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 (May 5, 2011)

NOTICE OF EX PARTE COMMUNICATION

INDEPENDENT ENERGY PRODUCERS ASSOCIATION
Steven Kelly
Policy Director
1215 K Street, Suite 900
Sacramento, CA 95814
Telephone: (916) 448-9499
Facsimile: (916) 448-0182
Email steven@iepa.com

GOODIN, MACBRIDE, SQUERI, DAY & LAMPREY, LLP
Brian T. Cragg
Suzy Hong
505 Sansome Street, Suite 900
San Francisco, CA 94111
Telephone: (415) 392-7900
Facsimile: (415) 398-4321
Email: bcragg@goodinmacbride.com
Email: shong@goodinmacbride.com

Attorneys for the Independent Energy Producers Association

Date: November 17, 2011

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 (May 5, 2011)

NOTICE OF EX PARTE COMMUNICATION

Pursuant to Rule 8.3 of the Commission's Rules of Practice and Procedure, the Independent Energy Producers Association (IEP) submits this Notice of Ex Parte Communication.

On November 14, 2011 Steven Kelly, Policy Director for IEP, and Brian Cragg, outside counsel for IEP, had several ex parte meetings. At approximately 1:30 p.m., Mr. Kelly and Mr. Cragg had an ex parte meeting with Colette Kersten, advisor to Commissioner Sandoval. The meeting was held at the California Public Utilities Commission, was initiated by Mr. Cragg and lasted for approximately 30 minutes. The handouts attached to this Notice as Attachment A (Statutory Construction and Unbundled RECs, Presentation by the Independent Energy Producers Association), Attachment B (Appendix on Statutory Construction and Unbundled RECs, Presentation by the Independent Energy Producers Association, Commentary on Slides and Supporting Legal Authorities) and Attachment C (Proposed Decision re RPS Product Categories) were used in connection with the communication. In addition, Ms. Kersten requested electronic copies of the attachments, which Mr. Cragg emailed to her that afternoon. Mr. Cragg's email to Ms. Kersten is included in Attachment D.

At approximately 2:30 p.m., Mr. Kelly and Mr. Cragg had an ex parte meeting with Rahmon O. Momoh, advisor to Commissioner Simon. The meeting was held at the California Public Utilities Commission, was initiated by Mr. Cragg and lasted for approximately 30 minutes. Attachments A, B and C were used in connection with the communication. In addition, Mr. Momoh requested electronic copies of the attachments, which Mr. Cragg emailed to him that afternoon. Mr. Cragg's email to Mr. Momoh is included in Attachment D.

At approximately 3:30 p.m., Mr. Kelly and Mr. Cragg had an ex parte meeting with Sara Kamins, advisor to Commissioner Ferron. The meeting was held at the California Public Utilities Commission, was initiated by Mr. Cragg and lasted for approximately 3 minutes. Attachments A and B were used in connection with the communication.

At approximately 3:40 p.m., Mr. Kelly and Mr. Cragg had an ex parte meeting with Matthew Tisdale, advisor to Commissioner Florio. The meeting was held at the California Public Utilities Commission, was initiated by Mr. Cragg and lasted for approximately 40 minutes. Attachments A, B and C were used in connection with the communication. In addition, Mr. Tisdale requested electronic copies of the attachments, which Mr. Cragg emailed to him that afternoon. Mr. Cragg's email to Mr. Tisdale is included in Attachment D.

During the meetings, Mr. Kelly and Mr. Cragg discussed the Proposed Decision on Portfolio Content Categories (PD) and the PD's treatment of unbundled Renewable Energy Credits (RECs). Mr. Kelly and Mr. Cragg discussed how both the words of the statute and policy considerations compel the conclusion that unbundled RECs from Category 1 facilities should be classified as Category 1 products.

Respectfully submitted this 17th day of November, 2011 at San Francisco, California.

GOODIN, MACBRIDE, SQUERI,
DAY & LAMPREY, LLP
Brian T. Cragg
Suzy Hong
505 Sansome Street, Suite 900
San Francisco, California 94111
Telephone: (415) 392-7900
Facsimile: (415) 398-4321
Email: bcragg@goodinmacbride.com
Email: shong@goodinmacbride.com

By /s/ Suzy Hong
Suzy Hong

Attorneys for the Independent Energy Producers Association

VERIFICATION

I am an attorney for the Independent Energy Producers Association in this matter. IEP is absent from the City and County of San Francisco, where my office is located, and under Rule 1.11(d) of the Commission's Rules of Practice and Procedure, I am submitting this verification on behalf of IEP for that reason. I have read the attached "Notice of Ex Parte Communication," dated November 17, 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 17th day of November, 2011, at San Francisco, California.

By */s/ Suzy Hong*
Suzy Hong

GOODIN, MACBRIDE, SQUERI,
DAY & LAMPREY, LLP
505 Sansome Street, Suite 900
San Francisco, California 94111
Telephone:(415) 392-7900
Facsimile: (415) 398-4321
Email: shong@goodinmacbride.com

Attorneys for the Independent Energy Producers Association

2970/010/X133740.v1
11/16/11 3:01 PM

ATTACHMENT A

Statutory Construction and Unbundled RECs

Presentation by the Independent Energy Producers Association

The Basic Rules of Statutory Construction

- Look to the language of the statute itself.
- Give effect to the usual, ordinary import of the language.
- Give effect and significance to every word, phrase, sentence and part.
- Assume that the Legislature knew what it was saying and meant what it said.
- Harmonize the various parts of the statute and consider the statutory framework as a whole.

The Relevant Statutory Language

New § 399.16(b)(e), enacted as part of SB2 (1X), defines Category 3 products:

> "Eligible renewable energy resource electricity products, or any fraction of the electricity generated, including unbundled renewable energy credits, that do not qualify under the criteria of paragraph (1) or (2)."

The Dispute

- The Proposed Decision reads the phrase "that do not qualify under the criteria of paragraph (1) or (2)" to mean that all unbundled RECs fall within Category 3 (*i.e.*, the phrase ***describes*** unbundled RECs).
- IEP and others read this phrase to mean that the unbundled RECs that don't qualify for Category 1 or 2 fall into Category 3 (*i.e.*, the phrase ***prescribes*** the criteria for Category 3 products). Under this interpretation, there can be unbundled RECs in Categories 1 and 2.
- The rules of statutory construction favor IEP's interpretation.

The Ordinary Meaning of the Statutory Language

- In English grammar, "that" is a defining, or restrictive pronoun, and "which" is a nondefining, or nonrestrictive pronoun.
- *The Elements of Style* gives an example of this distinction:

  The lawn mower that is broken is in the garage. (Tells which one)

  The lawn mower, which is broken, is in the garage. (Adds a fact about the only mower in question)
- In the ordinary meaning of this phrase, the selection of "that" means that the phrase "that do not qualify under the criteria of paragraph (1) or (2)" is intended to be restrictive and to indicate which "eligible renewable energy resource electricity products," including unbundled RECs, are Category 3 products, *i.e.*, those "that do not qualify under the criteria of paragraph (1) or (2)."

A Contrary Reading of this Phrase Leads to Illogical Results

- If the phrase "that do not qualify under the criteria of paragraph (1) or (2)" is read to be nonrestrictive, then it describes "eligible renewable energy resource electricity products," including unbundled RECs, as not qualifying under the criteria for Category 1 or 2.
- However, if "eligible renewable energy resource electricity products" don't qualify under the criteria of paragraph (1) or (2), then why do the definitions of Categories 1 and 2 refer to "eligible renewable energy resource electricity products"? A nonrestrictive interpretation of the phrase in paragraph (3) nullifies the language of paragraphs (1) and (2).
- Thus, interpreting "that" as nonrestrictive results in an absurd interpretation, a result that conflicts with the rules of statutory construction.
- The rules of statutory construction tell us to assume that the Legislature knew what it was saying and meant what it said, *i.e.*, that it intentionally used the restrictive pronoun "that" instead of the nonrestrictive pronoun "which," and that it understood the implications of this choice of words.

IEP's Interpretation Is Consistent with the Statutory Framework As a Whole

- Consistent with the Definitions of Categories 1 and 2
  - Nothing in the definitions of Categories 1 and 2 excludes unbundled RECs that meet the criteria for the category.
  - As noted previously, interpreting the phrase "that do not qualify under the criteria of paragraph (1) or (2)" as restrictive is consistent with the definitions of Categories 1 and 2, whereas interpreting the phrase as nonrestrictive negates the statutory definitions of those categories.

