



CRS

center for  
resource  
solutions

[SUBMITTED ELECTRONICALLY VIA EMAIL TO [docket@energy.ca.gov](mailto:docket@energy.ca.gov)]

February 19, 2016

Mr. Kevin Chou  
Renewable Energy Office  
California Energy Commission  
1516 Ninth Street, MS-45  
Sacramento, CA 95814-5512

**RE: DOCKET NO. 14-OIR-01. Center for Resource Solutions' comment in response to the December 18, 2015 Notice of Proposed Action and Express Terms for Modification of Regulations Governing the Power Source Disclosure Program**

Dear Mr. Chou:

Center for Resource Solutions (CRS) appreciates the opportunity to comment on the Express Terms for Modification of Regulations Governing the Power Source Disclosure (PSD) Program, released for public comment on December 18, 2015.

**Background on CRS and Green-e®**

CRS is a 501(c)(3) nonprofit organization that creates policy and market solutions to advance sustainable energy. CRS has broad expertise in renewable energy policy design and implementation, electricity product disclosures and consumer protection, and greenhouse gas (GHG) reporting and accounting. CRS administers the Green-e programs. Green-e Energy, in particular, is the leading certification program for voluntary renewable electricity products in North America. In 2014, Green-e Energy certified retail sales of 38 million megawatt-hours (MWh), representing over 1% of the total U.S. electricity mix, or enough to power nearly a third of U.S. households for a month. In 2014, there were over 836,000 retail purchasers of Green-e certified renewable energy, including 50,000 businesses.

Stakeholder-driven standards supported by rigorous verification audits and semiannual reviews of marketing materials ensure robust customer disclosure and are pillars of Green-e Certification. Through these audits and reviews CRS is able to provide independent third-party certification of renewable energy products. Green-e program documents, including the standards, Code of Conduct, and the annual verification report, are available at [www.green-e.org](http://www.green-e.org). CRS also has a long history of working with state agencies to design and implement consumer protection policies that ensure accurate marketing and avoid double counting of individual resources towards multiple end uses.

In January 2015, the California Public Utilities Commission directed the three largest investor-owned utilities (IOUs) in the state—Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas and Electric Company, which together cover nearly 80% of the state—to offer a Green-e

Energy certified 100% renewable energy option to their customers.<sup>1</sup> As such, these products will need to comply with Green-e requirements for product disclosure including product content labels.<sup>2</sup> According to the order, “Green-e Energy certification will also provide customers with standardized, understandable information on the energy’s attributes.”<sup>3</sup>

### **Comments on the Express Terms**

#### **1. We express our general support for the December 18, 2015 proposed modifications and Express Terms.**

In particular, we strongly support the removal of the problematic “REC only” category, which was proposed as a part of the May 2014 Pre-rulemaking Proposed Text of Draft Regulations for the Power Source Disclosure Program (“Pre-rulemaking Proposed Text”).<sup>4</sup>

We also strongly support a PSD program and power content labels (PCLs) that includes and reflect, respectively, *all* purchases made by retail sellers for deliveries to their customers, regardless of the form of contract, contractual instrument, or purchasing mechanism used, and regardless of the location of the generation. This provides retail customers with the most accurate information about the attributes of their electricity. Utilities cross state borders and they buy and sell electricity outside of their footprint and outside individual states. Rules for power source disclosure should not necessarily be dictated by state boundaries or programs and policies that center on state-specific emissions. With respect to deliveries of specified renewable energy, the attributes of renewable generation, including fuel/resource type, are clearly and exclusively contained in the renewable energy certificate (REC) (WREGIS Certificate).<sup>5</sup> Attributes that are delivered with electricity (“bundled”) and attributes that are delivered separate from electricity (“unbundled”) are contractually and functionally equivalent with respect to a customer’s claim to receipt of those attributes, which is precisely what is being communicated in PSD.

Finally, we support PCLs that do not include generation allocated to differentiated products that are delivered to a specific group of voluntary customers (“voluntary products”), or that disclose fuel mix for voluntary products separately. As noted above, each of the three large IOUs in the state will be required to offer voluntary green power options, and many of the other retail suppliers in the state offer voluntary products as well. To prevent double counting, it is important that voluntary product sales, particularly of renewable energy (bundled or unbundled), and especially sales of Green-e certified

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<sup>1</sup> California Public Utilities Commission (CPUC). Decision 15-01-051 January 29, 2015. Decision Approving Green Tariff Shared Renewables Program for San Diego Gas & Electric Company, Pacific Gas and Electric Company, and Southern California Edison Company pursuant to Senate Bill 43. Available online: <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M146/K250/146250314.PDF>.

