STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

PUBLIC UTILITIES COMMISSION
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Ratesetting

TO PARTIES OF RECORD IN RULEMAKING 06-02-012

This is the proposed decision of Administrative Law Judge (ALJ) Anne E. Simon, previously designated as the presiding officer in this proceeding. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. This matter was categorized as ratesetting and is subject to Pub. Util. Code § 1701.3(c). Upon the request of any Commissioner, a Ratesetting Deliberative Meeting (RDM) may be held. If that occurs, the Commission will prepare and publish an agenda for the RDM 10 days beforehand. When the RDM is held, there is a related ex parte communications prohibition period. (See Rule 8.2(c)(4).)

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 assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ KAREN V. CLOPTON
Karen V. Clopton, Chief
Administrative Law Judge

KVC:sid

Attachment

Decision PROPOSED DECISION OF ALJ SIMON (Mailed 3/26/2009)

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)

(See Appendix F for a list of appearances.)

DECISION AUTHORIZING USE OF RENEWABLE ENERGY CREDITS FOR COMPLIANCE WITH THE CALIFORNIA RENEWABLES PORTFOLIO STANDARD

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DECISION AUTHORIZING USE OF RENEWABLE ENERGY CREDITS FOR COMPLIANCE WITH THE CALIFORNIA RENEWABLES PORTFOLIO STANDARD

1. Summary

This decision authorizes the procurement and use of tradable renewable energy credit (TRECs) for compliance with the California renewables portfolio standard (RPS) program. It also delineates the structure and rules for a TREC market and for the integration of TRECs into the RPS flexible compliance system.

The use of TRECs for RPS compliance will provide more options and flexibility for RPS-obligated load-serving entities to comply with RPS mandates in both the near and longer term. Over time, it will also provide additional flexibility and incentives for the development of RPS-eligible generation by supplying useful revenue options for generation developers.

The market and compliance rules are developed with a view to simplicity, transparency, fairness, and ease of administration. These market and compliance structures are intended to remain the framework for the use of TRECs into the future. Although the TREC market may be modest in the next two or three years, the market rules put in place in this decision will both allow a new market to develop and provide robust rules for a mature TREC market.

The rules create a market in which participation in TREC transactions is not restricted, though participants must meet the requirements set forth by this Commission for TREC trading, as well as any requirements for participation set by the Western Renewable Energy Generation Information System. In order to promote market liquidity while preserving the value of TRECs for RPS procurement planning, TRECs must be committed to use for RPS compliance within three calendar years of the date the electricity associated with the TRECs was generated.

Once committed to RPS compliance, TRECs will be treated in substantially the same way as bundled energy purchases for reporting and compliance purposes. This includes application of most flexible compliance mechanisms, with the principal exception that only some TREC contracts may be earmarked for use to make up RPS procurement shortfalls. In order to promote a robust TREC market, the decision allows TRECs from existing RPS contracts to be unbundled and sold under certain conditions.

To support the price stability that is one of the potential benefits of contracts for RPS-eligible energy, this decision provides a temporary limit on the use of TRECs for RPS compliance by the three large investor-owned utilities (IOUs). To protect ratepayers from excessive payments for TRECs in the early stages of the TREC market, a transitional price cap on TRECs used for RPS compliance by all IOUs will be instituted. There will be opportunities for review of both limits as the TREC market matures. The decision also clarifies how certain transactions with RPS-eligible renewable generation located outside of California will be treated for RPS compliance purposes.

In order to facilitate the integration of the use of TRECs into the RPS program, this decision authorizes Energy Division staff to begin a process of revising the RPS compliance documents and reporting protocols.

Finally, the decision sets forth two standard terms and conditions (STCs) related to RECs that must be used in all RPS contracts and one additional STC governing Commission approval of REC-only contracts.

Because this decision concludes the consideration of the issues identified for this proceeding (with the exception of three related issues that are transferred to Rulemaking 08-08-009 for disposition), this proceeding is closed.

2. Introduction

In Pub. Util. Code § 399.11,[1] the Legislature set up the RPS program

> [i]n order to attain a target of generating 20 percent of total retail sales of electricity in California from eligible renewable energy resources by December 31, 2010, and for the purposes of increasing the diversity, reliability, public health and environmental benefits of the energy mix. . . (§ 399.11(a).)[2]

In Senate Bill (SB) 107 (Simitian), Stats. 2006, ch. 464, the Legislature gave this Commission express authority to allow the use of TRECs for RPS

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[1] RPS legislation is codified at Pub. Util. Code §§ 399.11-399.20. 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.

[2] The Legislature also described the benefits to be expected from the RPS program:

> (b) Increasing California's reliance on eligible renewable energy resources may promote stable electricity prices, protect public health, improve environmental quality, stimulate sustainable economic development, create new employment opportunities, and reduce reliance on imported fuels.
>
> (c) The development of eligible renewable energy resources and the delivery of the electricity generated by those resources to customers in California may ameliorate air quality problems throughout the state and improve public health by reducing the burning of fossil fuels and the associated environmental impacts and by reducing in-state fossil fuel consumption.
>
> (d) The California Renewables Portfolio Standard Program is intended to complement the Renewable Energy Resources Program administered by the State Energy Resources Conservation and Development Commission and established pursuant to Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code.

compliance. Section 399.16 provides both the authorization and several conditions on its exercise.[3]

This decision implements this authorization in light of the overarching purposes of the RPS program. It seeks to improve compliance opportunities for RPS-obligated load-serving entities (LSEs) and to provide incentives for the construction of new RPS-eligible generation. The decision builds on several years of experience with planning, procurement, reporting, and compliance in the use of bundled energy contracts (contracts for energy delivery and RECs) for RPS compliance. It relies on the new tools provided by the Western Renewable Energy Generation Information System (WREGIS) for recording, tracking, and trading TRECs in order to develop the market rules and integrate the use of TRECs into the RPS compliance framework.

3. Procedural Background

The history of the consideration of the use of TRECs in the RPS program was presented in detail in D.08-08-028 and will not be repeated here. This section addresses the procedural steps in this proceeding.

Rulemaking (R.) 06-02-012, the Order Instituting Rulemaking (OIR) for this proceeding, was issued in the framework of the original RPS legislation, SB 1078 (Sher), Stats. 2002, ch. 516. In the OIR, the Commission identified TRECs as an important component of the proceeding. The Scoping Memo and Ruling of Assigned Commissioner (April 28, 2006) set out a number of issues related to TRECs, and assigned them to the second portion of this proceeding.

A staff white paper, "Renewable Energy Certificates and the California Renewables Portfolio Standard Program" (REC white paper), was published

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[3] For ease of reference, § 399.16 is reproduced as Appendix A.

April 20, 2006.[4] Comments on the REC white paper were filed in late May 2006; reply comments were filed on June 14, 2006.[5]

Among other things, the REC white paper set out definitions of terms that have been used throughout the subsequent consideration of the use of RECs for RPS compliance. The Commission adopted the white paper's definitions of "unbundled" RECs and "tradable" RECs in Decision (D.) 06-10-019:

> Under an unbundled REC regime, claim over the renewable attributes of energy produced by eligible renewable technologies can be transferred from the renewable generator to one LSE while the energy is delivered to another. However, once this transfer occurs, claim over the attributes cannot be resold. In contrast, under a tradable REC regime, although the concept of selling the energy and claim over the attributes to different parties remains intact, RECs may be transferred from the renewable generator to any third party, not just obligated LSEs. In addition, these attributes can be resold subsequent to the initial sale.[6]

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[4] The REC white paper may be found at http://www.cpuc.ca.gov/word_pdf/REPORT/55606.doc.

[5] Comments were filed by Central California Power; Sustainable Conservation; Powerex Corp.; California Solar Energy Industries Association (CalSEIA), Clean Power Markets, Inc., PV NOW, Vote Solar Initiative (jointly); Pacific Gas & Electric Company (PG&E); Mountain Utilities (MU); Division of Ratepayer Advocates (DRA); Southern California Edison Company (SCE); San Diego Gas & Electric Company (SDG&E), Pilot Power Group, Inc.; Alliance for Retail Energy Markets (AReM), Western Power Trading Forum (WPTF) (jointly); Aglet Consumer Alliance (Aglet); Green Power Institute (GPI); Center for Energy Efficiency and Renewable Technologies (CEERT); Independent Energy Producers Association (IEP); Union of Concerned Scientists (UCS); The Utility Reform Network (TURN); and California Large Energy Consumers Association and California Manufacturers and Technology Association (jointly).

Reply comments were filed by Central California Power, CEERT, GPI, Aglet, Pilot Power, AReM, SDG&E, SCE, MU, UCS, TURN, PG&E, Powerex, and IEP.

[6] REC white paper, p. 1, n. 1; D.06-10-019, p. 33.

In D.06-10-019, the Commission decided not to authorize the use of unbundled RECs for RPS compliance at that time. We stated that we would consider the use of unbundled and/or tradable RECs later in this proceeding.[7]

The Amended Scoping Memo and Ruling of Assigned Commissioner (December 29, 2006) (Amended Scoping Memo) revised the tasks for this proceeding, in light of prior work and the enactment of SB 107, effective January 1, 2007. The Amended Scoping Memo identified three areas related to TRECs:

- Exploring the use of tradable RECs for RPS compliance by all RPS-obligated LSEs, including determining what attributes should be included in a REC;

- Determining the appropriate treatment of RECs associated with energy generated by renewable customer-side distributed generation, after examination of two important issues—measurement of renewable output from customer-side distributed generation, and analysis of the impact of ratepayer subsidies of renewable distributed generation—in R.06-03-004; and

  Determining the status of RECs associated with renewable energy generated by qualifying facilities (QFs) under contract with California utilities.

[7] In view of our decision to authorize the use of tradable RECs, we will not use the category of "unbundled REC" in this decision. We will refer to transactions in which only TRECs (not energy) are bought or sold as "TREC transactions" or "REC-only transactions." If the context requires a reference to "RECs" because, for example, the RECs were procured through a bundled contract, the RECs so referenced should be presumed to be tradable (unless they are RECs governed by §§ 399.16(a)(5) or (6), as explained in § 4.7, below).

The Second Amended Scoping Memo and Ruling of Assigned Commissioner (February 25, 2008) (Second Amended Memo) noted several developments related to the use of TRECs for RPS compliance since the issuance of the Amended Memo. These changes resolved some of the previously identified issues, added new tasks, and moved other issues forward.

In D.07-01-018, issued in R.06-03-004, the Commission determined that RECs associated with customer-side renewable distributed generation (DG) belong to the DG system owner, irrespective of participation in net-energy metering, the California Solar Initiative, or the Self Generation Incentive Program.

SB 107 resolved the status of RECs for renewable energy generated by QFs by prohibiting the creation of RECs associated with energy generated by QFs under contracts pursuant to the Public Utility Regulatory Policies Act of 1978 (Public Law 95-617) (PURPA) executed after January 1, 2005. It also allowed the creation of RECs associated with energy generated under any contract with a California RPS-obligated LSE or publicly owned utility (POU) prior to January 1, 2005 only if the contract explicitly addressed the ownership of RECs.[8]

SB 107 also added the requirement that, in order for us to authorize the use of TRECs for RPS compliance, this Commission and the California Energy Commission (CEC) must each make a determination that the CEC's RPS tracking system (including WREGIS) is ready to support the use of tradable RECs for RPS compliance.[9] A draft joint staff report on the tracking system was issued March 7, 2008. The final joint staff report was adopted by this Commission in

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[8] Pub. Util. Code §§ 399.16(a)(6), (5).

[9] Section 399.16(a)(1).

Resolution (Res.) E-4178 (November 21, 2008).[10] It was adopted by the CEC at its business meeting on December 3, 2008.[11]

Energy Division staff held a comprehensive workshop on TRECs and RPS compliance on September 5-7, 2007 (TRECs workshop).[12] Parties filed and served pre-workshop comments on August 17, 2007.[13] After the workshop, staff prepared a revised straw proposal (Straw Proposal) covering a number of TREC market and compliance issues. The Straw Proposal was circulated to parties with the Administrative Law Judge's (ALJ) Ruling Requesting Post-Workshop Comments on Tradable Renewable Energy Credits (October 16, 2007) (post-workshop ruling). Post-workshop comments were filed on November 13, 2007.[14] Post-workshop reply comments were filed on December 5, 2007.[15]

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[10] The resolution and attached final report are available at http://docs.cpuc.ca.gov/WORD_PDF/FINAL_RESOLUTION/94349.PDF.

[11] See http://www.energy.ca.gov/2008publications/CEC-300-2008-001/CEC-300-2008-001-CMF.pdf.

[12] The workshop notice and the assigned administrative law judge's rulings seeking pre-workshop and post-workshop comments were circulated to the service lists in this proceeding, R.06-05-027 (RPS administration), R.06-03-004 (distributed generation and California Solar Initiative), and R.06-04-009 (greenhouse gas policy). The workshop presentations are available at http://www.cpuc.ca.gov/PUC/energy/electric/RenewableEnergy/misc/recpresentations.htm.

[13] Pre-workshop comments in response to the ALJ's Ruling Requesting Pre-Workshop Comments on Tradable Renewable Energy Credits (July 19, 2007) were filed by Central California Power; Powerex, Solar Alliance; PacifiCorp; CEERT; Sustainable Conservation; AReM and WPTF (jointly); CalpinePowerAmerica-CA, LLC (Calpine); Coral Power, LLC; SDG&E; Aglet; IEP; PG&E; UCS; SCE; GPI; PPM Energy, Inc.; CPV Renewable Energy Company, LLC; and Sempra Energy Solutions.

[14] Post-workshop comments were filed by PG&E; GPI; Powerex; SDG&E; Golden State Water Company; IEP; Pilot Power; Central California Power; EcoSecurities; DRA; CEERT; Calpine Corporation and Calpine (jointly); AReM and WPTF (jointly); MU;

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At the prehearing conference held December 10, 2007, some parties suggested that parties interested in the subject might try to develop a consensus recommendation on the definition and attributes of a TREC. Informal discussions among the parties were publicized to the service lists in this proceeding, R.06-05-027, R.06-03-004, and R.06-04-009. The discussions did not result in the filing of any recommendations on this topic. On May 9, 2008, the Center for Resource Solutions (CRS) filed a Motion for Leave to File Additional Comments related to REC definition and attributes. This motion was granted by an ALJ's ruling on June 6, 2008.[16] The ruling allowed reply comments to be filed not later than June 11, 2008.[17] Following this round of comments, the Commission issued D.08-08-028, on the definition and attributes of a REC.[18]

Several significant developments have occurred since the TRECs workshop, including issuance of D.08-08-028, ongoing implementation of the

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SCE; TURN; PacifiCorp; California Farm Bureau Federation and Sustainable Conservation (jointly); Solar Alliance and CalSEIA (jointly).

[15] Post-workshop reply comments were filed by Central California Power; PacifiCorp; Aglet; UCS; California Farm Bureau Federation, Inland Empire Utilities Agency, Sustainable Conservation (jointly); Recurrent Energy, Inc., Solar Alliance, CalSEIA (jointly); Calpine Corporation and Calpine (jointly); TURN; IEP; AReM; SCE; MU; CEERT; SDG&E; DRA; GPI; and PG&E.

[16] Parties were notified informally by e-mail on May 28, 2008.

[17] Reply comments were filed on June 11, 2008 by AReM and WPTF (jointly; collectively, AReM); DRA; GPI; IEP; SCE, PG&E, PacifiCorp, Sierra Pacific, and SDG&E (jointly; collectively, IOUs); Solar Alliance and CalSEIA; TURN; and UCS.

