

Decision 08-05-029 May 29, 2008

**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 PARTICIPATION OF SMALL AND MULTI-JURISDICTIONAL  
UTILITIES IN THE RENEWABLES PORTFOLIO STANDARD PROGRAM**

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Appendix A – Schedule for IRPs and Supplements

## **DECISION ON PARTICIPATION OF SMALL AND MULTI-JURISDICTIONAL UTILITIES IN THE RENEWABLES PORTFOLIO STANDARD PROGRAM**

### **1. Summary**

In this decision, we complete the specification of the obligations of small utilities and multi-jurisdictional utilities under the renewables portfolio standard (RPS) program. We clarify how the technical rules, processes, and procedures already in place for the RPS program apply to these utilities. We find that the RPS annual procurement requirements, reporting requirements, and flexible compliance rules apply to the small and multi-jurisdictional utilities in the same way as to other load-serving entities in the RPS program. We apply the special rules for multi-jurisdictional utilities set by the Legislature to calculating their RPS procurement targets and reviewing their planning procedures, acknowledging the special situation of the multi-jurisdictional utilities while supporting the uniform administration of the RPS program. Recognizing the complexities of participation in the RPS program for the small and multi-jurisdictional utilities, we also allow them to extend the period of time during which they may defer their annual procurement obligations.

With this decision, the rules of the RPS program now include all of the investor-owned utilities serving California customers. This will allow all of these utilities to participate in meeting the RPS goal of providing 20% of their retail sales of electricity from eligible renewable resources by 2010.

## 2. Procedural Background

The RPS program was initiated by Senate Bill (SB) 1078 (Sher), Stats. 2002 ch. 516.<sup>1</sup> In Decision (D.) 03-06-071, our order beginning RPS implementation, we focused on setting procedures for the three large investor-owned utilities (IOUs)<sup>2</sup> to begin RPS procurement as soon as possible. We continued our implementation with decisions of general applicability, such as D.04-06-014, which set standard terms and conditions for RPS procurement contracts, and D.04-06-015, which set the initial market price referent (MPR).

Our consideration of the place of small utilities<sup>3</sup> and multi-jurisdictional utilities<sup>4</sup> (collectively, SMJUs) in the RPS program has had three iterations. We appreciate the patience and persistence of the SMJUs in responding to various changes over the extended period of time involved. In this decision, we consider the parties' submissions that are most relevant to the current state of the governing law and the administration of the RPS program.

In D.05-11-025, issued in Rulemaking (R.) 04-04-026, the predecessor to this proceeding, we found that all RPS-obligated load-serving entities (LSEs), including SMJUs, energy service providers (ESPs), and community choice

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<sup>1</sup> The statutory provisions are found at Pub. Util. Code §§ 399.11-399.20. All subsequent references to sections are to the Public Utilities Code, unless otherwise specified.

<sup>2</sup> Pacific Gas and Electric Company (PG&E); San Diego Gas & Electric Company (SDG&E); and Southern California Edison Company (SCE).

<sup>3</sup> Currently, respondents Bear Valley Electric Service (BVES), a division of Golden State Water Company (GSWC), and Mountain Utilities (MU) are the only utilities in this group.

<sup>4</sup> Currently, respondents PacifiCorp and Sierra Pacific Power Company (Sierra) are the only utilities in this group.

aggregators (CCAs), are required to meet the five basic elements of the RPS program.<sup>5</sup> We also noted that then-recently enacted Assembly Bill 200 (Leslie), Stats. 2005, ch. 50, codified at § 399.17, would provide more detailed direction on some aspects of the RPS participation of multi-jurisdictional utilities.

The second iteration followed our request in D.05-11-025 for parties to submit proposals for participating in the RPS program that met the basic requirements, but might have elements that were specific to the type of LSE. SMJUs (and other LSEs) submitted proposals, and parties commented extensively on them.<sup>6</sup>

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<sup>5</sup> These are:

- Meeting the goal that 20% of retail sales will come from eligible renewable resources by the end of 2017 [SB 107 (Simitian), Stats. 2006, ch. 464, advanced this date to 2010. See § 399.11(a).];
- Increasing annual renewable electricity procurement by 1% of the prior year's retail sales;
- Reporting to the Commission on progress toward meeting RPS requirements;
- Utilizing the flexible compliance mechanisms developed by the Commission; and
- Being subject to uniform penalty procedures and potential penalties.

<sup>6</sup> MU, PacifiCorp, and Sierra filed their proposals in R.04-04-026 in February 2006. After R.06-02-012 was opened, Aglet Consumer Alliance (Aglet), PG&E, the Division of Ratepayer Advocates, SCE, The Utility Reform Network (TURN) and Union of Concerned Scientists(UCS) (jointly), as well as MU, PacifiCorp, and Sierra filed comments and/or reply comments in this proceeding. Friends of Kirkwood Association was allowed to intervene and file comments by the Administrative Law Judge's (ALJ) Ruling Granting Motion to Intervene (March 20, 2006).

More detailed supplemental proposals were filed by PacifiCorp, Sierra, and MU in May 2006. SCE and Friends of Kirkwood filed comments on them in June 2006. After consultation with the assigned ALJ, BVES filed its Revised Proposal for Participation in March 2007.

After the parties completed these submissions, SB 107 made significant changes to the RPS program. Some revisions impacted the RPS program as a whole. The repeal of former § 399.14(a)(1), which had deferred the RPS procurement performance of utilities that were not creditworthy, directly impacted MU and Sierra.

The third iteration of consideration of SMJUs then followed. In the ALJ's Ruling Setting Schedule for Revised Proposals for Participation in the RPS Program (Oct. 13, 2006), the ALJ asked for revised proposals in light of the repeal of former § 399.14(a)(1). MU and Sierra filed and served their revised proposals, on which Friends of Kirkwood commented, in November 2006.

With the extensive contributions of the parties outlined above, we now turn to the RPS compliance issues of SMJUs in the context of a mature RPS program.

### **3. Discussion**

#### **3.1. The SMJUs**

##### **3.1.1. Small Utilities**

BVES is a division of GSWC. It provides retail electric service to about 23,000 customers in the Big Bear Lake area of San Bernardino County. Among its customers are two ski resorts. BVES obtains most of its electricity supplies through power purchase agreements, but also owns one small gas-fired peaking facility. It is within the California Independent System Operator (CAISO) transmission grid, but interconnects only to the system of SCE.

MU provides retail electric service to the small community of Kirkwood, in the mountains of Alpine County. Its principal customer is a ski resort. MU provides all its electricity from five small utility-owned diesel generators with a

total capacity of 5.3 megawatts (MW). MU is not connected to the transmission grid.

### **3.1.2. Multi-Jurisdictional Utilities**

PacifiCorp operates in six states: California, Idaho, Oregon, Utah, Washington, and Wyoming. In California, it serves about 50,000 retail customers in the counties of Siskiyou, Shasta, Modoc, and Del Norte. These customers comprise less than 5% of PacifiCorp's load. PacifiCorp maintains its own control area, which is not part of the CAISO grid.

Sierra provides retail electric service in northern Nevada and the Lake Tahoe area in California. It serves about 45,000 retail customers in California, comprising about six percent of Sierra's load. Sierra's transmission system is not part of the CAISO system.

### **3.2. Procurement Obligations**

We begin our discussion by noting that neither SB 1078 nor SB 107 distinguishes SMJUs from other electrical corporations. In D.05-11-025, we concluded that the fundamental RPS procurement requirements applied uniformly to all LSEs: (1) an annual increase in energy procured from RPS-eligible renewable resources of one percent of the prior year's retail sales; and (2) the target of 20% of retail sales supplied from eligible renewable resources by the statutory deadline. We now apply these basic procurement rules in light of three additional factors:

- the lapse of time since D.05-11-025;
- the special requirements for multi-jurisdictional utilities in § 399.17; and
- the repeal of former section 399.14(a)(1), regarding RPS procurement obligations of utilities that are not creditworthy.

We first discuss the general procurement requirements for small utilities and multi-jurisdictional utilities. Section 399.17<sup>7</sup> does not affect the underlying

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<sup>7</sup> Section 399.17 provides:

(a) Subject to the provisions of this section, the requirements of this article apply to an electrical corporation with 60,000 or fewer customer accounts in California that serves retail end-use customers outside California.

(b) For an electrical corporation with 60,000 or fewer customer accounts in California that serves retail end-use customers outside California, an eligible renewable energy resource includes a facility that is located outside California, if the facility is connected to the Western Electricity Coordinating Council (WECC) transmission system, provided all of the following conditions are met:

(1) The electricity generated by the facility is procured by the electrical corporation on behalf of its California customers, and is not used to fulfill renewable energy procurement requirements in other states.

(2) The electrical corporation participates in, and complies with, the accounting system administered by the Energy Commission pursuant to subdivision (b) of Section 399.13.

(3) The Energy Commission verifies that the electricity generated by the facility is eligible to meet the annual procurement targets of this article.

(c) The commission shall determine the annual procurement targets for an electrical corporation with 60,000 or fewer customer accounts in California that serves retail end-use customers outside California, as a specified percentage of total kilowatt hours sold by the electrical corporation to its retail end-use customers in California in a calendar year.

(d) An electrical corporation with 60,000 or fewer customer accounts in California that serves retail end-use customers outside California, may use an integrated resource plan prepared in compliance with the requirements of another state utility regulatory commission, to fulfill the requirement to prepare a renewable energy procurement plan pursuant to this article, provided the plan meets the requirements of Sections 399.11, 399.12, 399.13, and 399.14, as modified by this section.

