

STATE OF CALIFORNIA
 ENERGY RESOURCES
 CONSERVATION AND DEVELOPMENT COMMISSION

IN THE MATTER OF:)	DOCKET NO. 13-RPS-01
)	
ENFORCEMENT PROCEDURES FOR THE)	CAL ENERGY'S COMMENTS ON THE
RENEWABLES PORTFOLIO STANDARD)	ADOPTION OF REGULATIONS
FOR LOCAL PUBLICLY OWNED)	ESTABLISHING ENFORCEMENT
ELECTRIC UTILITIES)	PROCEDURES FOR THE RENEWABLES
)	PORTFOLIO STANDARD FOR LOCAL
)	PUBLICLY OWNED ELECTRIC UTILITIES

Pursuant to the California Energy Commission's ("Commission") Notice of Proposed Action issued March 1, 2013, in the above-referenced docket ("Notice"), CE Generation, LLC ("CE Generation") submits the following comments. The proposed regulations ("Proposed Regulations") establish enforcement procedures and provide interpretive guidance for the Renewables Portfolio Standard ("RPS") for local publicly owned electric utilities ("POUs") under the law as amended by Senate Bill X1-2 (Stats. 2011, 1st Ex. Sess., ch. 1) and Assembly Bill 2227 (Stats. 2012, ch. 606, sec. 8) ("SB 2 (1X)"). CE Generation appreciates the opportunity to submit comments in this proceeding and the Commission's efforts to clarify the rules established in SB 2 (1X). As discussed below, CE Generation requests that the Commission make clear in its final regulations that if an eligible renewable resource has its first point of interconnection within the boundaries of a California balancing authority area ("BAA") then all of the generation produced by the facility will be eligible for classification as Portfolio Content Category 1. For facilities located in California, there should be no netting related to scheduling and deliveries. The deduction proposed in Section 3203 (a)(1)(C) of the Proposed Regulations for electricity products scheduled into a California BAA should only be applied to electricity generated outside of a California BAA.

A. CE Generation

CE Generation is engaged in the independent power business and through its California subsidiaries owns and operates ten geothermal facilities in the Imperial Valley of California (the “CE Generation Geothermal QFs”).¹

Fifty percent of the membership interests in CE Generation, a Delaware limited liability company, are directly owned by MidAmerican Geothermal, LLC (“MidAmerican Geothermal”), a Delaware limited liability company. MidAmerican Geothermal is a direct, wholly owned subsidiary of MidAmerican Renewables, LLC (“MidAmerican Renewables”), a Delaware limited liability company, which is a direct, wholly owned subsidiary of MidAmerican Energy Holdings Company (“MidAmerican”), an Iowa Corporation. The remaining 50 percent of CE Generation is owned by a subsidiary of TransAlta USA, Inc. (“TransAlta USA”).

The ten CE Generation Geothermal QFs are:

- CE Leathers Company, which owns and operates the 42.8 MW Leathers Project;
- CE Turbo LLC, which owns and operates the 11.2 MW CE Turbo Project;
- Del Ranch Company, which owns and operates the 42.8 MW Del Ranch Project;
- Elmore Company, which owns and operates the 42.8 MW Elmore Project;
- Fish Lake Power LLC, which owns one percent of the approximately 42.8 MW Salton Sea IV Project;
- Salton Sea Power Generation Company, which owns and operates the 10.2 MW Salton Sea I Project, the 17.3 MW Salton Sea II Project, and the 51.0 MW Salton Sea III Project, and owns 99 percent of the 42.8 MW Salton Sea IV Project;
- Salton Sea Power L.L.C., which owns and operates the 46.9 MW Salton Sea V Project; and

¹ CE Generation also owns three natural gas-fueled cogeneration facilities located in New York, Texas and Arizona.

- Vulcan/BN Geothermal Power Company, which owns and operates the 38.8 MW Vulcan Project.

The CE Generation Geothermal QFs have a total generating capacity of approximately 345.7 MW. Each of the CE Generation Geothermal QFs is a qualifying facility under the Public Utility Regulatory Policies Act. The CE Generation Geothermal QFs are located in Calipatria, California, and are interconnected to the IID transmission system within the IID balancing authority area.

B. Comments

Section 3203 of the Proposed Regulations implements and defines more specifically the “Portfolio Content Categories” established by SB 2 (1X). Of the three categories, Portfolio Content Category 1 is the most desirable for purposes of RPS compliance, because Category 1 products can be procured without limitation to meet a POU’s RPS objectives. Electricity products can satisfy Category 1 requirements by meeting any one of four criteria. Two of these four criteria are relevant to these comments. First, under Section 3203 (a)(1)(A), electricity can be eligible for Category 1 status if it is generated by an eligible resource that “has its first point of interconnection within the metered boundaries of a California BAA.”

