



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

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12-05-07
04:59 PM

Order Instituting Rulemaking to Develop)
Additional Methods to Implement the California)
Renewables Portfolio Standard Program.)
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Rulemaking 06-02-012
(Filed February 16, 2006)

POST-WORKSHOP REPLY COMMENTS OF SOUTHERN CALIFORNIA EDISON
COMPANY (U 338-E) REGARDING TRADABLE RENEWABLE ENERGY CREDITS
AND OPPOSITION TO MOTION OF TURN AND AGLET REQUESTING
EVIDENTIARY HEARINGS

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Dated: December 5, 2007

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In accordance with the October 16, 2007 Administrative Law Judge’s (“ALJ”) Ruling Requesting Post-Workshop Comments on Tradable Renewable Energy Credits (the “Ruling”), and the October 31, 2007 notice of extension of time granted to file reply comments, Southern California Edison Company (“SCE”) respectfully submits these reply comments. In addition, in accordance with the Ruling, the notice of extension, and ALJ Simon’s November 8 e-mail regarding the schedule for requesting evidentiary hearings, SCE has included in these reply comments, its Opposition to TURN’s and Aglet’s Request for Evidentiary Hearings.

I.

THE PARTIES TO THIS PROCEEDING
SUPPORT THE USE OF UNBUNDLED TRADABLE RECS

The Post-Workshop Comments on Tradable Renewable Energy Credits (“RECs”) reveal that almost universally the parties in this proceeding affirmatively support the use of unbundled, tradable RECs as a mode of compliance with California’s Renewables Portfolio Standard (“RPS”) legislation. Indeed, no party affirmatively objects to the authorization of unbundled

RECs. In addition, for the most part, parties are in agreement as to the role and impact RECs will play in the RPS market. Mainly, parties recognize that RECs alone will not enable California to obtain its RPS goals or solve all of the challenges facing the RPS program.¹ Instead, RECs simply provide additional contracting flexibility and options in allowing load serving entities (“LSEs”) to contract for renewable energy.² This additional flexibility will lead to lower transaction costs³ in obtaining renewable attributes from renewable resources that have limited access to transmission or are located a far distance from their buyers. These added benefits, in the end, will only promote a better and more efficient RPS program in general, which in turn will help lead to more development opportunities.

Furthermore, the parties to this proceeding also agree on many of the important issues that were raised by the Commission in the Ruling. For example, most parties agree that the authorization of unbundled RECs for RPS compliance does not require sweeping changes to the existing RPS rules as demonstrated by the general support for the Energy Division’s straw proposal,⁴ which generally adopts the same rules for unbundled RECs as they are applied to bundled transactions and takes a hands-off approach to the regulation of a REC market.

¹ See Division of Ratepayer Advocates (“DRA”) Post Workshop Opening Comments (“Opening Comments”) at 3; The Utility Reform Network (“TURN”) Opening Comments at 7-8; Union of Concerned Scientist (“UCS”) Opening Comments at 2; Pacific Gas and Electric Company (“PG&E”) Opening Comments at 3; San Diego Gas and Electric Company (“SDG&E”) Opening Comments at 4; Evolution Markets Opening Comments at 5; California Central Power (“CCP”) Opening Comments at 1; and Powerex Corp. Opening Comments at 3.

² See DRA Opening Comments at 2; TURN Opening Comments at 1-3; PacifiCorp Opening Comments at 3; PG&E Opening Comments at 3-4; Pilot Power Group (“Pilot Power”) Opening Comments at 4; Alliance for Retail Energy Markets and the Western Power Trading Forum (“AReM/WPTF”) Opening Comments at 3; Powerex Opening Comments at 3; SDG&E Opening Comments at 5; UCS Opening Comments at 2; Evolution Markets Opening Comments at 4; Bear Valley Electric Opening Comments at 1-2; and CCP Opening Comments at 1.

