

**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)

**REPLE COMMENTS OF THE UNION OF CONCERNED SCIENTISTS ON THE
PROPOSED DECISION IMPLEMENTING PORTFOLIO CONTENT
CATEGORIES FOR THE RENEWABLES PORTFOLIO STANDARD
PROGRAM**

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Dated: November 1, 2011

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FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM**

Pursuant to the October 7, 2011 *Proposed Decision Implementing Portfolio Content Categories for the Renewables Portfolio Standard Program* (“Proposed Decision” or “PD”), the Union of Concerned Scientists (“UCS”) respectfully submits these reply comments.

I. The Commission has a strong record and motive to prohibit the re-sale of electricity to the RPS-eligible generator in a firm and shaped transaction.

The Proposed Decision characterizes firm and shaped transactions as “fundamentally providing substitute energy in the same quantity as the *contracted-for* RPS-eligible generation...”¹ Pacific Gas and Electric Company (“PG&E”) agrees with that characterization in its opening comments, but then objects to the PD’s proposed first element of a firm and shaped transaction, which would prohibit a buyer from selling RPS-eligible electricity back to the RPS-eligible generator. To support its objection, PG&E adds that “To PG&E’s knowledge, no party proposed similar language to define ‘firm and shaped’ in comments on ALJ Simon’s Ruling, and PG&E finds that in the absence of context or supporting discussion, the language in the second element could be subject to many different interpretations.”²

The Commission should reject PG&E’s argument. Parties including UCS have commented on the importance of making sure a firm and shaped transaction results in the off-take of electricity from the RPS-eligible generator. In its comments on the July 12, 2011 *Ruling Requesting Comments on Implementation of New Portfolio Content Categories for the Renewables Portfolio Standard Program* (“Ruling”), UCS explains the importance of ensuring that a firm and shaped transaction includes an agreement to purchase the actual energy generated by the RPS-eligible generator:

UCS does not believe that “firm and shaped” energy transactions occur when a California utility simply buys RECs (no energy) from an RPS-eligible generator and attaches those RECs to a California electricity import without engaging in an

¹ Proposed Decision, p.39. (emphasis added).

² PG&E Opening Comments, p.9.

agreement to “firm and shape” the renewable electricity into the local market. In addition, UCS does not believe that “firmed and shaped” transactions occur when a California utility purchases RPS-eligible energy and immediately sells it back to the original generator or an affiliate of the generator, but retains the RECs and bundles it with a California electricity import. In both of these cases, the risk of selling the energy that is now null, intermittent power into the local market is still borne by the renewable energy generator. This electricity has not been “firmed and shaped” into its local balancing area authority.³

The Utility Reform Network (“TURN”) referred to similar transactions in its reply comments on the Ruling which “stripped” RECs from underlying renewable electricity in past firmed and shaped transactions:

As the Commission is painfully aware, the IOUs have executed a wide range of transactions for products described as “firmed and shaped”. *Many of these deals functionally replicate unbundled REC transactions through stripping mechanisms, wash trades of energy and ‘delivery’ using legacy import contracts for resources such as the Palo Verde nuclear plant and SDG&E’s El Dorado CCGT plant. Allowing these types of transactions to count as “firmed and shaped” is tantamount to a decision to eliminate any meaningful distinction between the second and third product categories.*⁴

Moreover, the PD uses the phrase “contracted-for” in the description of firmed and shaped transactions, which PG&E supports- “providing substitute energy in the same quantity as the *contracted-for* RPS-eligible generation...”⁵ – to encompass the principle that a firmed and shaped transaction results in the off-take of electricity from the RPS-eligible generator. If the electricity from the RPS-eligible generator is not sold as a result of the firmed and shaped transaction, the result is a purchase of unbundled RECs, a transaction that should be characterized as a § 399.16(b)(3) product.

³ UCS Comments on Portfolio Content Categories, August 8, 2011, p.6.

⁴ TURN Comments on Portfolio Content Categories, August 8, 2011, p.4. (emphasis added).

⁵ Proposed Decision, p.39. (emphasis added).

II. The Commission should not classify pipeline biomethane procurement as a § 399.16(b)(1) transaction at this time.

UCS agrees with TURN that the procurement of out-of-state biomethane which is physically unable to be delivered to California should not be considered a § 399.16(b)(1) transaction. UCS believes that the Legislature's intent with § 399.16(b)(1) was to encompass any RPS transaction that would deliver electricity that has been directly created from a generation facility using RPS-eligible fuels. As TURN points out in its opening comments on the PD, many of the sources that provide biomethane inject gas into pipelines that cannot physically deliver the biomethane to California.⁶ The California Energy Commission ("CEC") is currently taking public comment with regards to how pipeline biomethane should be treated under the RPS program and UCS does not believe it is useful for the Commission to prematurely determine which "bucket" pipeline biomethane procurement contracts fall into until the CEC determines how it will assess overall RPS eligibility for generation facilities that combust non-renewable natural gas as a proxy for biomethane.

Respectfully submitted,



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⁶ TURN at 2.