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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.

Rulemaking 11-05-005  
(Filed May 5, 2011)

**SECOND ASSIGNED COMMISSIONER'S RULING ISSUING PROCUREMENT REFORM PROPOSALS AND ESTABLISHING A SCHEDULE FOR COMMENTS ON PROPOSALS**

**1. Summary**

On April 5, 2012, I issued the *Assigned Commissioner Ruling Identifying Issues and Schedule of Review for 2012 Renewables Portfolio Standard Procurement Plans Pursuant to Public Utilities Code Sections 399.11 Et Seq. and Requesting Comments on New Proposals* (April Assigned Commissioner Ruling (ACR)). The April ACR included several new proposals related to the Commission's review of renewable generation procurement.

Today's ruling furthers my efforts by offering additional proposals to refine the RPS procurement process and the Commission's review of this process. These proposals relate to:

- Modified rules for expedited review of certain short-term Renewables Portfolio Standards (RPS) power purchase and sale agreements;
- New rules for expedited review of certain long-term RPS power purchase agreements;

- Standards of review for investor-owned utilities' (IOU) shortlists from competitive RPS solicitations;
- A date certain for filing IOUs' executed RPS procurement contracts with the Commission;
- Standards of review for RPS power purchase agreements that result from IOU solicitations and bilateral negotiations;
- Standards of review for proposed contract amendments to RPS power purchase agreements;
- Independent Evaluator report template;
- Implementation of new Pub. Util. Code § 399.13(a)(4)<sup>1</sup> regarding the least-cost best-fit (LCBF) bid evaluation methodology; and
- Revisions to the Green Attributes standard term and condition.

The proposals are part of my effort to streamline the RPS contract review process, increase the transparency of the Commission's review of RPS procurement, establish clear standards for this review process, issue Commission determinations on contract reasonableness on a defined timeline, and, generally, to support market certainty in RPS procurement.

Comments of not more than 50 pages on these additional proposals may be filed not later than November 15, 2012 and reply comments of not more than 25 pages may be filed not later than December 7, 2012.

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<sup>1</sup> All further references to sections are to the Public Utilities Code, unless otherwise noted.

## 2. Background

A major paradigm shift has occurred in the renewables market in California. The number of experienced developers submitting viable renewable energy projects has increased and the IOUs<sup>2</sup> have made significant progress in contracting for RPS-eligible generation. Specifically, over one thousand unique bids were received collectively by PG&E, SCE, and SDG&E in the 2011 RPS solicitation from over 260 developers. This represents an increase of approximately 250% in the number of bidders and 150% in the number of developers from the previous RPS solicitation in 2009.<sup>3</sup> In addition, cumulative generation bid into the 2011 RPS solicitation for procurement by IOUs to meet 2020 compliance requirements was approximately 4.5 times the total need of the entire RPS program. Furthermore, the cost of many renewable technologies has decreased, in some cases materially, providing utilities with a significant pool of renewable projects to select from that are highly viable and lower in price than in previous years. The average bid price of all shortlisted projects from the 2011 RPS solicitation was down approximately 30% from the 2009 RPS solicitation. Furthermore, the average bid price of the lowest 250 bids (i.e., first quartile) from the 2011 RPS solicitation was down approximately 35% from the average price of all RPS contracts approved by the Commission in 2011.

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<sup>2</sup> Pacific Gas and Electric Company (PG&E); Southern California Edison Company (SCE); San Diego Gas & Electric Company (SDG&E); Bear Valley Electric Service, a division of Golden Gate State Water Company; and California Pacific Electric Company. PacifiCorp, a multi-jurisdictional utility, is in a special legislatively created category. See Section 399.17.

<sup>3</sup> No RPS solicitation was held in 2010.

In addition, the California RPS program is undergoing significant changes due to the implementation of Senate Bill (SB) 2 (1X) (Simitian, Stats. 2011, ch. 1) enacted in the First Extraordinary Session of the 2011-2012 Legislature (effective on December 10, 2011). Recently, new RPS procurement targets, portfolio content categories, and compliance rules have been adopted (Decision (D.) 11-12-020 and D.11-12-052, D.12-06-038, respectively). The April ACR, which ordered the IOUs and electric service providers (ESPs) to file draft 2012 RPS procurement plans, also set forth several proposals regarding the RPS procurement process, including the LCBF bid evaluation process.

As a result of the dramatic shift that has taken place in the marketplace, the maturing of the IOUs' RPS procurement portfolios, and changes to the RPS statute, the Commission is exploring additional ways to refine its RPS procurement review process to be better aligned with the realities of today's renewable energy market. Any refinements to the RPS procurement and evaluation process will strive to increase transparency and efficiency in the Commission's evaluation processes.

The procurement reform proposals in the April ACR included:

- (1) requiring utilities to rely on standardized variables for the LCBF valuation methodology;
- (2) requiring an additional Independent Evaluator (IE) report earlier in the Commission's review of RPS procurement;
- (3) requiring utilities to rely on transmission cost estimates from the California Independent System Operator (CAISO) in LCBF analysis rather than their own data;
- (4) requiring utilities to contract with only those bids on a shortlist with a certain level of progress on interconnection;
- (5) establishing a two-year procurement authorization to replace annual authorization; and
- (6) establishing a mechanism to rely on the RPS procurement process to minimize transmission upgrade costs.

To build upon the reform proposals outlined in the April ACR, today's ruling provides a description of the existing RPS procurement process and then offers several proposals for improving the process. Parties are requested to comment on possible improvements to the existing RPS procurement process, including the contract review process for new and amended renewable contracts, focusing on the proposals presented here.

### **3. The Existing RPS Procurement Process**

The Commission's goal is to ensure that each RPS contract it approves adheres to the long-term goals of the state of California to meet its energy needs, at the lowest cost to ratepayers, while complying with legislative requirements. To meet this goal, the Commission evaluates utilities' RPS procurement, over a multistep procurement review continuum<sup>4</sup>. This process is described below and is illustrated in Figure 1.

1. The Long-Term Procurement Plans (LTPP) proceeding utilizes RPS data in procurement scenarios to assess long-term procurement needs for system planning. The procurement scenarios in LTPP are then used to inform RPS future procurement initiatives.<sup>5</sup>
2. The IOUs file their annual RPS procurement plans with the Commission that contain the IOUs' procurement strategies to meet their RPS procurement requirements. These RPS procurement plans include the LCBF methodologies that the IOUs use to evaluate and select bids received in annual

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<sup>4</sup> Because the Commission does not review or approve RPS procurement contracts of ESPs (or of community choice aggregators), this Ruling largely addresses the RPS procurement process with respect to IOUs.

<sup>5</sup> The Commission may explore at a later time how to better align RPS procurement authorization with LTPP need determination.

