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TO PARTIES OF RECORD IN RULEMAKING 08-08-009

This is the proposed decision of Administrative Law Judge (ALJ) Anne E. Simon. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed either electronically pursuant to Resolution ALJ-188 or with the Commission's Docket Office. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Simon at aes@cpuc.ca.gov and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ KAREN V. CLOPTONKaren V. Clopton, Chief
Administrative Law Judge

KVC:sid

Attachment

Decision PROPOSED DECISION OF ALJ SIMON (Mailed 5/5/2009)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Rulemaking 08-08-009
(Filed August 21, 2008)

**DECISION ESTABLISHING PRICE BENCHMARKS AND CONTRACT
REVIEW PROCESSES FOR SHORT-TERM AND BILATERAL
PROCUREMENT CONTRACTS FOR COMPLIANCE WITH THE
CALIFORNIA RENEWABLES PORTFOLIO STANDARD**

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**DECISION ESTABLISHING PRICE BENCHMARKS AND CONTRACT
REVIEW PROCESSES FOR SHORT-TERM AND BILATERAL
PROCUREMENT CONTRACTS FOR COMPLIANCE WITH THE
CALIFORNIA RENEWABLES PORTFOLIO STANDARD**

1. Summary

This decision announces simplified and standardized procedures for Commission review of certain procurement contracts of investor-owned utilities under the renewables portfolio standard (RPS). The decision provides criteria for a fast-track review of RPS contracts that are less than 10 years in duration if the contracts meet specified criteria. The price will be considered per se reasonable and recoverable in rates if it satisfies the price benchmark requirements. The contract may be submitted for Commission approval using a Tier 2 advice letter if the contract is made with a generator already in commercial operation, the contract price meets the price benchmark, the contract meets the requirements for contract terms and conditions, and it is otherwise consistent with all other applicable RPS program requirements.

Contracts of less than 10 years that do not meet the criteria for fast-track treatment may continue to be submitted for review and approval using the regular RPS Tier 3 advice letter process.

The specific requirements for contracts one month to four years in duration to receive fast-track review are:

- The contract is made with a generation facility that has been in commercial operation for at least one month prior to the date the contract is signed;
- The levelized price, including firming and shaping costs, over the life of the contract does not exceed a price benchmark calculated as 110% of the forward price for a contract of the same duration

for non-renewable energy and the price does not exceed 90% of the market price referent for a contract of 10 years duration;

- The terms and conditions in the contract are the same as those provided in a pro forma contract submitted with the utility's RPS procurement plan and approved for use by the Commission;
- The contract is reviewed by the utility's Procurement Review Group;
- The contract is consistent with the utility's least-cost best-fit criteria for RPS procurement; and
- The contract otherwise is consistent with the utility's approved RPS procurement plan.

For RPS contracts of four to 10 years in duration, the decision authorizes Energy Division staff to develop a price benchmark derived from the market price referent. It also authorizes the use of a Tier 2 advice letter if:

- The contract is made with a generation facility that has been in commercial operation for at least one month prior to the date the contract is signed;
- The levelized price, including firming and shaping costs, over the life of the contract is less than or equal to the price benchmark for a contract of that length;
- The terms and conditions in the contract are the same as those provided in a pro forma contract submitted with the utility's RPS procurement plan and allowed to be used by the Commission;
- The contract is consistent with the utility's least-cost best-fit criteria for RPS procurement;
- The contract is reviewed by the utility's Independent Evaluator and its Procurement Review Group; and

- The contract otherwise is consistent with the utility's approved RPS procurement plan.

Finally, the decision clarifies that the review by utilities and by Energy Division of contracts negotiated outside the context of an annual RPS solicitation (bilateral contracts) should apply the same standards as are applied to the review of contracts that are the result of a solicitation.

2. Procedural Background

Consideration of the issues addressed in this decision began in Rulemaking (R.) 06-02-012. The Amended Scoping Memo and Ruling of Assigned Commissioner (December 29, 2006) in R.06-02-012 identified certain topics as necessary follow-up to the Commission's authorization of the use of short-term contracts¹ for RPS procurement in Decision (D.) 06-10-019.²

An Administrative Law Judge's (ALJ) Ruling Providing Opportunity for Comments and Reply Comments (May 10, 2007), asked parties for comments and reply comments on, inter alia, proposals by Energy Division staff on:

¹ RPS contracts with a duration of less than 10 years are considered short-term contracts.

² In response to direction in Senate Bill (SB) 107, in D.07-05-028 the Commission established, for a limited period of time, minimum quantities of RPS-eligible energy to be procured through contracts with new facilities or long-term contracts with existing facilities necessary in order for load-serving entities to count deliveries from short-term RPS-eligible contracts with existing facilities for RPS compliance. See Pub. Util. Code § 399.14(b).

Unless otherwise indicated, all subsequent citations to sections refer to the Public Utilities Code and citations to rules refer to the Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations.

- a. A methodology for a short-term contract price reasonableness benchmark;
- b. Reasonableness criteria for assessing bilateral contracts entered into by investor-owned utilities.³

Comments were received June 14, 2007 from Aglet, Alliance for Retail Energy Markets (AReM), Division of Ratepayer Advocates (DRA), Green Power Institute (GPI), PacifiCorp, Pacific Gas and Electric Company (PG&E), Powerex, Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), The Utility Reform Network (TURN), and the Center for Energy Efficiency and Renewable Technologies (CEERT). Reply comments were filed on June 25, 2007 by Aglet, CEERT, GPI, PG&E, SCE, SDG&E, and TURN.

An ALJ's Ruling Requesting Further Comment on Short-term Pricing Benchmark Proposals (September 4, 2007) sought additional comment from parties, to clarify proposals from earlier comments, and provide any additional information useful for developing a short-term pricing benchmark. Comments were received on September 24, 2007 from AReM, DRA and Aglet (jointly), GPI, PG&E, Powerex, SCE, and SDG&E. Reply comments were filed on October 1, 2007 by CEERT, DRA/Aglet, and PG&E.

