

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)

REPLY COMMENTS OF THE UTILITY REFORM NETWORK ON THE
ALTERNATE PROPOSED DECISION OF COMMISSIONER GRUENEICH ON
THE USE OF RENEWABLE ENERGY CREDITS FOR COMPLIANCE WITH THE
CALIFORNIA RENEWABLES PORTFOLIO STANDARD PROGRAM



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**REPLY COMMENTS OF THE UTILITY REFORM NETWORK ON
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Pursuant to Rule 14.3 of the Commission Rules of Practice and Procedure, TURN submits these reply comments on the Alternate Proposed Decision (APD) of Commissioner Grueneich on the use of Tradable Renewable Energy Credits (TRECs) for compliance with the California Renewables Portfolio Standard (RPS) Program. As indicated in opening comments, TURN believes that the Commission should defer action on TREC limitations due to pending consideration of legislation that is almost certain to adopt different restrictions than those contemplated in this proceeding. Approving specific TREC limits at this juncture could destabilize efforts to achieve statutory authorization for a 33% RPS program and thereby extend the uncertainty regarding long-term TREC requirements. Such uncertainty means that retail sellers run the risk that some procurement transactions are ineligible to satisfy future requirements. Such an outcome would be bad for utilities, ratepayers and the Commission. If the Commission ignores this recommendation and instead chooses to adopt a TREC decision prior to legislative action, TURN urges the approval of the APD with the small modifications outlined in subsequent sections.

**I. CLAIMS ABOUT THE POTENTIAL IMPACT OF TREC LIMITATIONS
SHOULD BE DISREGARDED UNLESS ACCOMPANIED BY DATA**

Despite the flurry of protestations by SCE, PG&E and other parties about the potential impact of TREC limits on future procurement, none of these parties provide any actual data showing their current reliance on TREC contracts, the amount of remaining TREC procurement that could occur under the PD or APD, and the expected renewable net short requirements of each IOU. This glaring omission is inexcusable given the generic

claims of hardship offered in an attempt to persuade the Commission to adopt higher TREC limits.

Once again, TURN is the only party providing a snapshot of this information based on the latest RPS compliance reports and announced procurement transactions. The following table shows the contribution of approved and executed TREC contracts by each IOU toward RPS and Renewable Electricity Standard targets through the end of the decade:¹

	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
SDG&E	48.9%	47.4%	47.1%	46.8%	38.4%	37.8%	37.3%	31.5%	31.0%	25.9%
SCE	15.0%	17.7%	14.5%	12.9%	10.6%	7.3%	7.1%	6.1%	5.8%	4.8%
PG&E	27.1%	19.4%	17.7%	17.5%	14.5%	11.9%	11.8%	10.0%	9.9%	8.3%

As can be seen from this table, both SCE and PG&E have abundant headroom under the APD limits especially in the later years of the decade. While SDG&E would be precluded from executing additional TREC contracts (unless the Rim Rock transaction is not successful), this result is fair given that IOU's excessive reliance on TRECs to date.

II. THE TREATMENT OF FIRM IMPORTS FROM OUTSIDE THE CAISO REQUIRES FURTHER STUDY TO AVOID GAMING AND UNINTENDED CONSEQUENCES

IEP and Iberdrola argue that transactions providing energy from the project to the CAISO in real-time should count as bundled and not be subject to any TREC limits.² Iberdrola goes so far as to claim that the Commission has sufficient evidence to adopt

¹ This table makes two key assumptions: (1) a 100% success rate for all executed TREC contracts, and (2) Commission approval for all pending TREC contracts submitted via Advice Letter. All the data used to produce this table is public.

² IEP opening comments, pages 4-7.

specific criteria for such transactions based on a single workshop and comments submitted by a number of parties.³

While TURN recognizes that Iberdrola provided useful information in their workshop presentation, it is not reasonable for the Commission to adopt specific conditions and rules based on the limited record. TURN has concerns about whether the proposed verification rules (sought by Iberdrola and IEP) would allow eTags to be swapped and matched with unrelated generation being imported under legacy power contracts, or whether eTags could be traded separately from underlying physical power for the sole purpose of demonstrating compliance with such a standard. The workshops referenced in comments did not provide sufficient assurances that eTag shuffling could be prevented or that imports would be incremental.

