



**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)

**POST WORKSHOP COMMENTS
ON TRADABLE RENEWABLE ENERGY CREDITS
BY MOUNTAIN UTILITIES (U 906-E)**

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November 13, 2007

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Pursuant to the Administrative Law Judge's Ruling Requesting Post-Workshop Comments on Tradable Renewable Energy Credits (Ruling), issued on October 16, 2007, Mountain Utilities (MU) submits the following comments and three of the four proposals initially proposed in the predecessor to this proceeding, Rulemaking 04-04-026.

INTRODUCTION

Because of MU's unique situation, the use of Tradable Renewable Energy Credits (tRECs) appears to be one of the very few strategies MU might employ to satisfy any renewables obligations. MU, California's smallest Investor Owned Utility, is an electric microutility with no access to either the California transmission grid or to natural gas pipelines, because of its remote and isolated location in the High Sierra southwest of Lake Tahoe. As a consequence, MU generates all the electricity to serve its customers using several diesel generators.

The large Investor Owned Utilities, the Commission staff, and other interested parties with resources comparable to their size have devoted substantial efforts to fleshing out a tREC scenario. MU seeks only to have its situation recognized and to avoid being swallowed up in a complex and expensive regulatory endeavor that its ratepayers should not be required to and almost certainly cannot afford to sustain.

What follows are MU's comments with regard to certain areas mentioned in the Ruling. MU also presents again its initial proposals to use biodiesel fuel in its generators to provide specific examples that relate to the tREC scenarios.

A. MU's Comments

1. Proposed Guiding Principles

MU first addresses certain of the “Proposed Guiding Principles” set forth in the Ruling. The Ruling states:

The proposed Guiding Principles set forth in the July 19, 2007 Administrative Law Judge's Ruling Requesting Pre-Workshop Comments are reproduced below. It is not necessary to use the proposed principles in post-workshop comments, but it would be helpful if any objections to any of the principles are clearly stated in comments.¹

In response, MU addresses Proposed Guiding Principles 1 and 8.

1. Use of REC trading for RPS compliance should be consistent with the legislative goals for the RPS program.²

MU comment: The guiding principles should also reflect the legislative intent of Public Utilities Code to minimize regulatory costs to electric microuilities such as MU:

Public Utilities Code Section 2780. As used in this chapter, the term "electric microuility" means any electrical corporation that is regulated by the commission and organized for the purpose of providing sole-source generation, distribution, and sale of electricity exclusively to a customer base of fewer than 2,000 customers.

Public Utilities Code Section 2780.1. (a) It is the intent of the Legislature that the commission consider the legal, administrative, and operational costs that an electric microuility faces if it is named as a respondent in a hearing generally applicable to electrical corporations. The limited resources of a microuility are disproportionately strained by the cost of response.

(b) Further, it is the intent of the Legislature that the commission consider the costs described in subdivision (a) before naming an electric microuility as a respondent in a hearing generally applicable to electrical corporations.

8. REC trading rules, guidelines, and policies should be simple, transparent, easily administered, uniformly applied, and equitable to all LSEs.³

¹ Ruling, p. 2.

² *Id.*

³ Ruling, p. 3.

MU comment: MU is compelled, once again, to oppose the concept of uniform application, at least as respects MU. At the risk of sounding like a broken record, MU points out that MU simply is unlike any other IOU in California. tREC rules, guidelines, and policies that may work very well for PG&E, SCE, and SDG&E will very likely be of little use to MU. MU is aware of no law that requires the Commission to apply the same tREC rules to the three large IOUs as to MU, which is as different from the three large IOUs as a lobster bisque is from a lemon meringue pie. MU entreats the Commission to recognize this obvious fact.

MU therefore recommends that guideline 8 be modified to state that the rules should be reasonably applied rather than uniformly applied, because of the vast differences between the various parties and because uniform application lends itself to mindless administration for the mere sake of administration, without regard for the impacts on electric microuilities.

2. Basics of a tradable REC market

MU next discusses certain of the “Basics of a tradable REC market” set forth in the Ruling.

(1)(b) Tradable RECs will provide buyers and sellers of RPS-eligible generation with additional contracting flexibility in the near term and long term.⁴

MU Comment: tRECs will provide the above benefit only if the implementation rules allow for contracting flexibility such as authorizing the recoupment of tREC expenses in monthly balancing accounts to avoid incurring carrying charges that would tax the financial abilities of electric microuilities.