(e) Procurement and administrative costs associated with long-term contracts entered into by an electrical corporation with 60,000 or fewer customer accounts in California that serves retail end-use customers

*Footnote continued on next page*

procurement *obligations* of PacifiCorp and Sierra, but only the methods of *calculation* and *planning* for RPS procurement and compliance. We therefore include all SMJUs in this general rule.

Because of the complexities introduced by the statutory treatment of the creditworthiness of the utilities by former § 399.14(a)(1) and its repeal, we separately discuss the impact of the creditworthiness issue on the procurement obligations of MU and Sierra.

### **3.2.1. Procurement Elements**

#### **3.2.1.1. Initial Baseline Procurement Amount**

We apply to SMJUs the initial baseline procurement amount (IBPA) calculation method for all utilities set out in § 399.15(b)(2), as explained in D.06-10-050 and clarified in D.07-03-046. It is:

$$\text{2003 IBPA} = (\text{2001 RPS-eligible procurement} / \text{2001 total retail sales}) \times \text{2003 total retail sales} + 1\% \text{ of 2001 total retail sales}$$

This formula applies without modification to BVES and MU.

For Sierra and PacifiCorp, some adaptation is required. Sierra seeks a special baseline calculation that would take into account certain transactions it entered into in Nevada in 2003. We decline to give Sierra its own baseline methodology. The baseline calculation is set by statute, and has been the subject

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outside California, for eligible renewable energy resources pursuant to this article, at or below the market price determined by the commission pursuant to subdivision (c) of Section 399.15, shall be deemed reasonable per se, and shall be recoverable in rates of the electrical corporation's California customers, provided the costs are not recoverable in rates in other states served by the electrical corporation.

of extensive consideration by this Commission. Nothing in § 399.17 changes that.

Section 399.17 does allow multi-jurisdictional utilities to have their RPS obligations figured on the basis of the California portion of their total load. In keeping with our intention to have the most uniform possible administration of the RPS program among different types of LSEs, we therefore use the general formula, with a California allocation to determine the initial baseline of the multi-jurisdictional utilities:

$$\text{2003 IBPA} = (\text{California proportion of 2001 RPS-eligible procurement} / \text{2001 total California retail sales}) \times \text{2003 total California retail sales} + 1\% \text{ of 2001 total California retail sales}^8$$

### 3.2.1.2. Annual Procurement Targets

Section 399.15(b) establishes the IBPA calculation as part of the process of determining the annual procurement target (APT) for RPS-obligated LSEs. We set up the APT system in D.03-06-071, and provided definitive explanations and guidance for reporting and compliance in D.06-10-050. In R.04-04-026 (April 22, 2004), the Order Instituting Rulemaking (OIR) for the predecessor to this proceeding, we set the initial APTs for the three large utilities, for the year 2004. The formula is:

$$\text{2004 initial APT} = \text{IBPA} + 1\% \text{ of 2003 total retail sales}$$

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<sup>8</sup> The methodology for determining the correct California proportions for RPS purposes is set out in the RPS reporting spreadsheet, attached to the ALJ's Ruling Adopting Standardized Reporting Format, Setting Schedule for Filing Updated Reports, and Addressing Subsequent Process (R.06-05-027, March 12, 2007), as revised from time to time by Energy Division. The current version may be found at <http://www.cpuc.ca.gov/PUC/energy/electric/RenewableEnergy/compliance.htm>.

For each succeeding year, until the 20% goal is attained, as set out in D.06-10-050, the APT formula is:

**APT = Prior year's APT + 1% of prior year's retail sales<sup>9</sup>**

As with the IBPA, the APT calculation applies directly to BVES and MU.

Sierra seeks to have its APT calculations adjusted to allow it to have the same percentage obligations in California as it does in Nevada, where the goal is 20% of sales from eligible renewable resources by 2015. This request is inconsistent with California's statutory mandate of 20% by 2010, as well as with our analysis and findings in D.05-11-025. We therefore reject it.

Instead, we apply to both Sierra and PacifiCorp the instructions of § 399.17(c) that their APT should be determined on the basis of the percentage of their total retail sales to end-use customers in California.

**2004 initial APT = IBPA + 1% of 2003 total California retail sales**

**APT in succeeding years = Prior year's APT + 1% of prior year's California retail sales<sup>10</sup>**

### **3.2.2. Timing of Annual Procurement Obligations**

In D.03-06-071, due to the constrained time period for initiating the RPS program, we focused on the three large utilities, PG&E, SDG&E, and SCE. We stated that 2004 would be the first year of RPS obligation for the three large utilities. The RPS statute does not create different RPS obligations for different

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<sup>9</sup> The 1% annual increase is often referred to as the incremental procurement target, or IPT.

<sup>10</sup> The relevant California proportions are calculated according to the methodology developed for the reporting spreadsheet, described above. Appropriate use of the spreadsheet will allow complete RPS reporting and prevent double-counting of out-of-state renewable resources.

types of electrical corporations.<sup>11</sup> In D.05-11-025, we found no reason to create such a differentiation. Therefore, we affirm here that the RPS procurement obligations of all electrical corporations, including SMJUs, commenced January 1, 2004.

In D.03-06-071, we allowed the three large utilities to defer their entire 2004 IPT obligation for three years, without need to show any of the excuses for shortfalls in actual deliveries required by the flexible compliance rules. (*mimeo.*, p. 50, n. 41).<sup>12</sup> This same allowance should apply to the SMJUs.<sup>13</sup> In view of the lapse of time since D.05-11-025, we believe that the interests of the SMJUs' ratepayers and the goals of the RPS program would be best served by further extending the ability of the SMJUs to defer their initial IPTs, if they so choose.

First, we will allow SMJUs to roll all their IPT obligations for 2004-2006 into 2007, so that their 2007 IPTs consist of the cumulation of their IPTs for 2004, 2005, 2006, and 2007. Because we defer the IPTs for 2004-2006, the SMJUs have no APTs for those years.<sup>14</sup> Their APTs for 2007, therefore, are their 2003 initial baseline procurement amounts plus their cumulated 2007 IPTs.

Second, although SMJUs have APTs for 2007, we will allow them to defer their entire (cumulated) 2007 IPT, without needing to provide any explanation

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<sup>11</sup> This is in contrast to the separate initial date of obligation for ESPs set by SB 107 (January 1, 2006). See § 399.12(h)(3).

<sup>12</sup> We use here the terminology and framework adopted in D.06-10-050, which differs in language but not in content from D.03-06-071.

<sup>13</sup> We discuss below whether any alteration is required by prior § 399.14(a)(1).

<sup>14</sup> APTs for each of 2004, 2005, and 2006 could, in theory, be calculated according to the formulas set out in section 3.2.1.1. Because we are deferring the IPTs for those years, however, such a calculation has no meaningful result.

under the flexible compliance rules for any shortfall greater than 25% of IPT, so long as the deficit is made up within three years. This is analogous to our practice for the large investor-owned utilities (D.03-06-071) and ESPs (D.06-10-019.) This deferral applies to 2007 only.<sup>15</sup> SMJUs will be required to meet their RPS obligations on schedule for 2008 and later years, or invoke the appropriate elements of the flexible compliance mechanisms set out in D.03-06-071, D.06-10-050, and D.08-02-008.<sup>16</sup>

### **3.2.3. Creditworthiness**

We now consider the impact of former § 399.14(a)(1) on the procurement obligations of Sierra and MU, the two SMJUs to which it applied.<sup>17</sup>

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<sup>15</sup> To the extent that this provision affects the compliance reporting of any SMJU, it should be reflected in the utility's August 2008 reports.

<sup>16</sup> The regular flexible compliance rules allow, among other things, the deferral of a shortfall of up to 25% of IPT for up to three years, without need of explanation. In D.08-02-008, we integrated into our flexible compliance rules the new excuse for shortfalls added by SB 107: insufficient transmission. (*See* § 399.14(a)(2)(C)(ii).)

<sup>17</sup> As it was prior to repeal, § 399.14(a)(1) provided:

(A) The commission shall not require an electrical corporation to conduct procurement to fulfill the renewables portfolio standard until the commission determines either of the following:

(i) The electrical corporation has attained an investment grade credit rating as determined by at least two major rating agencies.

(ii) The electrical corporation is able to procure eligible renewable energy resources on reasonable terms, those resources can be financed if necessary, and the procurement will not impair the restoration of an electrical corporation's creditworthiness. The provision shall not apply before April 1, 2004, for any electrical corporation that on June 30, 2003, is in federal court under Chapter 11 of the federal bankruptcy law.

(B) Within 90 days of the commission's determination as provided in subparagraph (A), an electrical corporation shall conduct solicitations to

*Footnote continued on next page*

### **3.2.3.1. Not Creditworthy**

MU and Sierra have each provided declarations by corporate officers that they were not creditworthy in the period from January 1, 2004 through December 31, 2006.<sup>18</sup> These declarations are undisputed. We therefore find that these two utilities were not creditworthy for purposes of RPS procurement during that period.

### **3.2.3.2. Not Able to Procure on Reasonable Terms**

We must add to our review of creditworthiness, however, the inquiry mandated by prior § 399.14(a)(1)(A)(ii), added by SB 67 (Bowen), Stats. 2003, ch. 731. (*See* n. 16, above.) This provision could affect the obligations of MU and/or Sierra with respect to RPS procurement in the period 2004-2006.

#### **3.2.3.2.1. Mountain Utilities**

Friends of Kirkwood (Friends) claims that MU should not be able to take advantage of its lack of creditworthiness because it is poorly managed and has not pursued opportunities to develop a viable RPS procurement strategy. These general claims do not provide any factual basis to believe that MU could have, during the period 2004-2006, procured eligible renewable energy resources on reasonable terms, that those resources could be financed if necessary, and the procurement would not impair the restoration of MU's creditworthiness.