In their 2009 RPS procurement plans, filed in September 2008, both SCE and PG&E made separate proposals for streamlined Commission approval of certain kinds of RPS contracts for each of these two utilities. Comments or reply comments on these proposals were filed by DRA, L. Jan Reid (Reid), PG&E, SCE, SDG&E, and TURN.

³ Additional topics for comment set out in the ruling are not relevant to this decision.

An Assigned Commissioner's Ruling (ACR) Transferring Consideration of Certain Issues from Rulemaking 06-02-012 to Rulemaking 08-08-009 (April 3, 2009) transferred three issues pending in R.06-02-012 to this proceeding for consideration and disposition. Two of them are the previously identified issues related to price reasonableness benchmarks and contract approval processes; the third is not related to this decision. These two relevant issues are:

1. The development of price benchmarks for evaluating the reasonableness of utilities' short-term bundled contracts (whether bilateral or the result of solicitations) and long-term bilateral bundled contracts.
2. The process for approval of utilities' short-term bundled energy (whether bilateral or the result of solicitations) contracts and long-term bilateral bundled contracts.

SCE and PG&E made proposals in their 2009 procurement plans that are related to the issues transferred by the ACR. SCE proposes that all its RPS procurement contracts having a term of less than five years be preapproved and then reported in the utility's quarterly procurement advice letter filing, up to a cumulative limit of 10,000 gigawatt-hours (GWh) of RPS procurement over five years. PG&E proposes a pilot program in which it submits Tier 1 advice letters⁴ for RPS contracts of any length that conform to Commission-approved terms and are priced at or below the market price referent (MPR). The program would be limited to a total of 800 GWh.

⁴ Advice letters are governed by General Order 96-B. Advice letter "tiers" are explained in D.07-01-024. A Tier 1 advice letter is effective upon filing, though staff retain the right to suspend the advice letter, and other parties have the right to protest the advice letter.

3. Discussion

3.1. General Considerations for Short-Term Contracts

The term “short-term” contracts covers all RPS contracts lasting at least one month but not more than 10 years.⁵ It applies both to contracts entered into as the result of an annual RPS solicitation and to contracts that are not the result of a solicitation (usually referred to as "bilateral" contracts). In D.08-02-008, the Commission authorized PG&E, SCE, and SDG&E⁶ to include requests for short-term contracts in their annual RPS solicitations.

Short-term contracts can play a useful role in RPS procurement. They are not, as a rule, a significant element in the financing of new RPS-eligible generation facilities. As the Commission found in D.06-10-019, in order to obtain financing for new RPS-eligible generation, the generation developer generally must have long-term contracts for the output of the facility. Parties agree that this is still true. Thus, short-term contracts are much more likely to be between utilities and generation facilities that are already built and operating, rather than with new facilities that are being developed. Such contracts may provide RPS-eligible generators whose long-term contracts are expiring with greater flexibility; they may also allow the useful lives of the facilities to be extended for a few years. Some evidence reviewed in D.06-10-019 suggests that short-term contracts could also be useful to an RPS-eligible facility at other times, perhaps to fill in when long-term contracts are not taking the entire output of the facility. For the utility, short-term contracts may fill procurement gaps when long-term

⁵ D.06-10-019.

⁶ These utilities sometimes referred to in this decision as “the three large utilities.”

contracts are not yet delivering energy. In some circumstances, a short-term contract may simply present a particularly attractive opportunity for acquisition of RPS-eligible energy.

3.2. Fast-track Treatment

Allowing utilities to submit certain short-term contracts using Tier 2 advice letters⁷ adds an expedited option for RPS procurement, while providing Energy Division staff with a reasonable opportunity to determine whether a particular contract merits closer review.

The initial proposals of both Energy Division staff and the parties focused on developing a process for across-the-board preapproval of short-term contracts whose prices were at or below a price reasonableness benchmark. Parties were divided both about the need for a preapproval process at all, and about how to determine price reasonableness for such a process.⁸ In its initial comments, GPI asserts that there are likely to be too few short-term contracts to make the process of developing a preapproval method worthwhile. Aglet and DRA argue that only the shortest contracts (less than six months) should be allowed on a preapproved basis, without any Commission review. SDG&E and CEERT urge that a "strong showing" standard should be applied for approval of short-term RPS contracts, similar to that used for approval of contracts for non-renewable power. While questioning the need for a short-term price reasonableness benchmark, SCE, AReM, Powerex, and PacifiCorp initially support the concept

⁷ A Tier 2 advice letter is effective 30 days from filing, unless suspended by staff or protested by another party.

⁸ Parties' views on the price benchmark issues are discussed in Section 3.4, below.

of a preapproval process. PG&E supports both preapproval and a price benchmark.

A similar division of opinion exists about the proposals for preapproval made by SCE and PG&E in their 2009 procurement plans. SCE, PG&E, and SDG&E support the proposals. DRA opposes both of the proposals, on the basis that they would allow a potentially large number of contracts to take effect with no Commission review. Reid reasserts the earlier position of Aglet and DRA, urging a strict limit on contracts eligible for preapproval. TURN argues more work would be needed before standards for determining the reasonableness of such contracts can be developed.

We appreciate the efforts of parties and staff in formulating responses to the problem they initially identified, which we paraphrase as: "Should short-term RPS contracts be preapproved or should they be subject to the full Tier 3⁹ advice letter process?" Taking into consideration the evolution of the RPS program, however, this is no longer the most productive inquiry. Rather, asking "how can approval of short-term contracts best fit in the overall context of RPS procurement?" makes the best use of the full range of experience of staff and the parties in the RPS process.

As an initial matter, the reservations about blanket preapproval of short-term contracts¹⁰ expressed by Aglet, DRA, Reid, GPI, and TURN are significant. Although several parties initially suggested that there would be relatively few contracts in this category, SCE's current proposal contemplates up to 10,000 GWh

⁹ A Tier 3 advice letter is not effective until approved by the Commission through a resolution.

