

Decision **ALTERNATE PROPOSED DECISION OF COMMISSIONER
GRUENEICH** (Mailed 10/25/2010)

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)

**DECISION ON PETITIONS FOR MODIFICATION OF DECISION 10-03-021
AUTHORIZING USE OF RENEWABLE ENERGY CREDITS
FOR COMPLIANCE WITH THE CALIFORNIA
RENEWABLES PORTFOLIO STANDARD**

1. Summary

This decision denies the April 12, 2010, Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company Joint Petition for Modification of Decision (D.) 10-03-021 and the April 15, 2010 Independent Energy Producers Association’s Petition for Modification of D.10-03-021. This decision modifies D.10-03-021 to extend the expiration date for the Tradable Renewable Energy Credit usage cap and price cap until December 31, 2013. This decision lifts the stay on D.10-03-021 as well as the moratorium on Commission approval of certain Renewables Portfolio Standard contracts, both imposed by D.10-05-018.

2. Procedural Background

The Commission issued Decision (D.) 10-03-021 on March 15, 2010, with an effective date of March 11, 2010. On April 12, 2010, Southern California Edison

Company (SCE), Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E) filed the Joint Petition of Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company for Modification of Decision 10-03-021 (utility petition). Filed with the utility petition were the Joint Motion of Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company to Shorten Time to Respond to Petition for Modification of Decision 10-03-021 and for an Expedited Decision and the Motion of Southern California Edison Company and San Diego Gas & Electric Company for Stay of Decision 10-03-021 (joint stay motion).

On April 14, 2010, the assigned Commissioner issued the Assigned Commissioner's Ruling Setting Schedule for Consideration of Joint Petition for Modification of Decision 10-03-021 and Joint Motion for Stay of Decision 10-03-021 (ACR). The ACR shortened the time for responses and replies to the joint stay motion and for responses and replies to the utility petition.

On April 15, 2010, the Independent Energy Producers Association (IEP) filed the Petition of the Independent Energy Producers Association for Modification of Decision 10-03-021 Authorizing Use of Renewable Energy Credits for RPS Compliance (IEP petition). IEP also filed the Motion of the Independent Energy Producers Association to Shorten Time with its petition. The Administrative Law Judge's Ruling Granting Motion of the Independent Energy Producers Association to Shorten Time (April 16, 2010) aligned the timing of consideration of the IEP petition with that of the utility petition.

Responses to the joint stay motion were filed April 21, 2010.¹ SCE filed a reply to the responses to the joint stay motion on April 23, 2010. In D.10-05-018, the Commission stayed D.10-03-021 on its own motion, pending the resolution of the two petitions for modification. D.10-05-018 also instituted a temporary moratorium on approval of any renewables portfolio standard (RPS) procurement contracts for compliance with the RPS program signed after May 6, 2010 (the effective date of the stay decision) that would be defined under D.10-03-021 as transactions transferring only renewable energy credits (RECs).

Responses to the utility petition and the IEP petition were filed May 4, 2010.² SCE, PG&E, and SDG&E filed a joint reply to the responses to the utility petition on May 10, 2010.

3. Discussion

3.1. Petitions for Modification of D.03-10-021

The utility petitioners and IEP failed to raise any new facts, evidence or arguments that were not available to the Commission in March 2010, or indeed

¹ Responses to the joint stay motion were filed by the Alliance for Retail Energy Markets (AReM); Center for Energy Efficiency and Renewable Technologies (CEERT); City and County of San Francisco (CCSF); PG&E; Shell Energy North America (Shell); Sierra Pacific Industries; The Utility Reform Network (TURN); Union of Concerned Scientists (UCS); and Western Power Trading Forum (WPTF).

² Responses to the petitions for modification were filed by AReM; Bloom Energy; California Independent System Operator; California Wind Energy Association; CCSF; Division of Ratepayer Advocates; Green Power Institute; Iberdrola Renewables, Inc. (Iberdrola); LS Power Associates, L.P.; Large Scale Solar Association (LSA); Mountain Utilities and Bear Valley Electric Service; NextEra Energy Resources; Renewable Energy Coalition; SCE; Sempra Generation; Shell; Sacramento Municipal Utility District; Solar Alliance; TURN; UCS; WPTF; and Zephyr Power Transmission, LLC and Chinook Power Transmission, LLC (jointly; collectively, Zephyr).

the entire 2½ year period that the tradable renewable energy credits (TRECs) issue has been considered by this Commission. The petitions are denied.