(2) What are the most likely sources of RECs that could be traded in the 2008-2011 timeframe? Please focus on RECs associated with generation that will meet the delivery requirements of Pub. Util. Code § 399.16(a)(3).⁴

⁴ Section 399.16(a)(3) states that tradable RECs must be associated with electricity that “is delivered to a [California] retail seller, the Independent System Operator, or a local publicly

⁴ Ruling, p. 4.

owned electric utility.”⁵

MU Comment: While MU, using biodiesel to create RECs, would be a minuscule addition to the sources of RECs, flexible, compensatory and non-burdensome rules would enable MU to anticipate becoming a source of RECs.

(3)(b) How, if at all, would REC trading, as compared to current RPS flexible delivery rules, provide more flexibility or be less costly in overcoming transmission congestion constraints? Please provide specific examples of situations in which REC trading would enable renewable energy projects to be developed in transmission constrained areas in California that would not otherwise be feasible. [Footnote omitted.]⁶

MU Comment: Senate Bill (SB)107 (Simitian) was signed into law on September 26, 2006 (Chapter 464, Statutes of 2006) and became effective on January 1, 2007. That bill eliminated the creditworthiness provision upon which MU sought an exemption from the RPS Program. The same bill also instituted provisions whereby the California Public Utilities Commission may apply flexible rules for compliance (Public Utilities Code Section 399.14 (a)(2)(C)).

MU’s transmission constraint is that it has no access to transmission. Therefore, as indicated in MU’s proposal 3 below, the only way MU could satisfy its renewables obligation would be through tRECs where the REC was totally divorced from the underlying generation.

(4) Describe the foreseeable market in California and neighboring states for null⁶ power in the timeframe 2008-2011. Please discuss:

- Market demand for in-state null intermittent power; . . .

⁶ Null power is energy that was originally generated from a renewable energy facility, but for which the RECs have been unbundled and sold separately.⁷

MU Comment: If MU can generate more renewable power using biodiesel than it requires and then sell the tRECs (see MU proposal 4 below), the underlying power will be null

⁵ Ruling, p. 5.

⁶ Ruling, p. 6.

⁷ Ruling, p. 6.

power and would be used to supply the requirements of its customers in Kirkwood. In that case, the demand for null power would come from MU's customers.

(7) Dr. Weiss presents an analysis of REC markets showing a bimodal pricing distribution, colloquially referred to as “boom-bust” pricing.

...

(3)(b) In the timeframe 2008-2011, are contracts for RECs likely to provide developers of new renewable facilities in California and neighboring states with additional financial resources (both in terms of cash flow for the facility and in terms of willingness of investors and/or lenders to provide capital for development of the facility)? Why or why not?⁸

MU Comment: MU would anticipate that a customer for its tRECs would have sufficient financial wherewithal to offer a long term contract that would compensate MU for all costs associated with the conversion from regular diesel to biodiesel and to provide adequate additional compensation to cover any costs that might otherwise be imposed upon MU's ratepayers after MU shifts from diesel to biodiesel. It is possible that tREC customers would anticipate that the prospective boom portion of the bimodal pricing regime and would be prepared to invest heavily to meet their renewables requirements.

3. Staff straw proposal

MU now turns to discussion of certain elements of the Staff straw proposal.

(1) For each area of the straw proposal please address the following issues, as well as any other issues that would contribute to a complete discussion of the straw proposal. Please provide all information necessary to support the analysis presented in the comments. Where relevant, please comment on the rationale provided by staff for each area. [Footnote omitted.]

(a) Impact on and integration with the existing methods of RPS compliance, including both procurement methods and existing flexible compliance rules.⁹

⁸ Ruling, p. 7.

⁹ Ruling, p. 8.

MU Comment: The Commission's flexible rules for compliance¹⁰ regarding transmission constrained utilities have not yet been established.

B. MU's Proposals

MU raises again certain proposals it has previously made regarding its satisfaction of any RPS requirements.

Proposal 2:

If MU is required to satisfy the RPS, it can do so by using biodiesel as some of the fuel for its diesel generators. MU can purchase biodiesel commercially in the same way it purchases regular diesel using annual contracts rather than under a ten year contract. However, if MU is required to fulfill the RPS in this fashion, it must be authorized to recover any excess cost of biodiesel over regular diesel fuel through its monthly Diesel Fuel Balancing Account.

a. Biodiesel Satisfies The Renewables Standard.

As an electric microutility with no access to either the transmission grid or natural gas

¹⁰ PU Code § 399.14. (a) (1) addressed requisite rules for flexible compliance:

The commission shall direct each electrical corporation to prepare a renewable energy procurement plan that includes the matter in paragraph (3), to satisfy its obligations under the renewables portfolio standard. To the extent feasible, this procurement plan shall be proposed, reviewed, and adopted by the commission as part of, and pursuant to, a general procurement plan process. The commission shall require each electrical corporation to review and update its renewable energy procurement plan as it determines to be necessary.

(2) The commission shall adopt, by rulemaking, all of the following: ...