Consistency with the Statutory Framework (continued)

- Consistent with Cost Containment for RPS Goals
  - SB 2 (1X) requires the Commission to set limitations on each utility's expenditures for compliance with the RPS standard.
  - IEP's interpretation reduces the cost of RPS compliance:
    - RECs from facilities interconnected to a California Balancing Authority (CBA) will increase the supply of products within Category 1, the only unlimited category. Greater supply will result in lower prices.
    - Utilities that enter into long-term contracts to purchase bundled Category 1 products will have the ability to sell RECs as Category 1 products if they have more eligible products than they need for RPS compliance.
  - By contrast, the other interpretation would limit such sales to a lower-valued Category 3 product, and if other potential buyers have reached the limit for Category 3, the utility and its ratepayers would be stuck with the stranded cost of RECs the utility can neither use for compliance nor sell.

Consistency with the Statutory Framework (continued)

- Consistent with the Values the Legislature Attributed to Each Category
  - New § 399.11(e)(3) states that out-of-state renewable resources having executed power purchase agreements with California utilities or awaiting interconnection approval from the CAISO will count as Category 1 products, and § 399.11(e)(2) requires in-state and out-of-state resources to be treated "without discrimination." In light of the Legislature's requirement of nondiscrimination and its categorization of various renewable energy products according to "their impacts on the operation of the grid in supplying electricity" (§399.16(a)), it wouldn't make sense to discriminate against unbundled RECs from resources interconnected to a CBA by classifying them in Category 3 while treating RECs from out-of-state resources as Category 1 products.

Consistency with the Statutory Framework (continued)

- Consistent with the Legislature's Actions
  - The PD interprets § 399.16(b)(3) to have three elements:
    1. "[e]ligible renewable energy resource electricity products . . . that do not qualify under the criteria of paragraph (1) or (2);"
    2. "any fraction of the electricity generated" that does not qualify under the criteria of paragraph (1) or (2); and
    3. "unbundled renewable energy credits."
  - An earlier version of SB 2 (1X) was worded nearly identically to the PD's interpretation. If the bill had remained unchanged, there would be little question that all unbundled RECs would be categorized in Category 3. However, the Legislature amended the bill to move the reference to its current position, where it must be read as being subject to the restrictive phrase "that do not qualify under the criteria of paragraph (1) or (2)." Under the rules of statutory construction, this amendment cannot be ignored, since we are to assume that the Legislature knew what it was doing and understood the implications of this amendment.

ATTACHMENT B

Appendix on Statutory Construction and Unbundled RECs
Presentation by the Independent Energy Producers Association
Commentary on Slides and Supporting Legal Authorities

Slide 2 - *The Basic Rules of Statutory Construction*

Commentary: This slide summarizes the basic rules that the Commission is to apply when it interprets statutes, derived from the cases summarized below.

Legal Authorities:
"A fundamental rule of statutory construction is that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law. In construing a statute, **our first task is to look to the language of the statute itself**. When the language is clear and there is no uncertainty as to the legislative intent, we look no further and simply enforce the statute according to its terms. . . . Additionally, however, we must consider the [statutory language] in the context of the entire statute and the statutory scheme of which it is a part. **We are required to give effect to statutes according to the usual, ordinary import of the language employed in framing them**. If possible, **significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose**. . . . When used in a statute [words] must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear. Moreover, the **various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole**."

> *Phelps v. Stostad*, 16 Cal. 4th 23, 32, 65 Cal. Rptr. 2d 360, 365 (1997) citing *DuBois v. Workers' Comp. Appeals Bd.*, 5 Cal. 4th 382, 387-388, 20 Cal. Rptr. 2d 523, 525-526 (1993) (internal citations and quotations omitted) (emphasis added).

"[T]he better and more modern rule of construction is to construe a legislative enactment in accordance with the ordinary meaning of the language used and to **assume that the Legislature knew what it was saying and meant what it said**."

> *Educational and Recreational Services, Inc. v. Pasadena Unified School Dist.*, 65 Cal. App. 3d 775, 782, 135 Cal. Rptr. 594, 598 (1977) (emphasis added).

