

## WSGR ALERT

FEBRUARY 2011

### CALIFORNIA ENERGY REGULATORY UPDATE

The following is a summary of recent California energy regulatory news and new programs in store for 2011.

#### **Renewable Portfolio Standard Rules Approved**

After years of debate and numerous draft decisions, on January 13, 2011, the California Public Utilities Commission (CPUC) approved the use of Tradable Renewable Energy Certificates (RECs or TRECs) for compliance with California's Renewables Portfolio Standard (RPS) (see D.11-01-025). The long-awaited and controversial decision lifts the stay on the TRECs decision issued by the CPUC in March of 2010 (D.10-03-021) and ends the moratorium on the approval of power purchase agreements under the RPS classified as "REC-only."

The TRECs decision permits utilities to use TRECs that are procured and traded separately from associated energy for compliance with California's RPS under certain conditions, and sets forth the rules for procurement and trading of such TRECs. The TRECs decision included within its definition of "unbundled" or "REC-only" transactions both (1) transactions that convey only RECs and not the underlying energy, and (2) transactions conveying both energy *and* RECs for which the first point of interconnection to the Western Electricity Coordinating Council grid is not within a California balancing authority area or which do not "dynamically transfer" the energy into a California balancing authority area. Deliveries made prior to March 11, 2010, are not counted as REC-only transactions.

The TRECs decision limits the use of REC-only transactions to no more than 25 percent of the annual RPS procurement targets for each of the three major investor-owned utilities (IOUs)—Pacific Gas & Electric (PG&E), Southern California Edison (SCE), and San Diego Gas & Electric (SDG&E)—beginning with the 2010 compliance year. The decision contains a maximum price of \$50/REC and extends the sunset on this temporary limit on the amount and price of TRECs that may be used for RPS compliance to December 31, 2013. Transactions approved by the commission before March 11, 2010, will not be counted as REC-only if this would cause the IOU to exceed its 25 percent usage limit, except where there has been a change to the contract since it was approved that extends its expiration date or increases deliveries. Power purchase agreements (PPAs) signed by the IOUs but not yet approved by the CPUC prior to March 11, 2010, are subject to the limit.

The decision authorizes the CPUC's Energy Division to develop methods for reviewing dynamic transfer and firm transmission arrangements, and for inferring a price for RECs in transactions for both energy and RECs that do not meet the new definition of "bundled." It also requires information regarding whether renewable energy projects commenced operations before January 1, 2005, or before the execution date of the applicable PPA. And, the draft decision authorizes potential changes to the methodology for reviewing "least-cost, best-fit" renewable resources, including consideration of whether the contract leads to the construction of additional capacity for RPS-eligible generation. Finally, the decision

imposes new non-modifiable standard terms and conditions (STCs) for PPAs relating to the purchase and use of RECs, and requires utilities to amend any PPAs currently awaiting approval by the CPUC to include such STCs and to file amended advice letters and supplemental filings.

The CPUC's TRECs decision applies to California's statutory 20 percent RPS requirement through 2013, but its application beyond this sunset date depends both on action on a 33 percent by 2020 RPS bill currently pending in the California legislature that imposes similar limitations on the use of RECs and out-of-state power, and harmonization with Renewable Electricity Standard (RES) regulations approved by the California Air Resources Board in September of 2010 under California's Global Warming Solutions Act (A.B. 32), which do not impose such limitations.

#### **Renewable Auction Mechanism**

On December 16, 2010, the CPUC approved a new renewable energy procurement process called the "Renewable Auction Mechanism" (RAM). The decision approving the program (D.10-12-048) requires the IOUs to purchase a total of 1 gigawatt (1,000 MW) of electricity from eligible renewable generation projects up to 20 MW in size during four auctions over a two-year period, allocated among the three IOUs based on retail sales. Bids are to be selected based on price, with the lowest price first, until the utility's minimum is reached for each auction.

The goal of the RAM is to provide a simplified contracting mechanism that will enable

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smaller projects to compete in California's mandatory renewable energy market. In order to reduce transaction costs and streamline the approval process, the RAM requires the use of PPAs with non-negotiable standard terms and conditions, and allows the IOUs to submit simplified advice letters to the commission to obtain approval of the contracts.

During the two-year pilot phase of the program, there will be two auctions per year of a total of 250 MW each, beginning this spring. To be eligible, a project must be within one of the three IOUs' service territories, begin commercial operation within 18 months of contract execution (with the potential for one six-month extension), and provide development and performance security deposits. Projects must also satisfy minimum project viability screens, including demonstrating site control and developer experience, utilizing commercialized technology, and having filed an interconnection application. The seller need not be a retail customer of one of the IOUs in order to participate. The IOUs will have the discretion to reject bids if there is evidence of market manipulation or the bids are not cost competitive.

