May 6, 2015

California Energy Commission
Docket No.14-RPS-01
Docket Office
1516 Ninth Street
Sacramento CA 95814

Submitted via email to: docket@energy.state.ca.us

Re: Docket No.14-RPS-01 -- Modification of Regulations Establishing Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Utilities

Introduction and Summary

The California Wind Energy Association ("CalWEA") appreciates the opportunity to comment on the proposed Modification of Regulations Establishing Enforcement Procedures for the Renewables Portfolio Standard ("RPS") for Local Publicly Owned Utilities ("POUs") (the "Proposed Regulations"), noticed on March 27, 2015. These comments recap and elaborate upon comments made by CalWEA at the Joint CEC/CARB workshop on April 9, 2015.

CalWEA objects to the proposed definition of a "bundled" product (Section 3201, Definitions), which would enable renewable energy credits ("RECs") from customer-sited renewable energy systems that serve on-site load – but which happen to be utility-owned – to count towards RPS compliance under Product Content Category ("PCC") 1. The proposed definition confuses the concept of a bundled product (energy + RECs) with project ownership. While limited in scope, this change would set a precedent that is inconsistent with current law and CPUC regulations, and could be highly disruptive to the RPS market.

Further, CalWEA opposes the counting of unbundled RECs from any customer-sited renewable energy project towards RPS compliance under PCC 3, at least until stringent consumer protection and fair advertising standards have been established, met and verified. Regardless of the fine print in contracts, most consumers are likely to believe that they have purchased and are receiving renewable energy from their on-site systems. Similarly, the public is likely to assume that renewable energy systems sited on commercial and industrial facilities are supplying those facilities with renewable energy, particularly if public claims are made along those lines. Thus, counting RECs from on-site systems towards RPS compliance in *any* PCC could effectively double count the generation. As the Commission is charged with ensuring that RECs are not double counted by any seller of electricity,[1] it must establish standards for the use of unbundled RECs for the purpose of RPS compliance that are consistent with that charge.

These issues are discussed further, below.

Discussion

1. **Ownership is unrelated to whether energy and RECs are bundled.**

Ownership is not an appropriate measure for determining whether a transaction qualifies for any of the PCCs. Generation that is consumed on-site is not "procured" by the utility (as the definition of "bundled" otherwise requires), and this fact is not altered by whether or not the utility owns the generation system.

Counting generation that is consumed on site reduces the utility's retail load and does not alter the generation mix of the utility, which is the objective of the RPS. As the Large-scale Solar Association ("LSA") noted in its July 28, 2014, comments in this docket (at p. 2), the CPUC considered this issue in a November 2011 decision (D. 11-12-052) and concluded that:

> …AB 920 [PUC Sec. 2827(h)(6)(a), addressing net metering] specifically recognizes that the sale of RECs associated with the on-site use of electricity from an RPS-certified DG facility is different from the sale by the system owner of both energy and RECs to a retail seller. In considering the role of such unbundled RECs, it is also important to recognize that the on-site consumption of the electricity from the DG system has already produced an RPS benefit: it reduces the total retail sales of the interconnected utility, and thus reduces the amount of RPS-eligible procurement the utility requires. (See D.05-05-011 at 9.) Conferring an additional value on the unbundled RECs by considering them to meet the "first point of interconnection to distribution system" criterion [PCC 1] is not warranted by any statutory language or Commission decision.

That CPUC decision also noted (at p. 31-32) that:

> [The statutory] prescriptions for the use of procurement in each category for RPS compliance do not make sense, and could not be administered, unless there are bright lines separating the portfolio content categories. … There is no reason, textual or otherwise, to believe that the Legislature specifically identified unbundled RECs as belonging in § 399.16(b)(3) [PCC 3], but really intended some of them to be in § 399.16(b)(1) [PCC 1].

[1] *See* PU Code Section 399.21 (a)(1) and (2).

This same reasoning should be adopted by this Commission as it *rejects* the proposed definition of "bundled" to include electricity consumed onsite as long as the utility owns the system. The proposal muddies the "bright line" distinction that has been the understanding of market participants since at least 2011. CalWEA agrees with LSA that, should the Energy Commission make a different determination on the PCC classification for on-site consumption of renewable generation projects, it would be highly disruptive to the RPS market and would set markedly different standards for POUs and CPUC-jurisdictional retail sellers and for different types of onsite load.

The Commission should reject proposals from POUs that would further loosen these proposed definitions (e.g., by including in PCC 1 any customer-sited systems that the POU has supported with incentives) and exacerbate the associated problems.

2. **The Commission should ensure that consumer protection standards have been met when unbundled RECs are used for the purpose of RPS compliance**

The Commission, which, again, has been charged with preventing double-counting, should establish strict conditions under which any retail seller is permitted to use RECs associated with customer-sited renewable energy systems towards RPS compliance under PCC 3. Strict conditions are necessary because it can be reasonably expected that many, if not most, residential consumers who install renewable energy systems on their premises are doing so at least in part because of the associated environmental benefits that result from their purchase. It can also be reasonably assumed that most residential consumers will be confused by the notion that a provision in their contract could eliminate that environmental benefit. As the few of us who understand RECs are well aware, the environmental benefit is eliminated when a retail seller uses RECs from residential customer-sited facilities (whether or not they are behind-the-meter) towards RPS compliance under PCC 3. Barring extraordinary efforts to educate consumers and give them a meaningful choice in the matter, the result is that RECs are effectively double counted: once when the consumer believes he or she is offsetting his or her electricity consumption with renewable energy, and again when that same renewable energy is counted by a retail seller toward its RPS obligation under PCC 3.

Customer-sited systems for commercial and industrial consumers present a different issue, given that these customers could be presumed to have the wherewithal to understand the provisions of the contract and the implications of REC ownership. These customers should understand that they cannot make public claims about being supplied with renewable energy if they have not retained the RECs. At least theoretically, those claims are subject to verification by consumer protection agencies that would look for retention of the RECs to support any public claims. The additional issue here is that no claims need to be specifically made in order to gain public recognition of the renewable energy system if the system is visible on the customer's premises. That is, the average member of the public will presume that the business is creating environmental benefits regardless of whether the business has retained the RECs; the environmental benefits cannot be disassociated with the renewable energy system in the public's mind, and thus the business will reap public good will (and resulting economic benefits) even without specifically making any marketing claims.[2] In these cases, the RECs should remain with the customer to support the implied claim, but in any case should not be used for RPS compliance under PCC 3, because RECs would be double-counted: once, in the public's mind, and again, when applied to RPS compliance.

For these reasons, the Commission should establish (or work with California's Office of Attorney General to establish) consumer protection standards to govern the circumstances (if any) under which RECs from customer-sited renewable energy systems may count towards RPS PCC 3. These standards should include, at a minimum: (a) a provision that consumers be given a reasonable choice whether to retain the RECs; (b) a plain-language explanation of what it means when RECs are not retained; (c) guidance regarding the public statements that the customer should and should not make; and (d) the customer's attestation that this information has been provided and understood.

These notions of customer protection and fair claims are not new:

- In its 2010 "Best Practices in Public Claims for Solar Photovoltaic Systems,"[3] the Center for Resource Solutions (CRS) – sponsor of the Green-e consumer protection program – notes that "most people are motivated to pay for a PV system because they want to use renewable electricity in their home and don't want their electricity consumption to cause pollution and emissions of greenhouse gases." CRS advises that, when the PV seller retains the RECs, the seller should explicitly state that the system owner, and not the PV host, owns the RECs and ensure that the host understands that they cannot and should not make any claims or statements about the use of renewable electricity from the system, or even stand by silently when renewable energy use is assumed.

- The Federal Trade Commission's 2012 "Green Guides" caution against making claims regarding solar panels when the associated RECs have been sold. In an example, the FTC states that a manufacturer with panels on its roof should not advertise that it "hosts" a renewable power facility because reasonable consumers likely interpret this claim to mean that the manufacturer uses renewable energy. The FTC states that it would not be deceptive for the manufacturer to advertise, "We generate renewable energy, but sell all of it to others."[4]

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[2] This is also true of a residential customer in terms of the "Jones Effect" and could result in economic gain when the home is sold if the buyer believes that environmental benefits are coming with the home, in addition to the economic benefits.

[3] Available at: http://www.green-e.org/docs/energy/Solar%20FAQ%20and%20Claims.pdf.

[4] U.S. Federal Trade Commission, *Guides for the Use of Environmental Marketing Claims (*16 CFR Part 260), October 11, 2012. Available at: https://www.ftc.gov/news-events/press-releases/2012/10/ftc-issues-revised-green-guides.

- A solar advocacy group states that, where RECs have been sold to the local utility to improve a solar system's payback, "most marketers know that Business X can't claim to be solar powered. Only the utility now gets to make that claim or else it would be double counting. Instead, we've all gotten used to finding … creative ways to talk about the business's solar efforts, typically by discretely calling the business a 'solar system host' or 'solar generator' and then moving on with the glorious details of the array and its many environmental benefits. No longer. The FTC's consumer perception research suggests that these kinds of claims can be misleading to consumers."[5]

The Commission must take action to ensure that RECs from customer-sited renewable energy systems are not being double-counted, both to protect those customers and to assure the public that the RPS is not being met, in part, on the backs of consumers who have been misled. Therefore, before the Commission allows the use of any RECs from customer-sited systems to count towards RPS PCC 3, it should establish consumer protection standards that retail sellers must meet, with some degree of verification, to ensure that these RECs are not being double-counted.

Thank you for considering our views.

Sincerely,

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cc: Chair Robert Weisenmiller
Commissioner Karen Douglas
Commissioner David Hochschild
Commissioner Andrew McAllister
Commissioner Janea Scott
Angela Gould, RPS Program, Energy Commission

[5] Rosalind Jackson, "Don't get left in the dark when it comes to your solar marketing claims," June 17, 2011. Available at: http://votesolar.org/2011/06/17/dont-get-left-it-the-dark-when-it-comes-to-your-solar-marketing-claims/.