[18] Although the definition of a REC is central to the tradability of a REC, the details of D.08-08-028 are largely not relevant to this decision. One convention that should be kept in mind throughout the discussion, however, is that one REC represents the environmental and renewable attributes associated with one megawatt-hour (MWh) of

Footnote continued on next page

California Global Warming Solutions Act of 2006, Assembly Bill (AB) 32 (Núñez/Pavley), Stats. 2006, ch. 488, and the CEC's revisions to its criteria for delivery of RPS-eligible generation in its *Renewables Portfolio Standard Eligibility Guidebook (Eligibility Guidebook),* pp. 23-26 (3d ed. December 19, 2007).[19] In order to allow parties an opportunity to update their positions on TRECs, the ALJ issued a Ruling Requesting Supplemental Comments on the Use of Tradable Renewable Energy Credits for the Renewables Portfolio Standard Program (supplemental comment ruling) on September 4, 2008. Comments were filed on September 12, 2008[20] and reply comments were filed September 18, 2008.[21]

A proposed decision (PD) on the use of TRECs was issued for comment on October 29, 2008.[22] That PD was withdrawn March 26, 2009.

4. Discussion

The RPS statute authorizes but does not require this Commission to allow the use of TRECs for RPS compliance, subject to certain statutorily-imposed

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RPS-eligible generation. See WREGIS Operating Rules, section 2, which may be found at http://www.wregis.org/content/blogcategory/26/47/.

19 The *Eligibility Guidebook* is available at http://www.energy.ca.gov/2007publications/CEC-300-2007-006/CEC-300-2007-006-ED3-CMF.PDF.

20 Comments were filed by Aglet, AReM, Bear Valley Electric Service (BVES), Calpine, CEERT, DRA, GPI, Horizon Wind Energy and Iberdrola Renewables (jointly; collectively, Horizon), IEP, MU, PG&E, PacifiCorp, Powerex, SDG&E, SMUD, SCE, UCS, and Wal-Mart.

21 Reply comments were filed by Aglet, AReM, IEP, Large-scale Solar Association, PG&E SCE, SDG&E, TURN, and UCS.

22 For ease of reference, a discussion of the comments filed in response to the October 2008 PD is attached as Appendix E.

conditions. It also provides specific direction on the treatment of several aspects of the use of TRECs for RPS compliance. Since the specific statutory guidance is relevant only if the use of TRECs is authorized, we begin with the issue of whether to authorize the use of TRECs for RPS compliance.

4.1. Authorization

The statute does not set out any criteria or standards by which this Commission should judge whether to authorize the use of TRECs, thus leaving this fundamental matter in our discretion. Almost all parties urge that the use of TRECs for RPS compliance be authorized. They advance a variety of reasons, focused on facilitating RPS compliance and promoting development of new RPS-eligible generation. Several parties assert that the use of TRECs will allow RPS procurement to avoid problems of transmission congestion.[23] Some parties argue that the availability of TRECs will make the overall RPS procurement process more efficient, by providing LSEs with additional options for procurement.[24] According to some parties, the use of TRECs will make it easier for RPS-obligated LSEs[25] to achieve their annual procurement targets (APTs).[26] With the use of TRECs, overall compliance costs for RPS-obligated LSEs should

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[23] AReM, Central California Power, and IEP.

[24] AReM, Horizon, PacifiCorp, SDG&E, PG&E.

[25] RPS-obligated LSEs comprise regulated utilities, community choice aggregators (CCAs), and electric service providers (ESPs). In this decision, utilities are sometimes referred to in groupings of "large utilities" (PG&E, SCE, SDG&E), "small utilities" (Bear Valley Electric Service and Mountain Utilities), and "multi-jurisdictional utilities" (PacifiCorp and Sierra Pacific).

[26] AReM, IEP, PG&E, and SDG&E. GPI and UCS are less certain, but suggest this could be a benefit.

be lower, some parties claim.[27] Finally, some parties assert, the availability of a revenue stream from TRECs and options that it may create for developers will promote development of new RPS-eligible generation.[28]

DRA and TURN are skeptical about the use of TRECs for RPS compliance; Aglet opposes it outright. These parties believe that use of TRECs will not improve the RPS program and is unlikely to lead to development of new RPS-eligible generation.

TURN and DRA express concern that the TREC pricing experience in other jurisdictions suggests that TREC prices are likely to be volatile. This would harm consumers and would not provide reliable financing for new renewable projects. Aglet, DRA and TURN suggest that the use of TRECs would lead to a market that overpays for TRECs from existing facilities, and thus would harm consumers and not contribute to new generation. Aglet asserts that the availability of transmission is a major constraint for the development of new RPS-eligible generation; TRECs can not solve that problem, because a new generation facility will not be built if transmission is not available. Both TURN and Aglet express concern that reliance on TRECs rather than long-term bundled contracts will reduce what they describe as the physical hedging value of RPS procurement. TURN also raises questions about possible hoarding of TRECs and exercise of market power within the TRECs market.

Several of the TREC proponents' arguments are somewhat overstated and do not acknowledge some real problems. It is true that TRECs can expand RPS compliance options, but without new RPS-eligible generation, a robust TREC

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[27] CEERT, IEP, PG&E, and SDG&E.

[28] AReM, CEERT, Coral Power, Horizon, IEP, PG&E, and SDG&E.

market to deliver TRECs for RPS compliance will not develop quickly. It is true that TRECs can allow transfer of RPS credit without regard to constrained transmission pathways, but only if there are both RPS-eligible generation to produce the energy associated with the REC and new transmission pathways for the electricity. Current RPS flexible compliance rules also allow LSEs to take delivery of RPS-eligible energy anywhere in the state, thus reducing the impact of transmission constraints.

The TREC skeptics, on the other hand, focus solely on negative possibilities, such as hoarding of TRECs and loss of interest in the development of new RPS-eligible generation in California. They also argue that consumers may be harmed by high or volatile TREC prices, and TURN proposes measures to mitigate those harms. But TURN does not appear to have confidence that the mitigation strategies it proposes will have a positive impact.

Considering all the arguments, the benefits of allowing the use of TRECs for RPS compliance substantially outweigh the potential harms. Greater compliance flexibility, procurement efficiency, and potentially lower costs are real benefits, even if they may be relatively small in the early years of a TREC market. The availability of a revenue stream from TRECs may encourage new renewable development. Though many other factors, such as transmission siting, are also important determinants of new renewable development, the possibility of more money, or money arranged more flexibly, is only a plus for possible development. Furthermore, a TREC market will provide important pricing information to developers and the investment community, potentially providing them greater confidence in the long-term financial viability of renewable energy projects.

The possible negative consequences of TRECs, such as high payments to existing facilities, market manipulation, or high prices, can be mitigated or removed by the rules this Commission sets for the use of TRECs and the design of the TREC market. Additionally, some of these problems, specifically high payments to existing facilities, are not inherent or unique to TRECs, but are problems that can exist in a bundled regime as well. Such issues might be better resolved through changes in the relevant statutes or guidelines governing RPS eligibility. This decision sets rules to allow the best chance for a healthy TREC market to develop and aid in the attainment of California's RPS goals.

We therefore exercise the discretion granted to this Commission in § 399.16(a) to authorize the use of tradable RECs for RPS compliance, in accordance with the rules set forth in this decision.[29]

4.2. Sources of TRECs

Our decision to authorize the use of TRECs for RPS compliance is not based on any estimate of the probable quantity of TRECs that may be available in the near term. A brief review of that topic can, however, usefully inform our design of any interim, transitional rules or requirements for the market and for the RPS flexible compliance regime.

Parties were asked to present their best quantitative estimates of the sources of TRECs that could be available for California RPS compliance in the period ending January 1, 2012. From those estimates it is possible to develop a broad-brush picture of the TREC landscape for the near future.

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[29] This authorization is qualified by the restrictions on the use of RPS-eligible generation from facilities with contracts with California LSEs or POUs prior to 2005 in which the ownership of RECs is not specified, and from QFs with contracts pursuant to PURPA signed after January 1, 2005. (§§ 399.16(a)(5),(6).) These restrictions are discussed further in § 4.7 below.

4.2.1. Larger-Scale RPS-Eligible Generation

Calpine suggests that essentially all RPS-eligible generation in California that is or will be capable of delivering energy by the end of 2010 is already under contract to one of the large investor-owned utilities (IOUs). This assertion is not disputed.

In response to a question posed in the ALJ's post-workshop ruling, several parties provided estimates, of varying precision, of possible sources of TRECs for the period until the end of 2011. Evolution Markets and UCS submitted the most substantial information, which was reasonably consistent. Evolution Markets estimates that existing RPS-eligible wind and biomass facilities in the Northwest might provide up to 1100 megawatts (MW) of RPS-eligible nameplate capacity, while planned new geothermal, wind, biomass or biogas generation throughout the Western Electricity Coordinating Council (WECC) region could provide up to 7500 MW of nameplate capacity. UCS estimates that the Northwest might supply up to 4000 MW of new nameplate capacity. The timeframe within which any of the projects included in these estimates might be built, however, is not clear. Nor is it possible for the parties to suggest what proportion of such new generation might be available to California LSEs, whether in the form of bundled energy contracts or REC-only purchases.

Other parties[30] point to smaller and more diffuse potential sources, such as small hydropower generation, excess renewable generation from publicly owned utilities, or RPS-eligible QFs whose contracts under PURPA with large utilities

[30] These parties include AReM, BVES, DRA, IEP, SDG&E, and TURN.

expire and are not renewed, but which still will produce RPS-eligible generation.[31]

PG&E and SCE each state that new merchant RPS-eligible generation is not a reasonable source of TRECs prior to 2012 because of the long lead time needed to make the business decision to build a merchant plant and to design and develop the project. SCE also notes that the large IOUs are unlikely to be in a position to sell RECs to other LSEs prior to attaining the 20% goal. No party disputes these comments.

4.2.2. Distributed Generation

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

There are several types of RPS-eligible DG projects. These include on-site RPS-eligible generation at customers, including public water and wastewater facilities; solar photovoltaic (PV) installations, largely constructed under the aegis of the California Solar Initiative (CSI) and the Self Generation Incentive Program (SGIP) administered by this Commission and the New Solar Homes Partnership (NSHP) administered by the CEC; generation using biodiesel or biogas; and small biomass facilities.[32]

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[31] Pursuant to § 399.16(a)(6), RPS-eligible generation from a QF under a PURPA contract may count for RPS compliance, but may not be the basis of a TREC.

[32] Formal determination of the RPS eligibility of types of generation or particular systems is made by the CEC. The most current statement of CEC guidance is the *Eligibility Guidebook*, (3d ed., December 2007), available at http://www.energy.ca.gov/2007publications/CEC-300-2007-006/CEC-300-2007-006-ED3-CMF.PDF. The *Eligibility Guidebook* provides that "[t]he Energy Commission will not certify distributed generation facilities as RPS-eligible unless the CPUC authorizes tradable RECs to be applied toward the RPS." (P. 18.)

Footnote continued on next page

The availability of TRECs from such installations has been addressed in a variety of contexts. In D.07-01-018, the Commission determined that owners of DG installations own the RECs associated with the generation, and can therefore sell them, regardless of whether the DG owners participate in net-metering, CSI, or the SGIP.[33] In D.07-07-027 and D.08-09-033, implementing § 399.20, the Commission provided for tariffs or standard contracts for utilities' bundled purchase of RPS-eligible generation from DG of not more than 1.5 MW in size located at public water and wastewater facilities and other customers, with an overall statewide limit on such purchases. The generation so acquired counts toward the utilities' RPS targets.[34] In this program, customers may sell to the utility either the full output of the DG facility (energy and RECs) or only the excess (energy and RECs) not used for on-site consumption. In the latter case, the RECs associated with the energy used on-site remain with the system owner.

AReM states that the CSI program estimates that the program will have installed about 800 gigawatt hours (GWh) of generation by 2010. AReM

We anticipate that the CEC will review the issue of the RPS eligibility of DG during its next revision of the *Eligibility Guidebook*.

[33] The CEC has likewise determined that RECs associated with customer-side DG belong to the DG system owner, irrespective of participation in the NSHP. See *New Solar Homes Partnership Guidebook* (revised 2d edition August 2008), pp. 7-8. This guidebook is available at http://www.energy.ca.gov/2008publications/CEC-300-2008-006/CEC-300-2008-006.PDF.

[34] Certain changes have been made to this program by recently enacted SB 380 (Kehoe), Stats. 2008, ch. 544, which amends § 399.20, effective January 1, 2009. None of the changes materially affects the discussion here.

additionally estimates that CSI will have provided incentives for approximately 1,100 GWh by 2011. No other party provides quantitative DG estimates.[35]

4.2.2.1. WREGIS Requirements for DG

In order for RECs from any source to be available for RPS compliance, they must be recognized in WREGIS. The requirements for WREGIS are set forth in the WREGIS Operating Rules (June 4, 2007).[36] Several of the rules have implications for the availability of RECs from DG installations for RPS compliance. WREGIS can not register a system smaller than one kilowatt, so some owners of very small DG systems may not be able to participate.[37] Another WREGIS rule states that RECs cannot be recognized in WREGIS unless the energy associated with the RECs is metered to an accuracy of +/-2%.[38] DG installations that do not provide metering accuracy to that level are not currently eligible for the creation of a REC in WREGIS (called a WREGIS Certificate).[39]

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

[36] The Operating Rules may be found at http://www.wregis.org/content/blogcategory/26/47/.

[37] With respect specifically to solar PV installations, the Operating Rules have a new Appendix F, allowing aggregation of rooftop solar installations in certain circumstances. Appendix F may also be found at http://www.wregis.org/content/blogcategory/26/47/.

[38] Operating Rules, pp. 28-29.

[39] For example, a CSI-subsidized installation taking advantage of the expected performance based buydown (EPBB) program is required to have a meter accurate only to +/-5%. Projects using the CSI performance-based incentives are required to have a

Footnote continued on next page

4.2.3. Availability of TRECs

Summarizing this information, it appears that existing RPS-eligible generation is largely already included in utilities' portfolios. Many utility-scale projects are under contract, but are not yet built and delivering energy. The construction of new RPS-eligible generation not located in California is uncertain, and the availability of TRECs from that generation is similarly unknown.[40] The use of TRECs from new DG installations is dependent both upon the technical requirements of WREGIS and upon whether the DG owner wishes to retain the RECs to support its own green claims. Since TRECs come from RPS-eligible generation, and the supply of new RPS-eligible generation not already committed to RPS compliance is likely to be limited, the supply of TRECs in the next few years will be similarly limited.

4.3. Guiding Principles

Before, during, and after the TRECs workshop, staff offered several proposals to provide guidance and food for thought to the parties. Because these staff proposals form the basis for many of the parties' suggestions and comments, we briefly review them to provide a background for the rules this decision adopts.

The proposed Guiding Principles distributed in the July 19, 2007 ALJ's Ruling Requesting Pre-Workshop Comments are:

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meter accurate to +/-2%. Unless the owner of a project with an EPBB incentive voluntarily installs the more accurate (and more expensive) meter, WREGIS would not, under its current rules, allow any RECs to be registered from that facility. As noted by GPI in its comments on the proposed decision (PD), WREGIS is reviewing this rule.

[40] Pub. Res. Code § 25741(b)(2)(B) allows RPS-eligible generation from facilities located outside California to count for RPS compliance provided, among other things, the facility began commercial operation after January 1, 2005.

