

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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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 INDEPENDENT ENERGY PRODUCERS
ASSOCIATION ON THE PROPOSED DECISION OF PRESIDENT
PEEVEY**

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Date: September 27, 2010

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Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, the Independent Energy Producers Association (IEP) submits its comments on the Proposed Decision of President Peevey (PD) on the use of Renewable Energy Credits (RECs) for compliance with California's Renewables Portfolio Standard (RPS), mailed on August 25, 2010. The time for submitting comments on the PD was extended to September 27 by the ruling of Administrative Law Judge Anne E. Simon on September 3, 2010.

The PD lifts the stay of Decision (D.) 10-03-021 and the moratorium imposed in D.10-05-018 and makes two significant modifications to D.10-03-021:

- The PD deems all contracts approved by the Commission before March 11, 2010, the effective date of D.10-03-021, to be bundled contracts for RPS compliance purposes that will not count toward the temporary usage cap on RECs.

- The temporary cap on use of tradable RECs (TRECs) by the large investor-owned utilities (IOUs) for RPS compliance purposes is increased to 40% of each large IOU's annual procurement target.

IEP agrees with these modifications. However, the PD should be revised to clarify that the definition of bundled transactions include transactions using firm transmission to deliver a bundled product of renewable energy and RECs to California customers in real time, as the renewable energy is generated.

I. APPROVED CONTRACTS SHOULD BE TREATED AS BUNDLED CONTRACTS

The PD modifies D.10-03-021 to avoid the disruptive effect of having contracts that were already approved by the Commission retroactively reclassified as REC-only contracts. The PD recognizes that its new rules on the classification and use of RECs should apply only prospectively, to avoid the “disruption to commercial arrangements and expectations” that would arise if some approved contracts were reclassified as REC-only.

IEP supports this revision. Commenting on an earlier proposed decision that led to D.10-03-021, IEP pointed out the problems with the approach adopted in D.10-03-021:

The . . . reclassification of existing, approved contracts has the unintended potential to disrupt the contractual relations between IOUs and renewable energy suppliers. When the parties to these existing, approved contracts negotiated their deal, they did so under the rules then in effect. The IOU justifiably believed that it was purchasing renewable energy that would count for RPS compliance purposes. Under the PD's proposal, however, the IOU could find that it is contractually obligated to purchase a product (*i.e.*, RECs from what is now a REC-only transaction) that it can no longer use for its intended purpose (compliance with its RPS obligations). . . . [I]f the purchased RECs do not “count” for RPS compliance purposes, as contemplated when the contract was signed by the parties and approved by the Commission, the IOU will be forced to either (1) buy additional renewable energy or

RECs, at an additional cost to ratepayers, or (2) incur penalties of \$50/REC for each MWh it falls short of its RPS goals.¹

The PD removes the commercial uncertainty that D.10-03-021 created, and it adheres to the appropriate approach that rule changes should apply only prospectively. The Commission should adopt this portion of the PD.

II. THE 40% USAGE CAP FOR TRECs

In an effort to avoid an individualized consideration of the numerous variations of firmed and shaped transactions involving TRECs, the PD determines that all firmed and shaped arrangements will be classified as REC-only deals. As if in compensation, the PD also raises the temporary usage cap from the 25% level adopted in D.10-03-021 to 40% of each large utility's annual RPS procurement target.

A 40% usage cap for REC-only transactions seems to be an acceptable accommodation of the various interests affected by the RPS program, but IEP's support for this accommodation is premised on the Commission's acceptance of three conditions established in the PD:

- The classification of all transactions approved before March 11, 2010 as bundled transactions will remove from the cap's constraints many of the MWh that otherwise might have been counted against the cap.
- The cap is temporary, and will expire on December 31, 2011 unless the Commission takes action to extend or modify the cap.

¹ *Comments of the Independent Energy Producers Association on the Proposed Decision*, Jan. 19, 2010, p. 10.

- The Commission will continue its effort to “develop better methodologies to reasonably assess the value of REC-only transactions as compared to bundled transactions.”²

III. **BUNDLED TRANSACTIONS INCLUDE TRANSACTIONS USING FIRM TRANSMISSION TO DELIVER A BUNDLED PRODUCT IN REAL TIME TO CALIFORNIA CUSTOMERS**

On one point, however, the PD should be revised. The PD accepts D.10-03-021’s limited definition of bundled transactions as only those where:

- the RPS-eligible generator’s first point of interconnection with the Western Electricity Coordinating Council (WECC) interconnected transmission system is with a California balancing authority, or
- the RPS-eligible energy from the transaction is dynamically transferred to a California balancing authority (CBA).³

In its petition for modification of D.10-03-021, IEP urged, among other things, that the definition of “bundled transaction” should include transactions that use firm transmission to deliver RPS-eligible energy on a real-time basis to California customers without any intermediate energy transactions. IEP noted that “firm transmission may be used to assure delivery of energy to California at the time the energy is generated by a renewable resource and . . . to deliver renewable energy to a CBA as it is being generated. No intermediary energy transactions are involved in this type of delivery, and there is no risk that energy that is not RPS-eligible will be substituted for energy that is.”⁴ Unlike other transactions that involve some

² PD, p. 19.