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implement a renewable energy procurement plan. The determination required by this paragraph shall apply on to the requirements established pursuant to this article. The requirements established for an electrical corporation pursuant to Section 454.5 shall be governed by that section.

<sup>18</sup> MU submitted the Declaration of David P. Likins, its chief financial officer, dated May 30, 2006. Sierra submitted the Affidavit of William Rogers, treasure of its parent, Sierra Pacific Resources, dated May 1, 2006.

Friends' dissatisfaction with MU's service and disagreements with its management are not a persuasive substitute for specific information that could ground a conclusion that MU was able to contract for RPS-eligible power during this period.

MU asserts that, since it never was creditworthy, it cannot be restored to creditworthiness. It is unnecessary to explore the logic of this position, since the repeal of § 399.14(a)(1) makes this argument moot. The repeal puts all RPS-obligated LSEs on the same footing after January 1, 2007, regardless of their credit ratings. From January 1, 2004 through December 31, 2006, however, MU was not creditworthy for RPS procurement purposes and was not able to procure RPS-eligible energy on reasonable terms.

#### **3.2.3.2.2. Sierra**

By contrast, TURN and Union of Concerned Scientists (jointly, TURN) present specific information in questioning whether Sierra was unable to procure RPS-eligible power during the 2004-2006 period.<sup>19</sup> TURN notes that Sierra executed a power purchase agreement (PPA) for deliveries of renewable energy from a new solar thermal generating facility in Nevada. TURN suggests that this contract may show that Sierra could contract for RPS-eligible renewable generation.

Sierra responds that the project cited by TURN was made possible despite Sierra's poor credit rating because the Public Utilities Commission of Nevada

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<sup>19</sup> Joint Comments of The Utility Reform Network and the Union of Concerned Scientists on the Renewables Portfolio Standard Compliance Proposals of Electric Service Providers, Community choice Aggregators, and Small and Multi-Jurisdictional Utilities (March 7, 2006).

(PUCN) established the Temporary Renewable Energy Development (TRED) Program. TRED uses Nevada ratepayer funds to establish a trust fund to protect the revenue stream to the renewable generator. Sierra notes that only its participation in TRED allowed the project to go forward; without the TRED guarantee, the developer could not have obtained financing.

In light of this information, we conclude that Sierra could not have procured eligible renewable energy on reasonable terms from resources that could have been financed without some government intervention such as TRED. We therefore determine that from January 1, 2004 through December 31, 2006, Sierra was not creditworthy for RPS procurement purposes and was not able to procure RPS-eligible energy on reasonable terms.

### **3.2.3.3. Deferral of RPS Procurement Performance**

We now turn to the consequences of MU's and Sierra's lack of creditworthiness. In D.03-06-071, we decided that lack of creditworthiness did not eliminate a utility's RPS procurement obligations, but allowed its performance to be deferred. That is, a utility's RPS obligations *accrue*, but are not *due*. We reached this conclusion after considering the overall goals of the RPS program and the statutory mandate of an increase of at least one percent per year in RPS procurement. See § 399.15(b)(1).

SCE suggests that we should apply this reasoning to MU and Sierra as well.<sup>20</sup> We adopt this suggestion, because it furthers our goal of equitable administration of the RPS program. Thus, in each year from 2004 (the first year

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<sup>20</sup> SCE's Response to the Supplemental Comments of Sierra Pacific Power Company on the Issue of Creditworthiness (May 22, 2006).

of RPS procurement obligation) through 2006 (the last year § 399.14(a)(1) was in effect), Sierra and MU each had IPTs equal to 1% of their prior years' retail sales. But, in each of those years, the need for actual procurement of RPS-eligible energy was deferred.<sup>21</sup>

Beginning January 1, 2007, the effective date of SB 107, the requirement to procure was reinstated. As we explained in D.03-06-071, the prior years' deferrals are rolled into the first year of ability to procure. (D.03-06-071, *mimeo.*, p. 54.) Thus, in 2007, Sierra and MU have APTs equal to their RPS initial procurement baselines, plus their cumulated IPTs for 2004, 2005, and 2006, plus their 2007 IPTs. That is:

$$\mathbf{2007\ APT = 2003\ Initial\ Baseline\ Procurement\ Amount + 2004\ IPT + 2005\ IPT + 2006\ IPT + 2007\ IPT}$$

As we did for PG&E and SCE, we allow deferral of (cumulated) IPT deficits of any size in the first year of required procurement (in this case, 2007), without need for explanation, so long as the deficit is made up within three years. (See D.03-06-071, *mimeo.*, p. 54.)<sup>22</sup> Also in line with our previous requirements, the possible deferral of deficits up to 100% of IPT without explanation applies to 2007 only. The ordinary flexible compliance rules apply to Sierra and MU in 2008 and subsequent years. (See D.06-10-050.)

Despite this excursion on what is now a historical byway, Sierra and MU wind up on the same RPS road as PacifiCorp and BVES: RPS IPT obligations prior to 2007 are rolled into 2007 as part of the 2007 APT; the cumulated 2007 IPT

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<sup>21</sup> As we noted in D.03-06-071, the RPS statute does not prevent voluntary procurement of RPS-eligible energy by an LSE subject to prior § 399.14(a)(1).

<sup>22</sup> To the extent that this provision affects the compliance reporting of MU or Sierra, it should be reflected in the August 2008 reports of those utilities.

(but not any obligations for 2008 or later years) may be deferred up to 100% without explanation, so long as it is made up within three years; and all regular flexible compliance rules apply in 2008 and later years.

### **3.3. Procurement Plans**

In D.05-11-025, we concluded that SMJUs did not need to meet the five basic requirements of the RPS program in a manner that was identical to that of the three large utilities. The large utilities file annual RPS procurement plans, currently in R.06-05-027.

#### **3.3.1. Small Utilities**

It is not fair and not necessary for any RPS administrative purpose to require the two small utilities to file the complex annual procurement plans we require of the large utilities. They may undertake their RPS procurement planning in any way that comports with their general planning processes. We nevertheless urge BVES and MU to consult with Energy Division staff before undertaking RPS procurement activities. Because their procurement planning does not undergo the review associated with the procurement plans of the three large utilities, these small utilities may benefit from advice of staff about how best to approach their RPS procurement.

#### **3.3.2. Multi-Jurisdictional Utilities**

Sierra and PacifiCorp are subject to § 399.17, which allows them to use the integrated resource plans (IRPs) that they file in other jurisdictions as the basis of their RPS procurement planning in California. Both utilities request that their IRPs approved by other state public utilities commissions be used in lieu of separate California RPS procurement plans. To that end, they each filed their 2004 IRPs in response to the ALJ's April 11, 2007 ruling requesting the filing of their current IRPs. In response to the ALJ's Ruling Requiring Submission of

Multi-Jurisdictional Utilities' 2007 Integrated Resource Plan and Allowing Comments on Plans (July 25, 2007), PacifiCorp and Sierra filed and served their 2007 IRPs in August 2007.

### **3.4. IRPs**

In order to be used for RPS procurement planning purposes, an IRP must be consistent with requirements of §§ 399.11, 399.12, 399.13, and 399.14, as they may be modified by § 399.17, as well as Commission decisions implementing the RPS statute.

The express statutory requirements for a utility's procurement plan are set out in § 399.14(a)(3):

Consistent with the goal of procuring the least-cost and best-fit eligible renewable energy resources, the renewable energy procurement plans submitted by an electrical corporation shall include all of the following:

- A. An assessment of annual or multi-year portfolio supplies and demand to determine the optimal mix of eligible renewable energy resources with deliverability characteristics that may include peaking, dispatchable, baseload, firm, and as-available capacity.
- B. Provisions for employing available compliance flexibility mechanisms established by the commission.
- C. A bid solicitation setting forth the need for eligible renewable energy resources of each deliverability characteristic, required online dates, and locational preferences, if any.

In the Scoping Memo and Ruling of Assigned Commissioner (August 21, 2006) (August Scoping Memo) issued in R.06-05-027 regarding RPS procurement

plans for 2007,<sup>23</sup> the three large utilities were asked to flesh out these statutory provisions by providing more specific information.<sup>24</sup>

Aglet, the only commenter on the IRPs, notes that neither Sierra nor PacifiCorp specifically identifies how its respective IRP comports with the requirements set forth above. Aglet suggests that the IRPs be approved nevertheless, with instructions that the two utilities provide the necessary analysis in later years.<sup>25</sup>

We agree with Aglet. Because § 399.17(b)(3)(d) requires that IRPs show overall conformity to RPS procurement planning processes, we examine the IRPs briefly here. As we explain below, we accept the 2007 IRPs of both utilities, but note the need for additional information in the future. We also set a schedule for subsequent submissions.

#### **3.4.1. IRP Procedural Issues**

Because the schedule on which PacifiCorp and Sierra prepare and file their IRPs is different from the procurement planning schedule of the large utilities, it is important to develop a relatively simple and efficient method for the multi-jurisdictional utilities to provide their IRPs and any additional information needed for RPS procurement planning. PacifiCorp, recognizing that its IRP does

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<sup>23</sup> We use this procurement plan year because it is the same as the year in which the most recent IRPs were prepared.

<sup>24</sup> The categories of information are: program metrics (*e.g.*, retail sales, APT); changes in the 2007 plan from 2006 plan; lessons learned in RPS procurement to date; transmission, flexible delivery, and curtailability; workplan to reach 20% by 2010; utility-owned resources; and any other necessary issues.

<sup>25</sup> Comments of Aglet Consumer Alliance on Integrated Resource Plans (May 8, 2007).

not have everything we would need, suggests that it file a supplement to its IRP, to cover those elements required for RPS purposes but not part of the IRP.

