

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)

ORDER DISMISSING REHEARING APPLICATIONS
OF DECISION (D.) 11-01-025

I. BACKGROUND

In Decision (D.) 10-03-021, we authorized the procurement and use of tradable renewable energy credits (“TREC’s”) for compliance with the California renewables portfolio standard (“RPS”) program. On April 12, 2010, Southern California Edison Company (“Edison”), Pacific Gas and Electric Company, and San Diego Gas and Electric Company jointly filed a Petition for Modification of D.10-03-021. On April 15, 2010, the Independent Energy Producers Association also filed a Petition for Modification of D.10-03-021. On May 6, 2010, we stayed D.10-03-021 on our own motion and placed a temporary moratorium on approval of any RPS contracts for TREC (or REC-only) transactions pending resolution of the petitions for modification. (*Decision Staying Decision 10-03-021 and Implementing Temporary Moratorium on Commission Approval of Certain Contracts* [D.10-05-018] (2010) __ Cal.P.U.C.3d __.)

In D.11-01-025 (or “Decision”), we denied the petitions for modification of D.10-03-021 with the exception of one technical modification, and also lifted the stay and temporary moratorium imposed by D.10-05-018.

Applications for rehearing of D.11-01-025 were filed by the Alliance for Retail Energy Markets (“AReM”), Edison, the Independent Energy Producers Association (“IEP”), and Iberdrola Renewables, Inc. (“Iberdrola”).

In its rehearing application, AReM claims that the Commission erred in its definition of bundled and TREC transactions since the definition allegedly results in discriminatory treatment of in-state versus out-of-state generators. AReM contends that this alleged discrimination imposes a burden on interstate commerce in violation of Article I, section 8 of the United States Constitution (“Commerce Clause”).

Edison argues that the Commission has committed legal error for the following reasons: (1) D.11-01-025 allegedly usurps the California Energy Commission’s authority, and thus, exceeds the scope of the Commission’s jurisdiction; (2) the Commission’s reclassification of out-of-state bundled transactions as REC-only and related actions violate the Commerce Clause; and (3) the adoption of different RPS rules for different load-serving entities violates various California statutes.

In its rehearing application, IEP alleges that D.11-01-025 violates the Commerce Clause.¹

Iberdrola’s application for rehearing raises a Commerce Clause challenge. Specifically, it argues that the Decision is unlawful because it establishes a state regulation and system that discriminates against and unduly burdens interstate commerce in violation of Article I, section 8, clause 3 of the United States Constitution.

Responses to the rehearing applications were filed by: The Utility Reform Network; the City and County of San Francisco; Marin Energy Authority; and jointly by the Alliance for Retail Energy Markets, the Direct Access Customer Coalition, the School Project for Utility Rate Reduction, the Western Power Trading Forum, Commerce Energy, Inc., Shell Energy North America, (US), LP, and 3 Phases Renewables.

For the reasons discussed below, we find the rehearing applications to be moot. Therefore, we dismiss the rehearing applications.

¹ IEP’s rehearing application also challenges D.10-03-021. We decline to consider IEP’s allegations regarding D.10-03-021. IEP did not file a timely application for rehearing of D.10-03-021 and is now precluded from challenging the findings of that decision. (See Pub. Util. Code, § 1731.) There are several pending rehearing applications of D.10-03-021. The applications for rehearing of D.10-03-021 will be disposed of in another decision we are issuing today.

II. DISCUSSION

As a preliminary matter, the rehearing applications constitute no more than an impermissible collateral attack of D.10-03-021. The rehearing applicants make various allegations based on the Commission's definition of a bundled versus a REC-only transaction, as well as based on the various rules, such as the temporary usage limit and price cap, that we adopted for REC-only transactions. However, these are all determinations we made in D.10-03-021, not in the Decision. Although the Decision extended the temporary usage limit and price cap, the Decision did not otherwise modify these aspects of D.10-03-021. To the extent that any of the rehearing applicants did not timely seek rehearing of D.10-03-021,² they are now foreclosed from challenging the determinations in D.10-03-021. (See Pub. Util. Code, § 1731.)³

In any event, the allegations raised in the rehearing applications are now moot in light of the subsequent enactment of SB 2 (1X).⁴ SB 2 (1X) requires implementation of higher RPS targets and modifies many other aspects of RPS program implementation, including rules for TRECs. Among other things, this legislation modifies: the definition of a REC to eliminate the delivery requirement and other changes (Pub. Util. Code, § 399.16, subd (b)); usage limitations on REC-only transactions (Pub. Util. Code, § 399.16, subd. (c)); rules for REC contracts executed prior to June 1, 2010 (Pub. Util. Code, § 399.16, subd. (d)); and REC trading and banking rules (Pub. Util. Code, § 399.21, subd. (a)(6)). The new RPS regime set forth in SB 2 (1X), including the new categories of RPS-eligible resources and usage limitations, applies to RPS

² Edison is the only rehearing applicant that also filed a rehearing application of D.10-03-021.

³ Subsequent section references are to the Public Utilities Code, as amended by Senate Bill 2 (Stats. 2011, 1st Ex. Sess. 2011-12, ch. 1) ("SB 2 (1X)"), unless otherwise specified.

⁴ Governor Brown signed SB 2 (1X) on April 12, 2011. Since the legislation was enacted during the 2011-2012 First Extraordinary Session, it will "go into effect on the 91st day after adjournment of the special session at which the bill was passed." (Gov. Code, § 9600, subd. (a).) The 2011-2012 First Extraordinary Session has not yet adjourned.

compliance obligations as of the 2011 compliance year. (Pub. Util. Code, § 399.15, subd. (b).)

On May 5, 2011, we instituted a rulemaking (Rulemaking (R.) 11-05-005) to implement these recent statutory changes, including the changes required to rules regarding TREC's. Since we will be reviewing the TREC rules in the context of the new legislation, the challenges to the TREC rules set forth in D.10-03-021 and D.11-01-025 have been rendered moot. Thus, the applications for rehearing of D.11-01-025 shall be dismissed.

III. CONCLUSION

For the foregoing reasons, we find the rehearing applications of D.11-01-025 to be moot.

THEREFORE, IT IS ORDERED that:

1. The rehearing applications of D.11-01-025 are dismissed.

This order is effective today.

Dated September 8, 2011, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners