alter an RPS contract entered into (or approved) before December 10, 2011. Id. at p. 10. The Commission should clarify that a pre-December 10, 2011 contract that met the "delivery" requirement as a "firmed and shaped" transaction under the pre-existing RPS statute will retain its status as a "firmed and shaped" transaction under Section 399.16(b)(2) beyond December 10, 2011. Finally, in order to provide

for an orderly transition to the new RPS structure, the implementation date for SBX1 2 should be January 1, 2012.

II.

TRANSACTIONS THAT QUALIFY UNDER P.U. CODE SECTION 399.16(b)(1) AND SECTION 399.16(b)(2) SHOULD BE TRANSFERABLE WITHOUT ALTERING THE PORTFOLIO CONTENT CATEGORY

The PD properly notes that "it is critical that sellers of RPS-eligible electricity know what they are selling; that buyers know what they are buying; and that the Commission is able to evaluate the portfolio content claims of retail sellers." PD at p. 14. On this basis, the PD acknowledges two basic tenets: "What you buy is what you have;" and "What you have is what you retire for RPS compliance." Id.

To this end, if a transaction between Seller and Buyer qualifies as an "in-State" product under Section 399.16(b)(1)(A), the Buyer should be able to re-sell the product, and that purchaser should be allowed to claim this product under Section 399.16(b)(1)(A). As long as the original Buyer does not retire the REC for RPS compliance, and as long as the original Buyer maintains the structure of the original transaction, the transferred product should qualify under Section 399.16(b)(1)(A).

For example, if an entity (Party 1) purchases RPS-eligible generation from the owner (Party 2) of a facility that has its first point of interconnection with a CBA, Party 1 should be able to transfer this transaction to another entity (Party 3), and Party 3 should be able to claim this product under Section 399.16(b)(1)(A). Because the RPS-eligible energy was scheduled into a CBA, the transaction should qualify under Section 399.16(b)(1)(A) each time it is transferred, until the RECs associated with the energy scheduled from the RPS-eligible facility are retired for RPS compliance.

Similarly, if an entity purchases a "firmed and shaped" product that is eligible under Section 399.16(b)(2), the firmed and shaped product should be transferable without limitation until the RECs are retired for RPS compliance. The purchaser of the transaction should be allowed to replace the substitute energy with other energy that is scheduled into a CBA within the same calendar year that the RPS-eligible energy is generated. As long as the conditions for a firmed and shaped transaction are satisfied in the original transaction, the transaction should be transferable until the RECs are retired.

The transferability of an eligible RPS product is fundamental to the success – and liquidity – of the RPS market. The PD recommends that "[t]he portfolio content category should depend on the transaction by which the retail seller claiming RPS credit acquired the RECs." PD at p. 36. Shell Energy does not object to this recommendation. However, the Commission should clarify the PD to provide that a transaction that originally qualifies under Section 399.16(b)(1) or (b)(2) does not lose its classification simply because the transaction is transferred.

Absent this clarification, the PD could be interpreted to exclude "third party" transactions from classification under P.U. Code Section 399.16(b)(1) or (b)(2). Shell Energy does not believe that it is the Commission's intent to limit the classification of RPS-eligible products under Section (b)(1) or (b)(2) to transactions between an LSE and the owner of an RPS-eligible facility. To do so would severely reduce liquidity and increase costs to consumers.

III.

QUALIFICATION FOR SECTION 399.16(b)(1) SHOULD INCLUDE UNBUNDLED RECS FROM "IN-STATE" RPS GENERATION FACILITIES

Shell Energy generally supports the PD's recommendations with respect to the classification of RPS-eligible products under Section 399.16(b)(1)(A). Shell Energy agrees, for

example, that in order for the RPS energy to qualify under Section 399.16(b)(1)(A), the electricity from the RPS-eligible facility must have a "first point of interconnection" with a CBA or must be "scheduled" into a CBA "without substituting electricity from another source." Shell Energy also agrees with the PD that the RPS energy must be scheduled in "real-time." Shell Energy agrees with the PD's recommendation that there must be an hourly schedule for deliveries to the CBA. See PD at p. 25.

Based on these fundamental prerequisites under Section 399.16(b)(1)(A), Shell Energy requests that the Commission make two clarifications to the PD respecting eligibility for this portfolio content category. First, as noted above, an RPS product that qualifies under Section 399.16(b)(1)(A) may be transferred to another entity without losing eligibility under this portfolio content category. Second, because an unbundled REC associated with "in-State" generation meets the eligibility requirements under Section 399.16(b)(1)(A), the unbundled REC should be classified in this portfolio content category.

Energy that is "scheduled" from an eligible renewable energy resource into a CBA as that energy is produced ("as produced") meets the definition of P.U. Code Section 399.16(b)(1)(A). The energy delivery can be verified through a NERC e-tag and meter data. This information provides conclusive evidence of a transaction that is scheduled from an eligible renewable energy resource into a CBA "without substituting electricity from another source." As long as the energy from the RPS-eligible facility is transmitted to a CBA, the energy can be tracked, and the RPS product meets the portfolio content definition of P.U. Code Section 399.16(b)(1)(A).

An RPS-eligible transaction automatically qualifies under P.U. Code Section 399.16(b)(1)(A) if the output from the eligible renewable energy resource is located within the boundaries of a CBA. The RECs associated with energy produced at such an "in-State" RPS-eligible facility must be classified under Section 399.16(b)(1)(A). All renewable

generation that is located within a CBA's boundaries is necessarily scheduled from the RPS-eligible resource into a CBA without substituting electricity from another source.

All energy output from an RPS-eligible resource within a CBA control area is scheduled, and in the case of the CAISO BA, sold and cleared through the CBA under the CAISO's MRTU market design. Accordingly, any REC, whether bundled with, or unbundled from the energy from an RPS-eligible resource located within the boundaries of a CBA, qualifies under P.U. Code Section 399.16(b)(1)(A). Regardless of what entity is the purchaser of the energy from an in-State eligible renewable energy resource, the energy is always scheduled into – and consumed in – a CBA.

Notwithstanding the language of Section 399.16(b)(1)(A), the PD recommends that the Commission determine that unbundled RECs (that is, "RECs that are separated from the electricity [with] which they were originally associated") (PD at p. 31) should qualify exclusively under Section 399.16(b)(3). The PD reasons that because the term "unbundled RECs" does not appear in any other provision of SBX1 2, the legislature intended that unbundled RECs should be classified exclusively in Section 399.16(b)(3). Id. at p. 32.

To the contrary, the language of Section 399.16(b)(3) itself demonstrates that unbundled RECs may qualify under Section 399.16(b)(1) or Section 399.16(b)(2). By its terms, Section 399.16(b)(3) is limited to those RPS-eligible products – including unbundled RECs – "that do not qualify under the criteria of paragraph (1) or (2)." (Emphasis added.) In other words, Section 399.16(b)(3) is a "residual" product category. Products that are classified under Section 399.16(b)(3) are limited to those otherwise eligible RPS products that do not meet the qualifications for Section 399.16(b)(1) or (b)(2). Only those bundled RECs that do not qualify under (b)(1) or (b)(2) are relegated to Section 399.16(b)(3) status.

Consequently, if an unbundled REC otherwise meets the qualifications under Section 399.16(b)(1) or (b)(2), the unbundled REC should be classified in (b)(1) or (b)(2). Eligibility for Section 399.16(b)(1) or Section 399.16(b)(2) is not limited to an RPS product that was "bundled" in its inception. If the RPS-eligible energy is scheduled from the RPS-eligible resource into a CBA without substituting energy from another source, the associated unbundled REC qualifies under Section 399.16(b)(1)(A). Moreover, if the unbundled REC meets the definition of a "firmed and shaped" product under Section 399.16(b)(2), the unbundled REC qualifies under Section 399.16(b)(2). The PD's recommendation on this issue must be changed.

