

**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 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 reply comments in response to ALJ Simon's *Proposed Decision Implementing Portfolio Content Categories for the Renewables Portfolio Standard Program* (PD), issued on October 7, 2011.

**I. THE SANITATION DISTRICTS ARE IN AGREEMENT WITH THE  
COMMENTS SUPPORTING INCLUSION OF QUALIFYING UNBUNDLED  
RECS IN CATEGORY ONE**

In its opening comments on the PD, the Sanitation Districts described how the PD's placement of all unbundled renewable energy credits (RECs) in the third portfolio content category (Category Three) conflicts with the statutory language, and recommended that the PD be modified to recognize the existence of Category One unbundled RECs and to remove the conclusion that all unbundled RECs belong in Category Three. The opening comments of the other parties exhibited broad-based support for this position among all types of retail sellers, including IOUs<sup>1</sup>, ESPs<sup>2</sup>, and municipal utilities<sup>3</sup>, as well as energy producers<sup>4</sup> and other industry

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<sup>1</sup> See Opening Comments of Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE).

<sup>2</sup> See Comments of Alliance for Retail Energy Markets and Retail Energy Supply Association (AREM/RESA), Noble Americas Energy Solutions LLC (Noble Solutions), Shell Energy North America (Shell Energy).

<sup>3</sup> See Comments of City and County of San Francisco (CCSF), California Municipal Utilities Association (CMUA), Southern California Public Power Authority (SCPPA).

<sup>4</sup> See Comments of Calpine Corporation (Calpine), California Wastewater Climate Change Group (CWCCG),  
*(footnote continued)*

groups<sup>5</sup>. Many of the comments included a detailed analysis of the statute’s plain meaning and reached the same conclusion as the Sanitation Districts, specifically that SB 2 (1X) clearly defines unbundled RECs that belong in § 399.16(b)(3) as only those that “do not qualify under the criteria of paragraph (1) or (2)”, and that nothing in the criteria of § 399.16(b)(1) suggests that a Category One product must be a bundle of energy and RECs.

These parties also provided many policy arguments that support inclusion of unbundled RECs that qualify under the criteria of Category One or Two in those categories. These include lowering the cost of RPS compliance<sup>6</sup>, increasing flexibility for retail sellers to meet RPS requirements<sup>7</sup>, encouraging the development of distributed generation (DG) that meets the criteria of § 399.16(b)(1)<sup>8</sup>, helping meet the goals of the statute set forth in § 399.11<sup>9</sup>, and creating greater simplicity and clarity for RPS compliance.<sup>10</sup>

The PD imposes a low value on unbundled RECs associated with resources that meet the criteria of § 399.16(b)(1) by placing all unbundled RECs in Category Three “no matter what the source of their originally associated electricity.” This low value for Category Three RECs will provide very little incentive for the development of DG facilities that meet the criteria of § 399.16(b)(1). As identified by AReM/RESA, “[i]mposing a mandatory Product 3 classification to DG serving on-site loads will have the unintended consequence of impeding commercial innovation in support of greater renewable DG deployment.”<sup>11</sup> This is contrary to the objectives of the statute and state policy goals, which clearly indicate strong support for the expansion of DG.

In addition, excluding unbundled RECs associated with resources that meet the criteria of § 399.16(b)(1) from inclusion in Category One would have a negative impact on ratepayers.

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Independent Energy Producers (IEP), Joint Solar Parties.

<sup>5</sup> See Comments of Leaf Exchange LLC (Leaf Exchange), Western Power Trading Forum (WPTF).

<sup>6</sup> See AReM/RESA comments at 8; IEP comments at 12; CCSF comments at 3-4; PG&E comments at 7; SCE comments at 9-10; CMUA comments at 4-5; SCPPA comments at 8-9; Shell Energy comments at 8; Calpine comments at 4-5; CWCCG comments at 7; AReM/RESA comments at 6-7; Leaf Exchange comments at 5.

<sup>7</sup> See Leaf Exchange comments at 5-6; AReM/RESA comments at 4-6; Noble Solutions comments at 5; CWCCG comments at 7.

<sup>8</sup> See SCE comments at 9; CCSF comments at 3-4; SCPPA comments at 8-9; Leaf Exchange comments at 7; AReM/RESA comments at 10; CWCCG comments at 6-7.

<sup>9</sup> See Leaf Exchange comments at 6; Calpine comments at 5-6; IEP comments at 10; CMUA comments at 6; CWCCG comments at 2-3.

<sup>10</sup> See SCPPA comments at 9-10; CMUA comments at 4; IEP comments at 14.

<sup>11</sup> See AReM/RESA comments at 10.