¹⁰ In the case of PG&E's current proposal, some long-term contracts would also be in this category.

of contracts over five years. On an annual basis, this would exceed SCE's entire RPS incremental procurement target in each of those years. We agree with those parties urging that the Commission should retain the ability to review short-term contracts, even if the review can be simplified and expedited. While we encourage parties and Energy Division staff to pursue additional opportunities to continue standardizing and streamlining RPS procurement processes, at this time it makes the most sense to provide a fast-track for review by Tier 2 advice letter of those contracts that meet the requirements for facility eligibility, price, and other contract terms.¹¹

Within the fast-track structure, there are several additional advantages as well:

- Utilities and generators may expedite contract negotiations.
- Commission staff has the opportunity to attend to those contracts that need further review, while allowing contracts that conform to the requirements set forth in this decision simply to take effect.
- The risk that an advice letter would require suspension for further review or be protested after its effective date (as would be the case with a Tier 1 advice letter) is substantially reduced.

Ordinary RPS procurement review (through Tier 3 advice letters) remains available for any contracts that do not meet the criteria or for which Energy Division staff concludes additional review would be appropriate.

¹¹ Moreover, as DRA points out, it is important for the Commission to be able to verify that the minimum quantity requirement for long-term contracts has been met in any year in which a utility seeks to use any short-term contract for RPS compliance. See D.07-05-028.

3.3. Eligible Facilities

The fast-track standards and procedures set out in this decision are based in part on the parties' agreement that short-term contracts are most likely to be used for energy procurement from RPS-eligible generators that are already in operation. This consensus suggests that it would not unduly constrain utilities' ability to enter into short-term contracts to institute a requirement that simply reflects this reality. Thus, any RPS contract submitted for fast-track treatment in accordance with this decision must provide for procurement of an energy product from an RPS-eligible facility that has been in commercial operation for at least one month prior to the date the contract is signed.

This qualification also promotes consistency of project viability review for new projects. The Commission has expressed its interest in a more focused review by utilities of the potential viability of new RPS-eligible generation for which contract approval is sought. (See D.08-12-058, as well as the Assigned Commissioner's Ruling Regarding Potential Renewables Portfolio Standard Development in Imperial Valley and Evaluation of Renewable Procurement Contracts (February 3, 2009).) By restricting fast-track review to contracts with generators already in operation, we allow the review of project viability for all new projects to be based on procedures tailored for new projects.

This requirement, like the others in this decision, applies only to short-term contracts submitted under the fast-track procedure. Short-term contracts that are between a utility and a generation facility being developed may always be submitted for Commission review and approval in accordance with the usual RPS procedures.

3.4. Price Reasonableness Benchmark

The parties' initial comments on a price reasonableness benchmark for short-term contracts, like their comments on a process for short-term contract

preapproval, were divided. CEERT, GPI, DRA, Powerex, and SDG&E initially saw no need to develop a short-term price reasonableness benchmark. PG&E, SCE, and AReM supported the general idea.¹² In their 2009 proposals neither SCE nor PG&E includes a price reasonableness benchmark, though PG&E proposes that all contract prices at or under the MPR be included in its pilot program.

To make a fast-track approval process work effectively, a price reasonableness benchmark of some kind is necessary. From a practical perspective, without a price benchmark, the need for individual determinations of the reasonableness of the contract price would undermine the possibility of expedited processing. From a ratepayer perspective, setting up an expedited process without a check on prices could lead to contract prices that are significantly greater than the value of the contract to ratepayers. We therefore turn to the parameters for a price benchmark in the fast-track process for short-term RPS contracts.

Two basic approaches to a short-term price reasonableness benchmark were suggested by Energy Division staff and addressed by the parties. One is the adaptation of the existing MPR¹³ for short-term contracts. The other is the development of price benchmarks based on market prices for energy. DRA, Aglet, SCE, and AReM support the use of a short-term price benchmark based on or adapted from the existing MPR. CEERT, Powerex, PG&E, and SDG&E argue

¹² PacifiCorp proposed using a benchmark method specific to its situation. Because the process we adopt applies to PacifiCorp in few if any circumstances, we do not pursue this suggested method.

that a price benchmark, if any is necessary or actually adopted, should not be based on the MPR. GPI does not favor adoption of a benchmark, but suggests that if one is adopted, the MPR could be used as the basis for contracts 5-10 years in duration as long as an "renewable adder" that recognizes renewable value is included.

The use of market-based prices to set a short-term price benchmark is advocated by PG&E, SDG&E, and CEERT. All parties agree that there is no current market in short-term contracts for RPS-eligible energy. The market prices to which a short-term RPS benchmark would refer would thus be those in the short-term non-renewable energy market. Parties agree that this basic price should be supplemented by an additional renewable value, though they do not agree on what that value should be.

Energy Division staff proposes that both methods be used: market-based prices with an adder for shorter contracts; MPR-based values for longer contracts. This approach responds to significant concerns of the parties and fits well in the fast-track framework we adopt. It aligns the benchmark for shorter RPS contracts with the market for energy products, while using the MPR, which is developed for long-term contracts, to provide the benchmark for longer short-term contracts.

In order to use market prices in developing a price benchmark, market prices must be determined. There is substantial agreement among the parties

¹³ The MPR is based on a model of a new California generating facility using a combined cycle gas turbine. It is calculated for contracts ranging in duration from 10 to 25 years. See D.08-10-026; Res. E-4214.

and staff that forward, rather than spot, energy prices are the relevant market.¹⁴ The availability of relevant market information is the most important determinant of how to develop the price benchmark.¹⁵ Parties suggest various periods of time for which such prices should be used. PG&E initially suggested a term of three years.¹⁶ TURN suggests a period of three years; SCE and GPI propose a period of five years.¹⁷

The large utilities initially proposed the use of generally accepted market indices to determine forward prices, including the Intercontinental Exchange (ICE) index and Platts, among others. Platts and ICE have since merged their products.¹⁸ The Platts-ICE index covers four years of forward prices, which is in the range suggested by the parties. As a practical matter, because this is the time period covered by a major index, four years is also a reasonable period of time to consider for the use of forward prices as part of the price benchmark.