<sup>2</sup> Green-e’s requirements for product content labels and other customer disclosure can be found in the Green-e Energy Code of Conduct, available online: [http://www.green-e.org/getcert\\_re\\_stan.shtml#coccdr](http://www.green-e.org/getcert_re_stan.shtml#coccdr).

<sup>3</sup> *Ibid.* Section 5.4, pg. 90.

<sup>4</sup> See CRS’s June 12, 2015 comments on the Power Source Disclosure (PSD) Program Pre-Rulemaking Draft Regulations, released by the California Energy Commission for public comment on May 14, 2015. Online at: [http://resource-solutions.org/site/wp-content/uploads/2015/07/CRScomment\\_CEC-PSD-draft-reg\\_6-12-2015.pdf](http://resource-solutions.org/site/wp-content/uploads/2015/07/CRScomment_CEC-PSD-draft-reg_6-12-2015.pdf).

<sup>5</sup> CAL. PUB. UTIL. CODE § 399.12(h). Online at: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=puc&group=00001-01000&file=399.11-399.32>. Also see Western Electricity Coordinating Council, WREGIS Operating Rules (July 15, 2013). Section 2, pg. 2, 4-5. Available online at: <https://www.wecc.biz/Corporate/WREGIS%20Operating%20Rules%20072013%20Final.pdf>.

renewable energy products, do not appear on PCLs received by all customers or non-subscribers to voluntary and Green-e certified programs and products. It is our understanding that the standardized template PCL required for retail suppliers will include additional, separate columns for voluntary products.

**2. The “Non-California Eligible Renewable” category, introduced in the December 18, 2015 proposed modifications to the PSD program, appears to double count. This category should be reconsidered.**

“Non-California Eligible Renewable,” is defined in the Express Terms as: “electrical generation from an out-of-state facility that is not certified by the California Renewables Portfolio Standard Program, but that is certified by another state’s Renewables Portfolio Standard.” We understand this to include renewable generation used for another state’s RPS but that is included in deliveries to California customers. If this category is not for generation that is counted toward another state’s RPS, this should be clarified. If we are correct in our understanding of this category, then it appears to double count.

RPS claims are unique for each state. All state RPS rules are clear about this, including those of California and its neighboring states.

CA AB 809, Sec.4, 399.16(a)(2) and CA Public Utilities Code, Sec. 399.21(a)(2):

*“A [Each] renewable energy credit shall be counted only once for compliance with the renewables portfolio standard of this state or any other state, or for verifying retail product claims in this state or any other state.”<sup>6</sup>*

CA Public Utilities Code, Sec. 399.25.:

*“The Energy Commission shall do all of the following: [...] (b) Design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers and local publicly owned electric utilities, to ensure that electricity generated by an eligible renewable energy resource is counted only once for the purpose of meeting the renewables portfolio standard of this state or any other state, to certify renewable energy credits produced by eligible renewable energy resources, and to verify retail product claims in this state or any other state. [...] (c) Establish a system for tracking and verifying renewable energy credits that, through the use of independently audited data, verifies the generation of electricity associated with each renewable energy credit and protects against multiple counting of the same renewable energy credit. The Energy Commission shall consult with other western states and with the WECC in the development of this system.”<sup>7</sup>*

Oregon Revised Statutes, Chapter 469A.140(3):

*“An electric utility or electricity service supplier is responsible for demonstrating that a renewable energy certificate used to comply with a renewable portfolio standard is derived from a renewable energy source and that the utility or supplier has not used, traded, sold or otherwise transferred the certificate. [...] (4) [...] An electric utility or electricity service supplier that uses a renewable energy certificate to comply with a renewable portfolio standard imposed by any*

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<sup>6</sup> See bill text of AB 809 here: [http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab\\_0801-0850/ab\\_809\\_bill\\_20070618\\_amended\\_sen\\_v95.html](http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_0801-0850/ab_809_bill_20070618_amended_sen_v95.html). See CA Public Utilities Code here: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=puc&group=00001-01000&file=399.11-399.32>.

<sup>7</sup> See CA Public Utilities Code here: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=puc&group=00001-01000&file=399.11-399.32>.

