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**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)

**ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING COMMENTS ON IMPLEMENTATION OF NEW PORTFOLIO CONTENT CATEGORIES FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM**

**Background**

The California renewables portfolio standard (RPS) program has been the subject of much legislation and many decisions by the Commission.<sup>1</sup> Most recently, Senate Bill (SB) 2 (1x) (Simitian), stats. 2011, ch. 1 was enacted in the First Extraordinary Session of the Legislature. Though signed by the Governor on April 12, 2011, SB 2 (1x) will not become effective until 90 days after the end of the special session in which it was enacted.<sup>2</sup>

SB 2 (1x) makes numerous changes to the RPS program, most notably extending the RPS goal from 20% of retail sales of all California investor owned utilities (IOUs), electric service providers (ESPs), and community choice aggregators (CCAs) by the end of 2010, to 33% of retail sales of IOUs, ESPs,

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<sup>1</sup> See the Order Instituting Rulemaking (OIR) for this proceeding, at 1, 7.

<sup>2</sup> Gov't Code § 9600(a).

CCAs and publicly owned utilities (POUs) by the end of 2020.<sup>3</sup> SB 2 (1x) also modifies or changes many details of the RPS program. This ruling seeks comment on one set of changes: the addition of "portfolio content categories" and quantitative rules for the use of transactions in each category for RPS compliance by retail sellers, set out in new Pub. Util. Code § 399.16. The text of new § 399.16 is attached as Attachment A.

### **Plan of this Ruling**

Although SB 2 (1x) is not yet in effect, the changes made by new § 399.16 are central to the administration of the RPS program, and thus should be addressed quickly. Because of the complexity of the issues presented and the desirability of expeditious but thorough consideration of them, this ruling presents a number of specific questions or proposals to provide direction for parties' comments. Some proposals are in the form of "straw" interpretations of specific statutory language in SB 2 (1x), to which parties may respond.

Comments should respond to the questions posed in this ruling. Comments should be as specific, precise, and detailed as possible. Comments should include specific examples of transactions or commercial arrangements that are relevant to the argument being made. Legal arguments should be supported with specific citations. All comments should use publicly available materials, including any specific examples of transactions (for example, the public description of a transaction in a resolution adopted by the Commission). Comments should make proposals and provide interpretations that, if adopted by the Commission, would provide clear guidance to market participants and

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<sup>3</sup> The Commission has jurisdiction, for RPS purposes, over the first three groups of retail sellers; it does not have jurisdiction over POUs. Pub. Util. Code §§399.12(j); 399.30(p). Unless otherwise noted, all further references to sections are to the Public Utilities Code.

Commission staff on the requirements of § 399.16. In commenting, parties should also consider the impact of their proposals on the RPS compliance reporting obligations of retail sellers and the RPS verification responsibilities of the California Energy Commission (CEC), set out in current § 399.13 and new § 399.25. Parties may identify issues in the interpretation of new § 399.16 that are not addressed in the questions below; commenters doing so should clearly explain the relevance of the additional issue(s).

### **Guiding principles**

In responding to the questions below, parties should take into account the following principles:

1. Parties' proposals should further the fair, efficient, and transparent administration of the RPS program. In particular, proposals should facilitate efficient contract review by Energy Division staff; straightforward calculation of direct and indirect procurement costs of an RPS procurement transaction; and ease of verifying the categorization of an RPS procurement transaction.

2. Proposals should provide RPS market certainty, to the extent possible.

3. Proposals should avoid creating unnecessary transaction costs for buyers and sellers in RPS procurement transactions and should encourage least-cost and best-fit procurement.

4. Proposals should enable a clear delineation among the three portfolio content categories set out in new § 399.16(b).

### **Comments**

Opening comments of not more than 50 pages addressing the issues set forth in this ruling may be filed and served not later than August 8, 2011. Reply comments of not more than 25 pages may be filed and served not later than August 19, 2011. It is not necessary to reproduce the questions in comments, so long as the question being addressed or topic being introduced is clearly

identified. Parties are encouraged, but not required, to file and serve opening comments, in order to give all parties the best opportunity to respond to other parties' positions.<sup>4</sup>

### **Issues to address in comments**

Please comment on the following issues related to the implementation of new § 399.16, in accordance with the guidelines for comments set forth in this ruling:

1. Section 399.16(b)(1) describes "eligible renewable energy resource electricity products" that meet certain criteria. "Electricity products" is not defined in the statute. Should this term be interpreted as meaning "RPS procurement transactions"?
2. Should the first sentence of § 399.16(b)(1)(A) be interpreted as meaning: "The RPS-eligible generation facility producing the electricity has a first point of interconnection with a California balancing authority, or has a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area, or the electricity produced by the RPS-eligible generation facility is scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source."
3. Please provide a comprehensive list of all "California balancing authorit[ies]" as defined in new § 399.12(d).
4. How should the phrase in new § 399.16(b)(1)(A) ". . . scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source" be interpreted? Please provide relevant examples.

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<sup>4</sup> As set out in the Scoping Memo and Ruling of Assigned Commissioner (July 8, 2011), new §§ 399.17 and 399.18 appear to exempt small and multi-jurisdictional utilities (SMJUs) from the portfolio content limits in new § 399.16. SMJUs wishing to comment on new § 399.16 may consider filing only reply comments.

5. Does the inclusion of transactions characterized in #4, above, subsume or resolve the work done by Energy Division staff and the parties in response to Ordering Paragraph 26 of Decision (D.) 10-03-021, regarding transactions using firm transmission?<sup>5</sup>

6. How would transactions characterized in #4, above, be tracked and verified? Please address the roles and responsibilities of both the CEC and the Commission.

7. Please provide relevant examples of the situation described in the second sentence of § 399.16(b)(1)(A):

"the use of another source to provide real-time ancillary services required to maintain an hourly or sub-hourly import schedule into a California balancing authority. . ."

How should the subsequent qualifying phrase, "but only the fraction of the schedule actually generated by the eligible renewable energy resources shall count toward this portfolio content category" be interpreted in light of your response? Please provide relevant examples.

8. Should § 399.16(b)(1)(B) be interpreted as meaning:

"The RPS-eligible generation facility producing the electricity has an agreement to dynamically transfer electricity to a California balancing authority."

9. The phrase "unbundled renewable energy credit" (REC) is not defined in the statute. Should it be interpreted as meaning:

"a renewable energy credit [as defined in new § 399.12(h)] that is procured separately from the RPS-eligible energy with which the REC is associated"?

10. "Unbundled renewable energy credits" are a type of transaction meeting the criteria of § 399.16(b)(3). Does § 399.16(b)(1) include any transactions that transfer only RECs but not the RPS-eligible energy with which the RECs are associated (for example, a transaction in which an RPS-eligible generator having a first point of interconnection

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<sup>5</sup> For example, the staff workshop held on April 23, 2010, and the post-workshop comments and reply comments.

with a California balancing authority sells unbundled RECs to a California retail seller)? Why or why not?

If your response is that unbundled REC transactions are or may be included in § 399.16(b)(1), please also address how a particular transaction can be characterized and verified as belonging in a particular portfolio content category.

11. Section 399.16(b)(3) includes "[e]ligible 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)."
  - Should the phrase, "or any fraction of the electricity generated" be interpreted as meaning "any fraction of the electricity generated by the eligible renewable energy resource"?
  - What metrics should be used to account for "any fraction of the electricity generated?" Please address the time period that may be encompassed in your response.
  - How would the procurement of "any fraction of the electricity generated" be documented? Please address the roles of the Western Renewable Energy Generation Information System (WREGIS), the CEC, and this Commission.
  
12. "Firmed" is not defined in SB 2 (1x). Please provide a definition or description of this term. Please include relevant examples.
  
13. "Shaped" is not defined in SB 2 (1x). Please provide a definition or description of this term. Please include relevant examples.
  
14. "Incremental electricity" is not defined in SB 2 (1x). Please provide a definition or description of this term. Please also address:
  - how a particular transaction can be characterized as providing incremental electricity;
  - whether there are or should be any more particular relationships between the generation of the RPS-eligible electricity and the scheduling of the "firmed and shaped" incremental electricity into a California balancing authority (for example, the electricity must

be scheduled into a California balancing authority within one month of its generation; or, the energy that is delivered must come from generators in the same balancing authority area as the RPS-eligible generation).

- whether the definition proposed is based on contract terms or on the characteristics of the electricity that is ultimately delivered into a California balancing authority.

Please provide relevant examples.

15. Should § 399.16(b)(2) be interpreted to refer only to energy generated outside the boundaries of a California balancing authority, or may it refer also to energy generated within the boundaries of a California balancing authority? Please provide relevant examples.

- Should this section be interpreted as applying only to transactions where the RPS-eligible generation is intermittent? Is the location of the generator within or outside of a California balancing authority area relevant to your response?