3.2. Closure on Actions Taken by D.10-05-018

With the resolution of the petitions for modification, the stay on D.03-10-021 imposed by D.10-05-018 is no longer warranted. In addition, the moratorium on Commission approval of RPS contracts signed after May 6, 2010 imposed by D.10-05-018 is terminated as of the effective date of this decision. All contracts for compliance with the renewables portfolio standard submitted after May 6, 2010 must be re-filed to comply with D.10-03-021. All new contracts for compliance with the renewables portfolio standard that would be defined under D.10-03-021 as transactions transferring only RECs may now be submitted beginning on the effective date of this decision.

3.3. Expiration Date of the TREC Usage and Price Cap

D.10-03-021 provided guidance to utilities that no more than 25% of the MWh used by PG&E, SCE, or SDG&E to meet the Annual Procurement Target (APT) in any year may be in the form of TRECs, beginning with the 2010 compliance year. D.10-03-021 also adopted a price cap of \$50 TREC (the penalty amount translated from MWh to TRECs). The 25% usage limit and the \$50 price cap allows significant use of TREC-only procurement yet bounds the risks ratepayers are asked to bear in this nascent TREC market, and ensures that bundled contracts are the source of the majority of RPS procurement in any year. D.10-03-021 imposed an automatic sunset date of December 31, 2011 unless the Commission acts to extend or otherwise modify it.

Because of the substantial amount of time that has passed between the issuance of D.10-03-021 and this decision, we find that the sunset provisions applied to the usage limit and price cap are insufficient to allow the Commission to refine the evaluative framework to assess the value of REC-only contracts

relative to bundled contracts. Therefore, this decision modifies D.10-03-021 to extend the expiration date for these limits to December 31, 2013, to give Energy Division sufficient time to develop this evaluative framework.

The Commission cannot and should not take any further actions on TRECs until it has Energy Division's report in hand and has carefully reviewed the state of the TRECs market and the utilities' RPS compliance. If changes are appropriate based on solid and contemporary evidence, the Commission can at that time determine whether further modifications are warranted.

Conforming changes should be made to those sections of text within D.10-03-021 which refer to the expiration date of the temporary limit on the use of RECs and the temporary price cap to reflect a December 31, 2013 expiration.

- a. The reference in the summary should be changed to read:

Both limits will expire December 31, ~~2011~~ 2013, unless the Commission acts to modify, extend, or terminate the limits prior to that date.

- b. All the references to December 31, 2011 as they pertain to the expiration of the temporary usage limit and the temporary price cap in sections 4.6.3 and 4.7.3. should be modified to "December 31, ~~2011~~ 2013."

Ordering Paragraphs (OP) 19 and 21 of D.10-03-021 are herein modified to read:

19. The temporary limit on the use of tradable renewable energy credits for compliance with the California renewables portfolio standard shall terminate December 31, ~~2011~~ 2013, ~~unless the Commission acts to review, extend, or modify it, or to terminate the limit prior to its expiration.~~
21. The temporary limit on the price paid by an investor-owned utility for tradable renewable energy credits procured through contracts for tradable renewable energy credits only for compliance with the California

renewables portfolio standard shall terminate December 31, 2013.

3.4. Technical Corrections to D.10-03-021

As is the sometimes the case with a Decision as complex as D.10-03-021 we learn after the fact of sections which could benefit from clarification. In some cases these clarifications are detailed and legalistic. In the following we identify four such topics needing clarification:

- A-1. The nature of the distributed generation discussed in section 4.3.2. of D.10-03-021 and the role of the California Energy Commission (CEC).
- A-2. Geographical references in OP 9 of D.10-03-021 and the discussion of that issue in section 4.8 of D.10-03-021.
- A-3. Capitalization of defined terms in RPS Procurement contracts.
- A-4. Treatment of TRECs by CEC and Western Renewable Energy Generation Information System.

These topics are expanded upon in Appendix A and necessary modifications to D.10-03-021 are set out in OPs 7, 8, 9, 10, 11, 12, and 13 herein.

