INDEPENDENT ENERGY PRODUCERS ASSOCIATION

LSA LARGE-SCALE SOLAR ASSOCIATION

July 21, 2015

California Energy Commission
Dockets Office, MS-4
Re: Docket Nos. 14-RPS-01
1516 Ninth Street
Sacramento, CA 95814-5512

RE: Enforcement Procedures for the Renewables Portfolio Standard for Publicly Owned Electric Utilities [15-Day Language]

The Independent Energy Producers Association (IEP), the California Wind Energy Association (CalWEA), and the Large-scale Solar Association (LSA), collectively the Joint Parties, appreciate the opportunity to comment on the proposed enforcement procedures for publicly owned utilities (POUs) pursuant to the Renewables Portfolio Standard (RPS).

Specifically, the Joint Parties' comments relate to the "15 Day" language released by the Commission on July 6, 2015.

1. **Overview**

In prior comments related to the 45-Day Language associated with the proposed POU RPS Enforcement Procedures, the Joint Parties individually raised concerns regarding the proposed changed definition for "Bundled" products used in the implementation and enforcement of the RPS, including concerns that the proposed changes risk undermining the integrity of the counting of renewable energy and associated renewable claims made by load-serving entities and end-use consumers.

The Joint Parties believe that the 15-Day Language perpetuates the same flaws presented earlier. The proposed definition would enable a POU to count as a preferred, bundled PCC-1 product for purposes of RPS compliance any and all products owned by a POU irrespective of whether the underlying power is actually serving the POU's load. The proposed definition is not ground in statutory law, rule, or common sense. Furthermore, as a result of the proposed definition of Bundled, similar yet related concerns arise regarding the definition of "Resale" and "Resold."

To protect against double-counting and false claims, a viable RPS program requires a clear definition of an eligible renewable resource; metering requirements to ensure accurate accounting of energy production from eligible renewable resources and associated Renewable Energy Credits (RECs); and a credible mechanism for establishing, tracking, and monitoring the ownership of metered RECs from creation through the retirement of the REC.

2. Comments on Express Terms

First, the Joint Parties foremost concern arises with regards to the proposal to define Bundled for purposes of Product Content Category (PCC) classification, i.e. PCC-1, based solely on ownership status irrespective of the use of the electricity and/or the load being served by the electricity. Second, due to the intertwined nature of the proposed enforcement procedures, the Joint Parties are concerned about the definition of "Resale" and "Resold." Below, we first address the definition of "Bundled." Following this discussion, we address the related matter in the context of the definition of "Resale" and "Resold."

a. Section 3201—Definitions:

(e) "Bundled"

In the 15-Day Language, the proposed definition of "Bundled" is the following:

> (e) **"Bundled"** means an electricity product that, when procured by the POU claiming the electricity product to satisfy its RPS procurement requirements includes both the electricity and the associated renewable energy credits from an eligible renewable energy resource. For example, if the POU claiming an electricity product owns the associated eligible renewable energy resource, then all electricity products, including those associated with electricity consumed onsite, may be considered bundled electricity products.

The Joint Parties oppose this definition of Bundled for three primary reasons. First, the Joint Parties believe the "example" provided as a component of the definition hinders clear understanding of the definition and should be removed.

Second, under current law, "Procure" means to acquire through ownership or contract.[1] Under the proposed definition, Bundled status will apply to electricity served onsite even if the electricity and the associated REC are transacted separately, e.g. when the electricity is consumed onsite by the "customer-generator" (versus a retail transaction in which the POU sells

[1] PU Code 399.12(f).

retail electricity to the customer) and the REC is claimed by the POU or a third-party. When the electricity is used onsite to reduce the customer's load that would otherwise be served by the utility and the POU claims the associated REC, the link between the REC and the renewable energy is broken. The customer in effect claims the energy (because it does not pay the POU the tariff rate for the energy) while the POU asserts ownership of the REC. When the REC is separated from the energy in this fashion, it becomes a PCC-3 unbundled REC.[2]

As evidence that electricity produced behind-the-meter is not necessarily serving the load the utility would otherwise serve in its role as a public utility, the existing statutory definition of "electrical corporation" indicates clearly that the domain of the electrical corporation does not extend to the load of certain third-parties and/or "customer-generators":

> "Electrical corporation" includes every corporation or person owning, operating, or managing any electric plant for compensation within this state, *except where* electricity is generated on or distributed by the producer through private property *solely for its own use of the use of its tenants and not for sale or transmission to others*."[3] [Emphasis added]

Moreover, the Self-Generation Incentive Program (SGIP) implemented by the CPUC illustrates this concept. In the context of the SGIP program, when distributed generation is physically serving behind-the-meter load, the load being served is the customer-generator's load and is not served by the utility under its retail tariffs. For example, the SGIP Handbook describes the following:

> **Power Purchase Agreements:** An agreement for the sale of electricity from one party to another, where the electricity is generated and consumed on the Host Customer Site. *Agreements that entail the export and sale of electricity from the Host Customer Site do not constitute Host Customer's use of the generated electricity and therefore are ineligible for the SGIP*. [Emphasis added]

[2] For purposes of this analysis, we do not address the obvious concern of "double-counting" of the electricity from the resource for purposes of making environmental claims. This may occur when the customer-generator claims the renewableness of the onsite generation (e.g. rooftop solar) while the utility claims the REC.
[3] PU Code § 218(a).

