Ten months after initially authorizing the use of tradable renewable energy credits (TRECs), the California Public Utilities Commission (CPUC) today lifted its moratorium on approval of TREC transactions. CPUC Dec. 11-01-025. Today's decision, however, retains restrictions on TREC transactions that could limit the amount of out-of-state generation that the three major investor-owned utilities can use to meet their California Renewable Portfolio Standard (RPS) obligations.

At its March 11, 2010 meeting, the CPUC authorized the use of TRECs for compliance with the RPS, subject to certain limitations. CPUC Dec. 10-03-021 (March Decision). Among the limitations that the March Decision imposed was a cap limiting the use of TRECs for RPS compliance for the largest investor-owned utilities (Pacific Gas and Electric, Southern California Edison, and San Diego Gas and Electric) to 25% of their annual RPS compliance obligations. That cap was to remain in place until December 31, 2011, when the CPUC would consider modifying or removing that limitation. The March Decision also imposed a price cap of $50 per TREC. The price cap was also set to expire on December 31, 2011.

After issuance of the March Decision, Southern California Edison, Pacific Gas and Electric, and San Diego Gas and Electric filed a joint petition for modification of the decision, seeking, among other things, modification of the usage and price caps, and modification of the criteria used to determine whether a contract was a TREC transaction subject to the 25% cap. The Independent Energy Producers Association also filed a petition for modification seeking modification of the criteria used to determine whether a contract was a TREC transaction.

On May 6, 2010, the CPUC issued a decision staying implementation of the March Decision pending resolution of the petitions for modification. CPUC Dec. 10-05-018 (May Decision). The May Decision also imposed a moratorium on approval of any contracts that would be defined as TREC transactions under the March Decision.
Today's decision denied the joint petition of Southern California Edison, Pacific Gas and Electric, and San Diego Gas and Electric, apart from one technical modification to the March Decision. Today's decision also denied the petition of the Independent Energy Producers Association, and lifted the stay imposed by the May Decision, ending the moratorium on approval of contracts defined as TREC transactions. Today's decision left in place the 25% cap on the use of TREC and the price cap, but extended them to from December 31, 2011 (under the March Decision), to December 31, 2013.

The definition of TREC established in the March Decision (and unchanged by Today's decision) could have a significant effect on the use of generation from renewable resources located outside of California. TREC is generally defined as renewable energy credits that can be traded separate and apart from the energy associated with their creation, in contrast to bundled transactions in which both the renewable energy credits and the associated power are sold together. The March Decision defined as bundled transactions any transactions with a generator that had its first point of interconnection with a California balancing authority, or in which the power associated with the renewable energy credits was dynamically transferred to a California balancing authority. The March Decision also recognized that some transactions with firm transmission arrangements might qualify as bundled transactions, but left that for future consideration. In remarks at the CPUC meeting today, President Peevey reiterated the CPUC's commitment to resolve this issue quickly.

The definition of bundled transactions adopted by the March Decision means that any transactions with renewable resources that do not have their first point of interconnection with a California balancing authority, or do not dynamically transfer power to a California balancing authority, would be deemed a TREC transaction subject to the cap. This would be true even if the renewable resource delivered power to California under a firming and shaping arrangement.

In a separate decision, the CPUC also imposed the 25% cap on the use of TREC on Energy Service Providers (ESPs) in California, although it declined to impose the $50 price cap on ESPs. CPUC Dec. 11-01-026. Also looming on the horizon is the California legislature's consideration of Senate Bill (SB) 23, introduced late last year, which would increase California's RPS to 33% from the current 20%. SB 23 is very similar to SB 722, a bill introduced in the previous session that would also have increased the RPS to 33%, but that failed to reach a vote prior to the end of the last session. The year before, the legislature had passed legislation increasing California's RPS to 33%, but that bill was vetoed by Governor Schwarzenegger in part due to the bill's restrictions on the use of out-of-state generation for RPS compliance.

Like its predecessors, SB 23 would also impose limitations on the use of TREC, and would impose limits on the use of out-of-state generation to meet RPS compliance obligations. In the event that legislation like SB 23 is adopted that mandates a specific limit on the use of TREC, it would likely preempt the limits adopted by the CPUC.

If you have any questions about the issues in this update, please contact
Seth Hilton or your Stoel Rives attorney.