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)

REPLY COMMENTS OF TRANSWEST EXPRESS LLC ON PROPOSED DECISION

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Dated: November 1, 2011

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Pursuant to Rule 14.3 of the California Public Utility Commission's ("Commission") Rules, TransWest Express LLC ("TransWest") provides its reply to comments submitted on Administrative Law Judge Simon's Decision Implementing Portfolio Content Categories For The Renewables Portfolio Standard Program ("PD"). The PD provides for implementation of the content categories of the 33% Renewables Portfolio Standard ("RPS") law.[1]

1. *The PD correctly describes the value of firm transmission for 399.16(b)(1)(A) transactions scheduled into a California balancing authority ("CBA") without substitution; firm transmission provides further value by aiding in demonstrating upfront compliance with this content category.*

Section 399.16(b)(1)(A) establishes a content category of transactions scheduled from outside a CBA into a CBA on an hourly or subhourly basis without substituting electricity from another source (with use of real-time ancillary services permitted to maintain the transaction schedule). The PD appropriately held that under subsection (b)(1)(A) holding firm transmission rights is not a "necessary element" of this content category (PD at 22), but also accurately discussed the additional value associated with firm transmission to support these transactions. Namely, the PD explained that for purposes of a compliance demonstration "the existence of a firm transmission arrangement may simplify the retail seller's task in showing that procurement

[1] Senate Bill 2 (2011-12 First Extraordinary Session, Stats 2011, Ch 1) ("SB 2 (1X)").

claimed to meet this criterion actually did so, and may simplify the task of Energy Division staff in evaluating such claims." *See id.* But while the PD unquestionably did not stray from the statute on this point, some parties claim the PD's discussion of firm transmission benefits could cause "confusion"[2] or create inappropriate implications regarding the significance of the use of firm transmission.[3]

There is no need for modification of the PD. The PD accurately reflects that entities with firm transmission rights deliver greater value than a non-firm transaction. Out-of-state renewables scheduled to a CBA tie with firm transmission will have the highest transaction priority for delivery of bundled RECs and energy to the CBA. Firm transmission service to a CBA from outside a CBA will facilitate hourly scheduled deliveries of efficient, generally low-cost renewable resources to the terminus of the line at a CBA, without substitution of electricity and with less risk of interruption of scheduled deliveries, *i.e.* due to congestion.

The PD also correctly found that firm transmission may simplify a retail seller's compliance demonstration. When an eligible renewable resource secures firm transmission rights to a CBA, the presence of such rights will permit retail sellers subject to the RPS the ability to make an upfront compliance demonstration that the source generator has an exclusive, firm right of delivery for scheduling its transaction without substitution of energy from another source (and without risk of interruption from congestion). As the PD indicates, if such firm transmission rights are demonstrated, such demonstration should satisfy most (and TransWest

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[2] Comments of the Center for Energy Efficiency and Renewable Technologies at 3-4. Unless otherwise noted, references to "Comments" herein are to parties' October 27, 2011, comments on the PD.

[3] Comments of Pacific Gas & Electric Company ("PG&E Comments") at 13. PG&E made similar comments during the initial stage of this proceeding and the PD appropriately disregarded them. *See* PG&E Comments at 11, 13 (filed Aug. 8, 2011).

believes all) of the core upfront demonstration required for this category.[4] TransWest and others have explained that use of e-Tags combined with meter data from the source generator provide for some (and possibly all) of the tools needed for after-the-fact transaction verification;[5] however, for upfront compliance showings, the PD appropriately cites firm transmission arrangements as a primary mechanism for demonstrating that criteria for this category are met.

2. *Independent Energy Producers Association ("IEP") mischaracterizes "Category 1" transactions scheduled into a CBA without substitution.*

IEP attempts to "summarize" each product content category but in doing so IEP makes a material omission in its characterization of transactions scheduled from an out-of-state balancing authority into a CBA. Section 366.16(b)(1)(A) provides for two ways to qualify for portfolio Category 1 and, as noted above, the second of these describes transactions from a source generator scheduled into a CBA "without substituting electricity from another source." For such transactions, the "use of another source to provide real-time ancillary services required to maintain an hourly or subhourly import schedule into a [CBA] shall be permitted . . . ."[6] IEP's summary of "Category 1" transactions, however, could be misinterpreted as meaning that the "focus of the [Category] 1 product criteria is on the interconnection to a CBA, *either directly or through a dynamic transfer.*"[7] In fact, subsection (b)(1)(A) specifically defines transactions that are from a source generator in a non-CBA, *i.e.*, *not* directly interconnected to a CBA but scheduled into the CBA without substitution of electricity (with use of real-time ancillary services permitted). IEP's inaccurate summary of subsection (b)(1)(A) should not be reflected in

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[4] *See* PD at 26 (citing "transmission arrangements [that] are sufficiently reliable" as a means of satisfying the upfront showing that "substitution of electricity from another source is unlikely to occur").