1. Use of REC trading for RPS compliance should be consistent with the legislative goals for the RPS program.

2. REC trading should result in minimal disruption to the current RPS program.

3. REC trading should not increase the cost of RPS compliance in the near term, and should lower the cost of RPS compliance over the longer term.

4. REC trading should promote development of new infrastructure in California and neighboring states for renewable energy generation.

5. REC trading rules, guidelines, and policies should not be inconsistent with the development of a regional REC trading regime.

6. REC trading rules, guidelines, and policies should take account of the process of implementing California's greenhouse gas (GHG) reduction policy and the potential for regional or federal programs for GHG reduction.

7. REC trading rules, guidelines, and policies should meet the Commission's requirements for REC trading set out in D.03-06-071.

8. REC trading rules, guidelines, and policies should be simple, transparent, easily administered, uniformly applied, and equitable to all LSEs.

Parties largely support or at least accept these guiding principles as laying the groundwork for thinking about a TREC market. Since these principles do not form the basis for this decision and are not part of the rules for the TREC market, it is not necessary to fine-tune them to accommodate all the views expressed by the parties.[41]

4.4. Market Structure and Rules

Drawing on the views of the parties and the ideas in the staff Guiding Principles, it is possible to set some basic goals for the TREC market. It must, at a minimum, enable compliance with California RPS requirements. It should not make RPS compliance more difficult or expensive than it currently is. It should put in place processes that can be used to improve RPS compliance options over time. Beyond compliance, the TREC market should be transparent and able to encourage development of new RPS-eligible generation and maximize the effective use of existing RPS-eligible generation resources. The TREC market should function in a way that protects ratepayers without unnecessarily confining innovation in the market. Finally, the market must allow accountability with respect to RPS flexible compliance rules, reporting, and verification.

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[41] We do, however, note IEP's suggestion that the commitment to equity should be applied to all TREC market participants, not simply LSEs.

4.4.1. Staff Straw Proposal

At the TRECS workshop, Energy Division staff presented a "straw proposal" addressing many areas of concern. That proposal was revised and attached to the ALJ's post-workshop ruling for the parties' consideration. Most post-workshop commenters responded to some or all of the points in the Straw Proposal.[42] The Straw Proposal identifies five areas of concern:

- Market participants
- Limits on TREC usage
- Application of flexible compliance rules on banking and earmarking
- Treatment of existing and future bundled RPS contracts
- Utility cost recovery, including bid evaluation, contract review, and price reasonableness.

We turn our consideration to these areas, though not necessarily in the order set out in the Straw Proposal.

4.4.2. Participants

Parties unanimously agree that there should be no restrictions on participation in a TREC market, and that the TREC trading rules should be the same for all participants. This will provide the foundation for a market that is transparent and fair, with the simplest possible rules and the largest range of participants. RPS-obligated LSEs, RPS-eligible generators, California POUs, parties that aggregate small numbers of RECs into larger packages, financial institutions, and other third parties will all be able to contribute to the developing TREC market. Although this decision places no formal restrictions

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[42] For ease of reference, the Straw Proposal is attached as Appendix B. Appendix B does not contain the "rationale" sections provided with the straw proposal attached to the ALJ's ruling.

on who can participate in the California TREC market, we note that, as a practical matter, participants must meet the requirements for participation set by WREGIS, through which TREC trades will occur.

4.4.3. Limits on Use of TRECs

In response to direction in 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[43] or long-term contracts[44] with existing facilities necessary in order for LSEs to count deliveries from short-term RPS-eligible contracts with existing facilities for RPS compliance.[45] The Straw Proposal would extend a modified version of these requirements to the use of short-term contracts for TRECs from existing facilities. The Straw Proposal would require that, in order to count short-term TREC contracts with existing facilities, an LSE must in the same year sign long-term

[43] Those that entered commercial operation on or after January 1, 2005.

UCS points out that this fixed date for determining whether a facility is "new" becomes less relevant with each passing year. Nothing in this decision depends on this determination, so we do not address it. We do, however, note that it would be useful to have more flexibility in determining when a "new" facility has become an "existing" facility.

[44] Contracts with durations of 10 years or more.

[45] Section 399.14(b) provides that:

> The commission may authorize a retail seller to enter into a contract of less than 10 years' duration with an eligible renewable energy resource, if 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.

At the time D.07-05-028 was issued, this statutory requirement was found in § 399.14(b)(2). Prior § 399.14(b)(1) was repealed by SB 1036 (Perata), Stats. 2007, ch. 685 and the section was renumbered.

contracts or contracts with new facilities whose aggregated annual expected deliveries total at least 0.25% of the prior year's retail sales.[46]

Parties' responses to this proposal vary widely. Calpine, DRA, PG&E, SCE, TURN, and UCS urge that such an extension is justified for the same reasons it is useful for bundled energy contracts. Long-term contracts, they assert, are fundamentally necessary for new development of RPS-eligible generation. The Commission recognized this fact in D.06-10-019, and no party currently disputes it. It therefore makes sense, these parties urge, to apply similar requirements to encourage long-term contracting in the context of TREC contracts. UCS proposes an alternative restriction that short-term TREC transactions with existing facilities can make up no more than 50% of the MWh contracted for in any year by an RPS-obligated LSE. TURN supports this suggestion, arguing that it would reduce the harmful impact on long-term RPS contracting introduced by the use of TRECs.[47]

In comments submitted in response to the September 2008 ruling requesting supplemental comments, several parties addressed the question of how to balance the use of TRECs against the perceived benefits offered by long-term bundled RPS contracts. Aglet asserts that the benefits of long-term fixed price bundled RPS contracts include (1) reduced exposure to natural gas price volatility and (2) reduced dependence on spot market energy purchases. If the use of TRECs were to increase and displace bundled contracts, Aglet argues,

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[46] UCS proposes that this figure be 0.75%, rather than 0.25%.

[47] Aglet makes a different type of proposal: that IOUs be allowed to engage in REC-only transactions with other IOUs, but only limited TREC transactions with other LSEs. Aglet does not address third-party market participants. No other party supports this proposal. Because it is inconsistent with the idea of a broad and liquid TRECs market, we do not pursue it further.

the effects of RPS contracts on electric price stability would be reduced.[48] UCS, while generally supportive of the use of TRECs, makes a similar point about price stability and argues in favor of more stringent limits on use of TRECs than those in the Straw Proposal. GPI also points out that only contracts for delivered energy, not TRECs, can contribute to price stability for ratepayers. TURN agrees with these positions.

TURN also asserts that price stability is the "primary" economic advantage of renewable energy. This advantage would be undermined were an LSE forced to purchase electricity to make up for TREC purchases, assuming such electricity purchases are not likely to have a fixed, long-term price. SDG&E contends that these views of the benefits of RPS contracts are too narrow, and that other methods of guarding against the risk of increased costs may be as, or more, effective.

Most parties, consistent with their views that a nascent TREC market should have few if any regulatory requirements, oppose extension of the minimum quantity requirement. AReM, CEERT, GPI, Horizon, IEP, MU, PacifiCorp and SDG&E all argue that such a requirement would reduce liquidity in the TREC market, tend to drive up TREC prices, and make it more difficult to move to a fully competitive TREC market. PacifiCorp asserts that limits on the use of TRECs will make it more difficult for LSEs to employ the least-cost alternatives in RPS procurement.

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[48] The parties sometimes use the term "price stability" and sometimes use the term "hedging" to refer to reducing the risk of uncertain cost impacts on ratepayers. In this decision, we will refer to price stability, consistent with the Legislature's finding that the RPS program "may promote stable electricity prices." (§ 399.11(b).)

CEERT, PG&E, and SCE oppose UCS's suggestion of a more stringent minimum quantity requirement. AReM, PG&E, and SCE oppose UCS' suggestion of a percentage usage limit. PG&E would prefer a minimum quantity requirement like that set forth in D.07-05-028. SCE argues that the UCS position is based on a theoretical concern that the use of TRECs could lead to a reduction in an LSE's commitment to long-term contracts. SCE asserts that, in practice, essentially all parties acknowledge that the supply of TRECs will be quite limited in the near term; the only source of short-term TRECs is likely to be facilities whose existing contracts with IOUs are expiring. Therefore, SCE argues, the kind of limits UCS proposes are simply unnecessary.

While the Legislature mandated that a minimum quantity requirement be established for the use of short-term bundled contracts with existing facilities, it did not impose a similar requirement for TREC contracts. We therefore take a fresh look at the desirability of limits on the use of TREC contracts.

Although the issue of limits on the use of TRECs was originally framed in the Straw Proposal as an extension of the minimum quantity contracting requirement to cover the use of short-term TRECs from existing facilities, it is actually broader than that. As TURN, GPI, UCS, and Aglet note, the ability of RPS procurement to promote stable electricity prices depends in part on the use of long-term fixed-price contracts for energy delivery. TREC deals, no matter the length of their term or the length of time the generation facility has been operating, do not provide for the long-term delivery of fixed-price power, and thus do not contribute to price stability.[49]

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[49] GPI, unlike the other parties making this observation, argues that limits on the use of TRECs for RPS compliance are nevertheless not advisable for other reasons.

A mature TREC market will be a useful complement to other RPS procurement strategies and will contribute to development of new RPS-eligible resources. However, ratepayers should not have to bear the risks associated with the fact that TREC contracts, unlike bundled RPS contracts, will not provide long-term fixed price energy for utility customers. We therefore will impose a temporary limit on the use of TRECs for RPS compliance.

The issue of a limit on TRECs was framed in the Straw Proposal and in UCS' alternative proposals as a limit on contracting, like the minimum quantity requirement for bundled contracts. However, it is more appropriate to establish a limit on TRECs usage as a percentage of the LSE's APT.[50] The current RPS reporting process is based on APT. Since the APT for a particular year is calculated from information about the prior year, an LSE knows its APT obligation early in the compliance year. It can therefore easily calculate its TRECs limit for that year. By contrast, the number of contracts signed in a year, and the amount of energy those contracts procure, is variable and can not be estimated accurately. It would therefore be difficult for an LSE to have confidence that its TREC purchases would be within a limit based on annual contracting until the year has ended. It is more transparent, practical, and enforceable to impose a limit on the proportion of TRECs used to meet APT.

Except as provided below, no more than 5% of the MWh used to meet APT in any year may be in the form of TRECs, beginning with the 2009 compliance year and ending with the 2011 compliance year. Although this limitation does not precisely correspond to any of the quantitative limits suggested by parties, it

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[50] APT for a given year is determined by taking the prior year's APT and adding 1% of the prior year's retail sales (the incremental procurement target, or IPT). D.06-10-050, Attachment A.

accomplishes the important goals they identify. The limit allows an LSE to make significant use of TRECs, but prevents it from only using only TRECs to fulfill its annual RPS requirements. The limited use of TRECs in the early years of the TREC market will promote the price stability associated with long-term fixed price bundled RPS contracts, without stifling the TREC market. It will also allow all market participants, as well as this Commission, to gain experience with the TREC market in a more controlled way. As explained more fully below, it makes sense to apply this limit only to the three large California utilities, whose ratepayers bear the largest share of risk from price volatility.

This limitation, like the minimum quantity requirement for bundled contracts, is an annual limit. Each year, no more than 5% of APT may be met with TRECs. However, unlike the minimum quantity requirement for bundled contracts, if an LSE does not use the full 5% of APT in any given year, it cannot carry the unused allotment forward to the next year. That is, if in 2009 an LSE uses TRECs for 3% of its APT, it may not use TRECs for 7% of its APT in 2010; it may use TRECs for only 5% of its APT in 2010.

The limit on the use of TRECs for RPS compliance should be a temporary one. Its primary purpose is to allow the Commission to gain experience with how a TREC market functions and how TRECs can help the state reach its RPS and GHG goals. The limitation will end after the 2011 RPS compliance year, but may be revisited earlier if the Commission decides it would be prudent to do so.

This limitation is enforceable through the existing RPS compliance reporting process. For each compliance year, LSEs would identify how many MWhs applied to the LSE's APT were provided through REC-only transactions. Any MWh from TREC transactions that exceeded 5% of APT would be disallowed for RPS compliance in that year. Energy Division staff is authorized to make any adjustments to the RPS compliance spreadsheet that are necessary to implement the 5% limitation.

This usage limitation is fundamentally a protection for California utility ratepayers. This limitation applies to the multi-jurisdictional utilities (MJUs), PacifiCorp and Sierra Pacific, only in particular, limited circumstances. This Commission does not generally approve their RPS procurement contracts. Further, the MJUs may proportionally allocate to California RPS compliance their system-wide RPS-eligible procurement. See § 399.17; D.08-05-029. Thus, the role of California- specific bundled RPS contracts in promoting price stability for MJU customers is much less significant, and much less within the sphere of our responsibility, than it is for California utilities. However, analogous to their bundled contracts,[51] if an MJU signs contracts for TRECs for use for California RPS compliance, such contracts would be subject to the limitation of 5% of APT.

For the two small California utilities, Bear Valley Electric Service and Mountain Utilities, price stability for their customers in the early years of the TREC market is more likely to be promoted by exempting them from the 5% limitation than by imposing it. As the small utilities have explained in several sets of comments, because of their remote locations and peak loads occurring in winter and at night (the inverse of those of the large utilities), their ability to contract for reasonably priced RPS-eligible resources is currently quite limited.[52] Their ratepayers would be better served by allowing as much RPS procurement flexibility as possible, within the general requirements of the program and the

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[51] See D.08-05-029, p. 34.

[52] Of course, because Mountain Utilities is not now connected to the California grid, it simply cannot procure electricity from third parties at the present time.

existing flexible compliance rules.[53] We therefore will not now apply 5% of APT limitation to the small utilities, though this aspect of the limitation, like all others, may be reconsidered on request of a party or on our own motion.

Finally, this Commission has different responsibilities with respect to utilities and ESPs and CCAs. This Commission does not set the rates of ESPs or CCAs and has no responsibility to ensure that their charges to their customers are just and reasonable. If an ESP or CCA chooses to take the price risk associated with using TRECs rather than fixed-price bundled contracts for RPS compliance, that is a business decision whose consequences are borne solely by the ESP or CCA and its customers. Therefore, the limitation on the use of TRECs to 5% of APT will not now apply to ESPs or CCAs, though this restriction on the limitation, like all others, may be reconsidered on request of a party or on our own motion.

It is not unreasonable that this limitation apply just to the three large utilities. They are responsible for the vast majority of RPS procurement in California, and they have by far the largest number of ratepayers. They also have the largest array of RPS procurement options and resources, enabling them to have greater flexibility incorporating the TREC limitation of 5% of APT into their procurement planning. Since the limitation is temporary and transitional, to provide some protection to ratepayers as the TREC market develops, the large utilities can take account of it in their longer-term RPS procurement strategies without being unduly constrained in those strategies.

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[53] In their supplemental comments, Calpine, DRA, and UCS all recognize the difficult situations of the small utilities, and make varying suggestions for providing them with more flexibility in meeting RPS requirements. We do not adopt any particular suggestion, but we do acknowledge the concerns of these parties.

This limit on the use of TRECs for RPS compliance should be a temporary one. Its primary purpose is to allow the Commission to gain experience with how a TREC market functions and how TRECs can help the state reach its RPS and GHG goals. After at least 24 months of experience with the TREC market, any party may request that this Commission modify or eliminate this limit.[54] Prior to eliminating this usage limit, the Commission shall consider, at a minimum:

1. The impact of the use of TRECs on the statutory goals identified in § 399.11;

2. How the use of TRECs has affected electric sector GHG emissions;

3. Whether and to what extent the use of TRECs has helped or hindered the deployment of renewable distributed generation;

4. How the use of TRECs has affected the development of in-state renewable resources; and

5. What impact, if any, the use of TRECs has had on the overall cost of RPS compliance.

After any such review, the Commission shall seek to identify and make improvements to the TREC market to address any problems identified by the review.

