Decision **PROPOSED DECISION OF COMMISSIONER PEEVEY**
(Mailed 8/25/2010)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

DECISION MODIFYING DECISION 10-03-021 AUTHORIZING USE OF RENEWABLE ENERGY CREDITS FOR COMPLIANCE WITH THE CALIFORNIA RENEWABLES PORTFOLIO STANDARD AND LIFTING STAY AND MORATORIUM IMPOSED BY DECISION 10-05-018

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DECISION MODIFYING DECISION 10-03-021 AUTHORIZING USE OF RENEWABLE ENERGY CREDITS FOR COMPLIANCE WITH THE CALIFORNIA RENEWABLES PORTFOLIO STANDARD AND LIFTING STAY AND MORATORIUM IMPOSED BY DECISION 10-05-018

1. Summary

This decision modifies Decision (D.)10-03-021, which authorizes the procurement and use of tradable renewable energy credits (TRECs) for compliance with the California renewables portfolio standard (RPS) program. D.10-03-021 also sets forth the structure and rules for a TREC market and for the integration of TRECs into the RPS flexible compliance system.

This decision modifies D.10-03-021 by:

1. Increasing the extent to which the large investor-owned utilities may rely on REC-only transactions, as defined in D.10-03-021, by modifying the temporary TREC usage cap to allow up to 30% of their RPS annual procurement targets to be met using TREC-only transactions.
2. Modifying the provisions in D.10-03-021 relating to the characterization of contracts approved prior to the effective date of the TRECs decision as REC-only, so that all contracts that were approved by the Commission before the effective date of D.10-03-021 will be characterized as bundled contracts for RPS compliance purposes and will not count toward the temporary REC usage cap adopted in D.10-03-021 and as modified herein.
3. Extending the temporary limit on the use of TRECs for RPS compliance to electric service providers.
4. Extending the date for when the temporary limit on the use of TRECs for RPS compliance and the temporary TREC price cap expire to December 31, 2013.

D.10-03-021, as modified by this decision, is effective March 11, 2010.

Further, because this decision resolves the two petitions for modification of D.10-03-021, the stay of D.10-03-021 imposed in D.10-05-018 is no longer

necessary. The stay is therefore lifted. Similarly, the moratorium on Commission approval of certain RPS contracts imposed in D.10-05-018 is no longer relevant, and is ended.

2. Procedural Background

The Commission issued Decision (D.)10-03-021 on March 15, 2010, with an effective date of March 11, 2010. On April 12, 2010, Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E) filed the Joint Petition of Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company for Modification of Decision 10-03-021 (utility petition). Filed with the utility petition were the Joint Motion of Southern California Edison Company, Pacific Gas and Electric Company and San Diego Gas & Electric Company to Shorten Time to Respond to Petition for Modification of Decision 10-03-021 and for an Expedited Decision and the Motion of Southern California Edison Company and San Diego Gas & Electric Company for Stay of Decision 10-03-021 (joint stay motion).

On April 14, 2010, the assigned Commissioner issued the Assigned Commissioner's Ruling Setting Schedule for Consideration of Joint Petition for Modification of Decision 10-03-021 and Joint Motion for Stay of Decision 10-03-021 (ACR). The ACR shortened the time for responses and replies to the joint stay motion and for responses and replies to the utility petition.

On April 15, 2010, the Independent Energy Producers Association (IEP) filed the Petition of the Independent Energy Producers Association for Modification of Decision 10-03-021 Authorizing Use of Renewable Energy Credits for RPS Compliance (IEP petition). IEP also filed the Motion of the Independent Energy Producers Association to Shorten Time with its petition.

The Administrative Law Judge's (ALJ) Ruling Granting Motion of the Independent Energy Producers Association to Shorten Time (April 16, 2010) aligned the timing of consideration of the IEP petition with that of the utility petition.

Responses to the joint stay motion were filed April 21, 2010.[1] SCE filed a reply to the responses to the joint stay motion on April 23, 2010. In D.10-05-018, the Commission stayed D.10-03-021 on its own motion, pending the resolution of the two petitions for modification. D10-05-018 also instituted a temporary moratorium on approval of any RPS procurement contracts for compliance with the renewables portfolio standard program (RPS) signed after May 6, 2010 (the effective date of the stay decision) that would be defined under D.10-03-021 as transactions transferring only renewable energy credits (RECs) and not energy.

Responses to the utility petition and the IEP petition were filed May 4, 2010.[2] SCE, PG&E, and SDG&E filed a joint reply to the responses to the utility petition on May 10, 2010.

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[1] Responses to the joint stay motion were filed by the Alliance for Retail Energy Markets (AReM); Center for Energy Efficiency and Renewable Technologies; City and County of San Francisco (CCSF); PG&E; Shell Energy North America (Shell); Sierra Pacific Industries; The Utility Reform Network (TURN); Union of Concerned Scientists (UCS); and Western Power Trading Forum (WPTF).

[2] Responses to the petitions for modification were filed by AReM; Bloom Energy; California Independent System Operator (CAISO); California Wind Energy Association (CalWEA); CCSF; Division of Ratepayer Advocates (DRA); Green Power Institute (GPI); Iberdrola Renewables, Inc. (Iberdrola); LS Power Associates, L.P. (LS Power); Large Scale Solar Association (LSA); Mountain Utilities and Bear Valley Electric Service (jointly; collectively, MU); NextEra Energy Resources (Next Era); Renewable Energy Coalition; SCE; Sempra Generation; Shell; Sacramento Municipal Utility District (SMUD); Solar Alliance; TURN; UCS; WPTF; and Zephyr Power Transmission, LLC and Chinook Power Transmission, LLC (jointly; collectively, Zephyr).

3. Discussion

3.1. The Petitions for Modification

3.1.1. The Utility Petition

The utility petition proposes wide-ranging changes to the decision on tradable renewable energy credits (TRECs). It makes 12 specific proposals.[3]

1. The Commission should revise the criteria for determining what transactions are bundled transactions and what transactions are for RECs only by ratifying the characterization of the transaction in the contract. That is, if the contract states that only RECs are being conveyed, the transaction should be classified as REC-only. If the contract states that RECs and energy are being conveyed, the transaction should be classified as bundled, regardless of any other characteristics of the contract or the transaction.

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[3] As noted by CCSF, the utility petition fails to comply with Rule 16.4(b) of the Commission's Rules of Practice and Procedure. That rule provides that:

> A petition for modification of a Commission decision must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision. Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit.

The utility petition proposes specific wording for only one of its requested modifications. It contains no citations to the record of the proceeding and does not propose that any matters be officially noticed. It does not provide any declarations or affidavits to present any factual material in the petition that is not the record of this proceeding.

Because the utility petition raises issues of significant importance to the RPS program, ratepayers, and the public, the Commission will consider the utility petition on the merits, despite its failure to comply with the rules governing petitions for modification.

2. The Commission should apply the criteria for classification of contracts as REC-only or bundled to contracts that are submitted for Commission approval after the effective date of the TRECs decision. For all contracts submitted for approval prior to that date, the characterization of the contract that would have obtained prior to D.10-03-021 should be used.
3. The Commission should eliminate the temporary limit on the use of TRECs for RPS compliance by the large utilities. The TRECs decision imposed a temporary limit of 25% of the RPS annual procurement target (APT) of a large utility, which expires on December 31, 2011 unless the Commission takes some action that would extend it, or would terminate it before that date.
4. If the Commission does not eliminate the temporary limit on the large utilities' use of TRECs for RPS compliance, it should extend that limit to all RPS-obligated retail sellers.
5. If the Commission does not eliminate the temporary limit on the large utilities' use of TRECs for RPS compliance, it should provide that the limit will unconditionally expire on December 31, 2011, without further review.
6. The Commission should eliminate the temporary cap of $50.00/TREC on the price that utilities are allowed pay for TRECs.
7. If the Commission does not eliminate the temporary cap on the price utilities may pay for TRECs for RPS compliance, it should extend that price cap to all RPS-obligated retail sellers.
8. If the Commission does not eliminate the temporary cap on the price utilities may pay for TRECs for RPS compliance, it should provide that the cap will unconditionally expire on December 31, 2011, without further review.

9. The Commission should expand the rules for "earmarking"[4] TREC contracts. Instead of allowing earmarking of contracts for TRECs only between an RPS-obligated retail seller and one generator that is the source of the TRECs and associated energy, the utility petition proposes that the Commission allow earmarking of contracts between a retail seller and one seller of all the TRECs in the contract.

10. The Commission should remove the requirement that the new standard terms and conditions set out in D.10-03-021 be added to RPS procurement contracts that were submitted for Commission approval, but not yet approved, prior to the effective date of the TRECs decision.

11. The Commission should expand and/or revise the rules for using TRECs for RPS compliance to:

    - allow the use of TRECs associated with energy generated in 2008 and 2009 to meet retail sellers' APTs for 2008 and 2009;
    - allow earmarking of REC-only contracts entered into prior to 2010 to apply to APTs prior to 2010 (if the Commission does not adopt either the utility petition's requested change to the criteria for classifying a contract as REC-only or the request to allow all deliveries from all previously approved contracts to be counted as bundled); and
    - allow use of TRECs for APTs for 2008 or 2009 without any usage limit (if the Commission does not eliminate the temporary TREC usage limit for large utilities).

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[4] 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.

12. The Commission should clarify the status of RECs associated with energy generated by qualifying facilities (QFs) not located in California that is under contract with a utility that is also not located in California.

3.1.2. The IEP Petition

The IEP petition proposes changes to the TRECs decision that are less sweeping than the changes suggested in the utility petition. The IEP petition makes proposals in two areas: criteria for classifying transactions as REC-only or bundled, and the methodology for least-cost best-fit (LCBF) analysis of RPS procurement options.

1. The Commission should revise the criteria for determining what transactions are bundled transactions and what transactions are REC-only transactions, creating a rebuttable presumption that three types of transactions will be considered bundled transactions:
   - transaction providing real-time delivery using firm transmission;
   - transactions using firm transmission in which firmed and shaped energy is delivered within 90 days of the generation of the energy associated with the RECs; and
   - firmed and shaped transactions using nonfirm transmission in which firmed and shaped energy is delivered within 90 days of the generation of the energy associated with the RECs.
2. The Commission should revise the LCBF methodology to provide for the explicit consideration of the geographic and related attributes that the Commission determines would increase the value of RPS transactions for California consumers.

3.2. Plan of this Decision

The discussion in this decision will follow the order of the topics set out in D.10-03-021. The requests in the petitions for modification and the responses to the petitions will be addressed in the context of the topics in D.10-03-021 to which they relate.

These modifications, like D.10-03-021, implement the Commission's existing authority under Pub. Util. Code § 399.16[5] to authorize the use of RECs for compliance with RPS procurement targets. Pursuant to §§ 399.11 and 399.15(b)(c), these targets are 20% of the retail sales of each RPS-obligated retail seller.

The modified findings of fact, conclusion of law, and Order will be attached as Appendix A to the issued decision.

3.3. Authorization

No party seeks changes to the authorization to use of TRECs for RPS compliance.

3.4. Sources of TRECs

No party seeks changes to the discussion of the sources of TRECs. Nevertheless, we conclude that one change is in order.

