

**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.

R.06-02-012

**POST-WORKSHOP REPLY COMMENTS OF
THE ALLIANCE FOR RETAIL ENERGY MARKETS
ON TRADABLE RENEWABLE ENERGY CREDITS**

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In accordance with the Administrative Law Judge’s Ruling Requesting Post-Workshop Comments on Tradable Renewable Energy Credits (“Ruling”) issued by Administrative Law Judge (“ALJ”) Anne E. Simon on October 16, 2007, the Alliance for Retail Energy Markets (“AReM”) respectfully submits these reply comments.¹

I. INTRODUCTION

AReM is heartened to note that nearly all of the parties that submitted post-workshop comments strongly support, and no parties oppose, allowing load-serving entities (“LSEs”) to use tradable renewable energy credits (“TREC”) for compliance with the California Renewables Portfolio Standard (“RPS”). These organizations represent virtually all interests, including those of various classes of load-serving entities (“LSEs”), generators, developers, marketers, large customers, environmental groups, and consumer advocates. As noted in AReM’s joint post-workshop comments with the Western Power Trading Forum (“WPTF”), TREC) are a useful and

¹ AReM is a California non-profit mutual benefit corporation that was formed by electric service providers that are active in California’s direct access market. The positions taken in this filing represent the views of AReM and its members but not necessarily those of the affiliates of its members with respect to the issues addressed herein.

much needed flexible compliance tool for ESPs and other LSEs.² Southern California Edison Company echoed this view in its comments, stating, “Given the importance of the State’s RPS goals and the current challenges facing LSEs with regard to RPS compliance, the additional flexibility provided by RECs is an important addition to the RPS program that should be authorized by the Commission.”³

Even the least enthusiastic proponent of RECs, The Utility Reform Network (“TURN”), acknowledges that “TRECs offer certain benefits,” though it echoed Staff’s observation that allowing the use of TRECs for RPS compliance will primarily benefit ESPs.⁴ However, all of the various LSEs that submitted comments indicated that they view TRECs as an important flexible compliance tool. And PG&E directly countered Staff’s (and TURN’s) view on this issue: “PG&E does not agree with the staff’s statement that RECs will help small LSEs more than large LSEs comply with the RPS in the near term.”⁵ Thus, TURN is clearly in the minority in suggesting that ESPs stand to benefit the most among LSEs from being allowed to use TRECs for compliance.

TURN is also skeptical as to whether creating a market for TRECs will lead to new renewable generation development and solve existing transmission problems. However, the Independent Energy Producers Association (“IEP”), which represents merchant power plant developers, expressly noted that a TRECs market will play an important part in spurring the development of new projects:

If tradable RECs were permitted, then renewable facilities would have three distinguishable/unbundled products to offer to the marketplace: energy, capacity,

² AReM and WPTF Post-Workshop Comments, p. 1.

³ SCE Post-Workshop Comments, p. 2.

⁴ TURN Post-Workshop Comments, p. 3.

⁵ PG&E Post-Workshop Comments, p. 4.

and environmental attributes. Some consumers/LSEs may desire all three products and seek a “bundled” deal. Others, e.g. an entity sufficient in either energy or RA capacity, may only want a portion of the 3-product portfolio. Providing for tradable RECs would allow the developer to bundle and/or unbundle the commodities as sought by the LSEs. From a developer perspective, this enhanced product differentiation and market flexibility will enhance the market value of the generation facility, improve financing, and make more viable the project as a whole.⁶

AReM fully agrees with IEP’s views regarding the valuable role that TRECs play in the development of new renewable projects. In fact, demonstrable evidence exists from other states with RPS requirements that allowing the use of RECs for compliance can result in the development of new renewable projects. For example, one of AReM’s member Constellation NewEnergy, has entered into numerous contracts for RECs (as well as energy and capacity) with new facilities over the past few years, including:

