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)

RESPONSE OF THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION TO THE APPLICATION OF PUBLIC UTILITY DISTRICT NO. 1 OF COWLITZ COUNTY FOR REHEARING OF DECISION 11-12-052

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In its application for rehearing of Decision (D.) 11-12-052, filed on January 20, 2012 (Application), Public Utility District No. 1 of Cowlitz County (Cowlitz) asserts, among other things, that Senate Bill (SB) 2 (1X),[1] the legislation that increased California's Renewables Portfolio Standard (RPS) to 33% of energy sales in 2020, favors in-state generators and disadvantages out-of-state generators in a manner that impermissibly burdens interstate commerce in violation of the Commerce Clause.[2] In this response, the Independent Energy Producers Association (IEP) shows that this claim is based on either a misreading or a misunderstanding of the statute.[3]

[1] Stats. 2011, First Ex. Sess., Ch. 1.

[2] U.S. Constitution, Art. I, § 8, cl. 3.

[3] Rule 16.1(c) requires that an application for rehearing "must make specific references to the record or law." The Application makes only unsupported allegations that the majority of out-of-state transactions will not meet the criteria set forth in Public Utilities Code section 399.16(b)(1). Application, p. 10. The Application does not provide any substantiation for these allegations and thus fails to comply with the requirements of Rule 16.1.

Stripped to its essence, the Application complains about how SB 2 (1X) set the criteria for three portfolio content categories in Public Utilities Code section 399.16(b)[4] and how the Commission implemented those statutory provisions in D.11-12-052. In particular, the Application focuses on the criteria for the first portfolio content category and erroneously asserts, "The statute and Commission Decision clearly set forth the requirements for transactions involving in-state generation to qualify for Category 1 treatment, but do not do so for transactions involving out-of-state generation."[5] Contrary to Cowlitz's claims, the criteria for the three content categories, particularly Category 1, are clear and apply equally to eligible renewable generation facilities located within California's borders and those sited outside the state.

Section 399.16, which describes the products that fall into each of the portfolio content categories, begins with this statement:

> Various electricity products from eligible renewable energy resources located within the WECC [Western Electricity Coordinating Counsel] transmission network service area shall be eligible to comply with the renewables portfolio standard procurement requirements of Section 399.15. These electricity products may be differentiated by their impacts on the operation of the grid in supplying electricity, as well as, meeting the requirements of this article [Chapter 2.3, Article 16 encompassing sections 399.11-399.31, and titled "California Renewables Portfolio Program"].

Among the goals of the RPS program are "[c]ontributing to the safe and reliable operation of the electrical grid, including providing predictable electrical supply, voltage support, lower line losses, and congestion relief" and "[d]isplacing fossil fuel consumption within the state."[6]

[4] All subsequent statutory references are to the Public Utilities Code unless otherwise noted.
[5] Application p. 3.
[6] Public Utilities Code section 399.11.

An examination of the criteria for products in the first portfolio content category set forth in section 399.16(b)(1) quickly reveals that the Legislature went out of its way to ensure that all eligible renewable generators, regardless of their location, were provided a fair opportunity to compete to make sales of renewable energy. Eligibility for Category 1 products may be established in any one of three ways:

- By having a first point of interconnection with a California balancing authority (CBA) at the transmission or distribution level;
- By scheduling electricity from the renewable generating facility into a CBA without substituting energy from another source; or
- By having an agreement to dynamically transfer electricity to a CBA.

Part of Cowlitz's complaint derives from its misunderstanding of the geographic relationship between CBAs and California's geographical borders. CBAs and California's borders are not congruent, as Cowlitz seems to assume. As defined by SB 2 (1X)[7] and D.11-12-052,[8] large portions of California are not within a CBA, and some CBAs extend beyond California's borders and have scheduling points in other states.

Because some CBAs have scheduling points outside of California, some out-of-state generators will be able to directly interconnect with a CBA and meet the first criterion for Category 1 products. In recognition of the fact that many generation facilities, both in-state and out-of-state, are not located where they could easily physically interconnect with a CBA, however, the Legislature offered two other options with comparable "impacts on the operation of the grid in supplying electricity." Renewable generation facilities may also meet the criteria for Category 1 products by (1) scheduling electricity into a CBA without substituting energy from

[7] Section 399.12(d).
[8] D.11-12-052, pp. 19-20.

another source (except as needed to balance an hourly or subhourly schedule), which essentially mimics a direct interconnection with a CBA, or (2) entering into an agreement to dynamically transfer electricity to a CBA, which also mimics a direct interconnection with a CBA.

The defining characteristic of a Category 1 product is that the renewable generation is delivered to and used by California consumers as it is generated, in real time or within a scheduling period of no more than an hour. Thus, Category 1 products have an immediate effect of "displacing fossil fuel consumption within the state." All three of the Category 1 criteria have similar impacts on the operation of the grid, and nothing in the statute or in practice prevents an out-of-state generator from meeting one or more of these criteria.

Despite the clear array of options available to out-of-state and in-state generating facilities that are not located within a CBA, Cowlitz speculates that "since the vast majority of out-of-state facilities will be unable to connect directly to the California grid and the protocols and procedures for dynamic transfers of intermittent renewable resources are still under development, few out-of-state transactions are likely to be able to qualify for Category 1."[9] Cowlitz conveniently ignores the option of scheduling "from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source," an option that is readily available to out-of-state facilities that want to qualify their output as Category 1 products. A generator's location does not determine whether electricity can be scheduled into a CBA without substituting energy from another source. If a generator can arrange to schedule its electricity into a CBA without substituting electricity from another source (so that it immediately displaces fossil fuel consumption within the state and its grid impacts are identical to a generating facility that is directly interconnected to a CBA), then its output can qualify as a Category 1 product. By presenting three options for qualifying for Category 1, SB 2

[9] Application, p. 10.

(1X) treats in-state and out-of-state generation equivalently based on how they are scheduled (*i.e.,* based on their grid impacts) and their capability to displace fossil fuel consumption. Rather than discriminating against out-of-state generation, SB 2 (1X) facilitates the use of out-of-state generation for RPS compliance purposes by allowing all RPS-eligible generation scheduled into a CBA "without substituting electricity from another source" to qualify as a Category 1 product.

Similarly, Category 2 products, also described as firmed and shaped transactions, are defined by criteria that are not affected by whether a renewable generating facility is located inside or outside of California's borders. According to D.11-12-052:

> firmed and shaped transactions should be seen as fundamentally providing substitute energy in the same quantity as the contracted-for RPS-eligible generation, in order to fulfill the scheduling into a California balancing authority of the RPS-eligible generation, which can be set in a manner that meets the timing and quantity requirements of the retail seller. As a practical matter, the original RPS eligible generation is consumed elsewhere, typically but not necessarily close to the generator.[10]

The Category 2 criteria, as defined in the statute and implemented by the Commission, allow for greater flexibility in managing and delivering renewable energy to California consumers. Category 2 allows for a temporal separation between the generation of renewable energy and the delivery of energy and the renewable attributes associated with the original renewable generation, and therefore Category 2 accommodates transmission schedules that do not provide for delivery within the hourly or subhourly import schedule of Category 1 products. Category 2 may be an attractive option for generating facilities, both in-state and out-of-state, that are not located within a CBA and that need more flexibility in delivering their product.

[10] D.11-12-052, p. 46.

Unlike Category 1 products, the ability of Category 2 products to displace fossil fuel consumption in California is uncertain. Because of the delay permitted between generation and delivery of renewable energy for Category 2 products and the use of substitute energy, the actual renewable energy procured by a California retail seller may be consumed outside of any CBA, and the energy that is delivered in real time to fulfill the scheduling obligation may or may not be from renewable sources. Thus, Category 2 products have different characteristics in terms of scheduling and displacement of fossil fuel consumption than Category 1 products. Rather than discriminating against out-of-state generation, SB 2 (1X) enables products generated by both out-of-state and in-state facilities to be counted for RPS compliance even if the product does not have the same scheduling characteristics and grid impacts as Category 1 products.

Category 3 products include only unbundled renewable energy credits and products that do not meet the criteria of section 399.16(b)(1) or (2). There is no geographical or locational element to the Category 3 criteria, and all Category 3 products, regardless of the location of the generating facility, are subject to the same procurement cap.

Cowlitz also asserts that the procurement caps set forth under section 399.16(c) impermissibly discriminate against out-of-state generation. However, as demonstrated in this response, the portfolio content product criteria can be met by renewable generating facilities regardless of whether they are located inside or outside of California's borders. The procurement limitations of section 399.16(c) apply equally to in-state and out-of-state resources within each category.

Cowlitz has failed to show that SB 2 (1X) applies to in-state versus out-of-state generators in a manner that impermissibly burdens interstate commerce in violation of the Commerce Clause. The different treatment of products in the different content categories is

based on, and justified by, differences among the products in those categories in terms of impact on the operation of the grid, scheduling requirements, and ability to displace fossil fuel consumption in California, **not** the location of a particular facility. For the reasons stated in this response, the Independent Energy Producers Association respectfully urges the Commission to deny Cowlitz's application for rehearing.

Respectfully submitted this 6th day of February, 2012 at San Francisco, California.

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By */s/ Brian T. Cragg*
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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 "Response of the Independent Energy Producers Association to the Application of Public Utility District No. 1 of Cowlitz County for Rehearing of Decision 11-12-052," dated February 6, 2012. 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 6th day of February, 2012, at San Francisco, California.

/s/ Brian T. Cragg
Brian T. Cragg

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