We adopt PacifiCorp's suggestion of a supplement to the IRP, in the context of a comprehensive procedure for future filing and evaluation of IRPs and related information. The elements of this procedure are:

- Multi-jurisdictional utilities file and serve their IRPs in R.06-05-027 or its successor at the same time they file with the jurisdictions requiring the IRP.
- Within 30 days of filing the IRP, multi-jurisdictional utilities file and serve, in R.06-05-027 or its successor, their IRP supplements. The supplement must include, either as a separate document or included in the supplements, an analysis of how the IRP and supplement comply with the requirements set out in § 399.17(d).
- At the discretion of and on a schedule set by the assigned ALJ, comments and reply comments on the IRPs and supplements may be filed and served.
- In years in which an IRP is not filed, multi-jurisdictional utilities must file and serve an annual supplement, providing the summary information we set forth below, at the same time that the large utilities file and serve their RPS procurement plans for the upcoming year.
- The supplements filed in the calendar year before an IRP is filed will address the year ahead (*e.g.*, supplements filed in 2008 will address 2009). The supplement filed with the IRP in the following year will thus include some of the same topics, but use updated information.

The timing for IRPs and supplements is set out in tabular form for the coming five years in Appendix A. This process applies only to the procurement planning documents - IRPs and supplements. We emphasize that this procedure, including any comments on or evaluation of the IRPs or supplements, is solely for the purpose of satisfying the statutory requirements for California RPS procurement planning. Because this decision is being issued several months

into 2008, we will not require PacifiCorp and Sierra to file supplements to their 2007 IRPs. As shown in the schedule in Appendix A, the process of annual supplements will begin in 2008, with the filing of supplements for 2009 at the same time as the large utilities file their 2009 RPS procurement plans.

Compliance reporting is addressed separately, below.

### **3.4.2. IRP Evaluation**

#### **3.4.2.1. PacifiCorp**

PacifiCorp is required by Oregon, Washington, Utah, and Idaho to develop an integrated resource plan on a biennial basis; an IRP is not required by either California or Wyoming. The utility is required by one or more of these jurisdictions to include the following components in its IRP:

- Resource management report, including analyses of particular uncertainties and contingencies in supply and demand reporting and forecasting.
- Energy portfolio analysis, including assessment of transmission costs, conservation, demand response and distributed generation resource potentials, environmental compliance costs, direct access load balance, multi-state planning approaches, risk of reliability, and plan for resource acquisition.
- Optimized resource portfolio, taking into account a combination of costs, risk and uncertainty; a range of load growth scenarios; present and future resources; an evaluation of the financial, competitive, reliability, and operational risks associated with various resource options; and an analysis of cost-effectiveness for customers.
- Transmission system capability and reliability assessment.

#### **3.4.2.1.1. Consistency With RPS Procurement Plan Requirements**

PacifiCorp's 2007 IRP satisfies the most important requirement for an annual RPS procurement plan set out in § 399.14(a)(3) – the multi-year assessment of supply and demand and determination of optimal mix of renewable resources. PacifiCorp has not included its plans for meeting its California APT, using flexible compliance, or its bid solicitation materials. None of these omissions is fatal to PacifiCorp's RPS compliance, since in future years they may be readily remedied through the IRP supplement, as we outline below. For 2007, we do not require a supplement.

PacifiCorp's IRP contains a robust assessment of supply and demand from 2007 through 2016. PacifiCorp optimizes its entire service territory's energy resource portfolio from 2007 through 2016. PacifiCorp uses a variety of modeling techniques to develop capacity and energy balances to project resource deficits, and conducts a portfolio analysis of 16 future scenarios. PacifiCorp then chooses one preferred portfolio, based on what it characterizes as "superior performance with respect to stochastic cost, customer rate impact, cost vs. risk balance, and supply reliability." (IRP, ch. 7, p. 139.)

The preferred plan projects that PacifiCorp would acquire 2,000 MW of system-wide renewables by 2013. PacifiCorp has also developed a separate report, the Renewable Plan, referenced in the IRP, which outlines objectives and action items to meet its system-wide renewables commitment.

#### **3.4.2.1.2. Plan for Using Flexible Compliance**

The IRP does not discuss PacifiCorp's expected use of flexible compliance. This is not surprising, since the states requiring the IRP do not have the same

compliance system as California. As PacifiCorp suggests, the flexible compliance component of its supplement should include use of flexible compliance mechanisms, a statement of accrued RPS procurement deficits and surpluses, and a procurement plan to satisfy any deficits.

#### **3.4.2.1.3. Bid Solicitation Materials**

Since § 399.17 does not require multi-jurisdictional utilities to undertake annual solicitations, bid materials should not be required to be submitted with an IRP. Because § 399.17 allows multi-jurisdictional utilities to allocate a proportion of their RPS-eligible procurement to California RPS compliance, it is unlikely that PacifiCorp will undertake a California RPS-only solicitation. If, however, PacifiCorp intends to undertake a competitive solicitation solely for California RPS purposes in any year, it should provide basic information about the solicitation, including the amount of energy the utility hopes to procure and any special characteristics of the solicitation. It should also include its *pro forma* contract, highlighting the standard terms and conditions (both modifiable and non-modifiable) required in all RPS contracts. (See D.07-02-011, D.07-11-025, D.08-04-009.) This information will allow us to have a fuller view of PacifiCorp's progress toward RPS goals. Requiring PacifiCorp to provide this information is not intended to interfere with any procurement activities undertaken pursuant to any PacifiCorp IRP.

#### **3.4.2.2. Sierra**

Sierra is required to develop a 20-year IRP every three years pursuant to Nevada's resource planning statutes. The main components of the IRP include:

- Forecasts of energy consumption and peak demand;
- Analysis of market fundamentals and options for supply;
- Demand side management plan;

- Energy supply plan, which must discuss alternative strategies if the utility's preferred resources are not available;
- Renewable energy plan, which must identify renewable energy in sufficient amounts to meet its Nevada Portfolio Standard;
- Fuel procurement plan;
- Purchased power procurement plan;
- Risk management strategy;
- Financial plan; and
- Three-year detailed action plan that describes the steps the utility will take to meet its near-term supply requirements, which the PUCN evaluates for consistency with the IRP.

#### **3.4.2.2.1. Consistency With RPS Procurement Plan Requirements**

Sierra's IRP satisfies the most important requirement for an annual RPS procurement plan set out in § 399.14(a)(3) – the multiyear assessment of supply and demand and determination of optimal mix of renewable resources. Sierra has not included its plans for meeting its California APT, using flexible compliance, or its bid solicitation materials. None of these omissions is fatal to Sierra's RPS compliance, since in future years they may be readily remedied through the IRP supplement, as we outline below. For 2007, we do not require a supplement.

In its IRP, Sierra assesses and forecasts its supply and demand from 2007-2027. Sierra then develops an Energy Supply Plan and a three-year action plan. Sierra evaluates various portfolio alternatives by minimizing supply costs, minimizing retail price volatility and maximizing the reliability of the energy supply over the three-year term.

Since the Nevada RPS requires a certain portion of its renewable obligation to be satisfied with solar energy, Sierra's IRP makes a distinction between the need for solar and non-solar renewable resources. The IRP discusses the company's specific plans to procure solar and geothermal resources and to study wind resource potential. According to the IRP analysis, Sierra will have sufficient renewable energy to satisfy both its California RPS and Nevada non-solar RPS obligations from 2008 through 2024 and ample solar resources through 2011.

#### **3.4.2.2.2. Plan for Using Flexible Compliance**

The IRP does not explicitly discuss Sierra's analysis of possible use of flexible compliance. This is not surprising, since Nevada does not have the same compliance system as California. Sierra's supplement should include analysis of flexible compliance mechanisms, a statement of accrued RPS procurement deficits and surpluses, and a procurement plan to satisfy any deficits.

#### **3.4.2.2.3. Bid Solicitation Materials**

For the same reasons as PacifiCorp, Sierra should not be required to submit bid materials with its IRP. If, however, Sierra intends to undertake a competitive solicitation for California RPS purposes in any year, it should provide basic information about the solicitation, including the amount of energy the utility hopes to procure and any special characteristics of the solicitation.<sup>26</sup> It should also include its pro forma contract, highlighting the standard terms and

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<sup>26</sup> We discuss separately below Sierra's request for a determination that it will recover in rates procurement and administrative costs for RPS contracts that are at or below the MPR.

conditions (both modifiable and non-modifiable) required in all RPS contracts. (See D.07-02-011, D.07-11-025, D.08-04-009.) This information, like that for PacifiCorp, will allow us to have a fuller view of the multi-jurisdictional utilities' progress toward RPS goals. Requiring Sierra to provide this information is not intended to interfere with any procurement activities undertaken pursuant to its IRP.

**3.4.2.3. Additional Information Required for Supplements**

**3.4.2.3.1. Information Supplements in Years IRP is Filed**

In years in which they file IRPs, PacifiCorp and Sierra should provide the information about plans for meeting California's APT, flexible compliance, and RPS contracting noted above. They should also include in the supplements any of the additional information required from the large utilities for their RPS procurement plans for that planning year. Using 2007 as an example only, the supplements would include: program metrics, such as retail sales and APT; significant changes in the 2007 IRP from prior IRP; lessons learned in RPS procurement to date; transmission, flexible delivery, and curtailability; workplan to reach 20% by 2010; utility-owned resources; and any other necessary issues.<sup>27</sup> They should also explain how the IRPs and supplements meet the requirements of § 399.17(d).

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<sup>27</sup> As noted above, no supplements for 2007 are required.

