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BEFORE THE CALIFORNIA ENERGY COMMISSION

Implementation of Renewables
Investment Plan Legislation
and
Implementation of Renewables
Portfolio Standard Legislation

Docket No. 02-REN-1038
Renewable Energy Program

Docket No. 03-RPS-1078
RPS Proceeding

Draft 2006 Verification Report re:
CPUC TRECs Decision

**Comments of the Center for Energy Efficiency and Renewable Technologies
On Draft 2006 Verification Report re: CPUC TRECs Decision**

April 21, 2010

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Introduction

The Center for Energy Efficiency and Renewable Technologies (CEERT) respectfully submits these comments in response to the California Energy Commission's (CEC's) request for comments on how the California Public Utilities Commission's (CPUC's) Decision (D.) 10-03-021 "affects public comments on the CEC's Draft 2006 Procurement Verification Staff Report (CEC-300-2009-006-SD ('Draft 2006 Verification Report'))."¹ By D.10-03-021, the CPUC authorized the use of tradable renewable energy credits (TRECs) for compliance with California's Renewable Portfolio Standard (RPS) Program.

CEERT Position

The CEC and CPUC have a shared responsibility for the implementation of the RPS Program. Both have authority to adopt rules and criteria that are critical to those seeking to sell and buy RPS-compliant generation. Avoiding conflict in these rules is imperative to achieving California's ambitious 20% and 33% RPS goals.

For these reasons, it is appropriate that the CEC is seeking to reconcile or determine the impacts of a recent CPUC decision (D.10-03-021) on its report verifying RPS compliance. However, CEERT wishes to bring to the CEC's attention the fact that D.10-03-021 has a more fundamental impact on the rules developed by the CEC for determining RPS "eligibility" in the first place. Further, D.10-03-021 is now the subject of a motion to stay its effectiveness, two petitions for modification, and four applications for rehearing, all of which raise concerns or challenges as to its meaning and its potential conflict with the law, in particular, the CEC's and CPUC's respective jurisdictions to implement the RPS Program. These pleadings reflect that D.10-03-021, instead of encouraging RPS procurement, has created confusion and uncertainty that undermine RPS goals.

CEERT is among those that has filed an application for rehearing and responded in favor of a limited stay. However, it is not only CEERT's position that D.10-03-021 needs to be corrected as to legal error, but also that the CEC should take affirmative steps to hold a hearing on the "delivery" and "out-of-state" rules in its Eligibility Guidebook to address and resolve any conflicts between those rules and the CPUC's decision. This request was the subject of a letter sent by CEERT to the CEC on April 19, 2010. That letter is attached as Appendix A and incorporated herein.

As that letter states, good communications and coordination between the CEC and CPUC is imperative in their joint implementation of the RPS Program. In that regard, CEERT now believes that the requested hearing could actually serve a broader purpose *to the extent* that the CPUC modifies D.10-03-021 consistent with the law. Specifically, as part of that action, the CEC and the CPUC could proceed to hold a joint hearing to develop a joint record that can be used by both agencies to make changes, if needed, in their respectively-developed RPS rules and criteria on a consistent basis and record

¹ CEC Request for Comments (April 7, 2010), at p. 1.

and in a manner designed to incentive, not unduly restrict, renewable development and RPS compliance.

Conclusion

For the reasons stated above, CEERT urges the CEC to hold a hearing on its RPS eligibility rules in cooperation with the CPUC (as requested in Appendix A). As noted above, however, this hearing could and should serve the broader purpose of not only reconciling those rules to D.10-03-021, but providing a joint CEC-CPUC hearing process to create a record for determining changes, if any, needed in their respectively-developed RPS rules and criteria.

Respectfully submitted,

April 21, 2010

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APPENDIX A
CEERT Letter to CEC
April 19, 2010



*Center for Energy Efficiency & Renewable Technologies
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April 19, 2010

Commission Chair Karen Douglas
Commission Vice-Chair James D. Boyd
Commissioner Jeffrey D. Byron
Commissioner Anthony Eggert
Commissioner Robert Weisenmiller
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

RE: Docket # 03-RPS-1078 (Renewable Portfolio Standard (RPS)) /
Docket # 09-RENEW EO-01 (Renewable Energy (RENEW) Executive Order (EO))
Request for Public Hearing to Address RPS Delivery Eligibility Requirements

Dear Commissioners:

By this letter, in furtherance of Governor's Executive Order S-14-08 (33% RPS), the Center for Energy Efficiency and Renewable Technologies (CEERT) requests that the California Energy Commission (CEC) notice and move rapidly to hold a public hearing in its Docket #03-RPS-1078 and/or Docket #09-RENEW EO-01. The purpose of this hearing would be to address, in coordination with the California Public Utilities Commission (CPUC), needed revisions to the CEC's RPS Eligibility Guidebook¹ in response to CPUC Decision (D.) 10-03-021.²

The hearing being requested by CEERT differs from the CEC's current request for comments on "how, if at all" D.10-03-021 affects previous comments on the CEC's "Draft 2006 Procurement Verification Staff Report."³ By that notice, it does not appear to be the CEC's intention to hold a hearing on the underlying requirements or rules contained in its RPS Eligibility Guidebook, which is the subject of this request.

Introduction

CEERT has long participated before the CEC and CPUC on issues related to the implementation of California's Renewable Portfolio Standard (RPS) Program. CEERT's current request stems from its long-held position that the CEC and CPUC must coordinate closely, to ensure clarity and certainty in RPS rules to so that the RPS goals

¹ Commission RPS Eligibility Guidebook (Third Edition), CEC-300-2007-006-ED3-CMF) (January 2008) at <http://www.energy.ca.gov/2007publications/CEC-300-2007-006/CEC-300-2007-006-ED3-CMF.PDF>.

² D.10-03-021 was issued in the CPUC's RPS Rulemaking (R.) 06-02-012 on March 11, 2010.

³ The CEC's Request for Comments was posted on April 7; comments are due CEC Docket Nos. 02-REN-1038 and 03-RPS-1078 on April 21, 2010.

will be achieved. In our view, CPUC D.10-03-021 creates (i) a conflict between rules adopted by the CPUC and those adopted by the CEC, and thus (ii) uncertainty in the market that could have a chilling effect on needed renewable development and procurement going forward. The requested hearing would, therefore, be the first step toward resolving this conflict and clarifying applicable RPS rules.

CPUC D.10-03-021

On March 11, 2010, after considering 3 different Proposed Decisions over a period of two years, the CPUC finally authorized the procurement and use of tradable renewable energy credits (TRECs) by RPS-obligated load serving entities (LSEs) for compliance with California's RPS Program in D.10-03-021.⁴ This authorization was given, however, subject to restrictions that will be in place for at least two years.

Significantly, D.10-03-021 defines renewable energy procurement as "bundled" or "REC-only," and then states that "the three large" California investor owned-utilities (IOUs) "may use TRECs ("REC-only") transactions to meet no more than 25 percent of their annual RPS procurement obligations."⁵ With regards to the classification of "bundled" transactions, D.10-03-021 establishes the following criteria:

"The following types of transactions shall be treated as bundled transactions for purposes of compliance with the California renewables portfolio standard:

- "a. Transactions in which energy is acquired from a generator certified as eligible for the California renewables portfolio standard and the generator has its first point of interconnection with the Western Electricity Coordinating Council interconnected transmission system with a California balancing authority; and
- "b. Transactions in which energy is required from a generator certified as eligible for the California renewables portfolio standard and the energy from the transaction is dynamically transferred to a California balancing authority area."⁶

D.10-03-021 does note that "the requirements for delivery to California of RPS-eligible generation" are set forth in Pub.Res. Code §25741(a) and "elaborated in the *RPS Eligibility Guidebook*" issued by the CEC.⁷ It also cites the CEC guidebook's adopted examples of "contracting structures that would meet the RPS-delivery

⁴ See, California Public Utilities (PU) Code, §§399.11, et seq; California Public Resources (Pub.Res.) Code, §§25740, et seq.

⁵ D.10-03-021, at p. 4.

⁶ D.03-10-021, Ordering Paragraph 7, at pp. 97-98. The CPUC has scheduled a workshop for April 23 to consider whether another type of transaction ("firm path transmission") might be treated as "bundled" in the future. However, such expansion of the "bundled transaction" criteria adopted in D.10-03-021 would require another CPUC order, for which no date has been set.

⁷ D.10-03-021, at p. 14.

requirements,” including its determination regarding RPS-compliant out-of-state “firming and shaping” transactions that do “not constitute tradable RECs.”⁸

However, in its differentiation of “bundled” and “REC-only” transactions, D.10-03-021 will effectively re-classify certain transactions as “REC-only,” rather than as RPS “bundled” transactions as they are defined under the CEC’s “delivery” eligibility requirements. In addition, D.10-03-021 extends its adopted “classifications” of TREC versus “bundled” transactions not only to prospective transactions, but also to RPS procurement contracts already approved by the CPUC as “bundled” consistent with the CEC’s certification as such.⁹ Specifically, a transaction that meets the CEC’s “delivery requirements” for “out-of-state energy” that is “firmed” and/or “shaped,” even if approved by the CPUC and certified by the CEC as “bundled” prior to D.10-03-021, will now be considered as delivering RECs-only from the effective date of D.10-03-021 forward.