RPS contracts of duration from one month to 48 months will therefore be subject to a market-based price benchmark for use of the fast-track procedure. To reduce visual and mental clutter, these contracts will be referred to as "very short-term contracts." Contracts four years to 10 years in duration will be

¹⁴ SDG&E suggests that spot prices be used, but without extended justification. All other parties either advocate or assume the use of forward market prices.

¹⁵ See D.08-10-026 for a discussion of this principle with respect to the MPR.

¹⁶ PG&E's current proposal for a pilot program uses the MPR (without any short-term adaptation) as the price benchmark for contracts of any duration.

¹⁷ SCE's current proposal for preapproval of certain contracts is limited to contracts of five years or less, but includes no proposed price benchmark.

¹⁸ See information about Platts-ICE Forward Curve—North America, at <http://www.platts.com/Electric%20Power/Real-Time%20Information/Forward%20Curve-US%20Electricity/>.

referred to as "moderately short-term contracts." Both groups together are "short-term contracts."

3.4.1. Very Short-Term Price Benchmark

Parties agree that, if a market-based method is used in setting the very short-term price benchmark, an adder for the value of the renewable character of the electricity should be included. As GPI notes, such an adder cannot be developed by reference to a market price for renewable attributes, because no such market currently exists in California.¹⁹ PG&E proposes a numerical approach: that an adder be the greater of 10% more than the market price, or \$20/megawatt-hour (MWh).²⁰

In the absence of a market that provides a valuation for renewable attributes (which in the RPS context are understood as RECs), PG&E's suggestion of a percentage adder for the very short-term price benchmark has the virtues of simplicity and transparency. We adopt a 10% premium, so that the very short-term price benchmark will be 110% of the forward energy price for a contract with conventional resources of the same duration and commencement date.

We base this choice on the nature of the very short-term RPS contract, *not* on a valuation (even an approximate valuation) of the renewable attributes of the energy. The 10% premium is the component of the very short-term price benchmark that incorporates the value to customers of obtaining RPS-eligible energy rather than non-renewable energy in a very short-term contract. Since

¹⁹ This Commission has the authority pursuant to § 399.16 to authorize the use of tradable renewable energy credits (RECs) for compliance with RPS requirements, but has not yet done so.

²⁰ SDG&E supports this idea, but suggests that the value should be 20% more than the market price or \$20/MWh.

such a contract does not contribute to the development of a new RPS-eligible generation resource, the value to ratepayers is not as great as that of a long-term contract that will support new construction of RPS-eligible generation. But the value is not zero. Procuring RPS-eligible energy through short-term contracts is in accordance with both the RPS statutory mandate and overall state policy to increase California's use of renewable energy.²¹ Such contracts can also encourage the continued production of RPS-eligible energy by facilities that have been doing so for many years, and whose energy is already reflected in utilities' RPS baselines.²²

Tying the price benchmark for very short term RPS contracts to forward prices for conventional generation could, however, import a significant element of price volatility to the calculation. To ensure that the fast-track option will not be available for very short term RPS contracts with extraordinarily high prices, we place an absolute cap of 90% of the MPR for a 10-year contract on the very short-term price benchmark.

The benchmark price and the cap on it are absolute requirements for using the fast-track approval process for very short term contracts. That is, a very short-term contract that meets all other requirements but does not have a levelized price (including firming or shaping costs) equal to or below 110% of the index price (as determined by Energy Division staff) and below 90% of the 10-year MPR will not be eligible for the fast track. It could, however, be submitted for approval in accordance with the ordinary RPS contract review and approval process.

²¹ See, e.g., Executive Order S-14-08.

²² See § 399.14(a); D.04-06-026; D.06-10-050.

The determination of the very short-term benchmark should be made by Energy Division staff, in consultation with the parties. Staff and parties should use generally accepted indices²³ in developing a simple method for calculating the benchmark that is appropriate to the use of a Tier 2 advice letter. Once developed, the methodology should be circulated to the service list by the Director of Energy Division prior to being used.

3.4.2. Moderately Short-Term Price Benchmark

The issues involved in developing an MPR-based price benchmark for contracts four to 10 years in duration are less complex. As parties acknowledge, the MPR is well-known and the MPR methodology has been developed with extensive input over the course of several years. Although it is possible to consider changes to the basic MPR methodology as part of the moderately short-term price benchmark, that is not likely to produce results commensurate with the effort. This is the case especially because the moderately short-term price benchmark is a requirement for fast-track consideration only, not an absolute price cap or a determination of reasonableness of any prices for moderately short-term contracts. We recognize that an adaptation of the MPR for the moderately short-term price benchmark will not include any "green adder," as urged by GPI and CEERT.²⁴ However, since moderately short-term contracts are unlikely to contribute to the development of new renewable facilities, the

²³ SDG&E's suggestion of using broker quotes is not consistent with the Commission's preference for the use of more generally available market information. See, e.g., D.05-12-042.

²⁴ Costs of compliance with greenhouse gas emission regulation are included in the MPR. See D.08-10-026 and Resolution (Res.) E-4214.

absence of any adder is a reasonable reflection of the value of the contract to ratepayers.

Energy Division staff should therefore calculate a moderately short-term price benchmark for contracts four to 10 years in duration at the same time as the actual MPR is calculated each year. The calculations for the price benchmark should be clearly identified as such and provided to all parties.

As with very short-term contracts, the moderately short-term price benchmark is an absolute requirement for using the fast-track approval process for moderately short term contracts. That is, a moderately short-term contract that meets all other requirements but does not have a levelized price (including firming or shaping costs) equal to or below the moderately short-term price benchmark will not be eligible for the fast track. It could, however, be submitted for approval in accordance with the ordinary RPS contract review and approval process.

3.5. Confidentiality of Prices

Parties' comments reveal a continuing tension between the value of public information about the RPS program and the protection of prices of utilities' procurement contracts. Confidentiality of particular contract prices must be preserved (see D.06-06-066), but public disclosure of some information about prices is both possible and desirable.

