

On the Subject

Energy & Commodities Advisory

January 4, 2010

Interested parties are invited to file comments on the revised proposed decision by January 19, 2010, and reply comments will be due January 25, 2010.

The CPUC Issues Revised Proposed Decision Allowing Use of Tradable Renewable Energy Credits for RPS Compliance in California

On December 23, 2009, the California Public Utilities Commission (CPUC) issued a revised proposed decision (Revised PD) authorizing the use of unbundled and tradable renewable energy credits (TRECs) for compliance with the California renewable portfolio standard (RPS). Interested parties are invited to file comments on the Revised PD by January 19, 2010, and reply comments will be due January 25, 2010. The CPUC will take the comments into consideration when determining whether to adopt or modify the Revised PD.

The CPUC originally issued a proposed decision regarding TRECs on October 29, 2008 (and a revised proposed decision on March 26, 2009). See McDermott's On the Subject "California PUC Creates a Tradable REC Market for RPS Compliance" for a discussion of the original proposed decision. California's RPS requires that all load-serving entities serve 20 percent of their total retail electricity load from eligible renewable resources by December 31, 2010, and 33 percent by 2020. The Revised PD seeks to improve compliance opportunities for load-serving entities and to provide incentives for the construction of new RPS-eligible generation.

Like prior iterations of the CPUC's proposed decision, the Revised PD outlines the general rules for a TREC market and for the integration of the TRECs into the RPS flexible compliance program. However, the Revised PD makes three substantial revisions to the prior proposal. First, it increases the quantity of TRECs that the three largest investor owned utilities (IOUs) may use to meet their RPS requirements, from 5 percent to 40 percent

of their overall annual RPS obligation. Second, the Revised PD clarifies what transactions will be considered "REC only" (i.e., TREC) transactions subject to the 40 percent cap, and which transactions will be considered bundled renewable energy transactions. Specifically, a transaction will be considered a TREC transaction for RPS compliance purposes if it is a transaction to purchase TRECs only, or the transaction is for energy and RECs with an RPS-eligible renewable generator for which the first point of interconnection with the Western Electricity Coordinating Council (WECC) transmission system is not physically located within California (or within the California Independent System Operator or another California balancing authority area). Although this designation will not retroactively affect compliance years prior to the effective date of the decision, it will affect the designation of a contract for compliance years subsequent to the effective date—even with respect to contracts entered into prior to that date. Finally, the Revised PD amends the process for reviewing the temporary limit on the use of TRECs for RPS compliance and the price cap for TRECs used for compliance. It replaces the prior subjective and uncertain review process with a definitive time limit of two years within which the CPUC will review these limitations.

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