*other state may not use the same certificate to comply with a renewable portfolio standard established under ORS 469A.005 to 469A.210.”<sup>8</sup>*

RECs used for another state's RPS are used to deliver renewable energy to that state's customers. They cannot be claimed by California customers, and the underlying electricity cannot be characterized as renewable in a PCL without the REC. For example, if the out-of-state facility is being used for Oregon's RPS, but the energy is being exported to California, that energy must not be claimed or reported as renewable. California's PCL under the PSD program represents a claim to renewable energy. Even though the out-of-state energy may not be used for the California RPS, it should not be claimed on the PCL as renewable if the RECs are being used to comply with the Oregon RPS. As such, the "Non-California Eligible Renewable" category, as proposed, appears to double count other state RPSs, without the REC. California's PCL should contain renewable energy used for the California RPS and any other renewables delivered to California customers that is not used for another state's RPS, demonstrated by REC retirement.

### **3. The "Non-California Eligible Renewable" category may be misleading to retail customers.**

It is unlikely that most retail customers will understand what it means to be "certified." They may interpret this as out-of-state generation that is of a fuel type that is not eligible for the California RPS, when in fact it could be an eligible fuel type from a facility or generating unit in Oregon, for example, that has not asked for and been approved for California's RPS. It may be misleading in that respect, since the out-of-state facility may be the same fuel type that would be eligible for California if the generator were to request certification by the CEC. Again, this category should be reconsidered.

### **4. The "Non-California Eligible Renewable" category hides fuel source information.**

This category is proposed as a new, top-level fuel source category, alongside Eligible Renewable, Coal, Natural Gas, and others. Eligible Renewable must also be reported in subcategories for the various renewable fuel types (e.g. wind, solar, geothermal, etc.). But, there is no such requirement for Non-California Eligible Renewables. Fuel source information (specific fuel types) within the Non-California Eligible Renewable category should be disclosed. Location or geographic origin can be disclosed separately, if this is important information for consumers, but it should not hide fuel source information.

### **5. Please explain the initial decision to include a proposed restriction on including wholesale sales traceable to a specific generation source in the May 2015 Pre-rulemaking Proposed Text and the subsequent decision to not include this restriction in the December 18, 2015 Express Terms.**

We have noted that Sec. 1393(c)(1)(H) of the Pre-rulemaking Proposed Text included a requirement that, "If, during the previous calendar year, a retail supplier has sold electricity at wholesale that is traceable to a specific generation source, that electricity shall not be included in the fuel mix disclosed pursuant to this section." Sec. 1394 (a)(2)(A)(1) also included a requirement to identify those sales in information submitted to the Energy Commission. Please clarify the rationale for initially including these requirements and then removing them.

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<sup>8</sup> See ORS, Chapter 469A, here: [https://www.oregonlegislature.gov/bills\\_laws/ors/ors469A.html](https://www.oregonlegislature.gov/bills_laws/ors/ors469A.html).

**6. We recommend adding language that explicitly requires the retirement of RECs (WREGIS certificates) to substantiate deliveries of specified renewables reported on PCLs.**

Along with the “REC only” category, the December 18, 2015 proposed modifications also removed previously proposed language explicitly requiring all specified renewables without certificates to be reported as unspecified, in Section 1394(a)(2)(A)(3) of the May 2014 Pre-rulemaking Proposed Text. Though the “REC Only” category was rightly removed, the following language reflected an appropriate and consistent treatment of RECs in PSD: “If a retail supplier purchases electricity for which WREGIS Certificates were issued but the retail supplier does not purchase the Certificates, the retail supplier shall identify the fuel type as ‘unspecified sources of power’ and shall disclose the facility from which the electricity was purchased.”

Though we believe that other requirements to report WREGIS certificates for specified power and the combined requirements for audited information submittals to Energy Commission in Sec. 1394 (a)(2)(A) will achieve the same result, we recommend explicitly stating that REC retirement is required for all reported deliveries of specified renewables reported on PCLs.

**7. Please revise Sec. 1392(c)(2)(B) of the Express Terms to clarify intent: “The balancing authority is not required to provide the Energy Commission with any information submitted under subdivision (b)(3) of this section for out-of-state power.”**

Energy Commission staff has explained that this is intended to make clear that balancing authorities are not required to report fuel information to the Energy Commission, and that this does *not* mean that PSD will not include out-of-state generation where procured for delivery to retail customers. We believe that this question was also raised at the May 28 workshop, at which Staff explained that its intent was to include out-of-state power and that this would be clarified. It is possible that any confusion may be resolved by simply removing “for out-of-state power.”

Thank you very much for the opportunity to comment. We would be happy to supply any other supporting or clarifying information that would be helpful.

Sincerely,



Todd Jones  
Senior Manager, Policy and Climate Change Programs