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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)

**ADMINISTRATIVE LAW JUDGE'S RULING  
DENYING MOTION FOR PARTY STATUS**

On February 24, 2011, enXco, Inc. (enXco) filed the Motion of enXco for Party Status. The motion identifies enXco as the developer and owner of the 150 megawatt Shiloh 2 Wind Project, located in Rio Vista. EnXco states that it is therefore interested in this proceeding, which addresses implementation of the California renewables portfolio standard (RPS). The motion states that enXco would like to file responses to certain applications for rehearing of Decision (D.) 11-01-025, which resolves two petitions for modification of D.10-03-021 that were filed in April 2010.

EnXco asserts that Resolution (Res.) ALJ-260 (February 24, 2011) provides that a person may move for party status in order to be able to file a response to an application for rehearing. Res. ALJ-260 makes a number of changes to the Commission's Rules of Practice and Procedure.<sup>1</sup> These include clarifications to Rules 1.4 and 16.2, to state expressly that only a party may file a response to

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<sup>1</sup> The Rules of Practice and Procedure are codified at Title 20, Division 1 of the California Code of Regulations. Unless otherwise noted, all further references to rules are to the Commission's Rules of Practice and Procedure.

applications for rehearing. EnXco argues that, although the revisions make plain that only a party may file a response to an application for rehearing, Res. ALJ-260 contemplates that a person may become a party in order to do so.

Although adopted by the Commission, these revisions will not become effective until after review and publication of the revisions by Office of Administrative Law. (Res. ALJ-260 at 1.) I therefore, take the revisions as clarifications of and guidance in interpreting the existing rules. Pursuant to Pub. Util. Code § 1731, only parties may file applications for rehearing. Because only parties have participated in creating the record and commenting on proposed decisions in the proceeding, it is reasonable that only parties may file responses to applications for rehearing, as well.

While a person may be *allowed* to file a motion for party status in order to file a response to an application for rehearing, nothing in the statute or rules requires that such a motion be granted. There is little reason, in the absence of unusual or especially compelling circumstances, to allow new participants so late. The Commission's decision has been made. The request to become a party comes after all the work related to the decision has been completed, without any contribution by the movant.

This proceeding provides a clear example. D.11-01-025 has a long history. The underlying decision, D.10-03-021 authorized the use of tradable renewable energy credits (TREC) and set rules for the use of TREC for compliance with RPS procurement requirements. D.10-03-021 was issued in March 2010. Petitions for modification of D.10-03-021 were filed in April 2010. Responses to the petitions for modification were filed in early May 2010. A proposed decision (PD) on the petitions for modification was mailed August 25, 2010. Comments on the PD were filed in September 2010; reply comments were filed in early

October 2010. At the request of certain parties, supplemental comments and reply comments on the PD were allowed to be filed in November 2010. An alternate PD on the petitions for modification was mailed in October 2010. Comments and reply comments on the alternate were filed in November 2010. D.11-01-025, which left D.10-03-021 largely undisturbed, was issued in January 2011.

EnXco avers that it owns renewable generation in California, and thus is interested in the RPS issues addressed in D.11-01-025. This interest is certainly legitimate. However, enXco provides no reason, much less any compelling reason, for its delay in seeking to become a party, when the potential impact on its interests has been clear for at least 11 months.<sup>2</sup> The motion should be denied.

In accordance with Rule 11.1(g), this motion is being ruled on prior to the date that responses are due.<sup>3</sup>

**IT IS RULED** that the Motion of enXco Inc. for Party Status is denied.

Dated March 4, 2011, at San Francisco, California.

/s/ ANNE E. SIMON  
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Anne E. Simon  
Administrative Law Judge

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<sup>2</sup> The first PD addressing TREC's was issued in October 2008, though the Commission did not adopt a decision until March 2010.

<sup>3</sup> The parties were notified of this decision by electronic mail on February 25, 2011.