The PD expresses concern that allowing unbundled RECs to be included under Section 399.16(b)(1) "could lead to the repeated sale of RECs at premium prices," which would drive up the costs to ratepayers. PD at p. 33. This makes no sense. As a threshold matter, a REC may only be retired for RPS compliance once. Moreover, increasing the quantity of renewable products that qualify under Section 399.16(b)(1) will reduce, rather than increase the cost to ratepayers. If "in-State" unbundled RECs qualify under Section 399.16(b)(1), LSEs will have access to more RPS products that may be used for RPS compliance without the limitations that apply under Section 399.16(c). The "premium" that is otherwise associated with Section 399.16(b)(1) products will decline, thereby reducing costs to LSEs and the ratepayers they serve.

IV.

THE PD IMPROPERLY RESTRICTS THE DEFINITION OF "FIRMED AND SHAPED" RPS PRODUCTS UNDER SECTION 399.16(b)(2)

The PD states that "firmed 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 [CBA] of the RPS-eligible generation, which can be set in a

manner that meets the timing and quantity requirements of the retail seller." PD at pp. 39-40. Shell Energy supports the Presiding Judge's proposed definition of a "firmed and shaped" transaction under Section 399.16(b)(2).

The PD also recommends, however, that the Commission impose conditions – "three commercial elements" – for a firmed and shaped transaction. Two of these "commercial elements," if adopted in their current form, would too narrowly restrict the transactions that qualify under Section 399.16(b)(2).

First, the PD recommends that the acquisition of the substitute energy must be "at the same time as acquisition of the RPS-eligible energy. . . ." PD at p. 40. This proposed requirement, if adopted, would conflict with the PD's recommendation that substitute energy should be allowed to be scheduled into a CBA "in a manner that meets the timing and quantity requirements of the retail seller." The PD acknowledges that there is "broad agreement" that the scheduling of substitute electricity can be "within the calendar year." PD at p. 39. In Conclusion of Law No. 16 (p. 60) and Ordering Paragraph No. 2 (p. 63), as well, the PD recommends that in an eligible firmed and shaped transaction, the substitute energy must be scheduled into a CBA "within the same calendar." The "same calendar year" requirement is equally appropriate for the purchase of substitute energy under a firmed and shaped transaction under Section 399.16(b)(2).[2]

Flexibility in timing the purchase and scheduling of substitute energy into a CBA is a paramount feature of a firmed and shaped transaction. An LSE should be allowed to match the unbundled REC from an out-of-State RPS-eligible facility with substitute energy that is scheduled within the same calendar year that the RPS-eligible energy is generated. The PD should be modified to reflect this.

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[2] The "same calendar year" requirement is also consistent with current practice. See CEC RPS Eligibility Guidebook (Fourth Edition), January 2011, pp. 36-40.

Second, the "discussion" section of the PD (p. 40) contains proposed language that would prohibit a purchaser of RPS-eligible energy from "selling the energy back to the generat[or]." (This language does not appear in Conclusion of Law No. 16 (p. 60) or in Ordering Paragraph No. 2 (p. 63).) The PD's proposed prohibition against re-selling the energy to the generator should not be adopted. It should not matter where – or to whom – a Buyer re-sells the energy from the RPS-eligible facility once the energy is unbundled from the REC. The key requirement is that the Buyer simultaneously purchase the energy and the associated RECs from the RPS-eligible generation facility, and that the Buyer purchase substitute energy for delivery to a CBA.

How and where the Buyer disposes of the unbundled energy from the RPS-eligible facility is not material to whether the transaction is a firmed and shaped transaction under Section 399.16(b)(2). It is enough, as proposed in the PD, to require "the availability of the purchased energy to the buyer." See PD at p. 40. This proposed provision, if adopted, will ensure against any "sham" transactions.