The text in section 4.3.2. of D.10-03-021 should be clarified with respect to the nature of the distributed generation (DG) being discussed and the role of the California Energy Commission (CEC). The original text could engender confusion about the relationship of this Commission's discussion of TRECs from DG sources to the CEC's authority, pursuant to § 399.13, to determine what

[5] All subsequent references to sections refer to the Public Utilities Code, unless otherwise noted.

resources are RPS eligible. We clarify that our decision to authorize the use of TRECs is not intended to imply that RECs associated with energy from customer-side DG installations generated prior to the effective date of D.10-03-021 are (or are not) RPS-eligible. The CEC will make those eligibility determinations. Therefore, section 4.3.2. should be rewritten, as follows:

> AReM, BVES, PG&E, SCE, and TURN suggest that various forms of DG[6] may provide some available TRECs, though not at a very large scale over the next few years.
>
> ~~There are several types of renewable DG projects.~~ Customer-side DG projects may utilize a variety of renewable technologies. These include ~~on-site RPS-eligible generation at customers~~; 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.[7]
>
> The CEC will determine the eligibility of customer-side DG for the RPS. Any customer-side DG must be found RPS-

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[6] This discussion considers generation on the customer side of the meter as DG, in accordance with the CEC's *RPS Eligibility Guidebook* (3d ed., December 2007), at 17-19 (available at http://www.energy.ca.gov/2007publications/CEC-300-2007-006/CEC-300-2007-006-ED3-CMF.PDF .) Generation projects on the system side of the meter that are developed to connect to the distribution system are not considered "distributed generation" for purposes of this discussion.

[7] 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 *RPS 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 *RPS 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." (at 18.) We anticipate that the CEC will review the issue of the RPS eligibility of DG during its next revision of the *RPS Eligibility Guidebook*.

eligible by the CEC. At this time, almost no customer-side DG is RPS-eligible. The Eligibility Guidebook (at 18) explains that:

> "The Energy Commission will not certify distributed generation PV and other forms of customer-sited renewable energy into the RPS at this time, with the following exception.
>
> The Energy Commission will certify facilities that would have been considered distributed generation facilities except that they are participating in a standard contract/tariff executed pursuant to Public Utilities Code § 399.20, as implemented through the CPUC Decision 07-07-027 (R.06.05.027), executed pursuant to a comparable standard contract/tariff approved by a local publicly owned electric utility. . ., or if the facility is owned by a utility and meets other requirements, to become certified as RPS-eligible . . . .
>
> The Energy Commission will not certify distributed generation facilities as RPS-eligible unless the CPUC authorizes tradable RECs to be applied toward the RPS."

Thus, although there are technologies that can be used for customer-side renewable DG, most current installations are not in fact RPS-eligible because they have not been certified by the CEC and cannot be certified until the CEC revises its RPS Eligibility Guidebook.

In anticipation of the eventual use of customer-side DG for RPS compliance, both this Commission and the CEC have addressed the issue of the availability of TRECs from such installations. ~~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 customer-side 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.[8] 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 megawatt (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. 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.[9]

AReM states that the CSI program estimates that the program will have installed about 800 gigawatt hours (GWh) of generation by 2010. AReM additionally estimates that CSI will have provided incentives for approximately 1,100 GWh by 2011. No other party provides quantitative DG estimates.[10]

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[8] The CEC has likewise determined that the system owner of customer-side DG does not need to relinquish claim over the RECs in order to participate in the NSHP. See *New Solar Homes Partnership Guidebook* (3d edition April 2010) at 7. This guidebook is available at http://www.energy.ca.gov/2010publications/CEC-300-2010-001/CEC-300-2010-001-CMF-REV1.PDF.

[9] 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).)

[10] In D.09-06-049, the Commission approved a new SCE program to procure RPS-eligible energy from rooftop solar PV installations of one to two MW in size. Because the program is new, it is not currently possible to know what, if any, impact it will have on DG as a resource for RPS procurement over the next two to three years.

3.5. Guiding Principles

No party has sought changes in the guiding principles set forth in Section 4.4, and we make none.

3.6. REC-only Transactions

The IOUs and IEP in their respective petitions request a number of modifications related to REC-only transactions. These include modifications to the definition of REC-only transactions, and thus, by extension, the definition of bundled transactions, modifications to the limits placed on the use of REC-only transactions, and the treatment of contracts entered into prior to the issuance of D.10-03-21.

Regarding the definition of what is considered a REC-only transaction, both the IOUs and IEP argue that the definition of a REC-only transaction adopted in D.10-03-021 is overbroad. To address this, the IOUs advocate counting as REC-only transactions only those contracts that expressly convey only RECs, not energy. All other contracts would be treated as bundled transactions.

IEP takes a more nuanced view, agreeing that as a practical matter, some of the contract structures that are written to convey RECs and energy and that meet the CEC's delivery requirements, are nonetheless functionally equivalent to REC-only transactions. To address this, IEP suggests that the definition of bundled transactions be broadened to include contracts that provide for real time delivery of energy via firm transmission, as well as shaped and firmed transactions, provided that an equivalent amount of incremental energy is delivered to a California Balancing Authority (CBA) within 90 days of when the renewable energy was physically generated via firm transmission or the project can otherwise demonstrate that there was sufficient transmission capacity

to allow for the delivery of an equivalent amount of incremental energy to a CBA. In all cases, under IEP's proposal, energy deliveries would need to be validated with North American Reliability Council (NERC) eTags demonstrating delivery of the corresponding amount of energy to a CBA.

Several parties disagree with these proposals, arguing in general that broadening the definition as requested by the IOUs or by IEP would run counter to the efficacy of the temporary REC usage cap by allowing transactions that are effectively REC-only to continue to be used without limit. We agree with these parties in the context of the petitions for modification.

We continue to prefer the approach, as we set out in D.10-03-021, of staff investigating issues related to the use of firm transmission in RPS procurement and developing information on the basis of which transactions using firm transmission could be classified as bundled RPS procurement. This will allow parties, staff, and the Commission the opportunity to review the technical and policy issues and provide the most comprehensive array of information on which to base any determination about the role of firm transmission in RPS procurement.

We decline to adopt IEP's other proposals as well as those of the IOUs on this issue. We agree with parties that argue that these other approaches appear relatively easy to game in a way that would compromise our preference that RPS contracts provide incremental energy to the utilities' portfolios. As TURN notes in its response to IEP's petition, for shaped and firmed transactions, nothing would preclude a retail seller from matching RECs with energy that is already scheduled into California apart from and irrespective of the associated REC transaction. This is true whether or not the contract includes firm transmission. The role of an intermediary facility and the temporal disconnect

between renewable energy production and delivery gives rise to this concern. Thus, we remain of the view that at this time, shaped and firmed transactions should be treated as REC-only for compliance purposes.

For similar reasons, we do not adopt the utilities' proposal to only count those transactions that expressly convey only RECs and not energy as REC-only and everything else as bundled. This proposal is overly expansive and, as TURN notes, would allow transactions that, for all practical purposes, are REC-only, to be treated as bundled, rendering meaningless any limits or rules governing the role of REC-only transactions in the RPS program.

Another issue related to the definition of REC-only and bundled transactions concerns the scope of contracts to which these definitions, and any related compliance rules, apply. The utilities object to the treatment of deliveries from contracts approved by the Commission prior to D.10-03-021 as REC-only deliveries after the effective date of that decision, if the contracts would be considered REC-only contracts under the definitions of D.10-03-021. This objection is joined by almost all parties.[11]

The parties focus on the asserted disruption to commercial arrangements and expectations caused by the prospective reclassification of some deliveries as REC-only, though RPS-eligible. They argue that, having approved the contracts, it is not fair for the Commission now to determine that future deliveries from these contracts will be classified as REC-only.[12] They

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[11] DRA supports this determination.

[12] In resolutions approving such contracts, the Commission expressed its intention to decide questions related to TRECs in this proceeding. Relying on the CEC's determination that the contract structures met RPS eligibility requirements, the Commission approved the contracts while recognizing that the question of whether

Footnote continued on next page

assert that this would deprive the utilities of some of the RPS compliance benefit of their contracts, and would generally destabilize the market for RPS-eligible energy transactions in the near future.

We are persuaded that, although our initial policy preference for consistency in future treatment of RPS deliveries was reasonable, the benefit of consistency does not justify the impact on RPS-eligible transactions that parties have identified. Contracts approved by the Commission prior to adoption of D.10-03-021 became effective on that approval.[13] These contracts were final, and it is reasonable for parties to rely on the regulatory rules in place at that time. On the other hand, contracts not yet approved were not yet effective, and subject to changes by the parties or the Commission. Therefore, we will modify D.10-03021 to set the new rules on a going forward basis. Accordingly, all RPS procurement contracts approved by the Commission prior to the effective date of D.10-03-021 (March 11, 2010) will be treated as "bundled" contracts, conveying both energy and RECs, for the duration of the contract. For electric service providers (ESPs), as explained more fully in section 3.9.1., below, the same treatment applies to all contracts for RPS-eligible generation signed by a California ESP prior to March 11, 2010.[14]

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transactions like those at issue in the advice letter would ultimately be determined to be REC-only. See, e.g., Resolution (Res.) E-4192, at 14-15 (available at http://docs.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/91720.pdf); Res. E-4244, at 20 (available at http://docs.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/102740.pdf.

[13] See D.08-04-009, Appendix A, at 3 (STC 1: CPUC Approval).

[14] This is equivalent to the treatment afforded contracts of the large IOUs. The IOUs' contracts become effective upon Commission approval. The ESPs' contracts, like most private contracts, become effective when signed. For each group, it is contracts that are

Footnote continued on next page

For both IOUs and ESPs,[15] this treatment is subject to two important caveats:

- It does not apply to any extension of a given contract beyond the expiration date existing on March 11, 2010; and
- It does not apply to any deliveries under a given contract beyond the maximum deliveries identified in the contract as the contract read on March 11, 2010.

That is, if a contract that is given bundled treatment pursuant to this decision is subsequently amended to extend the expiration date or to increase the maximum allowable deliveries, the incremental deliveries after the effective date of the contract amendment[16] will be treated according to the then-applicable classification of REC-only and bundled deliveries, as of the date the amendment is effective. In the case of an extension, this means deliveries after the date the original contract would have expired; in the case of augmented deliveries, it means the deliveries in excess of the previous maximum.[17]

Implementing these caveats will preserve the intent of treating approved contracts as bundled, while allowing existing contracts to be amended to meet future contingencies. Since the legitimate commercial expectations of the parties to contracts approved before the effective date of D.10-03-021 do not, by

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in effect prior to the effective date of D.10-03-021 that may be treated as bundled contracts, subject to the caveats set forth here.

[15] As set out in section 3.9.3, below, the application of TREC rules to CCAs will be taken up in R.08-08-009 or its successor.

[16] For IOUs, this is the date of Commission approval; for ESPs, it is the date the contract makes the amendment effective.

[17] A contract could also be both extended and augmented.

definition, extend to transactions after that date, the incremental deliveries secured by amending the contract do not need the shelter of the safe harbor granted to the original contract.

