

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Develop
Additional Methods to Implement the California
Renewables Portfolio Standard Program

Rulemaking 06-02-012
(Filed February 16, 2006)

**RESPONSE OF THE CALIFORNIA WIND ENERGY ASSOCIATION
ON JOINT PETITION OF
SOUTHERN CALIFORNIA EDISON COMPANY, PACIFIC GAS AND ELECTRIC
COMPANY, AND SAN DIEGO GAS & ELECTRIC COMPANY
FOR MODIFICATION OF DECISION 10-03-021**

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I. INTRODUCTION

Pursuant to the April 14, 2010, Ruling of Assigned Commissioner Peevey, the California Wind Energy Association (“CalWEA”) submits this limited response to the Joint Petition of Southern California Edison, Pacific Gas & Electric, and San Diego Gas & Electric (“Joint Petition”) to modify the Commission’s decision on tradable renewable energy credits (“TRECs”) in Decision 10-03-021 (“Decision”).

CalWEA opposes the Joint Petition’s call to reclassify as REC-only contracts transactions with out-of-state generators that do not have a first point-of-interconnection to a California Balancing Authority or that do not deliver under dynamic transfer arrangements. CalWEA supports the Decision as-is. We would, however, support eliminating the provision in the Decision that categorically excludes “firmed and shaped” products from the bundled category, so that further discussion may take place to determine whether such products can be defined in a way that assures that they will provide the benefits that the Commission is looking for in bundled transactions.

II. ARGUMENT

A. Market Certainty is What Really Matters

The Joint Petition argues that the Decision will “discourage the development of new renewable generation and efficient use of existing renewable resources.” (Joint Petition at p. 3.) In our view, what discourages development is uncertainty, which prevents decisions on project development investments. Most of CalWEA’s members are developing projects both within and outside of the state; they will focus on promoting whichever projects and products that meet the state’s rules and preferences. But first, those rules and preferences must be established. The Decision achieves this goal and we now need to move on.

The Decision creates market certainty both because, after several years, a decision has been made, and because the Decision itself provides clear direction to the market. In particular, it ensures that, for a defined portion of the market, developers who invest in projects that directly deliver to the California grid will not have to compete against projects that do not.

With regard to the Joint Petitioners’ reference to the “efficient use of existing renewable resources,” we assume this is a reference to extensive recent short-term acquisitions of what the Decision now classifies as TRECs from generation already under contract to or owned by out-of-state utilities. According to TURN, 70% of the TREC deals that the investor-owned utilities have executed since January 2009 have been of this nature, accounting for about 6,500 GWh of annual deliveries, or 3.7% of the utilities’ 2010 load.¹ Clearly, these transactions will not result in new development. The Joint Petitioners note that the CPUC has already determined that “there is simply no plausible market situation in California in which short-term contracts for existing renewable power will crowd out long-term contracts for new generation.” (Joint Petition at p. 19.) If Joint Petitioners also believe this, then they should not worry about the Decision, which ensures that there will be no such crowding out.

Although any regulatory decision can later be modified, and this Decision specifically provides for revisiting the TREC limit in December 2011, a Decision has nevertheless been made – one that is consistent with the delivery/REC construct accepted by the Legislature in SB 14 and which provides market certainty for the 20% RPS policy.

¹ Response Of The Utility Reform Network To The Joint Motion Of Southern California Edison Company And San Diego Gas & Electric Company For A Stay Of Decision 10-03-021, at p. 2. (R. 06-02-012). April 21, 2010.

B. The CPUC’s Decision Will Foster Continued Development of In-State Resources

By ensuring that, for a defined portion of the market, developers who invest in projects that directly deliver to California’s grid will not have to compete against projects that do not, the CPUC’s decision will foster continued development of in-state resources, which is far more expensive and risky than developing out-of-state, owing to strict environmental laws, high land values, incomplete land-use planning efforts, and other factors. Although in-state developers must still compete with out-of-state projects directly interconnected to California’s grid, a wide-open door to transactions classified by the Decision as TREC’s holds real potential to undermine in-state development, as companies decide where to focus their limited development capital.

While the Joint Petitioners charge that the Decision’s limitations on TREC’s will increase the demand for in-state renewable energy, thus “allowing in-state developers to increase their prices” (Joint Petition at p. 14), in fact, what it may allow is for in-state developers to recoup their investment in the costly and risky California development process. If the state wishes to see any development in California, companies need to know that their projects will not have to compete with an endless supply of TREC’s from throughout the vast WECC region. Moreover, the in-state renewable resource potential shown in the reports of the Renewable Energy Transmission Initiative (RETI) and the commercial development potential shown in the CAISO interconnection queue over the past few years (which includes out-of-state projects directly interconnected to California’s grid) demonstrate the availability of resources in the “bundled” category to fulfill many times over the amount of renewable energy required to meet California’s renewable energy goals. This resource availability will ensure strong competition.