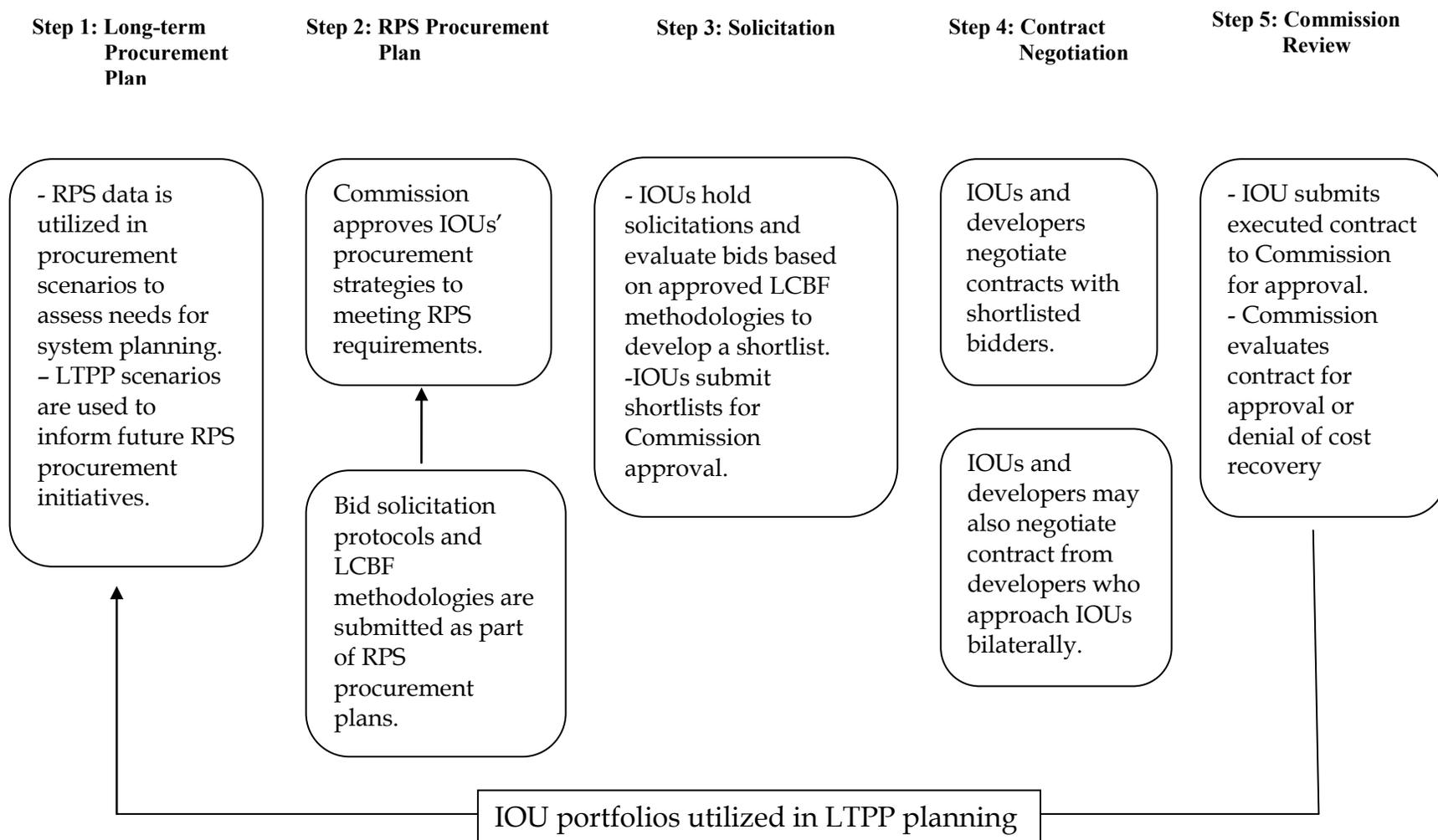
- solicitations. The Commission approves the IOUs' annual RPS procurement plans, including their LCBF methodologies, in a Commission decision.
3. After Commission approval of the Plans is obtained, the IOUs conduct RPS solicitations and evaluate the bids received according to their Commission-approved LCBF methodologies. Based on an IOU's LCBF evaluation of the bids, it establishes a shortlist of bids from the solicitation. The shortlist represents bids that may result in executed contracts if the two parties can agree on contract terms. The IOUs submit their shortlists of bids to the Commission via a Tier 2 Advice Letter. Energy Division reviews the shortlist of bids to ensure that projects were evaluated and shortlisted consistent with LCBF methodologies and the specific IOU's RPS net short, as approved in its annual RPS procurement plan.
  4. After the shortlists are approved by Energy Division, the IOU is permitted to negotiate and execute contracts with bidders from its shortlist. In addition to the process outlined above, the Commission permits utilities to separately execute and seek Commission approval via the Advice Letter process for bilaterally negotiated contracts.
  5. Once a contract is executed, the IOU submits the contract to the Commission for approval of cost recovery. In most cases, Commission approval of a contract is requested through a Tier 3 Advice Letter.<sup>6</sup> Energy Division evaluates

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<sup>6</sup> In D.02-08-071, the Commission adopted the process in which approval for cost recovery of a renewable energy contract may be requested in Tier 3 Advice Letters. An IOU may also choose or be directed by the Commission to request Commission approval in an application. The conditions under which this might be done include, but are not necessarily limited to, when an advice letter raises a potentially disputed, important, or significant issue of fact, policy or law (based on a filed protest or as identified by Energy Division) or changes to standard terms and conditions. Additionally, an applicant might on its own elect to submit certain matters for Commission review and consideration by application rather than advice letter.

each individual contract submitted for approval in a similar manner, applying standards of review (SOR) (*see* section 3 below) regardless of whether the contract originated from the shortlisting process or was bilaterally negotiated. The evaluation process analyzes, among other things, price, value, portfolio need, project viability, and consistency with Commission decisions.

**Figure 1: Commission’s Existing RPS Procurement Process**



#### **4. Proposals - Streamline and Increase Transparency of the Commission's RPS Contract Review Process**

This ruling sets forth and seeks comments on proposals to streamline the Commission's RPS contract review process. These proposals also seek to increase the transparency and efficiency of the RPS procurement and contract evaluation process and are designed to be implemented in conjunction with the earlier proposals in the April ACR.

##### **4.1. Proposal – Standards of Review for IOUs' Shortlists**

As explained above, the IOUs submit their shortlist of bids and an accompanying IE Report to the Commission via a Tier 2 Advice Letter. The shortlists are reviewed to ensure that the bids were evaluated and shortlisted consistent with approved LCBF methodologies and the IOU's RPS net short, as approved in its annual RPS procurement plan.<sup>7</sup> In order to streamline the advice letter review process, it is reasonable to put more emphasis on the review of the shortlist. If it is determined that the shortlist is consistent with an IOU's RPS net short and that the LCBF bid methodology was appropriately applied to select the projects on the shortlist, the contract review may be streamlined when a project is submitted by advice letter as long as the project characteristics and value do not meaningfully differ from the project as bid. This could help to minimize regulatory uncertainty later in the RPS contract evaluation process.