Second, under Section 3203 (a)(1)(C), the SB 2 (1X) and the Proposed Regulations provide that Category 1 status may be met for electricity generated outside a California BAA and “scheduled into a California [BAA] without substituting electricity from another source”, provided that “[i]f there is a difference between the amount of electricity generated and the amount of electricity scheduled and delivered into a California balancing authority, only the lesser of the two amounts shall be classified as Portfolio Content Category 1” (“netting limitation”).

The Proposed Regulations appropriately reflect that renewable generation can attain Category 1 status by meeting just one of the four possible criteria.² In the case of the CE Generation Geothermal QFs, each of them qualifies for Category 1 because they interconnect directly with a California BAA.

CE Generation does not take exception with the “netting limitation” proposed in Section 3203 (a)(1)(C). However, in the context of the CE Generation Geothermal QFs’ ability to sell energy from within a California BAA, CE Generation is concerned that potential POU offtakers located within a neighboring California BAA may incorrectly interpret the “netting limitation” in subcategory (C) as being applicable, even though the generator is located within California and clearly qualifies for Category 1 status as a generator with its first point of interconnection in a California BAA. Such an attempt to impose a “netting limitation” on in-state generation is inconsistent with Section 399.16 of the Public Utilities Code, which contains no such restriction for in-state generation located within any California BAA.³

Subcategory (C) of Section 3203 should pertain solely to the criteria by which out-of-state renewable resources may become eligible to be Category 1 sellers, namely, that the generation be scheduled “into” a California BAA without substitution from any other source on an hourly or subhourly basis.⁴ If the legislature had sought to impose specific scheduling-type requirements for in-state generation that is merely transferred from one California BAA to another California BAA it could have done so by stating specifically that scheduling requirements applied to electricity products scheduled “among” or “between” California BAAs.

² See Proposed Regulations, Section 3203 (a)(1) (“Category 1 ... products must also meet at least one of the following criteria...”).

³ See Cal. Pub. Utils. Code § 399.16 (b)(1)(A).

⁴ Cal. Pub. Utils. Code § 399.16 (b)(1)(A).

The legislature did not take this approach, however, and Section 399.16 (b)(1)(A) instead refers only to schedules “into” a California BAA.

The Commission has appropriately stated that one of its goals has been to “ensure the proposed regulations were consistent with the rules developed by the CPUC for the retail sellers.” The clarification that CE Generation seeks—that the “lesser of” netting provision in Section 3203 (a)(1)(C) apply only to generation that is imported into a California BAA from a non-California BAA—is fully consistent with this goal. In discussing Category 1, and the criteria for generation scheduled into a California BAA without substitution from any other source (i.e., subcategory (C)), the CPUC specifically found that “[t]he necessary implication” of the statutory language “is that the electricity is generated outside the metered boundaries of a California balancing authority.”⁵ This Commission should take the same position here, and find that the netting limitation should be applied only to electricity generated outside a California BAA, for scheduling into a California BAA.

To implement this clarification, CE Generation proposes that proposed Section 3203(a)(1)(C) of the regulations be modified as follows:

(C) Electricity products from ~~the~~ **an** eligible renewable energy resource **located in a balancing authority that is not a California balancing authority** must be scheduled into a California balancing authority without substituting electricity from another source. For purposes of this section 3203, electricity generated by the eligible renewable energy resource must be scheduled into a California balancing authority on an hourly or subhourly basis, and the POU’s governing board or other authority, as delegated by the POU governing board, must have approved an agreement, before the electricity is generated, to schedule the electricity from the eligible renewable energy resource into the California balancing authority on an hourly or subhourly basis. If there is a difference between the amount of electricity generated and the amount of electricity scheduled and delivered **from a balancing authority outside California** into a

⁵ CPUC, *Decision Implementing Portfolio Content Categories for the Renewables Portfolio Standard Program*, D.11-12-052 at 23 (2011).

California balancing authority, only the lesser of the two amounts shall be classified as Portfolio Content Category 1.

C. Conclusion

CE Generation requests that the Commission's final rulemaking decision include the revisions to proposed Section 3203 (a)(1)(C) set forth above, to clarify that the "netting limitation" in proposed Section 3203 (a)(1)(C) will be applied only to renewable generation that was generated outside a California BAA.

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Respectfully submitted,

/s/ Jared W. Johnson

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