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California Energy Commission
Docket No. 14-RPS-01
Docket Unit
1516 Ninth Street, MS-4
Sacramento, CA 95814-5004

California Energy Commission

DOCKETED

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TN 75675

May 1 2015

Re: Docket No. 14-RPS-01: PG&E's Comments on Modification of Regulations Establishing Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Utilities

A. Introduction

Pacific Gas and Electric Company ("PG&E") respectfully submits its post-workshop comments in response to the California Energy Commission's ("CEC" or "Energy Commission") March 27, 2015 Notice of Proposed Action ("NOPA"). This NOPA proposes to modify regulations concerning enforcement rules and procedures for the Renewables Portfolio Standard ("RPS") for local publicly owned electric utilities ("POUs").

The purpose of the NOPA is twofold – to implement Senate Bill ("SB") 591 and to clarify existing provisions in the RPS regulations. The CEC held a pre-rulemaking workshop on July 11, 2014 and PG&E submitted written comments on July 28, 2014. The CEC has now published its proposed revisions to its regulations as the "Express Terms," and its "Initial Statement of Reasons" for public comment as part of its 45-Day Language and Rulemaking Package.

PG&E indicated concern with certain provisions of the Express Terms during the CEC's April 9, 2015 workshop and now provides a detailed explanation of why the CEC should modify the Express Terms before adopting them as final CEC regulations. In particular,

- With respect to the CEC's proposed Portfolio Content Classification ("PCC") classification of POU-owned distributed generation ("DG") eligible renewable resource facilities, PG&E suggests that it not create differences between PCC classifications applicable to load serving entities regulated by the CEC versus the California Public Utilities Commission ("CPUC").
- Resources with a dynamic transfer agreement into a California Balancing Authority ("CBA") should qualify for PCC 1 treatment, without further conditions, such as having to verify hourly deliveries.
- The regulations must be consistent with SB 591, which requires that in order to qualify for the counting exemption, Modesto Irrigation District ("MID") must (1) actually receive the generation from its facility, and (2) demonstrate that it has served 50% or more of its sales with its large hydro facility during each compliance period, if not every year.

Each recommendation is addressed in detail, below.

PG&E's Recommendations

(1) The Portfolio Content Category ("PCC") for POU-Owned or POU-Procured DG RPS Should be Consistent with the Applicable PCC for all Load Serving Entities Responsible for RPS.

Proposed Modification:

The following sentence would be added to Section 3201 – "Definitions, subsection (e) 'Bundled'" (see, Express Terms page 1):¹

If the POU owns the eligible renewable energy resource, then electricity products associated with electricity consumed onsite may be considered bundled electricity products. If the POU does not own the eligible renewable energy resource, then the electricity products associated with electricity consumed onsite will be considered unbundled.

PG&E's Recommendation:

With respect to the CEC's proposed PCC classification of POU-owned DG eligible renewable resource facilities, the CEC should not create differences between PCC classifications applicable to load serving entities regulated by the CEC versus the CPUC. The CPUC has drawn nuanced distinctions between the PCC value of DG renewable energy. A utility-owned DG system which transmits energy to an investor-owned utility's ("IOU's") distribution system is considered a PCC 1 resource; however, the consumption of renewable generation on-site has the potential to create RECs that play different roles in RPS compliance. For example, the utility consumption of DG renewable energy reduces the total retail sales of the interconnected utility, and thus reduces the amount of RPS-eligible procurement required of the IOU so that the REC will not meet the "first point of interconnection to distribution system" standard, but may meet other criteria.²

The RPS is a statewide goal that is being addressed by both the CEC and the CPUC. Throughout its RPS enforcement policy for POU, the CEC should strive to promote conceptually sound renewable resource development through policies that are consistent between POUs and IOUs. Therefore, however a particular RPS product counts toward POU compliance should be the same as for IOUs. In order to maintain parity between CPUC and CEC regulated entities, CEC should count renewable DG consumed on-site by a POU's customer in the same way the CPUC counts this same type of renewable DG.

¹ Section numbers refer to sections within Title 20 of the California Code of Regulations that embody the regulations of the California Energy Commission.

² See, D.11-12-052, pp. 35 and 36.

(2) The Statutory Distinction between Imports Pursuant to Dynamic Transfer Agreements and Those Scheduled into California Balancing Authorities Must Be Observed in Practice.

Proposed Modification:

The following underlined sentence would be added to CEC Regulations Section 3203 – “Portfolio Content Categories,” subsection (a) Portfolio Content Category 1, subdivision (D) (see, Express Terms page 4):

Electricity products must be subject to an agreement between a California balancing authority and the balancing authority in which the eligible renewable energy resource is located, executed before the project is generated, to dynamically transfer electricity from the eligible renewable energy resource into the California balancing authority area. For purposes of this section 3203, electricity generated by the eligible renewable energy resource shall be scheduled into a California balancing authority area on an hourly or subhourly basis.