54 Such a request could be made by motion in R.08-08-009 or its successor, or by separate application served on the service list of R.08-08-009 or its successor.

If there is a new legally binding RPS goal, the 5% of APT limitation may be reviewed in light of the new goal. The assigned Commissioner or assigned ALJ in R.08-08-009 or its successor is authorized to issue any rulings needed to effectuate any review of the 5% annual limitation on TRECs used for RPS compliance by the large IOUs.

As the TREC market matures, it may also be desirable to move away from an approach that focuses on particularized limits, and toward a portfolio approach to the use of various types of RPS-eligible contracts in the RPS program. Parameters such as long-term and short-term, new facilities and existing facilities, TRECs and bundled procurement could be used to develop a more holistic approach to RPS procurement. At this time, however, there is no experience with TRECs that could inform the development of such an approach. We focus now on getting the TREC market off to a good start.

4.4.4. Cost Recovery

The various topics encompassed in the general rubric of cost recovery apply only to the IOUs—large, small, and multi-jurisdictional. The Commission has authority over their rates, and has responsibility to maintain just and reasonable rates for their ratepayers, while ensuring safe and reliable service and implementing the RPS program goals. This Commission does not have authority over the rates of ESPs or CCAs. Thus, this aspect of REC market and compliance design will not be the same, or even similar, for all RPS-obligated LSEs. This is not a repudiation of the Commission's commitment to equitable treatment of all RPS-obligated LSEs, but simply a reflection of the regulatory reality of the California hybrid energy market.

4.4.4.1. Contract Approval

The large utilities all support the Straw Proposal that contracts for TRECs be reviewed in the same way as analogous contracts for RPS-eligible bundled energy. No party opposes this fundamental principle. UCS supports eventually aligning the review of short-term bundled contracts with TREC contracts. Horizon, PG&E, and Shell all support aligning TREC contract approval with short-term fossil generation contract approval. SCE specifically requests that TREC contracts be reviewed by the method it proposes in its 2009 RPS procurement plan, filed in R.08-08-009.

The review processes for RPS bundled contracts and TREC contracts should be similar, so far as possible. This promotes the values of administrative simplicity, transparency, and fairness. The review process for TREC contracts starts, as does the process for bundled contracts, with the Commission's review of the large utilities' RPS procurement plans (see § 399.14(a)) or the multi-jurisdictional utilities' supplements to their integrated resource plans. (See 399.17(d), D.08-05-029.) Going forward, the large utilities and the multi-jurisdictional utilities should include in their procurement plans the extent to which they intend to use TRECs to meet their RPS obligations. After the Commission has evaluated the RPS procurement plans and determined that they are consistent with the requirements set out in the RPS statute, utilities may conduct solicitations to procure RPS-eligible resources in accordance with their plans. When utilities submit RPS procurement contracts for approval, the Commission evaluates them with respect to, among other things, whether the proposed contracts are consistent with the approved RPS procurement plan. (See § 399.14(d).) For the 2009 RPS procurement plans that have been submitted in R.08-08-009, all utilities that have submitted plans shall amend those plans to include their explanations of their planning for the use of TRECs to meet RPS procurement obligations in 2009.

The development of review processes and price benchmarks for short-term contracts that are either bilateral or the result of a solicitation, and long-term bilateral contracts, has been assigned to this proceeding. SCE's initiative with its 2009 RPS procurement plan, however, makes it logical to move examination of the details of the contract approval process to R.08-08-009. We encourage the assigned Commissioner or assigned ALJ to issue any rulings necessary to complete that examination expeditiously.[55]

Although parties have proposed a new pre-approval process for short-term TREC contracts, and this decision identifies several issues related to RPS procurement contract approval that may be taken up in R.08-08-009, this decision does not change current contract approval procedures. Therefore, the current requirement that RPS procurement contracts of any length be submitted by advice letter (see D.06-10-019) will apply to TREC transactions as well as bundled contracts, unless and until the Commission modifies this requirement. Energy Division staff may use present methods of analyzing advice letters for bundled contracts and make any adaptations necessary for reviewing REC-only contracts. If, after review in R.08-08-009, we conclude that current contract approval methods should be revised, the applicability of the revisions to REC-only contracts will be indicated.

For multi-jurisdictional utilities, the situation is somewhat more nuanced. This Commission does not generally approve their RPS procurement contracts

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[55] The record developed on these issues in this proceeding will be available in R.08-08-009.

for bundled energy. If, however, a multi-jurisdictional utility wishes to recover costs of a California-specific RPS contract, it must file an advice letter for approval of the costs of the contract. (See D.08-05-029, p. 32.) TREC contracts should be treated similarly. If a multi-jurisdictional utility wishes to recover costs for any quantity of TRECS from a specific contract committed to its California RPS obligations, it must submit an advice letter demonstrating that the levelized price of the RECs does not exceed any price cap or price benchmark applicable to TREC transactions of IOUs, and conforms to any other requirements for TREC cost recovery by multi-jurisdictional utilities.

4.4.4.2. Bid Evaluation

The Straw Proposal suggests that utilities revise their processes for RPS procurement to include requests for offers for REC-only contracts, as well as to revise their least-cost best-fit (LCBF) methodology to allow evaluation of REC-only bids. IEP, PG&E, and TURN generally support this proposal. It would facilitate the integration of REC-only bids into the RPS procurement process. It would also allow direct comparison of bids for bundled energy and bids for REC-only transactions, giving utilities a better way to evaluate the REC-only option. This change in methodology would not require utilities to shortlist any REC-only contracts; rather, it would provide a more complete LCBF evaluation.

Consideration of improvements to the RPS bid evaluation LCBF methodology has been identified as one of the tasks in R.08-08-009.[56] REC-only contracts should be part of that consideration. Therefore, proposals for developing a method for LCBF evaluation including REC-only contracts should

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56 See Scoping Memo and Ruling of Assigned Commissioner (September 26, 2008), p. 4.

be made in R.08-08-009. Prior to full consideration of this issue in R.08-08-009, utilities should explain their method for evaluating REC-only contracts in their advice letters seeking approval of such contracts.

4.4.4.3. TREC Prices

How much is too much for ratepayers to pay for a REC for RPS compliance? Is it possible to control the costs of RECs to utility ratepayers without stunting or distorting the TREC market? These are among the most contentious issues on which parties commented.

The RPS statute allows a utility "to recover the reasonable costs of purchasing renewable energy credits in rates." (§ 399.16(b).) The Straw Proposal suggests that "reasonable costs" should be capped at $35.00 per REC for the cost of RECs used for RPS compliance by RPS-obligated utilities. The cap would be an absolute limit on the price paid for a REC that an IOU uses for RPS compliance; it would not merely be a limit on the amount of the TREC price that could be included in rates.[57]

Some evidence from states with current TREC markets, presented at the TRECs workshop and discussed in comments, suggests that TREC prices will fall to close to zero (the marginal cost for renewable generation) when demand is low. When demand is high (for example, a compliance deadline looms) TREC

[57] This aspect of the Straw Proposal seeks to remove the incentive for a utility to pay any price, however high, that it believes this Commission would allow it to recover in rates; or alternatively, to pay the Commission-allowed amount plus $49.99 (one cent less than the current penalty amount of $50/MWh) for a TREC, a scenario identified by SCE in its post-workshop comments. Even if shareholders paid the extra amount, the market price of TRECs could be driven beyond the reach of most RPS-obligated LSEs.

prices will rise to the highest allowable cost.[58] TURN and UCS support the applicability of this "boom/bust" analysis to California. AReM, PG&E, SCE, and SDG&E assert that this "boom/bust" cycle is unlikely to occur in California, because RPS flexible compliance rules eliminate the prospect of a single fixed compliance deadline for all RPS-obligated LSEs. Calpine claims that, although banking of RECs and flexible compliance can help, a highly constrained supply of TRECs will have the same effect on prices as an inflexible deadline: prices will rise sharply.

All parties agree that, at least in the next three or four years, the demand for TRECs for California RPS compliance is highly likely to exceed the limited foreseeable supply. Many parties—whether in favor of TRECs or skeptical about them—also share the belief that, at least for the next few years, the TREC market will be largely a market for short-term RECs from existing facilities.[59]

TURN asserts that a price cap is necessary in order to keep REC prices in line with the price of bundled RPS contracts. Ratepayers, TURN argues, should not have to pay more for the combination of a TREC and conventional energy than they would have paid for a long-term bundled contract for RPS-eligible energy. From this point of view, a TREC price cap should set be below the current $50/MWh penalty price because the penalty price plus conventional

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[58] Information on recent TREC prices in markets in other states, provided by Aglet in its supplemental comments, shows that prices vary from a low range (less than $5/REC) through a few in the range of $25/REC, to, in one instance, a high of $48/REC.

[59] Aglet, Calpine, DRA, IEP, PG&E, TURN, and UCS all make this point.

energy price is currently higher than the long-term bundled RPS contract price. TURN therefore supports the $35/REC price cap proposal.[60]

Several parties urge that any price cap, if one is adopted at all, be set at the amount of the penalty for noncompliance with RPS procurement obligations.[61] This is currently $50.00/MWh. (See D.03-06-071.) If the price of a TREC bought by an IOU were allowed to exceed the penalty cost, this argument suggests, a utility would have an incentive to pay almost any price for a TREC (even above the penalty amount) in order to transfer the costs of noncompliance from the shareholders (via a penalty payment) to the ratepayers (via an inflated price for TRECs that would be reflected in rates).

Many parties oppose any cost cap, arguing that price limits almost by definition put artificial restraints on markets.[62] With a new market such as the California TREC market, the argument continues, such early restraints could delay the development of a robust TREC market and stifle the price signals needed to encourage new renewable development.

CEERT urges that, instead of a price cap, the Commission should adopt a price benchmark for TRECs. CEERT argues that a price cap will constrain the TREC market instead of letting market supply and demand determine prices. A reasonableness benchmark, however, would protect ratepayers from

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60 BVES and Central California Power also support it. Aglet suggests a more complex calculation that would impose a significantly lower cap, but only on IOU cost recovery for TRECs purchased from unregulated LSEs. Aglet's suggestion is not consistent with an integrated, liquid TREC market, and does not account for the participation of other, non-LSE entities in the TREC market.

61 GPI and UCS take this position. UCS also expresses a concern that the $35 price cap in the Straw Proposal might be too low in current market conditions to provide incentives for new renewable construction, though the basis for that concern is not clear.

62 Calpine, CEERT, Horizon, IEP, PG&E, and Solar Alliance take this position.

unreasonable TREC prices without depressing TREC prices. CEERT suggests that the price benchmark should be set at the penalty amount, rather than at a lower figure, such as the Straw Proposal's $35/REC. CEERT asserts that this would avoid creating a situation in which an IOU could not buy TRECs to fulfill its RPS obligations if they were above the price cap, but below the penalty amount, yet would be subject to the penalty for a procurement shortfall. CEERT does not, however, suggest a methodology for implementing a benchmark to evaluate prices.

A price benchmark for evaluating TREC purchases may be a reasonable proposal for the medium and longer term. In the immediate future (i.e., the next three years), however, it could be difficult to develop a reliable benchmark. TREC prices could not reliably be approximated by, for example, estimating the cost of RPS-eligible energy and subtracting the cost of conventional power, which parties sometimes call the "green premium." Such an RPS energy cost would be extremely difficult to estimate in itself, since RPS power purchase agreements (PPAs) present a wide range of technologies and prices. More importantly, however, TREC prices will be the result of forces in the TREC market, not the energy market. Pressure to comply with the 20% goal combined with a limited supply of TRECs would dominate TREC market pricing, making it difficult to develop and implement a benchmark using sources other than the TREC market prices.

SDG&E, supported by PG&E, proposes neither a cap nor a benchmark, but a price reasonableness review similar to what is done for all-source procurement. The review would be based on broker quotes, results of solicitations, or a price valuation model. This proposal, however, assumes that there is a fully developed market in which there is a wide range of information. Since, in its early years, the TREC market is unlikely to conform to this model, SDG&E's suggestion, like CEERT's benchmarking suggestion, is premature.

Paradoxically, a published, firm price cap could operate as a relatively reliable price signal for investors in new RPS-eligible generation. At the workshop and in post-workshop comments, staff and parties discussed methods to ensure some measure of price transparency in the early stages of the TREC market. No party proposed any method that would produce public TREC prices. Suggestions were made that some kind of anonymous average of transaction prices could be compiled from data in WREGIS, though how to do this under WREGIS' current functionalities was not clear.

A price cap, by contrast, does not implicate the confidential data of any participant. Market participants may make deals at prices lower than the price cap, and RPS-obligated ESPs and CCAs, as well as POUs, could make deals at higher prices. But the price cap itself could give a reasonable indication of the value of TRECs to ratepayers. As compared to no public indication of price, this would provide important information that could ground new investment in RPS-eligible generation, not simply TREC trades.

Price volatility and high prices are not a necessary outcome of the predicted situation of short TREC supply, but they are a significant risk. We conclude that this is a risk that ratepayers should not be required to bear in the short term. We believe that it is possible to create temporary protections for ratepayers through imposition of a price cap without damaging the basic structure of the TREC market or undermining the financial incentives for new renewable construction that are among the longer-term benefits of a TREC market. We therefore adopt a temporary, reviewable TREC price cap.

The Straw Proposal's suggestion of price cap of $35/REC, while potentially reasonable, would not be effective at this time. First, as CEERT notes, a utility could have to leave a TREC priced at $36 on the table, while paying $50 in penalties for having failed to procure it. Second, as SCE points out, a price cap lower than the penalty amount creates an uneven playing field between utilities and other LSEs. LSEs not subject to the price cap could pay the highest price for a REC they thought they could afford, up to the penalty amount, thus potentially driving up the price out of reach of utilities.

On the other hand, a price cap of $50/REC is connected to the noncompliance penalty amount. It is the highest economically rational price for a TREC that would not shift the costs of noncompliance from utility shareholders to ratepayers. The penalty structure is, however, intended to put the burden of IOUs' noncompliance with RPS requirements on shareholders, not ratepayers. It would be undermined by allowing utilities to pay more than the penalty amount for TRECs.

Therefore, we adopt a temporary price cap of $50/REC (the penalty amount translated from MWh to RECs). This means that an IOU may not use for RPS compliance a TREC for which it paid more than $50.00, on a levelized basis.[63]

Like the limit on TRECs usage, this cap on the prices of TRECs used for RPS compliance should be a temporary one. Its primary purposes are to allow the Commission to gain experience with how a TREC market functions, protect ratepayers from unexpected TREC price volatility, and provide information on how TRECs can help the state reach its RPS and GHG goals. After at least

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[63] This does not mean that purchasing TRECs for the amount of the price cap is per se reasonable. We will evaluate the reasonableness of TREC purchases by utilities in the contract approval process. IOUs must provide sufficient information to the Commission to demonstrate that a TREC contract price is reasonable.

24 months of experience with the TREC market, any party may request that this Commission modify or eliminate this price cap.[64] Prior to eliminating the price cap, the Commission shall consider, at a minimum:

1. The impact of the price cap on TRECs on the statutory goals identified in § 399.11;

2. How the price cap has affected electric sector GHG emissions;

3. Whether and to what extent the price cap has helped or hindered the deployment of renewable distributed generation;

4. How the price cap has affected the development of in-state renewable resources; and

5. What impact, if any, the price cap has had on the overall cost of RPS compliance.

After any such review, the Commission shall seek to identify and make improvements to the TREC market to address any problems identified by the review.