This re-classification of transactions in D.10-03-021 raises a serious question of what comprises a “bundled” transaction versus a TREC transaction when viewed in conjunction with the CEC rules. Furthermore, the change in classification to existing contracts only accentuates the constant moving target of California RPS rules. Such uncertainty in the market is likely to dampen needed renewable energy development in the West, rather than enhance it.

This matter is complicated by the fact that D.10-03-021 also includes “dynamic transfers” among “bundled” transactions. At this time, dynamic scheduling as currently implemented in the California Independent System Operator (CAISO) tariff contains Uninstructed Deviation Penalty (UDP) provisions that make participation in this program cost prohibitive for intermittent generators. Until a dynamic scheduling tariff is developed that does not unduly burden intermittent generators, there is no way for intermittent generators to participate in this program.

Urgent Public Hearing Request

In meeting either the 20% or 33% RPS, it is clear that uniformity and certainty in the rules applicable to RPS-eligible procurement are paramount. Unnecessary or confusing criteria imposed on RPS eligible procurement will have a chilling effect on needed development and procurement and, in turn, undermine California’s goals of increasing reliance on electricity generated from renewable resources and reducing greenhouse gas emissions.

At present, it appears that the CPUC’s decision and the CEC’s RPS eligibility rules, in particular those defining when and how RPS-eligible energy “may be delivered,” including whether and how “firming and shaping” transactions from out-of-

⁸ D.10-03-021, at pp. 14, 15, 29; CEC RPS Eligibility Guidebook (January 2008), at p. 23, n.2; emphasis added.

⁹ See, e.g., CPUC Resolution E-4192 (October 2, 2008), at p. 14 (http://docs.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/91720.pdf).

state renewable facilities should be treated, are in conflict. The CPUC's decision, however, is the subject of a motion to stay, petitions to modify, and applications for rehearing filed at the CPUC, and the CPUC is currently exploring other transactions ("firm path") that may qualify as "bundled." However, none of these actions change the terms of the CEC's Eligibility Guidebook or the fact that D.10-03-021 is currently effective law on the use of TRECs for RPS compliance by RPS-obligated load serving entities (LSEs).

Under these circumstances, CEERT believes that the CEC, in cooperation with the CPUC, should immediately address and resolve the apparent conflicts between D.10-03-021 and the CEC's eligibility rules. Communication and coordination between the CEC and CPUC is obviously necessary to achieve that outcome.

CEERT, therefore, requests that the CEC act quickly to coordinate and hold a joint hearing or workshop with the CPUC to reconsider its RPS delivery eligibility rules. Such action is completely appropriate to either CEC Docket #03-RPS-1078 (20% RPS) or Docket #09-RENEW EO-01 (33% RPS) or both and is consistent with the CEC's recent request for comments to determine the impacts of D.10-03-021 on its 2006 Procurement Verification Report.¹⁰

Conclusion

CEERT believes that its hearing request as described above is both timely and critical to ensure, and preserve, certainty in rules governing RPS-eligible procurement. Inconsistent rules or communications between the two state energy agencies charged with the responsibility to implement the RPS Program must be resolved to promote and realize California's renewable energy goals. To ensure a cooperative resolution of these issues before both the CEC and CPUC, CEERT has also copied CPUC Commissioners and the Governor's Office on this letter.

Sincerely,



V. John White
Executive Director

cc: Governor Arnold Schwarzenegger
CPUC Commissioners (Peevey, Grueneich, Bohn, Simon and Ryan)

¹⁰ See, n. 3, *supra* (re CEC Comment Request in Docket Nos. 02-REN-1038 and 03-RPS-1078. See also, CEC Docket No, 03-RPS-1078, Meeting Notice (June 29, 2009) at (http://www.energy.ca.gov/2009_energy/policy/notices/2009-06-29_workshop.html); Docket No. 09-Renew EO-01, Meeting Notice (March 12 and 17, 2009) at http://www.energy.ca.gov/33by2020/notices/2009-03-12+17_NOTICE_MEETINGS.PDF.