In light of the forgoing discussion and determinations, the following modifications of D.10-03-021 should be made:

1. The last two paragraphs of section 4.5 are deleted and the following substituted:

   The determination of classification of RPS procurement contracts made in this decision applies to all RPS procurement contracts that are effective after the date of this decision; that is, for IOUs, contracts approved by the Commission after the effective date of this decision; and for ESPs, contracts signed after the effective date of this decision.

2. In section 4.6.3, footnotes numbered 73 and 80 should be deleted.

3. In section 5, the following paragraph in the discussion of comments on the temporary limit on TRECs usage should be deleted:

~~We are also persuaded by SDG&E and TURN that the temporary limit on the use of TRECs for RPS compliance should not be applied to TRECs from contracts previously approved by the Commission if applying the limit to those deliveries would cause the LSE to exceed the TREC usage limit.~~

4. Conclusion of Law 11 should be deleted.

5. Conclusion of Law 13 should be rewritten as follows:

   In order to recognize the legitimate expectations of the parties to RPS contracts now classified as REC-only that were approved by the Commission (for IOUs), or were signed (for ESPs), prior to the effective date of this decision, the classification scheme for TRECS for RPS compliance provided in this decision should not be applied to deliveries made under contracts approved

(for IOUs), or signed (for ESPs), prior to the effective date of this decision. These contracts and all related deliveries should be treated as bundled transactions for RPS compliance purposes unless and until either of the following occurs:

a. The expiration date of the contract is extended beyond the expiration date existing on March 11, 2010; or

b. The deliveries allowed under the contract are increased beyond the maximum deliveries identified in the contract as the contract read on March 11, 2010.

If either of these changes is made to the contract, all deliveries after the effective date of the contract amendment[18] that are incremental to the deliveries set forth in the original contract will be treated according to the then-applicable classification of REC-only and bundled transactions.

4. Ordering Paragraph 6 should be modified as follows:

As of the effective date of this decision, a transaction for purposes of compliance with the California renewables portfolio standard shall be considered a transaction that procures only renewable energy credits if that transaction either:

a. Expressly transfers only renewable energy credits and not energy from the seller to the buyer; or

b. Transfers both renewable energy credits and energy from the seller to the buyer but does not meet the Commission's criteria for considering a procurement transaction a bundled transaction for purposes of

[18] For IOUs, this is the date of Commission approval; for ESPs, it is the date the contract makes the amendment effective.

compliance with the California renewables portfolio standard.

All deliveries from transactions described in subsection b, above, associated with contracts approved by the Commission (for investor-owned utilities), or signed (for electric service providers), prior to the effective date of this decision will be counted as bundled transactions for purposes of compliance with the California renewables portfolio standard unless and until either of the following occurs:

a. The expiration date of the contract is extended beyond the expiration date existing on March 11, 2010; or

b. The deliveries allowed under the contract are increased beyond the maximum deliveries identified in the contract as the contract read on March 11, 2010.

If either of these changes is made to the contract, all deliveries after the effective date of the contract amendment that are incremental to the deliveries in the original contract will be treated according to the then-applicable classification of REC-only and bundled transactions.

3.7. Market Structure and Rules

3.7.1. Temporary Limits on Use of TRECs

The utility petition argues for the wholesale elimination of the temporary cap on the use of TRECs for RPS compliance purposes adopted in D.10-03-021. As described more fully below, we are sensitive to the concerns of the utilities and others about the problems of taking a strictly categorical approach to determining what transaction structures are, and are not, more, or less valuable to ratepayers. The utilities are generally correct in their assertion that the temporary limitation on the use of TRECs limits their ability to enter into some transactions that may reduce the costs of RPS compliance. As the utilities

note in their petition, the broader the market for renewables that the utilities can access, the lower the costs are likely to be. For these reasons, the temporary cap adopted in D.10-03-021 on the use of TRECs for RPS compliance is an interim step while we develop better methodologies to reasonably assess the value of REC-only transactions as compared to bundled transactions. That said, the utilities present reasonable arguments regarding the potentially adverse impacts of a relatively low cap on their ability to meet their renewable energy obligations at reasonable cost. Although we stop short of fully eliminating the temporary cap on REC-only transactions, we believe that increasing the cap to 30% of APT is warranted. Thus, until the cap expires (December 31, 2011), the large utilities may meet up to 30% of their annual procurement targets using TRECs. As an interim measure, the limits adopted in D.10-03-021, as modified by this decision, are reasonable given ongoing concerns regarding the value to ratepayers of REC-only procurement and our ability to assess that value in a reasonable and consistent way.

The utilities also request that, if it continues the temporary usage limit on RECs, the Commission make an unconditional commitment to ending the limit on December 31, 2011 without additional review or consideration. This request for the Commission's promise could be granted, but it would not be meaningful. A party may file a petition for modification of a Commission decision, in accordance with Rule 16.4. A petition for modification seeking to extend the temporary usage limit, for example, would require the Commission to reexamine the termination date of the temporary limit. The Commission could not promise in advance to reject such a petition out of hand. Moreover, the Commission always has the authority to review or modify its decisions, whether or not it has formally stated its intention to do so. In addition, because of the

substantial amount of time that has passed between when the Commission issued D.10-03-021 and this decision, we find that the sunset provisions applied to the usage limit and price cap is insufficient to allow the Commission to refine the evaluative framework to assess the value of REC-only contracts relative to bundled contracts. Therefore, we extend the date for when these limits expire to December 31, 2013 to give Energy Division sufficient time to develop this evaluative framework.

In light of the forgoing discussion and determinations, the following modifications should be made to D.10-03-021:

1. Finding of Fact 10 should be rewritten as follows:

   REC-only contracts are likely to provide fewer potential benefits to ratepayers than contracts for RPS procurement that include both RECs and RPS-eligible energy. In light of this differential in potential benefits, it is reasonable to impose on the three large IOUs a temporary limit of 40% ~~25%~~ of APT annually on their use of TRECs for RPS compliance.

2. Ordering Paragraph 17 should be rewritten as follows:

   Pacific Gas and Electric Company, San Diego Gas and Electric Company, and Southern California Edison Company may each use renewable energy credits procured under contracts for renewable energy credits only to meet no more than 30 ~~25~~ percent of their annual procurement targets for the California renewables portfolio standard, beginning with the 2010 compliance year.

3. Ordering Paragraph 19 should be rewritten as follows:

   The temporary limit on the use of tradable renewable energy credits for compliance with the California renewables portfolio standard shall

terminate December 31, ~~2011~~ 2013, unless the Commission acts to review, extend, or modify it, or to terminate the limit prior to its expiration.

4. Conforming changes should be made to several sections of the text that refer to the temporary limit on TREC usage. Instead of 25% of APT, the limit should be stated as 30% of APT.

   a. The reference in the Summary should be changed to read:

      Under this limit, the three large California utilities may use TRECs to meet no more than ~~25~~ 30 percent of their annual RPS procurement obligations.

   b. All the references to 25% in section 4.6.3 should be changed to "30%."

5. Conforming changes should be made to those sections of text which refer to the expiration date of the temporary limit on the use of RECs and the temporary price cap to reflect a December 31, 2013 expiration.

   a. The reference in the summary should be changed to read:

      Both limits will expire December 31, ~~2011~~ 2013, unless the Commission acts to modify, extend, or terminate the limits prior to that date.

   b. All the references to December 31, 2011 as they pertain to the expiration of the temporary usage limit and the temporary price cap in sections 4.6.3 and 4.7.3. should be modified to "December 31, ~~2011~~ 2013."

3.8. Cost Recovery

3.8.1. Bid Evaluation

IEP's petition asks the Commission to expand the review of LCBF methodology for RPS procurement that is ordered in Ordering Paragraph

(OP) 34. IEP seeks to include additional issues in the review, and to impose a time limit by which the review should be complete. LSA and the Solar Alliance support these proposed modifications. TURN, UCS, and SCE oppose them.

IEP proposes the addition of several issues to the LCBF review, suggesting that rather than relying on TREC usage, the Commission instead work to incorporate the various elements that contribute to a given transaction's value from a state policy and ratepayer perspective into the LCBF methodologies used by the IOUs for purposes of project selection. While the specific elements IEP suggests appear overbroad and, as TURN suggests, subjective, in concept IEP's proposal is consistent with the Commission's desire to compare, on a value and cost basis, different procurement options in the RPS program in a consistent and objective way. A REC-only transaction may be the best deal for ratepayers if the net cost of bundled contracts, once the energy, capacity, and other benefits are subtracted out, prove more expensive. However, we do not feel that such a value based approach has been sufficiently vetted and standardized.

While these issues may be important and worthwhile, they are not appropriately addressed by modification of D.10-03-021. As already reflected in OP 34 of D.10-03-021, the assigned Commissioner is authorized to initiate a review and revision of the LCBF methodology. IEP and other interested parties may, if they choose, file a motion for consideration of these issues in the LCBF review. We will not impose the time limit IEP proposes (September 2010), because it will have passed before this decision is issued. Since, it is difficult to set meaningful short-term deadlines for complex work, we decline to modify OP 34 to do so. However, we continue to encourage expeditious initiation of a comprehensive review of LCBF methods.

3.8.2. Temporary Limits on Payments for TRECs

Similar to their request related to the REC usage limit, the IOUs request that we eliminate the temporary cap on the maximum price they can pay for RECs via REC-only transactions. D.10-03-021 set this amount at $50/REC. As with the REC usage limit adopted in the decision, this cap is set to expire, unless the Commission takes action to extend it, on December 31, 2011. In their petition, the utilities do not provide any specific rationale for this request, apparently confining this to the heading of a section of their petition, "If Not Eliminated, Any TREC Usage Limit or Price Cap Should be the Same for All LSEs". Nowhere else in their petition do the utilities provide any additional detail on this specific proposal.

We do not believe the IOUs have met their burden to convince us to modify this aspect of the decision. They offer no arguments, much less new arguments, in support of their position on this issue, and thus, we see no reason to modify our position. It should be noted that as with the usage cap, the price cap is intended as an interim, albeit preliminary, approach to ensure that while we develop experience with, and a methodology to assess the value of, different contract structures and products, we place reasonable limits to protect ratepayers from unreasonable outcomes.

The utilities also request that, if it continues the temporary limit on payments for TRECs, the Commission make an unconditional commitment to ending the price limit on December 31, 2011 without additional review or consideration. As discussed with respect to the usage limit, this request for the Commission's promise could be granted, but it would not be meaningful in light of the Commission's existing procedures. Additionally, for all the reasons noted above, given the current limitations in our ability to assess the relative value of

REC-only and bundled transactions on a consistent and objective basis, the price cap, as a temporary measure, is a reasonable safeguard against adverse outcomes while we develop an appropriate methodology to make these comparisons and value determinations.

3.9. Application of TREC Usage and Price Limits to Other RPS Obligated Retail Sellers

In their petition, the IOUs request that if the TREC usage and price caps are not eliminated, that they be applied consistently to all RPS-obligated retail sellers. In D.10-03-021, we stated that, in response to new § 365.1,[19] we "prefer to approach equalization of RPS requirements through a comprehensive review of all program requirements . . ., rather than changing this one element." That review was undertaken in R.08-08-009, and resulted in a PD that was mailed September 10, 2010.

