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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)

**POST-WORKSHOP COMMENTS OF
SUSTAINABLE CONSERVATION AND
CALIFORNIA FARM BUREAU FEDERATION
ON TRADABLE RENEWABLE ENERGY CREDITS**

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FOR Sustainable Conservation

I. INTRODUCTION

In accordance with the Rules of Practice and Procedure of the California Public Utilities Commission (“CPUC”) and the October 16, 2007 ruling of Administrative Law Judge Simon, Sustainable Conservation and the California Farm Bureau Federation (“parties”) submits these comments on tradable renewable energy credits (“RECs”) and on REC attributes. Parties applaud the Commission for its thorough investigation of RECs and its deliberations on how best to use RECs to achieve California’s renewable energy and attendant environmental goals. Our comments are focused in particular on issues related to small, renewable distributed generation, particularly biogas digesters. The Commission should distinguish between RECs that are used by utilities and other load-serving entities to meet renewable portfolio standard (“RPS”) obligations, and RECs that accrue to renewable distributed generation technology. The Commission also should revise its definition of “green attributes” to be consistent with SB 107 and reflect realities of the market.

II. THE COMMISSION SHOULD DISTINGUISH BETWEEN RECs USED FOR RPS COMPLIANCE AND RECs THAT ACCRUE TO SMALL RENEWABLE DISTRIBUTED GENERATORS

The market for many small-scale renewable generators is dependent on the ability of the generator to keep and trade unbundled RECs, as well as selling the energy generated. Many distributed generators are selling elements of the RECs into a marketplace that exists now and will be expanding rapidly in the future.¹ RECs, as currently defined, include other environmental attributes in addition to the renewable energy (this issue is discussed below). Small-scale renewable generators often depend on the value of those other attributes to secure financing for their projects (a typical biogas digester, for example, costs about \$1 million to

¹ There may be instances where renewable distributed generators are selling excess energy as well in the market, for example under the policies established in D.07-07-020. Even when that occurs, the amounts of energy sold may not be large.

install) or they are a reason in and of themselves for the project (i.e., companies are now installing digesters just to capture the greenhouse gas value). Many or most of these digester projects will not be built if these “green attributes” transfer to the utility with the sale of electricity. As such, the issue is not conferring the carbon neutral renewable value of the electricity to the investor-owned utilities at a fair market price. It is the investor-owned utilities claiming all the environmental attributes that is problematic.

These distributed renewable generators must retain ownership of specific elements of the REC, and sell only the element associated with renewable energy. Distributed renewable generators may require some of those elements, like emission reduction credits, to meet their obligations to other regulatory entities or to finance new projects. As another example, it is possible that implementation of AB 32 will lead to regulation of certain emissions, and farmers will install more biogas digesters as a requirement or to capture offset benefits. The California Climate Action Registry has anticipated this with the adoption earlier this year of a protocol for emissions from livestock. The CPUC must ensure, as it develops a tradable REC market, that there is a distinction between the market for renewable energy credits, as opposed to markets for other environmental attributes like greenhouse gas credits. Because under the parameters of the laws establishing RPS requirements the definition was used as an accounting tool for measuring RPS compliance, the distinction among the underlying elements of what has come to mean a REC and the relationship to greenhouse gases has not been appropriately assessed.

The October 16 ALJ Ruling requests comments on the staff straw proposal for using tradable RECs for RPS compliance. Parties agree with many of the elements of the straw proposal, particularly the absence of limits on market participation, the encouragement of long-term contracts, and the ability to unbundle and sell RECs on a forward basis. However, there are

some embedded assumptions in the Straw Proposal that do not comport to how things may work in the “real world.” The way the definition for RECs is mostly employed in discussion of tradable RECs is premised on the discrete RPS value of the renewable electricity attribute. However, the REC’s greater value will likely lie in the greenhouse gas or emission reduction credit (there may also be other environmental attributes with significant value in the future). Most of the discussion to date at the CPUC has not differentiated unique features of these discrete attributes and how they are now or will in the future function in the marketplace, including as a force driving new renewables development.

