

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
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Agenda ID #9884
Alternate to Agenda ID #9721
Ratesetting

TO PARTIES OF RECORD IN RULEMAKING 06-02-012

Enclosed is the Alternate Proposed Decision of Commissioner Dian M. Grueneich to the Proposed Decision of Commissioner Michael R. Peevey previously mailed to you. This cover letter explains the comment and review period and provides a digest of the alternate decision.

When the Commission acts on this agenda item, it may adopt all or part of it as written, amend or modify it, or set aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Public Utilities Code Section 311(e) requires that an alternate to a proposed decision or to a decision subject to subdivision (g) be served on all parties, and be subject to public review and comment prior to a vote of the Commission.

Parties to the proceeding may file comments on the alternate proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3 opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Simon at aes@cpuc.ca.gov and Commissioner Grueneich's advisor Michael Wheeler at mmw@cpuc.ca.gov. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ JANET A. ECONOME for
Karen V. Clopton, Chief
Administrative Law Judge

KVC:oma

Attachment

**Digest of Differences Between
Commissioner Michael R. Peevey's Proposed Decision and the
Alternate Proposed Decision of Commissioner Dian M. Grueneich**

ATTACHMENT

The major differences between this Alternate Decision of Commissioner Dian Grueneich and the Proposed Decision of President Peevey are:

1. The Alternate denies the April 12, 2010, Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E) Joint Petition for Modification of Decision 10-03-021 (utility petition) and the April 15, 2010 Independent Energy Producers Association's (IEP) Petition for Modification of Decision 10-03-021 (IEP petition).
2. The alternate modifies D.10-03-021 to eliminate the expiration dates for the tradable renewable energy credit (TREC) usage cap and price cap.
3. The alternate requires that all signed RPS procurement contracts submitted to the Commission for approval between May 6, 2010 and the effective date of this decision be re-filed in compliance with D.10-03-021.
4. The alternate directs SCE, PG&E, and SDG&E to comply with D.10-03-021 (March 11, 2010), in all respects other than those modified by the Alternate Decision.

(END OF ATTACHMENT)

Decision **ALTERNATE PROPOSED DECISION OF COMMISSIONER
GRUENEICH** (Mailed 10/25/2010)

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)

**DECISION ON PETITIONS FOR MODIFICATION OF DECISION 10-03-021
AUTHORIZING USE OF RENEWABLE ENERGY CREDITS
FOR COMPLIANCE WITH THE CALIFORNIA
RENEWABLES PORTFOLIO STANDARD**

1. Summary

This decision denies the April 12, 2010, Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company Joint Petition for Modification of Decision (D.) 10-03-021 and the April 15, 2010 Independent Energy Producers Association's Petition for Modification of D.10-03-021. This decision modifies D.10-03-021 to eliminate the expiration date for the Tradable Renewable Energy Credit usage cap and price cap. This decision lifts the stay on D.10-03-021 as well as the moratorium on Commission approval of certain Renewables Portfolio Standard contracts, both imposed by D.10-05-018.

2. Background

The Commission issued Decision (D.) 10-03-021 on March 15, 2010, with an effective date of March 11, 2010. On April 12, 2010 Southern California Edison

Company (SCE), San Diego Gas & Electric Company (SDG&E), and Pacific Gas and Electric Company (PG&E) filed the Joint Petition for Modification of Decision (D.) 10-03-021 (utility petition) and the Joint Motion of Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company to Shorten Time to Respond to Petition for Modification of Decision 10-03-021 and for an Expedited Decision and the Motion of Southern California Edison Company and San Diego Gas & Electric Company for Stay of Decision 10-03-021 (joint stay motion).

On April 14, 2010, the assigned Commissioner issued the Assigned Commissioner's Ruling Setting Schedule for Consideration of Joint Petition for Modification of Decision 10-03-021 and Joint Motion for Stay of Decision 10-03-021 (ACR). The ACR shortened the time for responses and replies to the joint stay motion and for responses and replies to the utility petition.

On April 15, 2010, the Independent Energy Producers Association (IEP) filed the Petition of the Independent Energy Producers Association for Modification of Decision 10-03-021 Authorizing Use of Renewable Energy Credits for Renewables Portfolio Standard (RPS) Compliance (IEP petition). IEP also filed the Motion of the Independent Energy Producers Association to Shorten Time with its petition. The Administrative Law Judge's Ruling Granting Motion of the Independent Energy Producers Association to Shorten Time (April 16, 2010) aligned the timing of consideration of the IEP petition with that of the utility petition.

