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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)

**SECOND AMENDED SCOPING MEMO AND RULING  
OF ASSIGNED COMMISSIONER**

**Summary**

Pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure,<sup>1</sup> following a prehearing conference (PHC) held on December 10, 2007, this ruling assigns the principal hearing officer, specifies the scope, and sets an extended schedule, to December 31, 2008, to complete the remaining tasks in the design of the renewables portfolio standard (RPS) program.

**Background**

In the Order Instituting Rulemaking (OIR) for this proceeding, the Commission identified certain RPS implementation issues that should be determined in this proceeding. The original Scoping Memo and Ruling of Assigned Commissioner issued on April 28, 2006 (April Memo) set out a plan for addressing those issues and others that were identified by the parties, dividing

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<sup>1</sup> Unless otherwise indicated, all subsequent citations to rules refer to the Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations, and citations to sections refer to the Public Utilities Code.

them into roughly two groups: the first four, then (after another PHC or comments), the last five.

1. Developing rules for the participation of energy service providers (ESPs), community choice aggregators (CCAs), and small utilities in the RPS program, including but not limited to determination of baselines, initial year compliance obligations, and procurement targets.
2. Developing rules for the participation of multi-jurisdictional utilities in the RPS program pursuant to § 399.17.
3. Exploring the use of contracts for the purchase of RPS-eligible electricity that are of less than 10 years' duration.
4. Exploring the use of unbundled renewable energy credits (RECs) for RPS compliance by all RPS-obligated load-serving entities (LSEs).
5. Exploring the use of tradable RECs for RPS compliance by all RPS-obligated LSEs, including determining what attributes should be included in a REC.
6. Exploring the use of procurement entities or other third-party intermediaries to facilitate the procurement of RPS-eligible generation by ESPs, CCAs, small utilities, and multi-jurisdictional utilities.
7. Determining the appropriate treatment of RECs associated with energy generated by renewable customer-side distributed generation, after examination of two issues in Rulemaking (R.) 06-03-004.
8. Determining the status of RECs associated with renewable energy generated by qualifying facilities (QFs) under contract with California utilities.
9. Determining the impact of RPS-eligible renewable generation acquired by customers from third parties on the RPS compliance of LSEs serving those customers.

The first four listed tasks were largely accomplished by Decision (D.) 06-10-019, with the exception of the integration of small and multi-jurisdictional utilities (SMJUs) into the RPS framework.

The priority and scheduling of the last five were addressed by the Amended Scoping Memo and Ruling of Assigned Commissioner (December 29, 2006) (Amended Memo). The Amended Memo noted that no parties identified the use of procurement entities (item 6, above) as a priority, and postponed the topic of procurement entities unless and until parties made a proposal for the Commission's consideration.

The Amended Memo also added two tasks. One was mandated by Senate Bill (SB) 107 (Simitian), Stats. 2006, ch. 464: establishing minimum procurement from long-term contracts and contracts with new facilities as a condition of approving short-term RPS contracts. (*See* § 399.14(b).) The other was a follow-up to D.06-10-019: developing price benchmarks for evaluation of utilities' short-term RPS contracts and bilateral RPS contracts of any length.

### **Current Status**

1. Price benchmarks for short-term contracts and bilateral contracts have been the subject of two rounds of party comments. The next step is issuance of a proposed decision.

2. Modifications to or adaptations of the rules and procedures for the RPS program to take account of any special situations presented by SMJUs will be examined in a proposed decision on the obligations and compliance options for SMJUs' RPS participation in light of existing RPS statutory requirements,

generally applicable RPS program rules, the special requirements of § 399.17, and the repeal of § 399.14(a)(1)(A) by SB 107<sup>2</sup>.

3. There have been several developments related to the use of tradable RECs (TRECs, following the usage of Energy Division and the parties) for RPS compliance since the issuance of the Amended Memo.

- SB 107 resolved the status of RECs for renewable energy generated by QFs.<sup>3</sup>
- In D.07-01-018, issued in R. 06-03-004, the Commission determined that RECs associated with customer-side renewable distributed generation belong to the system owner.
- A comprehensive workshop on TRECs was held by Energy Division staff on September 5-7, 2007. Parties have filed pre-workshop comments, post-workshop comments, and post-workshop reply comments.
- Development of the Western Renewable Generation Information System (WREGIS) is continuing. The management of WREGIS is in the process of completing the arrangements necessary for its use both for RPS compliance and for any system of REC trading. It is currently expected that, for California RPS purposes, all necessary users will be part of the system, and the system will be ready to go, by May 1, 2008. See California Energy Commission (CEC), *Renewables Portfolio Standard Eligibility Guidebook* (3d. ed. January 2008), p. 46.<sup>4</sup>

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<sup>2</sup> SB 107 changed the prior statutory provisions on RPS procurement by LSEs that are not creditworthy by repealing prior § 399.14(a)(1)(A), effective January 1, 2007. This change affects respondents Sierra Pacific Power Company and Mountain Utilities.