16. Should the requirement in § 399.16(b)(1)(A) that the generation must be "scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source" be interpreted to mean that no firmed and shaped electricity, as set forth in § 399.16(b)(2), may be considered as meeting the requirements of § 399.16(b)(1)(A)? Please provide relevant examples.

17. Section 399.16(d) provides that:

"Any contract or ownership agreement originally executed prior to June 1, 2010, shall count in full towards the procurement requirements established pursuant to this article, if [certain] conditions are met. . ."

- How should the phrase "ownership agreement" be interpreted in this context? Please provide relevant examples.
- How should the phrase "count in full" be interpreted? Include consideration of:

- a) The requirements in D.07-05-028 (implementing current § 399.14(b)<sup>6</sup>) that, in order for procurement from a short-term contract with an existing facility to count for RPS compliance, a minimum quantity of contracts longer than 10 years and/or contracts with new facilities must be signed in the same year as the short-term contract sought to be counted;
- b) The requirement in new § 399.13(b)<sup>7</sup> for minimum procurement from contracts of at least 10 years' duration;
- b) The restrictions set out in new § 399.13(a)(4)(B) on the use of procurement from contracts of less than 10 years' duration and on procurement meeting the portfolio content of § 399.16(b)(3) in accumulating excess procurement that can be applied to subsequent compliance periods.

18. Please discuss the relationship between the instruction in § 399.16(d), set forth above, and the rules for the use of tradable RECs (TRECs) set out in D.10-03-021 (as modified by D.11-01-025), and in D.11-01-026 (for example, temporary limits on TRECs usage; application of the temporary TREC limits to previously signed contracts).

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<sup>6</sup> Current § 399.14(b) provides:

The commission may authorize a retail seller to enter into a contract of less than 10 years' duration with an eligible renewable energy resource, if the commission has established, for each retail seller, minimum quantities of eligible renewable energy resources to be procured either through contracts of at least 10 years' duration or from new facilities commencing commercial operations on or after January 1, 2005.

<sup>7</sup> New § 399.13(b) provides:

A retail seller may enter into a combination of long- and short-term contracts for electricity and associated renewable energy credits. The commission may authorize a retail seller to enter into a contract of less than 10 years' duration with an eligible renewable energy resource, if the commission has established, for each retail seller, minimum quantities of eligible renewable energy resources to be procured through contracts of at least 10 years' duration.



19. When should the portfolio content limitations set forth in § 399.16(d) go into effect (for example, January 1, 2011; or the effective date of SB 2 (1x); or the date of the Commission decision implementing § 399.16)?

20. SB 2 (1x) amends Pub. Res. Code § 25741 to, among other things, eliminate the current requirement that RPS-eligible energy must be "delivered" to end-use retail customers in California.<sup>8</sup> The requirement for delivery is implemented by the CEC in its *Renewables Portfolio Standard Eligibility Guidebook (RPS Eligibility Guidebook)* (3d ed. December 19, 2007).<sup>9</sup> It is also incorporated into the characterization of a REC in D.08-08-028.

- At what point in time should the Commission consider the "delivery" requirement ended (e.g., on the effective date of SB 2 (1x); or as of January 1, 2011; or on the effective date of the CEC's revisions to the *RPS Eligibility Guidebook* reflecting the repeal)?
- Does the "delivery" requirement end at that time for generation under RPS contracts of utilities that were already approved by the Commission? Only for generation under contracts signed by utilities after the end of the delivery requirement?
- How should the plan you propose be applied to ESPs? to CCAs?

21. What documentation or descriptions should be required in an advice letter to enable Energy Division staff to confirm the portfolio content category of transactions submitted by utilities for Commission approval?

22. Is any post-contracting verification of the portfolio content category needed to track and determine compliance with RPS procurement obligations for utilities? for ESPs? for CCAs? If yes, is the CEC responsible for undertaking it? is this Commission?

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<sup>8</sup> This is accomplished by eliminating both current Pub. Res. Code § 25741(a) (defining "delivered" and "delivery") and current Pub. Res. Code §25741(a)(2)(B)(iii) (requiring that RPS-eligible energy be delivered to an in-state location).

<sup>9</sup> The *RPS Eligibility Guidebook* is available at <http://www.energy.ca.gov/2007publications/CEC-300-2007-006/CEC-300-2007-006-ED3-CMF.PDF>.

