

Decision \_\_\_\_\_

**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 STAYING DECISION 10-03-021  
AND IMPLEMENTING TEMPORARY MORATORIUM  
ON COMMISSION APPROVAL OF CERTAIN CONTRACTS**

**Summary**

This decision stays Decision (D.) 10-03-021, which authorizes the use of tradable renewable energy credits (TREC) for compliance with the renewables portfolio standard (RPS) program, defines TREC transactions for RPS purposes, and sets out market and compliance rules for the use of TREC. D.10-03-021 will be stayed pending resolution of 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) and the Petition of the Independent Energy Producers Association for Modification of Decision 10-03-021 Authorizing Use of Renewable Energy Credits for RPS Compliance (filed April 15, 2010) (together Petitions for Modification). The stay is instituted on the Commission's own motion and goes into effect on the effective date of this decision. Additionally, pending resolution of the Petitions for Modification, this decision places a temporary moratorium on approval of any RPS contracts signed after the date of this decision that would be defined under D.10-03-021 as REC-only transactions.

**Procedural Background**

The Commission issued Decision (D.)10-03-021 on March 11, 2010. On April 12, 2010, Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E) filed 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 (utility petition). Filed with the utility petition were 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 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 utility petition and the IEP petition (together Petitions for

Modification) are due May 4, 2010; any replies to the responses are due May 10, 2010.

Responses to the joint stay motion were filed and served April 21, 2010.<sup>1</sup> SCE filed and served a reply to the responses to the joint stay motion on April 23, 2010.

As authorized by Rule 14.6(c)(1) of the Commission's Rules of Practice and Procedure,<sup>2</sup> the public comment period on the proposed decision is waived because temporary injunctive relief is under consideration.

### **Discussion**

The parties' arguments on the joint stay motion have been informative and useful in our consideration of a stay of D.10-03-021. This stay, however, is on our own motion and for our own reasons, as explained more fully below.

The Petitions for Modification raise significant questions about D.10-03-021 and seek wide-ranging changes to that decision. The utility petition seeks to:

- revise the criteria for determining what transactions are bundled transactions and what transactions are for renewable energy credits (RECs) only;
- apply the criteria only to contracts that are submitted for Commission approval after the effective date of the decision;

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<sup>1</sup> Responses were filed by the Alliance for Retail Energy Markets; Center for Energy Efficiency and Renewable Technologies; City and County of San Francisco; PG&E; Shell Energy North America; Sierra Pacific Industries; The Utility Reform Network; Union of Concerned Scientists; Western Power Trading Forum; and Sempra Generation.

<sup>2</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. References to sections are to the Public Utilities Code.

- eliminate the temporary limit on use of tradable renewable energy credits (TRECs) for compliance with the renewables portfolio standard (RPS) by the large utilities (or, at the least, apply it to all RPS-obligated load-serving entities and ensure that it sunsets at the end of 2011);
- expand the rules for “earmarking”<sup>3</sup> TREC contracts; and
- remove the requirement that the new standard terms and conditions set out in D.10-03-021 be added to RPS procurement contracts that have been submitted for Commission approval.

The IEP petition seeks to:

- revise the criteria for determining what transactions are bundled transactions and what transactions are REC-only transactions, proposing revisions different from those suggested in the utility petition; and
- expand the review of the least-cost best-fit methodology for RPS bid evaluation and set a time for its completion.

The Petitions for Modification call for extensive changes to a long and detailed decision. D.10-03-021 includes a number of rules, requirements, and processes for the use of TRECs for RPS compliance. Many sections of D.10-03-021 are connected to other sections, or to other Commission decisions, or to rules of other organizations, such as the California Energy Commission and the Western Renewable Energy Generation Information System. Any modifications to the decision will therefore need to be consistent with a range of requirements, both of this Commission and other agencies.

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<sup>3</sup> Earmarking is a flexible compliance mechanism by which deliveries from a future RPS procurement contract may be designated to make up, within three years, shortfalls in RPS procurement in the same year in which the earmarked contract was signed.

Commission consideration of the Petitions for Modification will thus be complex. The implications of any action the Commission takes on the petitions, whether making essentially all the requested changes, or no changes, or some changes but not others, will also be complex, and not easily predictable.

The Commission seeks an effective way to reduce the complexity and effort involved in both the consideration of the Petitions for Modification and the implementation of whatever decision the Commission ultimately makes on them. Reducing the number of transactions and regulatory actions that must be taken into consideration – and possibly reviewed or revised--based on the outcome of the Commission's review of D.10-03-021 is likely to aid in minimizing complexity and uncertainty during the pendency of the Petitions for Modification.

