

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



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Order Instituting Rulemaking to Develop Additional Methods to Implement the California Renewables Portfolio Standard Program.	Rulemaking 06-02-012 (Filed February 16, 2006)
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**OPENING COMMENTS OF SEMPRA GENERATION  
ON THE REVISED PROPOSED DECISION**

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**SUBJECT INDEX/ TABLE OF CONTENTS**

**I. THE REVISED PROPOSED DECISION’S DEFINITION OF REC-ONLY TRANSACTIONS IS FLAWED ..... 2**

**A. In Its Effort to Avoid Problems With CEC-Specified Delivery Criteria, the Commission Should Not Oversimplify RPS Transactions from All Out-of-State Facilities ..... 2**

**B. Examining the Benefits Provided by RPS-Eligible Facilities Is the Key to Distinguishing Between Bundled and REC-Only Transactions ..... 4**

**C. The “Bright Line” Test for Distinguishing REC-Only from Bundled Transactions for Out-of-State Facilities Should be Whether the Facility Can Provide Firm Delivery of the Bundled Product to a California Delivery Point ..... 6**

**II. CONCLUSION ..... 9**

**APPENDIX ..... 10**

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**OPENING COMMENTS OF SEMPRA GENERATION  
ON THE REVISED PROPOSED DECISION**

In conformance with the schedule set forth in the “Administrative Law Judge’s Ruling Extending Time for Comments and Reply Comments,” dated December 23, 2009, Sempra Generation hereby submits its Comments<sup>1</sup> on the Revised Proposed Decision of ALJ Simon (RPD), issued in this docket on December 23, 2009, entitled “Decision Authorizing Use of Renewable Energy Credits for Compliance With the California Renewables Portfolio Standard.” Sempra Generation believes that the essential conclusion of the RPD—that Renewable Energy Credits (RECs) should play a part in meeting California’s Renewable Portfolio Standard (RPS) objectives—is sound. However, there are details in the RPD that thwart, rather than advance, this goal. Specifically, Sempra Generation believes that the definition of REC-only transactions in the RPD improperly limits the universe of renewable resources eligible to provide California consumers with the benefits of bundled renewable energy products.

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<sup>1</sup> Sempra Generation filed a Motion for Party Status in this proceeding on January 15, 2010. That motion has not yet been acted upon.

## **I. THE REVISED PROPOSED DECISION'S DEFINITION OF REC-ONLY TRANSACTIONS IS FLAWED**

The overall conclusion of the RPD is that RECs should be allowed to satisfy compliance with California's RPS, subject to conditions. There are only a few who would disagree with this fundamental policy decision. However, in devising the conditions under which RECs may be used for RPS compliance, the RPD sets forth the following:

[W]e conclude that a REC-only transaction for purposes of RPS compliance is one that either:

1. Expressly transfers only RECs, not energy; or

2. Transfers RECs and energy from an RPS-eligible generation facility for which the first point of interconnection with the WECC interconnected transmission system is not physically located within California and is also not a facility for which the first point of interconnection with the WECC interconnected transmission system lies in the CAISO or another California balancing authority area.”

RPD at p. 32. The second part of this formulation is untenable, and excludes a large class of facilities that provide both energy and RPS attributes directly to California.

### **A. In Its Effort to Avoid Problems With CEC-Specified Delivery Criteria, the Commission Should Not Oversimplify RPS Transactions from All Out-of-State Facilities**

The error promulgated by the RPD is based on an understandable effort to navigate the jurisdictional boundaries between the California Public Utilities Commission (CPUC) and the California Energy Commission (CEC), and to create a simple bright-line test for distinguishing between REC-only transactions and bundled RPS transactions. Unfortunately, the bright line as defined in the RPD is improperly drawn.

The RPD correctly points out that the concept of delivery is the sticking point in drawing a distinction between REC-only and bundled RPS contracts. The issue of delivery from facilities

outside of California prompted the most difficulty in setting the criteria for determining REC-only transactions. For example, the RPD observes that

...the application of the CEC's delivery criteria to transactions with generators not located in California has engendered some controversy in this proceeding. The parties have provided extensive arguments about the significance of the delivery criteria for the RPS program. The focus of parties' comments is the examples of firming and shaping arrangements for RPS-eligible transactions that are provided in the *Eligibility Guidebook*.

RPD at p. 24, footnotes omitted.

The RPD goes on to detail some of the arguments presented by the parties, and notes that a wide variety of transactions can meet the delivery criteria specified by the CEC. It is the difficulty in examining this wide variety of potential contractual arrangements that drives the RPD toward a simplifying technique.

