

**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 PROPOSED DECISION MODIFYING DECISION 10-03-021 AUTHORIZING  
USE OF RENEWABLE ENERGY CREDITS FOR COMPLIANCE WITH THE  
CALIFORNIA RENEWABLES PORTFOLIO STANDARD**

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September 27, 2010

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**I. INTRODUCTION**

Pursuant to the California Public Utilities Commission's ("Commission") Rule of Practice and Procedure 14.3 and the *Administrative Law Judge's Ruling Extending Time for Comments and Reply Comments* issued in this proceeding on September 3, 2010, the California Wind Energy Association ("CalWEA") respectfully submits these comments on the proposed *Decision Modifying Decision 10-03-021 Authorizing Use of Renewable Energy Credits for Compliance with the California Renewables Portfolio Standard and Lifting Stay and Moratorium Imposed by Decision 10-05-018* ("Proposed Decision").

CalWEA has focused significant attention on legislative efforts to establish a 33% Renewables Portfolio Standard ("RPS"), including the definition, and restrictions on use, of tradable renewable energy credits ("TREC"). In addition, CalWEA has participated in earlier phases of this proceeding, including the provision of 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* and the submission of a response

to the Joint Petition of Southern California Edison (“SCE”), Pacific Gas & Electric (“PG&E”), and San Diego Gas & Electric (“SDG&E”) (“Joint Petition”) to modify Decision 10-03-021 (“D. 10-03-021”).

One of the fundamental principles guiding CalWEA’s efforts at the legislature and before this Commission has been that market certainty is required to promote development of new renewable energy resources.<sup>1</sup> In addition, CalWEA has argued that the Commission has a reasonable purpose in ensuring that RPS procurement by jurisdictional utilities provides the greatest value to ratepayers.<sup>2</sup> CalWEA therefore also encouraged the Commission to make a limited modification to D. 10-03-021 to enable firmed-and-shaped products that meet a high standard of value to be included in the unlimited, “bundled” category of products.<sup>3</sup> Finally, CalWEA supported D. 10-03-021 as striking a reasonable balance among competing interests.<sup>4</sup>

By raising the TREC limit to 40% of the utilities’ Annual Procurement Target (“APT”) while grandfathering substantial quantities of TREC transactions, the Proposed Decision upsets that reasonable balance, particularly given the Air Resources Board’s indication that it will “harmonize” its 33% Renewable Electricity Standard policy with the TRECs policy adopted by this Commission, which includes the Proposed Decision.<sup>5</sup> Therefore, consistent with CalWEA’s previously stated principles, CalWEA respectfully requests that the Commission modify the Proposed Decision to: (1) include in the “bundled” category all products that provide equivalent consumer and environmental benefits to California consumers; (2) strictly limit the use of any future TREC transactions that do not provide these consumer and environmental benefits to

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<sup>1</sup> See e.g., Response of the California Wind Energy Association to 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 (“CalWEA Response to PFM”), at 3.

<sup>2</sup> *Id.* at 4.

<sup>3</sup> *Id.* at 8.

<sup>4</sup> *Id.* at 5.

<sup>5</sup> State of California Air Resources Board, Resolution 10-23, adopted September 23, 2010.

serve as a marginal compliance flexibility measure; (3) make the TREC usage cap permanent with respect to the existing 20% RPS and any future requirements, and (4) clarify that neither extensions nor expansions of grandfathered contracts are eligible for exemption from the TREC usage cap.<sup>6</sup>

Each of these recommendations is described further below.

## II. ARGUMENT

### A. The Commission Should Include in the “Bundled” Category All Products that Provide Equivalent Consumer and Environmental Value to California

CalWEA has previously described the problem with establishing the dividing line for “delivered energy” based on the first-point-of-interconnection: it discounts products that are electrically equivalent to California ratepayers and which provide equivalent value.<sup>7</sup> The Commission should therefore modify the Proposed Decision to establish principles for the RPS program that ensure that products that provide equivalent consumer and environmental value to California, whether directly interconnected to the California grid or otherwise, will be included in the “bundled” category and not limited in quantity.

Specifically, the “bundled” category should be expanded to include: (a) transactions that use firm transmission to deliver RPS-eligible energy to a California balancing authority on a real-time basis without use of intermediary energy transactions, and (b) firmed-and-shaped products that meet a high standard of value, e.g., those that include a 10-year fixed price and deliver energy under a new delivery contract that is approved by the Commission in the same

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<sup>6</sup> Alternatively, the CPUC could fashion its policy directly according to the compromise that was worked out in SB 722, which also would strike a reasonable balance.

<sup>7</sup> 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 (Sections II and III).

advice letter with the associated TREC contract.<sup>8</sup> The Commission should also authorize the Energy Division to further define the associated rules as it implements the decision. These transactions provide incremental deliveries into California and promote the development of new renewable generating resources. Accordingly, the Commission should include these transactions in the “bundled” category for purposes of RPS procurement limits.

**B. The Commission Should Strictly Limit the Use of Any Future TREC Transactions That Do Not Provide Consumer and Environmental Value to Serve as a Marginal Compliance Flexibility Measure**

Expanding the products included in the “bundled” category to include all products that provide the consumer, environmental and renewable energy development benefits that the Commission is rightly looking for,<sup>9</sup> will also provide the benefit of greatly expanding the renewable energy supply options available to the utilities. This reduces, if not eliminates, the need for the remaining products in the TRECs category (unbundled TRECs or TREC products that do not provide long-term price-stability or the in-state air quality benefits that derive from incremental energy deliveries). TRECs should be authorized, therefore, only as a limited compliance flexibility tool to “true up” any limited shortfalls in anticipated deliveries as compliance deadlines are approached. Limiting TRECs use to 5% of total compliance obligations should be sufficient for this purpose.

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<sup>8</sup> CalWEA and others have previously argued that, carefully defined, firmed and shaped products can provide the same benefits that the Commission is seeking in the bundled category. See *Id* and Post-Workshop Comments of the Union of Concerned Scientists, R. 06-02-012, April 30, 2010 (answer to Question 8).

<sup>9</sup> 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)).

**C. The Commission Should Modify the Proposed Decision to Make the TREC Usage Cap Permanent with Respect to the Existing 20% RPS Requirement**

The Proposed Decision would allow the TREC usage limitation to expire on December 31, 2011, in the absence of further Commission action.<sup>10</sup> The Commission should modify the Proposed Decision to make the TREC usage cap permanent.

As set forth above, the Commission should modify the Proposed Decision to expand the bundled product category and reduce the TREC usage allowance. It should also make the TREC allowance cap permanent with respect to the existing 20% RPS requirement in order to provide the renewable energy marketplace with the regulatory certainty needed to promote development of renewable energy resources. Decision 10-03-021 cited a series of “guiding principles” upon which the Commission relied to “set some basic goals for the TREC market.”<sup>11</sup> These guiding principles included the expectation that “REC trading should promote development of new infrastructure in California and neighboring states for renewable energy generation.”<sup>12</sup>

The key to promoting new development of renewable energy generation is establishing regulatory certainty. As noted in the CalWEA Response to PFM, most of CalWEA’s members are developing or participating in projects both within and outside of the state, and they will focus their development efforts on whichever projects and products meet the state’s rules and preferences. But, first, those rules and preferences must be established. The Proposed Decision establishes a framework for prospective procurement and provides regulatory certainty through the end of calendar year 2011, but provides only uncertainty thereafter because the Proposed Decision retains the provision allowing the TREC usage cap to sunset in the absence of further

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<sup>10</sup> Proposed Decision at 2, 19-21 and Ordering Paragraphs E, F, and M.

<sup>11</sup> D. 10-03-021 at 38.

<sup>12</sup> *Id.* at 25.