Slide 5 - *The Ordinary Meaning of the Statutory Language*

Commentary: The cases below describe this principle. Ascertaining the "usual, ordinary import of the language" requires a careful attention to both the words and the way the words are used, *i.e.,* the grammar of the statute. In this case, the distinction between the restrictive pronoun "that" and the nonrestrictive pronoun "which" is crucial. The status of unbundled RECs is quite different if the phrase "that do not qualify under the criteria of paragraph (1) or (2)" in section 399.16(b)(3) is read as a restrictive phrase, consistent with the actual words of the statute, or as a nonrestrictive phrase, which requires a substitution of "which" for the "that" that actually appears in the statute.

Legal Authorities:
"We are required to give effect to statutes according to the **usual, ordinary import of the language** employed in framing them."

> *Phelps v. Stostad*, 16 Cal. 4th 23, 32, 65 Cal. Rptr. 2d 360, 365 (1997) citing *DuBois v. Workers' Comp. Appeals Bd.*, 5 Cal. 4th 382, 387-388, 20 Cal. Rptr. 2d 523, 525-526 (1993) (internal citations and quotations omitted) (emphasis added).

"[T]he better and more modern rule of construction is to **construe a legislative enactment in accordance with the ordinary meaning of the language used** . . ."

> *Educational and Recreational Services, Inc. v. Pasadena Unified School Dist.*, 65 Cal. App. 3d 775, 782, 135 Cal. Rptr. 594, 598 (1977) (emphasis added).

Slide 6 - *A Contrary Reading of This Phrase Leads to Illogical Results*

Commentary: If the phrase "that do not qualify under the criteria of paragraph (1) or (2)" is read as a nonrestrictive phrase, then it describes or adds information about "eligible renewable energy resource electricity products, . . . including unbundled RECs." The added information is that they don't qualify under the criteria of paragraph (1) and (2), the criteria for Categories 1 and 2. But if "eligible renewable energy resource electricity products" don't qualify for Category 1 or 2, then paragraphs (1) and (2), both of which refer to "eligible renewable energy resource electricity products," make no sense--they set the criteria for Category 1 and 2 products that paragraph (3) says don't qualify under the criteria for Category 1 and 2. This is an absurd result, and the cases say that statutes should be construed to avoid absurd results.

Legal Authorities:
"In the end, we must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, **and avoid an interpretation that would lead to absurd consequences**."

> *City of Orange v. San Diego County Employees Ret. Ass'n,* 103 Cal. App. 4th 45, 54, 126 Cal. Rptr. 2d 405, 412 (2002) (citing *Torres v. Parkhouse Tire Serv., Inc.*, 26 Cal. 4th 995, 1003, 111 Cal. Rptr. 2d 564, 568 (2001)) (internal citations and quotations omitted) (emphasis added). Also see *Wilcox v. Birtwhistle*, 21 Cal. 4th 973, 977-978, 90 Cal. Rptr. 2d 260, 263 (1999).

"If possible, **significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose**."

> *Phelps v. Stostad*, 16 Cal. 4th 23, 32, 65 Cal. Rptr. 2d 360, 365 (1997) citing *DuBois v. Workers' Comp. Appeals Bd.*, 5 Cal. 4th 382, 387-388, 20 Cal. Rptr. 2d 523, 525-526 (1993) (internal citations and quotations omitted) (emphasis added). Also see *Garcia v. McCutchen*, 16 Cal. 4th 469, 476; 66 Cal. Rptr. 2d 319, 324

(1997) ("We must presume that the Legislature intended 'every word, phrase and provision . . . in a statute . . . to have meaning and to perform a useful function.'" (Internal citation omitted.))

"[T]he better and more modern rule of construction is to construe a legislative enactment in accordance with the ordinary meaning of the language used and to **assume that the Legislature knew what it was saying and meant what it said**."

Educational and Recreational Services, Inc. v. Pasadena Unified School Dist., 65 Cal. App. 3d 775, 782, 135 Cal. Rptr. 594, 598 (1977) (emphasis added).

Slide 7 - *IEP's Interpretation is Consistent with the Statutory Framework as a Whole*

Commentary: As discussed above, interpreting the phrase "that do not qualify under the criteria of paragraph (1) or (2)" as restrictive preserves the meaning of paragraph (1) and (2), rather than banishing them into absurdity. In addition, nothing in paragraph (1) and (2) in any way suggests that unbundled RECs are excluded from Category 1 or 2. IEP's interpretation is consistent with the existence of Category 1 or 2 RECs.

Legal Authorities:
"When used in a statute **[words] must be construed in context**, keeping in mind the nature and obvious purpose of the statute where they appear. Moreover, **the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole**."

Phelps v. Stostad, 16 Cal. 4th 23, 32, 65 Cal. Rptr. 2d 360, 365 (1997) citing *DuBois v. Workers' Comp. Appeals Bd.*, 5 Cal. 4th 382, 387-388, 20 Cal. Rptr. 2d 523, 525-526 (1993) (internal citations and quotations omitted) (emphasis added).

"[T]he various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole."

Moyer v. Workmen's Comp. Appeals Bd., 10 Cal.3d 222, 230, 110 Cal.Rptr. 144, 148 (1973). Also see *Turner v. Bd. of Trustees*, 16 Cal. 3d 818, 827, 129 Cal. Rptr. 443, 448 (1976) ("Courts should construe all provisions of a statute together, significance being given -- if possible -- to every word, phrase, sentence and part of an act in pursuance of the legislative purpose.") and *Prospect Medical Group, Inc. v. Northridge Emergency Medical Group*, 45 Cal. 4th 497, 506, 87 Cal. Rptr. 3d 299, 305 (2009) ("We do not examine [statutory] language in isolation, but in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment.")

Slide 8--*IEP's Interpretation Is Consistent with Cost Containment for RPS Goals*

Commentary: IEP's interpretation is consistent with the Legislature's desire to limit the costs of meeting RPS goals as much as possible. IEP's proposal creates the possibility that resources that are interconnected to a California Balancing Authority and other Category 1 resources can trade the RECs they produce separately from the associated renewable energy, and that retail sellers may buy and sell unbundled Category 1 and 2 RECs to meet their RPS obligations. Additional Category 1 products will help lower the cost of Category 1 products, both by increasing the supply of Category 1 products and creating a less expensive option for retail sellers that need RECs for compliance but may not need to purchase the associated energy in a bundled package.

In addition, retail sellers that enter into long-term contracts for bundled Category 1 products will have the ability to sell excess RECs as an unbundled Category 1 product to other retail sellers who need them for compliance and to recover the higher value of the Category 1 products for the benefit of their ratepayers. If all unbundled RECs are transformed into Category 3 products, regardless of their origin, retail sellers with excess RECs from purchases of bundled Category 1 products will be forced to either (1) sell them at a reduced price reflect the restrictions on use of Category 3 products for compliance or (2) let them expire because all other retail sellers have reached the percentage usage cap on Category 3 products. In either case, the cost for the retail sellers' ratepayers will be higher than under IEP's interpretation.

If all unbundled RECs are automatically classified as Category 3 products, regardless of their origin, it will be extremely difficult (or very expensive) for smaller retail sellers, especially ESPs with variable annual loads, to comply with the statutory goals. For these entities, a robust market for RECs in all categories is crucial.

Slide 9--*IEP's Interpretation Is Consistent with the Values the Legislature Attributed to Each Category*

Commentary: IEP's interpretation respects and maintains the category established with the location or transaction that creates the original categorization for the REC and associated renewable energy. The Legislature created certain criteria for Category 1 products derived from their impact on the grid (section 399.16(a), and there is no reason to transform the RECs from Category 1 resources into Category 3 resources when they are traded separately from the associated renewable energy. The impact on the system of the original generation is unaltered.

In this context, section 399.11(e) is significant. In section 399.11(e)(2), the Legislature required out-of-state generating resources to be "treated identically" to in-state resources and "without discrimination." In section 399.11(e)(3), the Legislature declared that the output from out-of-state resources that either have power purchase agreements with California retail suppliers or that are in the CAISO's interconnection queue will be counted as Category 1 products for compliance purposes. Section 399.11(e)(3) draws no distinctions among the products from these resources, and therefore any unbundled RECs from these resources would also be counted as Category 1 products. In light of Category 1 status given to resources interconnected to a California Balancing Authority, it makes no sense to assume that the Legislature would assign lesser value to the unbundled RECs

from an in-state resource interconnected to a CBA than it did to the unbundled RECs from certain out-of-state resources. In other words, the Legislature should not be presumed to have established a discriminatory treatment of unbundled RECs from Category 1 resources in contradiction of its requirement of nondiscrimination.