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[19] Section 365.1 was enacted by SB 695 (Kehoe), Stats. 2009, ch. 337. SB 695 provides, among other things, for the phased and limited reopening of direct access transactions in the service territories of the three large utilities. The statute also requires that once the Commission has begun the process of reopening direct access, the Commission shall equalize certain program requirements between the three large utilities and "other providers." The statute provides that the Commission shall:

> … ensure that other providers are subject to the same requirements that are applicable to the state's three largest electrical corporations under any programs or rules adopted by the commission to implement the resource adequacy provisions of Section 380, the renewables portfolio standard provisions of Article 16 (commencing with Section 399.11), and the requirements for the electricity sector adopted by the State Air Resources Board pursuant to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code). This requirement applies notwithstanding any prior decision of the commission to the contrary.
>
> § 365.1(c)(1).

UCS suggests in its reply comments that it would be helpful to RPS-obligated retail sellers, other interested parties, and the public if the application of TRECs rules to all retail sellers were addressed in one place. We agree.

We modify the TRECs usage limit to apply to ESPs, but otherwise leave the application of the usage limit and price cap unchanged.

3.9.1. Temporary TREC Usage Limit

The temporary limit on the use of TRECs for RPS compliance, as set out in D.10-03-021, applies only to the three large utilities. We now conclude that any limit on the use of TRECs for RPS compliance should also apply to ESPs. A limitation on what types of procurement may count for RPS compliance should be understood as a requirement adopted by the Commission to implement the RPS program. It is thus within the ambit of Commission requirements that § 365.1 intends to reach. The statute's mandate for equalization of those requirements means that the temporary limit on the use of TRECs for RPS compliance imposed by the Commission on the three large IOUs should apply equally to ESPs.[20]

[20] We do not disturb our conclusion in D.10-03-021 that the two small utilities, Bear Valley Electric Service and Mountain Utilities, should not be subject to the temporary limit on the use of TRECs for RPS compliance.

Conclusion of Law 12 should therefore be changed to read:

> A temporary limit on the proportion of annual RPS procurement obligations that can be met by using TRECs should be imposed on the three large IOUs and on all ESPs.

Equalization also requires that ESPs, like the large utilities, should be able to count deliveries from contracts that were effective prior to the effective date of D.10-03-021 (March 11, 2010) as bundled deliveries. They are effective on signing. Therefore, for purposes of applying the classification of REC-only or bundled contracts, ESP contracts signed prior to March 11, 2010 will be considered bundled contracts, subject to the same caveats set out in section 3.7.1.[21]

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[21] These circumstances are:

a. The expiration date of the contract is extended beyond the expiration date existing on March 11, 2010; or

b. The deliveries allowed under the contract are increased beyond the maximum deliveries identified in the contract as the contract read on March 11, 2010.

If either of these occurs, the then-applicable classification scheme will be applied to the contract as of the date that the change to the contract is signed.

3.9.2. Temporary TREC Price Limit

The temporary TREC price limit for IOUs presents a fundamentally different question from the usage limit. The temporary price limit is not an RPS program requirement. Rather, it is a method to protect IOU ratepayers from paying for TRECs at excessive prices in the early stages of the TREC market. This Commission's general responsibility to ensure just and reasonable rates for IOU ratepayers does not extend to the customers of ESPs. (See § 394(f).) As a matter of RPS program administration, protecting IOU ratepayers from excessive prices for TRECs does not also require limiting the prices ESPs may choose to pay for TRECs. There is thus neither a statutory nor a practical need to impose any limit on payments for TRECs on ESPs.

3.9.3. CCAs

CCAs are excluded from the mandate of § 365.1.[22] That does not, however, resolve the issue of whether either the temporary TRECs usage limit or the temporary TREC price cap should apply to CCAs. In D.06-10-019, the Commission elaborated on the framework for RPS participation of ESPs and CCAs that was set out in D.05-11-025. The Commission observed that

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[22] Section 365.1(a) provides:

> For purposes of this section, 'other provider' means any person, corporation, or other entity that is authorized to provide electric service within the service territory of an electrical corporation pursuant to this chapter, and includes an aggregator, broker, or marketer, as defined in Section 331, and an electric service provider, as defined in Section 218.3. 'Other provider' does not include a community choice aggregator, as defined in Section 331.1, and the limitations in this section do not apply to the sale of electricity by 'other providers' to a community choice aggregator for resale to community choice aggregation electricity consumers pursuant to Section 366.2.

> . . . the lack of any existing CCAs. . . has left our record on matters related to CCAs less robust than we might wish. We agree. . . that the CCA process is not sufficiently far advanced for us to be able to specify all the details of CCA participation in the RPS program.

D.06-10-019 at 6.

As a result, in D.10-03-021, the Commission had no record about CCAs on which to decide how to apply the TRECs usage limit to them. Only recently has any CCA started to operate. The one currently active CCA (Marin Energy Authority), has been serving customers since May 2010.[23] It is now appropriate for the Commission to complete specification of the rules for CCAs, as far as possible with only one active example.[24] The assigned Commissioner in R.08-08-009 or its successor should promptly take up the task of filling in the RPS rules for CCAs. This will include whether the temporary TRECs usage limit and price cap should be applied to CCAs, but is not limited to those issues.

3.10. Transactions Subject to §§ 399.16(a)(5) and (6)

The utilities identify what they characterize as an inconsistency between the text of section 4.8 in D.10-03-021 and the implementation of that discussion in OP 9. We agree that OP 9 does not reflect the Commission's full intention, as set forth in the discussion. We therefore adopt the proposed modification of OP 9 to eliminate the reference to facilities located in California, as follows:

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[23] See http://www.marinenergyauthority.org/index.cfm.

[24] The City and County of San Francisco has consistently participated in this proceeding as a potential CCA.

> Renewable energy credits associated with electricity generation that is eligible for the California renewables portfolio standard delivered under procurement contracts of California utilities for both energy and renewable energy credits pursuant to the federal Public Utility Regulatory Policies Act of 1978 that were signed after January 1, 2005 ~~with qualifying facilities located in California~~ shall be used for compliance with the California renewables portfolio standard only if they are not transferred to an entity other than the original buyer in the Western Renewable Energy Generation Information System prior to being retired for compliance with the California renewables portfolio standard.

3.11. Compliance and Reporting

3.11.1. Earmarking of TREC Contracts

In D.10-03-021, the Commission concluded that, at least at the beginning of the TREC market, the ability to earmark REC-only contracts for RPS compliance should be limited to contracts between one retail seller (buyer) and one RPS-eligible generator that supplies all the RECs. (OP 15.) The utility petition asks that this restriction on earmarking TREC contracts be modified to allow contracts between a retail seller and one seller of all the RECs. UCS opposes this proposal.

The utility proposal would introduce a complexity in administration and enforcement that the Commission rejected in D.10-03-021. The utility proposal would, for example, allow earmarking of a contract between a retail seller and a REC broker or aggregator, in which the RECs were to be produced by any number of generation facilities, in several states within the WECC. The utilities have not persuaded us that the time and effort involved in ascertaining the viability of the disparate elements of such a contract are worth the limited contribution to RPS compliance that such complex instruments might make.

Like all other RPS procurement and compliance rules, this limitation is subject to review by the Commission as the TREC market matures. Experience may show that it could be relaxed or eliminated. At the outset, however, this limitation on earmarking remains a sensible approach to expanding RPS compliance through the use of TRECs.

3.11.2. Other Compliance Issues

The utility petition also requests clarification on three points related to the use of TRECs in making up deficits in APT from prior years. These issues largely arise from the classification made in D.10-03-021 of future deliveries from contracts characterized as REC-only. Since the effect of this classification determination has been modified by this decision, these questions are no longer relevant. To the extent any issues may remain, they can and should be addressed through the application of the RPS flexible compliance rules, which apply to both bundled and REC-only transactions.

3.12. Standard Terms and Conditions

In their petition, the IOUs suggest that in the interest of market certainty, and to reduce the administrative burden associated with revisiting already signed contracts, that the requirement to add additional terms and conditions to contracts pending approval at the Commission be eliminated. We consider this concern to be exaggerated. Although there is some administrative burden, the value of consistent treatment of RECs in RPS procurement contracts outweighs it. We therefore make no change to this requirement.

In its comments on the PD, SCE identifies inconsistencies between the capitalization of the references to RECs in the new STCs and the capitalization in existing STCs. Because these are significant, defined terms in RPS contracts, the

inconsistencies should be remedied. The relevant changes should be made to OPs 35 and 36 and carried forward in Appendix C of D.10-03-021.

OP 35 should be changed to read:

35. The following non-modifiable standard terms and conditions shall be included in all contracts for procurement for compliance with the California renewables portfolio standard, whether bundled contracts or purchases of renewable energy credits only:

    a. STC REC-1. Transfer of ~~renewable energy credits~~ Renewable Energy Credits.

    Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the ~~renewable energy credits~~ 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 to allow the ~~renewable energy credits~~ Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

OP 36 should be modified to read:

36. The following non-modifiable standard terms and conditions shall be included in all contracts for

purchase of renewable energy credits only 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~~ 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.

STC 17. Applicable Law

Governing Law. This agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement.

Finally, three related editorial errors in D.10-03-021 should be corrected.

1. The last sentence in the second paragraph of section 4.10 should be revised to read:

   Because ~~RECs~~ TRECs cannot be recognized for RPS compliance unless they are tracked in WREGIS, REC-only contracts must contain assurances that the seller has taken all steps necessary to ensure that the generation is properly registered and the ~~RECs~~ TRECs will be tracked in WREGIS.[25]

2. Conclusion of Law 4 should be revised to read:

   4. ~~Only RECs tracked in WREGIS should be allowed to be used for RPS compliance~~. In order to be used for RPS compliance, TRECs must be tracked in WREGIS.

   3. OP 3 should be revised to read:

      3. ~~Only renewable energy credits tracked and retired in the Western Renewable Energy Generation Information System shall be used for compliance with the California renewables portfolio standard.~~ In order to be used for compliance with the California renewables portfolio standard, tradable renewable energy credits must be tracked and retired in the

[25] PG&E suggests in its comments on the RPD that the assurance of registration with WREGIS should apply at the time deliveries commence under the contract, not at the time the contract is signed. This suggestion is unopposed and simplifies contracting; we adopt it in this decision.

> Western Renewable Energy Generation Information System.

We also take this opportunity to remind all RPS-obligated retail sellers that all RPS contracts must contain the relevant standard terms and conditions.[26] For ESPs and CCAs, these are the nonmodifiable terms on REC Definition, WREGIS tracking, and statement of governing law as that of California adopted in this decision, the non-modifiable term on Green Attributes, and the STCs on eligibility and assignment required by D.06-10-019 (OP 20).