Commission action.<sup>13</sup> Thus, the Proposed Decision provides only a limited contribution towards the regulatory certainty required to actually bring to fruition the development of new renewable generation resources. Clearly-defined rules through 2011 are a helpful first step, but the commitments required to develop a new renewable energy resource extend decades beyond 2011. By removing the sunset provision and making the TREC usage cap permanent, the Commission can extend the regulatory certainty offered by the Proposed Decision and promote new development of renewable energy resources.

**D. The Commission Should Modify the Proposed Decision to Clarify that Neither Extensions Nor Expansions of Grandfathered Contracts Are Eligible for Exemption from the TREC Usage Cap**

The Proposed Decision states that “all RPS procurement contracts approved by the Commission prior to the effective date D.10-03-021 (March 11, 2010) will be treated as ‘bundled’ contracts . . . for the duration of the contract.”<sup>14</sup> Assuming the Commission adopts the proposed revisions to the definition of “TREC” transactions described above, CalWEA would also support such grandfathering. Appropriately, the Commission’s determination that certain RPS contracts are exempt from the TREC classification is accompanied by two important caveats: (1) the exemption does not apply to an extension of an otherwise-exempt RPS contract beyond the expiration date specified in that contract as of March 11, 2010; and (2) the exemption does not apply to any deliveries under the RPS contract that are in excess of the maximum deliveries specified in the contract as of March 11, 2010.<sup>15</sup>

CalWEA supports these essential caveats. While the parties to an RPS contract executed prior to March 11, 2010 may be entitled to rely on the rules that were in place at that time,<sup>16</sup> there

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<sup>13</sup> Proposed Decision at 19-21.

<sup>14</sup> Proposed Decision at 16-17.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

is no justification to extend that exemption to an extension or expansion of that contract that is agreed upon by the parties to the contract with full knowledge of the classifications and limitations set forth in Decision 10-03-021. To determine otherwise would reduce the TREC usage cap to a “soft” cap that would only be applicable to procurement from resources not under contract as of March 11, 2010. In turn, a soft cap would threaten the balance struck by the Commission in Decision 10-03-021.

To fully implement these caveats, the Commission should modify the Proposed Decision to explicitly state that the deliveries associated with an extension or expansion of an otherwise-exempt RPS contract are subject to the classifications and limitations set forth in Decision 10-03-021, as modified. Specifically, the Commission should revise (1) Ordering Paragraph 3.B. to clarify that the classification and TREC usage limits in D. 10-03-021, as amended, apply to deliveries associated with extensions or expansions of grandfathered contracts; (2) Ordering Paragraphs 3.G. and 3.K. to clarify that deliveries associated with extensions or expansions of grandfathered contracts will be considered REC-only transactions; (3) Ordering Paragraph 3.H. to clarify that deliveries associated with extensions or expansions of grandfathered contracts remain subject to the classification and TREC usage limitations set forth in D. 10-03-021, as amended; and (4) the discussion at pages 17 and 18 of the Proposed Decision to reflect the proposed changes to the Ordering Paragraphs described in this paragraph.

The Commission should make these revisions to the Proposed Decision to expressly implement the “two important caveats” described elsewhere in the Proposed Decision.<sup>17</sup>

### **III. CONCLUSION**

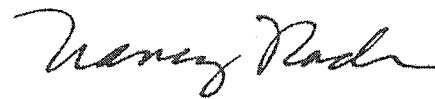
For the foregoing reasons, the Commission should modify the Proposed Decision to: (1) include in the “bundled” category all products that provide equivalent value to California

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<sup>17</sup> *Id.*

consumers; (2) strictly limit the use of any future TREC transactions that do not provide these consumer and environmental benefits to serve as a marginal compliance flexibility measure; (3) make the TREC usage cap permanent with respect to the existing 20% RPS requirement, and (4) clarify that neither extensions nor expansions of grandfathered contracts are eligible for exemption from the TREC usage cap.

Respectfully submitted,



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September 27, 2010

## Certificate of Service

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

**COMMENTS OF THE CALIFORNIA WIND ENERGY ASSOCIATION  
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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 September 27, 2010, at San Francisco, California.

/s/ Marcus Hidalgo  
Marcus Hidalgo