³ See TURN Opening Comments at 8; AReM/WPTF Opening Comments at 11; PG&E Opening Comments at 4-6; Pilot Power at 6; Powerex Opening Comments at 3; PacifiCorp Opening Comments at 3; and Solar Alliance and the California Solar Energy Industries Association (“Solar Alliance/CalSEIA”) Opening Comments at 2.

⁴ See TURN Opening Comments at 16; Center For Energy Efficiency and Renewable Technologies (“CEERT”) Opening Comments at 2; CCP Opening Comments at 3; Green Power Institute (“GPI”) Opening Comments at 5; PacifiCorp Opening Comments at 11; PG&E Opening Comments at 12; Powerex Opening Comments at 4; UCS Opening Comments at 9-15; and Independent Energy Producers Association (“IEP”) Opening Comments at 21-25.

However, as discussed in more detail below, the overwhelming exception to the support for the straw proposal is the \$35/REC cost cap.⁵

In addition, many parties agree that a supply and demand imbalance currently exists in the renewable market, and that this market reality is unrelated to whether the Commission authorizes the use of unbundled RECs.⁶ As suggested by SCE and others, this imbalance could be alleviated by relaxing the in-state delivery requirements.⁷ Not only would this maximize the State's ability to reach the 20 percent goal by 2010, it would likely allow RPS-obligated LSEs to do so at a lower cost.

Finally, many parties agree that while Dr. Weiss's economic analysis is theoretically correct, it is not applicable to the California market.⁸ More specifically, Dr. Weiss's analysis does not take into account the regulatory nuances of the California RPS program such as earmarking of contracts, unlimited banking, the misalignment of shareholder and customer interest in the penalty scheme, cumulative deficits of previous procurement shortfalls, and the limited automatic deferral of RPS procurement shortfalls. These characteristics render Dr. Weiss's conclusions regarding the elasticity of the supply and demand curve for RECs and of a "boom and bust" market incorrect when applied to California.

⁵ See UCS Opening Comments at 14; PG&E Opening Comments at 15; GPI Opening Comments at 6-7; CEERT Opening Comments at 13-14; SDG&E Opening Comments at 8; IEP Opening Comments at 12; and Solar Alliance/CalSEIA Opening Comments at 2-3.

⁶ See Pilot Power Opening Comments at 5; GPI Opening Comments at 3; AReM Opening Comments at 4; PG&E Opening Comments at 4; and DRA Opening Comments at 3; *see also* PacifiCorp Opening Comments at 4 (The unbundled REC market will reflect an imbalance); UCS Opening Comments at 3 (The unbundled REC market will reflect an imbalance).

⁷ See PG&E Opening Comments at 3; SDG&E Opening Comments at 4-5; IEP Opening Comments at 8; and PacifiCorp Opening Comments at 4.

⁸ See AReM Opening Comments at 7; CEERT Opening Comments at 2-3; GPI Opening Comments at 4-5; PacifiCorp Opening Comments at 6-7; PG&E Opening Comments at 8-10; Powerex Opening Comments at 4; IEP Opening Comments at 11-12; and SDG&E Opening Comments at 8; *see also* DRA Opening Comments at 8 ("In a regulated utility system the boom-bust pattern doesn't apply").

II.

THE COMMISSION SHOULD NOT IMPOSE A PRICE CAP ON COST RECOVERY OF TRADABLE RECS

As stated in SCE's opening comments, the \$35/REC cost cap suggested in the straw proposal merely highlights a greater problem in the RPS program: the misalignment of shareholder and customer interest in the RPS penalty scheme. Rather than maintaining the current interim penalty scheme that results in this misalignment, SCE proposes in its opening comments that stakeholders and policy makers consider implementing an alternative compliance payment ("ACP") model. Such a model would better align the interests of the investor owned utilities' ("IOUs") customers, the IOUs' shareholders, and the stated goals of the RPS program.

Notwithstanding this greater issue, and as many of the parties recognize, the establishment of a cost cap is unnecessary. In fact, other than TURN, which indicated support for the price cap without explanation, all of the parties that commented on the issue do not support the \$35/REC limit imposed in the straw proposal.⁹ As SCE's opening comments indicate, willing sellers and buyers should determine the value of RECs in light of all of the current circumstances. Whether or not the price is reasonable for the IOUs' customers would be subject to Commission review and approval. It is unclear why the Commission would want to predetermine this outcome and potentially preclude the IOUs from procuring RECs that may still provide customer value even though the costs may exceed an arbitrary amount.

Moreover, SCE is able to evaluate bids for unbundled REC contracts in the same manner and against bids it receives for bundled renewable energy as part of its annual solicitations. Based on this evaluation, SCE (or any other IOU) would be able to submit to the Commission for approval a contract for unbundled RECs. Once such a contract is before the Commission, and just as the Commission reviews bundled transactions, reasonableness can be determined based

⁹ See UCS Opening Comments at 14; PG&E Opening Comments at 15; GPI Opening Comments at 6-7; CEERT Opening Comments at 13-14; SDG&E Opening Comments at 14; IEP Opening Comments at 12; and Solar Alliance/CalSEIA Opening Comments at 2-3.

on a comparison to other bids received in that solicitation. Under such a scenario, there would be no need for the use of a price cap.

In the alternative, PG&E and CEERT both suggest that a price benchmark setting forth *per se* reasonableness be established in lieu of a price cap.¹⁰ If the Commission were unwilling to lift the price cap altogether, SCE would support the establishment of such a benchmark. As stated above, a price cap is unnecessary, because the IOUs are still required to bring the approval of any unbundled REC contract before the Commission. A pricing benchmark could help provide guidance on the reasonableness of the price provided in these agreements.

III.

SCE'S REPLY TO THE OPENING COMMENTS

As stated above, the parties to this proceeding agree on many of the issues associated with the authorization of unbundled, tradable RECs. However, certain parties attempt to argue positions that are either not supported in fact or law, impractical, redundant of current Commission requirements, or inappropriately raised through these comments. Because of the breadth of issues raised in the Ruling, these arguments cover a variety of topics. SCE address each of these arguments in turn below.

A. The Authorization Of Unbundled Tradable RECs Will Not Lead To Fewer New Renewable Projects

In their opening comments, TURN and UCS express concern that authorizing unbundled, tradable RECs could potentially lead to a situation where these transactions reduce, or potentially eliminate, an LSE's motivation to enter into long-term bundled contracts.¹¹ TURN indicates that their concern is especially acute with respect to the three large IOUs,¹² and UCS even goes as far as suggesting that in order to alleviate the "problem," the Commission should establish a larger

¹⁰ See PG&E Opening Comments at 2; CEERT Opening Comments at 13.

¹¹ See TURN Opening Comments at 8-10; UCS Opening Comments at 8.

¹² See TURN Opening Comments at 10.

minimum long-term contracting requirement in order to allow the use of short-term RECs for the IOUs.¹³ As discussed in more detail below, their concern is not only misplaced, but baseless.

TURN's and UCS's concern is based on a fear that, if given the chance, the IOUs may forego entering into long-term agreements for new RPS-eligible resources in favor of short-term unbundled REC transactions. Initially, the premise of TURN's and UCS's position is contradicted by their own statements made in their opening comments. Both organizations readily admit that, in the near term, the market for RECs will either be extremely limited or will primarily come from expiring RPS contracts.¹⁴ Under either scenario, and given that the State is currently "short" renewable energy (*i.e.*, California does not have enough RPS-eligible resources for all RPS-obligated LSEs to procure 20% renewables), it would be *impossible* for any of the IOUs to reach their RPS goals without contracting for new resources through long-term contracts. In other words, if unbundled RECs were authorized and PG&E, SDG&E, and/or SCE contracted for all unencumbered RECs in California, they would still be unable to meet their RPS goals. Thus, by their own statements, TURN and UCS describe a market where the IOUs would be unable to substitute long-term bundled agreements for short-term REC transactions.