4. Comments on Alternate Proposed Decision

The alternate proposed decision of Commissioner Grueneich in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code, and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on November 15, 2010 by CEERT; Iberdrola; IEP; LSA; PG&E; SDG&E; Shell; Sierra Pacific Power Company (Sierra Pacific); SCE; Transwest Express, LLC; TURN; and Zephyr. Reply comments were filed on November 20, 2010 by CCSF; Mountain Utilities; PacificCorp; PG&E; SCE; Sierra Pacific; TURN; and UCS.

The Commission has carefully considered all comments and reply comments. Some revisions to the PD have been made in response to comments

and are found in section 3.3 of the text and in the OPs. The majority of comments and reply comments expressed a preference that the Commission set a sunset date at this time. As December 31, 2013 is the latest date that RPS -obligated retail sellers must meet the 20% RPS target it is appropriate that we lift the caps to coincide with this date.

5. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Anne E. Simon is the assigned Administrative Law Judge for this portion of this proceeding.

Findings of Fact

1. Petitioners did not raise any new facts to support their petitions.
2. With the resolution of the petitions for modification, the stay imposed in D.10-05-018 is no longer necessary.

Conclusions of Law

1. The petitions for modification should be denied.
2. D.10-03-021 should be modified as set forth in this decision.
3. Contracts for RPS Procurement submitted after May 6, 2010 should be re-filed in a form and providing the information required by D.10-03-021, as modified by this decision.
4. Contracts for procurement of TRECs for RPS compliance that have not previously been submitted for Commission approval may be submitted beginning on the effective date of this decision.

O R D E R**IT IS ORDERED** that:

1. The Joint Petition of Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company for Modification of Decision 10-03-021, filed April 12, 2010, is denied.
2. The Petition of the Independent Energy Producers Association for Modification of Decision 10-03-021 Authorizing Use of Renewable Energy Credits for Renewables Portfolio Standard Compliance is denied.
3. The stay of Decision (D.) 10-03-021 imposed by D.10-05-018 is dissolved, as of the effective date of this decision.
4. The temporary moratorium imposed by Decision (D.) 10-05-018 on Commission approval of any procurement contracts for compliance with the renewables portfolio standard program signed after May 6, 2010 that would have been defined under D.10-03-021 as transactions transferring only renewable energy credits is ended, as of the effective date of this decision.
5. All contracts signed by utilities and submitted after May 6, 2010 must be re-filed in compliance with Decision (D.) 10-03-021. New contracts for compliance with the renewables portfolio standard that would be defined under D.10-03-021 as transactions transferring renewable energy credits only may now be submitted beginning on the effective date of this decision.
6. Conforming changes are made to several sections of the text of Decision (D.) 10-03-021 that refer to the expiration date of the temporary limit on tradable renewable energy credits usage and the temporary price cap. The expiration date shall be stated as December 31, 2013.

- a. The reference in the summary of D.10-03-021 is modified to read:

Both limits will expire December 31, 2013, unless the Commission acts to modify, extend, or terminate the limits prior to that date.

- b. All references to December 31, 2011 in section 4.6.3. and 4.7.3. as those references pertain to the expiration of the TREC usage limit and TREC price cap should be modified to read: "December 31, 2013."

7. The Discussion section of Decision (D.) 10-03-021 is modified as explained in Appendix A of this decision. The specific modifications to the text are set forth as follows:

- a. Section 4.3.2 of D.10-03-021 is modified to read:

AReM, BVES, PG&E, SCE, and TURN suggest that various forms of DG [FOOTNOTE: This discussion considers generation on the customer side of the meter as DG, in accordance with the CEC's *RPS Eligibility Guidebook* (3d ed., December 2007), at 17-19 (available at <http://www.energy.ca.gov/2007publications/CEC-300-2007-006/CEC-300-2007-006-ED3-CMF.PDF>.) Generation projects on the system side of the meter that are developed to connect to the distribution system are not considered "distributed generation" for purposes of this discussion.] may provide some available TRECs, though not at a very large scale over the next few years.

Customer-side DG projects may utilize a variety of renewable technologies. These include solar photovoltaic (PV) installations, largely constructed under the aegis of the California Solar Initiative (CSI) and the self-generation incentive program (SGIP) administered by this Commission, and the New Solar Homes Partnership (NSHP) administered by the CEC; generation using biodiesel or biogas; and small biomass facilities. [FOOTNOTE: Formal determination of the RPS eligibility of types of generation or particular systems is made by the CEC. The most current statement of CEC guidance is the *RPS Eligibility Guidebook*, (3d ed., December

2007). The *RPS Eligibility Guidebook* provides that “[t]he Energy Commission will not certify distributed generation facilities as RPS-eligible unless the CPUC authorizes tradable RECs to be applied toward the RPS.” (At 18.) We anticipate that the CEC will review the issue of the RPS eligibility of DG during its next revision of the *RPS Eligibility Guidebook*.]