Prior versions of the PD focused on the structure of the contract as the basis for clarifying which RPS-eligible deals are, for RPS procurement purposes, REC-only transactions...Lack of enthusiasm for this element of the March PD took varied forms, but most parties...argue that the classification determination was complicated and awkward...Taken together, the comments suggest that a simpler, more direct method of delineating REC-only transactions would be better.

RPD at p. 27 (footnotes omitted).

In search of a simplifying technique, the RPD undertakes an examination of the different benefits provided by REC-only contracts and bundled RPS contracts. This is certainly a reasonable approach, but it should not result in characterizing most or all transactions from facilities outside of the state as REC-only transactions.

## **B. Examining the Benefits Provided by RPS-Eligible Facilities Is the Key to Distinguishing Between Bundled and REC-Only Transactions**

The distinctions drawn in the RPD between the “generalized” benefits of REC-only contracts and the more “local” benefits of bundled RPS contracts directly delivered to California are generally sound. But the analysis falters when it assumes that only facilities physically located inside the boundaries of California or directly interconnected to California can provide the “local” benefits articulated in the RPD. The error is subtle but it is crucial.

It is important to remember that the controversy about delivery dealt with a type of contract known as a firming and shaping contract. The quotation from page 24 of the RPD set forth above speaks directly to firming and shaping contracts.<sup>2</sup> And it is exactly these kinds of contracts that the RPD analyzes in coming to its conclusions about drawing a bright line between the benefits of bundled and REC-only contracts:

Some RPS procurement transactions that involve both RECs and energy nevertheless are more like REC-only transactions in the benefits they provide and their ability to reduce use of fossil fuel. These transactions involve the delivery of the renewable output to someplace other than the customers of the purchasing California LSE, with the provision of energy to the California customers from other sources, which typically are not renewable resources.

RPD at p. 29 (footnote omitted, emphasis added).

This is true, as far as it goes. But not all bundled RPS contracts with the first point of interconnection outside of California are firming and shaping contracts that “involve the delivery of the renewable output to someplace other than the customers of the purchasing California LSE...with the provision of energy to the California customers from other sources.” *Id.* In fact, there are bundled RPS contracts currently serving the customers of a California LSE from RPS-eligible facilities located outside of California but directly delivering RPS attributes and

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<sup>2</sup> Firming and shaping contracts are defined in footnote 45 to the RPD, p. 24.

renewable energy to a CAISO delivery point. It is essential to draw a distinction between “firming and shaping arrangements” and “true” bundled contracts that deliver both RPS attributes and the associated renewable energy to California through any of the many CAISO scheduling points.<sup>3</sup> Indeed, the RPD implicitly acknowledges this in the passage quoted above by including the qualifier “some.” Constructing a general rule based on a specific set of contract characteristics is poor policy at best. Imposing restrictions on “true” bundled RPS contracts by characterizing all bundled contracts with non-California located facilities in terms of firming and shaping arrangements (which are characteristic of only some contracts) is just wrong.

Conflating the attributes of firming and shaping RPS deals with “true” bundled RPS transactions leads the RPD to a flawed conclusion. It is important to remember that California relies upon a significant amount of imported energy to meet its load every hour of every day. Energy from many sources is scheduled into the CAISO during each of these hours. That energy actually flows into the CAISO system through identified scheduling points. Once that energy flows into California, it displaces less-efficient California generation, and when the imported energy is from an RPS-eligible facility it provides the same “benefit” as RPS-eligible energy produced in California—it “obviate[s] the need for reliance on conventional resources in or near the utility's service territory...[that] can result in local air quality benefits and the attendant public health benefits improved air quality provides.” RPD at pp. 28-29.

Thus, it is evident that the RPD makes a fundamental error when it asserts that

As a general matter, transactions involving RPS-eligible facilities whose first point of interconnection with the WECC interconnected transmission system is not physically located within California and is also not a facility for which the first point of interconnection with the WECC lies in the California Independent System Operator (CAISO) or another California balancing authority area does

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<sup>3</sup> These Comments will refer to bundled RPS contracts that deliver RPS attributes and energy from the same RPS-eligible facility to California as “true” bundled RPS contracts or transactions.

[sic] not provide the benefits of physical delivery of renewable energy to California customers...

RPD at p. 30 (footnote omitted). The benefits specified in the RPD<sup>4</sup> are provided by external “true” bundled RPS contracts, just as certainly as they are provided by California RPS-eligible facilities selling under “true” bundled RPS contracts.

Consider the situation in which two renewable facilities are interconnected to the grid in the same substation, but the first is connected to a bus that is (electrically) within the CAISO, and the second is connected to a bus of an adjoining balancing area that also connects with CAISO facilities. Both RPS resources can provide bundled RPS energy deliverable to California. Applying price and quantity limits to sales from the second facility (as the RPD currently does) simply makes no sense. This policy discounts the benefits the second resource provides to California consumers, and would result in an unjust and discriminatory outcome.