Accordingly, I propose that instead of a Tier 2 Advice Letter, the shortlists be submitted via a Tier 3 Advice Letter. The standards of review for the shortlist will include consistency with an IOU's procurement plan (e.g. the approved net

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<sup>7</sup> D.11-04-030 (April 14, 2011)

short and LCBF methodology), determination by the IE that the shortlist was fairly selected, assessment of the viability of shortlisted projects relative to all bids, and consistency with the IOU's procurement expenditure limitation, once adopted by the Commission. Proposed contracts on the shortlist cannot be executed until the Commission adopts the shortlist in a resolution.

1. Provide comments on the strengths and weaknesses of increasing the level of review of IOUs' shortlists. If an alternative review process or review standards are proposed, include justification for the proposal.

#### **4.2. Proposal – Establish Date Certain for Request for Commission Approval of Contracts**

Currently, IOUs may request Commission approval of an RPS contract any time after the contract is executed. If a utility waits to submit a contract to the Commission, the review can be difficult and lengthy. Since the RPS market and IOUs' procurement positions are constantly changing, the analysis an IOU uses to determine whether it should execute a contract may be stale if the lag time between execution and Commission review is lengthy. If the procurement process is sufficiently streamlined, the Commission can make procurement review decisions based on the same market conditions and RPS need as was relevant when the utility made its decision to execute the contract. Accordingly, this ruling proposes that RPS contracts be executed within one year after the approval of an IOU's shortlist and filed with the Commission for approval within one month from the execution date of the contract.<sup>8</sup>

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<sup>8</sup> A related proposal limiting a project's status on an IOU's RPS shortlist to 12 months was included in the April ACR, at 21.

2. Discuss the strengths and weaknesses of the proposal to set a time requirement for requesting Commission approval of an RPS contract. What impact will it have on the market, ratepayer, and regulator? If an alternative time requirement is proposed, include a justification for the proposal.

#### **4.3. Proposal - Expedited Review of RPS Purchase and Sales Contracts**

Under the Commission's conventional procurement process, contracts with terms greater than or equal to 5 years in duration must be submitted to the Commission via application for pre-approval of cost recovery.<sup>9</sup> Final cost recovery is obtained in a subsequent Commission decision. By contrast, the RPS program currently requires all RPS contracts regardless of term length or portfolio content category (with some exceptions) to be submitted with a Tier 3 Advice Letter to the Commission for, among other things, cost recovery approval.<sup>10</sup>

In D.09-06-050, the Commission approved an expedited review process for short-term RPS contracts based on forward market prices for conventional energy contracts. To date, this expedited process has rarely been used and no contracts have been approved pursuant to it. Today's ruling seeks party comments on a proposal to revise and expand the expedited review process of RPS contracts set forth in D.09-06-050. Parties are requested to submit comments on this proposal and to respond to the questions at the end of the proposal.

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<sup>9</sup> D.04-12-048 (December 20, 2004).

<sup>10</sup> Exceptions include: Feed-in-Tariff contracts, Renewable Auction Mechanism, the current expedited approval process approved in D.09-06-050, and contracts submitted in applications.

**A. Purchase & Sales Contracts Less than Five Years in Term Length:** This proposal would streamline the review of RPS contracts of lengths of less than five years (<5 years). IOUs would be allowed to request Commission approval of eligible contracts by Tier 1 Advice Letters, as compared to the currently required Tier 3 Advice Letter, if the prerequisites in Table 1, below, are met.<sup>11</sup>

**B. Purchase Contracts of Five Years or Greater in Term Length:** This proposal would streamline the review of RPS contracts that use commercially proven technologies with contract term lengths five years or greater ( $\geq 5$  years). IOUs would be allowed to request Commission approval of eligible contracts by Tier 2 Advice Letters, as compared to the currently required Tier 3 Advice Letter process, if the prerequisites in Table 1, below, are met. Since IOUs generally sell excess RPS generation through short-term agreements, sales contracts are not included in this proposal.

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<sup>11</sup> Since these proposals, if adopted, would be different from the process set out in D.09-06-050, this ruling is being served on the service list for Rulemaking 08-08-009 as well as the present proceeding.

**Table 1**

**Proposed Prerequisites to Qualify for Streamlined Advice Letter Review  
Process for Purchase & Sale Contracts Less than Five-Years and Purchase  
Contracts of Five-Years or Greater in Term Length**

	<b>Purchase Contracts &lt; 5 years</b>	<b>Sales Contracts<sup>12</sup> &lt; 5 years</b>	<b>Purchase Contracts <math>\geq</math>5 years</b>
<b>Contract Term Length</b>	1 month to <5 years	1 month to <5 years	$\geq$ 5 years
<b>Need Authorization (GWh)</b>	Generation quantity contracted must be consistent with RPS net short approved in IOU's most recently approved RPS procurement plan		
<b>Contract Price, Net Market Value, and Viability Reasonableness</b>	Contract is selected from a competitive (minimum 5 bids) solicitation with bids of comparable term length and portfolio category <u>or</u> contract is from bilateral negotiations and has an equivalent or better net market value <sup>13</sup> than contracts recently (prior 12 months) executed from a competitive solicitation for similar products		Contract is selected from a competitive solicitation
<b>Contract terms</b>	Pro forma contract without modifications per Commission-approved Bid Solicitation Protocol		
<b>Delivery Start Date</b>	Within 1 year of contract execution		Must be consistent with RPS Procurement Need as approved in RPS procurement plan

<sup>12</sup> The sale of excess RPS-eligible procurement by an electrical corporation.

<sup>13</sup> See April ACR, Section 7.1, New Proposal - Standardized Variables in LCBF Market Valuation.

<p><b>Viability Screens<sup>14</sup> (must meet all screens)</b></p>	<p>None</p>	<p>None</p>	<ul style="list-style-type: none"> <li>▪ The developer must have full site control. The project must have a corresponding viability score of 10 for site control;<sup>15</sup></li> <li>▪ All necessary permit applications have been filed. The project must have a corresponding viability score of 5 or above for permitting status;</li> <li>▪ A Phase II Study or Facilities Study (or equivalent) is completed. The project must have a corresponding viability score of 9 or above for Interconnection Progress; and</li> </ul>
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<sup>14</sup> Screens are as defined by the Energy Division Project Viability Calculator: <http://www.cpuc.ca.gov/PUC/Templates/RPS.aspx?NRMODE=Published&NRNODEGUID=%7b722CB59B-003C-476F-BE7B-D6EABE6DC003%7d&NRORIGINALURL=%2fPUC%2fenergy%2fRenewables%2fprocurement%2ehtm&NRCACHEHINT=Guest#ProjectViability>.

<sup>15</sup> The RPS Quarterly Report – 3<sup>rd</sup> Quarter 2011 provides a methodology to categorize a project’s viability based on the Energy Division’s Project Viability Calculator. While the Project Viability Calculator was developed to provide relative project viability rankings, the adjusted project viability methodology in the Renewables Portfolio Standard Quarterly Report – 3<sup>rd</sup> Quarter 2011 assessed a particular project’s viability by focusing on four particular facets of project development: site control; permitting status; transmission system upgrade requirements; and CAISO and Commission approvals.