In contrast to a traditional "feed-in tariff," the RAM's market-based pricing approach avoids the need for a state agency to predetermine electricity prices and thus does not conflict with the Federal Energy Regulatory Commission's (FERC's) jurisdiction to set rates in wholesale electricity markets. Although FERC recently upheld California's feed-in tariff under A.B. 1613 for combined heat and power (CHP) facilities up to 20 MW in size, FERC's order could be appealed. Because it utilizes competitive pricing under a reverse auction, the RAM avoids such potential federal preemption issues.

The commission's decision made clear that the RAM is to be the "primary" and "exclusive" contracting tool for energy sales to the IOUs from behind-the-meter renewable projects up to 20 MW in size. Although these smaller projects may still participate in

annual RPS solicitations, the utilities' previously approved solar photovoltaic programs (see more information below on PG&E's new Solar Photovoltaic Program), and SCE's Renewables Standard Contract program (under which 21 contracts can count towards SCE's RAM requirement), the IOUs will not be permitted to use voluntary programs or bilateral negotiations to procure energy from this market segment. The three large IOUs are required to file advice letters with the CPUC by February 14, 2011, specifying the types of products they wish to procure via the RAM (e.g., baseload, peaking as-available, and non-peaking as-available), providing a form of standard RAM contract, and providing dates of the auctions, along with other details. Several parties have filed Petitions for Modification and Requests for Rehearing of the RAM decision, including PG&E and SCE; thus, there is a possibility of modifications to and additional regulatory processes regarding the program.

### Pacific Gas & Electric Solar Photovoltaic Program

On December 16, 2010, the CPUC approved a resolution implementing a five-year program under which PG&E may procure up to 250 MW from ground-mounted solar PV facilities in the 1-20 MW range, as well as own and operate an additional 250 MW of such facilities. The resolution approved a solicitation process, eligibility criteria, processes for interconnection, application and prioritizing locations, and standard contracts for the independent power producer portion of the program. The resolution follows the approval of similar utility-owned PV generation programs in California (e.g., SCE's 500 MW program, focused on 1-2 MW rooftop-mounted projects, and SDG&E's 100 MW program, focused on 1-5 MW ground-mounted projects).

Under the new program, PPA pricing will be based on a competitive solicitation process. Eligible facilities must be located within PG&E's service territory, have a pre-time-of-delivery adjusted price no greater than \$246/MWh, demonstrate site control, apply

for interconnection, and be operational within 18 months of PPA approval. In addition, the project developer must have experience constructing a solar project of at least 500 kilowatts (kW) and the project may not also participate in the California Solar Initiative or net energy metering programs. A single project may be comprised of multiple sites (each not less than 500 kW), in order to reach the 1 MW eligibility threshold. PG&E issued the first request for offers (RFO) for the first 50 MW of PPAs under this program on February 2, 2011, and intends to hold a Bidders' Conference on February 8, 2011, to discuss this RFO. Offers must be submitted to PG&E by **March 2, 2011, at 1:00 p.m.** Pacific time. PG&E will notify shortlisted bidders on April 15, 2011, and intends to execute power purchase agreements on June 17, 2011.

### CPUC Storage Proceeding and CAISO Regulation Energy Management Rules

On December 21, 2010, the CPUC opened a proceeding (R.10-12-007) pursuant to A.B. 2514, to determine appropriate targets, if any, for each load serving as defined by Public Utilities Code Section 380(j) to procure energy storage systems. Our previous WSGR Alert on A.B. 2514 is available at [http://www.wsgr.com/publications/pdfsearch/wsgralert\\_california\\_energy\\_storage\\_requirements.pdf](http://www.wsgr.com/publications/pdfsearch/wsgralert_california_energy_storage_requirements.pdf).

Various parties filed comments on the scope of the storage proceeding, many of which focused on the need for the proceeding to develop an effective methodology for performing cost-benefit analyses for proposed storage projects. SDG&E, SCE, and the Division of Ratepayer Advocates, among others, submitted comments stating their opposition to the setting of any minimum storage procurement standards for utilities. PG&E, however, did not oppose such standards and suggested potential CPUC funding of "promising emerging storage technologies . . . that are not cost-effective today" in order to spur development in this emerging field.

The CPUC next will convene a workshop at

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which key stakeholders may further present their views regarding the opportunities for development and deployment of energy storage technologies, the obstacles to such development and deployment, the costs and benefits of such development and deployment, and how those costs and benefits should be distributed. A date has not yet been set for this workshop.

Finally, on February 3, 2011, the California Independent System Operator (CAISO) Board of Governors approved a "regulation energy management" tool that permits energy storage and demand response resources with 15-minute capability to begin bidding in the CAISO market.

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If you would like any information on these programs and other energy regulatory developments, including an analysis of how they may impact your business, please contact Todd Glass, Sheridan Pauker, Kendall Bodden, or Matt Sieving in the firm's energy and clean technology practice.



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