1. Horizon Wind Energy, 198 MW, Bloomington Illinois, 18-year contract;
2. Reddington Mountain Wind, ME, 54 MW, Reddington, Maine, 10-year contract;⁷
3. Forward Wind, 30 MW facility, Somerset County, Pennsylvania, 10-year;
4. Ameresco, 7 MW Land Fill Gas (“LFG”) (two projects) Delaware, 10-year contract;
5. Commonwealth Energy Bedford, 3.2 MW LFG, New Bedford, MA, 10-year contract;
6. Ameresco, 2 MW LFG facility, Stafford County, Virginia, 10-year contract;
7. Ameresco, 1 MW LFG, Northampton, MA, 10-year contract; and
8. Brightfields/City of Brockton, MA, 400kW solar facility, 20-year contract.

⁶ IEP Post-Workshop Comments, p. 7.

⁷ The Reddington Mountain Wind project has to date not been given siting approval.

In addition, the importance of RECs isn't solely limited to traditional renewable facilities. Bear Valley Electric adds: "Distributed generation (DG) from renewable resources is one source of RECs in the near term. . . . The ability of the owners of these resources to sell RECs will increase incentives for development of new renewable resources, while also supplementing the number of RECs available in the market."⁸ And notwithstanding TURN's skepticism, another clear benefit of TRECs that was clearly identified in post-workshops concerns the relief of transmission constraints. For example, PG&E observed:

[A] REC program would help alleviate the need for certain in-state transmission system upgrades since it would no longer be necessary to have the capability to transmit power from renewable generation projects to points all over the state. Instead, the underlying power from a renewable project in southern California, for example, could remain in southern California while the RECs associated with the project could be purchased by an entity in another part of the state without the need to physically get the power to the distant buyer of the RECs or for the buyer to make alternate commercial arrangements.⁹

Given all of these important benefits, the Commission should have no hesitation about allowing ESPs and other LSEs to start using TRECs for RPS compliance immediately. In the following sections, AReM replies to comments on various implementation issues for REC trading, including potential sources of unbundled (and thus tradable) RECs, proposed TREC usage limits, earmarking of unbundled RECs from contracts with undeveloped facilities, and the start date for the use of TRECs.

⁸ Bear Valley Electric Post-Workshop Comments, p. 6.

⁹ PG&E Post-Workshop Comments, pp. 3-4.

II. REPLY COMMENTS

A. There Are Numerous Potential Sources of Unbundled RECs.

Information included in the Post-Workshop Comments of various parties indicates that there are a number of potential sources of unbundled RECs that would be available to help LSEs meet their RPS requirements (provided the Commission allows the use of unbundled RECs for compliance). For example, AReM and WPTF noted that at least 1100 GWh of RECs from distributed generation (“DG”) facilities installed as a result of the California Solar Initiative should be available by 2011. Bear Valley Electric also cited DG as a near-term source of RECs. PG&E stated that DG is a potential source of RECs, and the availability can be increased further by some minor changes to the WREGIS operating rules to allow the smallest solar projects to participate. SCE also identified photovoltaic DG as the largest source of uncommitted RECs at this time, noting that the only way to monetize the inherent value of these RECs associated with these projects is through selling them to an LSE or to a third party.

Additionally, PG&E noted that some renewable projects seek multiple buyers to mitigate market risk and counter-party risk. UCS believes there are 4000 MW of potential projects at different stages of development in the Pacific Northwest that could be a future source of renewable generation and RECs for California; allowing the unbundling of RECs will greatly allow this future Pacific Northwest renewable power, and other out-of-state renewable power for that matter to be utilized by California’s LSEs. And SCE identified the merchant renewable market as a potential source of uncommitted RECs, noting “it is certainly conceivable that the authorization to unbundle and trade RECs will stimulate the development of this type of project . . .”¹⁰ (Renewable energy can be difficult to schedule due to its intermittent nature when sold as

¹⁰ SCE Post-Workshop Comments, p. 8.

a bundled product, but scheduling can be more easily accomplished if the power is sold to one entity and the RECs are sold to multiple entities.)

AReM views the purchase and sale of RECs from these potential sources, and in particular the RECs associated with DG facilities, as an important way to foster renewable development and expand the renewable market, in addition to providing LSEs with a much needed flexible RPS compliance tool.

B. TREC Usage Limits Should Not Be Different Than Those for Bundled Short-Term Energy Contracts.

In AReM's Post-Workshop Comments, we pointed out that the Straw Proposal proposes burdensome TREC usage limits, in that expected deliveries *during the compliance year* must be 0.25% of the prior year's sales. This is in contrast to the requirement adopted in D.07-05-028 for the use of shorter-term contracts (< 10 years), which requires LSEs to enter into long-term contracts (> 10 years) with existing renewable facilities (on-line date prior to January 1, 2005) or to purchase energy from new generation facilities (on-line date after January 1, 2005) that *over the contract term* total at least 0.25% of the LSE's prior year's sales. This unnecessary change will limit the amount of RECs available in the trading market by requiring more MWh to be contracted for under long-term contracts, thus taking the associated RECs out of any potential market, which will result in decreased market liquidity and increased volatility of REC prices. AReM and a number of other parties, including Bear Valley Electric, Calpine, CEERT, IEP, Pilot Power, and San Diego Gas & Electric Company ("SDG&E") believe that the requirements for using RECs should not be any different than the existing requirements under D.07-05-028 for using shorter-term bundled contracts.

Notably, several parties representing renewable developers oppose the proposed TREC usage limits. For example, Calpine stated, “The minimum quota proposed in the Staff Straw Proposal is an inefficient and ineffective way to ensure new renewable energy resources are built.”¹¹ And CEERT recommends that “the Commission should conclude that the minimum quantity or quota applied to tradable RECs, especially at the inception of its use as an RPS-compliant option, should be set at zero to increase market liquidity and participation.”¹²

SDG&E also opposes Staff’s proposed change to the minimum quota adopted in D.07-05-028, and provides additional reasons that support AReM’s position on this matter:

To the extent that TRECs are similar to, and for the most part, interchangeable with, short-term physical renewable power transactions, imposing the same usage limit on TRECs as currently exists for short-term power should not create any unique barriers for LSEs participating in the TREC market. However, any proposal that would limit the use of TRECs – such as the proposed long-term contracting requirement – will reduce the size and availability of this additional means of project funding. Therefore, to the extent that this limit reduces TREC liquidity, it will consequently limit some of the benefit to be derived from this innovative product.¹³ GPI and PG&E also oppose the new requirements in principle, but accept the Staff’s proposal without providing a rationale. GPI states, “We would prefer that there be no limits on the use of tradable RECs, but we recognize that the limits proposed in the straw proposal, which appear to be modified on the limits the Commission has previously imposed on the use of short-term RPS contracts, are not onerous.”¹⁴ However, GPI provides no justification to support its conclusion that these new limits are “not onerous.” The same is true for PG&E, which states, “PG&E does not agree that a REC usage limit is necessary . . . Nevertheless, the staff’s Straw Proposal to establish REC usage limits by setting a minimum quota mechanism similar to the one set forth in D.07-05-028 for short term contracts is acceptable to PG&E. Consistent with

¹¹ Calpine Post-Workshop Comments, p. 8.

¹² CEERT Post-Workshop Comments, p. 9. CEERT goes on to suggest modifications to the wording of the TREC Usage Limits, which includes the new wording “aggregated annual expected deliveries”. AReM do not support his modification, and instead recommends that the requirements for the use of RECs, whether short-term or long-term, follow the same minimum quota framework set forth in D.07-05-028, which requires that each year an LSE must demonstrate on a “contracted for” basis that it has met the minimum quota adopted in D.07-05-028, i.e., short- or long-term contract with a new facility or long-term contract with a new facility for an amount greater than 0.25% of prior year’s retail sales before short-term contracts or REC contracts can be counted in the same compliance year.

¹³ SDG&E Post-Workshop Comments, p. 12.

¹⁴ GPI Post-Workshop Comments, p. 5.

D.07-05-028, PG&E assumes that the Straw Proposal intends for the RECs usage limit to be the same for all classes of LSEs.”¹⁵

The Union of Concerned Scientists (“UCS”) proposes imposing an even higher quota before tradable RECs can be used. However, they recognize that differences between LSEs may support different requirements: “Although UCS generally supports consistent application of RPS rules to all LSEs, UCS continues to believe that it may be appropriate for the Commission to grant lower minimum quotas on REC trading to certain classes of LSEs if the Commission finds that applying different limits on different LSE classes is more likely to meet the goals of the RPS program than a single limit applied uniformly to all LSEs.”¹⁶ AReM opposes the adoption of different minimum quotas for different LSEs because it would only add another layer of complexity to compliance. Instead, AReM urges the Commission to simply adopt the same minimum quota previously adopted in D.07-05-028.

That being said, Bear Valley Electric points out several reasons why the new TRECs Usage Limits should not apply to small LSEs. As Bear Valley Electric aptly points out, “risk is inversely related to the size of the LSE.”¹⁷ That is because most new renewable generation is committed to large IOUs even before construction. Bear Valley continues: “Small utilities . . . are not in a position to purchase a project’s entire output, which makes them less attractive buyers to a developer. . . . [U]nlike large LSEs, the small LSE must either find partners to participate in a larger scale project, or it must attempt to procure a share of a larger project contingent upon another buyer procuring the remainder. Either path is time-consuming, complicated, expensive, and dependent upon locating similarly situated entities with similar goals. . . . In this context, tradable RECs can be an important tool for facilitating RPS compliance

¹⁵ PG&E Post-Workshop Comments, p. 12.

¹⁶ UCS Post-Workshop Comments, p. 11.

¹⁷ Bear Valley Electric Post-Workshop Comments, p. 4.

by smaller LSEs. The ability to trade RECs at the volume required rather than procuring a fleet of green generation resources will be critical to enabling small LSEs to meet their RPS targets.”¹⁸

For all of these reasons, the TREC Usage Limits should not be different than those for shorter-term bundled contracts, or should not apply to smaller LSEs at all. AReM notes further that D.07-05-028 also allowed “excess” purchases for purposes of meeting the minimum quota to be banked forward without limitation. This provides an LSE with greater flexibility in contracting by allowing one to two larger contracts to be signed, rather than being forced to make small compliant purchases each year. AReM strongly believes this same “banking forward” flexible compliance tool should be adopted for the TREC usage limits.

C. REC Earmarking Should Be Allowed.

In our Post-Workshop Comments, AReM stated its disagreement with the Straw Proposal’s recommendation to prohibit the earmarking of tradable RECs or forward REC contracts. A number of other organizations supported AReM in this regard, including Pilot Power, SCE, and SDG&E. One of the key points to remember is that earmarking does not relieve an LSE of its obligation to meet the RPS; even though an LSE may use earmarking as a flexible compliance tool, the LSE will still need to purchase sufficient power or unbundled RECs to meet the RPS requirements.

Also, SCE noted that the prohibition of earmarking unbundled RECs will discourage the development of new renewable merchant projects, as the developers of these projects will be unable to realize the two independent revenue streams of energy/capacity and RECs. AReM shares SCE’s concern. Since the Commission allows earmarking of future bundled deliveries, the Commission should allow reciprocal treatment of future unbundled REC deliveries. This will

¹⁸ Bear Valley Electric Post-Workshop Comments, pp. 2 and 4-5.

provide renewable project developers greater opportunity and flexibility to finance their projects, and open up a larger pool of potential buyers and sellers of their unbundled energy/capacity and RECs.