Responses to the joint stay motion were filed April 21, 2010.¹ SCE filed a reply to the responses to the joint stay motion on April 23, 2010. In D.10-05-018, the Commission stayed D.10-03-021 on its own motion, pending the resolution of the two petitions for modification. D.10-05-018 also instituted a temporary moratorium on approval of any RPS procurement contracts for compliance with the RPS program signed after May 6, 2010 (the effective date of the stay decision) that would be defined under D.10-03-021 as transactions transferring only renewable energy credits (RECs).

Responses to the utility petition and the IEP petition were filed May 4, 2010.² SCE, PG&E, and SDG&E filed a joint reply to the responses to the utility petition on May 10, 2010.

3. Discussion

3.1. Petitions for Modification of D.03-10-021

The utility petitioners and IEP failed to raise any new facts, evidence or arguments that were not available to the Commission in March 2010, or indeed

¹ Responses to the joint stay motion were filed by the Alliance for Retail Energy Markets (AReM); Center for Energy Efficiency and Renewable Technologies; City and County of San Francisco (CCSF); PG&E; Shell Energy North America (Shell); Sierra Pacific Industries; The Utility Reform Network (TURN); Union of Concerned Scientists (UCS); and Western Power Trading Forum (WPTF).

² Responses to the petitions for modification were filed by AReM; Bloom Energy; California Independent System Operator (CAISO); California Wind Energy Association (CalWEA); CCSF; Division of Ratepayer Advocates (DRA); Green Power Institute (GPI); Iberdrola Renewables, Inc. (Iberdrola); LS Power Associates, L.P. (LS Power); Large Scale Solar Association (LSA); Mountain Utilities and Bear Valley Electric Service (jointly; collectively, MU); NextEra Energy Resources (NextEra); Renewable Energy Coalition; SCE; Sempra Generation; Shell; Sacramento Municipal Utility District (SMUD); Solar Alliance; TURN; UCS; WPTF; and Zephyr Power Transmission, LLC and Chinook Power Transmission, LLC (jointly; collectively, Zephyr).

the entire 2½ year period that the TRECs issue has been considered by this Commission. The petitions are denied.

3.2. Closure on Actions Taken by D.10-05-018

With the resolution of the petitions for modification, the stay on D.03-10-021 imposed by D.10-05-018 is no longer warranted. In addition, the moratorium on Commission approval of RPS contracts signed after May 6, 2010 imposed by D.10-05-018 is terminated as of the effective date of this decision. All contracts for compliance with the renewables portfolio standard submitted after May 6, 2010 must be re-filed to comply with D.10-03-021. All new contracts for compliance with the renewables portfolio standard that would be defined under D.10-03-021 as transactions transferring only RECs may now be submitted beginning on the effective date of this decision.

3.3. Expiration Date of the TREC Usage and Price Cap

D.10-03-021 provided guidance to utilities that no more than 25% of the MWh used by PG&E, SCE, or SDG&E to meet the Annual Procurement Target (APT) in any year may be in the form of TRECs, beginning with the 2010 compliance year. D.10-03-021 also adopted a price cap of \$50 TREC (the penalty amount translated from MWh to TRECs). The 25% usage limit and the \$50 price cap allows significant use of TREC-only procurement yet bounds the risks ratepayers are asked to bear in this nascent TREC market, and ensures that bundled contracts are the source of the majority of RPS procurement in any year. Lastly, D.10-03-021 imposed an automatic sunset date of December 31, 2011 unless the Commission acts to extend or otherwise modify it. This decision modifies D.10-03-021 to eliminate the sunset date for the price cap and 25% limit in meeting the APT until it is superseded by a Commission decision or an act of the Legislature.