**C. The “Bright Line” Test for Distinguishing REC-Only from Bundled Transactions for Out-of-State Facilities Should be Whether the Facility Can Provide Firm Delivery of the Bundled Product to a California Delivery Point**

The objective expressed in the RPD of having a simple bright-line test is an understandable one. But the indicator that assures that California customers receive the benefits of “true” bundled RPS transactions is the delivery of energy from an RPS-eligible facility via firm transmission to a CAISO scheduling point. This is a far better approach than the unwieldy definition set forth in the RPD. Furthermore, it is consistent with actual, existing commercial transactions, statutory provisions, and ongoing efforts at the CAISO to meet California’s RPS goals.<sup>5</sup>

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<sup>4</sup> See RPD at pp. 28-29.

<sup>5</sup> The current CAISO Dynamic Transfer stakeholder process is examining the ways in which intermittent resources with firm transmission service to a CAISO scheduling point can be integrated into the CAISO grid. Under the current proposal, all intermittent resources with pseudo-tie arrangements will

It is instructive to examine the provisions of California Public Resources (PR) Code Section 25741 (which appears to be the source of the somewhat unwieldy physical interconnection definition in the RPD) for clues as to what facilities were expected to participate in the California RPS program. Interestingly, facilities near the California border were explicitly identified in the relevant statute, and the criteria for recognizing the participation of eligible facilities outside of California were far less onerous than those specified in the RPD.<sup>6</sup> Under the statute, facilities outside of California can be treated as if they are facilities in California so long as they satisfy the criteria of Section 25741(b)(2)(B), which does not include the more restrictive language specified in the RPD.

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sign a Participating Generator Agreement (PGA) similar to all other CAISO interconnected resources. Sempra Generation is a participant in a pseudo-tie 'pilot project' for its solar facility in Nevada. Under this arrangement, the solar facility is deemed to be within the CAISO Balancing Area. As such, it is recognized as providing bundled RPS energy service.

<sup>6</sup> (b) "In-state renewable electricity generation facility" means a facility that meets all of the following criteria:

(1) The facility uses biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation of 30 megawatts or less, digester gas, municipal solid waste conversion, landfill gas, ocean wave, ocean thermal, or tidal current, and any additions or enhancements to the facility using that technology.

(2) The facility satisfies one of the following requirements:

(A) 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.

(B) The facility has its first point of interconnection to the transmission network outside the state and satisfies all of the following requirements:

(i) It is connected to the transmission network within the Western Electricity Coordinating Council (WECC) service territory.

(ii) It commences initial commercial operation after January 1, 2005.

(iii) Electricity produced by the facility is delivered to an in-state location.

(iv) It will not cause or contribute to any violation of a California environmental quality standard or requirement.

(v) If the facility is outside of the United States, it is developed and operated in a manner that is as protective of the environment as a similar facility located in the state.

(vi) It participates in the accounting system to verify compliance with the renewables portfolio standard by retail sellers, once established by the Energy Commission pursuant to subdivision (b) of Section 399.13 of the Public Utilities Code. [PR Code § 25741(b)]

Adopting the revisions proposed herein (and set forth in the attached Appendix – “Proposed Modifications to Findings of Fact, Conclusions of Law and Ordering Paragraphs”) will ensure that transactions from RPS-eligible facilities that actually deliver the underlying energy (and related capacity) directly to California are treated as bundled REC transactions. The REC and energy from these types of facilities remain bundled throughout the transaction and should not be treated the same as those contracts that use “firming and shaping” techniques, where the energy is sold at one point and then repackaged for delivery with other energy (generally non-renewable energy) for delivery to California. These “firming and shaping” contracts are rightly considered “REC only” transactions. Facilities that deliver bundled RPS energy to California by means of firm transmission to an approved California scheduling point should not be characterized as REC-only transactions.

Consequently, Sempra Generation proposes that the definition of REC-only transactions for RPS compliance purposes (as originally set forth at p.32 of the RPD) be modified. A REC-only transaction is one that either:

1. Expressly transfers only RECs, not energy; or
2. Transfers RECs and energy from an RPS-eligible generation facility that is not directly interconnected to the CAISO or another California balancing authority, or does not directly deliver energy to CAISO or another California balancing authority scheduling point via firm transmission

Sempra Generation believes that should the RPD definition of “REC-only” remain, many viable renewable energy projects that could be built in the near term and would deliver renewable energy to California via firm transmission would not be built because they would be crowded out of the market by REC-only resources located in distant states that have no ability to provide the underlying renewable energy to California.

Adopting this definition should also prompt an examination of whether the limits on counting REC-only transactions for RPS compliance purposes should be adjusted. The proposed definition will expand the number of facilities that can supply bundled RPS energy. With access to a greater number of bundled RPS transactions, California LSEs should be encouraged to procure the more valuable bundled products, with their superior environmental, incremental energy and capacity benefits. A lower REC-only cap than suggested in the RPD may be appropriate.