### **3.4.2.3.2. Information for Supplements in Other Years**

It would be useful for purposes of program administration, compliance planning, and public information about RPS for PacifiCorp and Sierra to file annual supplements (as PacifiCorp suggests), even in those years IRPs are not filed. The components of these “off-year” supplements should be:

- overview of California RPS procurement to date;
- projected retail sales out to one year after the next expected IRP;
- flexible compliance information as set forth above;
- bid solicitation information and materials as set forth above, if relevant;
- workplan to reach 20% by 2010, or any succeeding binding RPS goal; and
- any additional information required by the assigned ALJ or assigned Commissioner.

We anticipate that PacifiCorp and Sierra will be able to prepare these supplements without undue expenditure of resources or pages, since almost all the information is in or related to information in their IRPs or their California RPS compliance reports. We note that Sierra also files with PUCN a Portfolio Standard Annual Compliance Report, which further reports its existing portfolio of renewable energy supplies, projects in the pipeline and future demand for renewables needed to meet its obligations. We agree with Sierra that this report can be filed with its supplement, but as part of, not in lieu of, the supplement.

Sierra also asks that it be able to recover incremental and administrative costs associated with the annual supplements from its California customers. Sierra may request such recovery in its general rate case (GRC).

#### **3.4.2.4. Supplements for 2008 and 2009**

Because this decision is being issued in mid-2008, we will not require PacifiCorp or Sierra to file supplements for 2008. Instead, each utility will file its 2009 supplement at the same time as the large utilities file their 2009 RPS procurement plans.

#### **3.4.2.5. Varying the Requirements for Supplements**

In order to make the process of compliance with the procurement planning requirements of § 399.17 as efficient as possible, we authorize the assigned ALJ or assigned Commissioner in R.06-05-027 or its successor proceeding to vary the requirements for the content or filing date of the annual supplements for years when an IRP is not filed. If no such proceeding is open, the Director of Energy Division is authorized to do so.

In all other respects, the Commission's usual requirements for seeking changes to or extensions of time to comply with Commission orders will apply to the multi-jurisdictional utilities' use of their IRPs for RPS procurement planning purposes. (*See, e.g.*, Rule 16.6.)

### **3.5. Other RPS Procurement Issues**

We are mindful of the special challenges faced by the SMJUs in doing their part in the RPS program. We discuss here several specific issues raised by BVES, MU, and Sierra.

#### **3.5.1. BVES**

BVES points out that, in D.02-07-041, a cap of \$77/megawatt hour (MWh) was imposed for the weighted average annual energy cost used in calculating BVES' purchased power adjustment clause rate. BVES notes that this cap is significantly below the current MPR, and is likely to be below the MPR in the

future.<sup>28</sup> In order to allow BVES to undertake only one procedural step in seeking approval of RPS contracts, we will require that BVES submit any PPAs for RPS-eligible power for approval by means of an application, rather than an advice letter, as long as any cap on its charges for electricity is in place.<sup>29</sup> The application should provide the same information as Energy Division recommends for an RPS advice letter filing. The application will, however, allow a more thorough examination of the pricing issues and will provide a record on the basis of which we could, in appropriate circumstances, consider varying the \$77/MWh cap.

BVES also asks that we alter the MPR to include a premium for the higher costs of small amounts of power in remote locations. This request reflects a misunderstanding of the MPR, which provides a uniform statewide model for evaluating the *per se* reasonableness of prices of long-term contracts of utilities for RPS-eligible energy. (See D.05-12-042.) BVES' request is not consistent with the purpose or methodology of the MPR, and we therefore deny it. BVES may, of course, seek approval of RPS contracts with prices above the MPR. We would consider each such request on its own merits, and may allow the recovery of reasonable above-MPR costs in rates.

We also deny, for similar reasons, the request of BVES that it be exempted from calculating an MPR. That task is undertaken by Energy Division staff in the resolution calculating the MPR for each RPS procurement year.

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<sup>28</sup> Res. E-4118 calculates the MPR for contracts resulting from 2007 RPS solicitations as more than \$92/MWh.

<sup>29</sup> Any application should be served on the service lists for R.06-05-027 or its successor proceeding and the service list for A.01-08-020, or any subsequent proceeding that maintains or imposes a similar cap on BVES electricity charges.

### 3.5.2. MU

MU seems to suggest that, because it is not connected to the California grid, it should have different RPS obligations. This is not correct. Rather, access to transmission is an element in determining whether MU has complied with its RPS obligations, in accordance with the flexible compliance rules we have adopted. *See* § 399.14(a)(2)(C)(ii)<sup>30</sup> and D.08-02-008.

MU states that, in any event, it will explore the use of biodiesel in its utility-owned generators. Nothing prevents this course of action. Utility-owned generation located in California has always been recognized as a permissible form of RPS procurement. (*See* § 399.12(e) and Pub. Res. Code § 25741(b)(2)(A).)<sup>31</sup> Biodiesel meeting the CEC's requirements would be an

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<sup>30</sup> Section 399.14(a)(2)(C)(ii) provides:

The flexible rules for compliance shall address situations where, as a result of insufficient transmission, a retail seller is unable to procure eligible renewable energy resources sufficient to satisfy the requirements of this article. Any rules addressing insufficient transmission shall require a finding by the commission that the retail seller has undertaken all reasonable efforts to do all of the following:

- (I) Utilize flexible delivery points.
- (II) Ensure the availability of any needed transmission capacity.
- (III) If the retail seller is an electric corporation, to construct needed transmission facilities.
- (IV) Nothing in this subparagraph shall be construed to revise any portion of Section 454.5.

<sup>31</sup> Pub. Res. Code § 2574(b)(2)(A) provides that one way an electric generation facility can meet the RPS locational eligibility criteria is if "the facility is located in the state or near the border of the state with the first point of connection to the transmission network within this state and electricity produced by the facility is delivered to an in-state location." (Emphasis added.)

RPS-eligible fuel source.<sup>32</sup> MU's proposed method of compliance with its RPS obligations would simply need the CEC's certification of the utility's generation facility and its determination that any proposed biodiesel fuel conforms to the requirements set out in the Eligibility Guidebook.

MU also makes various requests related to the accounting treatment of possible methods of compliance with RPS and studies related to RPS compliance. If and when MU has a CEC-approved plan for using biodiesel for RPS compliance, it may file an advice letter for any changes needed to its Diesel Fuel Balancing Account.

MU's other requests are not appropriate for decision here. Although MU is not required to file an RPS procurement plan, it undoubtedly has its own internal planning process. If, after considering this decision and other aspects of the RPS program, MU believes that it needs any additional authorization to take any particular steps with respect to its RPS compliance, it may file an advice letter or application, as MU deems appropriate, setting out its plans and requested relief.

### **3.5.3. Sierra**

Sierra states that, in order to receive contract approval from PUCN, it must have assurance that it will be able to recover the procurement and administrative costs of the California-allocated portion of contracts for the purchase of

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<sup>32</sup> The CEC set forth eligibility requirements for biodiesel in its initial Renewables Portfolio Standard Eligibility Guidebook in May 2004. It may be found at [http://www.energy.ca.gov/portfolio/documents/2004-05-10\\_RPS\\_ELIG\\_GUIDEBK.PDF](http://www.energy.ca.gov/portfolio/documents/2004-05-10_RPS_ELIG_GUIDEBK.PDF). The current (third) edition of the Eligibility Guidebook may be found at <http://www.energy.ca.gov/2007publications/CEC-300-2007-006/CEC-300-2007-006-ED3-CMF.PDF>.

RPS-eligible energy that are at or below the MPR. As Sierra notes, such assurance is provided generally by § 399.17(e). To the extent that Sierra seeks contract-specific assurances, they cannot be provided in advance of examination of the specific contract. See D.05-12-042 and Res. E-4118 (setting out the complex methods and inputs for MPR). Although we generally do not require Sierra (or PacifiCorp) to submit their contracts for our approval, any evaluation that a particular contract price is at or below the MPR must be made by Energy Division staff, after submission of an advice letter that provides the information necessary for such a determination.<sup>33</sup>

### **3.6. Reporting, Compliance and Enforcement**

#### **3.6.1. Reporting**

As a general matter, RPS reporting is intended to allow all RPS-obligated LSEs to report accurately to this Commission their RPS procurement activities. Regular reporting also benefits the LSEs, by allowing them to track their RPS compliance in a uniform way. Because RPS reporting must respond accurately to changes in the program and must resolve problems in reporting, flexibility is necessary. The flexibility to make changes in reporting formats, and methods for doing so, are explained in the ALJ's Ruling Adopting Standardized Reporting Format, Setting Schedule for Filing Updated Reports, and Addressing Subsequent Process (March 12, 2007), issued in R.06-05-027.

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<sup>33</sup> Because this submission is not for purposes of contract *approval*, the advice letter would not need to include the standard requirements of RPS advice letters related to analysis of contract terms and conditions, other than those necessary to determine contract price in relation to the MPR. The advice letter should also indicate the year of the MPR Sierra proposes to use, so that Energy Division may evaluate that choice, if necessary.

Both PacifiCorp and Sierra request that they be allowed to submit a single, annual compliance and procurement filing in May each year. This single composite filing would replace the compliance reports that all LSEs are required to submit pursuant to D.06-10-050. We do not adopt this proposal. Our interests in uniformity of administration, fairness to all RPS-obligated LSEs, and provision of accurate information about RPS compliance to the public all counsel that we should not allow exceptions to RPS reporting requirements. Our resolution in this decision of the other issues related to the multi-jurisdictional utilities' reporting and compliance obligations should make it easier for them to incorporate reporting on the regular RPS schedule into their planning.<sup>34</sup>

### **3.6.2. Compliance**

#### **3.6.2.1. Use of Short-Term Contracts**

In D.07-05-028, we implemented new § 399.14(b), added by SB 107.<sup>35</sup> This section provides the statutory authorization for the use of short-term contracts<sup>36</sup>

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<sup>34</sup> Energy Division has implemented the reporting requirements by preparing and circulating detailed spreadsheets and instructions for RPS-obligated LSEs, including a version especially for multi-jurisdictional utilities. This substantially reduces any burden that compliance with the general reporting requirements might impose on PacifiCorp or Sierra.

<sup>35</sup> Section 399.14(b) provides:

The commission may authorize a retail seller to enter into a contract of less than 10 years' duration with an eligible renewable energy resource, subject to the following conditions:

- (1) No supplemental energy payments shall be awarded for a contract of less than 10 years' duration. The ineligibility of contracts of less than 10 years' duration for supplemental energy payments pursuant to this paragraph does not constitute an insufficiency in supplemental energy payments pursuant to paragraph (4) or (5) of subdivision (b) of Section 399.15.

*Footnote continued on next page*

with existing facilities<sup>37</sup> to meet RPS procurement obligations, as long as the Commission sets a minimum quantity of long-term contracts<sup>38</sup> and/or contracts with new facilities<sup>39</sup> that must be signed for any short-term contracts to be used for RPS compliance.

If they choose to use any short-term contracts with existing facilities for RPS compliance, BVES and MU would be subject to the minimum quantity requirement as set out in D.07-05-028.

Because § 399.17 allows PacifiCorp and Sierra to use a proportional approach to meeting their California RPS APTs, it is fair and reasonable to allocate other responsibilities, including their "minimum quantity" obligations, proportionally as well. If either utility seeks to use any short-term contracts with existing facilities for California RPS compliance, it must meet the minimum quantity obligation; *i.e.*, it must in that year sign contracts with new facilities or long-term contracts with existing facilities, equivalent to 0.25% of the previous year's retail sales to California customers.

Because, as noted in our discussion of § 399.17, Energy Division staff will generally not review RPS contracts of Sierra and PacifiCorp, we will require

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(2) The commission has established, for each retail seller, minimum quantities of eligible renewable energy resources to be procured either through contracts of at least 10 years' duration or from new facilities commencing commercial operations on or after January 1, 2005.

<sup>36</sup> Contracts that are less than 10 years in duration.

<sup>37</sup> Generation facilities that commenced commercial operation prior to January 1, 2005.

<sup>38</sup> Contracts that are at least 10 years in duration.

<sup>39</sup> Generation facilities that commenced commercial operation on or after January 1, 2005.

these utilities to certify compliance with this requirement separately. If any short-term contracts with existing facilities are being counted for RPS compliance in a particular reporting year, the report due March 1 of the following year must include a certification that the minimum quantity has been met. The certification should conform to the requirements set out in the Administrative Law Judge's Ruling Granting Motion for Reconsideration of Verification Requirement as Explained Herein and also Addressing Record (December 6, 2006), issued in R.06-05-027.

### **3.6.2.2. Verification of RPS Reporting**

All SMJUs must participate in the CEC's verification process required by § 399.13)(b). Additionally, they must provide, upon request, copies of contracts for RPS-eligible energy on which they are relying for RPS compliance to Energy Division, for use with the CEC's verification reports in verifying their RPS reporting and compliance.

### **3.6.3. Enforcement**

#### **3.6.3.1. General Principles**

D.05-11-025 provides that SMJUs, ESPs, and CCAs are subject to the same reporting, compliance, and enforcement rules as the large utilities. In D.06-10-019, we reiterated that ESPs and CCAs are subject to these general rules. We set out uniform reporting rules and formats in D.06-10-050, which have been implemented through ALJ rulings in R.06-05-027 and the reporting spreadsheets developed by staff. Most recently, in D.08-02-008, we updated our flexible compliance rules to include changes made by SB 107. We also reiterated that the flexible compliance rules apply to all RPS-obligated LSEs. (D.08-02-008, *mimeo.*, p. 21.)

Several possible exceptions to these rules have been requested by various SMJUs. We note initially that none of these exceptions would be relevant at all unless and until one of the SMJUs is not meeting one or more of its RPS obligations and none of the flexible compliance mechanisms is available to help the utility defer or excuse the shortfall.

### **3.6.3.2. Excuses for Shortfalls**

PacifiCorp asks us to expand the list of excuses for shortfalls in RPS procurement. However, we explained in D.06-10-019 that the process set out in D.03-06-071 and D.03-12-065 provides notice to an LSE of the potential noncompliance and affords the LSE options to manage the noncompliance. Four options were initially set out: use of the 25% no-explanation-needed shortfall mechanism; presentation of one of the excuses for a shortfall greater than 25%; presentation of a different explanation for a shortfall greater than 25%; and proactive request to the Commission to allow a greater shortfall. (D.03-06-071, *mimeo.*, p. 50.) These have been augmented by the Legislature's addition, in § 399.14(a)(2)(C)(ii), of the excuse of insufficient transmission, under certain circumstances. (*See* D.08-02-008.)

This process makes it unnecessary to consider in advance any request that additional excuses for shortfalls be recognized. If any SMJU (or other RPS-obligated LSE) believes that its RPS procurement shortfall should be excused for some reason other than those already enumerated, it is free to present that reason to us at the relevant time.

### **3.6.3.3. Maximum Penalty Amount**

The SMJUs also urge us to lower the maximum penalty amount to which they may be subject, on the grounds that they are (or their California presence is) so small that the maximum penalty of \$25 million per year (at \$.05/kilowatt

hours) is disproportionately large. We reject this suggestion, which is inconsistent with our prior decisions, including D.03-12-065 and D.06-10-050. In rejecting a similar request by ESPs and CCAs, we stated in D.06-10-019 (*mimeo.*, p. 15):

The penalty amounts are calculated on the basis of kilowatt hours (kWh) of renewable energy generation to which the people of California were entitled, but they did not receive. An ESP that does not meet its RPS targets is failing to provide renewable generation to its customers, exactly the same as a large utility. But, as we noted in D.06-03-023, all potential penalties for RPS noncompliance lie in the future. An ESP facing a penalty in the future would be free to argue that the full potential penalty amount is disproportionately large. We have no reason to consider that issue now.

We also observe that none of the SMJUs will be potentially subject to any noncompliance penalty until 2010 at the earliest. We have cumulated prior IPT obligations into 2007 and, consistent with our prior decisions, allowed the entire 2007 IPT to be deferred without explanation for up to three years. We expect that this will allow all four SMJUs to implement RPS compliance activities appropriate to their circumstances without unnecessary focus on potential penalties.

#### **4. Respondents**

New West Energy should be removed as a respondent in this proceeding, since it cancelled its California registration as an energy service provider in February 2006. (*See* D.07-07-027, p. 56 (Finding of Fact 32).)

The Commission issued its certification of the CCA implementation plan of San Joaquin Valley Power Authority (SJVPA) on April 30, 2007. SJVPA should therefore be added as a respondent in this proceeding, as discussed in the OIR, R.06-02-012 (*mimeo.*, p. 13).

## **5. Comments on Proposed Decision**

The proposed decision (PD) of ALJ Simon in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and Rule 14.3 of the Rules of Practice and Procedure. Comments were filed on May 15, 2008 by BVES, MU, PacifiCorp, and Sierra. Reply comments were filed on May 20, 2008 by SCE.

We briefly address the comments and reply comments by topic. We note generally that some of the SMJUs' comments appear to be based on a view of the administration of the RPS program that does not fully recognize the ways in which the existing flexibility in RPS administration may be applied to the situations of SMJUs without the need to create special rules or exceptions. We have expanded the text of the PD in several respects in order to clarify the application of existing administrative flexibility.

### **Annual Procurement Obligations**

BVES, MU, and PacifiCorp argue that the regular RPS procurement obligations and flexible compliance rules should not apply to them until 2009. We do not adopt this suggestion. We agree with SCE that D.05-11-025 made clear more than two years ago that the substantive RPS requirements of increasing procurement of eligible renewable resources by one per cent per year and reaching the 20% statutory goal applied to SMJUs. Further deferral of these obligations will not serve the purposes of the RPS program. We also reiterate that the regular flexible compliance rules still allow a shortfall of up to 25% of IPT without explanation for up to three years, and that these rules apply in all years, both before and after an LSE attains the 20% goal.

In response to the request of BVES, we clarify the relationship of the deferral of IPT to APT for the 2004-2007 period.

PacifiCorp proposes that we adopt what it characterizes as an "alternative compliance plan" for its RPS obligations. We do not see the need to do so. PacifiCorp describes two procurement modalities for its alternative compliance plan: allocating a percentage of its system's RPS-eligible resources to its California RPS obligations, and allocating a percentage of the output of a specific RPS-eligible generation facility to its California RPS obligations. Both these modalities, however, are entirely consistent with the proportional APT allocation authorized by §399.17(c), so long as no power is double-counted as allocated both to California RPS and the requirements of another state. To the extent that PacifiCorp's proposal arises from uncertainty about how to report these modalities, it can work with ED staff to resolve any uncertainties. We therefore make no change to the PD in this regard.

### **IRPs**

PacifiCorp and Sierra urge that we revise the requirements for filing supplements to their IRPs. Sierra also suggests that §399.17(d) requires only the filing of IRPs, in effect supplanting §399.14. That is not, however, what §399.17(d) says. We agree with SCE that §399.17(d) explicitly requires that IRP submissions ultimately conform to §399.14 for RPS purposes, and thus do not change the basic requirement for supplements to IRPs.