Two new developments since the March 2010 decision warrant eliminating the sunset date. First, the stay of D.10-03-021 and the length of time required to resolve the petitions for modification has resulted in a seven month delay in the implementation of D.10-03-021. That decision required Energy Division to prepare a report on the status of the TRECs market and the use of TRECs for RPS compliance to be provided to the Commission within 16 months of the effective date of D.10-03-021. The report will contain recommendations on whether the Commission should review, modify, or extend the TRECs usage and price caps and was to be used by the Commission as the basis for a decision on whether to amend the TRECs program. Even if D.10-03-021 had not been stayed, the time allotted for preparation and review of the report by Energy Division would have made it extremely difficult, if not impossible, for the Commission to reach a reasoned decision on whether the TRECs usage and price caps should be changed before the December 31, 2011 sunset date. Given the extended delay in the implementation of D.10-03-021, the timelines are now impossible.

Second, in adopting its 33 percent renewable electricity standard (RES), the California Air Resources Board (CARB) announced its intent to harmonize its RES with the TRECs rules adopted by this Commission through a new rulemaking that will be commenced 30 days after the Commission's final TRECs decision.³ We agree with comments filed by TURN on the Assigned Commissioner's Proposed Decision that allowing the usage and price caps to sunset after one year will yield further uncertainty in California's renewable

³ CARB Resolution 10-23.

energy market and hamper the ability for the Commission and CARB to “harmonize” their regulatory efforts.

The Commission cannot and should not take any further actions on TRECs until it has Energy Division’s report in hand and has carefully reviewed the state of the TRECs market and the utilities’ RPS compliance. If changes are appropriate based on solid and contemporary evidence, the Commission can at that time determine whether further modifications are warranted. It is unwise at this time to impose an arbitrary sunset date when a process is already in place to review the value of TRECs to ratepayers and the State of California. Ordering Paragraphs 19 and 21 of D.10-03-021 are herein modified to read:

19. The ~~temporary~~ limit on the use of tradable renewable energy credits for compliance with the California renewables portfolio standard shall exist indefinitely ~~terminate December 31, 2011~~, unless the Commission acts to review, ~~extend, or~~ modify it, or to terminate the limit ~~prior to its expiration~~.

21. The ~~temporary~~ limit on the price paid by an investor-owned utility for tradable renewable energy credits procured through contracts for tradable renewable energy credits only for compliance with the California renewables portfolio standard shall exist indefinitely ~~terminate December 31, 2011~~, unless the Commission acts to review, ~~extend, or~~ modify it, or to terminate the limit ~~prior to its expiration~~.

4. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Anne E. Simon is the assigned Administrative Law Judge for this portion of this proceeding.

5. Comments on Proposed Decision

The alternate of Commissioner Grueneich in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission’s Rules of Practice and

Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

Findings of Fact

1. Petitioners did not raise any new facts to support their petitions.
2. With the resolution of the petitions for modification, the stay imposed in D.10-05-018 is no longer necessary.
3. Contracts submitted after May 6, 2010 must be re-filed to comply with D.10-03-021.
4. New contracts for compliance with the renewables portfolio standard may now be submitted beginning on the effective date of this decision.

Conclusions of Law

1. The petitions for modification should be denied.
2. Ordering Paragraphs 19 and 21 of D.10-03-021 should be modified.

O R D E R

IT IS ORDERED that:

1. The Joint Petition of Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company for Modification of Decision 10-03-021, filed April 12, 2010, is denied.
2. The Petition of the Independent Energy Producers Association for Modification of Decision 10-03-021 Authorizing Use of Renewable Energy Credits for Renewables Portfolio Standard Compliance is denied.
3. The stay of Decision (D.) 10-03-021 imposed by D.10-05-018 is dissolved, as of the effective date of this decision.

4. The temporary moratorium imposed by Decision (D.) 10-05-018 on Commission approval of any procurement contracts for compliance with the renewables portfolio standard program signed after May 6, 2010 that would have been defined under D.10-03-021 as transactions transferring only renewable energy credits is ended, as of the effective date of this decision.

5. All contracts signed by utilities and submitted after May 6, 2010 must be re-filed in compliance with Decision 10-03-021.

6. New contracts for compliance with the renewables portfolio standard that would be defined under Decision 10-03-021 as transactions transferring renewable energy credits only may now be submitted beginning on the effective date of this decision.

7. The limit on the use of and price paid for tradable renewable energy credits for compliance with the California renewables portfolio standard exist indefinitely until the Commission acts to modify it, or until it is superseded by an act of the Legislature.

8. Rulemaking 06-02-012 remains open.

This order is effective today.

Dated _____, at San Francisco, California.