For moderately short-term contracts, the calculation of the price benchmark will provide the upper limit of the price (but not the actual price) of a contract submitted under the fast-track procedure. For very short-term contracts, the use of market indices as the base of the price benchmark makes disclosure more problematic. An indication of prices may be available, however, without threatening either contract confidentiality or price information that may not be public. SDG&E points out that, for example, disclosure of a 30-

day rolling average of index prices is an accepted industry practice. As part of the development of a method for establishing the index price to be used for the very short-term price benchmark, staff and parties should also identify a method of making relevant, but more general or averaged, price data available in the public version of the advice letter.

3.6. Contract Terms and Conditions

An important part of the fast-track process is the short-term contract itself. In order to use the Tier 2 advice letter process, the contract's terms and conditions must be standard and consistent with terms that have previously been reviewed for either very short-term contracts or moderately short-term contracts. Each utility intending to use the fast-track process must submit a *pro forma* very short-term contract and a *pro forma* moderately short-term contract with its annual RPS procurement plan.²⁵ Each *pro forma* contract must be submitted in its full form, clearly labeled as to whether it is for very short-term or moderately short-term contracts, or stating that the utility intends to use one *pro forma* contract for both types.

The non-modifiable standard terms and conditions for RPS contracts must not be modified in the utility's *pro forma* contract. These terms and conditions may not be modified in any contract submitted under the fast-track procedure. If any of the modifiable standard terms and conditions are modified in the *pro forma* contract, the changes and the rationale for the changes must be clearly identified when the *pro forma* contract is submitted with the utility's

²⁵ For 2009, these *pro forma* contracts may be submitted with any 2009 RPS procurement plan amendments a utility submits.

procurement plan (or amendments). A contract eligible for the fast-track procedure would use the *pro forma* contract without alterations.

3.7. Least-Cost Best-Fit

A utility's evaluation of potential RPS contract bids includes review using the utility's least-cost best-fit criteria. Since D.08-02-008 authorized the large utilities to solicit bids for short-term contracts, their least-cost best-fit evaluation now extends to short-term as well as long-term contracts.²⁶ These criteria are therefore available for the evaluation of short-term contracts that are otherwise eligible for fast-track review, and should be applied to those contracts.

The application of appropriate least-cost best-fit criteria to all short-term contracts will help ensure that contracts submitted for fast-track approval are consistent with the utility's overall RPS procurement plan and process. This requirement should not be onerous. Because contracts eligible for the fast track must conform to the price limitations set out in this decision and must be entered with facilities already in commercial operation, the evaluation of both cost and fit should be simplified and expeditious for the utility.

3.8. Review by Procurement Review Group and Independent Evaluator

The fast-track process for short-term contracts will expedite Commission review of the contract. These contracts must also be subject to the safeguards in the utility's own contracting processes, however, in order for the Commission's expedited review to be based on accurate and complete information.

A proposed RPS contract is typically presented to a utility's Procurement Review Group (PRG) for review before an advice letter seeking approval of the

²⁶ D.08-02-008, at 9.

contract is filed.²⁷ This should also be the case with a fast-track Tier 2 advice letter, except in the unusual situation that a short-term contract could not be presented to the PRG in time for the advice letter to become effective prior to the commencement of deliveries under the contract. Even in this circumstance, the utility must explain in the advice letter why the PRG could not be informed about the contract in sufficient time to allow its review of the contract.

An Independent Evaluator (IE) reviews a utility's annual RPS solicitation and writes a report evaluating the entire solicitation, evaluation, and selection process. (D.06-05-039, at 46.). The IE's final report is a required part of the Tier 3 advice letter filing for RPS contracts. The IE's final report should be a part of the fast-track process as well. The IE's evaluation provides some assurance that a particular short-term contract is a reasonable choice for the utility in the procurement circumstances of that year, as well as providing review of any transactions with utility affiliates.²⁸

3.9. Application to Small Utilities

Bear Valley Electric Service (BVES) and Mountain Utilities (MU) are California utilities, but they are so much smaller than the three large utilities that they sometimes face different issues of RPS procurement and compliance.

²⁷ Procurement transactions with delivery periods that are greater than three months are to be reviewed by a utility's PRG. (D.04-12-048.) The use of the PRG for RPS solicitations is discussed in D.05-07-039.

²⁸ Certain limitations on short-term transactions with affiliates were imposed in D.04-12-048. These restrictions were based on the quick-moving nature of the very short-term market for conventional generation. No party suggested that these restrictions be carried over to RPS procurement, which has no current short-term market. The IE report should provide sufficient safeguard for RPS transactions.

Although the procedures set forth in this decision are generally applicable, in practice, they will not apply to either BVES or MU at this time.

BVES currently has a Commission-imposed cap on its rates. Because of this cap, the Commission determined that BVES must seek approval for all RPS energy procurement contracts by application, rather than advice letter, as long as the rate cap is in place. (See D.08-05-029.) BVES would thus not be able to use the fast-track process established in this decision while the rate cap is in place.

MU, because it is not connected to the California grid, does not now enter into procurement contracts for energy. The fast-track process is simply not relevant to MU.

3.10. Application to Multi-Jurisdictional Utilities

RPS procurement by PacifiCorp and Sierra Pacific Power Company (Sierra) is governed by § 399.17, as applied by D.08-05-029. These utilities may each proportionally allocate their system-wide RPS-eligible procurement to their California RPS obligations without signing procurement contracts for RPS-eligible electricity that is specifically for their California customers. If these utilities decide to procure RPS-eligible electricity exclusively for their California customers, that procurement is subject to the same rules as apply to the California utilities.

The RPS fast-track procedures set forth in this decision are California-specific procedures. They therefore apply to PacifiCorp and Sierra only when either utility signs a short-term contract for RPS-eligible electricity exclusively for

the use of its California customers.²⁹ If such a contract meets the requirements in this decision, it may be submitted by means of a Tier 2 advice letter.

3.11. PG&E and SCE Proposals

Since this decision authorizes all utilities to make use of streamlined RPS contract mechanisms for short-term contracts, it addresses the fundamental goal of both utilities' proposals: making review and approval of relatively straightforward and standardized RPS contracts simpler and faster. No more than the general authorization put forth in this decision is needed to provide a framework for improvement.