(C) (i) Flexible rules for compliance, including rules permitting retail sellers to apply excess procurement in one year to subsequent years or inadequate procurement in one year to no more than the following three years. The flexible rules for compliance shall apply to all years, including years before and after a retail seller procures at least 20 percent of total retail sales of electricity from eligible renewable energy resources.

(ii) The flexible rules for compliance shall address situations where, as a result of insufficient transmission, a retail seller is unable to procure eligible renewable energy resources sufficient to satisfy the requirements of this article. Any rules addressing insufficient transmission shall require a finding by the commission that the retail seller has undertaken all reasonable efforts to do all of the following:

(I) Utilize flexible delivery points.

(II) Ensure the availability of any needed transmission capacity.

(III) If the retail seller is an electric corporation, to construct needed transmission facilities.

(IV) Nothing in this subparagraph shall be construed to revise any portion of Section 454.5.

(Emphasis added.)

pipelines, MU generates all the electricity to serve its customers using several diesel generators. It purchases the diesel based upon competitive contracts that are usually one year in duration. Thus, at present, its generation facility is a "Conventional Power Source."

Biodiesel is a fuel derived from biomass that can be substituted for regular diesel fuel. As such MU suggests using such fuel would satisfy the renewables standard, and the Commission should find that use of biodiesel will satisfy the RPS if MU must comply with RPS requirements.

b. MU Should Be Permitted To Buy Any Required Biodiesel According To Its Normal Bidding Practices.

As a commercially available commodity, biodiesel need not be purchased by MU to support a nascent biodiesel industry. Biodiesel is a commercial commodity available from numerous suppliers. An Internet search for "biodiesel" produced many thousands of references. The following statement was posted on the website of "Biodiesel - The Official site of the National Biodiesel Board" (<http://www.biodiesel.org/resources/biodiesel-basics/default.sht>):

Where do I get biodiesel?

Biodiesel is available nationwide. It can be purchased directly from biodiesel producers and marketers, petroleum distributors, or at a handful of public pumps throughout the nation.

In fact, an article even appeared in the Fairfield Daily Republic regarding the retail sale of a brand of biodiesel by country singer Willie Nelson.

In short, biodiesel is commercially available and MU's impact upon the biodiesel industry would be very small. Therefore there would appear to be no need for long term contracts to encourage investment in the industry. Because of this, MU proposes that it be allowed to purchase any biodiesel required using the usual contracting practices in the biodiesel industry, and using MU's normal fuel procurement process.

c. MU Must Be Authorized To Recover Any Excess Cost Of Biodiesel Over Regular Diesel Fuel Through Its Monthly Diesel Fuel Balancing Account (DFBA).

MU currently collects the major portion of its generating fuel costs through the monthly DFBA. Under this system of cost recovery, MU is not required to carry unrecovered fuel costs beyond one month, which is vital to an electric microutility like MU. Also, MU's monthly electricity price fluctuations are closely related to diesel and gasoline prices so that MU's customers will be cognizant of the reasons for the electricity price fluctuation.

Biodiesel is still fuel that will be used to generate for the customers MU is obligated to serve. It will generate costs that MU must recover, just like regular diesel fuel. To the extent that the cost of biodiesel differs from the price of regular diesel fuel, such differences should be reflected in its monthly DFBA balancing account. This is particularly the case since MU is not connected to the grid and cannot take advantage of cheaper power offered to utilities connected to California's transmission grid.

Proposal 3:

If biodiesel usage to satisfy MU's RPS is unavailable for regulatory or physical reasons, MU should be authorized to use Procurement Entities to purchase Renewable Energy Credits (REC) to satisfy its RPS and then resell the REC energy as non-RPS energy, (Null Energy) recovering the cost differential from its customers through MU's monthly Diesel Fuel Balancing Account.

Without access to California's transmission grid, and if biodiesel is for some reason not a viable option for MU to satisfy its RPS requirements, then MU would need to purchase Renewable Energy Credits (REC) to satisfy any RPS. MU could purchase RPS energy from a Procurement Entity. It could subsequently resell the same electricity as non-RPS energy, since MU has no way to actually use any energy not generated on its isolated distribution system in Kirkwood. In such a situation, MU should not be required to carry any excess cost of such REC energy. Instead, it should be authorized to recover the cost or credit the benefit of this transaction to its monthly DFBA

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the POT WORKSHOP COMMENTS ON TRADABLE RENEWABLE ENERGY CREDITS BY MOUNTAIN UTILITIES' (U 906 E) on November 13, 2007, on all known parties to proceeding R. 06-02-012 via electronic mail to those whose addresses are available and via U.S. mail to those who do not have an electronic address.

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

Dated this 13th day of November, 2007, at Sacramento, California.

/s/

Colleen Bullock

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