Shell Energy does not believe that the Commission intends to increase ratepayer costs by limiting the resale of energy from an RPS-eligible facility. In this connection, upon the transfer of a firmed and shaped transaction, the purchaser should be allowed to replace the substitute energy as long as the new energy is scheduled into a CBA within the same calendar year that the RPS-eligible energy is generated.

Based on the foregoing, Shell Energy recommends that the Commission clarify and modify the PD to provide that the "commercial" requirements for a firmed and shaped transaction are as follows:

1. The buyer's simultaneous purchase of energy and associated RECs from the RPS-eligible generation facility;

2. The availability of the purchased energy to the buyer (i.e., the purchased energy must not in practice be already committed to consumption by another party);

3. The scheduling of the substitute energy into a CBA within the same calendar year that the RPS-eligible energy is generated.

Shell Energy requests that the Commission modify the PD accordingly.

V.

THE COMMISSION MUST ADDRESS HOW "FLEXIBLE COMPLIANCE" OPERATES UNDER THE "COUNT IN FULL" PROVISION OF P.U. CODE SECTION 399.16(d)

The PD recommends that any RPS contract entered into ("originally executed") prior to June 1, 2010 should "count in full" toward an LSE's RPS compliance obligation, without application of the portfolio content categories under Section 399.16(c). See PD at p. 52. Shell Energy supports this recommendation.

The PD acknowledges that the Commission must still address how the "count in full" language of P.U. Code Section 399.16(d) will apply with respect to "carrying over" the pre-existing RPS procurement and compliance requirements. PD at p. 52. The PD notes, for example, that the Commission must address how "unlimited forward banking" of an LSE's excess RPS procurement (see D.06-10-050 (October 19, 2006) at p. 24) will apply to pre-June 1, 2010 RPS contracts. Id. Shell Energy urges the Commission to address these issues on an expeditious basis. LSEs must know whether and how excess procurement from prior years may be used for RPS compliance in the three compliance periods identified in P.U. Code Section 399.15(b)(1).

VI.

THE IMPLEMENTATION DATE OF SBX1 2 SHOULD BE JANUARY 1, 2012

The PD notes that SBX1 2 is effective on December 10, 2011. See PD at p. 9. The PD states, in this connection, that the "delivery" requirement for RPS eligibility ceases to exist on December 10, 2011, as well. Id. The PD states that on December 10, 2011, the Commission's

authority to require a demonstration that an RPS procurement transaction meets the "delivery" requirement ends.

This statement in the PD requires clarification. The Commission should clarify that any RPS contract entered into prior to December 10, 2011 will be eligible for RPS compliance under Section 399.16(b)(2) if the transaction meets the pre-existing "delivery" requirement under Pub. Res. Code Section 25741(a), as addressed in the CEC's RPS Eligibility Guidebook. The Commission also should clarify that the new rules for "firmed and shaped" transactions will not apply to contacts entered into prior to December 10, 2011. These contracts were agreed upon (and structured) in reliance on the existing RPS eligibility criteria in the CEC's RPS Eligibility Guidebook.

Finally, the Commission must address not only the effective date of SBX1 2, but also the implementation date of SBX1 2. In view of the fact that the effective date of SBX1 2 is nearly at the end of 2011, and in view of the fact that LSEs have made RPS procurement decisions in 2011 in reliance on the existing RPS rules, it would be most efficient to establish January 1, 2012 as the implementation date of SBX1 2. The current RPS procurement rules and current flexible compliance rules should remain in place through 2011. The RPS procurement and compliance requirements under SBX1 2 should begin on January 1, 2012.

VII.

CONCLUSION

The PD should be modified and/or clarified as follows:

- The classification of an RPS-eligible transaction will remain the same when the transaction is transferred, as long as the structure of the transaction remains the same and the REC has not been retired for RPS compliance.

- Unbundled RECs may be eligible under P.U. Code Section 399.16(b)(1) or (b)(2). Unbundled RECs are not limited to Section 399.16(b)(3).