Furthermore, TURN's and UCS's real concern is not that unbundled REC transactions will replace bundled transactions; their concern is that, bundled or not, short-term transactions (where it is generally accepted that such transactions *do not* support the construction of new resources) will replace long-term transactions (where it is generally accepted that such transactions *do* support the construction of new resources). The problem with their concern is that there is simply no basis to support it. As early as June 2003, in D.03-06-071, the Commission authorized the IOUs to enter into contracts for lengths less than ten years so long as they only *offered* contracts greater than ten years.¹⁵ This contracting option was reaffirmed twice since that the decision, and was arguably extended in D.06-10-019, which allows the IOUs to

¹³ See UCS Opening Comments at 10-11.

¹⁴ See TURN Opening Comments at 9; UCS Opening Comments at 3.

¹⁵ See D.03-06-071 at 58, fn.52.

enter into bilateral agreements of any length.¹⁶ Since the issuance of these decisions, there has not been a mass switch of contracting, as feared by TURN and UCS, from short-term to long-term agreements. The large majority of contracting by the IOUs continues to be long-term contracts, and will likely remain as such until they have reached the State's RPS goals. Indeed, the Commission continues to require the IOUs to hold annual RPS solicitations that require them to offer contracts that are least ten years in length.

Moreover, the Commission already addressed the issue of reliance on short-term contracting in evidentiary hearings and briefing in this proceeding that culminated in the issuance of D.06-10-019. In that decision, the Commission stated:

The approach we set forth below responds to the concerns of those parties that have argued that excessive reliance on short-term contracting is likely to have a negative impact on the construction of new renewable generation in California. In the abstract, this appears to be a cogent concern. Without a longterm contract for the output of a new renewable project (whether with an LSE or a marketer), few renewable developers would build new projects in California. Thus, this argument goes, allowing LSEs to rely on short-term contracts will stifle new RPS-eligible generation.

This fear, however logical, is not realistic. . . . [T]here is no dispute that California will not reach the goal of 20% RPS-eligible generation by 2010 unless new generation is built and comes on line. . . . Thus, there is simply no plausible market situation in California in which short-term contracts for existing renewable power will crowd out long-term contracts for new generation.¹⁷

Accordingly, TURN's and UCS's concern that short-term contracting, whether through bundled or unbundled transactions, *for the IOUs* will replace long-term agreements is not supported by fact.

TURN's and UCS's concern, however, is applicable to the State's smaller LSEs. Some of these LSEs may be able to meet their RPS goals solely through the purchase of short-term

¹⁶ See D.06-10-019 at 31.

¹⁷ *Id.* at 25-26 (emphasis added).

bundled or unbundled RECs, thereby not supporting the construction of new incremental renewable power in California. As SCE stated in its opening comments, the Commission is required by law to adopt rules which apply equally to all RPS-obligated LSEs and do not result, *de facto*, in different requirements with respect to the long-term contracting function. Thus, at a minimum, the Commission must reject UCS's suggestion to establish separate and larger long-term contracting minimums for the IOUs, and create an equal limit on all RPS-obligated LSEs on the quantity of unbundled RECs that LSEs may use for RPS compliance. Such a limit should not only be applied equally, but in a manner that ensures that all LSEs support the development of new renewable resources.

B. The Commission Should Separate The Avoidance Of GHG Emissions From The Definition Of A REC

Most of the parties that addressed the issue support the separation of avoided greenhouse gas (“GHG”) emissions from the definition of a REC.¹⁸ Indeed, most of the opening comments reflect the same reasoning SCE set forth in its own comments as to why RECs should be defined in such a manner. Specifically, parties indicate that separating the avoided GHG emissions from RECs will avoid the numerous and complex problems associated with incorporating two separate regulatory compliance schemes (including a regulatory scheme that has yet to be developed) into one “commodity” and will reduce transaction costs associated with RECs and the regulatory scheme established for GHG emissions under AB 32.¹⁹ However, a few parties have not recognized these benefits in separating these two separate legislative obligations. SCE addresses these parties below.