PG&E’s Recommendation:

This provision is contrary to the Legislature’s determination that resources with a dynamic transfer agreement into a California balancing authority (“CBA”) should qualify for PCC 1 treatment, without further subjecting the eligibility on verification of hourly deliveries. In fact, the Legislature made it clear that dynamic transfers are a special category by separating them from other out-of-state generation that is scheduled into a CBA and must be verified on an hourly basis.³ This distinction is apparent from the structure of Public Utilities (“Pub. Util.”) Code section 399.16(b). This statute provides that energy within PCC1 falls into *either of two* categories – energy scheduled into California under an hourly or subhourly import schedule. (Sec. 399.16(b)(1)(A), or energy subject to a dynamic transfer agreement with a CBA (Sec. 399.16(b)(1)(B).)

399.16.

(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:

(1) Eligible renewable energy resource electricity products that meet either of the following criteria:

³ Compare Cal. Pub. Util. Code § 399.16(b)(1)(A) (hourly verification required for out-of-state generation) with Cal. Pub. Util. Code § 399.16(b)(1)(B) (no requirement of hourly verification for dynamic transfers).

- (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 without substituting electricity from another source. *The use of another source to provide real-time ancillary services required to maintain an hourly or subhourly import schedule into a California balancing authority shall be permitted*, but only the fraction of the schedule actually generated by the eligible renewable energy resource shall count toward this portfolio content category.
- (B) Have an agreement to dynamically transfer electricity to a California balancing authority.
(Emphasis added.)

There is no statutory authority for imposing the hourly or subhourly schedule requirements on dynamic transfers scheduled specifically by POUs. The CEC should not overlook this important difference when adopting its POU enforcement regulations.

While the CEC's POU regulations do not apply to IOUs, PG&E is concerned that in attempting to harmonize the counting of PCC1 products procured by POUs and IOUs, the state or its regulatory agencies could perpetuate such a mistake. Accordingly, the underlined sentence in Section 3203(a)(D) should be omitted from the final regulations.

(3) The CEC Should Implement the SB 591 Provisions Applicable to Merced Irrigation District in Accordance with the Plain Words of the Statute.

Proposed Modification:

Section 3204 – “RPS Procurement Requirements” would be modified to carry out the terms of Pub. Util. Code section 399.30 subsection (k), which states that “a local publicly owned electric utility that receives greater than 50 percent of its annual retail sales from its own hydroelectric generation that is not an eligible renewable energy resource shall not be required to procure additional eligible renewable energy resources in excess of either of the following:”

The portion of its retail sales not supplied by its own hydroelectric generation and a certain cost limitation. PG&E refers to the remaining POU procurement obligation as the “Renewables Procurement Balance” or “RPB.”

The proposed regulations define the term “qualifying hydroelectric generation” to establish which POU may benefit from the limit on its RPB. Section 3204(a)(10), which appears on pages 8 and 9 of the “Express Terms” document contains two key terms:

- (1) Subdivision (10)(A)(3) specifically states that the “POU is not required to apply the electric generation from the facility toward its own load to meet this criterion.”

(2) Subdivision (10)(B) states that to demonstrate that the “POU receives greater than 50 percent of its annual retail sales from its own hydroelectric generation that is not an eligible renewable energy resource,” the POU must provide the CEC “documentation showing that qualifying hydroelectric generation produced an average of greater than 50 percent of the POU’s annual retail sales in the twenty years preceding each compliance period, or the entire generating history of the qualifying hydroelectric generation facility, whichever is less.”

PG&E’s Recommendations:

The CEC staff and parties at the April 8, 2015 NOPA workshop agreed that under these provisions of SB 591, the only POU governed by these terms is Merced Irrigation District (“MID”) and the hydroelectric generation resource is the New Exchequer Dam (“NED”). This is confirmed by the CEC’s “Initial Statement of Reasons” on page 8. In addition, the “electrical corporation receives the benefit of the electric generation through June of 2014” is PG&E, which purchased the output of NED through June of 2014.

- A. MID must apply the generation from its hydroelectric facility toward its own load for each period in which it seeks an exemption for its Renewables Procurement Balance.

Pub. Util. Code Section 399.30(k)(1) requires MID to actually receive the generation from NED and supply that same generation to its own retail customers in order to qualify for the exemption. However, the proposed regulations for implementing SB 591 do not faithfully carry out the highlighted statutory provisions:

(k) (1) A local publicly owned electric utility that receives greater than 50 percent of its annual retail sales from its own hydroelectric generation that is not an eligible renewable energy resource shall not be required to procure additional eligible renewable energy resources in excess of either of the following:

(A) The portion of its retail sales not supplied by its own hydroelectric generation. For these purposes, retail sales supplied by an increase in hydroelectric generation resulting from an increase in the amount of water stored by a dam because the dam is enlarged or otherwise modified after December 31, 2012, shall not count as being retail sales supplied by the utility’s own hydroelectric generation.

(B) The cost limitation adopted pursuant to this section.

(2) For the purposes of this subdivision, “hydroelectric generation” means electricity generated from a hydroelectric facility that satisfies all of the following:

(A) Is owned solely and operated by the local publicly owned electric utility as of 1967.

(B) Serves a local publicly owned electric utility with a distribution system

demand of less than 150 megawatts.