The CEC will determine the eligibility of customer-side DG for the RPS. At this time, almost no customer-side DG is RPS-eligible. The *RPS Eligibility Guidebook* (at 18) explains that:

“The Energy Commission will not certify distributed generation PV and other forms of customer-sited renewable energy into the RPS at this time, with the following exception.

The Energy Commission will certify facilities that would have been considered distributed generation facilities except that they are participating in a standard contract/tariff executed pursuant to Public Utilities Code § 399.20, as implemented through the CPUC Decision 07-07-027 (R.06.05.027), executed pursuant to a comparable standard contract/tariff approved by a local publicly owned electric utility. . . ., or if the facility is owned by a utility and meets other requirements, to become certified as RPS-eligible

The Energy Commission will not certify distributed generation facilities as RPS-eligible unless the CPUC authorizes tradable RECs to be applied toward the RPS.”

Thus, although there are technologies that can be used for customer-side renewable DG, most current installations are not in fact RPS-eligible because they have not been certified by the CEC and cannot be certified until the CEC revises its *RPS Eligibility Guidebook*.

In anticipation of the eventual use of customer-side DG for RPS compliance, both this Commission and the CEC have addressed the issue of the availability of TRECs from such installations. In D.07-01-018, the Commission determined that owners of customer-side DG installations own the RECs associated with the generation, and can therefore sell

them, regardless of whether the DG owners participate in net metering, CSI, or the SGIP [FOOTNOTE: The CEC has likewise determined that the system owner of customer-side DG does not need to relinquish claim over the RECs in order to participate in the NSHP. See *New Solar Homes Partnership Guidebook* (3d edition April 2010) at 7. This guidebook is available at: <http://www.energy.ca.gov/2010publications/CEC-300-2010-001/CEC-300-2010-001-CMF-REV1.PDF>]. In D.07-07-027 and D.08-09-033, implementing § 399.20, the Commission provided for tariffs or standard contracts for utilities' bundled purchase of RPS-eligible generation from DG of not more than 1.5 megawatt (MW) in size located at public water and wastewater facilities and other customers, with an overall statewide limit on such purchases. The generation so acquired counts toward the utilities' RPS targets. In this program, customers may sell to the utility either the full output of the DG facility (energy and RECs) or only the excess (energy and RECs) not used for on-site consumption. In the latter case, the RECs associated with the energy used on-site remain with the system owner. [FOOTNOTE: TRECs from RPS-eligible DG installations that are tracked in WREGIS are, for RPS compliance purposes, the same as TRECs from RPS-eligible utility-scale generation. No matter the type of DG generation or the kind of transaction, RECs associated with RPS-eligible DG – like RECs from any other RPS-eligible generation – “shall be counted only once for compliance with the renewables portfolio standard of this state or any other state, or for verifying retail product claims in this state or any other state.” (§ 399.16(a)(2).)]

AReM states that the CSI program estimates that the program will have installed about 800 gigawatt hours (GWh) of generation by 2010. AReM additionally estimates that CSI will have provided incentives for approximately 1,100 GWh by 2011. No other party provides quantitative DG estimates. [FOOTNOTE: In D.09-06-049, the Commission approved a new SCE program to procure RPS-eligible energy from rooftop solar

PV installations of one to two MW in size. Because the program is new, it is not currently possible to know what, if any, impact it will have on DG as a resource for RPS procurement over the next two to three years.]

b. The last sentence in the second paragraph of section 4.10 of D.10-03-021 is modified to read:

Because TRECs cannot be recognized for RPS compliance unless they are tracked in WREGIS, REC-only contracts must contain assurances that the seller has taken all steps necessary to ensure that the generation is properly registered and the TRECs will be tracked in WREGIS. [FOOTNOTE: PG&E suggests in its comments on the RPD that the assurance of registration with WREGIS should apply at the time deliveries commence under the contract, not at the time the contract is signed. This suggestion is unopposed and simplifies contracting; we adopt it in this decision.]

8. Conclusion of Law 4 of Decision 10-03-021 is modified to read:

4. In order to be used for RPS compliance, TRECs must be tracked in WREGIS.

9. Ordering Paragraph 3 of Decision 10-03-021 is modified to read:

3. In order to be used for compliance with the California renewables portfolio standard, tradable renewable energy credits must be tracked and retired in the Western Renewable Energy Generation Information System, must conform to the requirements of Decision 08-08-028 and any subsequent Commission decision or any applicable California legislation characterizing renewable energy credits, and must meet the criteria for eligibility for the California renewables portfolio standard that are set by the California Energy Commission.

10. Ordering Paragraph 4 of Decision 10-03-021 is modified to read:

4. Any renewable energy credits used for compliance with the California renewables portfolio standard are subject to the restrictions in Ordering Paragraphs 8 and 9, below.

11. Ordering Paragraph 9 of Decision 10-03-021 is modified to read:

Renewable energy credits associated with electricity generation that is eligible for the California renewables portfolio standard delivered under procurement contracts of California utilities for both energy and renewable energy credits pursuant to the federal Public Utility Regulatory Policies Act of 1978 that were signed after January 1, 2005 shall be used for compliance with the California renewables portfolio standard only if they are not transferred to an entity other than the original buyer in the Western Renewable Energy Generation Information System prior to being retired for compliance with the California renewables portfolio standard.

12. Ordering Paragraph 35 of Decision 10-03-021 is modified to read:

35. The following non-modifiable standard terms and conditions shall be included in all contracts for procurement for compliance with the California renewables portfolio standard, whether bundled contracts or purchases of renewable energy credits only:

a. STC REC-1. Transfer of Renewable Energy Credits.

Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

b. STC REC-2. Tracking of RECs in WREGIS.

Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation

Information System will be taken prior to the first delivery under the contract.

13. Ordering Paragraph 36 of Decision 10-03-021 is modified to read:

36. The following non-modifiable standard terms and conditions shall be included in all contracts for purchase of renewable energy credits only of regulated utilities other than multi-jurisdictional utilities:

STC REC-3. CPUC Approval

“CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:

- (a) approves this Agreement in its entirety, including payments to be made by the Buyer, subject to CPUC review of the Buyer’s administration of the Agreement; and
- (b) finds that any procurement pursuant to this Agreement is procurement of Renewable Energy Credits that conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation, for purposes of determining Buyer’s compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), Decision 03-06-071, or other applicable law.

CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A
Technical Corrections to D.10-03-021

This Appendix catalogues and justifies the technical corrections identified in the text of Section 4 of this Alternate Proposed Decision.

A-1.

No party seeks changes to the discussion of the sources of tradable renewable energy credits (TRECs). Nevertheless, we conclude that one change is in order.

The text in section 4.3.2. of Decision (D.) 10-03-021 should be clarified with respect to the nature of the distributed generation (DG) being discussed and the role of the California Energy Commission (CEC). The original text could engender confusion about the relationship of this Commission's discussion of TRECs from DG sources to the CEC's authority, pursuant to § 399.13, to determine what resources are renewables portfolio standard (RPS) eligible. We clarify that our decision to authorize the use of TRECs is not intended to imply that renewable energy credits (RECs) associated with energy from customer-side DG installations generated prior to the effective date of D.10-03-021 are (or are not) RPS-eligible. The CEC will make those eligibility determinations.

Therefore, section 4.3.2. should be rewritten, as follows:

AReM, BVES, PG&E, SCE, and TURN suggest that various forms of DG¹ may provide some available TRECs, though not at a very large scale over the next few years.

¹ This discussion considers generation on the customer side of the meter as DG, in accordance with the CEC's *RPS Eligibility Guidebook* (3d ed., December 2007), at 17-19 (available at <http://www.energy.ca.gov/2007publications/CEC-300-2007-006/CEC-300-2007-006-ED3-CMF.PDF>.) Generation projects on the system side of the meter that are developed to connect to the distribution system are not considered "distributed generation" for purposes of this discussion.

~~There are several types of renewable DG projects.~~

Customer-side DG projects may utilize a variety of renewable technologies. These include on-site RPS-eligible generation at customers; solar photovoltaic (PV) installations, largely constructed under the aegis of the California Solar Initiative (CSI) and the self-generation incentive program (SGIP) administered by this Commission, and the New Solar Homes Partnership (NSHP) administered by the CEC; generation using biodiesel or biogas; and small biomass facilities.²

The CEC will determine the eligibility of customer-side DG for the RPS. At this time, almost no customer-side DG is RPS-eligible. The *RPS Eligibility Guidebook* (at 18) explains that:

“The Energy Commission will not certify distributed generation PV and other forms of customer-sited renewable energy into the RPS at this time, with the following exception.

The Energy Commission will certify facilities that would have been considered distributed generation facilities except that they are participating in a standard contract/tariff executed pursuant to Public Utilities Code § 399.20, as implemented through the CPUC Decision 07-07-027 (R.06-05-027), executed pursuant to a comparable standard contract/tariff approved by a local publicly owned electric utility. . . , or if the facility is owned by a utility and meets other requirements, to become certified as RPS-eligible

² Formal determination of the RPS eligibility of types of generation or particular systems is made by the CEC. The most current statement of CEC guidance is the *RPS Eligibility Guidebook*, (3d ed., December 2007). The *RPS Eligibility Guidebook* provides that “[t]he Energy Commission will not certify distributed generation facilities as RPS-eligible unless the CPUC authorizes tradable RECs to be applied toward the RPS.” (at 18.) We anticipate that the CEC will review the issue of the RPS eligibility of DG during its next revision of the *RPS Eligibility Guidebook*.

The Energy Commission will not certify distributed generation facilities as RPS-eligible unless the CPUC authorizes tradable RECs to be applied toward the RPS.”

Thus, although there are technologies that can be used for customer-side renewable DG, most current installations are not in fact RPS-eligible because they have not been certified by the CEC and cannot be certified until the CEC revises its *RPS Eligibility Guidebook*.

In anticipation of the eventual use of customer-side DG for RPS compliance, both this Commission and the CEC have addressed the issue of the availability of TRECs from such installations. ~~The availability of TRECs from such installations has been addressed in a variety of contexts.~~ In D.07-01-018, the Commission determined that owners of customer-side DG installations own the RECs associated with the generation, and can therefore sell them, regardless of whether the DG owners participate in net metering, CSI, or the SGIP.³ In D.07-07-027 and D.08-09-033, implementing § 399.20, the Commission provided for tariffs or standard contracts for utilities’ bundled purchase of RPS-eligible generation from DG of not more than 1.5 megawatt (MW) in size located at public water and wastewater facilities and other customers, with an overall statewide limit on such purchases. The generation so acquired counts toward the utilities’ RPS targets. In this program, customers may sell to the utility either the full output of the DG facility (energy and RECs) or only the excess (energy and RECs) not used for on-site

³ The CEC has likewise determined that the system owner of customer-side DG does not need to relinquish claim over the RECs in order to participate in the NSHP. See *New Solar Homes Partnership Guidebook* (3d edition April 2010) at 7. This guidebook is available at: <http://www.energy.ca.gov/2010publications/CEC-300-2010-001/CEC-300-2010-001-CMF-REV1.PDF>.

consumption. In the latter case, the RECs associated with the energy used on-site remain with the system owner.⁴

AReM states that the CSI program estimates that the program will have installed about 800 gigawatt hours (GWh) of generation by 2010. AReM additionally estimates that CSI will have provided incentives for approximately 1,100 GWh by 2011. No other party provides quantitative DG estimates.⁵

A-2.

The text of section 4.8 in D.10-03-021 and the implementation of that discussion in Ordering Paragraph (OP) 9 create confusion. As a result OP 9 does not communicate the Commission's full intention, as set forth in the discussion. We therefore, adopt the proposed modification of OP 9 to eliminate the reference to facilities located in California, as follows:

Renewable energy credits associated with electricity generation that is eligible for the California renewables portfolio standard delivered under procurement contracts of California utilities for both energy and renewable energy credits pursuant to the federal Public Utility Regulatory Policies Act of 1978 that were signed after January 1, 2005 ~~with qualifying facilities located in California~~ shall be used for compliance with the California renewables portfolio standard only if they are not transferred to an entity other than the

⁴ TRECs from RPS-eligible DG installations that are tracked in WREGIS are, for RPS compliance purposes, the same as TRECs from RPS-eligible utility-scale generation. No matter the type of DG generation or the kind of transaction, RECs associated with RPS-eligible DG – like RECs from any other RPS-eligible generation – “shall be counted only once for compliance with the renewables portfolio standard of this state or any other state, or for verifying retail product claims in this state or any other state.” (§ 399.16(a)(2).)