We therefore determine that, pending resolution of the Petitions for Modification, the public interest would be served by staying D.10-03-021. The stay of this decision would, among other things, temporarily suspend the initial steps to use TRECs for RPS compliance. Additionally, because of the ambiguity and regulatory uncertainty created by the pending Petitions for Modification, we place a temporary moratorium on Commission approval of any RPS contracts signed after the date of this decision that would be defined under D.10-03-021 as REC only transactions. We do not believe it would be prudent to allow new contracts to be signed and approved by the Commission until a greater level of certainty has been achieved regarding the rules that will apply to these transactions. The moratorium will remain in effect until the Petitions for Modification have been addressed. Consequently, exercising our authority under Pub. Util. Code § 701, we stay D.10-03-021 and initiate a temporary moratorium as described above.

**Scope of Stay**

This stay has its primary effect on the authorization of the use of TRECs for RPS compliance made by D.10-03-021. By staying that decision, the Commission stays the authorization, as well as the rules, requirements, procedures, and reporting that follow on the authorization of the use of TRECs.

As discussed above, a principal purpose of this stay is to protect the public interest by minimizing the number and scope of actions with respect to the RPS program that may be subject to review, reconsideration, and/or revision once the Commission acts on the Petitions for Modification. One area of the RPS program on which the stay will have a readily foreseeable impact is the consideration of the 2010 RPS procurement plans of the three large utilities.<sup>4</sup> Pursuant to ordering paragraph 33 of D.10-03-021, the three large utilities are required to amend their 2010 RPS procurement plans to address each utility's anticipated plans for the use of TRECs to meet their RPS procurement obligations. In accordance with the Administrative Law Judge's Ruling of March 19, 2010, the large utilities provided those amendments on April 9, 2010. If the Commission conditionally approves the 2010 RPS procurement plan of any utility during the pendency of the stay set out in this decision, such approval would not constitute authorization to use TRECs for RPS compliance. Rather, it would express the Commission's conditional approval of the utility's plan for the use of TRECs, once the use of TRECs is again authorized. Alternatively, the Commission could decide not to conditionally approve utility plans for the use of TRECs until after the use of TRECs is again authorized.

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<sup>4</sup> These are PG&E, SCE, and SDG&E.

This stay and temporary moratorium does not invalidate any actions taken on the basis of D.10-03-021 prior to the effective date of this decision.

Because this stay and moratorium will be in place pending resolution of the Petitions for Modification, we need not address the issues raised in the joint stay motion, and thus, the motion is rendered moot.

### **Waiver of Comments on Proposed Decision**

Because temporary injunctive relief is under consideration, the 30-day public review and comment period required by Section 311 of the Public Utilities Code is waived, as authorized by Rule 14.6(c)(1) of the Commission's Rules of Practice and Procedure.

### **Assignment of Proceeding**

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

### **Findings of Fact**

1. D.10-03-021 affects many aspects of the RPS program and the renewable energy market.
2. The two Petitions for Modification of D.10-03-021 raise significant issues about and seek major changes to that decision.

### **Conclusions of Law**

1. In order to reduce the number and complexity of transactions and regulatory actions that may need to occur at the conclusion of the Commission's consideration of the two Petitions for Modification, a stay of D.10-03-021 should be issued, in addition to a temporary moratorium on Commission approval of any contracts signed after the date of this decision that would be defined under D.10-03-021 as REC-only transactions.

2. The temporary stay and moratorium should remain in effect pending resolution of the two Petitions for Modification.

3. Because a stay has been issued, the joint stay motion should be denied as moot.

4. In order to provide clarity and certainty, this decision should be effective today.

## **O R D E R**

### **IT IS ORDERED** that:

1. Decision 10-03-021 is stayed, pending resolution of 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, and the Petition of the Independent Energy Producers Association for Modification of Decision 10-03-021 Authorizing Use of Renewable Energy Credits for RPS Compliance.

2. A temporary moratorium is placed on Commission approval of any contracts signed after the issuance of this decision that would be defined under D.10-03-021 as REC-only transactions pending resolution of 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, and the Petition of the Independent Energy Producers Association for Modification of Decision 10-03-021 Authorizing Use of Renewable Energy Credits for RPS Compliance.

3. The temporary stay and moratorium imposed by this order do not invalidate any actions taken on the basis of Decision 10-03-021 prior to the effective date of this decision.



4. The Motion of Southern California Edison Company and San Diego Gas & Electric Company for Stay of Decision 10-03-021 is denied as moot.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.