(C) (Involves a power purchase agreement with a utility through June of 2014, at which time the benefit reverts back to the ownership and control of the local POU.)

(D) (Has a specified maximum penstock flow capacity.)

PG&E objects to subdivision (10)(A)(3), which states, “POU is not required to apply the electric generation from the facility toward its own load to meet this criterion”. PG&E’s objection is due to the fact that this subdivision is not based on any provision of SB 591, and in fact because it contradicts the explicit requirement of Pub. Util. Code Section 399.30(k)(1) that MID must *actually receive* NED’s generation and use it to provide more than 50 percent of its retail sales and the equally explicit requirement of Pub. Util. Code Section 399.30(k)(2) that NED’s electricity must *actually serve* MID, in order to qualify for the exemption.

The regulation as drafted allows MID to sell the full output of NED, procure non-RPS, fossil-based electricity to replace that output, and to offset its RPS obligations using that non-RPS generation. This was clearly not the intent of the legislature. As succinctly stated in the Legislative Counsel’s Digest of the chaptered version of SB 591, “This bill would provide that a local publicly owned electric utility is not required to procure additional eligible renewable energy resources in excess of specified levels, if it receives 50% or greater of its annual retail sales from its own hydroelectric generation meeting specified requirements.”

Prior to adoption, proposed CEC Regulation Section 3204(a)(10)(A)3 should be modified by striking the following sentence: “The POU is not required to apply the electric generation from the facility toward its own load to meet this criterion.”

B. MID must serve at least 50% of its load with NED generation during each compliance period in which it seeks exemption from its RPB.

The second inconsistency with the RPS statute appears in Section 3204(a)(10)(B), which allows MID to qualify for the RPB exemption by demonstrating that qualifying hydroelectric generation produced “an *average* of greater than 50 percent of the POU’s annual retail sales *in the twenty years preceding each compliance period, or the entire generating history... whichever is less.*” The highlighted terms clearly contradict Pub. Util. Code Section 399.30(k)(1), which requires MID to demonstrate that it has served 50% or more of its “annual” retail sales with NED output.

Proposed CEC regulation Section 3204(a)(10)(B) is unsupported by SB 591 for at least two reasons. First, MID cannot show that NED served an average of greater than 50 percent of MID’s annual retail sales in the twenty years before each compliance period because during those periods, NED’s energy was supplied to PG&E and not to MID’s

own load. Secondly, it would define MID's annual retail sales as an average of past sales. The word "average" does not appear in either SB 591 or the codified language.

The Energy Commission staff explained that MID's annual generation should be calculated over 20 years "to capture the fluctuations in production from the facility. This averaging period is consistent with the requirements in the ...Eligibility Guidebook for purposes of calculating incremental electricity generation from a hydroelectric generation facility."⁴ The Eligibility Guidebook employs a historical average of hydro generation to establish a baseline with which to compare efficiency improvements in hydro facility performance. This way, an increase in output due to factors other than efficiency improvements would not be counted as incremental RPS generation.⁵

However, the staff's proposal to use a 20-year average of deliveries to establish the threshold of MID's RPS compliance target is not conceptually consistent with SB 591. The amount of NED's annual hydroelectric generation is easily counted so there is no need for averaging. The legislation was not intended to establish a static threshold for excusing MID from RPS procurement, which is what a 20-year average would create. Finally, staff's 20-year averaging of generation creates an arbitrary inconsistency with the multi-year and annual RPS compliance periods.⁶ It does not make sense for the amount of hydroelectricity that was generated 20 years ago to determine a POU's RPS target today.

If the CEC's final regulations allow the calculation of NED's output used to actually serve MID's retail customers on any basis other than each calendar year, it would be logical to synchronize the averaging of NED output with the averaging of retail sales in each multi-year RPS compliance period, and to use a current time period. Thus, to determine whether MID is eligible to claim an SB 591 exemption during 2015, the CEC would first calculate MID's total retail sales during each of the three years in the January 1, 2014-December 31, 2016 compliance period. It would then calculate the total output of NED used to actually serve MID load during the same 2014-2016 compliance period. If at least 50% of MID's total retail sales was served by NED during that compliance period, MID would be entitled to rely upon the statutory exemption in SB 591.

Conclusion

PG&E appreciates the CEC staff's dedication to the fair and consistent implementation of the renewables portfolio standard. The final regulations should incorporate PG&E's recommendations, as provided here and at the CEC's NOPA workshop, to ensure fidelity to the RPS statutes and consistent treatment of the IOUs and POUs responsible for carrying out the state's renewables mandate.

⁴ *Initial Statement of Reasons* issued pursuant to the NOPA, dated March 27, 2015, p. 8.

⁵ *Renewables Portfolio Standard Eligibility*, 7th ed., California Energy Commission, April 2013, p. 35.

⁶ Pub. Util. Code Section 399.30(b).

Sincerely,

/s/

Valerie Winn
Chief, State Agency Relations

cc: Angela Gould (via email, angela.gould@energy.ca.gov)
Emily Chisholm (via email, emily.chisholm@energy.ca.gov)
Gabriel Herrera (via email, gabe.herrera@energy.ca.gov)