

**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)

**COMMENTS OF THE CALIFORNIA WIND ENERGY
ASSOCIATION ON REVISED PROPOSED DECISION AUTHORIZING
USE OF RENEWABLE ENERGY CREDITS FOR COMPLIANCE WITH
THE CALIFORNIA RENEWABLES PORTFOLIO STANDARD**

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January 19, 2010

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I. Introduction

Pursuant to the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, the California Wind Energy Association ("CalWEA") respectfully submits these comments on the *Revised Proposed Decision of Administrative Law Judge Simon Authorizing Use of Renewable Energy Credits for Compliance with the California Renewables Portfolio Standard* ("Proposed Decision").

CalWEA has not recently been active in this proceeding, but has focused significant attention on related matters in the legislative arena. CalWEA provides the following comments on the Proposed Decision in an effort to ensure that all generators that can provide like benefits to California be equally treated. To that end, the Commission should modify the Proposed Decision to include as delivered products generation that is dynamically delivered or scheduled in real time rather than classifying these transactions as tradable renewable energy credits ("TREC's"). Likewise, the Commission should recognize that certain "shaped and firmed"

products also provide like benefits to the State and should not be counted toward the TREC limitation.

II. ARGUMENT

A. **The Commission Should Modify the Proposed Decision to Include Generation that Is Dynamically Delivered or Scheduled In Real Time as Delivered Products Rather than TRECs.**

Under the Proposed Decision, a TREC transaction would include:

“All procurement from generators of RPS-eligible energy for which the first point of interconnection with the WECC interconnected transmission system is not physically located within California and is also not a facility for which the first point of interconnection with the WECC interconnected transmission system lies in the CAISO or another California balancing authority area.” (Proposed Decision at p. D1)

The Proposed Decision would place a temporary limit on the use of TRECs for RPS compliance:

“PG&E, SCE, and SDG&E may meet no more than 40% of their APT with TRECs.” (Proposed Decision at p. D3)

The distinction that is drawn between generation classified as TRECs and generation that has a first-point-of-interconnection either physically within California or that is directly interconnected with a California balancing authority area is based on the finding that “customers receive the maximum benefit of RPS procurement transactions” where the “RPS-eligible energy is delivered directly to California's system...” (Proposed Decision at p. 70, Finding of Fact 7.)

The Proposed Decision also notes that:

“Renewable energy procurement in which the energy is physically delivered to the IOU is more likely to obviate the need for reliance on conventional resources in or near the utility's service territory. This can result in local air quality benefits and the attendant public health benefits improved air quality provides. Also, as several parties note, fixed price energy contracts such as RPS bundled contracts also reduce the amount of price volatility to which a utility's energy portfolio is subject.” (Proposed Decision at p. 28-29.)

The problem with establishing the dividing line for “delivered energy” based on the first-point-of-interconnection is that it discounts products that are electrically identical to California

and which provide the stated values associated with such products. These benefits can be provided by generation whose first point of interconnection is outside of California but whose output is dynamically delivered or directly scheduled in real time to the California Independent System Operator or another California balancing authority. The Commission should therefore modify the Proposed Decision to include all such transactions as delivered products rather than TRECs.

The distinction should be redrawn not only so that Californians are able to receive benefits from the universe of generators capable of providing them, but also to reduce potential challenges to the constitutionality of the CPUC's decision. Any limitation placed on the eligibility of generators should rest on the benefits they produce to the state rather than arbitrary dividing lines that are not fact-based.¹ While the "first-point-of-interconnection" test (combined with energy procurement) may be a valid safe harbor, another appropriate safe harbor is renewable energy that is dynamically delivered or directly scheduled in real time.² Beyond established safe harbors, the Commission should also consider, on a case-by-case factual basis, other transactions for which a showing is made that the requisite benefits accrue to the state.

B. "Shaped and Firmed" Products Can Also Provide Benefits to the State

The Proposed Decision states that delivering energy to California is what produces benefits to the state. The Proposed Decision distinguishes renewable energy delivered to California from other transactions, which it characterizes as follows:

¹ For a discussion of legal issues associated with location and delivery requirements, see Nancy Rader and Scott Hempling, *The Renewables Portfolio Standard: A Practical Guide* (Appendix A), National Association of Regulatory Utility Commissioners (2001). (Available on the U.S. DOE website at: <http://www.oe.energy.gov/DocumentsandMedia/narucrps.pdf>.)

² The CAISO has clear protocols for dynamic transfers (both dynamic scheduling and pseudo-tie arrangements); contracts need only specify that energy be delivered accordingly.

Some RPS procurement transactions that involve both RECs and energy nevertheless are more like REC-only transactions in the benefits they provide and their ability to reduce use of fossil fuel. These transactions involve the delivery of the renewable output to someplace other than the customers of the purchasing California LSE, with the provision of energy to the California customers from other sources, which typically are not renewable resources. Such transactions do not reduce the extent to which the procuring utility is relying on conventional resources, because such resources are used for the physical delivery of energy to the utility. (Proposed Decision at p. 29, footnote omitted.)

The assertion in the last sentence – that what are known as “shaped and firmed” deliveries do not reduce the extent to which the procuring utility is relying on conventional resources – is an overbroad statement. In fact, if the renewable generator has arranged to deliver incremental energy to the LSE which “obviate[s] the need for reliance on conventional resources in or near the utility's service territory” (Proposed Decision at p. 28), then it has produced benefits to California customers equal to those that would come from energy delivered directly from a renewable energy facility.

While a safe harbor for such deliveries would need to be more carefully crafted than was done by the California Energy Commission in its definition of “delivery,” it could be achieved by this Commission in the context of its limit on TRECs without putting each contract “under a microscope” (Proposed Decision at p. 28). The Commission could create a safe harbor requirement for “shaped and firmed” energy that results in incremental energy deliveries to California -- namely, the shaped and firmed energy can be required to be delivered under a new power purchase contract (rather than a pre-existing one, as the CEC allows) of a duration at least five years or for the duration of the contract with the RPS-eligible facility (whichever is less).³

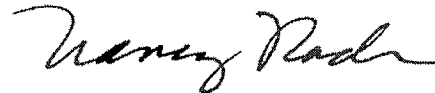
³ The Commission might also prohibit shaped imports from facilities that do not meet the emission performance standards established in SB 1638, and require the shaped power to originate from the same WECC subregion.

While creating such a safe harbor is somewhat more complex than the bright line drawn in the Proposed Decision, it would recognize an additional product category that provides the same benefits as a directly delivered product.⁴ Alternatively, the Commission could leave “shaped and firmed” deliveries open to determination on a case-by-case, factual basis. In any case, qualifying transactions should not be counted toward the TREC limit.

III. CONCLUSION

For the foregoing reasons, the Commission should adopt the recommendations set forth in these comments.

Respectfully submitted,



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⁴ Indeed, it would be most rational for the CEC to revisit its delivery requirement to ensure that all RPS-eligible facilities provide incremental deliveries to California, which would obviate the need for any delivery-based cap on TRECs.

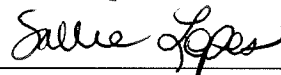
Certificate of Service

I hereby certify that I have this day served a copy of the

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on all known parties to R.06-02-012 by sending a copy via electronic mail and by mailing a properly addressed copy by first-class mail with postage prepaid to each party named in the official service list without an electronic mail address.

Executed on January 19, 2010, at San Francisco, California.



Sallie Lopes