From the outset, SCE notes that how the Commission defines a REC does not limit parties' ability to contract for attributes, credits, benefits, offsets, or other characteristics

¹⁸ See TURN Opening Comments at 14-16; IEP Opening Comments at 19; Sustainable Conservation/CFBF Opening Comments at 7; GPI Opening Comments at 15-17; SDG&E Opening Comments at 19; AReM Opening Comments at 22; *see also* UCS Opening Comments at 18 (indicating support for both approaches).

¹⁹ *See id.*

associated with renewable energy. The definition does nothing more than establish exactly what a REC encompasses. SCE's position has always been that parties should be free to contract for these things in a manner they see fit. Separating avoided GHG emissions from a REC only helps facilitate this goal.

PG&E, however, in support of including avoided GHG emissions into a REC, argues that “[t]he ultimate composition of a REC should support linkage with other systems and help position California for a broader market.”²⁰ While SCE supports PG&E's concept, it is unlikely that the inclusion of GHG emissions will result in PG&E's desired effect. As stated in SCE's opening comments, the inclusion of GHG emissions in a REC creates complex problems associated with reporting and tracking of two different sets of regulatory requirements at two different venues. These added complications will only serve as future roadblocks to any attempt to link RECs, or any other credit, with other systems.

In addition, PG&E also expresses concern that a narrow REC definition could impact their previously executed and future contracts for bundled RPS energy, because RECs are included in the definition of “Green Attributes,” which are included in their RPS agreements.²¹ PG&E's concern, however, is unfounded. The definition of “Green Attributes” not only conveys any and all RECs to an IOU, but all “credits, benefits, emissions reductions, offsets, howsoever entitled, attributable to the generation from [the facility], and its displacement of conventional generation . . .”²² In other words, if the specific definition of a REC does not include avoided GHG emissions, the complete definition of “Green Attributes” would. Thus, limiting the definition of a REC to all that is necessary for the holder of the REC to be treated as if it had received the equivalent amount of renewable energy for RPS compliance, will not impact PG&E's previously executed or future bundled agreements.

²⁰ PG&E Opening Comments at 17.

²¹ *Id.*

²² *See* D.07-05-057.

Powerex, CCP, and Solar Alliance/Cal SEIA also argue that RECs should include avoided GHG emissions because it avoids the problem of “double counting” GHG emissions.²³ While SCE agrees that if avoided GHG emissions are included in a REC, then the underlying null power must be assigned an emissions factor in order to avoid this double counting. However, not including the avoid emissions in the REC in the first place avoids this problem altogether and eliminates the difficulties associated with assigning emission factors and other reporting and tracking difficulties that arise from including avoided GHG emissions in a REC. Thus, under SCE’s and most of the other parties’ proposals, the Commission would be able to satisfy Powerex’s, CCP’s, and Solar Alliance/Cal SEIA’s concern while avoiding the problems with including avoided GHG emissions in a REC.

C. The Commission Should Reject TURN’s Recommendation To Require The IOUs To Enter Into Hedging Products Along With The Purchase Of Unbundled RECs

In its opening comments, TURN recommends that if the IOUs purchase unbundled RECs, they should be required “to enter into fixed-for-floating swaps, or other financial hedging transactions, to capture the hedging value of long-term bundled energy contracts.”²⁴ TURN’s recommendation, however, is unnecessary and redundant of the current procurement practices of the IOUs. For example, assume that an IOU enters into an agreement for unbundled RECs equivalent to 100 MWh of renewable energy. Because the IOU’s renewable obligation is being met through unbundled RECs, the IOU now has to procure an additional 100 MWh to serve its load. How the IOU serves this load, and how the IOU hedges against future energy and natural gas prices, is already governed by its Commission-approved procurement plan and numerous Commission decisions. Indeed, in conjunction with Commission decisions, its procurement plan, and prudent utility practice, the IOU in the example above would have several procurement

²³ See Powerex Opening Comments at 5; CCP Opening Comments at 7; Solar Alliance/CalSEIA Opening Comments at 5-6.

²⁴ TURN’s Opening Comments at 19.

options to serve its load including, among other things, gas indexed energy contracts, firm energy contracts with liquidated damages, and tolling agreements. Two of these options already provide a hedge against future changes in energy prices, and the third, tolling agreements, are hedged as part of the IOU's overall natural gas portfolio. Therefore, it is unnecessary for the Commission to add an additional hedging requirement for RECs in the RPS proceeding, because the Commission already provides the rules and mechanisms to be used by the IOUs in hedging against changes in energy prices in their procurement of conventional energy.

D. The Commission Should Allow Unlimited Banking Of Unbundled RECs

In their opening comments, UCS argues that unlimited banking of RECs should not be permitted once they have been retired in the Western Renewable Energy Generation Information System (“WREGIS”).²⁵ In support of their position, UCS states that “[a]llowing LSEs to bank RECs without temporal limits would reduce pressure in LSEs to continue increasing their renewable supply over time.”²⁶ This argument, however, provides improper signals and incentives to LSEs and is patently unfair to LSEs attempting to comply with the RPS program goals.

Under UCS's proposal, an LSE could potentially be punished for making an extra effort to comply with the RPS program. This could lead to situations where an LSE may choose to purchase less RECs for fear that they would be unable to use them towards RPS compliance. For example, assume that an LSE has reached its 20% goal and expects to be unable to sign certain expiring contracts over the next five years. Further assume that this LSE is approached by a developer with a bid for unbundled RECs for near-term delivery. In this scenario, unless the LSE knew that it would be able to bank forward the RECs to potentially fill shortfalls created by those expiring contracts, it might choose not to sign the agreement. This limitation would send

²⁵ See UCS Opening Comments at 12.

²⁶ *Id.*

the wrong signal to LSEs and, as demonstrated in the example, could actually cause the very result that UCS fears: less incentive on LSEs to increase their RPS procurement.

Moreover, part of the reason that the Commission established unlimited banking of renewable energy is that it coincides with the implementation of cumulative deficits of RPS procurement shortfalls. Just as LSEs are rewarded for purchasing renewable energy above and beyond what is required under the RPS legislation in the form of unlimited banking of that excess forward, the Commission requires LSEs to backfill any shortfalls in procurement even if they have been penalized for those shortfalls. It would be patently unfair to apply an accounting system that continually punishes an LSE for not procuring for previously unmet shortfalls, while not rewarding an LSE that procures “too much.” This axiom is applicable whether the RPS obligation is satisfied by bundled or unbundled RECs.

In addition, UCS also argues that unbundled RECs should be treated differently than bundled renewable energy with respect to banking, because it does not provide the same natural gas price hedge that a bundled transaction would.²⁷ This is a common misconception that was perpetuated at the REC workshop. Both RECs and bundled energy have the same hedging effect against natural gas because both represent units of renewable energy that were *actually* produced. Therefore, both transactions equally reduce the amount of natural gas that must be procured in the California market. In other words, the power produced by a renewable resource that delivers energy to California, whether the energy is unbundled or not, displaces the *same amount of energy* that needs to be produced from natural gas; thus, resulting in the same hedge against exposure to natural gas prices.

²⁷ See *id.* at 13.

E. LSEs Should Be Permitted To Earmark Contracts For Unbundled RECs In The Same Manner Bundled Transactions Are Earmarked

Certain parties in this proceeding support the straw proposal's prohibition on earmarking of contracts for unbundled RECs.²⁸ The thrust of their argument is that because the viability of the underlying renewable project is difficult to determine, a contract for unbundled RECs should not be eligible for earmarking. However, making such an assessment should be no more burdensome (or less speculative) with respect to an unbundled transaction than it is with respect to a bundled transaction. Indeed, as UCS recognizes, if the facility or facilities that are providing the RECs are disclosed (which in all likelihood would be), the Commission would be in the same position to evaluate the viability of these underlying resources as if they were being generated under a bundled transaction.²⁹ Either way, the onus would still be on the proponent of the transaction to establish that it is reasonable and that the facility producing the energy is viable. There simply is no practical reason to not allow an LSE to at least make an attempt to make such a viability showing.