C. The State Has a Reasonable Purpose in Distinguishing Between Products with Different Values

It is clearly within the CPUC’s purview to ensure that RPS procurements made by jurisdictional utilities provide the greatest value to ratepayers. To achieve the goal of providing overall value from the RPS program, the Decision reasonably found a need

to distinguish between bundled products that clearly provide incremental deliveries to California and those that do not.²

In arguing against the Decision's definition of TRECs "to allow for the most cost-effective achievement of the State's renewable energy goals" (Joint Petition at p. 11), Joint Petitioners fail to consider that "cost-effective" must take into account the benefits of the product to the state, not just lowest cost. Although the Decision may lead to higher costs for customers, the Decision reflects the Commission's view (and the Legislature's, given SB 14) that the cost of paying for products actually delivered are worth paying more for, as compared to an electronic certificate which, given potential opportunities for gaming, can come without real energy deliveries.

D. The Decision Is Not Arbitrary, and Strikes a Reasonable Balance

The Decision addresses a very complicated issue that has been debated for years. It reflects the difficulty, if not impossibility, of distinguishing among potentially endless types of transactions to define those that clearly provide sufficient value to ratepayers. In the end, the CPUC drew a bright line between those products that are clearly delivered, and those which are not, without prohibiting the latter, which are classified as TRECs. Instead, the Decision establishes a 25% TREC limit. This decision is not arbitrary, as the Joint Petitioners assert (Joint Petition at p. 18). Rather, it is an exercise of reasonable judgment that establishes a clear, practical way of balancing competing interests.

Joint Petitioners assert that "the TREC Decision includes no analysis of how its restrictions will affect the State's ability to reach 20% or 33% renewables" and that "the RPS eligibility of out-of-state renewable resources should be resolved as a matter of statewide policy by the legislature, not through a CPUC decision on TRECs." (Joint Petition at pp. 2 and 9, respectively.) But this Decision addresses only the state's 20% RPS policy, as a 33% RPS law has not been established. The Decision does, however, provide a very useful framework for addressing the complicated delivery/REC issue in potential 33% RPS legislation, allowing the TREC limit to be clearly debated and decided by the legislature in a way that turns on bundled,

² See D.10-03-021 at 43-44. "[I]mportant questions remain about whether, or to what extent, REC-only transactions might undermine some of the goals of the RPS program, including incentives for new renewable generation, meaningful diversification of the utilities' energy portfolios, and the value of the RPS program to ratepayers." (Footnotes omitted.)

delivered products, not on “out-of-state” resources. The legislature can also address the conditions under which the schedule for achieving 33% renewables (or the TREC limit) can be adjusted.

As to the ability to achieve the 20% RPS target under the 25% TREC limitation, Joint Petitioners have not provided any evidence that their ability to achieve the 20% goal is impaired. They note only that “the Joint Utilities may already exceed the TREC usage limit with existing contracts in some years.” (Joint Petition at p. 13, emphasis added.) The only clear figures that have been provided in this proceeding have been provided by TURN, which show that both PG&E and SCE have significant “headroom” under the 25% in the coming years that would allow additional TREC procurement.³ Further, the Decision grandfathers the eligibility of all TRECs acquired to date (including significant quantities over the limit already acquired by SDG&E) and allows excess TRECs associated with new contracts to be carried forward.

Finally, we note that if Southern California Edison is interested in procuring resources in the “bundled” category, it should heed our advice regarding unworkable terms in its 2010 pro forma power purchase agreement, which we have made clear will prevent the financing of resources that sell their output to Edison directly – an issue not of concern to sellers of TREC products.⁴

E. California Should Address (And Is Addressing) Its Fair Share of Renewable Energy Development Challenges

Joint Petitioners state (again, incorrectly applying this decision to 33% RPS targets): “There are serious impediments to achieving these [RPS] goals. Permitting, siting, approval, and construction of transmission and renewable generation projects, the uncertainty surrounding the federal production and investment tax credits, a heavily subscribed interconnection queue, financing, developer performance, grid reliability and integration issues, and lack of flexibility in the regulatory process to pursue all procurement options are all major issues that must be addressed if the State is to reach its renewable energy goals.” (Joint Petitioners at p. 6.)

We agree that the challenges of meeting the state’s ambitious renewable energy goals are considerable. However, we submit that it will be necessary and appropriate for California to take

³ See note 1 *supra* (TURN Response to Motion for Stay), at p. 4.

⁴ See Comments of the California Wind Energy Association and the Large-Scale Solar Association on 2010 Renewables Portfolio Standard Procurement Plans, R.08-08-009 (January 19, 2010).

on its fair share of these challenges rather than attempt effectively to transfer them to other areas in the West. To the extent that the challenges cited are (or could be) within California's control, it is incumbent upon California to address them, as the development is in response to its laws and policies. With unlimited TREC's, smaller, less capable balancing areas will be forced to integrate large quantities of renewables, despite the fact that the California Independent System Operator is better equipped to do so, owing to its large operating area, diverse resource mix, market-based operational rules and several of its recent initiatives, including the development of major renewable transmission projects, reform of the generation interconnection process, improved management and procurement of ramping capability and reserves within the ISO, and recent efforts to improve reserve sharing with neighboring balancing areas.

Likewise, California has appropriately taken on an ambitious land-use planning process, the Desert Renewable Energy Conservation Plan, to address what the Joint Petitioners identify as the "legal challenges and public opposition to large-scale renewable energy infrastructure [which] are external risks that could significantly delay attainment of a 33% renewables goal." (Joint Petition at p. 11, footnote omitted.) Putting off all of these challenges to other states – whose environmental standards may not equal those of California – is inappropriate.

Similarly, California is taking on the challenges of transmission infrastructure development. To wit, the state (including the CAISO and the transmission owners) has invested considerable resources in the RETI process, the CAISO's Renewable Energy Transmission Planning Process, and the California Transmission Planning Group. The Joint Petitioners correctly identify achievement of the State's goals as dependent on the successful development of large-scale transmission projects which "can take several years to permit and construct" and argue that "[i]t is prudent to contract with [generation] projects early on in the process to support the development of needed transmission [beyond California grid-interconnection points]." (Joint Petition at p. 10.) But the same is true for California-grid-interconnected resources, and California – and the Joint Petitioners themselves, as the transmission owners -- have far more control over whether and when those upgrades occur.

Finally, the Commission has greater control over whether generation facilities will actually be developed by virtue of overseeing the reasonableness of Joint Petitioners' contract terms (as noted above), particularly where the utilities take deliveries directly from the generator where the purchasing terms become critical to financing.

F. The CPUC Could Carefully Modify the Decision to Enable Greater Flexibility in What Can Be Considered a Bundled Product

While CalWEA supports the Decision as-is, we also believe that, should the Commission wish to revisit it, it would be reasonable to make a limited modification to eliminate the provision that categorically excludes “firmed and shaped” products from the bundled category by defining bundled transactions in a way that excludes the use of intermediary energy.⁵ Instead, just as the Decision authorized the Energy Division to further explore whether transactions using firm transmission should also be classified as bundled,⁶ the Commission could establish principles to ensure that any firmed-and-shaped products that are approved will meet a high standard of value, and authorize the Energy Division to further explore the issue as it goes about implementing the decision. (Indeed, discussion along these lines has already occurred in the first workshop implementing the decision.)

Although, after protracted discussions, the parties have not been able to agree on rules that would define firmed and shaped products capable of meeting the Commission’s objectives of meaningful diversification of the utilities’ energy portfolios and value to ratepayers,⁷ CalWEA has previously argued that shaped and firmed products can provide the benefits that the Commission is seeking,⁸ and we still believe it may be possible to achieve consensus. In particular, we believe that the concept recently proposed by the Union of Concerned Scientists holds promise.⁹

⁵ Decision 10-03-021. (See, e.g., p. 2-3: “The decision distinguishes between bundled (energy plus renewable energy credits (RECs)) transactions and TREC (or REC-only) transactions used for RPS compliance by finding that a bundled transaction must serve California customer load, without needing any intermediary energy transactions that in effect substitute energy that is not RPS-eligible for energy that is.”)

⁶ D.10-03-021 at 3, 37.

⁷ D.10-03-021 at 43-44.

⁸ See Comments Of The California Wind Energy Association on The Revised Proposed Decision Authorizing Use Of Renewable Energy Credits For Compliance With The California Renewables Portfolio Standard, R. 06-02-012, January 19, 2010.

⁹ See the Post-Workshop Comments of The Union of Concerned Scientists, R. 06-02-012, April 30, 2010 (answer to Question 8).

III. CONCLUSION

For the reasons set forth above, the Commission should reject the Joint Petition. If the Commission wishes to entertain modifications to the bundled/TRECs framework, it should limit the change to eliminating the provision that categorically excludes “firmed and shaped” products from the bundled category, instead establishing clear principles that such products must achieve a high standard of value to be defined after proper consideration.

Respectfully submitted,



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