When the CEC adopted its original guidelines on delivery from out-of-ISO resources, there was an insufficient understanding of the creative structures that could be developed in subsequent years. The Commission must learn from history and ensure that the rush to certify “firm imports” as bundled does not allow IOUs to concoct the same type of “mix and match” products that have characterized most of their recent TREC contracts. TURN therefore recommends that additional time be spent on this topic before embracing the suggestions made by parties with a strong financial interest in their adoption.

II. TREATMENT OF CONTRACTS APPROVED PRIOR TO MARCH 11, 2010

SCE claims that counting previously approved TREC contracts towards the limits “creates unacceptable regulatory uncertainty and would have profound negative effects on existing contracts”⁴. PG&E echoes this concern. Similarly, IEP claims that this

³ Iberdrola opening comments, page 3.

⁴ SCE opening comments, page 5.

element of the APD “disrupts the contracting parties’ commercial arrangements”⁵. Shell offers a more specific request -- that all contracts approved prior to March 11, 2010 should be “fully eligible for RPS compliance.”⁶

Despite having numerous opportunities to detail specific harms to existing contracts under the various TREC proposals, parties have failed to identify any particular contract that could suffer a material impairment. TURN has repeatedly pointed out the absence of concrete harms to the buyer or seller under any of these deals. In truth, these seemingly principled arguments are motivated only by the desire to increase the effective TREC limit for the IOUs.

There is a simple way to adjust the APD to respond to the particular concern. The Commission should classify all contracts approved prior to March 11, 2010 as bundled transactions and reduce the TREC allowance for each IOU downward (from 25%) based on the expected deliveries from these contracts over time. This modification would ensure that such contracts are “fully eligible” on par with any other bundled transaction while also preventing huge disparities in the practical TREC limitations across IOUs.

III. THE TREC LIMIT SHOULD NOT AUTOMATICALLY SUNSET

Many parties oppose the lack of an automatic sunset for the TREC limits in the APD. TURN reiterates the importance of this element based on the need to provide clear signals to all market participants and minimize uncertainty about future regulatory policy. Moreover, the California Air Resources Board has indicated its intent to harmonize the TREC rules adopted by the Commission with the procurement requirements in the Renewable Electricity Standard (RES). If the Commission indicates that the TREC limits automatically expire prior to the effective date of any RES

⁵ IEP opening comments, page 3.

⁶ Shell opening comments, page 2.

compliance obligations, the CARB may incorrectly surmise that there should be no TREC limitations under the RES. Such an outcome would effectively ignore the Commission's determinations in this proceeding.

The Commission can always revise the TREC limits in response to further developments and information provided by parties. Issuing a near-term sunset date will only encourage parties to stonewall further Commission action in order to run out the clock so that the restrictions will automatically expire. The Commission would be better served by requiring that any changes to TREC limits are affirmatively adopted at a later date if evidence demonstrates that higher percentages are justified.

IV. TREC LIMITS SHOULD BE APPLIED TO ELECTRIC SERVICE PROVIDERS AND COMMUNITY CHOICE AGGREGATORS

PG&E argues that the APD would violate state law if the TREC usage and price limits are applied only to the IOUs.⁷ TURN agrees with PG&E (in part) and urges the Commission to apply the TREC usage limits to all retail sellers. TURN does not agree that price caps are applicable to other retail sellers since their contracts are not subject to Commission approval. In addition, TURN urges the Commission to make the TREC limits applicable to ESPs and CCAs beginning in 2011.

Respectfully submitted,

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Dated: November 22, 2010

⁷ PG&E opening comments, pages 2-3.

CERTIFICATE OF SERVICE

I, Larry Wong, certify under penalty of perjury under the laws of the State of California that the following is true and correct:

On November 22, 2010, I served the attached:

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on all eligible parties on the attached list **R.06-02-012** by sending said document by electronic mail to each of the parties via electronic mail, as reflected on the attached Service List.

Executed this November 22, 2010, at San Francisco, California.

/S/
Larry Wong

Service List for R.06-02-012

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