

BEFORE THE CALIFORNIA ENERGY COMMISSION

**In the matter of:
Amendments to Regulations Specifying
Enforcement Procedures for the
Renewables Portfolio Standard for
Local Publicly Owned Electric Utilities**

Docket No. 14-RPS-01

California Energy Commission

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M-S-R COMMENTS ON JULY 11 STAFF WORKSHOP

On July 11, 2014, the California Energy Commission (Commission or CEC) hosted a Staff Workshop to discuss proposed amendments to the *Regulations for Enforcement Procedures for the Renewable Portfolio Standard for Local Publicly Owned Electric Utilities* (Regulations). The M-S-R Public Power Agency¹ (M-S-R) appreciates the opportunity to provide these initial comments to the CEC regarding proposed amendments to the Renewable Portfolio Standard (RPS) Regulations and the discussion items set forth in Attachment A to the Workshop Notice.

During the Workshop, stakeholders addressed some of the issues raised in Attachment A, as well as variations and refinements to the proposals put forth for consideration.² The proposed amendments to the Regulations should include language that recognizes the Portfolio Content Category (PCC) 1 treatment of energy generated from utility-owned distributed generation systems and addresses the need for procurement flexibility in the provisions governing the ability of resources to be eligible for the excess procurement calculation. The Regulations do not need to be revised to further refine the definition of retail sales, as there is already a uniform definition that is applicable to all POUs. Neither do the Regulations need to be amended to include additional definitions or requirements relevant to dynamically transferred electricity.

Portfolio Content Category for POU-Owned or Procured DG System

Attachment A presents an inquiry "whether generation from an RPS-certified facility consisting of a distributed generation system either owned by a POU or from which the POU

¹ Created in 1980, the M-S-R Public Power Agency is a public agency formed by the Modesto Irrigation District, the City of Santa Clara, and the City of Redding. M-S-R is authorized to acquire, construct, maintain, and operate facilities for the generation and transmission of electric power and to enter into contractual agreements for the benefit of any of its members. As such M-S-R does not serve retail load within California but supplies wholesale power under long-term contracts to its retail load-serving members.

² The fact that these comments do not address all of the issues raised in during the Workshop or in Attachment A should not be viewed as a position either for or against the proposed changes.

procures generation could be classified as Portfolio Content Category (PCC) 1 under PUC section 399.16 (b)(1) and section 3203 of the Energy Commission's regulations for POUs." M-S-R is pleased to see the CEC further reviewing this issue, because as currently implemented, the Regulations preclude the PCC1 treatment of electricity that otherwise meets all of the statutory requirements of Public Utilities (PU) Code section 399.30, as well as the myriad policy reasons supporting the RPS program statewide. PCC1 eligibility for these resources should only be restricted by clear statutory prohibitions, and absent those prohibitions, the Regulations should not include barriers to PCC 1 eligibility.

Electricity generated from distributed generation (DG) systems that have a first point of interconnection in any California balancing authority should be eligible for PCC1, regardless of whether the facility is utility-owned or if the generation is purchased by the utility. The crucial point is that the electricity is generated from an eligible resource and is used to serve California retail customers. As such, it should be eligible of PCC1 treatment. Since DG meets several of the states policy objectives relevant to the provision of electricity, there is no sound reason to exclude this specific resource from PPC1 treatment. This includes that portion of the generation that is consumed on-site, as such generation reduces the utility's retail load (offsetting generation that would otherwise be generated by a non-renewable energy resource) and is generated by an eligible resource, and clearly meets the legislative intent of PU section 399.1, et seq.

Furthermore, PCC1 eligibility should focus on the resource at issue, and not on the entity consuming the electricity. The fact that the contractual arrangement between a DG system owner and the utility calls for a certain quantity of the electricity generated to be sold back to the customers does not negate the fact that the electricity generated is from an eligible resource. Indeed, such an arrangement meets more than just the RPS policy objectives of the state, but also eases potential constraints on transmission and distribution resources by locating generation close to load. While not in the same proportion as a large utility scale renewable energy generator, a POU and ultimately its rate payers benefit greatly from the financial savings associated with transmission line or distribution line upgrades that are the result of local generation and consumption of the renewable energy that is generated by these DG systems. Every little bit helps when a utility can offset costly investments in upgrades or new lines to reach these resources.

For purposes of determining PCC1 eligibility, it should not make a difference where the generation is measured, whether or not the generation is being consumed on-site, or who installs or owns the DG system. Furthermore, the “resale” restriction in 3203(a)(1) of the Regulations does not prohibit such a transaction because the generation at issue is being used to serve retail load, and not wholesale customers. The upcoming amendments to the Regulations should clarify the rules to ensure that these DG resources are counted as PCC1.

Contract Amendments and Excess Procurement

In Attachment A, the Commission requests input on whether the Regulations “should address subtraction of short term contracts for purposes of excess procurement” and present scenarios for further consideration. M-S-R believes that the Commission should consider amendments to the Regulations that clarify the terms under which the contracts of less than 10 years can be counted towards the calculation of excess procurement under different circumstances. M-S-R believes that if a contract is extended beyond the initial term to provide for term of more than 10 years total, that contract should be eligible for inclusion in the excess procurement calculation. The objective of this restriction is to discourage entities from procuring all of their renewable resources through short-term contracts, and thus not investing in the development of renewable energy resources for the long-term. However, if entities with existing contracts take steps to extend that contractual commitment and the contract extension results in an agreement that is more than 10 years, then that contract should be eligible for the same treatment as all other contracts that are greater than 10 years. For purposes of determining eligibility, the date of the modification to more than 10 years should service as the beginning date for calculating generation that will be included in excess procurement.

M-S-R also urges the Commission to further explore the issues raised by Roseville Electric during the Workshop regarding the ability to count excess procurement from short-term contracts in certain situations and under pre-defined conditions. As contemplated, if a POU has sufficient long-term resources to meet its RPS mandate, but for some unforeseen reason those resources are not deliverable during the required period, and the POU must therefore enter the market and procure resources to fill the shortage, to the extent that those additional contracts are for less than 10-years, the POU should still be able to count any excess procurement from those contracts. The provisions of section 3206(a)(2) of the Regulations allows a delay for timely performance under similar situations, but rather than “non-perform,” the utility has opted to meet the obligation through the short term contracts.

The following scenario exemplifies why this provision is necessary. In 2013, Santa Clara had several long term contracts that did not reach commercial operation as expected. In order for the City to meet its PCC1 obligation, it was necessary to procure PCC1 RECs under short term contracts to satisfy the minimum requirements of its RPS obligation. This resulted in approximately 93,000 PCC0 RECs in 2013, none of which would be eligible for excess procurement. However, the utility only needed to procure these additional RECs because other contracts did not deliver as planned, and entering into contracts in excess of 10 years would have been not only economically infeasible, but would have resulted in the purchase of more energy than the City needed. Under these limited conditions, M-S-R believes that the statutory intent of PU section 399.30 is still met, and thus, the contracts at issue should be eligible for the excess procurement calculation. Furthermore, there is no risk of gaming contracts, because the utility will need to demonstrate that it had sufficient resources prior to entering into the additional short-term contracts to meet the unrealized generation from the long term agreements.

Definition of “Retail Sales”

In Attachment A, the CEC queries “whether the current definition of ‘retail sales’ should be clarified in section 3201(bb) . . . to ensure that POUs are properly excluding their consumptive loads in determination retail sales.” Section 3201(bb) provides:

“Retail sales” means sales of electricity by a POU to end-use customers and their tenants, measured in MWh. This does not include energy consumption by a POU, electricity used by a POU for water pumping, or electricity produced for onsite consumption (self-generation).”

The definition set forth in the current Regulations distinguishes between the energy consumed by a POU versus that of end-use customers. For POUs that are also municipalities, “end-use” clearly includes their municipal facilities, such as their city offices, their municipal police and fire departments, and city street lights. While this interpretation is inherent in the existing definition, M-S-R does not oppose a change to add “including, but not limited to” language after “energy consumption by a POU,” if the Commission believes that further amendments are necessary.

Definition of “Resale”

The term “resale” is used in the RPS Compliance Report Form for Local Publicly Owned Electric Utilities. The term is discussed in footnote 16 and defined in the RPS FAQ. These references adequately address this issue, and M-S-R does not see the need to amend the Regulations to add a definition for “resale.”

Dynamic Transfer Agreements

The Commission is seeking input on whether the Regulations should be amended “to further clarify the definition of ‘dynamic transfer agreements’ for PCC 1 in section 3203(a)(1)(D).” M-S-R does not believe that the Regulations require any further clarifications on this issue. The statute makes no distinction between pseudo ties and dynamic schedules, and PU 399.16(b)(1)(B) provides that eligibility is based on “an agreement to dynamically transfer electricity to a California balancing authority.” If the dynamic transfer meets this requirement, no further review or verification should be necessary.

Conclusion

M-S-R appreciates the opportunity to provide these comments regarding the scope of proposed amendments to the RPS Regulations and looks forward to work with the CEC staff as they develop the proposed amendments.

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Respectfully submitted,



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