<sup>3</sup> Sections 399.16(a)(5), (6).

<sup>4</sup> The *Eligibility Guidebook* may be found at <http://www.energy.ca.gov/renewables/documents/index.html#rps>.

- SB 107 added the requirement that this Commission and the Energy Commission make a determination that WREGIS is ready to support the use of unbundled and/or tradable RECs for RPS compliance.<sup>5</sup>
- The Utility Reform Network (TURN) and Aglet (jointly, TURN) filed a Motion Requesting Evidentiary Hearings on November 28, 2007. This request is discussed separately, below.

4. One task should be added to this proceeding. In D.07-09-024, the Commission adopted a temporary greenhouse gas adder (GHG adder) for the 2007 market price referent (MPR) calculation. In doing so, the Commission also authorized:

... the assigned Commissioner and assigned administrative law judges in R.06-02-012, in R.06-05-027, and/or their successor proceedings, to set a schedule for examining the MPR for 2008 and later years for purposes of determining what changes should be made to the MPR methodology, including how the costs of GHG emissions should be reflected in the MPR for 2008 and later years.

I determine that this proceeding is the appropriate vehicle for undertaking the examination of the MPR outlined in D.07-09-024. Consistent with the consensus of the parties at the PHC, the schedule below identifies a workshop

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<sup>5</sup> Section 399.16(a)(1) provides:

Prior to authorizing any renewable energy credit to be used toward satisfying annual procurement targets, the commission and the Energy Commission shall conclude that the tracking system established pursuant to subdivision (c) of Section 399.13, is operational, is capable of independently verifying the electricity generated by an eligible renewable energy resource and delivered to the retail seller, and can ensure that renewable energy credits shall not be double counted by any seller of electricity within the service territory of the Western Electricity Coordination Council (WECC).

*Footnote continued on next page*

convened by Energy Division staff and related party comments as the method for addressing the 2008 MPR.

5. One task should be removed from this proceeding. The last topic in the Amended Memo, impact of RPS-eligible renewable generation acquired by customers, was identified as a low priority. In PHC statements filed and served prior to the December 10, 2007 PHC, and at the PHC, no parties asked that this topic be considered. It will therefore not be addressed in this proceeding.

### **Request for Evidentiary Hearing**

TURN seeks hearings on two issues:

1. Whether additional revenues from TRECs will simply improve the profitability of renewables projects or actually result in new incremental renewable project development; and
2. Whether the [current] \$50 per megawatt-hour noncompliance penalty would act as a price cap for TRECs.

No other parties supported the hearing request in their written submissions, but the Division of Ratepayer Advocates orally supported it at the PHC.

As directed by the Administrative Law Judge's (ALJ's) Ruling Requesting Post-Workshop Comments on Tradable Renewable Energy Credits (October 16, 2007) and the ALJ's Ruling Revising Schedule for Post-Workshop Comments (November 21, 2007), several parties noted their opposition to the hearing request in their reply comments.<sup>6</sup>

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<sup>6</sup> Central California Power, Center for Energy Efficiency and Renewable Technologies (CEERT), Independent Energy Producers Association, Mountain Utilities, Southern California Edison Company, San Diego Gas & Electric Company, and Solar Alliance,

*Footnote continued on next page*

The parties opposing the hearing request make three principal arguments. First, the issues identified by TURN are not really material factual disputes, but differences of opinion. Second, the real disagreements are about policy direction, not facts. Third, if there are factual disagreements among the parties on these topics, they can be resolved on the basis of the extensive existing record.

TURN's first issue is not really in dispute. The record of the May 2006 evidentiary hearing, on which the Commission relied in D.06-10-019, made clear that "[t]here is . . . no dispute that long-term contracts are the dominant method of structuring new [renewable generation] development so that it can be financed." (D.06-10-019, *mimeo.*, p. 25.) Nothing in the record of this proceeding since that time disturbs that conclusion.

The second issue, the potential interaction of TREC prices with the current RPS noncompliance penalty, is not an appropriate subject for evidentiary hearings. The Commission has an extensive record in this proceeding and its predecessors, including the parties' many submissions, the information presented at the workshop, Energy Division staff's post-workshop "straw proposal" for a TREC system, and a prior staff white paper, Renewable Energy Certificates and the California Renewables Portfolio Standard Program (April 20, 2006).<sup>7</sup> As several parties opposing the hearing request note, this record already includes a great deal of information about the economics and market practices of TREC markets in other states. This information is surely relevant to the Commission's decision about whether to authorize the use of TRECs for

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California Solar Energy Industries Association, and Recurrent Energy (jointly) all indicated their opposition to the hearing request.

<sup>7</sup> Found at <http://www.cpuc.ca.gov/PUBLISHED/REPORT/55606.htm>.

California RPS compliance. But, as CEERT points out, no additional information about the potential behavior of a California TREC market will be available unless and until the Commission actually authorizes such a market, and LSEs, generators, and third parties start using it.

Based on the hearing request, the written oppositions, and the comments of the parties at the PHC, an evidentiary hearing would largely consist of contrasting opinions of experts about what might happen in California, based on their interpretations of what has happened elsewhere. This would merely be duplicative of the workshop presentations and party comments. The parties' opinions, theories, and projections of future events have already been afforded ample scope in their pre- and post-workshop comments and reply comments.

I therefore conclude that evidentiary hearings are not necessary, and deny TURN's request.

### **Summary of Remaining Issues**

The issues remaining to be addressed in this proceeding are:

- Developing price benchmarks for evaluating utilities' short-term RPS procurement contracts and bilateral RPS procurement contracts of any length;
- Completing the integration of SMJUs' special characteristics into the RPS program;
- Developing the MPR for 2008 and exploring changes in the MPR methodology for 2008 and later years; and
- Deciding whether to authorize the use of TRECs for California RPS compliance and, if TRECs are authorized, setting up the system for their use.

The issue of the use of a procurement entity (*see* § 399.14(f)) will be entertained only on presentation of a motion with a detailed proposal and rationale, not later than May 1, 2008. This deadline is sufficiently in advance of

the projected December 31, 2008 termination date of this proceeding to allow for adequate party comment and Commission consideration.

### **Schedule**

The schedule set forth below is intended to provide for the orderly and expeditious resolution of all issues remaining in this proceeding. The April Memo, using the 24-month schedule for this proceeding in the OIR (*see* § 1701.5), set a completion date of April 2008 for this proceeding. The Amended Memo noted that in view of the complexities associated with implementing any REC trading system that the Commission might adopt, it might be necessary to amend the scoping memo in the future to extend the date for completing this proceeding.

In view of the current schedule for WREGIS implementation and the complexity of the other tasks for this proceeding, I conclude that an extension of this proceeding to December 31, 2008 would further the fair and efficient determination of the issues. The assigned ALJ may issue any rulings necessary to set specific dates and other requirements for any workshops, hearings, filings, or other activities determined to be necessary to resolve the issues identified in this second amended scoping memo.

First quarter 2008	Proposed decision on price benchmarks for short-term and bilateral contracts
First quarter 2008	Proposed decision on participation of SMJUs
First quarter 2008	Energy Division workshop on 2008 MPR, including pre-workshop comments
Second quarter 2008	Post-workshop comments and reply comments on 2008 MPR
Second or third quarter 2008	Proposed decision on 2008 MPR
Second or third quarter 2008	Draft resolution calculating 2008 MPR (prepared by Energy Division staff)
Second quarter 2008 <sup>8</sup>	Proposed decision on tradable RECs
On motion of parties interested, not later than May 1, 2008.	Consideration of use of procurement entities for RPS procurement

The principal hearing officer may, for good cause shown, alter this schedule, so long as no such changes would extend the schedule past December 31, 2008.

**Category of Proceeding**

This ruling does not alter the determination in the April Memo that this is a ratesetting proceeding.

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<sup>8</sup> Tasks on TRECs are also related to the status of WREGIS and coordination with the CEC.

**Assignment of Principal Hearing Officer**

ALJ Anne E. Simon and ALJ Burton Mattson are co-assigned to this proceeding. Either ALJ Simon or ALJ Mattson may act as principal hearing officer.

**Ex Parte Rules**

*Ex parte* communications are restricted as set forth in Rules 8.2 and 8.3.

**IT IS RULED** that:

1. The scope of the proceeding is as set forth herein.
2. The schedule for this proceeding is as set forth herein.
3. The principal hearing officer may be either Administrative Law Judge (ALJ) Simon or ALJ Mattson.
4. This ruling does not alter the prior determination that this is a ratesetting matter.
5. *Ex parte* communications are restricted in accordance with Rules 8.2 and 8.3 of the Commission's Rules of Practice and Procedure.

Dated February 25, 2008, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey  
Assigned Commissioner