3.13. Timing Issues

No party proposes changes to this section. On review, however, we conclude that two clarifications are needed. The text in D.10-03-021 inadvertently elided the role of the CEC in determining RPS eligibility. In order to avoid potential confusion, the first sentence of section 4.11 is revised to read:

> Beginning on the effective date of this decision, TRECs tracked in WREGIS and certified by the CEC as associated with RPS-eligible electricity, 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.[27]

In order to conform to the timing of the issuance of this decision, the last sentence of section 4.11 should be revised to read:

> IOUs required to submit their RPS procurement contracts for Commission approval may submit REC-only contracts for approval not earlier than November 1, 2010.

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[26] The STCs are compiled in D.08-04-009.

[27] This date is used because 2008 is the first year that WREGIS issued certificates; it is also the first year data from WREGIS is reported to the CEC to verify RPS procurement. (*RPS Eligibility Guidebook* at 46.)

We accept SCE's suggestion that contracts that are classified as REC-only by D.10-03-021, as modified by this decision, which have already been submitted for Commission approval do not need to be withdrawn and resubmitted. However, the Director of Energy Division is authorized to require the utility to submit any additional information that is necessary for the complete evaluation of the contract.

3.14. Comparison to March 2009 PD

This section of D.10-03-021 is not relevant to the modifications made by this decision, and is now likely to engender confusion. D.10-03-021 is therefore modified to eliminate Section 4.12, Comparison to March 2009 PD.

3.15. Next Steps

This decision modifies some aspects of D.10-03-021 and dissolves the stay imposed by D.10-05-018. As a result, RPS-obligated retail sellers will begin to use TRECs for RPS compliance in accordance with the rules and procedures set out in D.10-03-021, as modified by this decision. A market for TRECs will develop, in accordance with the structure set forth. Over time, the Commission will take the actions required to refine and further develop the place of TRECs in RPS compliance.

By lifting the stay of D.10-03-021, this decision also allows Energy Division staff to complete the work it began in April 2010 to determine how to characterize RPS-eligible transactions that use firm transmission arrangements, as authorized by OP 26 of D.10-03-021. In view of the strong interest in this issue shown by the comments on the PD, we urge Energy Division staff to complete this task as soon as practicable.

Further work on the rules for the RPS participation of CCAs will be taken up in R.08-08-009 and/or its successor proceeding.

We will continue our work to collaborate with the CEC as it revises its *RPS Eligibility Guidebook*.

Since the PD was mailed, the Air Resources Board (ARB) has adopted a regulation to create a Renewable Energy Standard (RES) as part of ARB's implementation of the Global Warming Solutions Act, AB 32 (Nunez), Stats. 2006, ch. 488.[28] In adopting the RES regulation, ARB noted that this Commission, the CEC, and ARB should coordinate their roles and harmonize their policies with respect to renewable energy programs in California. We intend to work with ARB and the CEC to maximize the benefit of the state's renewable energy programs for California residents.

4. Comments of Proposed Decision

The proposed decision of Commissioner Peevey 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. Comments were filed on September 24, 2010 by Bear Valley Electric Service; Bonneville Power Administration; BP Wind Energy North America, Inc.; CalWEA; Center for Energy Efficiency and Renewable Technologies; DRA; Evolution Markets; First Solar; GPI; Iberdrola; LS Power; LSA; Next Era; PacifiCorp; PG&E; Royal Bank of Scotland; SDG&E; Shell; Sierra Pacific Power Company (Sierra Pacific); SCE; Terra-Gen Power, LLC; Transwest Express, LLC; TURN; UCS; WPTF and AReM (jointly); and Zephyr.
Reply comments were filed on October 4, 2010 by BVES, City and County of San Francisco, Coalition of California Utility Employees, DRA, Iberdrola,

[28] Resolution 10-23 (September 23, 2010).

Mountain Utilities, PG&E, SDG&E, SCE, Sierra Pacific, SMUD, Solar Alliance, TURN, USC, and WPTF.

The Commission has carefully considered all comments and reply comments. Many revisions to the PD have been made in response to comments and are found throughout the text and in the ordering paragraphs. Modifications to the findings of fact, conclusions of law, and ordering paragraphs of D.10-03-021 are fully set out in OP 4 of this decision. The complete findings of fact, conclusions of law, and ordering paragraphs of D.10-03-021 as modified by this decision are set out in Appendix A.

We specifically note here that several commenters urge the Commission to short-circuit the process we adopted in OP 26 of D.10-03-021, and declare in this decision on the petitions for modification of D.10-03-021 that certain transactions using firm transmission should be considered to be bundled.[29] Energy Division staff has set up a process for carrying out our direction in OP 26 that appears to be thorough, fair, and able to provide sound information on which to base a conclusion. We decline to interrupt that process, especially in the limited context presented by the petitions for modification.

In addition to changes made to the PD in response to comments, revisions have been made to improve clarity and consistency, and to correct minor errors.

5. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Anne E. Simon is the assigned Administrative Law Judge for this portion of this proceeding.

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[29] These commenters include CalWEA, Iberdrola, LS Power, SMUD, Terra-Gen, TransWest, and Zephyr.

Findings of Fact

1. Allowing the use of TRECs for RPS compliance will give RPS-obligated retail sellers increased options for RPS compliance, and may reduce complexity in RPS procurement contracting.

2. Modifying D.10-03-021 will simplify RPS compliance for retail sellers obligated under the RPS program.

3. Modifying D.10-03-021 is likely to increase regulatory certainty for participants in the new TREC market.

Conclusions of Law

1. The use of TRECs for RPS compliance should be authorized.

2. D.10-03-021 should be modified as set forth in this decision.

3. 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. The Joint Petition of Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company for Modification of Decision 10-03-021, filed April 12, 2010, is granted to the extent set forth in the Ordering Paragraphs below. In all other respects, the Joint Petition of Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company for Modification of Decision 10-03-021 is denied.

2. The Petition of the Independent Energy Producers Association for Modification of Decision (D.) 10-03-021 Authorizing Use of Renewable Energy Credits for RPS Compliance, filed April 15, 2010, is granted to the extent set forth in the Ordering Paragraphs below. In all other respects, the Petition of the

Independent Energy Producers Association for Modification of D.10-03-021 Authorizing Use of Renewable Energy Credits for RPS Compliance is denied.

3. The Discussion section of Decision (D.) 10-03-021 is modified as explained in this decision. The specific modifications to the text are set forth as follows:

A. Section 4.3.2 of the text is modified to read:

> AReM, BVES, PG&E, SCE, and TURN suggest that various forms of DG[30] may provide some available TRECs, though not at a very large scale over the next few years.
>
> Customer-side DG projects may utilize a variety of renewable technologies. These include 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.[31]
>
> The CEC will determine the eligibility of customer-side DG for the RPS. Any customer-side DG must be found

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[30] This discussion considers generation on the customer side of the meter as DG, in accordance with the CEC's *RPS Eligibility Guidebook* (3d ed., December 2007), at 17-19 (available at http://www.energy.ca.gov/2007publications/CEC-300-2007-006/CEC-300-2007-006-ED3-CMF.PDF .) Generation projects on the system side of the meter that are developed to connect to the distribution system are not considered "distributed generation" for purposes of this discussion.

[31] 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 *RPS 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 *RPS 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." (At 18.) We anticipate that the CEC will review the issue of the RPS eligibility of DG during its next revision of the *RPS Eligibility Guidebook*.

RPS-eligible by the CEC. At this time, almost no customer-side DG is RPS-eligible. The Eligibility Guidebook (at 18) explains that:

> "The Energy Commission will not certify distributed generation PV and other forms of customer-sited renewable energy into the RPS at this time, with the following exception.
>
> The Energy Commission will certify facilities that would have been considered distributed generation facilities except that they are participating in a standard contract/tariff executed pursuant to Public Utilities Code § 399.20, as implemented through the CPUC Decision 07-07-027 (R.06.05.027), executed pursuant to a comparable standard contract/tariff approved by a local publicly owned electric utility. . ., or if the facility is owned by a utility and meets other requirements, to become certified as RPS-eligible . . . .
>
> The Energy Commission will not certify distributed generation facilities as RPS-eligible unless the CPUC authorizes tradable RECs to be applied toward the RPS."

Thus, although there are technologies that can be used for customer-side renewable DG, most current installations are not in fact RPS-eligible because they have not been certified by the CEC and cannot be certified until the CEC revises its RPS Eligibility Guidebook.

In anticipation of the eventual use of customer-side DG for RPS compliance, both this Commission and the CEC have addressed the issue of the availability of TRECs from such installations. In D.07-01-018, the Commission determined that owners of customer-side 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.[32] 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 megawatt (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. 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.[33]

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

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[32] The CEC has likewise determined that the system owner of customer-side DG does not need to relinquish claim over the RECs in order to participate in the NSHP. See *New Solar Homes Partnership Guidebook* (3d edition April 2010) at 7. This guidebook is available at http://www.energy.ca.gov/2010publications/CEC-300-2010-001/CEC-300-2010-001-CMF-REV1.PDF.

[33] 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).)

estimates that CSI will have provided incentives for approximately 1,100 GWh by 2011. No other party provides quantitative DG estimates.[34]

B. The last two paragraphs of section 4.5 of the text are modified to read:

The determination of classification of RPS procurement contracts made in this decision applies to all RPS procurement contracts that are effective after the date of this decision; that is, for IOUs, contracts approved by the Commission after the effective date of this decision; and for ESPs, contracts signed after the effective date of this decision.

C. Section 4.6.3 of the text is modified to delete footnotes numbered 73 and 80.

D. The last sentence in the second paragraph of section 4.10 is modified to read:

Because TRECs cannot be recognized for RPS compliance unless they are tracked in WREGIS, REC-only contracts must contain assurances that the seller has taken all steps necessary to ensure that the generation is properly registered and the TRECs will be tracked in WREGIS.[35]

E. The first sentence of section 4.11 of the text is modified to read:

Beginning on the effective date of this decision, TRECs tracked in WREGIS and certified by the CEC as associated with RPS-eligible electricity, for which the RPS-eligible electricity associated with the TREC was generated on or

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[34] In D.09-06-049, the Commission approved a new SCE program to procure RPS-eligible energy from rooftop solar PV installations of one to two MW in size. Because the program is new, it is not currently possible to know what, if any, impact it will have on DG as a resource for RPS procurement over the next two to three years.

[35] PG&E suggests in its comments on the RPD that the assurance of registration with WREGIS should apply at the time deliveries commence under the contract, not at the time the contract is signed. This suggestion is unopposed and simplifies contracting; we adopt it in this decision.

after January 1, 2008 may be procured, traded, and used for RPS compliance.[36]

F. The last sentence of section 4.11 of the text is modified to read:

IOUs required to submit their RPS procurement contracts for Commission approval may submit REC-only contracts for approval not earlier than November 1, 2010.

G. Section 4.12 of the text is deleted.

H. The text in section 5 is modified to delete the following paragraph in the discussion of comments on the temporary limit on the use of tradable renewable energy credits for compliance with the California renewables portfolio standard:

We are also persuaded by SDG&E and TURN that the temporary limit on the use of TRECs for RPS compliance should not be applied to TRECs from contracts previously approved by the Commission if applying the limit to those deliveries would cause the LSE to exceed the TREC usage limit.

