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## California Public Utilities Commission Issues Proposed Decision on Tradable Renewable Energy Credits

On December 23, 2009, the California Public Utilities Commission (CPUC) issued a revised Proposed Decision<sup>1</sup> that, if adopted, would create a tradable renewable energy credit (REC) market for the first time in the state, allowing load-serving entities (LSEs) to meet a portion of their compliance obligations under the state's Renewables Portfolio Standard (RPS) through the use of tradable RECs. Currently, the state requires LSEs to purchase renewable energy directly from generators delivering energy into California. The decision would allow unbundled RECs to be purchased from anywhere in the western region, as long as they are registered in the Western Renewable Energy Generation Information System (WREGIS).

### Comment Period and Next Steps

Comments on the Proposed Decision are due January 19, 2010, may not exceed 15 pages, may be filed electronically or by hard copy and must be served on all parties to the proceeding. Reply comments are due January 25, 2010. Administrative Law Judge Anne Simon will then address the comments and

<sup>1</sup> Administrative Law Judge Anne E. Simon, R.06-02-012. The Proposed Decision may be viewed at <http://docs.cpuc.ca.gov/proceedings/R0602012.htm>.

revise the Proposed Decision as necessary. The Commission may vote on the Proposed Decision as early as its February 4, 2010, meeting.

### Context

California's RPS, one of the most stringent in the nation, was established in 2002 pursuant to Senate Bill 1078, requiring retail sellers of electricity to source 20 percent of their sales from renewable sources by 2017. This target was strengthened in 2006 by Senate Bill 107, moving that 20 percent target deadline up to December 31, 2010. The RPS is jointly implemented by the CPUC and the California Energy Commission (CEC). Executive orders issued by Governor Arnold Schwarzenegger on November 17, 2008 and September 15, 2009 set a new target of 33 percent by 2020, though this has not yet been implemented in law.<sup>2</sup> The RPS previously envisioned compliance with the use of RECs bundled with electricity; in other words, retail electric sellers were

<sup>2</sup> Executive Order S-21-09 requires the California Air Resources Board (CARB) to adopt regulations to implement this target by July 31, 2010, under its AB 32 authority. The Executive Order shifts primary jurisdiction over RPS implementation in 2011 from the CPUC and the CEC to the CARB. However, CARB may delegate some implementation responsibilities to the CPUC.

required to prove that they had purchased renewable energy directly from the generator. RECs were not able to be traded separately from power.

The CPUC has considered the merits of an unbundled, tradable REC program for several years. The concept was given the legislature's blessing in 2006 in Senate Bill 107.<sup>3</sup> Two earlier versions of this Proposed Decision were issued on October 29, 2008, and March 26, 2009. This version incorporates comments received from stakeholders.

The stated primary purposes of adopting a tradable REC system are to improve the RPS program by increasing options and flexibility for compliance, to support the development of new renewable generation and potentially to lower the costs of compliance.

#### Definition of a "REC"

The definition of a California "REC" was determined by the CPUC in an August 2008 decision.<sup>4</sup> The definition is similar to other states' definitions in that a REC in California contains the renewable and environmental attributes of one megawatt-hour (MWh) of energy generated from an eligible renewable source. The definition specifically includes any attributes that may be claimed from avoided

<sup>3</sup> The CPUC distinguishes between "unbundled RECs" and "tradable RECs" — a distinction that does not generally exist in the rest of the country. "Unbundled RECs" refer to renewable attributes that can be sold only once, to the load-serving entity, whereas "tradable RECs" refer to fully fungible and tradable RECs that can be sold to anyone, multiple times. This distinction is mostly academic, and not relevant once the tradable system is adopted.

<sup>4</sup> D.08-08-028.

greenhouse gas emissions due to displacing fossil fuel-generated electricity from the grid, but specifically excludes attributes related to greenhouse gas emission destruction or reduction from burning biomass or biogas (including landfill gas) as a fuel. Unlike some other states, no premium is available for certain types of RECs, like RECs resulting from solar generation.