If there is a new legally binding RPS goal, the price cap may be reviewed in light of the new goal. The assigned Commissioner or assigned ALJ in R.08-08-009 or its successor is authorized to issue any rulings needed to effectuate any review of the $50/REC price cap on TRECs used for RPS compliance by any IOU.

4.5. Cost Limitation Provisions

Section 399.15(d) provides for a limitation on the total above-market costs expended for RPS procurement by IOUs and makes available a limited amount

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[64] Such a request could be made by motion in R.08-08-009 or its successor, or by separate application served on the service list of R.08-08-009 or its successor.

of money to cover above-market costs. It states that "[n]o purchases of renewable energy credits may be eligible for consideration as an above-market cost." (§ 399.15(d)(2)(D).) Thus, TREC purchases are not eligible for any above-market funds set aside pursuant to § 399.15(d)(1). No IOU is required to purchase TRECs to meet RPS obligations if it has otherwise exceeded its cost limitation for bundled contracts (§ 399.16(a)(8)).[65] However, IOUs should also have the ability to enter into voluntary TREC transactions even if the cost limitation has been reached, as they do with bundled contracts. (See § 399.15(d)(4).)

4.6. TREC Revenues for the Benefit of Ratepayers

Section 399.16(a)(4) provides that "[a]ll revenues received by an electrical corporation for the sale of a renewable energy credit shall be credited to the benefit of ratepayers." The respondent utilities should promptly take steps to include all TREC transactions in their energy resource recovery accounts (ERRA) or energy cost adjustment (ECAC) accounts, or equivalents, such as power purchase adjustment accounts, as appropriate. Those utilities that believe they do not currently have an appropriate accounting vehicle for TREC transactions should submit advice letters within 90 days of the date of this decision, proposing their accounting treatment of TREC transactions.

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[65] This is analogous to the provision, with respect to bundled contracts, that no IOU is required to purchase bundled electricity at a price above the market price referent if its cost limitation has been exceeded. ((§ 399.15(d)(3).)

4.7. Transactions subject to §§ 399.16(a)(5) and (6)

The RPS statute provides that "no renewable energy credits shall be created" associated with electricity from two types of transactions.[66] The first is a contract executed with a California RPS-obligated LSE or POU prior to 2005 that does not specify the ownership or disposition of the RECs. The second is a contract pursuant to PURPA executed after January 1, 2005 with a QF.

Because WREGIS tracks renewable generation by issuing RECs (in the form of WREGIS Certificates), it is not possible literally to prevent the creation of RECs from these transactions. It is possible, however, to implement the Legislature's intent by ensuring that the bundled renewable energy from such transactions is tracked through WREGIS and counted toward the RPS obligations of only the purchasing retail seller. LSEs that purchase renewable energy from such transactions can prevent the WREGIS Certificates from being transferred out of their WREGIS accounts (and thus being available for transfer or trading) by setting up appropriate mechanisms within WREGIS to make direct or

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[66] The relevant parts of § 399.16 are:

> (5) No renewable energy credits shall be created for electricity generated pursuant to any electricity purchase contract with a retail seller or a local publicly owned electric utility executed before January 1, 2005, unless the contract contains explicit terms and conditions specifying the ownership or disposition of those credits. Deliveries under those contracts shall be tracked through the accounting system described in subdivision (b) of Section 399.13 and included in the baseline quantity of eligible renewable energy resources of the purchasing retail seller pursuant to Section 399.15.
>
> (6) No renewable energy credits shall be created for electricity generated under any electricity purchase contract executed after January 1, 2005, pursuant to the federal Public Utility Regulatory Policies Act of 1978 (16 U.S.C. Sec. 2601 et seq.). Deliveries under the electricity purchase contracts shall be tracked through the accounting system described in subdivision (b) of Section 399.12 and count toward the renewables portfolio standard obligations of the purchasing retail seller.

automatic transfers of the relevant WREGIS Certificates into their WREGIS accounts and retire them for RPS compliance at the earliest feasible time after the WREGIS Certificates are generated.[67] Currently, only the three large utilities have such contracts. We will require them to work with CEC and WREGIS staff to take the necessary steps, if they have not already done so, to move the WREGIS Certificates generated by such transactions as promptly as possible, as determined by the CEC, into their retirement accounts in WREGIS for purposes of RPS compliance.

Energy Division staff should review with CEC staff and the affected utilities whether any changes to the RPS compliance spreadsheet, or other RPS reporting tools, are needed to ensure compliance with §§ 399.16(a)(5) and (6).

4.8. Classification of Certain RPS Procurement Contracts

The RPS statute requires that RPS-eligible electricity associated with RECs must be "delivered to a retail seller, the Independent System Operator, or a local publicly owned electric utility." (§ 399.16(a)(3).) The statute further allows "delivery" to occur "regardless of whether the electricity is generated at a different time from consumption by a California end-use customer." The CEC may adopt criteria for determining when RPS-eligible energy may be considered "delivered." (Pub. Res. Code § 2741(a).)[68] The CEC has done so in its current *Eligibility Guidebook* (pp. 22-26).

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[67] The rules for transfers between accounts in WREGIS are set out in section 15 of the WREGIS Operating Rules.

[68] Pub. Res. Code § 25741(a) provides:

> 'Delivered' and 'delivery' mean the electricity output of an in-state renewable electricity generation facility that is used to serve end-use retail customers located within the state. Subject to verification by the accounting system established by the

Footnote continued on next page

The application of the CEC's delivery criteria to RPS transactions has engendered some controversy in this proceeding. The focus of parties' comments is the examples of firming and shaping[69] arrangements for RPS-eligible transactions that are provided in the *Eligibility Guidebook*.[70]

GPI and UCS each assert in their supplemental comments that this portion of the *Eligibility Guidebook* expands the scope of "delivery" to allow renewable generation that never enters California (whether directly or through conventional firming and shaping arrangements) to count for RPS compliance.

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commission pursuant to subdivision (b) of Section 399.13 of the Public Utilities Code, electricity shall be deemed delivered if it is either generated at a location within the state, or is scheduled for consumption by California end-use retail customers. Subject to criteria adopted by the commission, electricity generated by an eligible renewable energy resource may be considered "delivered" regardless of whether the electricity is generated at a different time from consumption by a California end-use customer.

[69] Firming and shaping are methods of using other generation resources to supplement the delivery of power from intermittent renewable resources. A fuller explanation is provided in Appendix A of the REC White Paper.

[70] In full, the examples are:

1. The facility could provide firming and shaping services. For example, the retail seller could enter into a PPA with an RPS-eligible facility and, as part of the PPA, the facility would provide firming and shaping to deliver a firm or non-firm product into California.

2. A third party could provide firming and shaping services. For example: a retail seller could buy energy and RECs from an RPS-eligible facility and execute a second PPA to resell the energy from the RPS-eligible facility, but not the RECs, to a third party that provides firming and shaping services. Then, the third party could provide the retail seller with a firm schedule for delivery into California.

3. The retail seller could provide firming and shaping services. The retail seller could buy energy and RECs from an RPS-eligible facility, sell the energy back to the facility, and "match" the RECs with energy delivery into California from a second PPA and/or with imports under a pre-existing PPA.

Eligibility Guidebook, pp. 23-24, n. 21.

They suggest that this will alter the balance of RPS-eligible procurement between facilities located in California and those located in other areas, with an increasing portion of RPS procurement contracts going to facilities located in other states.

TURN argues, following a line of argument made by DRA in protest to some advice letters for RPS contracts,[71] that the CEC has made the requirement of delivery almost meaningless. According to TURN, the negative consequences of the CEC's criteria include sanctioning the delivery of any kind of power, including coal-fired generation, to be "matched" with a REC to satisfy the delivery requirements. TURN also supports the assertions made by GPI and Aglet that allowing RECs to be so unmoored from their underlying associated energy will increase prices by requiring the purchase of replacement energy (since, in the third *Eligibility Guidebook* example, no additional energy equivalent to the energy associated with the RECs will be delivered into California). TURN additionally argues that this result would undermine one of the principal values of renewable energy generation— promoting price stability.

CEERT, the large utilities, SMUD, Evolution Markets, and NaturEner oppose TURN's position. Several of these parties assert that TURN's analysis is not correct and the CEC has made the correct determinations about delivery. CEERT, NaturEner, and SCE focus on their view that, in any event, the CEC's delivery criteria are not reviewable by this Commission.

We agree that the RPS statute gives the CEC the responsibility to determine RPS eligibility, including establishing the criteria for delivery of RPS-eligible electricity. We therefore do not resolve the dispute among parties in this proceeding about the merits of the CEC's criteria for RPS-eligible energy

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[71] TURN cites to DRA's Protest to PG&E advice Letter 3183-E (January 10, 2008).

delivery. The CEC has determined that, for RPS compliance purposes, transactions that meet the delivery criteria set out in the third example of footnote 21 in the current *Eligibility Guidebook* are RPS-eligible; therefore, they are RPS-eligible.

Some of the disagreement among the parties about this issue apparently stems from the assumption that if these transactions are not RPS-eligible bundled contracts (for energy and RECs) they are not RPS-eligible transactions at all.[72] This is not the case. Both bundled contracts and REC-only contracts that meet all the CEC's criteria are RPS-eligible.

The CEC's RPS eligibility criteria are not, however, the end of the story. This Commission has exclusive authority over the approval of utilities' RPS procurement contracts (see § 399.14(d)) and over the conditions for the use of TRECs for RPS compliance by all LSEs (see § 399.16(a)(7), (9)). We must bring our perspective and experience to bear on the application of the CEC criteria to actual RPS procurement and compliance activities.

The descriptions in the third example of the *Eligibility Guidebook* mix transactions that are bundled transactions with transactions that could be characterized as REC-only deals. A transaction that is RPS-eligible because the buyer "matches" the RECs that it retains from its original purchase from the generator with "imports under a pre-existing PPA" is a REC-only transaction.

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[72] This polarized view may be influenced by the statement in the *Eligibility Guidebook* that the examples of delivery given there are not intended to "constitute tradable RECs or authorize tradable RECs for RPS compliance." (P. 23, n.21.) Since this Commission, not the CEC, has the discretion to authorize the use of tradable RECs for RPS compliance, it is true that the examples in the *Eligibility Guidebook* cannot and do not *authorize* the use of tradable RECs. The third example, however, does *describe* a type of TREC transaction, as we explain.

The buyer gets the credit for the RPS-eligible generation in the form of the RECs; however, the buyer is not procuring any more energy than would have been delivered to California if the transaction had not occurred at all. Since the net effect of the transaction is the transfer of RECs from generator to buyer, the transaction should be characterized as a REC-only transaction for RPS compliance purposes.

On the other hand, a transaction in which the buyer provides firming and shaping by "matching" deliveries from a new PPA to the RECs it retains from the original purchase from the generator may, under appropriate circumstances, be considered a bundled energy deal. The buyer in this case, too, gets the credit for the RPS-eligible generation in the form of RECs. The buyer also provides for an equivalent amount of firm energy to be delivered to California through the new second PPA. The buyer thus receives deliveries of energy equivalent to the amount of energy associated with the RECs purchased.

Such a transaction, however, should be considered a bundled transaction only if it has characteristics that promote price stability. When seeking approval of an RPS PPA, IOUs should demonstrate how the transaction promotes electric price stability. If an advice letter seeks approval of a contract or contracts for RECs and an equivalent amount of newly acquired firm energy delivered to California over the same term and provides a combined price that is not indexed to forward energy prices, Energy Division should treat the contractual package as a bundled RPS procurement contract and evaluate it in that framework. If any of these conditions is not met, Energy Division should consider the transaction a REC-only deal and evaluate it as such.

In reaching these conclusions, we do not disturb the CEC's determination that all transactions described in the *Eligibility Guidebook* are RPS-eligible. Rather, we exercise our own authority over RPS procurement and compliance, as well as our authority to impose any conditions that we conclude are reasonable on the use of TRECs. We classify these transactions as TREC transactions or as bundled deals in order to provide clarity for LSEs, generators, developers, other market participants, and Commission staff about the treatment of such transactions for RPS compliance. Transactions that we define as TRECs may be used for RPS compliance, so long as they comply with all requirements for RPS eligibility and TREC transactions.

Treating these transactions as the REC-only transactions that they actually are will benefit ratepayers and all California residents. Ratepayers will benefit from the transparency of classifying such deals as TREC deals, avoiding unnecessary transaction costs involved in the utility's negotiating and seeking approval for a bundled energy PPA, and in buying and selling back the same energy instantaneously to the generator without delivering an equivalent amount of newly acquired energy to California.[73] Moreover, by calling a TREC a TREC, we ensure that the rules governing the usage of TRECs are equitably applied to all transactions where these rules are appropriate. Without such

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[73] Among these transaction costs is the potential that such PPAs could contribute disproportionately to credit rating agencies' evaluation of the "debt equivalence" of California utilities. As explained in D.07-12-052, debt equivalence "is a tool used by credit rating agencies to assess potential financial risks associated with a utility's PPA obligations. In certain circumstances, a rating agency may treat some portion of PPA costs as payments on debt obligations rather than as operation costs (treating them as 'debt equivalent'), and in turn make corresponding adjustment to the utility's credit metrics and financial ratios used as part of the rating agency's overall assessment of credit quality." (D.07-12-052, p. 161, n.198.) The PPA's total cost is that of a long-term bundled energy contract. This is significantly higher than the cost of the RECs, which is the net cost of the transaction that is matched with pre-existing imports. If credit rating agencies count the entire face value of the PPA, they may increase the debt equivalence of the utility by more than the actual cash cost of the TREC transaction, thus adding downward pressure on the utility's credit rating.

clarification, transactions with RPS-eligible facilities located in other states, such as those described here, that would otherwise be governed by our rules for TREC transactions, could circumvent these rules by being called bundled contracts.

We recognize that the Commission has already approved a PPA that matched RECs with pre-existing imports.[74] When the advice letter was originally filed, it included the CEC's certification that the delivery structure described was RPS-eligible. With the benefit of more extensive party participation through supplemental comments and reply comments in this proceeding, we are now able to determine that, in the exercise of this Commission's authority over RPS procurement and the use of TRECs for RPS compliance, we should define such transactions as REC-only transactions. Similarly, we exercise our authority to provide that, where the buyer can show a match with newly acquired firm energy at a price that is not indexed to energy prices, as set forth above, the deal may be treated as a bundled energy transaction for RPS compliance purposes.

This classification decision applies only to contracts for RPS procurement that are signed on or after June 1, 2009.

4.9. Compliance and Reporting

As a general principle, the use of TRECs will be consistent with the existing RPS flexible compliance rules.[75] There are a few situations, however, requiring more detailed examination and, in some cases, initial adjustments. As we develop experience with the use of TRECs for RPS compliance, we may

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[74] Resolution E-4192 (October 2, 2008), available at http://docs.cpuc.ca.gov/PUBLISHED/FINAL_RESOLUTION/91720.htm.

[75] See, e.g., D.06-05-037, D.06-10-050, D.07-02-011, D.08-02-008.

review the impact of TRECs on the existing flexible compliance regime. The rules set out in this decision provide for the integration of TRECs into the existing RPS program; if experience reveals the need for improvements, we will consider them.

4.9.1. Banking

In the context of bundled energy contracts, RPS-eligible deliveries may be "banked" for an indefinite period for RPS compliance, as allowed by § 399.14(a)(2)(C)(i).[76] That is, an LSE with deliveries in excess of its APT in one year may bank the surplus for use in any later compliance year.