I. Conforming changes are made to several sections of the text that refer to the temporary limit on TREC usage. Instead of 25% of APT, the limit shall be stated as 30% of APT.

a. The reference in the Summary is modified to read:

Under this limit, the three large California utilities and all California electric service providers may use TRECs to meet no more than 30 percent of their annual RPS procurement obligations.

b. All the references to 25% in section 4.6.3 are modified to read: "30%."

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[36] This date is used because 2008 is the first year that WREGIS issued certificates; it is also the first year data from WREGIS is reported to the CEC to verify RPS procurement. (*RPS Eligibility Guidebook* at 46.)

J. Conforming changes are made to several sections of the text that refer to the expiration date of the temporary limit on TREC usage and the temporary price cap. The expiration date shall be stated as December 31, 2013.

a. The reference in the summary is modified to read:

Both limits will expire December 31, ~~2011~~ 2013, unless the Commission acts to modify, extend, or terminate the limits prior to that date.

b. All references to December 31, 2011 in this section 4.6.3. and 4.7.3. as those references pertain to the expiration of the TREC usage limit and TREC price cap should be modified to read: "December 31, 2013."

4. The findings of fact, conclusions of law, and Order in D.10-03-021 are modified as explained in this decision. The specific modifications are set forth as follows:

A. Finding of Fact 10 is modified to read:

10. REC-only contracts are likely to provide fewer potential benefits to ratepayers than contracts for RPS procurement that include both RECs and RPS-eligible energy. In light of this differential in potential benefits, it is reasonable to impose on the three large IOUs a temporary limit of 30% of APT annually on their use of TRECs for RPS compliance.

B. Conclusion of Law 4 is modified to read:

4. In order to be used for RPS compliance, TRECs must be tracked in WREGIS.

C. Conclusion of Law 11 is deleted.

D. Conclusion of Law 12 is renumbered as 11 and is modified to read:

11. A temporary limit on the proportion of annual RPS procurement obligations that can be met by using TRECs should be imposed on the three large IOUs and on all ESPs.

E. Conclusion of Law 13 is renumbered as 12 and is modified to read:

In order to recognize the legitimate expectations of the parties to RPS contracts now classified as REC-only that were approved by the Commission (for IOUs), or were signed (for ESPs), prior to the effective date of this decision, the classification scheme for TRECS for RPS compliance provided in this decision should not be applied to deliveries made under contracts approved (for IOUs), or signed (for ESPs), prior to the effective date of this decision. These contracts and all related deliveries should be treated as bundled transactions for RPS compliance purposes unless and until either of the following occurs:

a. The expiration date of the contract is extended beyond the expiration date existing on March 11, 2010; or

b. The deliveries allowed under the contract are increased beyond the maximum deliveries identified in the contract as the contract read on March 11, 2010.

If either of these changes is made to the contract, all deliveries after the effective date of the contract amendment[37] that are incremental to the deliveries set forth in the original contract will be treated according to the then-applicable classification of REC-only and bundled transactions.

F. Conclusions of Law 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23 are renumbered as 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22, respectively.

G. Conclusion of Law 24 is renumbered as 23 and modified to read:

[37] For IOUs, this is the date of Commission approval; for ESPs, it is the date the contract makes the amendment effective.

24. Utilities that are required to submit their RPS procurement contracts for Commission approval should submit REC-only contracts for approval not earlier than November 1, 2010. The Director of Energy Division should be authorized to require the submission of any additional information necessary for the evaluation of such contracts.

H. Conclusions of Law 25, 26, and 27 are renumbered as 24, 25, and 26, respectively.

I. Ordering Paragraph 3 is modified to read:

3. In order to be used for compliance with the California renewables portfolio standard, tradable renewable energy credits must be tracked and retired in the Western Renewable Energy Generation Information System.

J. Ordering Paragraph 4 is modified to read:

Any renewable energy credits tracked in the Western Renewable Energy Generation Information System that conform to the requirements of Decision 08-08-028 and any subsequent Commission decision or any applicable California legislation characterizing renewable energy credits, and that meet the criteria for eligibility set by the California Energy Commission, may be used for compliance with the California renewables portfolio standard, subject to the restrictions in Ordering Paragraphs 8 and 9, below.

K. Ordering Paragraph 6 should be modified as follows:

As of the effective date of this decision, a transaction for purposes of compliance with the California renewables portfolio standard shall be considered a transaction that procures only renewable energy credits if that transaction either:

a. Expressly transfers only renewable energy credits and not energy from the seller to the buyer; or

b. Transfers both renewable energy credits and energy from the seller to the buyer but does not meet the Commission's criteria for considering a procurement transaction a bundled transaction for purposes of compliance with the California renewables portfolio standard.

All deliveries from transactions described in subsection b, above, associated with contracts approved by the Commission (for investor-owned utilities), or signed (for electric service providers), prior to the effective date of this decision will be counted as bundled transactions for purposes of compliance with the California renewables portfolio standard unless and until either of the following occurs:

a. The expiration date of the contract is extended beyond the expiration date existing on March 11, 2010; or

b. The deliveries allowed under the contract are increased beyond the maximum deliveries identified in the contract as the contract read on March 11, 2010.

If either of these changes is made to the contract, all deliveries after the effective date of the contract amendment that are incremental to the deliveries in the original contract will be treated according to the then-applicable classification of REC-only and bundled transactions.

L. Ordering Paragraph 9 is modified to read:

9. Renewable energy credits associated with electricity generation that is eligible for the California renewables portfolio standard delivered under procurement contracts of California utilities for both energy and renewable energy credits pursuant to the federal Public Utility Regulatory Policies Act of 1978 that were signed after January 1, 2005 shall be used for compliance with the California renewables portfolio standard only if

they are not transferred to an entity other than the original buyer in the Western Renewable Energy Generation Information System prior to being retired for compliance with the California renewables portfolio standard.

M. Ordering Paragraph 17 is modified to read:

17. Pacific Gas and Electric Company, San Diego Gas and Electric Company, Southern California Edison Company, and each electric service provider registered in California, may each use renewable energy credits procured under contracts for renewable energy credits only, to meet no more than 40 percent of their annual procurement targets for the California renewables portfolio standard, beginning with the 2010 compliance year.

N. Ordering Paragraph 18 is deleted.

O. Ordering Paragraph 19 is renumbered as 18 and modified to read:

18. The temporary limit on the use of tradable renewable energy credits for compliance with the California renewables portfolio standard set forth in OP 17 shall terminate December 31, 2013.

P. Ordering paragraph 20 is renumbered as 19.

Q. Ordering Paragraph 21 is renumbered as 20 and modified to read:

20. The temporary limit on the price paid by an investor-owned utility for tradable renewable energy credits procured through contracts for renewable energy credits only for compliance with the California renewables portfolio standard shall terminate on December 31, 2011.

R. Ordering Paragraphs 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34, are renumbered as 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, and 33, respectively.

S. Ordering Paragraph 35 is renumbered as 34 and is modified to read:

34. The following non-modifiable standard terms and conditions shall be included in all contracts for procurement for compliance with the California renewables portfolio standard, whether bundled contracts or purchases of renewable energy credits only:

STC REC-1. Transfer of Renewable Energy Credits

a. 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 to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

T. Ordering Paragraph 36 is renumbered as 35 and is modified to read:

35. The following non-modifiable standard terms and conditions shall be included in all contracts for

purchase of renewable energy credits only of regulated utilities other than multi-jurisdictional utilities:

a. 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.

b. STC 17. Applicable Law

Governing Law. This agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each party

waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement.

U. Ordering Paragraph 38 is renumbered as 37 and modified to read:

37. Not earlier than November 1, 2010, investor-owned utilities may submit for Commission approval contracts conveying only renewable energy credits and not energy that conform to the requirements of this order. For any contracts conveying only renewable energy credits and not energy that a utility submitted prior to November 1, 2010 but that have not been approved by November 1, 2010, the utility shall make a supplemental filing, in the form and with the content prescribed by the Director of Energy Division.

V. Ordering Paragraph 39 is renumbered as 38.

W. Appendix C to D.10-03-021, "New and Revised Standard Terms and Conditions," is modified to replace each use of the phrase "renewable energy credits" with "Renewable Energy Credits."

X. Appendix D to D.10-03-021, "Summary of TREC Rules Announced in this Decision," is modified to reflect the modifications made in this Ordering Paragraph. The modified Appendix D is attached to this decision as Appendix B.

5. The stay of Decision (D.) 10-03-021 imposed by D.10-05-018 is dissolved, as of the effective date of this decision.

6. The temporary moratorium imposed by Decision (D.) 10-05-018 on Commission approval of any procurement contracts for compliance with the renewables portfolio standard program signed after May 6, 2010 that would have been defined under D.10-03-021 as transactions transferring only renewable energy credits and not energy is ended, as of the effective date of this decision.

This order is effective today.

Dated _____, at San Francisco, California.

(APPENDIX A)

APPENDIX A

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER IN D.10-03-021 AS MODIFIED BY THIS DECISION

Findings of Fact

1. Allowing the use of TRECs for RPS compliance will give RPS-obligated LSEs increased options for RPS compliance, and may reduce complexity and costs of RPS procurement contracting.

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 order to maximize benefits to ratepayers, it is reasonable to classify RPS procurement transactions that convey energy and RECs as bundled transactions when these transactions serve California customer load without the substitution of energy from firming and/or shaping arrangements prior to the energy being scheduled in a California balancing authority.

8. Because the RPS-eligible energy is delivered directly to California's system, California customers receive the maximum benefit of RPS procurement

transactions when the generator of the energy associated with a REC has its first point of interconnection with the WECC transmission system with a California balancing authority area, or when the energy procured is dynamically transferred to a California balancing authority.

9. 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.

10. REC-only contracts are likely to provide fewer potential benefits to ratepayers than contracts for RPS procurement that include both RECs and RPS-eligible energy. In light of this differential in potential benefits, it is reasonable to impose on the three large IOUs a temporary limit of 30% of APT annually on their use of TRECs for RPS compliance.

11. In order to provide protections for ratepayers from the potential for volatility and spikes in TREC prices 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 temporary price cap of $50/REC for TREC purchases by IOUs.

12. Solely for purposes of determining whether the contract price is reasonable and the price of TRECs is at or below the reviewable price cap, it is reasonable to develop a method to infer the price for a TREC based on a forecast of the market price for the associated energy if the contract does not specifically identify the REC price.

13. 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 may be held in an active WREGIS sub-account before being retired for RPS compliance.

14. 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.

15. 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 RPS-obligated LSE and one RPS-eligible generator providing the TRECs.

16. It is reasonable to allow REC-only transactions as well as bundled transactions to be used to make up shortfalls in RPS procurement in prior years in accordance with the flexible compliance rules and the limits on TREC usage set forth in this decision.

17. 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 deliveries of any RPS procurement contract, whether bundled or REC-only, that has been earmarked.

18. In view of the uncertainties involved in the early years of a new TREC market, it is reasonable to provide for regular reports by RPS-obligated LSEs of their purchases and sales of TRECs including prices of the transactions. This information may be used in assessments of market performance by Energy Division staff and, as needed, review by the Commission 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. Procurement and 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 the effective date of this decision.