We agree with PacifiCorp and Sierra that requiring 2007 supplements to the IRPs is not useful, and remove that requirement. We also agree that the PD's explanation of the plan for supplements to the IRPs requires clarification. In doing so, we give slightly less weight to administrative consistency and slightly more weight to ease of compliance than in the PD. We summarize these changes in a specific schedule for PacifiCorp and Sierra to file IRPs and supplements,

subject to modification by the assigned Commissioner or assigned ALJ, or by the Director of Energy Division.

We also make minor changes to the discussion of IRPs for clarity and for consistency with these larger revisions.

At Sierra's request, we allow it to seek recovery of any incremental and administrative costs associated with annual California RPS supplements in its GRC.

### **Other RPS procurement issues**

BVES asks us to declare in this decision that the existing \$77/hour cap on weighted average energy cost will not apply to RPS-eligible energy, thus allowing it to file any RPS contracts by advice letter. We decline this invitation. The parties to A.01-08-020, in which the cap was imposed, did not have notice that we might lift the cap in this decision. We prefer to have an application with proper notice before us.

MU suggests for the first time in its comments on the PD that its diesel generators, even if they were to use biodiesel fuel, would not qualify as RPS-eligible because they are not connected to the transmission grid. We disagree, and thus make no changes to the PD based on this argument. In our view, this argument misreads Pub. Res. Code § 25741(b)(2)(A). We think it clear that this section states that a facility is RPS-eligible if it is "located in the state." MU's generators are located in California. We note, however, that the CEC, not this Commission, is charged with making RPS eligibility determinations. We expand the text on these points.

MU also expresses concern about its authority to use its Diesel Fuel Balancing Account for biodiesel purchases. We clarify this point.

The PD explains that Sierra can implement its request for formal assurances (required by PCUN), which it asserts are required by PUCN, that a particular long-term RPS procurement contract price is at or below the MPR by filing an advice letter. In its comments, Sierra argues that it should not have to follow the limited advice letter procedure in the PD. It argues that §399.17(e) requires that contracts at or below the MPR must be "deemed approved" without examination by ED staff. We do not agree with Sierra's reading of the statute, but it is not necessary to focus on this difference in statutory interpretation. As a practical matter, the determination that an RPS long-term procurement contract is at or below the MPR is not self-executing. The MPR is a levelized price over the term of the contract, with various highly technical requirements for its calculation. Many contracts have prices that vary over the life of the contract, and other terms that affect the calculation of the price metric in relation to the MPR. Without review by ED staff, it is not possible for Sierra or PUCN to have assurance that the contract price is at or below the MPR. We therefore do not alter this requirement.

### **Reporting**

All SMJUs express some degree of discomfort with RPS reporting requirements and methods. In response, we make more explicit the PD's explanation of the existing opportunities for resolving problems in reporting by consultation with ED staff and proposing changes in the reporting spreadsheets.

BVES expresses particular concern about the perceived consequences of reporting "potential penalties" if a procurement shortfall is reported. We have explained the relationship between the *potential* for a penalty and the *assessment* of a penalty in several prior decisions, including D.03-12-065, D.06-05-023, and

D.06-10-050. The issues raised by BVES were discussed at length in D.06-10-050 (*mimeo.*, pp. 36-38).

### **Compliance**

MU asks us to create special flexible compliance rules exclusively for it. We decline the invitation. Existing flexible compliance rules, properly applied, are sufficient for MU to manage its RPS compliance. In particular, MU's assertion that the scope of the "insufficient transmission" excuse should be expanded for it appears to be based on its concern that using biodiesel in its existing generators would not be RPS-compliant. Since we think this concern is not well-founded, we see no need to revisit our recent treatment of "insufficient transmission" in D.08-02-008.

Finally, we make minor changes throughout the PD to respond to comments of less significance, correct minor errors, and improve clarity and consistency.

### **6. Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner and Anne E. Simon and Burton W. Mattson are the assigned ALJs for this proceeding.

### **Findings of Fact**

1. It is reasonable to determine the RPS procurement baselines of BVES and MU in accordance with D.07-03-046.
2. It is reasonable to determine the RPS procurement baselines of PacifiCorp and Sierra in accordance with D.07-03-046, with an adjustment to use the proportion of their load that is sales to California retail customers.
3. It is reasonable to determine the IPT and APT of BVES and MU in accordance with D.06-10-050, as implemented by the Director of Energy Division.

4. It is reasonable to determine the IPT and APT of PacifiCorp and Sierra in accordance with D.06-10-050, with an adjustment to use the proportion of their load that is sales to California retail customers, as implemented by the Director of Energy Division.

5. Because it will aid the administration of the RPS program and be fair to BVES ratepayers, it is reasonable to allow BVES to defer its IPTs for the years 2004, 2005, and 2006 to 2007.

6. Consistent with our practice for the large utilities, it is reasonable to set a 2007 APT for BVES and to allow BVES to carry a deficit of up to 100% of its cumulative 2007 IPT (*i.e.*, its 2004, 2005, 2006, and 2007 IPTs) without explanation, so long as this amount is fully made up within three years.

7. In view of the RPS target of 20% of retail sales from RPS-eligible resources by 2010, it is reasonable to require BVES to meet its APT for 2008 and succeeding years, subject to the flexible compliance mechanisms available to all RPS-obligated LSEs.

8. Because it will aid the administration of the RPS program and be fair to PacifiCorp ratepayers, it is reasonable to allow PacifiCorp to defer its IPTs for the years 2004, 2005, and 2006 to 2007.

9. Consistent with our practice for the large utilities, it is reasonable to set a 2007 APT for PacifiCorp and to allow PacifiCorp to carry a deficit of up to 100% of its cumulative 2007 IPT without explanation, so long as this amount is fully made up within three years.

10. In view of the RPS target of 20% of retail sales from RPS-eligible resources by 2010, it is reasonable to require PacifiCorp to meet its APT for 2008 and succeeding years, subject to the flexible compliance mechanisms available to all RPS-obligated LSEs.

11. During the period extending from January 1, 2004 through December 31, 2006, MU did not have an investment grade credit rating as determined by at least two major rating agencies.

12. During the period extending from January 1, 2004 through December 31, 2006, MU was not able to procure RPS-eligible renewable energy resources on reasonable terms that could be financed if necessary.

13. Consistent with our practice for PG&E and SCE, it is reasonable to defer MU's IPTs for the period January 1, 2004 through December 31, 2006 to its 2007 RPS compliance year.

14. Consistent with our practice for PG&E and SCE, it is reasonable to set a 2007 APT for MU and to allow MU to carry a deficit of up to 100% of its cumulative 2007 IPT without explanation, so long as this amount is fully made up within three years.

15. In view of the RPS target of 20% of retail sales from RPS-eligible renewable resources by 2010, it is reasonable to require MU to meet its APT for 2008 and succeeding years, subject to the flexible compliance mechanisms available to all RPS-obligated LSEs.

16. During the period extending from January 1, 2004 through December 31, 2006, Sierra did not have an investment grade credit rating as determined by at least two major rating agencies.

17. During the period extending from January 1, 2004 through December 31, 2006, Sierra was not able to procure RPS-eligible renewable energy resources on reasonable terms that could be financed if necessary.

18. Consistent with our practice for PG&E and SCE, it is reasonable to defer Sierra's IPTs for the period January 1, 2004 through December 31, 2006 to its 2007 RPS compliance year.

19. Consistent with our practice for PG&E and SCE, it is reasonable to set a 2007 APT for Sierra and to allow Sierra to carry a deficit of up to 100% of its cumulative 2007 IPT without explanation, so long as this amount is fully made up within three years.

20. In view of the RPS target of 20% of retail sales from RPS-eligible resources by 2010, it is reasonable to require Sierra to meet its APT for 2008 and succeeding years, subject to the flexible compliance mechanisms available to all RPS-obligated LSEs.

21. In order to implement § 399.17, it is reasonable to accept the 2007 IRPs of PacifiCorp and Sierra.

22. To promote uniform administration of the RPS program, it is reasonable to set a schedule and methodology for multi-jurisdictional utilities to file IRPs and annual supplements in subsequent years.

23. In order to avoid unfairness due to the timing of this order, it is reasonable not to require annual supplements for 2007 or 2008, and to allow PacifiCorp and Sierra to file their 2009 annual supplements at the same time as the large utilities file their 2009 RPS procurement plans.

24. It is reasonable to allow SMJUs to reflect any reporting changes necessary to conform to the requirements of this order in their August 2008 reports.

25. In order to ensure uniform administration of the RPS program, it is reasonable to require SMJUs to send copies of all contracts for procurement of RPS-eligible energy to Energy Division, as and when requested by the Director of Energy Division, for reporting and compliance verification purposes.

26. New West Energy, a respondent in this proceeding, cancelled its California registration as an energy service provider in February 2006.

27. The Commission certified SJVPA's CCA implementation plan on April 30, 2007.

### **Conclusions of Law**

1. The RPS procurement baselines of BVES and MU should be determined in accordance with D.07-03-046.

2. The RPS procurement baselines of PacifiCorp and Sierra should be determined in accordance with D.07-03-046, with an adjustment to use the proportion of their load that is sales to California retail customers.

3. The IPT and APT of BVES and MU should be determined in accordance with D.06-10-050, as implemented by the Director of Energy Division.

4. The IPT and APT of PacifiCorp and Sierra should be determined in accordance with D.06-10-050, with an adjustment to use the proportion of their load that is sales to California retail customers, as implemented by the Director of Energy Division.

5. BVES should be allowed to defer its IPTs for the years 2004, 2005, and 2006 to 2007. Because of this deferral, BVES has no APT for 2004, 2005, or 2006.

6. BVES should have an APT for 2007 and be allowed to carry a deficit of up to 100% of its cumulative 2007 IPT without explanation, so long as this amount is fully made up within three years.

