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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

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

Rulemaking 08-08-009

**POST WORKSHOP COMMENTS OF ELEMENT POWER
ON TREC IMPLEMENTATION**

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Dated: April 30, 2010

**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)
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**POST WORKSHOP COMMENTS OF ELEMENT POWER
ON TREC IMPLEMENTATION**

INTRODUCTION

On March 10, 2010, CPUC Decision 10-03-021 was issued effectively defining an out-of-state RPS procurement transaction as “bundled” if a retail seller purchases energy and RECs and the energy is delivered dynamically to the CAISO. All other eligible out-of-state RPS deals would be considered tradable renewable energy certificate (TREC) transactions and subject to a volumetric cap established by the same decision. That said, the decision further directed the CPUC to take action to determine how to classify out-of-state transactions that use firm transmission – which was the reason for the workshop held on April 23, 2010. Element Power hereby timely and respectfully submits comments in response to that workshop.

DISCUSSION

Element Power is an international renewable energy company dedicated to developing wind and solar projects around the world. Element Power's US headquarters is based in Portland, Oregon, with smaller offices located around the country, including California. The company is funded by Hudson Clean Energy Partners, a private equity fund that recently raised over \$1 billion to invest in the alternative energy sector. While Element Power has no operational projects in the US today, its Portland-based senior management team has been instrumental in the development of close to 6,500 MW of operational renewable energy projects across the nation. Element Power has a pipeline of roughly 5,000 MW of wind and solar assets in the US and is actively developing projects inside and outside California in order to serve California's retail sellers.

Element Power believes CPUC Decision 10-03-021, while well intentioned, is misdirected and detrimental to the development of a robust renewable energy market in California and the WECC.

First, as mentioned above, the decision defines an out-of-state RPS procurement transaction as "bundled" if a retail seller purchases the energy and RECs and the energy is delivered dynamically to the CAISO. All other eligible out-of-state deliveries would be considered TREC transactions. However, the use of dynamic scheduling has significant limitations, as the CAISO does not currently have a tariff for dynamic scheduling of renewable resources and, per BPA's own analysis, the available dynamic transfer capability into California from the Northwest is zero (see http://www.transmission.bpa.gov/wind/dynamic_transfer/DTLS_results.pdf). There may be more potential to import dynamically scheduled renewable energy from southwestern states, but

the current CPUC Decision 10-03-021 significantly reduces the ability to use any new Northwest renewable resources to meet California's RPS goals, which seems inconsistent with the California RPS objective of causing the development of new renewable energy projects. While Element Power is actively developing both solar and wind projects within California, we do not believe it is feasible for California to meet its RPS goals in a cost-effective manner using only in-state resources. Furthermore, the State can recognize both economic and reliability benefits due to the regional and technological diversification realized by tapping out-of-state resources *in addition to* in-state resources. Quite frankly, the current CPUC decision would radically impede the development of renewable resources in states surrounding California, which will in turn reduce competition and force the development of lower quality projects in state, thereby increasing the cost of renewable energy for California consumers. In short, impeding the development of out-of-state resources is a short-sighted, costly, and likely unsuccessful approach to meeting California's RPS goals.

Second, the CPUC Decision creates a definition of what can be considered an RPS-eligible "bundled" transaction that is in conflict with the definitions established in Section II.D of the California Energy Commission's (CEC) *Renewables Portfolio Standard Eligibility Guidebook*. This is important given that the CEC was directed legislatively to establish eligibility guidelines for out-of-state RPS deliveries, so CPUC Decision 10-03-021 may raise jurisdictional issues and, at the very least, will cause uncertainty in the market as to which rules apply. Such uncertainty is not conducive to the development of a robust RPS energy market. In addition, any out-of-state deliveries that are not dynamically scheduled to California will now be considered TRECs and subject to a volumetric cap pursuant to CPUC Decision 10-03-021.

Element Power further believes the CPUC's focus on the use of firm transmission as an alternative means to deliver "bundled" RPS-eligible energy is misdirected as well. CPUC's focus on firm transmission is primarily due to its desire to stimulate credible and reliable deals. However, the market itself will provide that reliability because RPS-eligible deliveries to California will be subject to damages, and if the generator and/or marketer cannot demonstrate dependable deliveries it will not receive the financing or the necessary approvals to go forward with the deals. Rather, consistent with statements made by PG&E at the workshop and written comments made by CEERT and others in the past, the determination of whether an RPS-eligible transaction should be considered "bundled" versus a TREC should focus on whether the transaction results in the delivery of energy to California that would otherwise not have been included in the retail seller's resource portfolio (in other words, whether "incremental" energy was actually delivered to California). For the purposes of this discussion, we will use the term "transaction" to cover the overall contractual arrangements established for the delivery of energy and RECs related to a specific eligible renewable resource (ERR), which would include a power purchase agreement (PPA) and possibly a firming and shaping (or re-delivery) agreement, among others.

Element Power's position is that a transaction should be considered a TREC transaction if (1) it only involves the sale and purchase of a renewable energy certificate (REC), or (2) the sale and delivery of energy and RECs from an out-of-state resource cannot demonstrate that the energy delivered was incremental to what would have been included in the retail seller's resource portfolio prior to the transaction. As mentioned above, the CEC has established deliverability requirements for RPS-eligible out-of-state transactions that do not constitute TREC transactions, and these structures were developed in response to retail sellers' needs and based on the desire to

use transmission efficiently and deliver intermittent energy to California in the most cost-effective manner and in a shape that best fits those retail sellers' needs. In fact, the CEC provided three specific examples in a footnote on pages 23-24 of the *Renewables Portfolio*

Standard Eligibility Guidebook:

1. The facility could provide firming and shaping services. For example, the retail seller could enter into a power purchase agreement (PPA) with an RPS-eligible facility and, as part of the PPA, the facility would provide firming and shaping to deliver a firm or non-firm product into California.
2. A third party could provide firming and shaping services. For example: a retail seller could buy energy and RECs from an RPS-eligible facility and execute a second PPA to resell the energy from the RPS-eligible facility, but not the RECs, to a third party that provides firming and shaping services. Then, the third party could provide the retail seller with a firm schedule for delivery into California.
3. The retail seller could provide firming and shaping services. The retail seller could buy energy and RECs from an RPS-eligible facility, sell the energy back to the facility, and “match” the RECs with energy delivery into California from a second PPA and/or with imports under a pre-existing PPA.

The demonstration of incremental energy in the first two examples would be simple enough, as there will be contracts to demonstrate the legal obligations to deliver energy that would not otherwise have been delivered but for the transaction; obligations, to be clear, that would be subject to damages if they were not held to. In response to the concerns that these incremental deliveries may just be offsetting existing imports, this may or may not be true. It could just as likely be that these incremental imports could result in the curtailment of in-state conventional resources. Furthermore, if the transaction does result in the reduction of existing non-renewable

imports, that seems to be completely consistent with the intent of the California RPS program given that such a reduction was caused by the development of a new renewable energy project.

The CEC's third example in the footnote is a different story, as it is clear that no incremental energy would be delivered. Element Power would recommend deleting this example. However, in making such deletion, the potential for the retail seller to provide its own firming and shaping (or re-delivery) services disappears, which is inappropriate. Element Power recommends slightly modifying the language in the second footnote to capture that possible transaction structure (see below).

RECOMMENDATION AND CONCLUSION

Element Power recommends that, in determining whether a transaction should be considered as “bundled” or a TREC, the CPUC should focus on whether incremental energy has been delivered to California pursuant to that transaction rather than focusing on whether the transaction has been dynamically scheduled or used firm transmission. Specifically, Element Power recommends that the CPUC work collaboratively with the CEC to change the non-TREC examples in Section II.D of the CEC's *Renewables Portfolio Standard Eligibility Guidebook* as follows (edits in bold italics):

1. Unchanged.
2. A third party could provide firming and shaping services. For example: a retail seller could buy energy and RECs from an RPS-eligible facility and ***then either (a) self-provide or (b) transact with a third party*** to resell the energy from the RPS-eligible facility, but not the RECs, ***and*** provide firming and shaping services, ***thus providing*** the retail seller with a firm schedule for delivery into California.
3. Deleted.

Then the only question becomes: How does a retail seller demonstrate incremental energy deliveries in a situation in which it is self-supplying the firming and shaping services? Element Power recommends that the retail seller, in its advice letter filing for any such transaction, must reasonably demonstrate that the related energy deliveries to California are indeed incremental to its resource portfolio as it existed prior to the transaction. If the retail seller cannot demonstrate that such deliveries are incremental, but the deliveries meet all other RPS-eligibility requirements, the transaction should be deemed a TREC transaction, rather than a “bundled” transaction, and therefore subject to the cap on TREC transactions.

With respect to previously executed deals that have been approved by the CPUC that would now fall into the TREC category as described in the previous paragraph, Element Power recommends such transactions be grandfathered and deemed “bundled” transactions in order to generally signal to the market that as California RPS rules change over time, renewable energy generators and marketers will not be subject to change-of-law risk.

Finally, Element Power believes that price stability is already covered by RPS rules but would be open to re-stating the requirement that the PPA contract price and any firming and shaping charges would not be subject to energy-based indexing (other than for negotiated true-up mechanisms).

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Element Power respectfully files these comments and is willing and available to meet with the CPUC to discuss any questions the staff may have. Thank you.

Respectfully submitted,

DATED: April 30, 2010

/s/ ANDERS GLADER

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VERIFICATION

I am an Senior Vice President of Element Power, and am authorized to make this verification on its behalf. The statements in the foregoing **POST WORKSHOP COMMENTS OF ELEMENT POWER ON TREC IMPLEMENTATION** are true of my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the forgoing is true and correct. Executed on May 18, 2010 at Mill Valley, California.

/s/ Anders Glader
ANDERS GLADER

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing **POST WORKSHOP COMMENTS OF ELEMENT POWER** on all known interested parties of record in **R-06-02-012 and R-08-08-009** by electronic mail. Any party on the service list who has not provided an electronic mail address was served by placing copies in properly addressed sealed envelopes and depositing such envelopes in the United States Mail with first-class postage prepaid.

Dated May 19, 2010 at Sacramento, California.

/s/ Ha T. Nguyen _____
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