

CPUC Issues Final Decision on Renewables Portfolio Standard Content Categories of SB 2X

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On Dec. 15, the California Public Utilities Commission passed a highly technical and complex [decision](#) implementing portfolio content categories for the Renewables Portfolio Standard (“RPS”) program (“Final RPS Decision”). With a few exceptions, the Final RPS Decision closely mirrors the Proposed Decision which was issued on Oct. 7, 2011 and reported on in detail in an earlier advisory. Our [earlier advisory](#) also provides a good primer on the portfolio content categories for those who have not been following the RPS rulemaking (R.11-05-005).

This advisory describes the differences between the Proposed Decision and the Final RPS Decision, and discusses where the RPS rulemaking goes from here and how that might impact the energy industry.

Differences between the Proposed Decision and the Final RPS Decision

A number of parties argued that Senate Bill 2 (1x) was intended to allow Renewable Energy Credits (“RECs”) associated with at least certain types of distributed generation/self-generation to qualify within the highest RPS priority, so-called Bucket 1—but the Commission adopted the more restrictive view that to qualify for Bucket 1 the generation must be sold in a fully bundled manner (i.e., an integrated transaction involving both physical power and RECs). Thus, by definition, no RECs associated with distributed generation or self-generation (i.e., the RPS generator consumes the power and thus can only sell the associated REC in a separate transaction) could possibly qualify as Bucket 1. The Final RPS Decision clarifies that all unbundled RECs, even those associated with in-state distributed generation/self-generation, are relegated to the residual Bucket 3 category.

A number of parties also argued that the requirements related to “firmed and shaped” products that qualify in the Bucket 2 category needed clarification. The Final RPS Decision clarifies that each qualifying firm and shaped transaction must contain the following three commercial elements:

1. the buyer's simultaneous purchase of energy and associated RECs from the RPS-eligible generation facility without selling the energy back to the generator;
2. the availability of the purchased energy to the buyer (i.e., the purchased energy must not in practice be already committed to another party); and
3. the initial contract for substitute energy is acquired no earlier than the time the RPS-eligible energy is purchased and no later than prior to the initial date of generation of the RPS-eligible energy under the terms of the contract between the buyer and the RPS-eligible generator.

The Final RPS Decision adds the additional requirement that the contract for the substitute energy to be used in a qualifying firmed and shaped transaction must have a term at least as long as the lesser of the firmed and shaped sales contract or five years. Thus, in making a determination regarding the transactions eligible for Bucket 2 status, the Commission took a much narrower view on transactions that will qualify for Bucket 2 firmed and shaped status than the California Energy Commission had previously determined or what the industry had generally recognized.

Finally, the Final RPS Decision also clarifies that a retail seller could buy part or all of the procurement acquired through a contract for RPS procurement entered into by another entity, as long as:

1. the original contract meets all of the requirements of the original category sought (Bucket 1 or Bucket 2);
2. the resale contract transfers only electricity and RECs that have not yet been generated prior to the effective date of the resale contract; and
3. the original arrangements regarding the physical electricity and RECs that make the original contract Bucket 1-eligible or Bucket 2-eligible is retained in the resale contract.

What's next?

With its issuance of the Final RPS Decision, the Commission has attempted to provide some regulatory certainty as to how contracts will be counted under the various portfolio content categories delineated in Senate Bill 2 (1x). By determining that transactions involving unbundled RECs will not be classified in Bucket 1, the Commission has reduced the number of options available to retail sellers to meet their RPS obligations, which some retail sellers claim to be more cost-effective. In addition, the Commission's decision has the consequence of reducing the economic benefits of self-generation and distributed generation here in California. However, by this decision, the Commission does provide certainty and confirms the benefits for the development of RPS power for generators both in-state and out-of-state that are able to bundle both energy and the associated RECs into one transaction.

All industry participants should be aware that the Final RPS Decision will require the purchasing utility to make certain "upfront" showings and involve additional compliance determinations. These include the appropriate portfolio content category of RPS procurement, the risks that the procurement will not ultimately be classified in the claimed portfolio content category, the value to ratepayers of the procurement as proposed, and the value to ratepayers if the procurement is not ultimately classified in the claimed portfolio category.

The Commission's Energy Division is tasked to develop, in consultation with the parties, formats and information requirements for advice letters detailing such RPS procurement that will help facilitate the evaluation of proposed procurement including the reasonableness of costs. Those parties that expect to play a part in the marketplace should consider actively participating in that process shepherded by the Commission's Energy Division.

In addition, the Commission's RPS rulemaking remains open to consider a number of additional topics including how procurement can be counted and banked, potential cost caps on procurement, and potential penalties for failures to procure. Market participants should remain engaged on these important topics as well.

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