- "Firmed and shaped" products qualify under P.U. Code Section 399.16(b)(2) as long as the substitute energy is "scheduled into a CBA" within the same calendar year that the RPS-eligible energy is generated. Replacement of the substitute energy by a subsequent purchaser is permitted if the replacement energy is scheduled within the same calendar year.

- An RPS contract entered into prior to December 10, 2011 satisfies the requirements under Section 399.16(b)(2) if, at the time of the contract, the transaction met the "delivery" requirements in the CEC's RPS Eligibility Guidebook.

- The "implementation" date for SBX1 2 shall be January 1, 2012.

Proposed revised findings of fact, conclusions of law and Ordering Paragraphs are provided in Appendix A.

Respectfully submitted,

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APPENDIX A

Proposed Revised Findings of Fact, Conclusions of Law and Ordering Paragraphs

(red-lined changes to the PD)

Findings of Fact

1. There are currently five California balancing authorities for RPS purposes: CAISO, Balancing Authority of Northern California, Imperial Irrigation District, LADWP, and Turlock Irrigation District.

2. WREGIS aggregates information about RPS-eligible generation on a monthly basis.

3. WREGIS does not currently have a functionality that would allow tracking of the new portfolio content categories created by new § 399.16.

4. Firmed and shaped transactions using substitute electricity are one method to schedule electricity into a California balancing authority from a generation facility located outside the boundaries of a California balancing authority.

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.

6. Electricity from a generation facility located outside the boundaries of a California balancing authority may be scheduled into a California balancing authority through an arrangement for dynamic transfer from the balancing authority in which the generation facility is interconnected to a California balancing authority.

7. Information about the specific generation facility providing generation recorded on the e-Tag is not a required element of e-Tags.

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.

9. Procurement contracts signed by DWR with Cabazon Wind Partners LLC and Whitewater Hill Wind Partners LLC and assigned by the Commission to SDG&E purchased electricity from wind farms interconnected to a California balancing authority, but did not procure the RECs associated with the generation.

10. A procurement contract signed by DWR with Mountain View Power Partners purchased electricity from wind farms interconnected to a California balancing authority, but did not procure the RECs associated with the generation.

Conclusions of Law

1. SB 2 (1X) goes into effect on December 10, 2011. Implementation of the RPS procurement and compliance obligations under SBX1 2 will be on January 1, 2012.

2. Upon the effective date of SB 2 (1X), the Commission's authority to require a demonstration that an RPS procurement transaction meets the "delivery" requirement for RPS eligibility under current RPS law lapses.

3. The repeal of the delivery requirement for RPS eligibility does not affect existing contractual delivery requirements.

4. Because any change to the delivery structure of an IOU's RPS contract approved prior to December 10, 2011 may have value and price implications for ratepayers, any IOU seeking to amend the delivery structure of such a contract should submit the amendment for Commission approval.

4a. Any RPS contract entered into prior to December 10, 2011 that meets the "delivery" requirement under Pub. Res. Code Section 25741(a) and the requirements in the CEC's RPS Eligibility Guidebook (Fourth Edition), qualifies under P.U. Code Section 399.16(b)(2) upon implementation of SBX1 2.

5. In order to keep the list of California balancing authorities that meet the requirements of new § 399.12(d) up to date, the Director of Energy Division should be authorized to develop a method for updating the list in the future, should that prove necessary.

6. In order to provide value to ratepayers and promote the fair and efficient administration of the RPS program, IOUs should be required to make an upfront showing of the new portfolio content category or categories of procurement in contracts submitted for Commission approval.

7. In order to ensure that RPS procurement complies with the new portfolio content requirements and promote the fair and efficient administration of the RPS program, all retail sellers should be required to provide documentation to Energy Division staff demonstrating that RPS procurement properly belongs in the portfolio content category in which it is claimed for RPS compliance.

8. Because the criteria for portfolio content categories set out in new § 399.16 are different from the criteria for unbundled and REC-only transactions stated in D.10-03-021, the investigation of the role of firm transmission required by OP 26 of D.10-03-021, as modified by D.11-01-025, is no longer necessary.

9. Because new types of information will be necessary to evaluate retail sellers' compliance with the procurement requirements of the new portfolio content categories, the Director of Energy Division should be authorized to develop methods for evaluating compliance with the new portfolio content categories and to require retail sellers to provide necessary information, as determined by the Director of Energy Division, for such evaluation.

10. Because new types of information will be necessary to evaluate the value to ratepayers of IOUs' procurement that meets the requirements of the new portfolio content categories, the Director of Energy Division should be authorized to develop methods for evaluating the value to ratepayers of IOUs' procurement meeting the requirements the new portfolio content categories and to require IOUs to provide necessary information, as determined by the Director of Energy Division, for such evaluation at the time an IOU seeks Commission approval of an RPS procurement contract.

11. Because dynamic transfer transmission arrangements are evolving, the Director of Energy Division should be authorized to review the development of dynamic transfer methods and incorporate any such developments into the information retail sellers must provide for compliance with the new portfolio content categories.

12. 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)(1), as effective December 10, 2011, if the generation facility from which 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 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 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~~and all other procurement requirements for compliance with the California RPS are met.

~~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 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 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 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 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 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 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 that is purchased and 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~~within the same ~~time~~calendar year as it acquires the RPS-eligible energy.

17. 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)(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 generation eligible under the California renewables portfolio standard and the transaction is not otherwise eligible under Section 399.16(b)(1) or (b)(2); or

- The procurement consists of any generation eligible under the California renewables portfolio standard that does not quality 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 but 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 but receive RPS compliance credit as though they had been purchased together.

20. The ruling of the Scoping Memo that RPS procurement of small and multi-jurisdictional utilities should count 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, should be confirmed.

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 applicable portfolio content category as set out in Pub. Util. Code § 399.16(c).

~~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).~~

21a. The classification of an RPS-eligible transaction will remain the same when the transaction is transferred, sold or traded, as long as the structure of the transaction remains the same and the REC has not been retired for RPS compliance.

22. In order to promote effective compliance with the new RPS requirements of SB 2 (1x), the RPS procurement and compliance obligations under SBX1 2 and this order should be effective ~~immediately.~~on January 1, 2012.

ORDER

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 pursuant to an 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.

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 purchased and 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);
- the buyer acquires the substitute energy ~~at~~in the same ~~time~~calendar year 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.

3. A retail seller claiming that procurement for compliance with the California renewables portfolio standard from a contract signed on or after June 1, 2010 should be counted in the portfolio content category described in Pub. Util. Code § 399.16(b)(3), as effective December 10, 2011, must provide information to the Director of Energy Division sufficient to demonstrate that either of the following conditions is met, so long as all other

procurement requirements for compliance with the California renewables portfolio standard are met:

- The procurement consists of unbundled renewable energy credits originally associated with generation eligible under the California renewables portfolio standard and the procurement is not otherwise classified under P.U. Code Section 399.16(b)(1) or (b)(2); or

- The procurement consists of any generation eligible under the California renewables portfolio standard that does not quality 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.

4. In submitting any contract for procurement to meet the California renewables portfolio standard to the Commission for approval on or after December 10, 2011, an investor owned utility must provide sufficient information for the Commission to evaluate, without limitation and in addition to any other requirements for information, the following elements: the claimed portfolio content category of the proposed procurement; the risks that the procurement will not ultimately be classified in the claimed portfolio content category; the value to ratepayers of the procurement as proposed and the value to ratepayers if the procurement is not ultimately classified in the claimed portfolio category.

5. The Director of Energy Division is authorized to require any investor owned utility that has submitted a contract for procurement to meet the California renewables portfolio standard that was signed after June 1, 2010 but was not approved by the Commission prior to December 10, 2011 to provide additional information to allow the Commission to evaluate, without limitation and in addition to any other requirements for information, the following elements: the claimed portfolio content category of the proposed procurement; the risks that the procurement will not ultimately be classified in the claimed portfolio content category; the value to ratepayers of the procurement as proposed and the value to ratepayers if the procurement is not ultimately classified in the claimed portfolio category.

