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cc: [Gould, Angela@Energy](#);
Subject: POU RPS rules -- banking treatment for short term contracts
Date: Tuesday, April 30, 2013 3:12:19 PM

To the CEC Commissioners,

In reviewing the latest changes to the POU RPS rules, I was very surprised to see a deletion of the prohibition on POUs banking any quantities associated with contracts less than 10 years in duration. During the RPS legislative battle over SBx2, this issue became very important and was hotly contested by a number of groups (including TURN, LSA, UCS and others). We care about this prohibition because short-term contracts do not stimulate new capacity and a primary RPS program goal is for POUs and IOUs to execute long-term contracts with new facilities. Given the CEC's apparent decision to adopt "stair step" procurement targets, at least for the second compliance period, I am concerned that POUs may execute short-term contracts in 2014, 2015 or 2016 to run up their banks in anticipation of the third compliance period and thereby delay meaningful commitments to new renewable resource development by several additional years.

The prohibition on banking short-term contracts by retail sellers is found in PU Code §399.13(a)(4)(B). In §399.30(d)(1), the code states that "The governing board of a local publicly owned electric utility may adopt the following measures....Rules permitting the utility to apply excess procurement in one compliance period to subsequent compliance periods in the same manner as allowed for retail sellers pursuant to Section 399.13." When we wrote this provision, there was a clear understanding that this language ("in the same manner as allowed for retail sellers") created a hard linkage between the banking rules for retail sellers and POUs. It was never contemplated that POUs could be permitted to adopt different banking restrictions.

The CEC's original version of the POU enforcement rules included, in proposed Section 3206, the prohibition on banking any quantities associated with short-term contracts. This treatment is fully consistent with the CPUC's determination of this issue in D.12-06-038 (Ordering Paragraph 18). The CEC's initial statement of reasons, which remains unchanged, explains that "the limitations of Public Utilities Code section 399.13 (a)(4)(B) should apply equally to POUs to ensure the rules for excess procurement for retail sellers are applied in the same manner to POUs." (page 30). Given the history, the crystal clear statutory language, the CPUC decision and the explanation provided in the CEC's statement of reasons, I was shocked to see this limitation simply deleted from the latest revision of the rules without any explanation. There is absolutely no justification for this last-minute reversal.

I understand that Commissioners and staff are considering ways to undo this change. I strongly urge the Commission to fix this problem before the rules are adopted. If the rules are adopted as drafted, there will be a period of opportunity for some POUs to move quickly to execute short-term contracts before the CEC has an chance to revisit the rules. This could lead to another round of grandfathering (as we saw with pipeline biomethane debacle) that would only cause more headaches down the line.

I want to be able to defend the CEC's management of its RPS program responsibilities. But this issue is not negotiable and the proposed outcome is not defensible. If the CEC adopts rules that ignore these explicit banking restrictions, I may be forced to join with other environmental and renewable energy groups to seek judicial review of these rules. I would strongly prefer not to take this course of action. But if we do, I am fairly certain that we would prevail and the CEC would look foolish.

I implore you to fix this problem now, even if it requires another 15 day comment period. I am confident that an extra 15 days at this juncture will be far less painful and time consuming then trying to clean up the mess later.

I hope that you will take my perspective into consideration.

Many thanks.

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