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 PUBLIC UTILITY DISTRICT NO. 1 OF COWLITZ COUNTY ON PROPOSED DECISION IMPLEMENTING PORTFOLIO CONTENT CATEGORIES FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

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Pursuant to Rule 14.3 of the California Public Utilities Commission ("Commission") Rules of Practice and Procedure, the Public Utility District No. 1 of Cowlitz County ("Cowlitz") submits these reply comments on the proposed decision ("PD") implementing portfolio content categories for the Renewables Portfolio Standard ("RPS") program.[1]

I. THE TREATMENT OF OUT-OF-CALIFORNIA RPS-ELIGIBLE GENERATION

Many of the opening comments center on the appropriate treatment of in-state generation.[2] However, the PD must also ensure that the treatment of out-of-California RPS-eligible generation is fair, equitable, and in all substantive and procedural respects equivalent to similarly situated in-state RPS-eligible generation. Cowlitz has not experienced such treatment thus far as a result of the Commission's implementation of Senate Bill 2 (1x) (Simitian), stats. 2011, ch. 1 ("SB 2X").

Prior to SB 2X, Cowlitz entered into contractual arrangements for the sale of RPS eligible wind power and green attributes from existing facilities in the Northwest to a California retail seller to help satisfy the retail seller's RPS compliance obligations.[3] Under these arrangements, a significant portion of the negotiated price to be paid to Cowlitz for the power and green attributes was conditioned on Commission approval of the contractual arrangements. For approximately two years, the transactions remained pending at the Commission awaiting approval without any apparent action by Commission staff. The matter was never placed on the Business Meeting agenda for consideration by the Commission despite the fact that an

[1] Cowlitz filed a Motion to Become a Party on September 27, 2011 that is currently pending before the Commission.
[2] *See*, e.g., Opening Comments of Southern California Power Authority, The Utility Reform Network ("TURN"), Southern California Edison Company ("SCE"), Calpine Corporation, and The Leaf Exchange LLC.
[3] *See* Pacific Gas and Electric Company ("PG&E") Advice Letters 3609-E and 3609-E-A.

independent evaluator advised the Commission that the contractual arrangements met all regulatory requirements objectives and should be approved. After the enactment of SB 2X and resulting uncertainties regarding Commission implementation of the new law, the retail seller terminated the contractual arrangements and withdrew its pending advice letter regarding the transaction.[4] As a result of these events, Cowlitz, a non-profit municipal corporation, has lost a significant amount of the revenue that it reasonably anticipated receiving on account of sales of RPS-eligible power and green attributes into California over the past two years and this loss of revenue has resulted in an unanticipated rate increase for its retail customers.[5]

The implementation of SB 2X to date, in Cowlitz's experience, has not been fair, equitable, or transparent. Instead, it has created market uncertainty, adversely affected out-of-California generators and unnecessarily decreased the generation available to meet RPS compliance requirements. The disparate treatment of out-of-California generation Cowlitz has experienced to date may also constitute an impermissible burden on interstate commerce in violation of the Commerce Clause.[6]

II. THE RULES AND REQUIREMENTS TO QUALIFY FOR RPS TREATMENT SHOULD BE FULLY TRANSPARENT AND UNAMBIGUOUS

A number of parties have expressed their concern with the PD's requirement of an up-front showing and compliance determination.[7] These commenters find both the PD's rules and its discussion of these rules ambiguous and seek clarification. The Commission should heed the concerns of these commenters. Cowlitz' experience, described above, provides ample evidence of the importance of providing clear rules associated with the RPS treatment of various

[4] *See* PG&E Letter of October 5, 2011, *Re: Withdrawal of Advice Letters 3609-E and 3609-E-A Contract Between PG&E and Shell Energy North America (US), L.P. for Procurement of Renewable Energy Resources.*
[5] *See*, Resolution 2651 of the Board of Commissioners for Public Utility District Number 1 of Cowlitz County, WA.
[6] U.S. Constitution, art. I, §8, cl. 3; *New Energy Co. of Indiana v. Limbach*, 486 U.S. 269, 273-74 (1988).
[7] *See*, e.g., Opening Comments of enXco Development Corporation, NextEra Energy Resources, LLC, San Diego Gas & Electric Company ("SDG&E"), SCE, and Green Power Institute.

contractual arrangements. Even more importantly, the Commission must ensure that the rules do not allow room for manipulation by any party, including the Commission staff responsible for implementing those rules.

A. The Criteria to Qualify as a Category 1 Product Must Include Products from Out-of-California RPS Generators

The PD's lack of clarity prompted Centennial West Clean Line to request that the Commission clarify that a product scheduled from a facility connected to an interstate high-voltage direct current transmission line and other generation ties would be considered "scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source."[8] Similarly, Cowlitz requests that the Commission clarify that electricity products from an eligible generator that are scheduled on an hourly basis through the Northwest-Southwest Intertie are also considered "scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source." Such clarity is crucial to ensuring regulatory certainty for the development of renewable generation facilities that will connect to such interties.

B. The Criteria to Qualify as a Category 2 Product Must Not Be Overly Restrictive

TURN and Iberdrola both propose additional and more onerous requirements for electricity products to be qualified as "firmed" and "shaped" electricity products under §399.16(b)(2). TURN urges the Commission to "establish a minimum duration of 5 years for any firmed and shaped transaction;" to institute "a fixed-price requirement for the energy"; and ensure that "the energy used to 'firm and shape' the generation should be provided from the same [Western Energy Coordinating Council] subregion as the renewable generation."[9]

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[8] Section 399.16(b)(1)(A).
[9] TURN Opening Comments, 4-5.

Iberdrola also urges the Commission to require minimum contract lengths for firming and shaping agreements.[10] These additional and overly restrictive criteria are not included in the statute and thus must be rejected.

The PD itself improperly imposes three additional commercial elements for firmed and shaped transactions that are not included in the statute. Specifically:

> 1. the buyer simultaneously purchases energy and associated renewable energy certificates (RECs) from the RPS-eligible generation facility;
>
> 2. 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);
>
> 3. the buyer acquires the substitute energy at the same time as it acquires the renewables portfolio standard-eligible energy.[11]

These additional, vague, and inconsistent requirements are not found in the actual statutory language. They too must be rejected.

Instead, the Commission should retain the definition of "firming" and "shaping" that was previously codified by the California Energy Commission ("CEC") and relied upon by commercial parties like Cowlitz when creating contractual arrangements.[12] This definition also provides the underpinning of the current statutory language in §399.16(b)(2). This less-restrictive definition preserves commercial flexibility for both RPS developers and retail sellers, provides certainty for all parties, and thus is ultimately to the benefit of ratepayers.

III. THE COMMISSION'S INTERPRETATION OF GRANDFATHERING SHOULD BE RELAXED

SDG&E's comments explores a few of the problems stemming from the Commission's narrow interpretation of §399.16(d), which grandfathers "[a]ny contract or ownership agreement

[10] Iberdrola Renewables Inc. Opening Comments, 13-14.
[11] PD, mimeo at 60.
[12] CEC RPS Eligibility Guidebook (2011), at 37.

originally executed prior to June 1, 2010" and is subject to three specific requirements.[13] Just as with "firming" and "shaping," the Commission should not impose additional restrictions that do not appear in the statute and should grant parties the most commercial flexibility possible to provide regulatory certainty for all parties and benefit ratepayers.

The Commission should interpret §399.16(d)(3) as grandfathering all amendments, novations or modifications to a contract or ownership agreement executed prior to June 1, 2010, including those made to contracts or ownership agreements that had been executed but had not yet been approved by the Commission prior to June 1, 2010. This interpretation would allow for the potential renegotiation of contractual arrangements that were affected by the regulatory uncertainty regarding the Commission's implementation of SB 2X. In addition, this interpretation potentially will result in more RPS-eligible electricity products available to meet California RPS compliance requirements and reduce the overall costs of RPS compliance to ratepayers.

/s/_____
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[13] SDG&E Opening Comments, at 7-9.

VERIFICATION

I, Paul Brachvogel, am General Counsel of Public Utility District No. 1 of Cowlitz County and am authorized to make this verification on its behalf. I do hereby verify that the information contained in the foregoing Reply Comments is true, correct and complete to the best of my knowledge.

I verify that the foregoing is true under penalty of perjury.

Executed on November 1, 2011, at Longview, Washington.

/s/
Paul Brachvogel
General Counsel
Public Utility District No. 1 of Cowlitz County