- What information would be required for such verification?
  - Would any changes be needed to WREGIS to accommodate your proposal?
23. Reviewing your proposals above, please describe the value to the buyer, the seller, and ratepayers of transactions in each portfolio content category. Identify the direct and indirect costs that would be associated with transactions in each category.
24. The First Extraordinary Session of the Legislature is still in session. Because SB 2 (1x) becomes effective 90 days after the end of this special session, the provisions of SB 2 (1x) will not be in effect until mid-October 2011, at the earliest, and the end of 2011, at the latest. Please review your proposals and identify any issues of timing that should be addressed. Should the Commission simply carry forward the existing RPS rules through calendar year 2011? Why or why not?

**IT IS RULED** that:

1. Comments of not more than 50 pages, addressing the issues identified in this ruling, may be filed and served not later than August 8, 2011.
2. Reply comments of not more than 25 pages may be filed and served not later than August 19, 2011.
3. In addition to service by electronic mail, paper copies of comments and reply comments must be promptly provided to Administrative Law Judge Anne Simon.

Dated July 12, 2011, at San Francisco, California.

/s/ ANNE E. SIMON  
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Anne E. Simon  
Administrative Law Judge

**ATTACHMENT A**  
**New section 399.16 of Public Utilities Code**  
**(Enacted by Senate Bill 2 (1x), Stats. 2011, ch. 1)**

399.16. (a) Various electricity products from eligible renewable energy resources located within the WECC transmission network service area shall be eligible to comply with the renewables portfolio standard procurement requirements in 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.

(b) Consistent with the goals of procuring the least-cost and best-fit electricity products from eligible renewable energy resources that meet project viability principles adopted by the commission pursuant to paragraph (4) of subdivision (a) of Section 399.13 and that provide the benefits set forth in Section 399.11, a balanced portfolio of eligible renewable energy resources shall be procured consisting of the following portfolio content categories:

(1) Eligible renewable energy resource electricity products that meet either of the following criteria:

(A) Have a first point of interconnection with a California balancing authority, have a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area, or are scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source. The use of another source to provide real-time ancillary services required to maintain an hourly or subhourly import schedule into a California balancing authority shall be permitted, but only the fraction of the schedule actually generated by the eligible renewable energy resource shall count toward this portfolio content category.

(B) Have an agreement to dynamically transfer electricity to a California balancing authority.

(2) Firmed and shaped eligible renewable energy resource electricity products providing incremental electricity and scheduled into a California balancing authority.

(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).

(c) In order to achieve a balanced portfolio, all retail sellers shall meet the following requirements for all procurement credited towards each compliance period:

(1) Not less than 50 percent for the compliance period ending December 31, 2013, 65 percent for the compliance period ending December 31, 2016, and 75 percent thereafter of the eligible renewable energy resource electricity products associated with

contracts executed after June 1, 2010, shall meet the product content requirements of paragraph (1) of subdivision (b).

(2) Not more than 25 percent for the compliance period ending December 31, 2013, 15 percent for the compliance period ending December 31, 2016, and 10 percent thereafter of the eligible renewable energy resource electricity products associated with contracts executed after June 1, 2010, shall meet the product content requirements of paragraph (3) of subdivision (b).

(3) Any renewable energy resources contracts executed on or after June 1, 2010, not subject to the limitations of paragraph (1) or (2), shall meet the product content requirements of paragraph (2) of subdivision (b).

(d) Any contract or ownership agreement originally executed prior to June 1, 2010, shall count in full towards the procurement requirements established pursuant to this article, if all of the following conditions are met:

(1) The renewable energy resource was eligible under the rules in place as of the date when the contract was executed.

(2) For an electrical corporation, the contract has been approved by the commission, even if that approval occurs after June 1, 2010.

(3) Any contract amendments or modifications occurring after June 1, 2010, do not increase the nameplate capacity or expected quantities of annual generation, or substitute a different renewable energy resource. The duration of the contract may be extended if the original contract specified a procurement commitment of 15 or more years.

(e) A retail seller may apply to the commission for a reduction of a procurement content requirement of subdivision (c). The commission may reduce a procurement content requirement of subdivision (c) to the extent the retail seller demonstrates that it cannot comply with that subdivision because of conditions beyond the control of the retail seller as provided in paragraph (5) of subdivision (b) of Section 399.15. The commission shall not, under any circumstance, reduce the obligation specified in paragraph (1) of subdivision (c) below 65 percent for any compliance obligation after December 31, 2016.

**END OF ATTACHMENT A**