7. BVES should be required to meet its APT for 2008 and succeeding years, subject to the flexible compliance mechanisms available to all RPS-obligated LSEs.

8. PacifiCorp should be allowed to defer its IPTs for the years 2004, 2005, and 2006 to 2007. Because of this deferral, PacifiCorp has no APT for 2004, 2005, or 2006.

9. PacifiCorp should have an APT for 2007 and be allowed to carry a deficit of up to 100% of its cumulative 2007 IPT without explanation, so long as this amount is fully made up within three years.

10. PacifiCorp should be required to meet its APT for 2008 and succeeding years, subject to the flexible compliance mechanisms available to all RPS-obligated LSEs.

11. The same conclusions about the effect of their lack of creditworthiness on their RPS procurement obligations that we applied to PG&E and SCE in D.03-06-071 should be applied to MU and Sierra.

12. MU and Sierra were subject to IPT and APT obligations for the period January 1, 2004 through December 31, 2006, but had no obligation to procure RPS-eligible energy during that period.

13. The repeal of former section 399.14(a)(1)(A), effective January 1, 2007, reinstated the obligations of MU and Sierra to procure RPS-eligible energy to meet their RPS obligations.

14. MU should be allowed to defer its IPTs for the years 2004, 2005, and 2006 to 2007. Because of this deferral, MU has no APT for 2004, 2005, or 2006.

15. MU should have an APT for 2007 and be allowed to carry a deficit of up to 100% of its cumulative 2007 IPT without explanation, so long as this amount is fully made up within three years.

16. MU should be required to meet its APT for 2008 and succeeding years, subject to the flexible compliance mechanisms available to all RPS-obligated LSEs.

17. Sierra should be allowed to defer its IPTs for the years 2004, 2005, and 2006 to 2007. Because of this deferral, Sierra has no APT for 2004, 2005, or 2006.

18. Sierra should have an IPT for 2007 and be allowed to carry a deficit of up to 100% of its cumulative 2007 IPT without explanation, so long as this amount is fully made up within three years.

19. Sierra should be required to meet its APT for 2008 and succeeding years, subject to the flexible compliance mechanisms available to all RPS-obligated LSEs.

20. MU and Sierra may voluntarily procure renewable energy under the RPS program at any time during the period when they are not creditworthy for RPS procurement purposes.

21. Because of the timing of this decision, the 2007 IRPs of PacifiCorp and Sierra should be accepted without supplementation.

22. PacifiCorp and Sierra should not be required to file annual supplements to their IRPs for 2007 or 2008.

23. In order to comply with § 399.17(d), supplements to IRPs in years when an IRP is filed should include plans for meeting California's APT, flexible compliance, and procurement contracting to meet California's RPS. They should also include information on the additional topics required of the large utilities in their RPS procurement plans for that year, as set forth by the assigned ALJ or assigned Commissioner in R.06-05-027 or its successor. They should explain how the IRP and supplement meet the requirements of § 399.17(d).

24. Supplements to IRPs in years when an IRP is not filed should include an overview of California RPS procurement to date; projected California retail sales out to one year after the next expected IRP; plans for flexible compliance and procurement contracting to meet California's RPS; workplan to reach 20% by 2010, or any succeeding binding RPS goal; and any other information required by the assigned ALJ or assigned Commissioner in R.06-05-027 or its successor.

25. PacifiCorp and Sierra should file their IRPs and supplements according to the schedule set out in Appendix A. This schedule may be varied by the assigned Commissioner or assigned ALJ in R.06-05-027 and its successor, or, if no such proceeding is open, by the Director of Energy Division.

26. SMJUs should reflect any reporting changes necessary to conform to the requirements of this order in their August 2008 reports.

27. SMJUs should use the same flexible compliance mechanisms as other RPS-obligated LSEs, including the same penalties for noncompliance, with the exceptions for 2004-2006 and 2007 noted above.

28. SMJUs should follow the same RPS reporting and verification requirements as all other RPS-obligated LSEs.

29. SMJUs should send copies of all contracts for procurement of RPS-eligible energy to Energy Division, as and when requested by the Director of Energy Division, for reporting and compliance verification purposes.

30. New West Energy should be removed as a respondent in this proceeding.

31. SJVPA should be added as a respondent in this proceeding.

## **O R D E R**

### **IT IS ORDERED** that:

1. The renewables portfolio standard (RPS) procurement baselines of Bear Valley Electric Service (BVES) and Mountain Utilities (MU) shall be determined in accordance with Decision (D.) 07-03-046.

2. The RPS procurement baselines of PacifiCorp and Sierra Pacific Power Company (Sierra) shall be determined in accordance with D.07-03-046, with an adjustment to use the proportion of their load that is sales to California retail customers, as implemented by the Director of Energy Division.

3. The incremental procurement target (IPT) and annual procurement target (APT) of BVES and MU shall be determined in accordance with D.06-10-050, as implemented by the Director of Energy Division.

4. The IPT and APT of PacifiCorp and Sierra shall be determined in accordance with D.06-10-050, with an adjustment to use the proportion of their load that is sales to California retail customers, as implemented by the Director of Energy Division.

5. The assigned Administrative Law Judge (ALJ) in this proceeding or in Rulemaking (R.) 06-05-027 is authorized to issue any rulings necessary to facilitate the acquisition of appropriate information for the development of baselines, IPTs, and APTs for all four small and multi-jurisdictional utilities (SMJUs).

6. Each SMJU (BVES, MU, PacifiCorp, and Sierra) shall be allowed to defer its IPTs for the years 2004, 2005, and 2006 to 2007.

7. Each SMJU shall have an APT for 2007, and shall be allowed to carry a deficit of up to 100% of its cumulative 2007 IPT without explanation, so long as this amount is fully made up within three years.

8. Each SMJU shall be required to meet its APT for 2008 and succeeding years, subject to the flexible compliance mechanisms available to all RPS-obligated load-serving entities (LSEs).

9. The 2007 integrated resource plans (IRPs) of PacifiCorp and Sierra are accepted without need for supplementation.

10. PacifiCorp and Sierra shall file their IRPs and annual supplements for future years in accordance with the schedule in Appendix A. This schedule may be varied by the assigned Commissioner or assigned ALJ in R.06-05-027 or its successor, or, if no such proceeding is open, by the Director of Energy Division.

11. Supplements to IRPs in years when an IRP is filed shall include plans for meeting California's APT, flexible compliance, and procurement contracting to meet California's RPS. They shall also include information on the additional topics required of the large utilities in their RPS procurement plans for that year, as set forth by the assigned ALJ or Assigned Commissioner in R.06-05-027 or its successor. The supplements shall also include an explanation of how the IRP and supplement comply with § 399.17(d).

12. Supplements to IRPs in years when an IRP is not filed should include an overview of California RPS procurement to date; projected retail sales out to one year after the next expected IRP; plans for flexible compliance and procurement contracting to meet California's RPS; workplan to reach 20% by 2010, or any succeeding binding RPS goal; and any other information required by the assigned ALJ or assigned Commissioner in R.06-05-027 or its successor. The assigned ALJ and assigned Commissioner in R.06-05-027 or its successor are authorized to vary these requirements, as appropriate.

13. PacifiCorp and Sierra may include with their supplements any other information they deem necessary to provide an accurate picture of their California RPS procurement planning.

14. SMJUs shall reflect any reporting changes necessary to conform to the requirements of this decision in their August 2008 reports.

15. SMJUs shall use the same flexible compliance mechanisms as other RPS-obligated LSEs, including the same penalty provisions for noncompliance, with the exceptions for the years 2004-2006 and 2007 noted above.

16. SMJUs shall follow the same RPS reporting and verification requirements as all other RPS-obligated LSEs.

17. BVES shall seek approval of any contracts for the procurement of RPS-eligible energy by application, rather than by advice letter, so long as any cap on BVES electricity charges is authorized by this Commission.

18. Sierra shall submit by advice letter any request that this Commission determine that a particular long-term contract with a new facility is priced at or below the RPS market price referent.

19. Sierra may request recovery of incremental and administrative costs associated with the annual supplements from its California customers in its general rate case.

20. If and when MU has a plan for using biodiesel for RPS compliance that is approved by the California Energy Commission, MU may submit an advice letter to make any changes needed to its Diesel Fuel Balancing Account.

21. SMJUs shall send copies of contracts for procurement of RPS-eligible energy to Energy Division, as and when requested by the Director of Energy Division, for reporting and compliance purposes.

22. New West Energy shall be removed as a respondent in this proceeding.

23. San Joaquin Valley Power Authority shall be added as a respondent in this proceeding.

This order is effective today.

Dated May 29, 2008, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
TIMOTHY ALAN SIMON  
Commissioners

**APPENDIX A**  
**SCHEDULE FOR IRPs AND SUPPLEMENTS**

Year	PACIFICORP	SIERRA
2008	File 2009 annual supplement at same time as large IOUs file 2009 procurement plans	File 2009 annual supplement at same time as large IOUs file 2009 procurement plans
2009	File 2009 IRP when filed with other jurisdictions; supplement within 30 days	File 2010 annual supplement at same time as large IOUs file 2010 procurement plans
2010	File 2011 annual supplement at same time as large IOUs file 2011 procurement plans	File 2010 IRP when filed with other jurisdictions; supplement within 30 days
2011	File 2011 IRP when filed with other jurisdictions; supplement within 30 days	File 2012 annual supplement at same time as large IOUs file 2011 procurement plans
2012	File 2013 annual supplement at same time as large IOUs file 2013 procurement plans	File 2013 annual supplement at same time as large IOUs file 2013 procurement plans

**(END OF APPENDIX A)**