To maintain consistency between the use of TRECs and the use of bundled energy contracts, RECs in excess of an LSE's APT in one year may be banked for use in future years.[77] Because of the nature of RECs and how they are tracked and traded, however, banking of RECs for RPS compliance must be a two-step process: holding RECs in active sub-accounts in WREGIS, and banking within the RPS flexible compliance system. These two steps are the same for RECs associated with bundled contracts and RECs from REC-only contracts.

The first step is holding the REC in WREGIS. Under the WREGIS operating rules, RECs may be maintained indefinitely in a WREGIS participant's active sub-account.[78] When RECs are committed to California RPS compliance (or any other compliance purpose), they are transferred to the participant's

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[76] Section 399.14(a)(2)(C)(i) provides in relevant part that

> The commission shall adopt. . . [f]lexible rules for compliance, including rules permitting retail sellers to apply excess procurement in one year to subsequent years or inadequate procurement in one year to no more than the following three years.

[77] The RECs may be procured through TREC contracts or bundled contracts.

[78] WREGIS Certificates do not have an expiration date. (Operating Rules, p. 34.)

WREGIS retirement sub-account. WREGIS still tracks the RECs in the retirement sub-account, but those RECs may not be traded or used for any other purpose.

Maintaining RECs within a WREGIS active sub-account keeps the RECs available for any purpose. The Straw Proposal would allow maintenance in active sub-accounts for up to three compliance years (inclusive of the year of generation) from the date the electricity associated with the REC is generated. That is, an RPS-obligated LSE that wanted to use a REC associated with electricity generated in June 2008 for RPS compliance would need to commit the REC to RPS compliance by putting it in its WREGIS retirement sub-account not later than December 31, 2010 (the end of the third compliance year since the generation). This is in the mid-range of the banking practices of other states, which typically allow between 18 months and five years for REC banking.[79]

TURN argues that this is too long a period to allow RECs to be held without commitment to RPS compliance, and urges that 18 months is a more appropriate time. UCS supports some limits on the time RECs can be maintained in WREGIS, in order to ensure that LSEs continue to procure RPS-eligible energy, rather than relying on generation from several years in the past. GPI and Pilot Power Group (PPG) argue that the period of holding RECs in WREGIS should be unlimited, essentially because the banking process for bundled energy is unlimited.

The argument advanced by GPI and PPG conflates the two processes. It is possible to allow indefinite banking of RECs for RPS compliance once they have been committed to that purpose, without allowing indefinite retention of RECs in

[79] The staff presentation on "Compliance Rules: Consensus and Unresolved Issues" provided this information at the TREC workshop.

active WREGIS sub-accounts. TURN argues that allowing RECs to sit in active WREGIS sub-accounts for an indefinite period of time without being committed to any compliance purpose could encourage hoarding of TRECs and gaming of the TREC market by market participants who could buy TRECs and hold them until a major compliance deadline (such as attainment of the 20% target) looms, then sell them at inflated prices. On the other hand, in order to have a liquid TREC market, it is necessary to keep TRECs available for a long enough period of time that trading within that market will be efficient, while not providing incentives to keep TRECs out of the market.

In evaluating the banking proposals, it is important to remember that the primary purpose of authorizing the use of TRECs is to improve the RPS program. Allowing market participants to hold RECs indefinitely without committing them to RPS compliance would undermine both liquidity in the market and compliance planning by RPS-obligated LSEs.

The Straw Proposal strikes an appropriate balance between maintaining market liquidity and discouraging hoarding of TRECs. We therefore adopt the Straw Proposal on banking of RECs and clarify that it is applicable to all RECs tracked in WREGIS. The period of not more three compliance years inclusive of the year of generation of the electricity associated with the REC to retirement for RPS compliance will allow an LSE holding TRECs to make a good estimate of its future compliance needs, and either commit or sell its TRECs. Other TREC market participants will be able to assess their market situations over a reasonable period of time, but without incentives to hold TRECs for extremely long periods of time and potentially distort the TREC market.[80]

Once RECs are retired for RPS compliance within WREGIS, they will be accounted for in the RPS compliance and reporting system. They then will be subject to the RPS flexible compliance rules.

4.9.2. Unbundling of RECs from Future Years of Bundled Contracts

Once a system of tradable RECs is established, any RECs recorded in WREGIS are subject to being traded, with the important exception (discussed in § 4.7 above) of RECs associated with the types of contracts described in §§ 399.16(a)(5) and (6). This raises the question of the appropriate treatment of RECs that are associated with the energy conveyed in bundled RPS contracts.

An LSE with a contract for bundled energy should be able to "unbundle" and sell RECs from that contract on both a spot and a forward basis. In the case of a contract that is delivering energy, RECs from past deliveries would be tracked in WREGIS and could be sold if they were not yet retired for RPS compliance. RECs from later deliveries could be sold on a forward basis. In the case of a contract with a facility that is not yet on-line, RECs could be sold on a forward basis for some or all of the entire term of the contract (with the partial exception that RECs could not be unbundled from the first three years of

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[80] This timing rule applies to the REC, not to the LSE or other market participant. A TREC may be traded several times within the three-year period; it may count for RPS compliance as long as it is retired in WREGIS within the period. The LSE retiring the REC for RPS compliance may have retained that REC in its active WREGIS sub-account for years, or acquired it only the day before it is retired.

bundled contracts that have been earmarked).[81] Once the RECs are transferred, however, the LSE with the original bundled contract may not use *either* the REC *or* the underlying energy for RPS compliance; the RPS compliance value has been transferred to the purchaser along with the REC.[82]

The potential unbundling and sale of RECs from bundled contracts that have been earmarked to make up shortfalls from prior years presents a special case.[83] The Straw Proposal suggests that RPS-obligated LSEs should not be allowed to unbundle the RECs from the first year of such contracts, since that year's deliveries have already been committed to make up a prior year's shortfall under the flexible compliance rules. This raises the risk of double-counting the unbundled RECs, as earmarked by one LSE and retired for RPS compliance by another. On the other hand, if an earmarked contract turns out not to be needed to make up the shortfall for which it has been earmarked, the RECs should be able to be unbundled. We adopt an approach that would encourage liquidity in the TREC market without undermining the flexible compliance rules. An LSE may unbundle and trade RECs from the later years of a bundled contract that has

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[81] Energy Division staff should review the RPS compliance spreadsheet and reporting rules to determine whether additional reporting requirements should be imposed to track these transactions.

[82] In principle, the original LSE could buy some or all of the RECs back at a later point. As the owner of the RECs, it could then retire them for RPS compliance.

[83] "Earmarking" is a flexible compliance mechanism by which deliveries from a future RPS procurement contract may be designated to make up, within three years, shortfalls in RPS procurement in the same year in which the earmarked contract was signed. As part of the earmarking process, Energy Division staff reviews the contract proposed for earmarking to ascertain whether the contract is likely to deliver as proposed, since it is covering an already-incurred shortfall.

been earmarked, but should be prohibited from unbundling any RECs generated in the first three years of deliveries under an earmarked contract.

4.9.3. Earmarking of TREC Contracts

In the Straw Proposal, staff suggests that earmarking of TREC contracts not be allowed because the viability of forward TREC contracts would be significantly more difficult to assess than the viability of bundled contracts. CEERT, GPI, IEP, PG&E, and UCS agree with this position. AReM, Pilot Power, SCE, and SDG&E argue against it. The opponents assert that all RPS contracts should be treated equally. They assert that administrative difficulty in making a viability determination should not prevent earmarking of TREC contracts. SCE asserts that purchases of TRECs from new facilities would be discouraged if earmarking of TRECs were not allowed.

Although in almost all respects TRECs can and should fit into the flexible compliance rules, it is appropriate to limit the circumstances in which earmarking of REC-only contracts is allowed.[84] TREC deals present earmarking challenges different from bundled energy contracts. For TREC purchases that are associated with energy from multiple generators, possibly located in several different jurisdictions, staff would have difficulty undertaking an adequate review of potential future performance under the contracts. Confidential information about the viability of a number of different generation projects may be difficult and very time-consuming to track down. This could at the least significantly delay approval of TREC deals proposed for earmarking, and might increase the risk that the shortfall for which the TRECs are earmarked would not in fact be made up within the required three-year period.

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[84] PG&E's comments on the proposed decision helpfully informed this discussion.

On the other hand, TREC contracts between an LSE and one RPS-eligible generator providing the RECs share most of the characteristics of bundled transactions. It should not be significantly more difficult for staff to evaluate the likelihood of future performance of such contracts than it is to evaluate the future performance of bundled contracts that are eligible for earmarking.

We therefore allow earmarking of TREC contracts between an RPS-obligated LSE and one RPS-eligible generator providing the RECs, subject to review by staff in accordance with RPS flexible compliance procedures. Such earmarking is also subject to the restriction that no RECs associated with energy generated in the first three years of an earmarked TREC contract may be sold or traded. This is analogous to the restriction for bundled contracts set out in § 4.9.2, above.

4.9.4. Reporting

The RPS reporting structure has been set forth in D.06-10-050.[85] Energy Division staff has developed a collaborative process with parties in which any changes needed in the reporting formats are developed and reviewed.[86] Staff should use this process to make revisions to current reporting formats that may be needed to accommodate the use of TRECs. The assigned Commissioner or assigned ALJ in R.08-08-009 or its successor may issue any rulings necessary to

[85] A standardized RPS reporting format and a process for considering changes to the reporting format were adopted in R.06-05-027 by an ALJ's Ruling Adopting Standardized Reporting Format, Setting Schedule For Filing Updated Reports, and Addressing Subsequent Process (ALJ's Reporting Ruling) (March 12, 2007).

[86] Reporting formats include the semiannual compliance spreadsheets and any other documentation needed to report on RPS compliance.

provide staff and the parties with the opportunity to develop revisions to the reporting formats.

Following a suggestion made by CEERT, all RPS-obligated LSEs should be required to file with Energy Division reports on TREC purchases, sales, and prices, with appropriate confidentiality protections. Those utilities that utilize a procurement review group (PRG) should also provide this information to the PRG. This is not for purposes of contract approval, but for TREC market monitoring. This will enable staff to learn about developments in the TREC market, propose improvements, and identify potential problems that should be addressed by this Commission. Energy Division has discretion to develop, in consultation with the parties, the format and timing of such reports; they may be included as part of the RPS compliance spreadsheet.

4.10. Standard Terms and Conditions

Parties commenting on this issue favor minimal new STCs for TREC contracts, and little or no change to the STCs for bundled RPS contracts.[87] Parties unanimously believe that an STC defining RECs is the core, and perhaps only, STC needed. SDG&E adds that the STC must provide that the RECs are tracked in WREGIS; PG&E and AReM include a "CPUC approval" term.

We agree with the parties that few changes to STCs are required. It is clear that all TREC contracts will need an STC that ensures that the RECs being transferred conform to the definition and attributes of RECs set forth in D.08-08-028, or any later modifications made by decision of this Commission or new legislation. Because RECs cannot be recognized for RPS compliance unless they are tracked in WREGIS, TREC contracts must contain assurances that the

[87] AReM, CEERT, PG&E, SCE, SDG&E, and UCS made suggestions for STCs.

seller has taken all steps necessary to ensure that the generation is properly registered and the RECs will be tracked in WREGIS.

In addition, as PG&E points out, TREC contracts of both large and small IOUs must include the same requirement as bundled contracts that the contract takes effect upon approval by this Commission.[88]

Defining and tracking RECs and requiring this Commission's approval of contracts where that approval is necessary cover the minimum requirements for STCs related to the use of TRECs for RPS compliance. Therefore, only three STCs will be required for REC-only contracts: REC definition, WREGIS tracking, and Commission approval for utility contracts (other than multi-jurisdictional utilities).[89]

Bundled contracts transfer RECs as well as energy. In order for bundled contracts to be consistent with REC-only contracts and to allow the unbundling and trading of RECs from bundled contracts as authorized by this decision, the "RECs definition" and "WREGIS tracking" STCs should be added to the STCs for bundled contracts.

The two new REC STCs address the fundamental issues of what is being conveyed by the contract. They should be non-modifiable in both REC-only and bundled contracts. The STC requiring Commission approval for REC-only contracts should likewise by non-modifiable in REC-only contracts, as it is in bundled contracts. The new STCs are set out in Appendix C.

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[88] This Commission does not approve RPS contracts of multi-jurisdictional utilities. See § 4.4.4.1, above.

[89] If and when the Commission changes or augments the RPS procurement approval process, appropriate changes can be made in the STCs.

4.11. Timing Issues

Beginning June 1, 2009, TRECs tracked in WREGIS for which the RPS-eligible electricity associated with the TREC was generated on or after January 1, 2008 may be procured, traded, and used for RPS compliance. Any RECs associated with RPS-eligible bundled energy deliveries may be used for RPS compliance in accordance with existing flexible compliance rules and may, beginning June 1, 2009, be unbundled and sold in accordance with the rules set forth in this decision, subject to the restrictions in §§ 399.16(a)(5) and (6). Utilities may file advice letters for approval of TREC contracts beginning June 1, 2009.[90]

4.12. Next Steps

Refining the LCBF bid evaluation process to allow TREC contract bids to be evaluated side by side with bids for bundled contracts in utility RPS procurement processes will encourage integration of REC-only and bundled procurement decision-making. Revisions to the LCBF process could include consideration of how LCBF might better take into account various benefits of RPS-eligible generation identified by the RPS statute, such as diversity and reliability of the energy supply, public health and environmental benefits, as well as economic development benefits. (See § 399.11.) In addition, developing processes for the Commission's approval of RPS contracts that can be applied to both bundled and REC-only procurement will aid in integration of TRECs into RPS procurement.

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[90] D.08-05-029 requires BVES to submit an application for approval of bundled energy purchases as long as there is a cap on its electricity charges. This requirement does not apply to TREC purchases.

These tasks are most appropriately undertaken in R.08-08-009, where all aspects of the RPS procurement process are addressed. One task in the current proceeding—developing price benchmarks for evaluating price reasonableness of short-term RPS bundled contracts and long-term bilateral bundled contracts—does not apply to REC-only transactions. Because it is closely linked with other contract evaluation issues, however, it too should be considered in R.08-08-009. The assigned Commissioner should revise the scoping memo for R.08-08-009, if necessary, to include these three tasks (LCBF, contract approval, and price benchmarks) in that proceeding.

The rules and procedures for procuring and trading TRECs and using them for RPS compliance that are set forth in this decision are summarized for informational purposes only in Appendix D. The TREC market and the use of TRECs for RPS compliance will, however, be affected by many other sources. These include D.08-08-028, the CEC's *Eligibility Guidebook*, and the WREGIS Operating Rules. Energy Division staff is authorized to compile a TRECs reference guide to aid RPS-obligated LSEs and other market participants in understanding how to participate in the TREC market. We also encourage Energy Division staff to consider AReM's suggestion to convene a workshop on integrating TRECs into RPS reporting and verification processes.

We intend to work with the CEC as it reviews a variety of RPS requirements in developing revisions to the CEC's *RPS Eligibility Guidebook*.

We also must consider the possibility that we could need to revisit some aspects of this decision in the future. The landscape within which our RPS program functions is always changing, but some possibilities are already visible. Legislation to increase RPS goals to 33% of retail sales by 2020 may be enacted. The full implementation of AB 32 may lead to other changes as well. Review of how the TREC market is functioning may reveal unexpected challenges or opportunities not fully encompassed in this decision.

5. Comments on Proposed Decision

The proposed decision (PD) of ALJ Simon in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. To aid parties in commenting on this PD, a brief discussion of comments filed in response to the PD mailed on October 29, 2008 is provided in Appendix E.

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. Allowing the use of TRECs for RPS compliance will give RPS-obligated LSEs increased options for RPS compliance.

2. The use of TRECs for RPS compliance will be substantially compatible with existing RPS flexible compliance rules.

3. As the California TREC market develops, it is likely to provide support for the development of new RPS-eligible generation.

4. In view of the benefits of the use of TRECs for RPS compliance and the development of a viable TREC market, it is reasonable to allow the use of TRECs for RPS compliance, subject to reasonable conditions.

5. This Commission adopted the report on the tracking system required by § 399.16(a)(1) by Res. E-4178 (November 21, 2008).

6. The CEC adopted the report on the tracking system required by § 399.16(a)(1) at its business meeting on December 3, 2008.

7. In the early years of a California TREC market, prior to LSEs' attaining the goal of 20% of retail sales from RPS-eligible generation resources, demand for TRECs is likely to exceed supply.

8. In the early years of a California TREC market, it is reasonable to protect ratepayers from the potential for volatility and high spikes in TREC prices.

9. In order to promote price stability for ratepayers without damaging the basic structure of the TREC market, it is reasonable to impose a reviewable limitation of 5% of APT annually on the use of TRECs for RPS compliance by the three large IOUs.

10. In order to provide temporary protections for ratepayers without damaging the basic structure of the TREC market or undermining the financial incentives for new renewable construction that are among the longer-term benefits of a TREC market, it is reasonable to impose a reviewable price cap of $50/REC for TREC purchases by IOUs.

11. In order to promote liquidity in the TREC market, it is reasonable to impose a limit on the period of time that TRECs and RECs associated with energy in bundled contracts used for RPS compliance may be held in an active WREGIS sub-account before being retired for RPS compliance.

12. Allowing LSEs to unbundle and sell RECs from bundled contracts for RPS-eligible energy, on both a spot and forward basis, will promote liquidity in the TREC market and provide RPS compliance flexibility.

13. Because it is not always possible for the viability of REC-only contracts to be assessed in the same way as bundled contracts, it is reasonable to limit the earmarking of REC-only contracts, to those contracts between an LSE and one RPS-eligible generator providing the TRECs.

14. In order to preserve the Commission's ability to determine compliance with RPS obligations and to eliminate the potential for double-counting of some

RECs, it is reasonable to prohibit the unbundling and trading of RECs from the first three years of anticipated or actual deliveries of any RPS procurement contract, whether bundled or REC-only, that has been earmarked.

15. In view of the uncertainties involved in the early years of a new TREC market, it is reasonable to provide for regular assessments of market performance by Energy Division staff and, as needed, review of the market rules set forth in this order.

Conclusions of Law

1. The use of TRECs for RPS compliance should be authorized.
2. All statutory preconditions to this authorization have been met.
3. Trading of RECs that meet the requirements of D.08-08-028 and any subsequent Commission decision or any applicable legislation characterizing RECs should begin not earlier than June 1, 2009.
4. Only RECs tracked in WREGIS should be allowed to be used for RPS compliance.
5. LSEs should be allowed to unbundle and sell RECs from bundled contracts for RPS-eligible energy, on both a spot and forward basis, subject to conditions that promote RPS compliance and prevent double-counting.
6. Existing RPS flexible compliance rules should be applied to the use of TRECs for RPS compliance, with the following adjustments:

    a. REC-only contracts between an LSE and one RPS-eligible generator supplying the TRECs may be earmarked;

    b. RECs may not be unbundled or traded in the first three years of contracts (whether bundled or REC-only) that have been earmarked.

7. RECs associated with RPS-eligible generation under contracts with California LSEs or POUs signed prior to 2005 that do not allocate ownership or

disposition of RECs and contracts pursuant to PURPA with QFs signed after January 1, 2005 may not be unbundled or used for RPS compliance separate from the associated energy.

8. A reasonable limit on the period of time that TRECs and RECs associated with energy delivered in bundled contracts used for RPS compliance may be held in an active WREGIS sub-account before being retired for RPS compliance should be imposed.

9. In order to allow flexibility in RPS procurement and compliance, IOUs should be able to enter into voluntary TREC transactions even if their cost limitation, as set out in § 399.15(d), has been reached.

10. In order to promote consistency in RPS procurement and protect ratepayers from unnecessary transaction costs, so long as the CEC accepts as RPS-eligible those transactions with RPS-eligible generation facilities that are not sited in California and do not have their first point of interconnection with the WECC grid in California, in which the RPS-obligated LSE buys RECs and energy from the RPS-eligible facility, sells the energy back to the generation facility, and then "matches" the RECs for RPS compliance purposes with energy delivered into California from imports under a pre-existing PPA or with imports of energy at prices that are indexed to energy or fuel prices, such transactions should be treated as REC-only transactions for purposes of RPS compliance.

11. If an RPS-obligated LSE enters a contract with an RPS-eligible generation facility that is not sited in California and does not have its first point of interconnection with the WECC grid in California in which the buyer receives RECs but not energy, such a transaction should be considered a bundled transaction if the LSE provides in a single submission to Energy Division a contract or contracts for RECs and for firm delivery into California of a quantity

of newly acquired energy equivalent to that associated with the RECs, for the same contractual term, at a price that is not indexed to energy or fuel prices.

12. A reviewable limit on the proportion of annual RPS obligations that can be met by using TRECs should be imposed on the three large utilities.

13. A reviewable cap on the price a utility may pay for a TREC should be imposed; the price cap should not be treated as a per se reasonable price for a TREC.

14. IOUs should include proceeds of the sale of TRECs in their ERRA or ECAC accounts, or equivalents (such as power purchase accounts) for the benefit of ratepayers. Any IOU not currently having an appropriate accounting method should file an advice letter within 90 days of the date of this decision proposing an accounting method.

15. In order to allow multi-jurisdictional utilities to recover the reasonable costs of REC-only contracts procured solely for California RPS compliance, such contracts should be submitted for Commission approval via advice letter.

16. In order to facilitate the integration of REC-only transactions into the RPS flexible compliance rules, the Director of Energy Division should be authorized, consistent with the ALJ's Reporting Ruling, to make revisions to the RPS compliance spreadsheet and other RPS reporting formats to implement the requirements and conditions set forth in this order. Such revisions should include but not be limited to reports on TREC purchases, sales, and prices.

17. In order to allow the use of TRECs for RPS compliance as soon as practicable, this order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Renewable energy credits (RECs) that are procured and traded separately from the energy generated by a facility that is eligible for the renewables portfolio standard (RPS) with which the RECs are associated may be used for RPS compliance in accordance with the rules set forth in this decision.

2. Procurement and trading of tradable RECs (TRECs) in accordance with the rules set out in this decision may commence June 1, 2009.

3. Only RECs tracked and retired in the Western Renewable Energy Generation System (WREGIS) shall be used for RPS compliance.

4. Any RECs tracked in WREGIS that conform to the requirements of Decision (D.) 08-08-028 and any subsequent Commission decision or any applicable legislation characterizing RECs may be used for RPS compliance, subject to the restrictions in Ordering Paragraphs (OPs) 6 and 7, below.

5. Any RECs tracked in WREGIS associated with electricity generated on or after January 1, 2008 may be procured and traded separately from the associated energy, subject to the restrictions set forth in OPs 6 and 7.

6. RECs associated with RPS-eligible energy delivered under procurement contracts signed prior to 2005 with California RPS-obligated load-serving entities (LSEs) or publicly owned utilities that do not allocate ownership or disposition of the RECs shall be used for RPS compliance only if they are not transferred to an entity other than the original buyer in WREGIS prior to being retired for RPS compliance.

7. RECs associated with RPS-eligible energy delivered under procurement contracts for both energy and RECs pursuant to the Federal Public Utility Regulatory Policies Act of 1978 with qualifying facilities signed after January 1,

2005 shall be used for RPS compliance only if they are not transferred to an entity other the original buyer in WREGIS prior to being retired for RPS compliance.

8. In order to be used for RPS compliance, RECs may be retained in active sub-accounts in WREGIS for no more than three calendar years (inclusive of the year in which the electricity associated with the RECs was generated) after the electricity associated with the RECs was generated before being transferred to the WREGIS retirement sub-account of an RPS-obligated LSE.

9. Once RECs are retired in WREGIS for use for RPS compliance, they may be banked for RPS compliance in future years in accordance with the RPS flexible compliance rules.

10. The RECs from bundled contracts currently delivering RPS-eligible energy may be unbundled and traded separately from the associated energy, so long as, once the RECs have been sold, the associated energy is not used for RPS compliance, subject to the restrictions in OP 12.

11. The RECs from bundled contracts scheduled to deliver RPS-eligible energy in the future may be unbundled and traded on a forward basis separately from the associated energy, so long as, once the RECs are generated, they are tracked in WREGIS and, once the RECs have been sold, the associated energy is not used for RPS compliance, subject to the restrictions in OP 12.

12. RECs may not be unbundled and traded from the first three years of deliveries under any bundled RPS procurement contract that has been earmarked to apply to a shortfall in meeting an RPS-obligated LSE's annual procurement target (APT) in the year the bundled contract was signed, subject to the restrictions in OPs 6 and 7.

13. TREC contracts between an LSE and one RPS-eligible generator supplying the TRECs may be earmarked for RPS compliance purposes, but no other types of TREC contracts may be earmarked.

14. TRECs may not be sold or traded from the first three years of a REC-only RPS procurement contract that has been earmarked to apply to a shortfall in meeting an RPS-obligated LSE's APT in the year the REC-only contract was signed, subject to the restrictions in OPs 6 and 7.

15. Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE) may use TRECs for no more than 5% of their APT. Not less than 24 months after the imposition of this limit, any party may request that the Commission modify or eliminate the limit.

16. No TRECs for which the levelized amount paid is greater than $50.00 per TREC may be used for RPS compliance by any IOU. Not less than 24 months after the imposition of this price cap, any party may request that the Commission modify or eliminate the price cap.

17. So long as the California Energy Commission (CEC) accepts as RPS-eligible those transactions with RPS-eligible generation facilities that are not sited in California and do not have their first point of interconnection with the Western Electricity Coordinating Council (WECC) grid in California in which the RPS-obligated LSE buys RECs and energy from the RPS-eligible facility, sells the energy back to the generation facility, and then "matches" the RECs for RPS compliance purposes with imports of energy into California under a pre-existing power purchase agreement (PPA), or with imports of energy at prices that are indexed to energy or fuel prices, any such transactions which are signed on or after April 1, 2009 shall be treated as REC-only transactions for purposes of RPS compliance.

18. If an RPS-obligated LSE enters a contract with an RPS-eligible generation facility that is not sited in California and does not have its first point of interconnection with the WECC grid in California in which the buyer receives

RECs but not energy, such a transaction shall be considered a bundled transaction only if the LSE provides in a single submission to Energy Division a contract or contracts for RECs and for firm delivery into California of a quantity of newly acquired energy equivalent to that associated with the RECs, for the same contractual term, at a price that is not indexed to energy or fuel prices.

19. IOUs that have reached the RPS procurement cost limitation set forth in § 399.15(d) may enter into voluntary TREC transactions.

20. REC-only contracts of IOUs may be reviewed in the same manner and according to the same procedures as bundled RPS procurement contracts of analogous type and length.

21. IOUs shall promptly set up an appropriate accounting method to apply proceeds of the sale of RECs for the benefit of ratepayers. Any IOU not currently having an appropriate accounting method shall file an advice letter within 90 days of the date of this decision proposing an accounting method.

22. Any REC-only contracts procured solely for California RPS compliance for which a multi-jurisdictional utility seeks recovery of costs must be submitted via advice letter.

23. The Director of Energy Division is authorized to review existing RPS reporting formats and tools and undertake appropriate revisions to allow complete reporting and monitoring of the provisions in this order.

24. The Director of Energy Division may require the submission of appropriate documentation to verify compliance with any of the requirements set forth above, including but not limited to TREC purchases, sales, and prices.

25. The following non-modifiable standard terms and conditions shall be included in all contracts for RPS procurement, whether bundled contracts or REC-only purchases:

a. STC REC-1. Transfer of renewable energy credits

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

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

Seller warrants that all necessary steps have been taken to allow the renewable energy credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System.

26. The following non-modifiable standard terms and conditions shall be included in all REC-only contracts of regulated utilities other than multi-jurisdictional utilities:

STC REC-3. CPUC Approval

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

(a) approves this Agreement in its entirety, including payments to be made by the Buyer, subject to CPUC review of the Buyer’s administration of the Agreement; and

(b) finds that any procurement pursuant to this Agreement is procurement of renewable energy credits that conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public

Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation, for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 *et seq.*), Decision 03-06-071, or other applicable law.

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

27. The assigned Commissioner or assigned administrative law judge in R.08-08-009 or its successor is authorized to issue any rulings necessary to facilitate revision of the RPS reporting methods to accommodate the use of tradable RECs for RPS compliance.

28. Three related issues identified in this proceeding shall be addressed in R.08-08-009, and the record related to these issues shall be transferred to R.08-08-009:

a. The revision of utilities' least-cost best-fit methodologies to include evaluation of REC-only contracts.

b. The process of approval of utilities' bundled energy and REC-only short-term contracts (whether bilateral or the result of solicitations) and long-term bilateral contracts.

c. 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.

29. All utilities that have submitted RPS procurement plans for 2009 in R.08-08-009 shall amend those plans to include explanations of their planning for

the use of TRECs to meet RPS procurement obligations in 2009, on a schedule to be set by the assigned Commissioner or assigned administrative law judge.

30. R.06-02-012 is closed.

This order is effective today.

Dated ____________________________, at San Francisco, California.

APPENDIX A

§ 399.16. Use of renewable energy credits to satisfy the requirements of the renewables portfolio standard

(a) The commission, by rule, may authorize the use of renewable energy credits to satisfy the requirements of the renewables portfolio standard established pursuant to this article, subject to the following conditions:

(1) Prior to authorizing any renewable energy credit to be used toward satisfying annual procurement targets, the commission and the Energy Commission shall conclude that the tracking system established pursuant to subdivision (c) of Section 399.13, is operational, is capable of independently verifying the electricity generated by an eligible renewable energy resource and delivered to the retail seller, and can ensure that renewable energy credits shall not be double counted by any seller of electricity within the service territory of the Western Electricity Coordinating Council (WECC).

(2) A renewable energy credit shall be counted only once for compliance with the renewables portfolio standard of this state or any other state, or for verifying retail product claims in this state or any other state.

(3) The electricity is delivered to a retail seller, the Independent System Operator, or a local publicly owned electric utility.

(4) All revenues received by an electrical corporation for the sale of a renewable energy credit shall be credited to the benefit of ratepayers.

(5) No renewable energy credits shall be created for electricity generated pursuant to any electricity purchase contract with a retail seller or a local publicly owned electric utility executed before January 1, 2005, unless the contract contains explicit terms and conditions specifying the ownership or disposition of those credits. Deliveries under those contracts shall be tracked through the accounting system described in subdivision (b) of Section 399.13 and included in the baseline quantity of eligible renewable energy resources of the purchasing retail seller pursuant to Section 399.15.

(6) No renewable energy credits shall be created for electricity generated under any electricity purchase contract executed after January 1, 2005, pursuant to the federal Public Utility Regulatory Policies Act of 1978 (16 U.S.C. Sec. 2601 et seq.).