The Straw Proposal rejects earmarking for unbundled RECs because it states that it will be difficult to make a viability assessment, and will be difficult to administer. AReM agrees with SCE's arguments countering these objections; an assessment of an unbundled transaction will be no more burdensome or speculative compared with a bundled transaction, and tracking earmarked unbundled RECs is no more difficult than tracking bundled RECs that have been earmarked: "Both would require the ongoing measurement of energy at the meter, which is already being performed."¹⁹

SDG&E points out that preventing earmarking of TRECs is contradictory, when the Straw Proposal "allows for unbundled RECs to be traded from Commission-approved projects that have not been built"²⁰ Indeed, this is the case as the Straw Proposal allows LSEs to "unbundle subsequent years of an earmarked bundled contract."²¹ This contradiction indicates that the Staff actually realizes that it makes sense to treat bundled renewable energy and tradable RECs in a similar manner, as they can be interchangeable.

D. The Start Date for the Use of TRECs Should Be January 1, 2008.

In our Post-Workshop Comments, AReM noted that there is no need to wait until January 1, 2009, to begin using unbundled RECs for RPS compliance. We continue to support that position. Except for GPI, other parties did not offer specific comments on the choice of this start date. GPI states, "Beginning in 2008, or at the latest 2009, RECs, in the form of WREGIS

¹⁹ SCE Post-Workshop Comments, p. 12.

²⁰ SDG&E Post-Workshop Comments, p. 13.

²¹ Staff Straw Proposal, pp. 5-6.

Certificates, will become the principal means of demonstrating compliance with the California RPS.”²² As the author of GPI’s comments serves on the WREGIS Governing Board, his perspective that WREGIS and RECs will become the *de facto* method of demonstrating compliance with the RPS should be noted. Related to this, CEERT recommended previously that since WREGIS was launched on June 25, 2007 and has already been declared operational by the California Energy Commission (“CEC”), the use of RECs for compliance should be allowed.²³

AREM sees no need to delay the use of RECs for demonstrating compliance, and urges the Commission to allow the use of TRECs for RPS compliance beginning with the 2008 compliance year. Public Utilities Code Section 399.16 (a)(1) provides that the Commission can allow the use of RECs for RPS compliance once it concludes that that WREGIS 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 Coordinating Council (WECC).” WREGIS has been operational since June 25, 2007. Moreover, it’s AREM’s understanding that effective January 1, 2008, the CEC will require all RPS-certified facilities and all LSEs subject to RPS compliance to register and participate in WREGIS. Therefore, AREM sees no reason why the Commission cannot declare WREGIS to be operational and allow unbundled RECs to be tracked and verified through WREGIS for RPS compliance. If the Commission should feel that the five months to date that WREGIS has been operational is not sufficient for it to make a reasonable determination that the requirements laid out in PUC Section 399.16(a)(1) have been satisfied, the Commission should allow the use of

²² GPI Post-Workshop Comments, p. 2.

²³ CEERT Pre-Workshop Comments, dated August 17, 2007, p. 8

unbundled RECs by no later than July 1, 2008; this provides the Commission with another six months to gauge whether any problems with WREGIS have been identified and resolved, while affording LSEs with the latter six months of 2008 to secure any needed RECs for RPS compliance.

III. CONCLUSION

AReM urges the Commission to make a positive determination to allow the use of RECs in California's RPS compliance market. Rather than inserting additional requirements on where and when RECs can be used, the unbundled RECs from RPS-certified facilities should be treated the same as, and therefore fully substitutable for, short-term bundled energy contracts. The use of RECs should be enabled as soon as possible, preferably as of January 1, 2008, and no later than July 1, 2008, since the WREGIS system is currently operational, and beginning on January 1, 2008, will be the *de facto* method of measuring RPS compliance.

Respectfully submitted,

-----/s/-----

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Date: December 5, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **Post-Workshop Reply Comments of the Alliance For Retail Energy Markets on Tradable Renewable Energy Credits** on all parties of record in proceedings R.06-02-012, R.06-05-027, R.06-03-004, and R.06-04-009, by serving an electronic copy on their email addresses of record and by mailing a properly addressed copy by first-class mail with postage prepaid to each party for whom an email address is not available.

Executed on December 5, 2007, at Arcadia, California.

-----/s/-----

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