			<ul style="list-style-type: none"> <li>▪ Transmission system upgrades required for the project pursuant to the most recent interconnection study (or equivalent) require a Permit to Construct or an approved Notice of Construction from the Commission, and an application or Advice Letter, as applicable, has been filed. (For upgrades that do not require Commission approval for construction, an equivalent status has been obtained.) The project must have a corresponding viability score of 8 or above for Transmission System Upgrade Requirements.</li> </ul>
<p><b>Consistency with Commission Decisions</b></p>	<p>Power purchase agreements must be consistent with relevant Commission decisions. Relevant decisions include, but are not limited to, D.02-08-071, D.04-07-029, D.06-05-039, D.07-01-039, D.08-04-009, D.08-08-028, D.10-03-021, as modified by D.11-01-025, D.11-12-020, D.11-12-052.</p>		

<b>Independent Evaluator and Procurement Review Group</b>	Contract selection, negotiation, and execution process reviewed by IE and Procurement Review Group (PRG)
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Discuss the advantages and disadvantages of each proposed review criterion to the ratepayer, market, and regulator. In your response, please address the questions below.

3. The above proposal defines expedited review prerequisites differently for contracts <5 years and those ≥5 years in term length. Comment on the appropriateness of the 5 year term length distinction. If an alternative is proposed, include a justification for the proposal.
4. The above proposal allows for contracts that meet all of the prerequisites to be submitted with Tier 1 and Tier 2 Advice Letters for contracts <5 years in term length and contracts ≥5 years in term length, respectively. Comment on the appropriateness of the designated Advice Letter Tier. If an alternative is proposed, include a justification for the proposal.
5. The above proposals do not apply to sales contracts five years or greater in term length. Is there a market need to extend an expedited approval process to sales contracts five years or greater in term length?
6. The above proposal requires contracts using the expedited review process to be selected from competitive solicitations but it also allows bilateral contracts <5 years in term length if they are of equivalent or better net market value than offers from a prior solicitation for similar products. Would a solicitation for short-term transactions be robust enough to adequately benchmark short-term bilateral transaction if the contract is negotiated bilaterally?
7. The above proposal extends the expedited approval process to contracts greater than five years in term length. Because long-term contracts are primarily for generation from facilities that are not yet operating, viability screens

are proposed as prerequisites to reduce RPS portfolio risk for the IOUs and ratepayers. Comment on the strengths and weaknesses of the proposed viability screens.

#### **4.4. Proposal – Improve RPS Power Purchase Agreement Standards of Review**

This ruling proposes rules to improve the Commission’s review of RPS power purchase agreements submitted by Tier 3 Advice Letter that do not meet the requirements for expedited approval (or for those that the IOU does not request expedited approval). This review process is referred to, generally, as the RPS Standards of Review (SOR). As noted above, the Commission currently reviews most proposed RPS power purchase agreements submitted by IOUs via a Tier 3 Advice Letter for consistency with approved RPS procurement plans, including approved LCBF methodologies, existing Commission decisions, cost and value reasonableness, and viability relative to an IOU’s other RPS procurement opportunities.<sup>16</sup>

The proposals set forth below in subsections A through D, focus on evaluating four different types of power purchase agreements: 1) contracts from a solicitation; 2) bilaterally negotiated contracts; 3) contract amendments and/or amended and restated contracts; and 4) contracts that do not meet SOR identified in the first three categories, contracts for generation from a technology that has not been commercially proven, and contracts representing a significant portion of an IOU’s portfolio.<sup>17</sup>

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<sup>16</sup> Relevant decisions include, but are not limited to, D.08-04-009, D.08-08-028, D.10-03-021, as modified by D.11-01-025, D.06-05-039, D.02-08-071, and D.07-01-039.

<sup>17</sup> See Section 4.5 for SOR of purchase and sale agreements (PSAs) or unbundled renewable energy credit (REC) contracts.

Within each proposal, the following SOR criteria are proposed for evaluating an RPS power purchase agreement that utilizes a commercially proven technology: 1) portfolio need, 2) price reasonableness, 3) project value, 4) project viability, and 5) consistency with Commission decisions, rules, and laws.

If the Commission finds that a contract is consistent with the SOR, the contract may be approved without modification. If the proposed contract does not comply with the SOR, the contract may be rejected. The filing IOU may request Commission approval by application (*see* Section D for SOR of these types of applications) if it does not conform with all of the requirements in the SOR for advice letters. All SOR requirements are described in further detail below in Tables 2 through 5.

I note that this proceeding is also developing a new procurement expenditure limitation methodology pursuant to Section 399.15, as amended by SB 2 (1X). When adopted, this methodology may or may not prescribe additional criteria for the review of RPS contracts.

**A. Proposed Standards of Review for Power Purchase Agreements from Solicitations**

**Table 2: Proposed Standards of Review for Power Purchase Agreements from Solicitations**

<b>Reasonableness Review Criterion</b>	<b>Standards of Review / Requirements</b>
<b>Need Authorization (GWh)</b>	Generation quantity must be consistent with RPS net short approved in IOU’s most recently approved RPS procurement plan. <sup>18</sup>
<b>Contract Price, Net Market Value, and Project Viability</b>	Reasonableness of the PPA’s price, net market value and viability will be assessed relative to 1) shortlisted bids from the annual RPS Solicitation from which the contract originated; and 2) all PPAs that were executed in the 12 months prior to contract execution.
<b>Consistency with Commission Decisions</b>	Power purchase agreements must be consistent with relevant Commission decisions. Relevant decisions include, but are not limited to, D.02-08-071, D.04-07-029, D.06-05-039, D.07-01-039, D.08-04-009, D.08-08-028, D.10-03-021, as modified by D.11-01-025, D.11-12-020, D.11-12-052.
<b>Updated Information</b>	The IOU’s renewable net short, the project’s net market value, and the project’s viability score must be updated within one week prior to filing the Advice Letter (or application) with the Commission. Similarly, net market value calculations for all comparable bids (as identified above) must be updated using the most current forward curve information within one week prior to filing the Advice Letter (or application) with the Commission.

<sup>18</sup> Contracts that are expected to annually provide more than one percent of the IOU’s total bundled sales in the first full year of deliveries should be filed as applications and reviewed with the SOR proposed in Table 5.

<p><b>Monthly Information Updates</b></p>	<p>For PPAs pending Commission approval, utilities must provide monthly updates on project development milestones, potential compliance delays, updated project viability scores, an updated assessment of project risk, and an updated assessment of RPS net short. Utilities will work with Energy Division Staff to formulate a monthly reporting template to be submitted to the Director of Energy Division at the end of every calendar month.</p>
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If a PPA from a competitive solicitation that is not eligible for expedited review is not consistent with these SOR, then the contract will be rejected. Furthermore, PPAs will be rejected that are submitted for approval based on other “qualitative” factors, as described in IOUs’ respective RPS plans, but do not meet the criteria established in the SOR. Alternatively, the filing IOU can submit a PPA via Application and it will be reviewed with SOR proposed in subsection D.

Discuss the advantages and disadvantages of each proposed review criterion to the ratepayer, market, and regulator. In your response, please address the questions below.

8. The above proposal requires contracts to be consistent with an IOU’s net short approved in the most recent Procurement Plan. Propose how this criterion could be applied to an individual contract.
9. Are the proposed cohorts to be used to evaluate the reasonableness of a contract’s price, net market value, and viability appropriate? If not, provide an alternative proposal and justification for the alternatives.

## **B. Proposed Standards of Review for Bilateral Power Purchase Agreements**

While the Commission has allowed a utility and a generator to enter into bilateral contracts outside of the competitive solicitation process since D.03-06-071, the focus of the RPS program and preference of the Commission is procurement through competitive solicitations. Currently, the Energy Division requires the IOU to include in its advice letter seeking approval of a bilaterally negotiated contract: 1) the IOU's procurement and/or RPS portfolio needs that require the utility to procure bilaterally as opposed to a solicitation; 2) a description of the reasons the seller did not participate in a solicitation; and 3) why the benefits (e.g., high viability, near term commercial online date, etc.) of the bilateral contract cannot be procured through a subsequent solicitation.

Because of the Commission's preference for contracts from solicitations, the following proposed SOR for bilateral power purchase contracts that utilize commercially proven technologies (Table 3) requires minimum development milestones in addition to the proposed SOR for contracts from solicitations (Table 2).<sup>19</sup> Minimum development milestones will be required because the rationale for a bilateral transaction is that the transaction represents a unique fleeting procurement opportunity and that it would be detrimental to ratepayers to wait until a solicitation is held.

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<sup>19</sup> See Section 4.5 and Table 6 for proposed standards of review for bilateral unbundled renewable energy credit purchase and sale contracts.

**Table 3: Standards of Review for Bilateral Power Purchase Agreements**

<b>Reasonableness Review Criterion</b>	<b>Standards of Review / Requirements</b>
<b>Need Authorization (GWh)</b>	Generation quantity must be consistent with RPS net short approved in IOU's most recently approved RPS procurement plan. <sup>20</sup>
<b>Contract Price, Net Market Value, and Project Viability</b>	Reasonableness of the PPA's price, net market value and viability will be assessed relative to 1) shortlisted bids from the most recent annual RPS Solicitation and 2) all PPAs that were executed in the 12 months prior to contract execution.
<b>Consistency with Commission Decisions</b>	Power purchase agreements must be consistent with Commission decisions. Relevant decisions include, but are not limited to, D.02-08-071, D.04-07-029, D.06-05-039, D.07-01-039, D.08-04-009, D.08-08-028, D.10-03-021, as modified by D.11-01-025, D.11-12-020, D.11-12-052.
<b>Minimum Development Milestones</b>	<ul style="list-style-type: none"> <li>▪ Bilaterally negotiated PPAs must meet minimum project development milestone requirements before requesting Commission approval.</li> <li>▪ Bilaterally negotiated PPAs must meet or exceed the following project development milestones before the PPA is submitted to the Commission:</li> <li>▪ The developer must have full site control. The project must have a corresponding viability score of 10</li> </ul>

<sup>20</sup> Contracts that are expected to annually provide more than one percent of the IOU's total bundled sales in its first full year of deliveries should be filed as applications and reviewed with the SOR proposed in Table 5.

<b>Reasonableness Review Criterion</b>	<b>Standards of Review / Requirements</b>
	<p>for site control;</p> <ul style="list-style-type: none"> <li>▪ All necessary permit applications have been filed. The project must have a corresponding viability score of 5 or above for permitting status;</li> <li>▪ A Phase II Study or Facilities Study (or equivalent) is completed. The project must have a corresponding viability score of 9 or above for Interconnection Progress; and</li> <li>▪ Transmission system upgrades required for the project pursuant to the most recent interconnection study (or equivalent) require a Permit to Construct or an approved Notice of Construction from the Commission, and an application or Advice Letter, as applicable, has been filed. (For upgrades that do not require Commission approval for construction, an equivalent status has been obtained.)The project must have a corresponding viability score of 8 or above for Transmission System Upgrade Requirements.</li> </ul>

<p><b>Updated Information</b></p>	<p>The IOU’s renewable net short, the project’s net market value, and the project’s viability score must be updated within one week prior to filing the Advice Letter (or application) with the Commission. Similarly, net market value calculations for all comparable bids (as identified above) must be updated using the most current forward curve information within one week prior to filing the Advice Letter (or application) with the Commission.</p>
<p><b>Monthly Information Updates</b></p>	<p>For PPAs pending Commission approval, utilities must provide monthly updates on project development milestones, potential compliance delays, updated project viability scores, an updated assessment of project risk and an updated assessment of portfolio net short. Utilities will work with Energy Division Staff to formulate a monthly reporting template to be submitted to the Commission at the end of every calendar month.</p>

If the PPA is not consistent with these SOR, then the contract may be filed as an Application and will be reviewed with SOR outlined in Table 5.

Discuss the advantages and disadvantages of each proposed review criterion to the ratepayer, market, and regulator. In your response, please address the questions below.

10. Are there additional reasons for executing bilateral power purchase agreements outside of the solicitation process other than those stated above (e.g. fleeting opportunity, very high viability, near-term commercial operation date, etc.)? If yes, provide the additional reasons and the justifications for bilateral contacts outside of a solicitation.
  
11. Are the proposed cohorts to be used to evaluate the reasonableness of a contract’s price, net market value,

and viability appropriate? If not, provide an alternative proposal and justification for the alternatives.

12. Are the proposed criteria and standards within the minimum viability requirements appropriate for bilaterally offered projects? If not, provide alternative criteria and standards and justification for the proposal.

### **C. Proposed Standards of Review for Amended Contracts**

The Commission has previously explored procedures for approval of amendments to contracts that have previously been approved by the Commission.<sup>21</sup> To date, however, definitive procedures and standards have not been adopted. The following proposal clarifies procedures and SOR for contract amendments and/or amended and restated contracts. This proposal, in part, seeks to address concerns raised by the *Motion of California Wind Energy Association Regarding 2012 RPS Procurement Plans* filed December 8, 2011.

Figure 2 provides a proposed decision tree for each IOU to use in determining whether contracts that are already submitted for Commission approval and contracts that have previously been approved can be amended.<sup>22</sup> Notably, any contract amendments or amended and restated contracts that change the project's technology (e.g., solar photovoltaic vs. solar thermal) must

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<sup>21</sup> Amended Scoping Memo and Ruling of Assigned Commissioner Regarding 2009 RPS Procurement Plans (June 20, 2008) and Amended Scoping Memo and Ruling of Assigned Commissioner Regarding 2010 RPS Procurement Plans (November 2, 2009).