In addition, the link between the need to make viability determinations and the earmarking of contracts is tenuous at best. As with a bundled transaction, if an LSE earmarks a contract, the LSE takes the risk that the facility producing the RECs (both bundled and unbundled) never gets built. This is true regardless of whether or not a viability determination is made by the Commission. Under either scenario, the LSE would potentially be exposed to penalties for RPS procurement shortfalls stemming from a failed facility. Thus, because the consequences associated with a failed earmarked contract under a bundled or unbundled transaction are the same, the applicable earmarking rules for such transactions should be the same.

²⁸ See UCS Opening Comments at 13; IEP Opening Comments at 22; CEERT Opening Comments at 10-11; GPI Opening Comments at 6; and PG&E Opening Comments at 13-14.

²⁹ See UCS Opening Comments at 13.

F. The Commission Must Ignore GPI's And Sustainable Conservation's Request To Modify The Definition Of Green Attributes

GPI and Sustainable Conservation both argue that the definition of “Green Attributes,” as established in D.07-05-057, should be modified to ensure that the capture of methane from a biomass facility through an anaerobic digester is not included in the definition.³⁰ Regardless of the merit of their argument, the post-workshop comments on RECs are not the proper method for challenging such a decision. Pursuant to Rule 16.4 of the Commission’s Rules of Practice and Procedure, GPI and Sustainable Conservation are required to file a petition for modification of that decision. Accordingly, the Commission should ignore their arguments with respect to modifications to the definition of “Green Attributes.”

IV.

**OPPOSITION TO TURN'S AND AGLET'S
REQUEST FOR EVIDENTIARY HEARINGS**

On November 28, 2007, TURN and Aglet Consumer Alliance (“Aglet”) filed a motion requesting evidentiary hearings in this proceeding (the “Motion”). TURN/Aglet’s request is based on the following areas of alleged factual dispute: (1) “[W]hether additional revenues from TRECs will simply improve the profitability of renewables projects or actually result in new incremental renewable project development;” and (2) “[W]hether the \$50 per megawatt-hour non-compliance penalty would act as a price cap for TRECs.”³¹ As described in more detail below, neither of these topics are contested issues of material fact related to the use or authorization of unbundled RECs for RPS compliance. Therefore, the Commission must reject TURN/Aglet’s request.

³⁰ See GPI Opening Comments at 18; Sustainable Conservation/CFBF Opening Comments at 4-7.

³¹ Motion at 2. In the Motion, TURN/Aglet identify a third area of alleged factual dispute, but state that they are not requesting evidentiary hearings on the issue.

Initially, it should be noted that the parties have already placed much time and effort in discussing the authorization of unbundled RECs including three recent rounds of comments and three days of workshops that included several Energy Division-sponsored presentations. Based on these filings, the workshop, and the presentations given at the workshop, the Commission has more than enough information to determine whether unbundled RECs should be authorized. It makes little sense to waste the parties' and Commission's limited resources on the time consuming process of evidentiary hearings for a subject that already contains such a robust record and for issues that are immaterial.

Issue #1

TURN/Aglet identify “whether additional revenues from TRECs will simply improve the profitability of renewables projects or actually result in new incremental renewable project development” as an issue of material fact that necessitates evidentiary hearings. These “issues,” however, are unrelated to each other in that answering one part of the question affirmatively does not affect or determine the answer to the other. More importantly, neither of these questions are issues of material fact because deciding whether they are true or not does not impact whether or how the Commission should authorize the use of unbundled RECs.

TURN/Aglet's real concern is that RECs will not result in new incremental renewable project development in the near term.³² This concern, however, is not a prerequisite to authorizing RECs, and, therefore, is immaterial. Unbundled RECs offer other benefits to the RPS program other than supporting new incremental power such as creating additional contracting options for renewable buyers and sellers. As stated above, these additional contracting options will lead to lower transactions costs. These benefits, regardless of whether

³² As stated in Section III. A., the development of new incremental resources is not dependent on whether a REC is bundled from the underlying energy or not. It is dependent on whether a developer has a long-term agreement. The Commission has already conducted evidentiary hearings on the issue of reliance on short-term contracting to the detriment of the development of new incremental resources and concluded that it was not realistic. Any attempt by TURN/Aglet to create an issue of material fact based on its concern that RECs will not support new incremental renewable project development, will likely be redundant of the Commission's previous hearings.

unbundled RECs will result in new incremental power, support their authorization. Accordingly, the Commission should not grant TURN/Aglet's motion for evidentiary hearings on the issue identified above.