6. The Director of Energy Division is authorized to develop any methods and requirements for information to be provided by investor owned utilities seeking approval of contracts for procurement to meet the California renewables portfolio standard to allow the Commission to evaluate, without limitation, the following elements: the claimed portfolio

content category of the proposed procurement; the risks that the procurement will not ultimately be classified in the claimed portfolio content category; the value to ratepayers of the procurement as proposed and the value to ratepayers if the procurement is not ultimately classified in the claimed portfolio content category.

7. The Director of Energy Division is relieved of the obligation imposed by Ordering Paragraph 26 of Decision (D.) 10-03-021, as modified by D.11-01-025, to investigate and report on the place of firm transmission in procurement for compliance with the California renewables portfolio standard.

8. Any investor owned utility seeking to amend the delivery structure of a contract for procurement for compliance with the California renewables portfolio standard on or after December 10, 2011 must submit the amended contract for Commission approval.

9. The Director of Energy Division is authorized to review the development of dynamic transfer arrangements for transmission of electricity eligible for renewables portfolio standard compliance and incorporate the results of such review into the information retail sellers must provide for compliance with the new portfolio content categories.

10. In order to keep the list of California balancing authorities up to date, the Director of Energy Division is authorized to develop a method for updating the list of California balancing authorities that meet the requirements of new § 399.12(d), should that prove necessary.

11. The general rules about the use of unbundled renewable energy credits for compliance with the California renewables portfolio standard should not be applied in the unique and limited circumstance of the contracts signed by the Department of Water Resources during the energy crisis with Cabazon Wind Partners LLC and Whitewater Hill Wind Partners LLC and assigned to San Diego Gas & Electric Company, which may be allowed to acquire the unbundled renewable energy credits separately from the energy but receive credit for compliance with the California renewables portfolio standard as though they had been purchased together.

12. The general rules about the use of unbundled renewable energy credits for compliance with the California renewables portfolio standard should not be applied in the unique and limited circumstance of the contracts signed by the Department of Water Resources during the energy crisis with Mountain View Power Partners and assigned to

Southern California Edison Company, which may be allowed to acquire the unbundled renewable energy credits separately from the energy but receive credit for compliance with the California renewables portfolio standard as though they had been purchased together.

13. The procurement of small and multi-jurisdictional utilities should count for compliance with the California renewables portfolio standard without regard to the limitations on the use of each portfolio content category established by Pub. Util. Code § 399.16(c), as effective December 10, 2011, so long as all other procurement requirements for compliance with the California renewables portfolio standard are also met.

14. Procurement from contracts signed prior to June 1, 2010, and meeting the conditions set out in Pub. Util. Code § 399.16(d), as effective December 10, 2011, may be counted for compliance with the California renewables portfolio standard without regard to the limitations on the use of each portfolio content category established by Pub. Util. Code § 399.16(c), as effective December 10, 2011, provided that, if any renewable energy credits from a contract signed prior to June 1, 2010 are unbundled and sold separately after June 1, 2010, the underlying energy may not be counted for compliance with the California renewables portfolio standard and the unbundled renewable energy credits must be counted in accordance with the ~~limitations on procurement in the~~applicable portfolio content category of Pub. Util. Code § 399.16(b)~~(3)~~, as set out in Pub. Util. Code § 399.16(c), as effective December 10, 2011.

15. Rulemaking 11-05-005 remains open.

This order is effective ~~today.~~on January 1, 2012.

Dated _____, at San Francisco, California.

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VERIFICATION

I am an officer of Shell Energy North America (US), L.P. and am authorized to make this verification on its behalf. 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 October 26, 2011 at San Diego, California.

Thomas Ingwers
Vice President – Environmental Products
Shell Energy North America (US), L.P.

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