

Renewable Energy Law Alert: California Public Utilities Commission Adopts Decision Implementing RPS Portfolio Content Categories

LEGAL ALERT

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On December 15, 2011, the California Public Utilities Commission adopted Decision 11-12-052, implementing Portfolio Content Categories for the 33% Renewables Portfolio Standard (RPS) Program in California. The Decision implements portions of Senate Bill (S.B.) x1-2, which created the 33% RPS Program. S.B. x1-2 established three categories of RPS-eligible electricity, applicable to RPS contracts executed after June 1, 2010:

- Category One includes electricity from RPS-eligible resources that have their first point of interconnection with a California balancing authority, RPS-eligible resources with a dynamic transfer arrangement with a California balancing authority, and RPS-eligible resources scheduling their electricity directly into a California balancing authority without substituting electricity from another source.
- Category Two includes firm and shaped RPS-eligible electricity.
- Category Three includes transactions that do not meet the criteria of Category One or Two, including unbundled renewable energy credit (REC) transactions.

Retail sellers are limited in the amount of generation they may procure in Categories Two and Three to meet their RPS compliance obligations. These limitations become increasingly tighter as the RPS 2020 deadline draws closer. In the final RPS compliance period, from 2017 through 2020, and thereafter, a minimum of 75% of retail sellers' RPS procurement contracts, executed after June 1, 2010, must be classified as Category One. A maximum of 10% of RPS procurement can be made up of Category Three products, with the remainder of RPS obligations from Category Two.

The Decision requires investor-owned utilities (IOUs) to demonstrate the Portfolio Content Category or Categories included in an RPS procurement contract at the time the contract is presented to the Commission for approval. In addition to this upfront showing for IOUs, all retail sellers must provide sufficient information on their RPS procurement for Commission staff to confirm compliance with the Portfolio Content Categories minimum and maximum quantities. The Decision

tasks the Energy Division with determining the information necessary for the upfront showing and after-the-fact compliance determination. The Decision allows for cost recovery by the IOUs even if procurement is subsequently determined not to meet the criteria of the Portfolio Content Category that the IOU initially presented to the Commission, provided that enough information was presented at the time of contract approval for the Commission to be reasonably sure that the Portfolio Content Category of the proposed contract is correctly characterized.

The Decision also provides detailed requirements for the three Portfolio Content Categories.

Category One: Generation Interconnected with a California Balancing Authority or Dynamically Scheduled into a California Balancing Authority

The Decision clarified several points related to Category One electricity products. First, the Commission does not require firm transmission rights to demonstrate that Category One energy will be scheduled into a California balancing authority without substitution of electricity from another source. However, it notes that a transaction with firm transmission would simplify a retail seller's showing that the procurement meets the requirements of Category One. The use of another source to provide ancillary services to maintain an hourly or subhourly import schedule into a California balancing authority is permitted, but that energy cannot be counted toward a retail seller's RPS compliance obligation as Category One energy, even if the source providing ancillary services is itself RPS-eligible.

Category Two: Firmed and Shaped Energy

Firmed and shaped transactions provide substitute energy in the same quantity as contracted-for RPS-eligible generation, in order to fulfill the scheduling into a California balancing authority of the RPS-eligible generation in accordance with the timing and quantity requirements of the purchasing utility. The Decision requires Category Two firming and shaping transactions to have the following characteristics:

- A buyer cannot sell purchased energy back to the generator. However, if the RPS-eligible generator, or its affiliate, is arranging for the firming and shaping electricity, the IOU must provide information in its upfront showing that any energy to be sold back to the generator or its affiliate is for the purpose of firming and shaping.
- The purchased energy must be made available to the buyer—i.e., the energy must not, in practice, be already committed to another party.
- The substitute energy in the firmed and shaped transaction must be acquired no earlier than the date RPS-eligible energy is acquired and no later than the initial date of generation of the RPS-eligible energy.
- For IOUs, an initial contract for substitute energy must be for a minimum of five years, or the same length of the contract for RPS-eligible energy if it is less than five years.

The Decision clarified that a buyer of substitute energy is likely to be, but is not

necessarily, the retail seller ultimately claiming the firmed and shaped procurement for RPS compliance; the buyer may be the entity providing firming and shaping services. The Decision also defines "incremental electricity" as electricity that is not in the portfolio of the retail seller claiming the transaction for RPS compliance prior to the firming and shaping transaction.

The Commission declined to require a fixed price for substitute electricity, or to require that substitute electricity come from the same Western Electricity Coordinating Council subregion as the RPS-eligible electricity.

Resale of Category One and Two Products

The Decision outlined criteria for the resale of all or part of Category One or Two contracts without reclassifying the RECs associated with the energy to Category Three:

- The original contract must meet the requirements for a Category One or Two product.
- The resale contract must transfer only electricity and RECs that have not yet been generated prior to the effective date of the resale contract.
- For Category One resale contracts, the electricity transferred by the resale contract must be transferred to the ultimate buyer in real time.
- For dynamically scheduled transactions, the original hourly or subhourly schedule must be maintained.
- For firming and shaping contracts, the resale contract must transfer the original arrangement for substitute electricity—e.g., the source and quantity of electricity, and retain the scheduling of the substitute electricity into a California balancing authority as set out in the original firming and shaping transaction.

Category Three: Unbundled RECs

RPS-eligible electricity that does not meet the strict criteria of Categories One and Two, including the criteria for resale of a Category One or Two transaction, is characterized as a Category Three product. The Decision continues the price cap of \$50/REC for unbundled RECs in effect until December 31, 2013, as established in Decision 10-03-021. The Decision also determined that the purchase of RECs from a distributed generation facility that has its first point of interconnection with a California balancing authority constitutes a Category Three transaction, despite claims by numerous parties that the transaction should be considered a Category One transaction because the generator is interconnected to a California balancing authority.

If you have further questions about the Commission's Decision on Portfolio Content Categories, S.B. x1-2, or other California energy regulatory matters, please contact a key contributor.