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California Energy Commission
Docket Office, MS-4
Re: Docket No. 14-RPS-01
RPS Proceeding
1516 Ninth Street
Sacramento, CA 95814-5512

California Energy Commission

DOCKETED

14-RPS-01

TN # 75727

MAY 08 2015

Comments of the Small POU Coalition on the Proposed Modification of Regulations Establishing Enforcement Procedures for the Renewable Portfolio Standard for Local Publicly Owned Electric Utilities

I. INTRODUCTION

The Small POU Coalition¹ appreciates the opportunity to submit comments on the *Proposed Modification of Regulations Establishing Enforcement Procedures for the Renewable Portfolio Standard for Local Publicly Owned Electric Utilities*, issued by the California Energy Commission (“CEC”) on March 27, 2015 (“Proposed Modification”).

The Small POU Coalition supports the initial comments of the California Municipal Utilities Association (“CMUA”), dated April 30, 2015. In particular, the small POU’s have a strong interest in assuring that their priorities for development of distributed renewable generation in their service areas are facilitated by State policies making customer-owned and onsite or “behind the meter” distributed renewable generation a permanent part of the State’s Renewables Portfolio Standard (“RPS”). It is difficult to comprehend – and no party has adequately explained – the basis for disallowing these important generation resources from qualifying as Portfolio Content Category (“PCC”) 1 status.

II. COMMENTS ON THE PROPOSED MODIFICATION ON THE DEFINITION OF “BUNDLED”

The CEC’s proposed modification to the Section 3201 (e) definition of “bundled” is inconsistent with both State policy and reasonable legal interpretation of SBX 1-2². It would add a new factor for determining whether a renewable electricity product is bundled or unbundled by describing whether the electricity is consumed on site and then whether, if consumed on site, it is owned by the utility. The Small POU Coalition appreciates the CEC’s efforts to clarify that utility-owned renewable resources

¹ The Small POU Coalition consists of the Cities of Rancho Cucamonga, Moreno Valley, Corona, Colton, Needles, Cerritos, and Victorville, Eastside Power Authority, Pittsburg Power Company and Power and Water Resources Pooling Authority.

² See e.g. initial comments of the CMUA, dated April 30, 2015. “Such generation meets all of the requirements of California Public Utility Code 399.16(b)(1)(A) because it has its first point of interconnection to distribution facilities used to serve end users within a California balancing authority area.”

meeting utility or city load qualify as PCC1 resources. However, by then specifically including the provision “electricity consumed onsite will be considered unbundled” (and therefore only qualifying as a PCC3 resource) if not owned by the utility, the proposed modification has described an entirely new kind of limitation – one that doesn’t exist in current state policy or law. In the Initial Statement of Reasons (“ISOR”) the CEC explains that “If the electricity and associated RECs from a customer-owned eligible renewable energy resource are sold to the POU under provisions requiring the electricity to be immediately sold back to the customer, the electricity products are unbundled, because the customer is effectively selling only the RECs to the POU.”³ As proposed by the Small POU Coalition, the electricity from the customer-owned generation sold to the distribution utility is not then sold back to the customer. The costs and attributes of the electricity are combined with other resources and it becomes system power which is used to serve all customers, including the customer. Nor, under the terms of the contract and consistent with State law⁴, would the customer be able to claim any of the environmental attributes for marketing purposes. For all intents and purposes, and consistent with any applicable State policy, the power remains bundled. Contracts for the sale of power are based on legal structures transferring title to the power. Similarly, the obligation of a utility to serve a customer’s load is based on a regulatory construct that establishes the terms and costs of service in rates. If title to the power from onsite customer generation is passed to the utility under a power purchase agreement and the utility then sells power from its system back to the customer under contracts and tariffs established by the regulatory authority, it is irrelevant where the energy flows physically or is consumed.

Another concern cited by some of the parties is the calculation of the utility’s retail sales figure for purposes of computing the amount of RPS obligation. In previous comments, the Small POU Coalition described a type of renewable resource power sale where the developer of the generation, typically a rooftop solar PV unit located at the site of a new commercial business, would transfer to the utility all title to the output and the utility would deliver retail electric service from its system to meet the full electrical load of the customer.⁵ Since, under this arrangement, the retail load is independent of the generation the customer is selling to the utility, the gross retail load of the customer would continue to be included in the utility’s total “retail sales” figure for calculation of RPS requirements. There is thus no legal or policy distinction between this transaction and one where the power would instead be sold into the wholesale grid. State policies should favor such transactions since the transaction does not require the use of scarce transmission capacity. It also reduces dependence on out of state sources and can be used to help retain and attract businesses, which are benefitted by such transactions.

If the policy for calculating retail sales numbers for RPS compliance purposes is not germane and appropriate metering requirements are met, then the positions of various parties opposing the extension of PCC1 treatment to customer-owned distributed generation are not credible. Parity of the POUs with regulatory limitations by the California Public Utilities Commission (“CPUC”) for the investor-owned utilities (“IOUs”) is not a good reason for backwards-looking policies to be adopted by the CEC. Perhaps the CPUC, by limiting IOU treatment of behind the meter distributed generation as a PCC1 resource, was trying to prevent overlap of existing programs (e.g. net metering) applicable to the IOUs.

³ ISOR, p.3

⁴ See California Business and Professions Code (“B&P”) section 17508.5(a)

⁵ See *Comments of the Small POU Coalition on Amendments to Regulations Specifying Enforcement Procedures of the RPS for POUs*, July 28, 2014, p. 2

Such limitations are not necessary nor applicable to the type of transaction described by the Small POU Coalition.

III. CONCLUSION

The Small POU Coalition would like to see the CEC proactively adopt policies which will move the State forward in meeting RPS goals. There is no downside or risk to interpreting SBX 1-2 to give the full value of PCC1 treatment to onsite distributed renewable generation. At the very least, the CEC ISOR in this proceeding should better explain what concerns or risks to State RPS goals it is trying to address, and then proposed modifications can be better drafted to target such risks.

Thank you for your consideration of these comments.

Respectfully,

A handwritten signature in cursive script, appearing to read "L. Johnson", written in dark ink.

Linda Johnson
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