

AES/cmf 10/27/2010



FILED

10-27-10
01:36 PM

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)

**ADMINISTRATIVE LAW JUDGE'S RULING
GRANTING MOTION REQUESTING COMMENT PERIOD FOR THE REVISED
PROPOSED DECISION OF COMMISSIONER PEEVEY**

Background

On October 19, 2010, the Alliance for Retail Energy Markets (AReM), the California Manufacturers and Technology Association, Commerce Energy, Inc., the Direct Access Customer Coalition, Pilot Power Group, Inc., Shell Energy North America, (US) LP, and Walmart Stores, Inc. filed the Motion of the Alliance for Retail Energy Markets, the California Manufacturers and Technology Association, Commerce Energy, Inc., the Direct Access Customer Coalition, Pilot Power Group, Inc., Shell Energy North America, (US) LP, and Walmart Stores, Inc. Requesting Comment Period for the Revised Proposed Decision of Commissioner Peevey: Decision Modifying Decision 10-03-021 Authorizing Use of Renewable Energy Credits for Compliance with the California Renewables Portfolio Standard and Lifting Stay and Moratorium Imposed by Decision 10-05-018 (Comment Motion; parties collectively, AReM). AReM's simultaneous request that the time for responses to the motion be

shortened was granted in part. Responses were filed October 22, 2010 by Pacific Gas & Electric Company (PG&E) and The Utility Reform Network (TURN). No replies to the responses were allowed.

The Comment Motion requests that additional comment be allowed on the proposed decision (PD) on petitions for modification of Decision (D.)10-03-021, which was mailed for comment August 25, 2010. Comments on the PD were filed on September 27, 2010, and reply comments were filed on October 4, 2010. The PD appeared on the Commission's business meeting agenda of October 14, 2010, when it was held to the meeting of October 28, 2010. The most recent version of the PD, prepared for the October 28, 2010 Commission meeting, is Revision 3, which may be found at http://162.15.7.24/word_pdf/AGENDA_DECISION/125381.pdf.

Discussion

AReM contends that parties should be allowed to submit additional comments because the current PD¹ is now significantly different from the PD on which comments were submitted in three respects:

1. The current PD applies the temporary limit on the use of tradable renewable energy credits (TRECs) for compliance with the renewables portfolio standard (RPS) in D.10-03-021 to electric service providers (ESPs), as of the effective date of D.10-03-021.

¹ The Comment Motion references Revision 2 of the PD, which was prepared for the October 14, 2010 Commission meeting. A number of editorial errors in Revision 2 have been corrected in Revision 3, the most current revision.

2. The current PD reduces the temporary TRECs usage limit to 30% of the RPS annual procurement target.
3. The current PD extends the temporary TRECs usage limit to December 31, 2013.

AReM asserts that these changes represent such a significant departure from the PD as mailed that comments addressing the changes should be allowed. PG&E argues in opposition that each change cited by AReM was made in response to comments on the PD, and thus no additional comment is required. PG&E also claims that additional comment will merely delay the issuance of the PD as a Commission decision, without adding any value to the many rounds of comments already filed about TRECs over the years. TURN supports an additional comment period. TURN, however, wants the focus of additional comment to be not on ESPs, but on the utilities' projected RPS procurement and the actual effect of the policies enunciated in the PD on utilities' RPS compliance, as well as on compliance with the Air Resources Board's recently adopted renewable energy standard.

PG&E makes a strong argument that further delay in finalizing the Commission's authorization of the use of TRECs for RPS compliance and the associated rules for the use of TRECs is unnecessary. However, since the Comment Motion was filed, the Alternate Decision of Commissioner Grueneich (Alternate) was served on October 25, 2010. Comments may be filed within 20 days of the service of the Alternate, in accordance with Rule 14.3(a) of the Commission's Rules of Practice and Procedure. Pursuant to Pub. Util. Code § 311(e) and Rule 15.1(e), the Alternate and the PD will appear on the agenda of a Commission business meeting not earlier than December 2, 2010. Thus, some

further delay in deciding the petitions for modification of D.10-03-021 will occur whether or not additional comment on the PD is allowed.

Nevertheless, now is not the time for extensive additional comments on the PD, which addresses proposed modifications of a Commission decision issued in March 2010 after more than two years of consideration of issues related to TRECs. The Comment Motion should therefore be granted, but with limits as to the scope, length, and timing of the supplemental comments to be allowed.

- The supplemental comments should address only Section 3.9 and related ordering paragraphs of Revision 3 of the PD, which may be found at:
http://162.15.7.24/word_pdf/AGENDA_DECISION/125381.pdf.
- Supplemental comments should be limited to 8 pages and supplemental reply comments should be limited to 5 pages.
- In order to ensure that all parties potentially interested in the supplemental comments receive them, supplemental comments and reply comments should be filed both in this proceeding, Rulemaking (R.)06-02-012, and R.08-08-009 (RPS administration).
- In order to ensure that allowing supplemental comments does not delay the Commission's consideration of the PD, supplemental comments and reply comments should be due prior to the comments on the Alternate Decision of Commissioner Grueneich.

IT IS RULED that:

1. The Motion of the Alliance for Retail Energy Markets, the California Manufacturers and Technology Association, Commerce Energy, Inc., the Direct Access Customer Coalition, Pilot Power Group, Inc., Shell Energy North America, (US) LP, and Walmart Stores, Inc. Requesting Comment Period for the Revised Proposed Decision of Commissioner Peevey: Decision Modifying Decision 10-03-021 Authorizing Use of Renewable Energy Credits for Compliance with the California Renewables Portfolio Standard and Lifting Stay and Moratorium Imposed by Decision 10-05-018 is granted, with conditions.

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated October 27, 2010, at San Francisco, California.

/s/ CRISTINE FERNANDEZ
Cristine Fernandez

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event.