3.11.1. PG&E

PG&E proposes to apply Tier 1 advice letter treatment to all contracts with prices at or below the MPR and in conformity with the Commission's standard terms and conditions up to 800 GWh. This would apparently include even contracts of 10 or 20 years in duration with new facilities under development. This proposal would impair the Commission's ability to evaluate the viability of new projects proposed for long-term RPS contracts. This is inconsistent with the Commission's intention to improve and standardize the consideration of project viability in the development, review, and approval of RPS contracts with new facilities. In addition, even as a pilot program, PG&E's proposal, as DRA and Reid argue, has the potential to put large contracts outside the normal RPS review process. PG&E does not propose any method to screen the potential long-term contracts in this program, leaving open the possibility that ratepayer

²⁹ Because this Commission does not exercise supervisory authority over the multi-jurisdictional utilities' contracting, the requirements set out in § 3.7 regarding least-cost best-fit and § 3.8 regarding review by procurement review groups and independent evaluators would not apply to PacifiCorp or Sierra.

resources would be committed to projects that would not be highly ranked in the ordinary RPS contract review process.

PG&E's proposal also creates pricing problems for short-term contracts. By asserting that any contracts with prices at or below the MPR³⁰ should be eligible for Tier 1 treatment, PG&E in effect offers the MPR as a price reasonableness benchmark for short-term contracts. As explained in Section 3.4.1, above, however, this could allow short-term contracts with prices substantially higher than their real value to ratepayers to become effective immediately. This is not consistent with the balance between short-term contract cost and ratepayer value that we have struck in this decision.

PG&E's proposal is therefore denied.

3.11.2. SCE

SCE proposes that all RPS contracts of less than five years' duration be preapproved and reported in the utility's quarterly report³¹ for a period of the next five years, up to 10,000 GWh. DRA, Reid, and TURN observe that this proposal would effectively remove Commission oversight of short-term contracts for hundreds of megawatts of RPS-eligible generation over the next five years. SCE does not present any evidence that short-term contracting opportunities are being lost because utilities must use an advice letter process for contract approval. The RPS contracting process is not yet thoroughly standardized and the program itself is not yet fully mature; we are therefore not

³⁰ PG&E does not specify the term of years for the MPR that it would apply to short-term contracts for this purpose.

³¹ This is formally the utility's procurement plan compliance report quarterly advice letter filing.

willing to allow such a potentially large amount of RPS procurement to occur with no Commission review at all.

SCE's request is therefore denied.

3.12. Bilateral Contracts

Earlier in the RPS program, it was not clear to parties or the Commission whether bilateral contracts required a separate regime for their review and approval. Because such contracts were not subject to the discipline of a competitive solicitation, the thinking went, there was greater potential for bilateral contracts to be negotiated that were too expensive, dependent on unproven technologies, or otherwise less appropriate than competitively bid contracts. The initial ruling in R.06-02-012 assumed that bilateral contracts were likely to require some special treatment.

Experience with the RPS program as it has matured suggests that the early concerns about bilateral contracts can best be resolved by holding bilateral contracts to the same review standards as contracts that come through a solicitation. The Commission now uses uniform standards for reviewing contracts that come through a solicitation. See Res. E-4199. No party has provided a reason not to apply the same standards to bilateral contracts.

Therefore, the contract review standards and processes set out in this decision for very short-term contracts and moderately short-term contracts govern both bilateral contracts and contracts that are the result of a solicitation. The ordinary Tier 3 advice letter review for short-term contracts not submitted on the fast-track should also apply to both bilateral contracts and those from a solicitation. This leaves only long-term bilateral contracts to be accounted for.

Applying the same principles, long-term bilateral contracts should be reviewed according to the same processes and standards as contracts that come through a solicitation. This includes review by the utility's Procurement Review

Group and its Independent Evaluator. This requires only one adaptation to the current process. The MPR by its terms applies only to long-term contracts that come through a solicitation.³² It makes no sense, however, to develop an independent price evaluation tool for long-term bilateral contracts that are otherwise the same as long-term contracts that are the result of a solicitation. The MPR should therefore be used as a price benchmark for the evaluation of long-term bilateral contracts. In all other respects, including evaluation of price reasonableness, Energy Division's contract review processes should apply equally to bilateral contracts and contracts from a solicitation.

4. Comments on Proposed Decision

The proposed decision of ALJ Anne E. Simon in this matter was mailed to the parties in accordance with § 311 of the Public Utilities Code and comments are allowed pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure. Opening comments were filed on _____, and reply comments were filed on _____.

5. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Anne E. Simon and Burton W. Mattson are the assigned Administrative Law Judges in this proceeding.

³² It also is the point used to determine whether contracts are eligible for above-market funds under SB 1036. This, too, is limited to contracts from a solicitation. See Res. E-4199.

Findings of Fact

1. The majority of utilities' short-term contracts to acquire RPS-eligible bundled energy are likely to be from RPS-eligible generation facilities that are already in commercial operation at the time the contract is signed.
2. Many older RPS-eligible generation facilities could make use of short-term contracts after their current long-term contracts with California utilities expire.
3. Most of the RPS-eligible generation from older RPS-eligible facilities is already part of the RPS baseline amount for California utilities.
4. In order to facilitate short-term RPS contracts while maintaining the safeguards of Commission oversight, it is reasonable to develop fast-track procedures for short-term contracts that do not exceed price benchmarks and meet certain additional standards.
5. In order to promote consistent evaluation of the viability of new RPS-eligible generation projects, it is reasonable to limit fast-track procedures to short-term contracts with generation facilities that are already in commercial operation.
6. In order to protect ratepayers from unnecessarily high prices for RPS-eligible energy procured through short-term contracts with generation facilities that are already in commercial operation, it is reasonable to establish price reasonableness benchmarks for short-term contract prices.
7. In view of the structure of the current energy market, it is reasonable to identify two groups of short-term contracts, based on duration: contracts of one month to four years (very short-term contracts), and contracts of four to ten years (moderately short term contracts).
8. For purposes of the fast-track procedure, forward energy prices for contracts of similar duration provide a reasonable component of a price reasonableness benchmark for very short term contracts.