Third, under the proposed definition, if a POU owned an eligible renewable resource physically located in Hawaii (and the resource was registered in WREGIS), then the product from that resource would be considered a Bundled product (i.e. a PCC-1 product) for purposes of RPS counting. The Joint Parties believe this defies common sense.

As a practical matter, *ownership* per se of an eligible renewable resource has nothing to do with determining whether a product from an eligible renewable resource is "bundled" for purposes of PCC categorization; and ownership status certainly is not the appropriate factor to distinguish PCC classifications. Rather, the critical factor in this context is whether the underlying energy and the REC are bundled when procured and remain bundled until the energy is used to serve the POU's retail customers and the associated REC is retired. Moreover, to ascertain whether this resource is serving the POU's retail load, one must know whether the load is being served under the POU's retail tariff(s); or, whether the resource is used to reduce the customer-generator's load that would otherwise be served via retail service provided by the POU.

In light of the fact-based, context specific nature of the determination of PCC classification, the Joint Parties disagree with the proposed approach to treat ownership as a determining factor in whether a product may be classified as a bundled, PCC-1 product. Rather, the Joint Parties offer the following modifications to the latest definition of Bundled to better align the definition with the practical realities of PCC classification under the RPS statute:

> (e) **"Bundled"** means an electricity product that, when procured by the POU claiming the electricity product to satisfy its RPS procurement requirements, includes both the electricity and the associated renewable energy credits from an eligible renewable energy resource <u>if the electricity associated with that product is used to serve the POU's retail customers</u>. ~~For example, if the POU claiming an electricity product owns the associated eligible renewable energy resource, then all electricity products, including those associated with electricity consumed onsite, may be considered electricity products.~~

b. Definition of Resale or Resold

In order to ensure all transactions involving an eligible renewable resource owned by a POU may be counted as a bundled, PCC-1 transaction, the term resale (or resold) needed to be defined. Under the 15-Day Language, the proposed definition of "Resale" and "Resold" in the POU Regulations is the following:

> (bb) **"Resale"** or **"resold**" means the sale from any entity to a POU of part or all of the electricity products procured by the entity through an executed procurement contract, *as opposed to an ownership agreement*. [Emphasis added][4]

This language suggests that POUs can repeatedly transact certain types of RPS products among themselves as long as the product derives from an ownership agreement of the POU. In effect, irrespective of whether the power is actually serving the load of the POU claiming the REC as a PCC-1 transaction, the REC-product will forever be classified as a Bundled product (i.e. PCC-1) even if the REC is sold separately from the associated energy, because, by definition, no secondary "resale" ever occurred.

This language once again obfuscates the treatment of the underlying energy and the associated REC, essentially enabling the two components of a "product" to be separated yet allowing the POU to continue to claim that the product is bundled. The Joint Parties find no justification for this in statute, rule, or as a matter of common sense.

The Joint Parties do not believe the term "resale" or "resold" merits definition in the regulations. However, to the extent that the Commission determines that a definition of these commonly used terms is warranted, then the terms "resale" or "resold" should not be presented as an alternative to an ownership agreement per se because, as noted elsewhere, nothing

[4] This language is unchanged from the 45-Day Language.

precludes a utility from reselling electricity products derived from ownership agreements. Accordingly, while our preference is to delete the defined term from the Express Terms, we urge the following change to the definition if a definition is retained in the CEC POU RPS Enforcement regulations in order to ensure that a POU ownership agreement is not used to ipso facto exclude a resold product from treatment as an unbundled PCC-3 product:

> (bb) **"Resale"** or **"resold**" means the sale from any entity to a POU of part or all of the electricity products procured by the entity through an executed procurement contract ~~as opposed to~~ or an ownership agreement.

3. Summary

The Joint Parties appreciate the opportunity to comment on these proposed POU RPS Enforcement Procedures. We have significant concerns regarding the 15-Day Language. Specifically, these concerns relate to the proposed definition of "Bundled" in the context of RPS procurement and categorization within the three Product Content Categories prescribed by statute. Essentially, the proposed definition would enable a POU to count as a preferred, bundled PCC-1 product for purposes of RPS compliance any and all products owned by a POU irrespective of whether the underlying power is actually serving the POU's retail customers. The proposed definition is not ground in statutory law, rule, or common sense. Furthermore, as a result of the proposed definition of Bundled, similar yet related concerns arise regarding the definition of "Resale" and "Resold." We look forward to working with the Commission on this matter in order to ensure consistency with statutory prescriptions and comparability as to the obligations and accounting protocols for entities meeting the RPS obligation, whether they are investor-owned utilities, ESPs, CCAs, or POUs.

Respectfully submitted,



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