This confusion is confounded by different definitions of “RECs,” “Green Attributes,” “Environmental Attributes,” and similar terms both within and between State agencies. At the current time, there is not a standard definition for these terms. As an example, the way the CPUC now defines “Green Attributes” is different than what was defined in the RPS-enabling legislation, SB 107 (discussed below). Furthermore, the current CPUC definition is so expansive, that it may infringe on property and product ownership rights. As just one example, under the pending advice letters to implement D.07-07-020, investor-owned utilities would assume the inherent environmental value of the fuel used in the digesters, specifically the manure for digester. That would mean that the utilities could now claim they “own” manure from an organic dairy (which has a value that can be monetized in the market place). This is the result of a poorly conceived definition adopted by the CPUC, likely not understanding its implications.

The State is only now beginning to look at the policies, rulings, and regulations that have been adopted or are in development around RECs. The goal of this examination of RECs should be defined terms that are consistent, well-defined, and reflective of legislative intent. One way to do that is to define RECs, as was originally intended, to include only the renewable value of

the electricity that can be used for RPS compliance. The greenhouse gas, emission reduction, and other environmental values showed be separately defined and treated. “Renewable energy” (electricity) should be defined to include “zero net emissions” of greenhouse gases.

III. DEFINITION OF GREEN ATTRIBUTES MUST BE MODIFIED TO COMPLY WITH SB 107

The CPUC, in its definition of Green Attributes as determined in D.07-02-011² and adopted from D.04-06-014, has not accurately applied the governing language from Senate Bill 107. The specific problem is that the non-modifiable terms refer to “biomass or landfill gas” facilities. The definition of Renewable Energy Credits (“RECs”) in SB 107 defines RECs as:

“Renewable energy credit” includes all renewable and environmental attributes associated with the production of electricity from the eligible renewable energy resource, except for an emissions reduction credit issued pursuant to Section 40709 of the Health and Safety Code and any credits or payments associated with the reduction of solid waste and treatment benefits created by the utilization of *biomass or biogas* fuels.”³ (emphasis added)

By using “landfill gas” instead of “biogas,” the CPUC has inadvertently created a situation where there is ambiguity specific to non-landfill gas fueled generation, despite the clear intent of P.U.C. Section 399.12.

While this was likely an oversight by the Commission in D.04-06-014 and D.07-02-011, parties request that the Commission fix this oversight in the definition of attributes to conform to the statute, and remove the ambiguity in Commission policy related to non-landfill gas technologies.

IV. THE COMMISSION MUST CAREFULLY DEFINE REC ATTRIBUTES

Parties below provide responses to the specific questions posed in the ALJ Ruling on REC attributes. It is precisely the relationship of AB 32 and other aspects related to greenhouse

² Decision 07-02-011, pp. 40-43.

³ Section 399.12 (g)(2)

gas regulations that prompted the concern that the definitions underlying the REC definition were being extended far beyond what was appropriate.

(1) With respect to biogas that is an RPS-eligible resource, should the benefits of capturing methane in the production of the biogas be included in the attributes of the REC associated with the biogas?

No, the benefits of capturing methane in the production of biogas should not be included in the attributes of the REC associated with the biogas generation. As parties have pointed out earlier in this proceeding,⁴ the methane reduction is tracked separately and has value in other markets. Virtually every other regulatory entity that has addressed green or renewable attributes has bifurcated ownership of greenhouse gas credits for biomass and biogas generators, including the Intergovernmental Panel on Climate Change (“IPCC”), the United Nations, the Province of Ontario, Canada, and the California Climate Action Registry. The bifurcation of ownership is created because biomass and biogas generators are using fuel stocks that are the byproduct of agricultural and forestry processes that are unrelated to energy production, and that could be utilized in any number of ways, including producing biomethane for vehicle fuel or flaring the gas to destroy the methane. Internationally and in the U.S. there are developed markets for trading greenhouse gas offsets, including methane in dairy biogas, which operate independently of any markets for RECs, emission reduction credits, or Green Tags.

The IPCC recognizes that “Biomass is a special case,” and includes only the part of biomass that is combusted for energy as an emission in the energy sector.⁵ Carbon-equivalent emissions from biomass and biogas are biogenic emissions and will be inventoried and reported in a different category from fossil fuels and will not require allowances.

⁴ See in particular “Comments of Sustainable Conservation on Tradable RECs,” August 22, 2007.

⁵ IPCC, “2006 IPCC Guidelines for National Greenhouse Gas Inventories,” Volume 2: Energy, p. 2.33. This document can be found online at: http://www.ipcc-nggip.iges.or.jp/public/2006gl/pdf/2_Volume2/V2_2_Ch2_Stationary_Combustion.pdf

The United Nations Framework Convention on Climate Change (“UNFCCC”) has developed a clean development mechanism for issuing offset credits in accordance with the Kyoto Protocols, with a focus on developing countries. In 2004, UNFCCC published a methodology for calculating greenhouse gas reductions from manure management systems. The accounting tool UNFCCC uses has separate quantification methodologies for projects that have methane destruction by anaerobic manure digesters. When measuring greenhouse gas emission reductions from manure management, the UNFCCC methodology separates CO₂ emissions as a result of electricity generation from the methane that is destroyed in the process.

The California Climate Action Registry (“CCAR”) in June 2007 adopted its first industry-specific project reporting protocol, the Livestock Reporting Protocol for Capturing and Combusting Methane from Manure Management Systems. The CCAR Protocol specifically delineates greenhouse gas reductions from farm operations from those associated with operation of a biogas digester: “Furthermore, producing power for the electricity grid (and thus displacing fossil-fueled power plant GHG emissions) is a complementary and separate GHG project activity to destroying methane gas from waste treatment/storage, and not included within this protocol’s accounting framework.”⁶

Internationally and in the U.S. there are developed markets for trading greenhouse gas offsets, including methane in dairy biogas, which operate independently of any markets for RECs, emission reduction credits, or Green Tags.⁷ The Chicago Climate Exchange is currently

⁶ California Climate Action Registry, “Livestock Project Reporting Protocol: Capturing and Combusting Methane from Manure Management Systems,” June, 2007, p. 3. This document can be found online at: http://www.climateregistry.org/docs/PROTOCOLS/CCAR_Livestock_Project_Reporting_Protocol_June_2007.pdf

⁷ It should be noted that the Inland Empire Utilities Agency, a party in other proceedings before this Commission and a customer of Southern California Edison, currently registers biogas energy GHG reductions with the Environmental Resources Trust, and has participated in the development of appropriate protocols with CCAR and the California Energy Commission. Given the fact that IEUA anticipates expanding their biogas electrical generation in the near term, as well as the fact that this is a nascent issue for which the Commission and the State of

trading greenhouse gas offsets, including those from California dairies. The Chicago Climate Exchange has standardized rules for projects including Agricultural Methane, Landfill Methane, Agricultural Soil Carbon, Forestry, Renewable Energy, Coal Mine Methane, and Rangeland Soil Carbon Management.⁸ In addition, bilateral deals are being brokered regularly with livestock producers across the U.S. For example, American Electric Power announced in June 2007 that it will purchase approximately 4.6 million carbon credits between 2010 and 2017 generated from capturing methane on livestock farms.⁹ Future transactions are jeopardized as a result of the ambiguity and problematic language in the current definition of “Green Attributes” (aka RECs).

(2) How should the "net zero emissions" requirement in the last sentence of the Green Attributes definition in Attachment D-2 be applied to the capture of methane to produce RPS-eligible biogas?

The “net zero emissions” requirement should exclude captured methane for the reasons stated above.

(3) Should a REC include avoided carbon emissions associated with conventional generation displaced by the renewable generation giving rise to the REC? As a policy matter, why or why not?

No, a REC should not include avoided carbon emissions associated with conventional generation displaced by the renewable generation that is giving rise to the REC. As stated above, the carbon piece will trade in a different market. The buyer of the REC, be it a utility or other load-serving entity, should get only the renewable electricity attribute and carbon neutral energy, not the additional attributes. The CPUC need look no further than the debate ongoing in R.06-04-009 over whether a greenhouse gas allowance cap should be load-based or based on the first seller as evidence of why this separation is required. In that proceeding, the Commission and

California will establish policy, it is extremely important that the Commission “get it right” with respect to establishing policy and appropriate allocation of ownership rights of various environmental attributes.

⁸ Chicago Climate Exchange, “CCS Offsets Program,” 2007.

⁹ AEP, “AEP To Support Largest Agricultural Carbon Offset Program In U.S.; Program Will Capture And Destroy Methane From 200 Farms,” June 14, 2007.

other agencies also are contemplating the development of markets for greenhouse gas emission allowances. Including those attributes in the definition of a REC could preclude the Commission and other agencies from taking further action on this issue in the greenhouse gas docket and elsewhere.

(4) In view of the current uncertainties associated with the implementation of AB 32, what are the potential pitfalls, if any, both for the RPS program itself and the interaction of RPS with potential GHG regulatory methods, of determining that a tradable REC used for compliance with the California RPS includes avoided carbon emissions? Of determining that a REC does not include avoided carbon emissions?

The uncertainty associated with AB 32 implementation, and the opportunities it presents to create incentives for new renewable generation, is precisely why the CPUC must be careful and not bundle all the environmental attributes into one tradable unit.

(5) Are there any potential legal impediments to or uncertainties about the implementation of the policy preferences you expressed in response to questions 1-4? What are they? How might they be overcome? Please explain in detail.

Yes, there are significant legal impediments based on previous CPUC decisions, as cited above. Parties have submitted comments in various proceedings which reflect the preferences explained above. In this proceeding the Commission has the opportunity to make clarifications which draw a distinction between REC as used for an accounting tool and the underlying components which have a separate value in the marketplace. The CPUC has the authority and should use this opportunity to clearly draw the distinction.

(6) Would particular decisions about the implementation of AB 32 alter your views about the issues discussed in Questions 1-5, above? What decisions would have an impact? What impact would they have? Why?

Whatever happens with AB 32 – even if it was to be repealed – there will be markets for greenhouse gas credits and emissions reduction credits and perhaps other attributes. If anything AB 32 provides a platform for new renewable generation that can be justified on the basis of the

increasing greenhouse value – value that should be owned by those who invest their time and money and put their business on the line to build new generation. What the CPUC must recognize is that for small, renewable distributed generation, these values will be needed by the project developer to justify construction of new facilities.

V. CONCLUSION

The CPUC is poised to provide more certainty and create more opportunity for renewable energy generation in California. The CPUC should adopt a program of tradable RECs. As the CPUC does this, it should recognize that small, renewable distributed generators rely on RECs differently than larger generators and load-serving entities. The program the CPUC adopts should allow generators to sell only the renewable energy elements of a REC, and provide that other elements, such as greenhouse gas emissions reduction credits, can be sold in markets that are established or are emerging. The CPUC also must revise the definition of REC attributes to match the language in SB 107.

Dated: November 13, 2007

Respectfully submitted,

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For SUSTAINABLE CONSERVATION

CERTIFICATE OF SERVICE

I, Jody London, certify that I have, on this date, caused the foregoing POST-WORKSHOP COMMENTS OF SUSTAINABLE CONSERVATION AND THE CALIFORNIA FARM BUREAU FEDERATION ON TRADABLE RENEWABLE ENERGY CREDITS 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 List for the proceeding in California Public Utilities Commission Docket No. R.06-02-012, R.06-05-027, R.06-03-004, and R.06-04-009.

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 13, 2007, in Oakland, California.

A handwritten signature in blue ink, appearing to read "Jody London", is written over a light blue rectangular background.

Jody London

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