³ D.10-03-021, p. 3.

⁴ *Petition of the Independent Energy Producers Association for Modification of Decision 10-03-021 Authorizing Use of Renewable Energy Credits for RPS Compliance*, April 15, 2010, p. 12.

element of deferred delivery or firming and shaping, transactions that use firm transmission to directly link the generator to a CBA and provide instantaneous delivery of renewable energy to California customers are electrically equivalent to other transactions that are classified as bundled transactions and present no concern that other, non-renewable energy will be substituted for RPS-eligible energy as part of the transaction.

In its petition for modification, IEP proposed that the existence of real-time delivery using firm transmission could be demonstrated by:

- documentation showing the existence of firm transmission reservations from the renewable generator to a CBA in an amount equivalent to the nameplate capacity or delivery obligation of the generator; and
- eTags demonstrating that the energy generated by the facility was delivered to a CBA.

Further verification that does not require the Energy Division to monitor in real time the underlying powerflows of these transactions could take the form of:

- a declaration under penalty of perjury of an officer of the selling entity that the entity had obtained the necessary firm transmission reservations and would deliver RPS-eligible energy on a real-time basis to California customers as it was generated; and
- a non-modifiable standard Term and Condition of the RPS contract that grants audit rights to the Commission or the Energy Division to examine the extent to which sales pursuant to the contract are consistent with the firm delivery requirements specified by the Commission.

The two objections the PD raises to IEP’s petition do not address this specific type of transaction. The PD first raises the concern about proposals that “would allow transactions that, for all practical purposes, are REC-only, to be treated as bundled.”⁵ The real-time delivery of RPS-eligible energy as it is being generated—without any intermediate transactions or shaping and firming—precludes any characterization of this type of transaction as REC-only, since the RECs are created and delivered at the same time that the associated renewable energy is created and delivered. The PD’s second objection to IEP’s petition was directed to transactions involving firming and shaping.⁶ For a transaction using firm transmission for real-time delivery to a CBA, however, there is no firming and shaping, and thus the PD’s concerns are not relevant.

IEP’s proposal to include transactions providing real-time delivery using firm transmission in the definition of bundled transactions has the added benefit of focusing on the product—*i.e.*, a bundle of renewable energy and the associated RECs—rather than the geographic location of the generator, thus avoiding objections that the PD violates the Commerce Clause of the United States Constitution. Any renewable generator, regardless of where it is located, has the option of securing firm transmission reservations equivalent to its nameplate capacity or delivery obligation to enable it to deliver its renewable energy on a real-time basis to a CBA.

For these reasons, IEP urges the Commission to modify the PD to clarify that transactions that use firm transmission to deliver RPS-eligible energy and associated RECs on a

⁵ PD, pp. 14-15.

⁶ PD, p. 14.

real-time basis to California without any intermediate energy transactions should be classified as bundled transactions, contingent on:

- documentation showing the existence of firm transmission reservations from the renewable generator to a CBA equivalent to the nameplate capacity or delivery obligation of the generator;
- eTags demonstrating that the energy generated by the facility was delivered to a CBA;
- a declaration under penalty of perjury of an officer of the selling entity that the entity had obtained the necessary firm transmission reservations and would deliver RPS-eligible energy on a real-time basis to California customers as it was generated; and
- a non-modifiable standard Term and Condition of the RPS contract that grants audit rights to the Commission or the Energy Division to examine the extent to which sales pursuant to the contract are consistent with the firm delivery requirements specified by the Commission.

With this modification, IEP respectfully urges to adopt the PD without further significant revisions.

CERTIFICATE OF SERVICE

I, Melinda LaJaunie, certify that I have on this 27th day of September 2010 caused a copy of the foregoing

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to be served on all known parties to R.06-02-012 listed on the most recently updated service list available on the California Public Utilities Commission website, via email to those listed with email and via U.S. mail to those without email service. I also caused courtesy copies to be hand-delivered as follows:

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I declare under penalty of perjury that the foregoing is true and correct.

Executed this 27th day of September 2010 at San Francisco, California.

/s/ Melinda LaJaunie
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