

April 27, 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**

The Independent Energy Producers Association (IEP) appreciates the opportunity to comment on the proposed enforcement procedures for publicly owned utilities (POUs) pursuant to the Renewable Portfolio Standard (RPS). The proposed enforcement procedures, i.e. the “45 Day” language dated March 27, 2015, were discussed at the Joint CEC/CARB workshop on April 9, 2015.

**1. Overview<sup>1</sup>**

The strength of the RPS program, as well as the voluntary green programs, rests on public and policymakers belief that they are “getting what they pay for.” Accordingly, the central issue associated with the viability of the RPS program was, is, and will continue to be the integrity of the “counting” of renewable energy and associated “renewable claims” made by load-serving entities and end-use consumers. Just as double-counting quickly erodes the public’s (and policymakers’) confidence and support in the RPS, so too will false claims undermine integrity of the overall program. 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

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<sup>1</sup> The California RPS was initiated by SB 1038 (2002). During the past 12 years, the legislature has enacted many modifications not the least of which were those contained in SB x1-2 (2011) which statutorily prescribed various portfolio content categories to be applied by retail sellers of electricity when complying with the RPS requirements. Each time the legislature has enacted changes to the RPS, the responsible regulatory entities engage in a process to implement the statutory prescriptions in regulations. This process has resulted in much debate, but decisions were made and regulations were promulgated. IEP’s comment herein address the narrow matters raised by the staff’s proposed changes, and we do not waive our rights to raise concerns regarding other aspects of the Enforcement Procedures for the RPS for publicly owned electric utilities.

associated RECs; and, a reputable mechanism for establishing, tracking, and monitoring the ownership of metered RECs from creation through the retirement of the REC.

We urge the Commission to resist the arguments that propose to weaken the current standards for metering, registering, and tracking the production, ownership and retirement of RECs which have served so well to preserve the integrity of the RPS program. Currently, the Commission's rules related to RPS enforcement rest on a few critical principles that apply to all facilities that are RPS-certified by the Energy Commission:

- Facilities must be registered in WREGIS, comply with WREGIS rules, and all generation must be tracked in WREGIS to be considered RPS-eligible.
- Generation from an RPS-certified facility must be measured using a meter, or meters, with an independently verified accuracy rating of 2 percent (+/-) or better, to be counted for the RPS; and,
- Generation from a certified facility serving onsite load may be claimed for use in the RPS if all eligibility requirements are met and the generation serving onsite load is metered independently from any station service loads using a meter with a verified accuracy rating of 2 percent or better and must be adjusted for transformation losses to the "high side" to reflect what would have actually been delivered to the grid.<sup>2</sup>

IEP supports these principles. These principles are necessary to protect the program and California consumers/ratepayers from fraud, abuse, and the risk of double-counting of energy production from eligible renewable resources.

In light of these governing principles and concerns, IEP offers the following comments on the proposed changes to the regulations governing the enforcement procedures for the RPS as it applies to the POUs. Essentially, we oppose changes to the existing definition of "Bundled" product in order to keep that definition clear and not muddled with the concept of "ownership." In addition, we recommend two Express Terms, "Ownership" and "Double-Counting," as a more effectively means to address the concerns raised by IEP and others in the Commission workshop.

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<sup>2</sup> WREGIS Operating Rule 9.6

## 2. Comments on Express Terms

### a. Section 3201—Definitions:

#### (e) “Bundled” and “Unbundled RECs”

**PROPOSED 45-DAY LANGUAGE:** The CEC proposes the following definition of “Bundled” and “Unbundled REC” in the POU Regulations:

(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. 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 electricity products associated with electricity consumed onsite will be considered unbundled.

(ee)(ff) “**Unbundled REC**” means a REC from an eligible renewable energy resource that is not procured as part of the same contract or ownership agreement with the underlying energy from that eligible renewable energy resource; this includes RECs that were originally procured as a bundled product but were subsequently resold separately from the underlying energy.

**ISSUE:** The proposed language adds an additional criterion, i.e. “ownership,” to determine whether a product associated with an eligible renewable resource is defined as “bundled” or not for purposes of RPS compliance. As a result of this proposed change, the standard of whether a product is determined to be “bundled” is an either/or condition: the product is bundled if either the product when procured includes both the energy and environmental attributes *or* the product is from a resource owned by the POU.

The proposed changes inappropriately alter the definition of a “bundled” product and, moreover, muddle the important distinction between a bundled vs. unbundled product from an eligible renewable resource. For example, what is the proposed treatment if the energy from a POU-owned eligible renewable resource is used to serve its load but, because the POU is already compliant with its RPS obligation, the POU sells the REC separate from the associated energy used to serve load? Is this not an unbundled product? This proposed change would treat this transaction as a sale/resale of a bundled product in spite of all the evidence in statute and determinations elsewhere in the regulations that this represents an unbundled REC sale.

As a practical matter, the standard of ownership (i.e. does the utility own the eligible resource or not?) should have nothing to do with the criteria for determining whether a product from an eligible renewable resources is treated as “bundled” or unbundled. A product is bundled if the energy and the underlying environmental attributes are sold/resold together as a whole, and they are linked together until the energy is consumed and the REC is retired in an accounting system such as WREGIS.

**IEP RECOMMENDATION:** IEP recommends retaining the existing definitions for “Bundled” and “Unbundled RECs”, and we oppose the proposed changes.

**b. Proposed New Definition: “Ownership”**

**ISSUE:** As noted above, IEP is opposed to defining RPS products based on ownership status. To the extent that POUs wish to count the energy from the resources they own against their 399.13(1)(A) obligations (i.e. “bucket 1”), then the Commission must ensure that the Bundled products meet the existing criteria for metering, tracking, and verification.

Accordingly, IEP recommends adding a new, stand-alone definition for *Ownership* to clarify the treatment of resources owned by utilities vis-à-vis the 3 portfolio content categories (PCCs). Moreover, we urge the Commission to reinforce and re-affirm the

necessity of imposing strict metering requirements to prevent abuse, fraud, and double-counting.

**IEP RECOMMENDED EXPRESS TERM (NEW):** IEP recommends adding to the Express Terms the following definition for Ownership. Moreover, we urge integrating this concept throughout the POU regulations where appropriate:

**“Ownership”** If the POU owns an eligible renewable energy resource, the output of which is registered, metered, and tracked using a meter with a verified accuracy rating of 2 percent or better, is properly adjusted for transformation losses, and is subject to third-party verification and/or auditing, then the electricity products associated with the eligible renewable energy will be considered bundled for purposes of that POU’s RPS compliance obligation if the underlying energy is used to serve that POU’s retail load.

c. **Proposed New Definition: “Double-counting”**

**ISSUE:** Energy used to serve load “behind the meter” reduces retail sales that would otherwise occur. As a result, energy supply serving load behind the meter lowers an individual load serving entity’s RPS obligation below what it would otherwise be absent the delivery behind the meter supply. Thus, this supply provides an important RPS benefit to individual load-serving entities. If the supply (MWhs) is used to lower a load-serving entity’s retail sales, and thus lower its RPS obligation, *and* it is used to create a REC, then the supply is being double-counted in the context of the RPS program.

**IEP RECOMMENDED EXPRESS TERM (NEW):** In order to enable the counting of this supply, yet prevent abuse and double-counting, IEP recommends adding to the Express Terms the following definition for “Double-counting.” Moreover, we recommend integrating this concept throughout the POU regulations where appropriate:

**“Double-Counting”** To the extent that behind-the-meter energy (MWh) is used to lower an LSE’s retail sales and the same supply (MWh) is used to create a REC, then for purposes of calculating an LSE’s RPS obligation, that amount of energy (MWh) used to serve the behind-the-meter load will be added to the individual LSE’s retail sales calculation used to set its RPS compliance obligation.

**d. Definition of Resale or Resold**

**PROPOSED 45-DAY LANGUAGE:** The CEC proposes the following definition of “Resale” and “Resold” in the POU Regulations:

(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]

**ISSUE:** The proposed new language “... as opposed to an ownership agreement.” creates a condition in which RECs associated with the energy from a POU resource *by definition* will always be treated as bundled, even if the REC is separated from the associated energy and sold or resold.

This suggests that POU’s can repeatedly transact certain types of RPS products among themselves and, if the product originally derives from a resource owned by a POU, then all POU’s that are part of the chain of transactions get to treat the product as bundled irrespective of whether the REC remains linked to the underlying metered energy. For example, assume a POU enters into an ownership agreement with an eligible renewable resource, and the resource is registered with WREGIS whereby a REC is created associated with the underlying energy. This language suggests that if the POU uses the energy to serve its load, and then sells the REC to another POU, then the product associated with that transaction would not be considered as having

been subject to a resale or resold; i.e. the REC would not be considered unbundled from the underlying energy since no secondary “sale” ever occurred.

This language obfuscates the treatment of the energy and REC associated with the resale of renewable products and/or resold renewable products. Moreover, this language undermines the Commission’s prior determination regarding the treatment of unbundled RECs as Bucket 3 transactions.

**IEP RECOMMENDED EDITS TO DEFINITION RESALE/RESOLD:**

IEP recommends amending this definition as follows:

(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 and/or an ownership agreement if the product (in part or in whole) is sold to a separate entity other than the entity having an Ownership interest in the resource.

IEP thanks the CEC for the opportunity to comment on the Enforcement Procedures for the RPS for POUs. 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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