## II. CONCLUSION

For the reasons set forth above, and as designated in the attached Appendix, Sempra Generation proposes that facilities outside of California supplying RPS-eligible energy through a bundled transaction via firm transmission to a CAISO scheduling point be treated the same as an RPS-eligible facility within California. Given that this revised definition will expand the universe of facilities eligible to provide bundled RPS energy to California LSEs, the Commission should evaluate whether a reduction in the proposed REC quantity limit is in order. The REC quantity limit should reflect a balancing of the environmental, incremental energy and capacity benefits of bundled supplies with the allowed quantity of REC-only transactions.

Respectfully submitted,

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Submitted: January 19, 2010

## APPENDIX

### **Proposed Modifications to Findings of Fact, Conclusions of Law, and Ordering Paragraphs**

#### **Clean Version:**

#### **Finding of Fact 7 should be revised to read:**

California customers receive the maximum benefit of RPS procurement transactions when the generator of the energy associated with a REC delivers the energy directly to the CAISO or another California balancing authority area, through a direct interconnection or via firm transmission to an associated scheduling point.

#### **Conclusion of Law 10 should be revised to read:**

In order to maximize the benefit California consumers receive from the procurement of RPS-eligible energy and of TRECs, all procurement from RPS-eligible generators that are not directly interconnected to the CAISO or another California balancing authority, or do not directly deliver energy to CAISO or another California balancing authority scheduling point via firm transmission, should be considered REC-only procurement for RPS compliance purposes.

#### **Ordering Paragraph 7 should be revised to read:**

As of the effective date of this decision, all procurement from generators of energy eligible under the California renewables portfolio standard which are not directly interconnected to the California Independent System Operator or other California balancing authority, or do not directly deliver their energy to a California Independent System Operator or California balancing authority scheduling point via firm transmission, will be considered procurement of renewable energy credits only for purposes of compliance with the California renewables portfolio standard. All deliveries from such transactions prior to the effective date of this decision will be counted as bundled transactions procuring both renewable energy credits and energy for purposes of compliance with the California renewables portfolio standard.

## **Redline Version:**

### **Finding of Fact 7:**

~~Because the RPS-eligible energy is delivered directly to California's system,~~ California customers receive the maximum benefit of RPS procurement transactions when the generator of the energy associated with a REC ~~has its first point of interconnection with the WECC transmission system physically located within California or with a facility for which the first point of interconnection with the WECC lies in~~ delivers the energy directly to the CAISO or another California balancing authority area through a direct interconnection or via firm transmission to an associated scheduling point.

### **Conclusion of Law 10:**

In order to maximize the benefit California consumers receive from the procurement of RPS-eligible energy and of TRECs, all procurement from RPS-eligible generators that are not directly interconnected to ~~of RPS-eligible energy for which the first point of interconnection with the WECC interconnected transmission system is not physically located within California and is also not a facility for which the first point of interconnection with the WECC interconnected transmission system lies in~~ the CAISO or another California balancing authority area, or no not directly deliver energy to CAISO or another California balancing authority scheduling point via firm transmission, should be considered REC-only procurement for RPS compliance purposes.

### **Ordering Paragraph 7:**

As of the effective date of this decision, all procurement from generators of energy eligible under the California renewables portfolio standard which are not directly interconnected to ~~for which the first point of interconnection with the Western Electricity Coordinating Council interconnected transmission system is not physically located within California and is also not a facility for which the first point of interconnection with the Western Electricity Coordinating Council interconnected transmission system lies in~~ the California Independent System Operator or another California balancing authority, or do not directly deliver energy to a California Independent System Operator or other California balancing authority scheduling point via firm transmission, ~~area~~ will be considered procurement of renewable energy credits only for purposes of compliance with the California renewables portfolio standard. All deliveries from such transactions prior to the effective date of this decision will be counted as bundled transactions procuring both renewable energy credits and energy for purposes of compliance with the California renewables portfolio standard.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of **OPENING COMMENTS OF SEMPRA GENERATION ON THE REVISED PROPOSED DECISION** has been electronically mailed to each party of record of the service list in R.06-02-012. Any party on the service list who has not provided an electronic mail address was served by placing copies in properly addressed and sealed envelopes and by depositing such envelopes in the United States Mail with first-class postage prepaid.

Copies were also sent via Federal Express to the assigned Administrative Law Judges and Commissioner.

Executed this 19th day of January, 2010 at San Diego, California.

          /s/ Jenny Norin          

Jenny Norin



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[TOP OF PAGE](#)  
[BACK TO INDEX OF SERVICE LISTS](#)