

California Energy Commission
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Re: Docket Nos. 14-RPS-01
1516 Ninth Street
Sacramento, CA 95814-5512

July 28, 2014

California Energy Commission

DOCKETED

14-RPS-01

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JUL 28 2014

RE: Staff Workshop: Enforcement Procedures for the Renewables Portfolio Standard for Publicly Owned Electric Utilities

The Independent Energy Producers Association (IEP) appreciates the opportunity to comment on the Staff Workshop related to enforcement procedures for publicly owned utilities (POUs) pursuant to the Renewable Portfolio Standard (RPS). The enforcement procedures were discussed at the CEC workshop July 11, 2014. IEP's comments are presented below.

1. Portfolio Context Category for POU-Owned or Procured DG System

The Commission is exploring whether generation from an RPS-certified facility consisting of a distributed generation system either owned by a Publicly-Owned Utility (POU) or from which the POU procures generation could be classified as Portfolio Content Category (PCC) 1 under PU Code section 399.16(b) (1) and section 3203 of the Commission's regulations for POUs. Attachment A, Section 2 related to Portfolio Content Category poses a series of questions related to the issue. Essentially, the series of questions may be summed into the following: *Are there circumstances when it would not be appropriate to classify electricity generation from a POU-owned DG system as PCC 1?*

In response, focusing on *ownership* as a threshold characteristic distinguishing RPS compliance in the context of the PCC "buckets" is misplaced. Ownership per se is not the distinguishing characteristic in determining whether a specific product procured by the POU fits into any one of the PCCs. Rather, what distinguishes the PCC product categories are the attributes associated with the delivery of the energy and/or renewable energy credit (REC) in place and time. Ownership is essentially irrelevant to determining whether a specific product meets anyone of the criteria for being treated as a "Bucket 1," "Bucket 2," or "Bucket 3" procurement for purposes of RPS compliance.

The Commission essentially inquires whether, for purposes of PCC classification, it matters that the eligible renewable resource is from a "POU-owned DG system"?

In response, distinctions among the qualities of the products based on whether the product is produced/delivered as part of the "DG system" as opposed to the transmission, grid

connected system is unnecessary and inappropriate.¹ Comparable and otherwise equivalent eligible renewable resources may interconnect at either the distribution level or the transmission level. Furthermore, comparable and otherwise equivalent RECs may be created as a function of energy production at either the DG system level or at the transmission level whether located within a California balancing authority or not; whether dynamically scheduled or not.

The Commission inquires “Under what circumstances, if at all, would it be appropriate to classify electricity generation from a customer-owned or third party-owned DG system as PCC1, when that electricity generation is used to meet the customer’s on-site load.”

In response, IEP has argued and continues to believe that the criteria for categorization as a PCC 1 product are fairly straight-forward: namely as prescribed in PU Code Section 399.16:

“The electricity derives from an eligible renewable resources that either (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, or (b) have an agreement to dynamically transfer electricity to a California balancing authority.” [PU Code 399.16(b) (1) (A)]

Other than the circumstances described above, it is inappropriate to classify electricity as a PCC 1 product solely based on whether it is a customer-owned or third party-owned DG system.

2. Definition of Retail Sales

The Commission is considering whether the current definition [in the POU RPS Regulations] of ‘retail sales’ should be clarified in section 3201(bb). In raising this question, the Commission notes that “some POUs may be excluding electricity demand from other departments, units, or enterprises within the municipality ...” Moreover, the Commission notes that “It may be difficult for a POU to determine where to draw the line between the POU/municipality’s consumptive demand and ‘retail sales,’ ...”

IEP suggests that the confusion as to where to “draw the line” by POUs may be self-inflicted, and it may be done as a means to lessen the POU’s RPS obligation. In order to help remove some of the confusion, IEP offers the following framework for determining a utility’s, an ESP’s, and a POU’s RPS Obligation.

- a. **Retail Sales are Those Sales That Are Not Wholesale In Nature.** First and foremost, wholesale sales are those “sales for resale” that are FERC jurisdictional. All other “sales” are retail. It makes no difference if the “sale” is for free, i.e., the POU provides the energy to one of the municipality’s departments, units, or enterprises: in situations such as these, a “sale” still has taken place.
- b. **The RPS obligation is imposed on all Retail Sales, unless explicitly exempted.** Exclusions from the calculation of a POU’s retail sales are inappropriate if the energy is delivered to meet retail demand, i.e., the energy is delivered as

¹ Importantly, the Commission’s adopted regulations omit any definition of “DG system.” See California Energy Commission Adopted Regulations, Approved by the Office of Administrative Law, Enforcement Procedures for the Renewable Portfolio Standard for Local Publicly Owned Electric Utilities, August, 2013.

electricity product to meet end-use demand irrespective of the end-use customers' relationship to the utility, POU, or ESP. The Commission should assume that a municipality's departments, units, and/or enterprises consuming energy are doing so as an end-use, retail customer. Presumably, this is "metered demand" (although, the metering may not be transparent to the Commission). Barring clear evidence that the departments, units, and/or enterprises are acting in a wholesale capacity (in which case they will be subject to FERC jurisdiction), then the Commission should assume that the energy consumed by any department, unit, enterprise (or its equivalent function) is end-use demand properly characterized as a retail sale.

- c. **Distinction between "retail sales" and "consumptive demand" is artificial, arbitrary and not consistent with statutory language.** The Commission has inquired as to whether clarifications are needed related to the definition of 'retail sales' to exclude a POUs own consumptive demand. As indicated above, IEP does not believe that *any* exclusion is warranted or allowed by law. To the extent that the existing POU RPS Regulations provide for any such exclusion, then the regulation should be amended to eliminate any such exclusion.

3. Need For Consistency with CEC RPS Guidebook

Importantly, IEP believes that it is fundamentally important from a public policy perspective, as well as the integrity of the RPS, to treat commercial transactions the same regarding PCC classifications, irrespective of whether the transaction is a POU/IOU-owned transaction versus third-party; irrespective of whether the transaction is at the DG-level, the transmission level; or, "behind the meter." IEP is particularly concerned that comparability may be undermined in the effort to distinguish transactions based on ownership-type or delivery-level as it being suggested. Accordingly, in response to questions posed in Attachment A, IEP offers the following response:

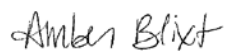
- Portfolio balance requirements (maximum PCC content for category 3 and minimum content for category 1) should apply consistent with the obligations imposed on CPUC jurisdictional entities.
- Comparable metering and REC-accounting rules should apply as those imposed on CPUC jurisdictional entities.

IEP thanks the CEC for the opportunity to comment on the Enforcement Procedures for the RPS for POUs. We look forward to working with the Commission on this matter in order to ensure consistency with statutory prescriptions, and comparability as to the obligations and accounting protocols for entities meeting the RPS obligation, whether they are investor-owned utilities, ESPs, or POUs.

Respectfully submitted,



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