<sup>22</sup> Contract amendments that are a part of "contract administration" do not need to be submitted for Commission review. These contract amendments should be included in the IOU's Energy Resource and Recovery Account filings under contract administration.

be re-bid into the next RPS solicitation. This also includes major modifications to existing technology that potentially change the economics of the project, such as the incorporation of storage. Any other contract amendments or amended and restated contracts that substantially change the contract, or modify a term that is an explicit term of contract approval, should be filed by Tier 3 Advice Letter.

Substantial amendments that would not be considered part of “contract administration” include, but are not limited to: a contract price change; an increase or decrease in contract capacity not previously approved by the Commission; a change to the project’s commercial online date by more than three months; a change in project location; or a change in interconnection point. Contract amendments will be reviewed with the SOR in Table 4.

Figure 2: Decision Tree for Amended Contracts

### SOR for Amended Contracts

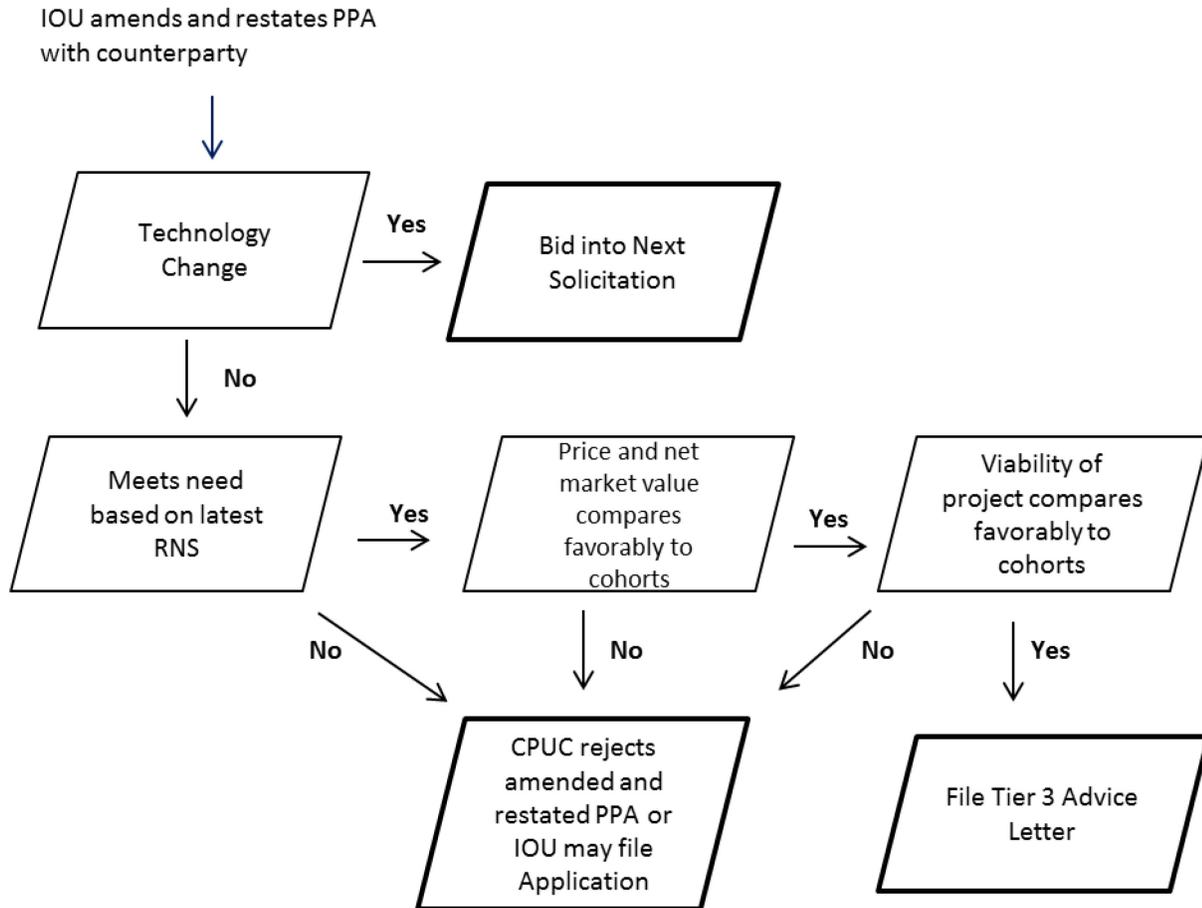


Table 4: Standards of Review for Amended Contracts

Reasonableness Review Criterion	Standards of Review / Requirements
Need Authorization (GWh)	Generation quantity must be consistent with RPS net short approved in IOU’s most recently approved RPS procurement plan.

<b>Contract Price, Net Market Value, and Project Viability</b>	Reasonableness of the amended PPA's price, net market value and viability will be assessed relative to: 1) shortlisted bids from the most recent annual RPS Solicitation; and 2) all PPAs that were executed in the 12 months prior to contract execution.
<b>Technology Change</b>	An amended PPA must be re-bid into the next RPS solicitation if the project will be utilizing a different technology than is stated in the original PPA.
<b>Consistency with Commission Decisions</b>	Amended power purchase agreements must be consistent with relevant Commission decisions. Relevant decisions include, but are not limited to, D.02-08-071, D.04-07-029, D.06-05-039, D.07-01-039, D.08-04-009, D.08-08-028, D.10-03-021, as modified by D.11-01-025, D.11-12-020, D.11-12-052.
<b>Updated Information</b>	The IOU's renewable net short, the project's net market value, and the project's viability score must be updated within one week prior to filing the Advice Letter with the Commission. Similarly, net market value calculations for all comparable bids (as identified above) must be updated using the most current forward curve information within one week prior to filing the Advice Letter with the Commission.
<b>Monthly Information Updates</b>	For Amended PPAs awaiting approval by California Public Utilities Commission (CPUC), utilities must provide monthly updates on project development milestones, potential compliance delays, updated project viability scores, an updated assessment of project risk an updated assessment of portfolio net short. Utilities will work with Energy Division Staff to formulate a monthly reporting template to be submitted to the Commission at the end of every calendar month.

Discuss the advantages and disadvantages of each proposed review criterion to the ratepayer, market, and regulator. In your response, please address the questions below.

13. The proposed SOR are for contract amendments that substantially modify a contract. Are additional SOR needed for other types of contract amendments (i.e., contract amendments that do not substantially modify approved contracts) or does review of “contract administration” within the IOUs’ Energy Resource and Recovery Account filings encompass all other contract amendment types? If additional SOR are needed, propose alternative or additional SOR and describe the type of contract amendment that they would apply to.
14. Are the proposed cohorts to be used to evaluate the reasonableness of a contract’s price, net market value, and viability appropriate? If not, provide an alternative proposal and justification for the alternatives.
15. Should minimum project development milestones (as proposed for the SOR for bilateral contracts) be incorporated into the SOR for amended contracts as a way to ensure only viable projects proceed with contracts, thus decreasing the amount of risk in the IOUs’ RPS portfolios? If not, provide alternative SOR that would reduce the risk of IOUs’ RPS portfolios.