Legal Authorities:

New Public Utilities Code section 399.11(e):

> (2) This article requires generating resources located outside of California, but are able to supply that electricity to California end-use customers, to be treated identically to generating resources located within the state, without discrimination.
>
> (3) California electrical corporations have already executed, and the commission has approved, power purchase agreements with eligible renewable energy resources located outside of California that will supply electricity to California end-use customers. These resources will fully count toward meeting the renewables portfolio standard procurement requirements. In addition, there are nearly 7,000 megawatts of additional proposed renewable energy resources located outside of California that are awaiting interconnection approval from the Independent System Operator. All of these resources, if procured, will count as eligible renewable energy resources that satisfy the portfolio content requirements of paragraph (1) of subdivision (c) of Section 399.16.

Slide 10--*IEP's Interpretation Is Consistent with the Legislature's Actions*

Commentary: The Legislature considered but ultimately rejected language that would have clearly classified all unbundled RECs as Category 3 products. The language that became section 399.16(b) in SB2 (1X) originated in Senate Bill (SB) 722. In early August 2010, the definition of Category 3 resources in SB 722 read:

> (3) Eligible renewable energy resource electricity products, or any fraction of the electricity generated, that do not qualify under paragraph (1) or (2), including unbundled renewable energy credits.

This language is consistent with the PD's construction that the restriction "that do not qualify under the criteria of paragraph (1) or (2)" refers to "eligible renewable energy resource electricity products" but not to "unbundled renewable energy credits." However, this provision was amended on August 16, 2010 to read:

> (3) Eligible renewable energy resource electricity products, or any fraction of the electricity generated, *including unbundled renewable energy credits*, that do not qualify under *the criteria of* paragraph (1) or (2) ~~, including unbundled renewable energy credits~~.

(Inserts shown in italics, deletions in strikethrough.) This amendment, moving the reference to unbundled RECs so that it too is subject to the restriction "that do not qualify under the criteria of paragraph (1) or (2)" clarifies that the only unbundled RECs that fall in Category 3 are those that do not qualify for Category 1 or 2. If the Legislature did not intend to restrict Category 3 RECs in this way, there would have been no need to rearrange this provision. Conversely, if the Legislature intended that all unbundled RECs would fall within Category 3, as the PD concludes, it would not have moved the

reference to unbundled RECs to a place in the paragraph where it is modified by "that do not qualify under the criteria of paragraph (1) or (2)." Moreover, the language incorporated in SB 2 (1X), as enacted by the Legislature and approved by the Governor, is exactly the language in the August 16 amendment.

Legal Authorities:

Aug. 2, 2010 amendments to SB 722, § 20, p. 36, available at http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0701-0750/sb_722_bill_20100802_amended_asm_v93.pdf .

Aug. 16, 2010 amendments to SB 722, § 20, p. 39, available at http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0701-0750/sb_722_bill_20100816_amended_asm_v92.pdf .

2970/010/X133743.v1
11/16/11

ATTACHMENT C

Proposed Decision re RPS Product Categories

The Proposed Decision undermines the legislature's purpose for creating the portfolio content categories:

Logical Inconsistency and Illogical Discrimination: The PD states that whenever a REC is separated from the associated energy, it becomes a REC-only product. It then places all REC-only products in Bucket 3. Yet when a REC is separated from the underlying energy and repackaged with substitute energy in a "firmed and shaped" Bucket 2 transaction, the REC is not categorized as a Bucket 3 product but retains its status as a Bucket 2 product. By contrast, when Bucket 1 RECs are separated from the underlying renewable energy, in the PD's view they are immediately transformed into Bucket 3 products. The PD's inconsistent treatment of RECs creates commercial uncertainty that undermines the goals of the RPS.