Issue #2

The Opening Comments reveal that the parties to this proceeding advocate for four different positions in connection with an unbundled REC price cap. These positions include:

- (1) \$35/REC price cap as suggested in the straw proposal;³³
- (2) \$50/REC price cap or, at the very least, higher than \$35/REC price cap;³⁴
- (3) REC price benchmark;³⁵ or
- (4) No price cap with reasonableness determined by the market and through the approval process at the Commission.³⁶

Under any of these four options, it is immaterial to the authorization of unbundled RECs to determine "whether the \$50 per megawatt-hour non-compliance penalty would act as a price cap for TRECs." Thus, the Commission should reject TURN/Aglet's request for evidentiary hearings on this issue.

More specifically, under options 1 and 2, whether the non-compliance penalty acts as a price cap is answered in the affirmative is irrelevant, because, by definition, under these options the Commission would have already established an administratively determined price cap that would not implicate the alleged "non-compliance penalty price cap." In other words, because options 1 and 2 are both less than or equal to the non-compliance penalty, whether or not the non-compliance penalty acts as a natural price cap will never be tested.

Moreover, under options 2 and 4, TURN/Aglet's issue of fact is irrelevant as well. If the non-compliance penalty does act as a price cap, then naturally RECs will not exceed \$50/REC.

³³ See TURN Opening Comments at 18.

³⁴ See GPI Opening Comments at 6; UCS Opening Comments at 14.

³⁵ See PG&E Opening Comments at 2; *see also* CEERT Opening Comments at 13 (Supporting a price benchmark in general).

³⁶ See SCE Opening Comments at 13-16; IEP Opening Comments at 24; SDG&E Opening Comments at 14; *see also* Solar Alliance/CalSEIA Opening Comments at 2-3 (Arguing for no price cap in general).

If it does not, then RECs could potentially exceed \$50/REC. Regardless, under either scenario the IOUs will still have to demonstrate that the price paid for the RECs is reasonable in the approval process before the Commission.

V.

CONCLUSION

Based on SCE's opening comments, and the opening comments of the parties to this proceeding, the Commission should authorize the use of unbundled, tradable RECs as a mode of compliance with California's RPS program. The parties to this proceeding recognize that while the role unbundled, tradable RECs will play in facilitating the achievement of the State's RPS goals will be small, they do provide benefit to the RPS program that justifies their authorization. Thus, the principle focus of the Commission's effort should be on adopting rules that create certainty and confidence that RECs can be used for RPS compliance in California by RPS-obligated entities. Specifically, as SCE has previously stated, in order for unbundled, tradable RECs to be used for RPS compliance, the Commission must:

- Ensure that the unbundling and trading of RECs does not result in different compliance treatment of IOUs and other load-serving entities LSEs;
- Clearly define the attributes and eligibility of an unbundled, tradable REC in a manner sufficient to assure holders of RECs that they will be honored for RPS compliance in California; and
- Clearly define the RPS compliance and accounting rules that apply to RECs.

If the Commission achieves these objectives, then a market for RECS will develop on its own and in an efficient and reasonable manner.

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CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of POST-WORKSHOP REPLY COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) REGARDING TRADABLE RENEWABLE ENERGY CREDITS AND OPPOSITION TO MOTION OF TURN AND AGLET REQUESTING EVIDENTIARY HEARINGS on all parties identified on the attached service list(s). Service was effected by one or more means indicated below:

Transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.

Executed this 5th day of December, 2007, at Rosemead, California.

/s/ Sara Carrillo

By: [Sara Carrillo](#)

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