**D. Proposed Standards of Review for Power Purchase Agreements that are Beyond the Scope of the Commission’s Advice Letter Process.**

The Commission recognizes that an IOU may want to procure generation from projects that would not meet the SOR outlined above in Sections 4.4 A through 4.4 C. For instance, a project may have a worse net market value than the contracts it is being compared to, but have other attributes that merit Commission review. Or, an IOU may want to contract with a technology that is

not commercially proven.<sup>23</sup> In those instances, the proposal put forth here would require that these non-standard contracts must be submitted for Commission approval in an application. The following SOR in Table 5 would be applied.

Additionally, there are certain contracts that introduce higher risk into an IOU's RPS portfolio because they represent a significant portion of that portfolio. Therefore, it is proposed that these contracts should undergo a more thorough review process than the typical Tier 3 Advice Letter review process. Specifically, it is proposed that any contract that is expected to annually provide more than one percent of the IOU's total bundled sales in its first full year of deliveries should be filed as an application and reviewed with the SOR proposed in Table 5.<sup>24</sup>

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<sup>23</sup> The Project Viability Calculator defines technology that is not commercially proven as:

Either (i) the project will use key components of commercialized technology, but in an application that has not yet been commercially proven; or (ii) project feasibility is supported by third party, independent engineer's report that verifies the cost and performance.

<sup>24</sup> Small IOUs are exempt from this requirement due to the high likelihood that all of their RPS contracts will exceed one percent of their total bundled sales.

**Table 5: Standards of Review for Non-Standard RPS Power Purchase Agreements**

<b>Reasonableness Review Criterion</b>	<b>Standards of Review / Requirements</b>
<b>Need Authorization (GWh)</b>	Generation quantity must be consistent with RPS net short approved in IOU's most recently approved RPS procurement plan.
<b>Price and Contract Terms and Conditions Discovery</b>	The contract, including price, filed by Application will be disclosed and be part of the public record.
<b>Contract Price, Net Market Value, and Project Viability</b>	Reasonableness of the PPA's price, net market value and viability will be assessed relative to 1) shortlisted bids from the most recent annual RPS Solicitation and 2) all PPAs that were executed in the 12 months prior to contract execution.
<b>Consistency with Commission Decisions</b>	Power purchase agreements must be consistent with relevant Commission decisions. Relevant decisions include, but are not limited to, D.02-08-071, D.04-07-029, D.06-05-039, D.07-01-039, D.08-04-009, D.08-08-028, D.10-03-021, as modified by D.11-01-025, D.11-12-020, D.11-12-052.

<p><b>Updated Information</b></p>	<p>The IOU’s renewable net short, the project’s net market value, and the project’s viability score must be updated within one week prior to filing the Application with the Commission. Similarly, net market value calculations for all comparable bids (as identified above) must be updated using the most current forward curve information within one week prior to filing the Application with the Commission. This information would not need to be provided in the public version of the Application.</p>
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Discuss the advantages and disadvantages of each proposed review criterion to the ratepayer, market, and regulator. In your response, please address the questions below.

16. The above proposal proposes that the process by which IOUs must seek Commission approval of RPS contracts be based, in part, on the contracted amount of expected annual generation. Comment on how projects with multiple contracts for total facility capacity and projects with contracts for multiple phases should be treated under the proposal or propose an alternative delineation and justification.
17. Comment on the appropriateness of the requirement that contracts that are expected to provide annually more than one percent of the IOU’s total bundled sales in the first full year of deliveries should be filed by application. Provide justification for any alternative proposals.
18. Are there additional circumstances for which RPS contracts should be submitted by application for Commission approval? For example, if the contract exceeds a certain capacity or it would cause a rate impact above a certain

amount the IOU would be required to seek approval with an application. In the proposal, provide a justification and include not only the circumstance(s) but also any limits (e.g., all contracts that cause more than a 0.05 cents/kWh rate increase must be filed by application because that would cause a statistically significant rate increase to the average electric rate in California).

19. Are there any items (e.g., contract's net market value or viability score) in addition to the contract terms and conditions that should be part of the public record? Provide a justification.

#### **4.5 Proposed Standards of Review for Unbundled Renewable Energy Credits<sup>25</sup>**

In D.10-03-021, as modified by D.11-01-025, the Commission first approved the use of RECs procured without the underlying energy for the purpose of meeting RPS requirements.<sup>26</sup> More recently, the Commission adopted D.11-12-052, which implements the new RPS portfolio content categories and defines procurement from unbundled REC contracts as meeting the requirements of Section 399.16(b)(3).

However, neither D.10-03-021, as modified by D.11-01-025, nor D.11-12-052 establishes standards of review for the Commission to determine reasonableness of unbundled REC contracts. D.10-03-021, as modified by D.11-01-025, authorizes the Director of Energy Division to apply current procedures and

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<sup>25</sup> Unbundled renewable energy credits (RECs) are RECs that are procured separately from the RPS-eligible generation with which they were originally associated.

<sup>26</sup> D.10-03-021, as modified by D.11-01-025, also established rules for tradable RECs. D.11-12-052 clarified which rules established by D.10-03-021, as modified by D.11-12-052, continue in force and are unaffected by SB 2 (1X).

methods of review of bundled contracts for procurement under unbundled REC contracts. As noted above, the Commission currently reviews proposed bundled RPS power purchase agreements for consistency with approved RPS Procurement Plans, including approved LCBF methodologies, existing Commission decisions, cost and value reasonableness, and viability. Currently, unbundled REC contracts are reviewed on a case-by-case basis focusing on the same criteria. In this ruling, I propose that unbundled REC purchase contracts or PSAs<sup>27</sup> (from solicitations and bilaterally negotiated) that do not qualify for expedited approval (Section 4.3) be reviewed for consistency with the renewable net short as approved in the IOU’s RPS Procurement Plan, consistency with existing Commission decisions, and the SOR in Table 6. This proposal is similar to the reasonableness standards of review for bundled contracts, but it proposes that the price reasonableness determination be based on a comparison of unbundled REC contracts only to other unbundled REC contracts.

**Table 6: Standards of Review for Unbundled Renewable Energy Credit Contracts**

<b>Reasonableness Review Criterion</b>	<b>Standards of Review / Requirements</b>
<b>Need Authorization (GWh)</b>	REC quantity must be consistent with RPS net short approved in IOU’s most recently approved RPS procurement plan.

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<sup>27</sup> The sale of excess RPS-eligible procurement by an electrical corporation.

<b>Contract Price</b>	Reasonableness of contract’s price will be assessed relative to: 1) shortlisted unbundled REC bids from the most recent annual RPS Solicitation and 2) all unbundled REC contracts that were executed in the 12 months prior to contract execution.
<b>Updated Renewable Net Short</b>	The IOU’s renewable net short must be updated within one week prior to filing the Advice Letter with the Commission.
<b>Consistency with Commission Decisions</b>	Purchase agreements must be consistent with relevant Commission decisions. Relevant decisions include, but are not limited to, D.02-08-071, D.04-07-029, D.06-05-039, D.07-01-039, D.08-04-009, D.08-08-028, D.10-03-021, as modified by D.11-01-025, D.11-12-020, D.11-12-052.