Deliveries under the electricity purchase contracts shall be tracked through the accounting system described in subdivision (b) of Section 399.12 and count toward the renewables portfolio standard obligations of the purchasing retail seller.

(7) The commission may limit the quantity of renewable energy credits that may be procured unbundled from electricity generation by any retail seller, to meet the requirements of this article.

(8) No electrical corporation shall be obligated to procure renewable energy credits to satisfy the requirements of this article in the event that the total costs expended above the applicable market prices for the procurement of eligible renewable energy resources exceeds the cost limitation established pursuant to subdivision (d) of Section 399.15.

(9) Any additional condition that the commission determines is reasonable.

(b) The commission shall allow an electrical corporation to recover the reasonable costs of purchasing renewable energy credits in rates.

(END OF APPENDIX A)

APPENDIX B

STAFF STRAW PROPOSAL

COMPLIANCE QUESTIONS	STRAW PROPOSAL
Market Participants	
• Who can participate in the California compliance REC market?	There are no limits on market participation.
• Should the REC trading rules differ for third parties (any non RPS-obligated entity)?	To the greatest extent possible, rules should be consistent for all participants.
TREC Usage Limits	
• Pursuant to Pub. Util. Code § 399.16(a)(7), the Commission may limit the quantity of tradable RECs (TRECs) procured for RPS compliance.	To address usage limits, a minimum quota mechanism, similar to the one set forth in D.07-05-028 for short term contracts, will be applied to TRECs.
• Should there be a limit on the quantity of tradable RECs that can be used by LSEs for RPS compliance? Should the limit be different for different classes of LSEs?	The minimum quota will allow, in any calendar year, LSEs to count short-term REC contracts for RPS compliance only if, in the same calendar year, the LSE signs long-term bundled contracts or bundled contracts with new facilities whose aggregated annual expected deliveries[1] total at least 0.25% of its prior year's retail sales.

[1] This is different from the minimum quota framework set forth in D.07-05-028, which requires that the *total* deliveries expected from the long-term contracts and contracts with new facilities are greater than 0.25% of prior year's retail sales before short-term contracts can be signed.

Flexible Compliance: Banking	
• Should tradable RECs have an "expiration date"? • Should RPS-obligated LSEs be able to "bank" tradable RECs without limitation as to quantity? • Should RPS-obligated LSEs be able to "bank" tradable RECs without temporal limitations? *Note: Currently, there are no temporal or quantity restrictions for banking bundled RPS contracts. Flexible compliance is tracked for each LSE in its Reporting and Compliance Spreadsheet submitted in biannual performance reports required by D.06-10-050.*	<u>Banking within WREGIS</u> In order for tradable RECs to be used for RPS compliance, they must be retired[2] in WREGIS within three compliance years (including compliance year in which it was generated).[3] <u>Banking after WREGIS</u> After RECs are retired in WREGIS, they can be banked indefinitely for RPS compliance purposes. The flexible compliance for RECs and RPS bundled procurement will be tracked by the Compliance Spreadsheets submitted as part of the biannual Compliance Reports (D.06-10-050).

[2] "A Retirement Subaccount is used as a repository for WREGIS Certificates that the Account Holder wants to designate as Retired and remove from circulation (e.g., to demonstrate compliance with a state's RPS). Once a Certificate has been transferred into a WREGIS Retirement Subaccount, it cannot be transferred again to any other Account." (WREGIS Operating Rules, p. 6.)

[3] The LSEs should create a banking Active sub-account within WREGIS to 'hold' RECs until they are retired for compliance purposes.

Flexible Compliance: Earmarking	
• Should earmarking[4] be allowed for TRECs?	No tradable RECs can be used for earmarking. No forward REC contracts can be used for earmarking.
Treatment of Bundled[5] Contracts	
• What types of existing and future bundled RPS contracts can be unbundled for REC trading (excluding contracts pursuant to Pub. Util. Code § 399.16(a) for which no RECs will be created)?	Beginning on January 1, 2009, LSEs can unbundle and sell the RECs (that are tracked in WREGIS) from currently operational RPS projects. (Once the RECs are sold, they cannot be used for RPS compliance by the selling LSE. The null power also cannot be used for RPS compliance by any LSE.) Beginning on January 1, 2009, LSEs can unbundle and sell RECs (that are tracked in WREGIS), on a forward basis, from Commission-approved RPS projects that are not yet online. (Once the RECs are sold, they cannot be used for RPS compliance by the selling LSE. The null power also cannot be used for RPS compliance.)

4 Earmarking is a flexible compliance tool that LSEs can conditionally use to defer deficits. See D.06-10-050, Attachment A, pages 9-10.

5 A bundled RPS contract is a power purchase agreement that conveys all energy, capacity and environmental attributes to a load-serving entity.

	However, LSEs cannot unbundle the first year of a bundled contract if it has been set aside for RPS earmarking. - LSEs can unbundle subsequent years of an earmarked bundled contract
Cost Recovery	
• What is the review and approval process for IOU REC contracts? *(Currently, all IOU bundled RPS contracts must be filed by advice letter. The contract review process for short-term bundled contracts is being separately developed in R.06-02-012.)* • What price evaluation mechanism should the Commission use to evaluate whether a REC contract price is reasonable? • Should the Commission establish standard terms and conditions (modifiable and/or non-modifiable) to be contained in REC contracts?	<u>Review process:</u> Long-term REC contracts (either from a solicitation or bilateral) must be filed with the Commission by advice letter. All short-term REC contracts should follow the same approval process that is established in R.06-02-012 for short-term bundled contracts. <u>Price evaluation criteria:</u> IOUs should solicit REC contracts in their annual renewable RFOs. As part of this process, the IOUs must modify their least cost, best fit (LCBF) evaluation methodologies to shortlist the most competitive REC contracts. The LCBF methodology should compare the benefits and costs of bundled contracts with REC transactions and evaluate them relative to the LSE's entire RPS portfolio. A price cap will also be used to protect ratepayers from unreasonable costs. The price cap for any REC contract (short term, long term, bid into a solicitation,

bilateral) is $35/REC levelized using the IOU's approved discount rate.

Bilateral REC contracts are allowed also and are subject to the $35/REC levelized price cap.

Standard terms and conditions:

Each REC contract must contain a Commission-approved term identifying the RECs and their attributes transferred to the buyer. This term is not modifiable.

(END OF APPENDIX B)

APPENDIX C

NEW AND REVISED STANDARD TERMS AND CONDITIONS

STC REC-1 Transfer of renewable energy credits (Applies to all REC-only and bundled contracts)

Non-modifiable

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

STC REC-2 Tracking of RECs in WREGIS (Applies to all REC-only and bundled contracts) Non-modifiable

Seller warrants that all necessary steps have been taken to allow the renewable energy credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System.

STC REC-3 CPUC Approval (Applies to REC-only contracts of regulated utilities other than multi-jurisdictional utilities)

Non-Modifiable

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

(a) approves this Agreement in its entirety, including payments to be made by the Buyer, subject to CPUC review of the Buyer's administration of the Agreement; and

(b) finds that any procurement pursuant to this Agreement is procurement of renewable energy credits that conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation, for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 *et seq.*), Decision 03-06-071, or other applicable law.

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

(END OF APPENDIX C)

APPENDIX D

Summary of TREC Rules Announced in This Decision

This decision sets rules for the use of TRECs for RPS compliance and for the TREC market. The orders and guidance (while not limited by this summary) are summarized below. Other sources relevant to TRECs include D.08-08-028, the CEC's *RPS Eligibility Guidebook*, and the WREGIS Operating Rules.

What is a tradable renewable energy credit (TREC) transaction?

- A transaction in which an entity procures only a REC (and not the underlying energy) from another entity.

Effective date of REC trading

- RPS-obligated load-serving entities[1] may begin procuring and trading RECs on June 1, 2009.

Eligibility of TRECs

- All TRECs must be associated with RPS-eligible energy generated on or after January 1, 2008.
- All TRECs must be tracked in WREGIS to be used for RPS compliance.
- The RECs from bundled contracts currently delivering RPS-eligible energy may be unbundled and traded separately from the associated energy, subject to the exceptions below.
- The RECs from bundled contracts scheduled to deliver RPS-eligible energy in the future may be unbundled and traded on a forward basis separately from the associated energy, subject to the exceptions below.

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[1] Load-serving entities (LSEs) include: investor-owned utilities (IOUs), energy service providers (ESPs), and community choice aggregators (CCAs).

- Exceptions:

  1. RECs associated with RPS-eligible energy delivered under procurement contracts signed prior to 2005 with California RPS-obligated LSEs or publicly owned utilities cannot be traded unless the contract explicitly assigns ownership or disposition of the RECs.

  2. RECs associated with RPS-eligible energy delivered under procurement contracts pursuant to the Federal Public Utility Regulatory Policies Act of 1978 with qualifying facilities signed after January 1, 2005 can not be traded.

Flexible compliance rules for TRECs

Banking

- In order to be used for RPS compliance, TRECs may be retained in active sub-accounts in WREGIS for no more than three calendar years (inclusive of the year in which the electricity associated with the RECs was generated) after the electricity associated with the RECs was generated.
- Once RECs are retired in WREGIS for RPS compliance, they may be banked for RPS compliance in future years in accordance with the RPS flexible compliance rules.

Earmarking

- TREC contracts between an LSE and one RPS-eligible generator may be earmarked for RPS compliance purposes, but no other types of TREC contracts may be earmarked.
- An LSE may not unbundle and trade RECs associated with energy generated in the first three years of an RPS contract (whether bundled or REC-only) that is being used for earmarking.

Limit on use of TRECs for RPS compliance

- The three large IOUs may not use TRECs for more than 5% of their annual procurement targets. Not less than 24 months after the imposition of this limit, it may be reviewed by the Commission at the request of any party.

Contract review and approval of TREC transactions

- IOUs may submit TREC contracts for CPUC review and approval by advice letter starting June 1, 2009.
- Energy Division staff may use present methods of analyzing advice letters for bundled contracts, and make any adaptations necessary, for reviewing REC-only contracts. These methods may be reviewed in R.08-08-009.
- TRECs for which an IOU pays more than $50/TREC may not be used for RPS compliance. Not less than 24 months after the imposition of this price cap, it may be reviewed by the Commission at the request of any party.
- The temporary $50/TREC price cap does not make a TREC priced at or below $50 reasonable. A utility will still have to provide sufficient information in its advice letter filing to demonstrate that the TREC contract is reasonable.
- All REC-only contracts must contain the following two non-modifiable standard terms and conditions: (1) Transfer of renewable energy credits and (2) Tracking of RECs in WREGIS.
- IOU REC-only contracts must contain a third STC: Commission Approval.
- IOUs may enter into voluntary TREC transactions even if their cost limitation pursuant to § 399.15(d) has been reached.
- TREC purchases are not eligible for any above-market funds set aside pursuant to § 399.15(d)(1). No IOU is required to purchase TRECs to meet RPS obligations if it has otherwise exceeded its cost limitation for bundled contracts.
- If an RPS-obligated LSE enters a contract with an out-of-state RPS-eligible generator in which the buyer receives RECs but not energy, the LSE must provide in a single submission to Energy Division a contract or contracts for RECs and for firm delivery into California of a quantity of energy equivalent to that associated with the RECs, for the same contractual term, at a price that is not indexed to energy or fuel prices, in order for the deal to be considered a bundled transaction.

Delivery rules for TREC transactions

- The decision on whether a TREC contract satisfies RPS delivery rules remains with the CEC. As for bundled contracts, the Energy Division may request written confirmation from the CEC about whether the contract complies with RPS delivery rules.

(END OF APPENDIX D)

APPENDIX E

COMMENTS ON PRIOR PROPOSED DECISION (10/29/08)

Comments on the proposed decision that was mailed on October 29, 2008 were filed on November 18, 2008 by Aglet; AReM; BVES; CEERT; DRA; Evolution Markets; GPI; Iberdrola Renewables, Inc. and Horizon Wind Energy (jointly); IEP; LSA; NaturEner USA LLC; PacifiCorp; PG&E; SCE; SDG&E; Shell Energy; Sierra Pacific; Solar Alliance; TURN, Coalition of California Utility Employees, and California Unions for Renewable Energy (jointly); UCS; and Wasatch Wind, Inc.[1] Reply comments were filed November 24, 2008 by AReM, CEERT, DRA, IEP, PacifiCorp, PG&E, Powerex, SCE, SMUD, Sierra Pacific, and UCS.

The most significant areas of substantive comments were cost recovery, including both contract approval and TREC prices; classification of TREC transactions; banking of RECs; and earmarking of TREC contracts.

Several parties urge that this decision should set new procedures for review and approval of REC-only contracts. The discussion in the PD has been expanded to make clear that Energy Division staff may use all current processes of RPS contract review for reviewing REC-only contracts. Any changes to review and approval processes, for both bundled and TREC contracts, will be made in R.08-08-009.

Comments on the unlimited use of TRECs for RPS compliance are somewhat sparse. Most commenting parties supported some limitation on

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1 Motions for Party Status filed by Evolution Markets, NaturEner, and Wasatch Wind were granted November 25, 2008.

TREC usage, though their proposals varied. Some parties simply supported the Straw Proposal; others made their own suggestions. The PD has been revised to provide a limit on TRECs usage that does not correspond to any of the specific proposals, but responds to the rationales advanced by TURN and UCS to have some type of usage limitation.

Commenters both support and oppose the temporary price cap of $50/REC. The arguments advanced by commenters urging use of a price benchmark or elimination of any price cap do not provide any new analysis that persuade us to change this aspect of the PD.[2] The PD has been revised to make the interim nature of the price cap clearer in the ordering paragraphs.

Comments on the classification of certain transactions as TREC transactions reveal strong views among the parties, both about the authority of this Commission to make such a determination, and about the merits of the determination itself. Aided by comments about the scope of this Commission's jurisdiction made by DRA and UCS, the PD has been revised to clarify the allocation of authority between this Commission and the CEC. The analysis of the transactions is now more focused on the benefits to ratepayers provided by these transactions. These revisions provide more thorough and accessible support for the PD's conclusions on this subject, which have been modified to allow certain transactions that

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[2] IEP's proposal to increase the RPS penalty amount and SCE's advocacy of an alternative compliance payment would require changes to prior Commission decisions and the RPS statute, respectively. These proposals are beyond the scope of this decision.

could be considered to be REC-only deals to be treated as bundled contracts if certain conditions protecting ratepayers are met.

Comments on banking of RECs provide a wide range of suggestions, from unlimited banking of RECs to specific requirements for the order in which banked RECs should be applied to RPS compliance. The substance of the PD in this area is not changed, but the discussion has been revised to clarify the relationship between maintaining RECs in WREGIS accounts and banking RECs within the RPS flexible compliance system.

Commenters on earmarking both support and oppose the PD's prohibition on earmarking TREC contracts. We conclude that a middle ground, allowing the earmarking of those TREC contracts that are likely to present few problems for staff review, is appropriate. The PD has been changed to allow limited earmarking of TREC contracts, subject to restrictions on the trading of TRECs from the first three years of the earmarked contract.

Changes to the new STCs have been made to align the new STCs more closely with existing STC language.

Several comments request clarification of the timing on the procurement of TRECs, as well as the temporal limits on eligible TRECs. New section 4.12 responds to these requests.

Section 4.11 has been removed. It merely restated the positions expressed in D.08-08-028 and D.08-10-037 and did not significantly contribute to the discussion of the rules for the TREC market.

Appendix D, summarizing the TREC rules set forth in the PD, has been added.

(END OF APPENDIX E)

INFORMATION REGARDING SERVICE

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

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 March 26, 2009, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid