



California Municipal Utilities Association

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California Energy Commission

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TN 73498

JUL 28 2014

Re: CMUA Workshop Comments on Amending the California Energy Commission's *Enforcement Procedures for the Renewables Portfolio Standard Eligibility for Local Publicly Owned Electric Utilities*

The California Municipal Utilities Association (CMUA) would like to thank the California Energy Commission (CEC) for the opportunity to provide comments on the Staff Workshop on Amending the California Energy Commission's *Enforcement Procedures for the Renewables Portfolio Standard Eligibility for Local Publicly Owned Electric Utilities* (Staff Workshop), held on July 11, 2014. Several of CMUA's members will file comments that will provide detailed responses to the questions posed in Attachment A. CMUA supports these comments filed by its members.

While all of the issues raised in Attachment A are significant, these comments will focus on the questions relating to the issue of the portfolio content category for POU-owned or procured distributed generation systems. CMUA encourages the CEC to continue to have a dialog with stakeholders on all of the issues that will be raised in this proceeding, and if necessary to hold additional workshops to discuss these matters further.

A. The CEC Should Revisit Its Interpretation of PCC1

As CMUA demonstrated in comments filed throughout the regulatory process to develop the current version of CEC's Enforcement Procedures,¹ Public Utilities Code section 399.16(b)(1)² does not require that portfolio content category 1 (PCC1) electricity products be procured as bundled. As Commissioner Peevey rightly noted when the California Public Utilities Commission (CPUC) adopted this requirement for the CPUC-jurisdictional entities, "... prohibiting the use of any unbundled RECs for Category 1 will increase compliance costs for no discernable purpose."³ One of the key reasons for these increased costs is because utilities are forced to engage in unnecessary overly complex transactions, such as procuring additional energy when the utility is already fully resourced.

¹ See, e.g., CMUA Comments on Proposed Regulations: Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities, Apr. 16, 2013, at

² Unless otherwise specified, all statutory references are to the California Public Utilities Code.

³ Concurrence of Commissioner Michael R. Peevey on Item 47, Decision 11-12-052, at 3.

One of the primary impacts of this interpretation is that renewable energy credits (RECs) associated with behind-the-meter generation, where the energy is consumed onsite would be classified as PCC3. This interpretation is contrary to the intent of SBX1-2 and the State policy of encouraging the expansion of distributed generation.

CMUA requests that the CEC take this opportunity to reconsider its interpretation of the bundled requirement. Specifically, the CEC should take advantage of the data that has been collected regarding compliance period 1 and evaluate what benefit is achieved or harm prevented by this requirement compared against the added costs caused by this interpretation. The CEC should determine if this is consistent with the Legislature's purpose.

B. Distributed Generation Is Eligible for PCC1

The questions raised in Attachment A go well beyond the limitations imposed even under the CEC's "bundled" interpretation. Under the CEC's current interpretation, electricity products associated with customer-owned generation that is interconnected on the customer's side of the meter, and where the energy is consumed by onsite load would be PCC3. As mentioned above, CMUA does not believe these limitations represent good policy, nor the only legal interpretation of the PCC language in SBX1-2. It is important that this interpretation not be expanded to cover all distributed generation where there is a potential that load may be consumed on-site, regardless of the metering structure and contractual arrangements for the procurement of that generation.

When a POU procures energy and RECs as a bundled product from a distributed generation facility through a contract or ownership, and the metering configuration, contract terms, or some combination of both meet the statutory requirements for PCC1, the CEC should not impose any additional restrictions that would convert these transactions to PCC3. Any limitations imposed simply because a resource is distributed generation runs counter to clear state policy and is in opposition to the future of the electric utility industry. The CEC must be careful that its actions do not discourage the development of new distributed generation facilities. In particular, the CEC should not impose limitations that favor generation located far from load (with increased environmental impacts and increased burdens on the electric system) over generation located close to load.

As the CEC considers this issue, it must follow the rules of statutory construction, which includes:

"(s)tatutes must be given a reasonable and common sense construction in accordance with the apparent purpose and intention of the lawmakers—**one that is practical rather than technical**, and that will lead to a wise policy rather than to mischief or absurdity.' [] '(l)n construing a statute the courts may consider the consequences that might flow from a particular

interpretation. They will construe the statute with a view to promoting rather than to defeating its general purpose and the policy behind it.”⁴

When evaluating the PCC of a particular transaction, the CEC must keep the purpose and intent behind the PCCs in mind. Section 399.16(a) clearly sets out the Legislature’s purpose:

(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.⁵

The benefits set forth in section 399.11 are the following:

- (1) Displacing fossil fuel consumption within the state.
- (2) Adding new electrical generating facilities in the transmission network within the Western Electricity Coordinating Council service area.
- (3) Reducing air pollution in the state.
- (4) Meeting the state's climate change goals by reducing emissions of greenhouse gases associated with electrical generation.
- (5) Promoting stable retail rates for electric service.
- (6) Meeting the state's need for a diversified and balanced energy generation portfolio.
- (7) Assistance with meeting the state's resource adequacy requirements.
- (8) Contributing to the safe and reliable operation of the electrical grid, including providing predictable electrical supply, voltage support, lower line losses, and congestion relief.**
- (9) Implementing the state's transmission and land use planning activities related to development of eligible renewable energy resources.⁶

⁴ City of Costa Mesa v. McKenzie, 30 Cal. App. 3d 763, 770 (1973) (citing *Anaheim Union Water Co. v. Franchise Tax Bd.*, 26 Cal.App.3d 95, 105, 102 (1972); *Bush v. Bright*, 264 Cal.App.2d 788, 792 (1968)) (emphasis added).

⁵ Cal. Pub. Util. Code § 399.16(a)-(b) (emphasis added).

⁶ Cal. Pub. Util. Code § 399.11(b) (emphasis added).

Distributed generation clearly fits within the Legislature's purpose expressed above. Distributed generation has one of the lowest impacts on the operation of the grid and avoids the need for the construction of additional distribution and transmission infrastructure. The Legislature's preference for the procurement of distributed generation is demonstrated in section 399.15(b)(5)(B), which requires that a retail seller that is requesting the California Public Utilities Commission to waive enforcement of the RPS due to permitting, interconnection, or insufficient supply must first take reasonable measures to "**procure cost-effective distributed generation.**"

In response to the specific questions posed in Attachment A, CMUA believes that the concerns raised represent the types of overly technical readings of statutory language that lead to results counter to the express intent of the legislature. The questions relating to POU-owned distributed generation are a prime example of this. A POU owned distributed generation system clearly meets the requirement of section 399.16(b)(1) that the facility have a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area. Further, the very nature of the POU's ownership means that the electricity products are procured. Section 399.12(f) defines "procure" as "to acquire through ownership or through contract." There is no requirement that energy from a PCC1 contract "be transmitted to the POU's distribution system," as asked in Attachment A. Indeed, the CEC does not require that energy from a PCC1 transaction with an out-of-state resource be transmitted to the distribution system of the POU. Instead, once the energy has been scheduled into any delivery point within a California Balancing Authority, the transaction is eligible for PCC1. The questions in Attachment A imply restrictions for distributed generation that are not imposed on utility-scale generation.

Similar to POU-owned generation, where a POU has executed a contract to procure the bundled RECs and energy from a generating facility that is located on the property of one of its customers, this also clearly meets the statutory requirements for a PCC1 transaction, even under the CEC's interpretation. As long as the contractual arrangement and metering configuration is sufficient to demonstrate that transaction meets the statutory procurement and interconnection requirements discussed above, there should be no additional limitations regarding the "availability" of the generation to be procured.

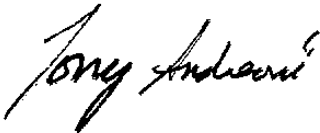
If these types of transactions are not considered PCC1, the CEC's interpretation will lead to the unreasonable result where electricity products from a renewable facility located in Montana and scheduled across the western United States into California will be treated as "preferred" in comparison to generation constructed within the POU's own community. This is clearly at odds with the express purpose of the RPS, and the PCCs in particular. The CEC should not impose restrictions that lead to this result. As stated above, several of CMUA's members will provide detailed responses to the questions in Attachment A. CMUA asks that the CEC carefully weigh these arguments in light of the rules of statutory construction and the clear purpose of the Legislature.

C. CONCLUSION

When a local POU procures energy and RECs from a distributed generation facility through a contract agreement or ownership, and the metering configuration, contract terms, or some combination of both meet the statutory requirements for PCC1, the CEC should not impose any additional restrictions that would convert these transaction to PCC3.

CMUA appreciates this opportunity to provide these comments to the CEC on the Staff Workshop. CMUA looks forward to working with the CEC on more formal regulatory language amendments.

Sincerely,

A handwritten signature in black ink, appearing to read "Tony Andreoni". The signature is fluid and cursive, with the first name "Tony" being more prominent.

Tony Andreoni, P.E.

Director of Regulatory Affairs

CC: Angela Gould
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