



**FILED**

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**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)

Order Instituting Rulemaking to Continue  
Implementation and Administration of the  
California Renewables Portfolio Standard  
Program

Rulemaking 08-08-009  
(Filed August 21, 2008)

**SUPPLEMENTAL COMMENTS OF THE UNION OF CONCERNED  
SCIENTISTS ON THE REVISED 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**

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Dated: November 4, 2010

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**I. INTRODUCTION**

Pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure, the Union of Concerned Scientists (“UCS”) respectfully submits these supplemental comments on the following revised proposed decision of Commissioner Peevey: 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 (“RPD”), filed October 28, 2010. Administrative Law Judge Anne Simon’s ruling, which provides additional opportunity to comment on this RPD, specifies that comments shall only address Section 3.9 and related ordering paragraphs of Revision 3 of the RPD, which addresses tradable Renewable Energy Credit (“TREC”) usage and price limits for energy service providers (“ESPs”).

## **II. THE COMMISSION SHOULD ONLY APPLY REC-ONLY AND BUNDLED CLASSIFICATIONS TO ESP CONTRACTS ON A GOING FORWARD BASIS**

The Commission's August 25, 2010 proposed decision, which responded to the petitions for modification and would lift the stay on D.10-03-021, would establish limits on the use of TRECs for the investor-owned utilities ("IOUs"), but postpone a decision to equalize Renewables Portfolio Standard ("RPS") requirements on the ESPs, including TREC usage rules, to another decision in R.08-08-009. On September 10, 2010, the Commission issued a proposed decision in R.08-08-009 that established identical TREC usage limits on the ESPs.

Since UCS believes that it is important for the Commission to authorize the use of TRECs as expeditiously as possible, UCS has requested that the Commission address TREC usage limits for both the IOUs and ESPs in the same decision. The October 2010 revisions to the RPD accomplish this and UCS commends the Commission for consolidating this matter into one proceeding.

Throughout the course of R.06-02-021, UCS has urged the Commission to limit the amount of TRECs that ESPs may use to comply with RPS requirements. In past comments, UCS has supported a TREC limit as high as 50 percent of an ESP's annual procurement target ("APT"), to respond to the ESPs' need for additional contracting flexibility to meet RPS requirements. Prior to issuing the *Proposed Decision Revising Rules for the RPS Pursuant to Senate Bill 695*, filed on September 10, 2010 in R.08-08-009, the Commission requested party feedback on, among other things, how to implement the new language in Section 365.1 of the Public Utilities Code. In that

proposed decision, the Commission determined that “the statute’s mandate for equalization of those requirements means that any limit on the use of TRECs for RPS compliance imposed by the Commission on the three large IOUs should apply equally to ESPs.”<sup>1</sup> Although UCS continues to believe that the large IOUs and ESPs are different enough to merit different TREC limits, UCS does not disagree with the Commission’s interpretation of § 365.1.

In this RPD, Commission determines that the load-serving entities affected by D.10-03-021 should not be required to apply the new REC-only and bundled classifications until the decision on the matter is final. Since the decision on this matter became final on March 11, 2010 with D.10-03-021, the Commission determines that contracts signed on or before that date will not be treated as TRECs, even if their contractual arrangements clearly resemble TREC transactions. The Commission made this revision to ensure that “final” RPS contracts (i.e. contracts approved by the Commission for the IOUs; signed by the ESPs) would not be retroactively classified as TRECs by D.10-03-021. UCS argues that the new REC-only and bundled contract classifications did not become final for the ESPs when D.10-03-021 was issued because at the time, the decision did not apply to the ESPs. Instead, the new treatment for ESP contracts will become final when this RPD is approved by the Commission. For this reason, the Commission should only apply new REC-only and bundled classifications to RPS contracts that were signed by the ESPs after a final decision from this RPD is issued. This would ensure the Commission provides consistent treatment for all ESP or IOU RPS contracts that were executed prior to a decision that would change their status.

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<sup>1</sup> Proposed Decision Revising Rules for the RPS Pursuant to Senate Bill 695, in R.08-08-009, p.17.

Therefore UCS proposes the Commission make the following change to the Conclusions of Law:

12. In order to recognize the legitimate expectations of the parties to RPS contracts now classified as REC-only that were approved by the Commission (for IOUs), or were signed (for ESPs), prior to the effective date of ~~this~~ *the decision which would change their status*, the classification scheme for TRECs for RPS compliance provided in this decision should not be applied to deliveries made under contracts approved (for IOUs), or signed (for ESPs), prior to the effective date of *such this* decision. *For the large IOUs, this effective date is March 11, 2010, the effective date of D.10-03-021. For the ESPs, this effective date is the issuance of this decision.* These contracts and all related deliveries should be treated as bundled transactions for RPS compliance purposes unless and until either of the following occurs:
  - a. The expiration date of the contract is extended beyond the expiration date existing on March 11, 2010 *for the large IOUs and the effective date of this decision for the ESPs*; or
  - b. The deliveries allowed under the contract are increased beyond the maximum deliveries identified in the contract as the contract read on March 11, 2010 *for the large IOUs and the effective date of this decision for the ESPs.*

If either of these changes is made to the contract, all deliveries after the effective date of the contract amendment that are incremental to the deliveries set forth in the original contract should be treated according to the then-applicable classification of REC-only and bundled transactions.

### III. CONCLUSION

UCS commends the Commission for consolidating the decision on appropriate TREC limits for IOUs and ESPs into one proceeding, and urges the Commission to only treat RPS contracts signed by the ESPs as REC-only or bundled if they were signed by the ESPs after the issuance of a final decision on this matter.

Respectfully submitted,



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Dated: November 4, 2010

**CERTIFICATE OF SERVICE**

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I, Miriam Swaffer, certify that on this date, I have caused the foregoing

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**IMPOSED BY DECISION 10-05-018** to be served by electronic mail, or for any party for which an electronic mail address has not been provided, by U.S. Mail on the parties listed on the service lists for the proceedings in California Public Utilities Commission Dockets No. R.06-02-012 and R.08-08-009.

I declare under penalty of perjury, pursuant to the laws of the State of California, that the foregoing is true and correct.

Executed on November 4, 2010 in Berkeley, California.

/S/

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Miriam Swaffer

## VERIFICATION

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I, Laura Wisland, am a representative of the Union of Concerned Scientists and am authorized to make this verification on the organization's behalf. The statements in the foregoing document are true to the best of my knowledge, except for those matters which are stated on information and belief, and as to those matters, I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 4, 2010, in Berkeley, California.

A handwritten signature in cursive script that reads "Laura Wisland". The signature is written in black ink and is positioned above a horizontal line.

Laura Wisland