[5] TransWest August 8 Comments at 10-11; *see also* Comments of Iberdrola Renewables, Inc. ("Iberdrola Comments") at 4-5.

[6] SB 2 (1X), § 399.16(b)(1)(A).

[7] IEP Comments at 5 (emphasis added).

the final decision. Finding of Fact No. 5 should be expanded as suggested by TransWest and others to include the provision that allows for use of ancillary services to meet the schedule.[8]

3. *There is no merit to claims that some types of unbundled RECs qualify to be in the content categories of subsection (b)(1) or (b)(2) of Section 399.16.*

The PD correctly holds that Section 399.16 provides for unbundled RECs only in the third product category of Section 399.16(b)(3). Several parties advance meritless claims that the PD inappropriately restricts unbundled RECs to this category.[9] The text of Section 399.16(b) delineates three separate product content categories. Unbundled RECs are specifically defined for inclusion in only *one* category, namely, in subsection (b)(3) (subject to procurement limitations). Some parties seek more procurement flexibility by pushing unbundled RECs out of the restricted category of subsection (b)(3), but the Commission should reject this interpretation.

Principles of statutory construction provide that where the Legislature employed a term or phrase in one place and excluded it in another "it should not be implied where excluded."[10] If the Legislature sought to give preferred treatment for in-state REC-only products, it could have expressly identified and defined them within Section 399.16(b)(1)(A)—as it clearly knew how to do since it referred specifically to unbundled RECs in subsection (b)(3).[11]

IEP argues that whenever an in-state REC is generated, then renewable energy is

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[8] *See* Initial Comments of TransWest to Proposed Decision, Appendix (Oct. 27, 2011); *see also* NextEra Energy Resources, LLC Comments at Appendix, p.1.

[9] *See generally* IEP Comments; *see also, e.g.*, PG&E Comments at 4-7; Comments of Southern California Edison Company at 8-10; Comments of the City and County of San Francisco at 2-4; Noble Americas Energy Solutions LLC Comments at 2-7.

[10] *See* TransWest August 8 Comments at 12-13 & n.12.

[11] Moreover, permitting in-state unbundled RECs to be redefined for inclusion in Section 399.16(b)(1)(A), while treating out-of-state RECs transactions as falling under subsection (b)(3) (subject to procurement caps)—effectively treats REC resources located in different locations within WECC differently, contrary to provisions of Section 399.11(e)(2) that generating resources outside California capable of supplying electricity to California be treated the same as in-state resources. *See* Comments of Iberdrola at 10-11 (filed Aug. 8, 2011).

necessarily also produced within a CBA, even if the RECs and energy are separately traded.[12] IEP's "grid impacts" observations, however, are simply not relevant to the Commission's implementation of the plain statutory text. IEP further argues that the history of the drafting of subsection (b)(3) indicates intent by the Legislature to provide that in-state RECs can be included in subsection (b)(1) because of the later decision by the Legislature to place the clause "including unbundled RECs" just prior to the words "that do not qualify" under the other two content categories. On the contrary, IEP's discussion supports the PD's findings. The more salient point to be taken from the earlier history cited by IEP is that *unbundled RECs remained limited to "Category 3" status.*[13] A specific reference to unbundled RECs was never—to the knowledge of TransWest—included by the Legislature in an earlier version of Category 1 transactions. Moreover, placement of the words "including unbundled RECs" within subsection (b)(3) indicates nothing more than a legislative intent to single out unbundled RECs as the main example of transactions that do not qualify under the content categories in subsections (b)(1) and (b)(2).

Respectfully submitted,

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On behalf of TransWest Express LLC
Dated: November 1, 2011

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[12] *See* IEP Comments at 5-6.

[13] *See* IEP Comments at 9 (citing August 2, 2010 amendments to SB 722).

VERIFICATION

I am an officer of TransWest Express LLC, and am authorized to make this verification on its behalf. I have read the foregoing *Reply Comments Of TransWest Express LLC On Proposed Decision* dated November 1, 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 1st day of November, 2011 at Denver, Colorado.

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