⁵ In D.09-06-049, the Commission approved a new SCE program to procure RPS-eligible energy from rooftop solar PV installations of one to two MW in size. Because the program is new, it is not currently possible to know what, if any, impact it will have on DG as a resource for RPS procurement over the next two to three years.

original buyer in the Western Renewable Energy Generation Information System prior to being retired for compliance with the California renewables portfolio standard.

A-3.

In its comments on the Proposed Decision, Southern California Edison Company identifies inconsistencies between the capitalization of the references to RECs in the new Standard Terms and Conditions (STCs) and the capitalization in existing STCs. Because these are significant, defined terms in RPS contracts, the inconsistencies should be remedied. The relevant changes should be made to OPs 35 and 36 and carried forward in Appendix C of D.10-03-021 such that all references to "renewable energy credits" are modified to read "Renewable Energy Credits."

OP 35 should be changed to read:

35. The following non-modifiable standard terms and conditions shall be included in all contracts for procurement for compliance with the California renewables portfolio standard, whether bundled contracts or purchases of renewable energy credits only:

- a. STC REC-1. Transfer of ~~renewable energy credits~~
Renewable Energy Credits.

Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the ~~renewable energy credits~~ Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

b. STC REC-2. Tracking of RECs in WREGIS.

Seller warrants that all necessary steps to allow the ~~renewable energy credits~~ Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

OP 36 should be modified to read:

36. The following non-modifiable standard terms and conditions shall be included in all contracts for purchase of renewable energy credits only of regulated utilities other than multi-jurisdictional utilities:

STC REC-3. CPUC Approval

“CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:

- (a) approves this Agreement in its entirety, including payments to be made by the Buyer, subject to CPUC review of the Buyer’s administration of the Agreement; and
- (b) finds that any procurement pursuant to this Agreement is procurement of ~~renewable energy credits~~ Renewable Energy Credits that conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation, for purposes of determining Buyer’s compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), Decision 03-06-071, or other applicable law.

CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

STC 17. Applicable Law

Governing Law. This agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement.

A-4.

Four editorial errors in D.10-03-021 should be corrected.

1. The last sentence in the second paragraph of section 4.10 should be revised to read:

Because ~~RECs~~ TRECs cannot be recognized for RPS compliance unless they are tracked in WREGIS, REC-only contracts must contain assurances that the seller has taken all steps necessary to ensure that the generation is properly registered and the ~~RECs~~ TRECs will be tracked in WREGIS.⁶

2. Conclusion of Law 4 should be revised to read:
 4. ~~Only RECs tracked in WREGIS should be allowed to be used for RPS compliance.~~ In order to be used for RPS compliance, TRECs must be tracked in WREGIS.
3. OP 3 should be changed to clarify the roles of the CEC and Western Renewable Energy Generation Information System. It should be revised to read:

⁶ PG&E suggests in its comments on the RPD that the assurance of registration with WREGIS should apply at the time deliveries commence under the contract, not at the time the contract is signed. This suggestion is unopposed and simplifies contracting; we adopt it in this decision.

3. ~~Only renewable energy credits tracked and retired in the Western Renewable Energy Generation Information System shall be used for compliance with the California renewables portfolio standard. In order to be used for compliance with the California renewables portfolio standard, tradable renewable energy credits must be tracked and retired in the Western Renewable Energy Generation Information System, must conform to the requirements of Decision 08-08-028 and any subsequent Commission decision or any applicable California legislation characterizing renewable energy credits, and must meet the criteria for eligibility for the California renewables portfolio standard that are set by the California Energy Commission.~~
4. Ordering Paragraph 4 should be modified to address only the restrictions on the use of RECs associated with RPS-eligible energy generated by QFs. It should be revised to read:
 4. ~~Any renewable energy credits tracked in the Western Renewable Energy Generation Information System that conform to the requirements of Decision 08-08-028 and any subsequent Commission decision or any applicable California legislation characterizing renewable energy credits, and that meet the criteria for eligibility set by the California Energy Commission, may be used for compliance with the California renewables portfolio standard, are subject to the restrictions in Ordering Paragraphs 8 and 9, below.~~

(END OF APPENDIX A)