PG&E commented that, “the resulting restriction in the supply of Section 399.16(b)(1) products will directly increase the RPS costs borne by PG&E’s customers without any corresponding increase in value.”<sup>12</sup> And SCE stated that, “prohibiting unbundled RECs from counting as Section 399.16(b)(1) products will actually drive up compliance costs.”<sup>13</sup>

**II. COMMENTS OPPOSED TO INCLUSION OF ANY UNBUNDLED RECS IN CATEGORY ONE INCORRECTLY INTERPRET THE STATUTORY LANGUAGE AND DO NOT HAVE FACTUAL BASIS**

Some parties’ comments supported the PD’s conclusion regarding the placement of unbundled RECs in Category Three, although little analysis of the issue was provided.<sup>14</sup> The Sanitation Districts specifically disagree with Iberdrola’s position that “once a REC is sold separately and unbundled from the energy associated with the generation, the REC becomes a Category 3 product subject to the compliance quantity limitations of Section 399.16(c)(2).”<sup>15</sup> The plain meaning of the statute is clear that the reference to unbundled RECs in § 399.16(b)(3) is subject to the modifying phrase directly following it: “that do not qualify under the criteria of paragraph (1) or (2).” Therefore, unbundled RECs that belong in Category Three are only those that do not qualify for Category One or Two based on their criteria.

As stated by CMUA, the inclusion of this modifying phrase indicates that the statute “clearly contemplates that there are types of unbundled renewable energy credits that do qualify for content categories 1 and 2, otherwise the final phrase would be superfluous. An interpretation of statutory language that renders a key phrase of the directly applicable statutory provision irrelevant, is not favored by settled rules of statutory construction.”<sup>16</sup> Furthermore, a close examination of the statute reveals the observation of IEP that, “nothing in the criteria for Bucket 1 suggests that a bundle of energy and RECs is the only Bucket 1 product. If the Legislature had intended to limit Bucket 1 to only bundled transactions, it could have said so. Instead, it defined Bucket 1 in terms of the resources that are directly or effectively connected to a CBA.”<sup>17</sup> This leads to the conclusion of CCSF that, “[b]ecause the statute does not prohibit the unbundling of

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<sup>12</sup> See PG&E comments at 4.

<sup>13</sup> See SCE comments at 10.

<sup>14</sup> See Comments of Iberdrola Renewables (Iberdrola), enXco Development Corporation, NextEra Energy Resources, Powerex Corporation, TransWest Express LLC.

<sup>15</sup> See Iberdrola comments at 8.

<sup>16</sup> See CMUA comments at 3.

<sup>17</sup> See IEP comments at 10.

RECs in Buckets I and 2, it must be read to permit such unbundling. To infer the opposite is fundamentally at odds with the wording of the entire subsection.”

The plain meaning of the statute is clear that unbundled RECs originating from resources that meet the criteria of § 399.16(b)(1) belong in Category One. As stated by AReM/RESA, “SB 2 (1X) explicitly removed the deliverability requirements that were codified in the prior RPS law. Therefore, where the energy associated with the in-state renewable resource is physically consumed is not a relevant point of reference when determining the portfolio content category for in-state renewable DG.”<sup>18</sup> And as stated by Calpine, “there is no policy reason to assign different portfolio content categories to the same resource depending on how its output is marketed - an unbundled REC associated with a Category 1 product furthers the same policy goals and provides the same benefits as a Category 1 bundled REC.”<sup>19</sup>

Furthermore the final compliance determination for a Category One unbundled REC product is practical and straightforward, and will not “depend on tracing the history of the RECs... through a variety of transactions”<sup>20</sup> as the PD warns. As stated by IEP:

Because RECs retain the characteristics of the associated renewable generation, the accounting for RECs that are traded separately from the energy is simplified. The after-the-fact compliance determination is simplified because the REC retains the portfolio classification assigned in the upfront showing, and that classification can be easily verified through the WREGIS certificate and e-tags.<sup>21</sup>

### III. CONCLUSION

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.

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<sup>18</sup> See AReM/RESA comments at 11.

<sup>19</sup> See Capline comments at 6.

<sup>20</sup> PD, p. 37.

<sup>21</sup> See IEP comments at 13-14.

Respectfully submitted this 1<sup>st</sup> day of November at San Francisco, California.

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By     /s/ Mark McDannel      
Mark McDannel



## 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 "Reply 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 November 1, 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 1st day of November, 2011, at Whittier, California.

*/s/ Mark McDannel*

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Mark McDannel

Mark McDannel, P.E. BCEE  
Supervising Engineer

COUNTY SANITATION  
DISTRICTS OF  
LOS ANGELES COUNTY