#### Key Features of Proposed Decision

- **Who can trade or generate RECs:** Does not restrict who can trade RECs. Renewable energy that is generated anywhere in the region covered by WREGIS (i.e., not just in California) is eligible to be issued a tradable California REC.
- **Use of WREGIS:** Requires use of the WREGIS database to track, trade and retire RECs. WREGIS covers the entire Western Interconnection and has been operational since 2007.
- **Price cap:** Imposes a temporary reviewable price cap of \$50/REC for purchases by all investor-owned utilities (IOUs). The price cap is equal to the current noncompliance penalty for RPS procurement obligations.<sup>5</sup> The price cap aims to reduce the chances of price volatility and high prices, particularly given the likelihood of demand exceeding supply in the early years of the program. In effect, IOUs will not be able to submit for compliance, or obtain cost recovery for, any

<sup>5</sup> D.03-06.071. Other states generally do not set a separate price cap; the de facto price cap in most states is the level of the alternative compliance penalty or payment.

REC that costs more than \$50 to acquire. The price cap will be reviewed within 24 months. Other states in the western region have effective cost caps that range from \$0/MWh to \$150/MWh (for small solar generation).

- **Banking:** Allows for three-year banking of both tradable RECs and bundled RECs that are tracked in WREGIS; RECs must be used for compliance by the end of the third calendar year after the date of generation. Bundled RECs previously could be banked indefinitely. Other states that incorporate banking adopt a period between 18 months and five years.
- **Compliance use limit:** Imposes an annual 40 percent limit on compliance use of tradable RECs beginning with the 2010 compliance year for the three large investor-owned utilities (San Diego Gas & Electric, Pacific Gas and Electric and Southern California Edison). The remaining compliance obligation must be sourced from RECs bundled with energy. The goal is to maintain some price stability while still encouraging new generation. This percentage has been increased from 5 percent in an earlier Proposed Decision. The limit will be reviewed within 24 months.
- **Contract standard terms and conditions:** Requires compliance entities to incorporate three nonmodifiable standard terms and conditions in their REC contracts:

- The 2008 definition of a REC
- The requirement to utilize WREGIS tracking
- The requirement that contracts with non-multijurisdictional regulated utilities are subject to CPUC approval
- **Contract approval:** Requires CPUC to review and approve all tradable REC contracts where one party is an IOU, to ensure they are consistent with RPS procurement plans and pricing restrictions. This process is currently in force for bundled REC contracts and will not be changed. Contracts may be submitted for review starting March 1, 2010. Prices and contract terms are kept confidential for three years but counterparty identity, REC quantity, generation source and location, and contract term are considered public information.
- **Timing:** Provides that only energy generated on or after January 1, 2008, is eligible to generate California tradable RECs.
- **PURPA QF restrictions:** Provides that Qualifying Facilities (QFs) under the Public Utility Regulatory Policies Act of 1978 with contracts executed after January 1, 2005, are ineligible to generate RECs. Those with contracts executed prior to January 1, 2005, can create RECs only if the contract explicitly addressed the ownership of RECs. Renewable energy from QFs may still be used meet RPS compliance obligations, but not as the basis for an unbundled or tradable REC.
- **Distributed generation:** Provides that owners of distributed generation own tradable RECs at the point of generation and can sell them, even if the owners do not participate in net metering, the California Solar Initiative, the Self-Generation Incentive Program or the New Solar Homes Partnership. However, systems must be at least one kilowatt to register with WREGIS (though WREGIS envisions aggregating solar PV rooftop installations).

The provisions most likely to be commented on by stakeholders and considered by the Commission are the question of whether generators may be located outside of California, the 40 percent compliance cap, and the \$50/REC price cap.

If you have any questions regarding this proceeding, please do not hesitate to contact us.

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