19. Are there any other cohorts that unbundled REC contracts should be compared to? If yes, propose additional appropriate cohorts and the justification for their appropriateness.

20. Are there any criteria in addition to need authorization, consistency with an IOU’s renewable net short, consistency with Commission decisions, and price that should be considered by the Energy Division and the Commission when reviewing unbundled REC contracts for reasonableness?

21. Is there a methodology that would accurately allow the comparison of unbundled REC contracts to bundled procurement? Please provide a quantitative example.

**4.6 Proposal – RPS Independent Evaluator Reports**

In D.06-05-039, the Commission required an IE to prepare a report on its evaluation of an IOU’s RPS solicitation, evaluation, and selection process. This report is filed by the IOU in an advice letter or application requesting Commission approval of an RPS contract. While the Energy Division regularly provides IEs with reporting templates, the Commission has not adopted specific

review and reporting guidelines for IEs. This ruling builds upon the proposals regarding IE reports in the April ACR by proposing specific evaluation requirements to be included in RPS IE Reports. If adopted, these requirements will be incorporated into the templates provided by Energy Division to the IEs.

**Table 7  
Proposal - RPS Independent Evaluator Reports**

<b>Reasonableness Review Criterion</b>	<b>Review Requirements</b>
<b>Capacity Value</b>	The IE must provide a supplemental calculation(s) of the Capacity Value for the LCBF evaluation and provide a finding regarding the reasonableness and accuracy of the IOU's calculation, illustrate the strengths and shortcomings of the calculation and provide recommendations for improving the calculation.
<b>Ancillary Services Value</b>	The IE must provide a supplemental calculation of the Ancillary Services Value for the LCBF evaluation and provide a finding regarding the reasonableness and accuracy of the IOU's calculation, illustrate the strengths and shortcomings of the calculation and provide recommendations for improving the calculation.
<b>IE Recommendation</b>	The IE must provide a definitive recommendation in the IE Report to the Commission regarding whether the IOU conducted its evaluation of bids in a fair and reasonable manner and if the shortlist should either be "approved" or "rejected." This recommendation must be justified based on an evaluation of the shortlist based on: 1) reasonableness and accuracy of LCBF methodology, 2) price and value of projects shortlisted, 3) viability of projects on shortlist, and 4) approved renewable net short.

22. Comment on the strengths and weaknesses of the IE providing supplemental calculations.

23. Are there additional evaluation criteria or requirements for IEs assigned to RPS solicitations that the Commission should adopt?

## **5. Other Procurement Reforms**

### **5.1 Implementation of New Least-Cost Best-Fit Requirements**

In SB 2 (1X), the Legislature expanded the Commission's obligations in developing criteria "for the rank ordering and selection of least-cost and best-fit eligible renewable energy resources." New Section 399.13(a)(4) provides:

- (4) The commission shall adopt, by rulemaking, all of the following:
  - (A) A process that provides criteria for the rank ordering and selection of least-cost and best-fit eligible renewable energy resources to comply with the California Renewables Portfolio Standard Program obligations on a total cost basis. This process shall take into account all of the following:
    - (i.) Estimates of indirect costs associated with needed transmission investments and ongoing electrical corporation expenses resulting from integrating and operating eligible renewable energy resources.
    - (ii.) The cost impact of procuring the eligible renewable energy resources on the electrical corporation's electricity portfolio.
    - (iii.) The viability of the project to construct and reliably operate the eligible renewable energy resource, including the developer's experience, the feasibility of the technology used to generate electricity, and the risk that the facility will not be built, or that construction will be delayed, with the result that electricity will not be supplied as required by the contract.
    - (iv.) Workforce recruitment, training, and retention efforts, including the employment growth associated with the construction and operation of eligible renewable energy

resources and goals for recruitment and training of women, minorities, and disabled veterans.

24. Please describe how the Commission should implement each of the four specific topics listed in Section 399.13(a)(4)(A). Please include quantitative examples where relevant.
25. For each of these four topics, please compare your implementation proposal with the existing LCBF methodology as set out in D.04-07-029 and applied in the 2011 RPS Procurement Plans approved in D.11-04-030.
26. For each of these four topics, and for your LCBF proposal as a whole, please explain how your proposal would affect costs ultimately paid by ratepayers for RPS-eligible energy, using quantitative examples where relevant.
27. For each of the four topics, and for your LCBF proposal as a whole, please explain how your proposed criteria would contribute to the efficiency of the RPS procurement process.
28. What additional topics, if any, should be part of the LCBF process? Please provide a detailed discussion of each topic, using quantitative examples where relevant.

## **5.2 Green Attributes Standard Term and Condition**

RPS procurement contracts now contain a non-modifiable standard term and condition (STC) 2 regarding “green attributes.”<sup>28</sup>

29. In view of the adoption of RECs as the basis for RPS compliance, is STC 2 still necessary in its entirety? Please explain in detail, with reference to:
  - 1) current commercial practice; 2) the regulatory

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<sup>28</sup> The current version of STC 2 is found at Appendix B of D.08-08-028. It is attached to this Ruling as Attachment A.

requirements of the Commission and any other relevant agencies (e.g., the California Energy Commission (CEC) and the California Air Resources Board (CARB)); and 3) recent legislation related to biofuels (Assembly Bill (AB) 1900 (Gatto); AB 2196 (Chesbro); and SB 1122 (Rubio)).

30. Are specific elements of STC 2 still necessary? If so, which ones? Please explain in detail, with reference to: 1) current commercial practice; 2) the regulatory requirements of the Commission and any other relevant agencies (e.g., CEC and CARB); and 3) recent legislation related to biofuels (AB 1900 (Gatto); AB 2196 (Chesbro); and Senate Bill (SB) 1122 (Rubio)).

31. Even if not necessary, is STC 2, or are some elements of STC 2, still useful in RPS procurement contracts? Please explain in detail, with reference to: 1) current commercial practice; 2) the regulatory requirements of the Commission and any other relevant agencies (e.g., the CEC and CARB); and 3) recent legislation related to biofuels (AB 1900 (Gatto); AB 2196 (Chesbro); and SB 1122 (Rubio)).

**IT IS RULED** that Comments not to exceed 50 pages on the new proposals set forth herein may be filed not later than November 15, 2012 and reply comments not to exceed 25 pages may be filed not later than December 7, 2012.

Dated October 5, 2012 at San Francisco, California.

/s/ MARK J. FERRON  
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Mark J. Ferron  
Assigned Commissioner

# ATTACHMENT A

Standard Term and Condition 2:

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;<sup>29</sup> (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

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<sup>29</sup> Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

3.2. Green Attributes. Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.

(END OF ATTACHMENT A)