- ✓ **IEP's solution: categorize all RECs consistently based on the characteristics of the associated resource or transaction and maintain that categorization until the REC is retired.**
  - **If the REC is associated with a resource interconnected with a CBA or energy delivered to a CBA within an hour of REC creation, it's a Bucket 1 product and is retired as a Bucket 1 product;**
  - **If the REC is associated with energy delivered to a CBA outside of an hour but within a Calendar Year of REC creation, it's a Bucket 2 product and is retired as a Bucket 2 product;**
  - **If the REC fails to meet the criteria for Bucket 1 or Bucket 2, then it's a Bucket 3 product and is retired as a Bucket 3 product.**

Increases Consumer Costs While Discriminating Against Load Not Served by the Utility: The PD allows electric generation directly interconnected to a CBA to count as a Bucket 1 Transaction if it is sold to the local utility, but that same electric generation will be treated as a Bucket 3 Transaction if it is used to serve load behind the meter, even though the flow of electricity is physically identical. Not only is this treatment discriminatory, but it also reduces the supply of higher value Bucket 1 transactions and increases consumer costs.

- ✓ **IEP's solution: categorize RECs associated with behind the meter use of energy from Bucket 1 resources as Bucket 1 products, if properly metered to meet the requirements of WREGIS.**

Undermines Administrative Simplicity: Bucket 1 transactions will require parties to submit and the Energy Division to review reams of delivery, scheduling, and transaction data to verify that the REC remains bundled with the underlying energy from its original creation to retirement and to verify that the REC has not been separated from its associated energy and remarketed.

- ✓ **IEP's solution: Simply count the REC as representative of the original generation that created the REC. The date, time, and place stamp on the WREGIS certificate will provide the information the CPUC needs to properly track Bucket 1 transactions that represent the bulk of RPS sales.**

ATTACHMENT D

BCragg

From: BCragg
Sent: Monday, November 14, 2011 4:55 PM
To: 'Kersten, Colette'
Subject: Copies of handouts from today's meeting
Attachments: statutory construction and RECs (X133617).PPTX; Appendix for RECs powerpoint (X133622).DOCX; final talking points on RPS buckets (X133443-4).DOCX

Colette,
Thank you for meeting with us to discuss the Proposed Decision on the portfolio content categories of SB 2X. As you requested, attached are electronic copies of the documents we used during the meeting. Please let Steven Kelly or me know if you have any further questions.
Regards,
Brian

Brian T. Cragg
direct line 415.765.8413
tel 415.392.7900 | fax 415.398.4321
505 Sansome Street, Suite 900 | San Francisco, CA 94111
bcragg@goodinmacbride.com
vCard | www.goodinmacbride.com

GOODIN,
MACBRIDE,
SQUERI, DAY &
LAMPREY, LLP

BCragg

From: BCragg
Sent: Monday, November 14, 2011 4:56 PM
To: 'rmm@cpuc.ca.gov'
Subject: Copies of handouts from today's meeting
Attachments: statutory construction and RECs (X133617).PPTX; Appendix for RECs powerpoint (X133622).DOCX; final talking points on RPS buckets (X133443-4).DOCX

Rahmon,
Thank you for meeting with us to discuss the Proposed Decision on the portfolio content categories of SB 2X. As you requested, attached are electronic copies of the documents we used during the meeting. Please let Steven Kelly or me know if you have any further questions.
Regards,
Brian

Brian T. Cragg
direct line 415.765.8413
tel 415.392.7900 | fax 415.398.4321
505 Sansome Street, Suite 900 | San Francisco, CA 94111
bcragg@goodinmacbride.com
vCard | www.goodinmacbride.com

GOODIN,
MACBRIDE,
SQUERI, DAY &
LAMPREY, LLP

BCragg

From: BCragg
Sent: Monday, November 14, 2011 4:58 PM
To: 'Tisdale, Matthew'
Subject: Copies of handouts from today's meeting
Attachments: statutory construction and RECs (X133617).PPTX; Appendix for RECs powerpoint (X133622).DOCX; final talking points on RPS buckets (X133443-4).DOCX

Matthew,
Thank you for meeting with us to discuss the Proposed Decision on the portfolio content categories of SB 2X. As you requested, attached are electronic copies of the documents we used during the meeting. The discussion was stimulating, as always. Please let Steven Kelly or me know if you have any further questions.
Regards,
Brian

Brian T. Cragg
direct line 415.765.8413
tel 415.392.7900 | fax 415.398.4321
505 Sansome Street, Suite 900 | San Francisco, CA 94111
bcragg@goodinmacbride.com
vCard | www.goodinmacbride.com

GOODIN,
MACBRIDE,
SQUERI, DAY &
LAMPREY, LLP