9. For purposes of the fast-track procedure for very short term contracts, a premium to reflect the value of RPS-eligible energy to utility customers is a reasonable component of the price benchmark.

10. Taking into account the forward prices for energy contracts of comparable length and the value to ratepayers of obtaining RPS-eligible energy from facilities already in commercial operation, a premium of 10% over the forward market price for non-renewable energy contracts of comparable length is a reasonable component of the very short-term price benchmark.

11. Because of the expedited nature of the fast-track procedure, it is reasonable to protect ratepayers from prices for very short-term RPS contracts that are out of proportion to their value to ratepayers by imposing an absolute limit of 90% of the MPR for 10-year contracts on the price of any very short-term contract that is submitted for fast-track consideration.

12. For purposes of the fast-track procedure, a modification of the MPR can be the basis of a price reasonableness benchmark for moderately short term contracts, since there are no analogous forward energy prices for contracts of such duration and the MPR methodology is well-known and publicly available.

13. In view of the public importance of the RPS program, it is reasonable to develop a method of providing publicly available information about short-term price benchmarks while protecting actual prices of individual contracts from disclosure.

14. In order to promote consistency of evaluation of short-term contracts using the fast track process, it is reasonable to require utilities to submit such contracts for PRG review and to provide IE reports with their Tier 2 advice letters.

15. In order to promote consistency of evaluation of all RPS procurement contracts, it is reasonable to authorize Energy Division staff to review bilateral

RPS contracts using the same methods and criteria, including those for reviewing price reasonableness, as are used to review contracts that result from the utilities' annual RPS solicitation, using the MPR as a price reasonableness benchmark for long-term bilateral contracts.

Conclusions of Law

1. In order to facilitate short-term RPS contracts while maintaining the safeguards of Commission oversight, fast-track procedures for short-term contracts that do not exceed price benchmarks and meet certain additional standards should be developed.
2. Fast-track procedures should be limited to short-term contracts with RPS-eligible generation facilities that are already in commercial operation.
3. Separate price reasonableness benchmarks should be established as part of the fast-track procedures for contracts for RPS-eligible energy products that are one month to four years in duration (very short term contracts) and for contracts for RPS-eligible bundled energy products that are four years to ten years in duration (moderately short-term contracts).
4. A price reasonableness benchmark for very short term contracts for purposes of the fast-track procedure should include both forward energy prices for contracts of similar duration and a premium to reflect the value of RPS-eligible energy to utility customers.
5. Energy Division staff, in consultation with the parties, should develop a method to calculate the very short-term price benchmark, and should notify the service list of this proceeding or its successor of the calculation method chosen.
6. Energy Division staff, in consultation with the parties, should develop a method for public disclosure in the advice letter of a forward price range used in the very short-term benchmark calculation, while preserving confidentiality of the actual contract price.

7. A price reasonableness benchmark for moderately short-term contracts for purposes of the fast-track procedure should be based on the MPR, and should be calculated by Energy Division staff annually at the same time as the MPR.

8. A very short-term contract between a large utility and an RPS-eligible generator that has been in commercial operation for at least one month that has a levelized price (including any firming or shaping costs), equal to or below the price benchmark for very short-term contracts (and not more than 90% of the market price referent for 10-year contracts), and contract terms that conform to the pro forma contract for very short-term contracts that is approved as part of a utility's annual RPS procurement plan meets the requirements for submission to the Commission using a Tier 2 advice letter.

9. A moderately short-term contract between a large utility and an RPS-eligible generator that has been in commercial operation for at least one month that has been presented to the utility's PRG, has been reviewed by the Independent Evaluator, has a levelized price (including any firming or shaping costs), at or below the price benchmark for moderately short-term contracts, and has contract terms that conform to the pro forma contract for moderately short-term contracts that is approved as part of a utility's annual RPS procurement plan meets the requirements for submission to the Commission using a Tier 2 advice letter.

10. The fast-track procedures using a Tier 2 advice letter should also apply to any very short-term contract or moderately short-term contract to acquire RPS-eligible electricity exclusively for use to meet its California RPS obligations entered into by a multi-jurisdictional utility that meets all the requirements of the fast-track process.

11. Because this decision establishes a fast-track procedure for Commission approval of short-term contracts that meet certain requirements, PG&E's request

for a pilot program using Tier 1 advice letters is unnecessary, and should be denied.

12. Because this decision establishes a fast-track procedure for Commission approval of short-term contracts that meet certain requirements, SCE's request for preapproval of short-term contracts of less than five years in duration is unnecessary, and should be denied.

13. In order to allow RPS contracting to proceed expeditiously, this order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company, San Diego Gas and Electric Company, and Southern California Edison Company may each use Tier 2 advice letters to submit procurement contracts for bundled energy products for compliance with the California renewables portfolio standard that meet the following criteria:
 - a. The contract has a duration of at least one month but less than 48 months;
 - b. The contract is made with a generation facility that has been in commercial operation for at least one month prior to the date the contract is signed;
 - c. The contract has a levelized price, including any firming or shaping costs, less than or equal to the price reasonableness benchmark for a contract of such duration signed on such date as determined by the Director of Energy Division in accordance with this decision;
 - d. Notwithstanding any provision of subparagraph c, no contract of one month to four years duration having a levelized price, including any firming or shaping costs, of more than 90% of the value of the market price referent calculated for the year in which the contract is signed may be submitted for Commission

consideration using the procedure set out in this Ordering Paragraph.

- e. The contract contains all the non-modifiable standard terms and conditions required in renewables portfolio standard contracts and such terms are not modified;
- f. The contract in all other respects conforms to the *pro forma* contract for durations of one month to 48 months that was included with that utility's most recent annual renewables portfolio standard procurement plan and conditionally approved by the Commission;
- g. The contract results either from negotiations undertaken as a result of that utility's annual solicitation for contracts for compliance with the renewables portfolio standard or from negotiations undertaken outside such a solicitation;
- h. The contract has been presented to the utility's Procurement Review Group and has been reviewed by the utility's Independent Evaluator;
- i. The contract is consistent with the utility's approved RPS procurement plan; and
- j. Nothing in the contract is inconsistent with statutory requirements or prior Commission decisions with respect to the renewables portfolio standard program.

2. Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company may each use Tier 2 advice letters to submit procurement contracts for bundled energy products for compliance with the California renewables portfolio standard that meet the following criteria:

- a. The contract has a duration of at least four years but less than 10 years;

- b. The contract is made with a generation facility that has been in commercial operation for at least one month prior to the date the contract is signed;
 - c. The contract has a levelized price, including any firming or shaping costs, less than or equal to the price reasonableness benchmark for a contract of such duration as determined by the Director of Energy Division in accordance with this decision;
 - d. The contract contains all the non-modifiable standard terms and conditions required in renewables portfolio standard contracts and such terms are not modified;
 - e. The contract in all other respects conforms to the *pro forma* contract for durations of four years to ten years that was included with that utility's most recent annual renewables portfolio standard procurement plan and conditionally approved by the Commission;
 - f. The contract results either from negotiations undertaken as a result of that utility's annual solicitation for contracts for compliance with the renewables portfolio standard or from negotiations undertaken outside such a solicitation;
 - g. The contract has been presented to the utility's Procurement Review Group and has been reviewed by the utility's Independent Evaluator;
 - h. The contract is consistent with the utility's approved RPS procurement plan; and
 - i. Nothing in the contract is inconsistent with statutory requirements or prior Commission decisions with respect to the renewables portfolio standard program.
3. PacifiCorp and Sierra Pacific Power Company may each use Tier 2 advice letters to submit contracts for bundled energy products acquired exclusively for

compliance with the California renewables portfolio standard that meet the following criteria:

- a. The contract has a duration of at least one month but less than 48 months;
- b. The contract is made with a generation facility that has been in commercial operation for at least one month prior to the date the contract is signed;
- c. The contract has a levelized price, including any firming or shaping costs, less than or equal to the price reasonableness benchmark for a contract of such duration signed on such date as determined by the Director of Energy Division in accordance with this decision;
- d. Notwithstanding any provision of subparagraph c, no contract of one month to four years duration having a levelized price, including any firming or shaping costs, of more than 90% of the value of the market price referent calculated for the year in which the contract is signed may be submitted for Commission consideration using the procedure set out in this Ordering Paragraph.
- e. The contract contains all the non-modifiable standard terms and conditions required in renewables portfolio standard contracts and such terms are not modified;
- f. The contract in all other respects conforms to the *pro forma* contract for durations of one month to 48 months that was included with that utility's most recent integrated resource plan or supplement and conditionally approved by the Commission;
- g. Nothing in the contract is inconsistent with statutory requirements or prior Commission decisions with respect to the renewables portfolio standard program.

4. PacifiCorp and Sierra Pacific Power Company may each use Tier 2 advice letters to submit contracts for bundled energy products acquired exclusively for compliance with the California renewables portfolio standard that meet the following criteria:

- a. The contract has a duration of at least four years but less than 10 years;
- b. The contract is made with a generation facility that has been in commercial operation for at least one month prior to the date the contract is signed;
- c. The contract has a levelized price, including any firming or shaping costs, less than or equal to the price reasonableness benchmark for a contract of such duration as determined by the Director of Energy Division in accordance with this decision;
- d. The contract contains all the non-modifiable standard terms and conditions required in renewables portfolio standard contracts and such terms are not modified;
- e. The contract in all other respects conforms to the *pro forma* contract for durations of four years to ten years that was included with that utility's most recent integrated resource plan or supplement and conditionally approved by the Commission;
- f. Nothing in the contract is inconsistent with statutory requirements or prior Commission decisions with respect to the renewables portfolio standard program.

5. The Director of Energy Division is authorized to develop a methodology to calculate a price reasonableness benchmark for procurement contracts for energy products for compliance with the renewables portfolio standard that have a duration of at least one month but less than 48 months based on forward market prices for energy contracts of similar duration signed at similar dates plus a

premium not to exceed 10% of such forward market prices. Prices for such contracts that are equal to or less than the price reasonableness benchmark are per se reasonable and may be recovered in rates.

6. The Director of Energy Division is authorized to calculate a price reasonableness benchmark for procurement contracts for energy products for compliance with the renewables portfolio standard that have a duration of at least four years but less than 10 years based on the calculation of the market price referent established pursuant to Pub. Util. Code § 399.15 for the same solicitation year as the year the contract is signed. Prices for such contracts that are equal to or less than the price reasonableness benchmark are per se reasonable and may be recovered in rates.

7. The Director of Energy Division is authorized to review procurement contracts for contracts to meet the renewables portfolio standard that are negotiated outside a utility's annual solicitation (bilateral contracts) and are submitted for Commission approval using the same methods and criteria as are used to review contracts that are negotiated as a result of a utility's annual solicitation for contracts to meet the renewables portfolio standard, provided that, in reviewing any bilateral contracts 10 years or longer in duration, the Director of Energy Division uses the market price reference calculated for the same solicitation year in which the contract is signed as a price reasonableness benchmark, and for no other purpose in the review of the contract.

8. The request of Pacific Gas and Electric Company to establish a pilot program in which Pacific Gas and Electric Company could submit up to 800 gigawatt-hours of contracts for renewable energy to meet procurement targets under the renewables portfolio standard using Tier 1 advice letters, so long as the contracts contain the standard terms and conditions required by the

Commission and the price of the contract does not exceed the market price referent established pursuant to Pub. Util. Code § 399.15, is denied.

9. The request of Southern California Edison Company to authorize Southern California Edison Company to procure up to 10,000 gigawatt-hours of electricity to meet procurement targets under the renewables portfolio standard by entering into contracts with generation facilities that are less than five years in duration and reporting the contracts in Southern California Edison Company's procurement plan compliance report quarterly advice letter filing, is denied.

10. Notwithstanding any requirements or authorizations in this decision, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company may each submit any procurement contracts for bundled energy products for compliance with the renewables portfolio standard for Commission approval using a Tier 3 advice letter.

This order is effective today.

Dated _____, at San Francisco, California.

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated May 5, 2009, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid