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)

INITIAL COMMENTS OF TRANSWEST EXPRESS LLC

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Dated: February 16, 2012

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Pursuant to the January 24, 2012, Administrative Law Judge's ("ALJ") Ruling Requesting Comments on Procurement Expenditure Limitations for the Renewables Portfolio Standard Program ("January 24 Ruling"), TransWest Express LLC ("TransWest") respectfully submits its initial comments.

I. BACKGROUND

As explained in previous comments filed with the Commission in this proceeding,[1] TransWest is developing an approximately 725-mile, 600 kV direct-current (DC) transmission system ("Project") that will be capable of delivering 20,000 GWh/yr of high quality, low cost, Wyoming wind energy directly to California markets. TransWest's Project can supply enough renewable energy to serve more than 1.8 million homes per year and support the reduction of an estimated 8.2 million metric tons of greenhouse gas (GHG) emissions per year. As set forth below, TransWest limits these Initial Comments to Issue 13, specifically with respect to whether the procurement expenditure limitation methodology should be impacted by geographic factors.

[1] *See* Initial Comments of TransWest Express LLC at 1-2, Case No. R.11-05-005 (filed Aug. 8, 2011).

II. COMMENTS

Issue 13 asks whether "the procurement expenditure limitation methodology [should] take into consideration the value of diversification of resources in IOUs' RPS procurement" and sets forth two specific sub-issues relating to geographic diversification namely, whether the expenditure limitation methodology should: (i) "create a set of geographically-defined expenditure limitations," and/or (ii) whether the methodology should "give 'extra credit' for geographic diversification."[2] TransWest submits that the procurement expenditure limitation methodology should not be impacted (either negatively or positively) by the geographic location of renewable resources that otherwise meet the Commission's eligibility requirements.

The Commission's mandate to establish a procurement expenditure limitation for each electrical corporation is set forth in Section 399.15(c)-(g) of the Public Utilities Code[3] as established by California Senate Bill (SB) 2 (1X).[4] In that provision, the legislature has already provided a significant amount of detailed guidance regarding the factors that should be relevant in determining expenditure limitations, none of which mention geography. For example, the limitation is intended to be set so that it "prevents disproportionate rate impacts."[5] In addition, the limitation is to reflect expenditures that "approximate the expected cost of building, owning and operating eligible renewable energy resources." On the other hand, procurement expenditures are not to include "indirect expenses, including imbalance energy charges, sales of

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[2] January 24 Ruling at 10-11.

[3] Pub. Util. Code § 399.15(c)-(g).

[4] Senate Bill 2 (2011-12 First Extraordinary Session, Stats 2011, Ch 1) ("SB 2 (1X)"). TransWest filed a Motion of TransWest Express LLC for Party Status ("Motion") on May 31, 2011, in this proceeding, which was granted pursuant to the Administrative Law Judge's Ruling Granting Motions for Party Status dated June 9, 2011.

[5] Pub. Util. Code § 399.15 (d)(1).

excess energy, decreased generation from existing resources, transmission upgrades, or the costs associated with relicensing any utility-owned hydroelectric facilities."[6] Thus, the legislature included several guideposts in Section 399.15 for what should be considered when establishing expenditure limitations, but nowhere in Section 399.15 did the legislature include any factor related to geographic location of the renewable resource.[7] It would not be appropriate for the Commission to add a geographically-defined set of limitations (or an "extra credit" factor related to geography) when establishing its methodology.

While the January 24 Ruling does not define in detail what it means by a geographic diversity factor, TransWest assumes that such a factor may relate, at least in part, to whether the resource is located outside a California balancing authority. No such factor is needed, however, and indeed any geographic factor that would have the impact of favoring in-state resources over out-of-state resources would likely run afoul of the dormant Commerce Clause.

There is no need to create a geographic factor related to expenditure limitations because the legislature has already ensured that out-of-state imports of renewable resources will bring renewable benefits comparable to the benefits received from resources located within California's borders, and therefore the Commission's evaluation of procurement expenditures should be a neutral one, *i.e.*, without regard to the location of the resource. Specifically, the portfolio content categories established in Section 399.16 already ensure, in Section 399.16 (b)(1)(A) that any renewable resource procurement from outside a California balancing authority will be scheduled into California "without substituting electricity from another source" and that any real-time ancillary services required for an import will not be counted as part of any such

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6 Pub. Util. Code § 399.15 (d)(3).

7 *See* Pub. Util. Code § 399.15 (c)-(g).

procurement.[8] In addition, renewable resources from outside a California balancing authority may be eligible for procurement if they are subject to an appropriate dynamic transfer arrangement.[9] Thus, the legislature has already found that procurement from resources geographically located outside the borders of a California balancing authority should be eligible for procurement if the requirements of Section 399.16 are met.

Any attempt to limit procurement of resources geographically located outside the State through the expenditure limitations methodology would be an inappropriate "back door" attempt to regulate such procurement contrary to the legislature's intent in enacting SB 2 (1X). Rather, there should be a neutral evaluation of procurement from otherwise eligible renewable resources, without regard to geographic location.

Although the January 24 Ruling does not define how a geographic diversity element might be established in the expenditure limitation methodology, TransWest notes that any attempt to implement a geographic diversity factor that favors in-state resources over out-of-state would likely be contrary to the dormant Commerce Clause. The dormant Commerce Clause limits the power of the States to discriminate against interstate commerce in such a manner as to benefit in-state interests over out-of-state interests. Recently, the United States District Court for the Eastern District of California ruled that the California Air Resource Board's low carbon fuel standard ("LCFS") violated the dormant Commerce Clause, finding that the LCFS inappropriately differentiated between otherwise identical fuels by assigning lower carbon intensity scores based on location.[10] In doing so, the court noted, among other things, that "California is attempting to stop leakage of GHG emissions by treating electricity

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[8] Pub. Util. Code § 399.16 (b)(1)(A).

[9] Pub. Util. Code § 399.16 (b)(1)(B).

[10] *Rocky Mountain Farmers Union et al. v. Goldstene*, No. 09-2234, 2011 U.S. Dist. LEXIS 149593 (E.D.Cal. Dec. 29, 2011) ("*Goldstene*").

generate[d] outside of the state differently than electricity generated inside its border. This discriminates against interstate commerce."[11]

To the extent that a procurement expenditure limitation related to geographic location would have an impact of disfavoring procurement from out-of-state resources (and any such limitation likely would have such an impact), the Commission's methodology would likely discriminate against interstate commerce. Accordingly, the Commission should limit the development of its methodology to an appropriate consideration of those factors already listed in Section 399.15(c)-(g), and should not incorporate any new geography-based category into its expenditure limitation methodology.

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[11] *Goldstene*, at *36.

III. CONCLUSION

TransWest urges the Commission to find that there should be no geographic factor that either negatively or positively impacts an electrical corporation's renewables procurement expenditure limitation.

Respectfully submitted,

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On behalf of TransWest Express LLC

Dated: February 16, 2012

VERIFICATION

I am an officer of TransWest Express LLC, and am authorized to make this verification on its behalf. I have read the foregoing *Initial Comments of TransWest Express LLC*, dated February 16, 2012. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 16th day of February, 2012, at Denver, Colorado.

/s/ Roxane J. Perruso

Roxane J. Perruso
Vice President
TransWest Express LLC