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)

REPLY OF THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION TO COMMENTS ON THE PROPOSED DECISION ON PORTFOLIO CONTENT CATEGORIES

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Many of the comments on the Proposed Decision (PD) of Administrative Law Judge Anne Simon on the Portfolio Content Categories for the Renewables Portfolio Standard (RPS) Program touched on two topics: (a) the interpretation of the product definition provisions of Senate Bill 2 of the First Extraordinary Session of the 2011-2012 legislative session (SB 2X), particularly the treatment of bundled and unbundled Renewable Energy Credits (RECs), and (b) the appropriate requirements for the products described in section 399.16(b)(2) (Bucket 2). The Independent Energy Producers Association (IEP) offers reply comments on these topics.

I. UNBUNDLED RECS ARE NOT CONFINED TO BUCKET 3

IEP was gratified to see the number and variety of parties that concurred with the analysis and conclusion of IEP's examination of SB 2X's provisions on unbundled RECs.[1] The number of parties supporting IEP's construction is less significant than the fact that many of the

[1] *E.g.,* Opening Comments of California Municipal Utility Association, Southern California Public Power Association (SCPPA), Calpine, California Wastewater Climate Change Group, Southern California Edison Company (SCE), the City and County of San Francisco, Solar Alliance, Leaf Exchange, Shell, Alliance of Retail Energy Markets/Retail Energy Supply Association (AReM/RESA), Noble Americas Energy Solutions, Pilot Power Group.

comments included a detailed legal analysis of the provisions of SB 2X and a thoughtful application of the rules of statutory construction to reach the same conclusion as IEP's.[2]

IEP found it useful in its Opening Comments to focus on RECs from resources that are interconnected at the transmission or distribution level to a California Balancing Authority (CBA) and resources that are dynamically transferred into a CBA. SB 2X also provides that resources whose energy is scheduled into a CBA without substituting electricity from another source should be classified as Bucket 1 products and treated accordingly for compliance purposes. For those resources that delivery energy to a CBA according to an hourly or subhourly import schedule, SB 2X specifically allows the use of another source to provide real-time ancillary services required to maintain the import schedule, with the qualification that only the fraction of the schedule actually generated by the eligible renewable resource is considered as part of a Bucket 1 transaction.

For each type of Bucket 1 product, the RECs associated with the underlying eligible generation retain the Bucket 1 status of the associated generation. For example, if a retail seller buys energy and RECs from an eligible resource that delivers energy in real time (*i.e.,* schedules energy into a CBA without substitute energy), and the retail seller later finds that it has an excess of RECs and sells the RECs from the transaction to another retail seller, the purchaser of the RECs should be able to retire those RECs as Bucket 1 products. The RECs retain the characteristics of the associated renewable energy, and the RECs are not transformed

[2] Some parties argued that because each MW of self-generation allows the retail seller to avoid the need to procure up to 0.33 MW of RPS eligible energy, RECs resulting from self-generation from Bucket 1 renewable facilities should count less (*i.e.,* 1.0 - RPS target, up to 0.67) for compliance purposes to ensure that self-generators do not evade their RPS responsibilities. This argument overlooks the fact that the RPS obligation applies only to retail sellers of energy and is based on a percentage of retail sales. There is no basis in SB 2X or in the existing RPS statutes for extending this obligation, directly or indirectly, to entities that generate electricity to serve their own load (*i.e.*, that are not retail sellers as defined in the statute and that make no retail sales).

into Bucket 3 products merely because they are traded separately from the associated renewable energy.

The principle that governs here is the one IEP articulated in its Opening Comments: RECs retain the characteristics (time/location/technology or fuel) of the associated renewable energy generated by the eligible renewable resource that simultaneously produced both the renewable energy and the REC.

II. FIRMED AND SHAPED TRANSACTIONS MUST BE COMMERCIALLY VIABLE

Several parties raised various concerns about the PD's discussion of firmed and shaped products and its interpretation of the statutory language.

A. The Upfront Showing Requirement

The utilities and several potential sellers noted the difficulty of making the upfront showing described in the PD for an RPS product the categorization of which may swing from Bucket 1 to Bucket 2 to Bucket 3 depending on the conditions on the transmission system and the timing of delivery into the CBA.[3] The upfront showing described in the PD will be impractical, as the final determination of compliance will be a function of how transactions are completed in real time over the life of the power purchase agreement (PPA). On the other hand, the compliance determination, which determines whether retail sellers have met their RPS obligations within the portfolio content limits set in section 399.16(c), is the only practical forum to determine how these types of transactions should be categorized. The Commission can reduce its administrative burden of review, while establishing clear guidelines for retail sellers, by adopting the following guidelines for the compliance determination:

[3] *E. g.,* Opening Comments of Pacific Gas and Electric Company, SCE, NextEra Energy Resources, enXco Development Corporation.

- Bucket 1: For transactions in which the eligible renewable resource is directly interconnected to the transmission or distribution system of a CBA, the REC will contain all the information needed to ensure proper categorization. For other transactions (*e.g.*, dynamic transfers and hourly/subhourly imports), the retail seller must provide the REC and sufficient information about the transfer or scheduling of the energy to demonstrate Bucket 1 status.
- Bucket 2: A REC and information confirming delivery beyond the hour of generation but within the calendar year will be necessary.
- Bucket 3: Only a REC is required.

B. Commercial Practicality

Other parties were confused by the PD's description of the three commercial elements and questioned how typical commercial arrangements could be revised to fit the framework the PD established, particularly the requirement that the RPS-eligible energy and the substitute energy would be acquired at the same time.[4]

From IEP's perspective, it is critical for the Commission to ensure that Bucket 2 products remain commercially viable. The express statutory requirements are relatively simple, and if the Commission imposes additional restrictions and requirements on Bucket 2 transactions, it runs the risk of creating a product that has no commercial viability. If the Commission either intentionally or inadvertently makes transacting a Bucket 2 product inflexible or impractical, it will frustrate and contravene the desire of the Legislature.

IEP respectfully urges the Commission to carefully consider the additional requirements the PD imposes on Bucket 2 transactions. If Bucket 2 products are not maintained

[4] See, *e.g.*, Opening Comments of San Diego Gas & Electric Company, Iberdrola Renewables, CEERT, SCPPA, Idaho Wind Partners 1, ARem/RESA.

as viable commercial products, the result will be higher RPS implementation costs. Specifically, to minimize the administrative burden of reviewing RPS compliance filings and to ensure that unnecessary impediments to RPS compliance are not created, the PD should be modified to eliminate any suggestion that the three commercial elements described on p. 40 are required for any compliance showing. Rather, as suggested above, the Commission may simplify matters by focusing in its review of a retail seller's compliance showing on the guidelines proposed above, *i.e.,* the REC and the import schedule demonstrating delivery of energy within a calendar year.

III. CONCLUSION

For the reasons stated in these Reply Comments, the Independent Energy Producers Association respectfully urges the Commission to modify the PD to recognize that unbundled RECs are not confined to Bucket 3 and to reject proposed restrictions on Bucket 2 products that result in commercially unviable products.

Respectfully submitted this 1st day of November, 2011 at San Francisco, California.

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By */s/ Brian T. Cragg*
Brian T. Cragg

VERIFICATION

I am the 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 "Reply of the Independent Energy Producers Association to Comments on the Proposed Decision on Portfolio Content Categories," 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 San Francisco, California.

/s/Brian T. Cragg
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