

## Client Alert.

---

May 11, 2010

# CPUC Suspends its New Rules on Tradable RECs

By Peter Hanschen

In March, the California Public Utilities Commission (CPUC) authorized the use of tradable renewable energy credits (TRECs) for use in the California Renewables Portfolio Standard (RPS) program. The RPS program requires investor-owned utilities, energy service providers, and community choice aggregators operating within the state to obtain 20 percent of their retail sales from renewable energy sources by 2010. Last week, the CPUC stayed its March decision on the use of TRECs, backtracking after hearing complaints from investor-owned utilities and developers that the new TREC rules were too strict.

A renewable energy credit (REC) is a certificate which verifies that one unit of energy has been generated from a renewable source. These certificates are used as an accounting tool to prove that electricity sellers have complied with the RPS program requirements.

In the unanimous March decision, the CPUC “unbundled” renewable energy contracts and established the structure for the TREC market. Previously, utilities were required to buy both the renewable energy and the RECs together as a single commodity, but under the new framework, they could trade RECs independent of the associated energy.

The CPUC limited the use of REC-only (or “unbundled”) transactions for RPS compliance to not more than 25 percent of an investor-owned utility’s annual procurement obligation. This temporary cap was set to expire at the end of 2011, and was intended to allow the CPUC to better understand the implications of unbundled REC trading. Until then, at least 75 percent of the utility’s annual procurement obligation had to come from the traditional “bundled” transactions.

In addition to establishing the cap, the March decision defined bundled transactions narrowly. Bundled transactions only included those deals that serve California load without needing intermediary energy transactions, which sometimes substitute non-renewable energy. While out-of-state energy could still qualify as bundled if the generator’s first point of interconnection with the Western Electricity Coordinating Council occurred at a California balancing authority or if the renewable energy was dynamically transferred to a California balancing authority, most transactions for out-of-state energy would be limited by the cap under the March decision.

Since issuing the TREC decision in March, the CPUC has received significant pushback, through applications for rehearing, petitions for modification, and negative feedback in its April workshops. Opponents to the March decision want the CPUC to broaden the scope of permissible out-of-state generation available for uncapped compliance purposes. They assert that dynamic transfers are not widely available and therefore are not a viable solution for California utilities. Furthermore, they assert that geographic diversity is necessary for balancing intermittent renewable energy sources, and out-of-state generation is a crucial part of the solution.

On May 6, in response to the utilities’ complaints, the Commissioners voted 4-1 to stay the March decision and issued a moratorium on new RPS contracts that the March decision would categorize as REC-only. The Commission will now consider the specific issues raised by the utilities and other opponents before clarifying the rules for the TREC market.

## Client Alert.

---

### **About Morrison & Foerster:**

We are Morrison & Foerster—a global firm of exceptional credentials in many areas. Our clients include some of the largest financial institutions, Fortune 100 companies, investment banks and technology and life science companies. Our clients count on us for innovative and business-minded solutions. Our commitment to serving client needs has resulted in enduring relationships and a record of high achievement. For the last six years, we've been included on *The American Lawyer's* A-List. *Fortune* named us one of the "100 Best Companies to Work For." We are among the leaders in the profession for our longstanding commitment to pro bono work. Our lawyers share a commitment to achieving results for our clients, while preserving the differences that make us stronger. This is MoFo. Visit us at [www.mofo.com](http://www.mofo.com).

*Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.*