4. In order to be used for RPS compliance, TRECs must be tracked in WREGIS.

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.

   c. REC-only contracts that are used for earmarking will count against any TREC usage limitation in the year the TRECs are used for RPS compliance.

7. RECs associated with RPS-eligible generation under contracts with California RPS-obligated LSEs or POUs signed prior to 2005 that do not allocate ownership or disposition of RECs as well as RECs associated with RPS-eligible generation under contracts pursuant to PURPA between QFs and California LSEs or POUs 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, so long as the usage limit, price cap, and other requirements in this decision are met.

10. In order to maximize the benefit California consumers receive from the procurement of RPS-eligible energy and of TRECs, all procurement that does not meet the Commission's criteria for classification as bundled RPS transactions should be classified as REC-only transactions. Transactions in which RECs and energy are procured from RPS-eligible generators for which the first point of interconnection with the WECC interconnected transmission system is in a California balancing authority area, or transactions using dynamic transfer arrangements with a California balancing authority, should be considered bundled procurement for RPS compliance purposes. All other RPS procurement transactions should be considered REC-only at this time.

11. A temporary limit on the proportion of annual RPS procurement obligations that can be met by using TRECs should be imposed on the three large IOUs and on all ESPs.

12. In order to recognize the legitimate expectations of the parties to RPS contracts now classified as REC-only that were approved by the Commission (for IOUs), or were signed (for ESPs), prior to the effective date of this decision, the classification scheme for TRECS for RPS compliance provided in this decision should not be applied to deliveries made under contracts approved (for IOUs), or

signed (for ESPs), prior to the effective date of this decision. These contracts and all related deliveries should be treated as bundled transactions for RPS compliance purposes unless and until either of the following occurs:

a. The expiration date of the contract is extended beyond the expiration date existing on March 11, 2010; or
b. The deliveries allowed under the contract are increased beyond the maximum deliveries identified in the contract as the contract read on March 11, 2010.

If either of these changes is made to the contract, all deliveries after the effective date of the contract amendment[1] that are incremental to the deliveries set forth in the original contract will be treated according to the then-applicable classification of REC-only and bundled transactions.

13. A temporary cap on the price a utility may pay for a TREC should be imposed.

14. The temporary price cap for IOU purchases of TRECs should not be treated as a per se reasonable price for a TREC.

15. 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.

16. 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.

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[1] For IOUs, this is the date of Commission approval; for ESPs, it is the date the contract makes the amendment effective.

17. In order to carry out the determinations in this decision, the Director of Energy Division should be authorized to develop methods, in consultation with the parties and CAISO and other California balancing authorities, if relevant, of reviewing and evaluating RPS procurement contracts in which a dynamic transfer is an element of the contract.

18. In order to provide the Commission with information to evaluate the role of firm transmission in RPS procurement, the Director of Energy Division should be authorized to investigate the use of firm transmission in accordance with the guidance provided in this decision.

19. In order to facilitate the integration of TRECs into RPS procurement planning and practices, the assigned Commissioner in R.08-08-009 or its successor should be authorized to include in that proceeding consideration of changes to RPS annual procurement plans, LCBF evaluation methodology, and RPS contract approval processes to include procurement of TRECs.

20. 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.

21. In order to facilitate the integration of REC-only transactions into the RPS procurement process, the Director of Energy Division should be authorized to apply current procedures and methods of review of bundled contracts to REC-only contracts, with the exception that the fast-track procedure authorized by D.09-06-050 should not now be applied to REC-only contracts.

22. In order to facilitate the integration of REC-only transactions into the RPS procurement process, utilities that have submitted RPS procurement contracts

for Commission approval should, if necessary, amend all pending contracts to include the STCs related to RECs, and should amend their pending advice letters or applications to demonstrate that the contracts conform to the requirements for STCs related to RECs.

23. Utilities that are required to submit their RPS procurement contracts for Commission approval should submit REC-only contracts for approval not earlier than November 1, 2010. The Director of Energy Division should be authorized to require the submission of any additional information necessary for the evaluation of such contracts.

24. In order to facilitate the integration of REC-only transactions into the RPS procurement process, the Director of Energy Division should be authorized to determine the price of the TRECs in transactions for both RECs and energy in which no separate price for RECs is indicated and where the RECs are associated with energy from generators of RPS-eligible energy for which the generator's first point of interconnection with the WECC interconnected transmission system is not with a California balancing authority, and the transaction does not make use of dynamic transfer arrangements in a California balancing authority.

25. In order to provide the Commission with information about the initial period of the TREC market and the use of TRECs for RPS compliance, the Director of Energy Division should prepare a report for the Commission within 16 months of the effective date of this order, using information provided by all RPS-obligated LSEs. This report should include a recommendation to the Commission regarding whether or not the applicable TREC usage limit and price cap should be retained or allowed to sunset.

26. 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 that are procured and traded separately from the associated energy generated by a facility that is eligible for the California renewables portfolio standard may be used for compliance with the California renewables portfolio standard in accordance with the rules set forth in this decision.

2. Procurement and trading of renewable energy credits for compliance with the California renewables portfolio standard in accordance with the rules set forth in this decision may commence on the effective date of this decision.

3. In order to be used for compliance with the California renewables portfolio standard, tradable renewable energy credits must be tracked and retired in the Western Renewable Energy Generation Information System.

4. Any renewable energy credits tracked in the Western Renewable Energy Generation Information System that conform to the requirements of Decision 08-08-028 and any subsequent Commission decision or any applicable California legislation characterizing renewable energy credits, and that meet the criteria for eligibility set by the California Energy Commission, may be used for compliance with the California renewables portfolio standard, subject to the restrictions in Ordering Paragraphs 8 and 9, below.

5. Any renewable energy credits tracked in the Western Renewable Energy Generation Information System associated with electricity that is eligible for the California renewables portfolio standard that was generated on or after January 1, 2008 may be procured and traded separately from the associated

energy, subject to the restrictions set forth in Ordering Paragraphs 8, 9, and 14 below.

6. As of the effective date of this decision, a transaction for purposes of compliance with the California renewables portfolio standard shall be considered a transaction that procures only renewable energy credits if that transaction either:

a. Expressly transfers only renewable energy credits and not energy from the seller to the buyer; or
b. Transfers both renewable energy credits and energy from the seller to the buyer but does not meet the Commission's criteria for considering a procurement transaction a bundled transaction for purposes of compliance with the California renewables portfolio standard.

All deliveries from transactions described in subsection b, above, associated with contracts approved by the Commission (for investor-owned utilities), or signed (for electric service providers), prior to the effective date of this decision will be counted as bundled transactions for purposes of compliance with the California renewables portfolio standard unless and until either of the following occurs:

a. The expiration date of the contract is extended beyond the expiration date existing on March 11, 2010; or
b. The deliveries allowed under the contract are increased beyond the maximum deliveries identified in the contract as the contract read on March 11, 2010.

If either of these changes is made to the contract, all deliveries after the effective date of the contract amendment that are incremental to the deliveries in the original contract will be treated according to the then-applicable classification of REC-only and bundled transactions.

7. The following types of transactions shall be treated as bundled transactions for purposes of compliance with the California renewables portfolio standard:

   a. Transactions in which energy is acquired from a generator certified as eligible for the California renewables portfolio standard and the generator has its first point of interconnection with the Western Electricity Coordinating Council interconnected transmission system with a California balancing authority; and

   b. Transactions in which energy is acquired from a generator certified as eligible for the California renewables portfolio standard and the energy from the transaction is dynamically transferred to a California balancing authority area.

8. Renewable energy credits associated with electricity generation that is eligible for the California renewables portfolio standard delivered under procurement contracts signed prior to 2005 with load-serving entities obligated under the California renewables portfolio standard or with California publicly owned utilities that do not allocate ownership or disposition of the renewable energy credits shall be used for compliance with the California renewables portfolio standard only if they are not transferred to an entity other than the original buyer in the Western Renewable Energy Generation Information System prior to being retired for compliance with the California renewables portfolio standard.

9. Renewable energy credits associated with electricity generation that is eligible for the California renewables portfolio standard delivered under procurement contracts of California utilities for both energy and renewable energy credits pursuant to the federal Public Utility Regulatory Policies Act of 1978 that were signed after January 1, 2005 shall be used for compliance with the California renewables portfolio standard only if they are not transferred to an entity other than the original buyer in the Western Renewable Energy Generation

Information System prior to being retired for compliance with the California renewables portfolio standard.

10. In order to be used for compliance with the California renewables portfolio standard, renewable energy credits may be retained in active sub-accounts in the Western Renewable Energy Generation Information System for no more than three compliance years (inclusive of the year in which the electricity associated with the renewable energy credits was generated) after the electricity associated with the renewable energy credits was generated before being transferred to the Western Renewable Energy Generation Information System retirement sub-account of a load-serving entity obligated under the California renewables portfolio standard.

11. Once renewable energy credits are retired in the Western Renewable Energy Generation Information System for use for compliance with the California renewables portfolio standard, they may be banked for compliance with the California renewables portfolio standard in future years in accordance with the flexible compliance rules for the California renewables portfolio standard.

12. Subject to the restrictions in Ordering Paragraphs 8, 9, and 14, the renewable energy credits from bundled contracts currently delivering energy eligible under the California renewables portfolio standard may be unbundled and traded separately from the associated energy in accordance with the rules set forth in this decision, so long as, once the renewable energy credits have been sold, the associated energy is not used for compliance with the California renewables portfolio standard.

13. Subject to the restrictions in Ordering Paragraphs 8, 9, and 14, the renewable energy credits from bundled contracts scheduled to deliver energy

eligible for the California renewables portfolio standard in the future may be unbundled and traded on a forward basis separately from the associated energy, so long as, once the renewable energy credits are generated, they are tracked in the Western Renewable Energy Generation Information System and, once the renewable energy credits have been sold, the associated energy is not used for compliance with the California renewables portfolio standard.

14. Renewable energy credits may not be unbundled and traded from the first three years of deliveries under any bundled procurement contract for compliance with the California renewables portfolio standard that has been earmarked to apply to a shortfall in meeting the annual procurement target of a load-serving entity obligated under the California renewables portfolio standard in the year the bundled contract was signed, subject to the restrictions in Ordering Paragraphs 8 and 9.

15. Contracts for delivery of renewable energy credits only between a load-serving entity and one generator of energy eligible under the California renewables portfolio standard that supplies all the renewable energy credits in the contract may be earmarked for purposes of compliance with the California renewables portfolio standard, but no other types of contracts for delivery of renewable energy credits only may be earmarked. The tradable renewable energy credits from such contracts shall count against any annual limit on the use of tradable renewable energy credits in the year that the tradable renewable energy credits are used for compliance with the California renewables portfolio standard.

16. Renewable energy credits may not be sold or traded from the first three years of deliveries from a procurement contract for renewable energy credits only that has been earmarked to apply to a shortfall in meeting the annual

procurement target of a load-serving entity obligated under the California renewables portfolio standard in the year the contract for the delivery of renewable energy credits was signed.

17. Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company, and each electric service provider registered in California, may each use renewable energy credits procured from contracts for renewable energy credits only to meet no more than 40 percent of their annual procurement targets for the California renewables portfolio standard, beginning with the 2010 compliance year.

18. The temporary limit on the use of tradable renewable energy credits for compliance with the California renewables portfolio standard set forth in OP 17 shall terminate on December 31, 2013.

19. No renewable energy credits procured through contracts for renewable energy credits only for which the levelized amount paid is greater than $50.00 per renewable energy credit may be used by any investor-owned utility for compliance with the California renewables portfolio standard. This limit applies only to those renewable energy credits procured by multi-jurisdictional utilities exclusively for use in complying with their California renewables portfolio standard procurement obligations.

20. The temporary limit on the price paid by an investor-owned utility for tradable renewable energy credits procured through contracts for renewable energy credits only for compliance with the California renewables portfolio standard shall terminate on December 31, 2013.

21. Investor-owned utilities that have reached the procurement cost limitation for compliance with the California renewables portfolio standard set forth in

Public Utilities Code Section 399.15(d) may enter into voluntary transactions for renewable energy credits in accordance with the rules set forth in this decision.

22. Investor-owned utilities shall promptly set up an appropriate accounting method to apply proceeds of the sale of renewable energy credits for the benefit of ratepayers. Any investor-owned utility not currently having an appropriate accounting method shall file an advice letter within 90 days of the effective date of this decision proposing an accounting method.

23. Any contracts for renewable energy credits only that are procured solely for compliance with the California renewables portfolio standard for which a multi-jurisdictional utility seeks recovery of costs must be submitted for Commission approval by means of an advice letter.

24. The Director of Energy Division is authorized to develop methods, in consultation with the parties and California Independent System Operator, and other California balancing authorities, if relevant, of reviewing and evaluating procurement contracts for compliance with the California renewables portfolio standard in which a dynamic transfer is an element of the contract.

25. The Director of Energy Division shall take appropriate steps to obtain information that will enable a definitive determination of how to classify transactions for RPS procurement that include firm transmission arrangements but not dynamic transfers to a California balancing authority and will allow the development of criteria for reviewing and evaluating such contracts that are presented for Commission approval. The Director of Energy Division may also, in the Director's discretion, provide recommendations to the Commission about the classification and evaluation of such transactions. Such recommendations may be in the form of a report, or in the form of a resolution prepared for the Commission's consideration.

26. The Director of Energy Division is authorized to review existing reporting formats and tools for the California renewables portfolio standard and undertake appropriate revisions to allow complete reporting and monitoring of the provisions in this order.

27. The Director of Energy Division is authorized to apply current procedures and methods of review of bundled contracts for procurement under the California renewables portfolio standard by investor-owned utilities to contracts for renewable energy credits only, with the exception that the fast-track procedure authorized by Decision 09-06-050 may not now be applied to procurement of renewable energy credits only.

28. The Director of Energy Division is authorized to develop and apply a method for inferring the price of renewable energy credits in transactions for both renewable energy credits and energy in which no separate price for the renewable energy credits is indicated and where the renewable energy credits are associated with energy from generators of energy eligible under the California renewables portfolio standard for which the first point of interconnection with the Western Electricity Coordinating Council interconnected transmission system is not a California balancing authority and a dynamic transfer with a California balancing authority is not an element of transaction.

29. The Director of Energy Division may require the submission of appropriate documentation to verify compliance with any of the requirements set forth in this Order, including but not limited to purchases, sales, and prices of renewable energy credits.

30. The Director of Energy Division shall review and compile information about the market for tradable renewable energy credits and the use of tradable

renewable energy credits for compliance with the California renewables portfolio standard provided by load-serving entities obligated under the California renewables portfolio standard in their advice letters or applications seeking approval of contracts for procurement of renewable energy credits only, in their semiannual compliance reports, and in response to other request for information made by Energy Division staff. The Director of Energy Division shall include analysis of this information in a report to be provided to the Commission not more than 16 months from the effective date of this decision. The report shall also include recommendations about whether the Commission should review, modify, or extend the annual limit on the use of tradable renewable energy credits for compliance with the California renewables portfolio standard program, or whether the Commission should let the limit expire. The report shall also include recommendations about whether the Commission should review, modify, or extend the limit on the price an investor-owned utility may pay for tradable renewable energy credits for compliance with the California renewables portfolio standard program, or whether the Commission should let the limit expire.

31. The Director of Energy Division shall include in the format for advice letters seeking Commission approval of contracts for procurement of tradable renewable energy credits for compliance with the California renewables portfolio standard the following information from the utility submitting the advice letter:

- Whether the generation facility or facilities producing the energy eligible for the California renewables portfolio standard that is associated with the renewable energy credits to be procured entered commercial operation prior to January 1, 2005, or after January 1, 2005, or was not in commercial operation at the time the contract was signed;

- the sum of all delivered and expected tradable renewable energy credits purchased through contracts executed by the utility to date and how this compares to any applicable annual limit on the use of tradable renewable energy credits for compliance with the California renewables portfolio standard;
- the sum of all delivered and expected tradable renewable energy credits purchased by that utility through contracts for the procurement of renewable energy credits only with facilities that are or were already online as of the execution date of their associated contract for procurement of tradable renewable energy credits, and how this compares to the applicable annual limit on the use of tradable renewable energy credits for compliance with the California renewables portfolio standard;
- the sum of all delivered and expected tradable renewable energy credits purchased by that utility through contracts for the procurement of renewable energy credits only with facilities that are not or were not online as of the execution dates of their associated contracts, and how this compares to the applicable annual limit on the use of tradable renewable energy credits for compliance with the California renewables portfolio standard;
- a comparison of the price of the renewable energy credits in the contract that is the subject of the advice letter and the price of renewable energy credits from all contracts for the procurement of renewable energy credits only with facilities that were online as of the execution date of their associated contracts; and
- a comparison of the price of the renewable energy credits in the contract that is the subject of the advice letter and the price of renewable energy credits from all contracts for the procurement of renewable energy credits only with facilities that were not yet online as of the execution date of their associated contracts.

32. Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company shall each file and serve amendments to their 2010 annual procurement plans for compliance with the California renewables portfolio standard that have been submitted in Rulemaking 08-08-009, on a schedule to be set by the assigned administrative law judge. The amendments shall address each utility's anticipated plans for the use of tradable renewable energy credits to meet their procurement obligations under the California renewables portfolio standard. The amendments shall include as much detail as currently possible on whether the utility intends to use long-term or short-term contracts, and whether the utility expects to contract with newly constructed generation, or acquire tradable renewable energy credits from facilities that are currently on line. The amendments shall also explain how these transactions will promote the development of new renewable facilities in California and the area served by the Western Electricity Coordinating Council.

33. The assigned Commissioner in Rulemaking 08-08-009 is authorized to initiate review and revision of the methodology for identifying least cost and best-fit resources for procurement for compliance with the California renewables portfolio standard. The review shall include, among other issues, consideration of revisions to the least cost and best-fit methodology that will encourage greater reliance on procurement transactions that lead to the construction of additional capacity for generation that is eligible for procurement for compliance with the California renewables portfolio standard.

34. The following non-modifiable standard terms and conditions shall be included in all contracts for procurement for compliance with the California renewables portfolio standard, whether bundled contracts or purchases of renewable energy credits only:

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 to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

35. The following non-modifiable standard terms and conditions shall be included in all contracts for purchase of renewable energy credits only 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.

STC 17. Applicable Law

Governing Law. This agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement.

36. Utilities that have submitted for Commission approval contracts for procurement for compliance with the California renewables portfolio standard shall, if necessary, amend all pending contracts to include the standard terms and conditions related to renewable energy credits set forth in Ordering Paragraphs 34 and 35 above, and shall amend their pending advice letters or applications to demonstrate that the contracts conform to the requirements for standard terms and conditions related to renewable energy credits.

37. Not earlier than November 1, 2010, utilities may submit for Commission approval contracts conveying only renewable energy credits and not energy that conform to the requirements of this order. For any contracts conveying only renewable energy credits and not energy that a utility submitted prior to November 1, 2010 but that have not been approved by November 1, 2010, the utility shall file make a supplemental filing, in the form and with the content prescribed by the Director of Energy Division.

38. The issues in the Second Amended Scoping Memo and Ruling of Assigned Commissioner (February 25, 2008) have either been transferred to Rulemaking (R.) 08-08-009 by the Assigned Commissioner's Ruling Transferring Consideration of Certain Issues from R.06-02-012 to R.08-08-009 (April 3, 2009) or resolved in this proceeding. This proceeding is therefore resolved for the purpose of compliance with Public Utilities Code Section 1701.5. However, the proceeding remains open to address the Petition for Modification of Decision 06-10-019, filed October 29, 2009.

This order is effective today.

(END OF APPENDIX A)

APPENDIX B

APPENDIX B

Summary of TREC Rules Announced in D.10-03-021, and Compiled in Appendix D to D.10-03-021, as Modified by 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?

1) A transaction in which an entity procures only a REC (and not the underlying energy) from another entity, or
2) A transaction conveying both RECs and energy that does not meet the Commission's criteria for bundled RPS procurement transactions. These REC-only transactions currently include all procurement from generators of RPS-eligible energy for which the first point of interconnection with the WECC interconnected transmission system is not a California balancing authority, and the transaction does not make use of dynamic transfer arrangements in a California balancing authority area.

All deliveries from transactions described in section 2, above, associated with contracts approved by the Commission (for IOUs), or signed (for ESPs), prior to the effective date of this decision will be counted as bundled transactions for purposes of compliance with the California renewables portfolio standard unless and until either of the following occurs:

a. The expiration date of the contract is extended beyond the expiration date existing on March 11, 2010; or
b. The deliveries allowed under the contract are increased beyond the maximum deliveries identified in the contract as the contract read on March 11, 2010.

If either of these changes is made to the contract, all deliveries after the effective date of the contract amendment will be treated according to the applicable classification of REC-only and bundled deliveries as of the effective date of the amendment.

Effective date of REC trading

- RPS-obligated load-serving entities[1] may begin procuring and trading RECs on March 11, 2010.

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.
- 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 to California utilities under procurement contracts pursuant to the Federal Public Utility Regulatory Policies Act of 1978 with qualifying facilities signed after January 1, 2005 cannot be traded.

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

Flexible compliance rules for TRECs

Commitment and 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.

Filling compliance shortfalls

REC-only contracts may be used to make up shortfalls in APT, so long as the total use of TRECs for the year of the shortfall does not exceed the applicable limit on TRECs usage.

Temporary limit on use of TRECs for RPS compliance

- PG&E, SCE, SDG&E, and the ESPs may meet no more than 30% of their APT with TRECs. This limitation will sunset December 31, 2013.

Contract review and approval of TREC transactions

- IOUs may submit TREC contracts for CPUC review and approval by advice letter starting November 1, 2010.
- Energy Division staff may use present methods of analyzing advice letters for bundled contracts, and make any adaptations necessary, for reviewing REC-only contracts, except that the fast-track process set out in D.09-06-050 does not apply to TRECs. These methods may be reviewed in R.08-08-009 or a successor proceeding.
- TRECs for which an IOU pays more than $50/TREC may not be used for RPS compliance. This price cap will sunset December 31, 2013.

- 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 three non-modifiable standard terms and conditions: (1) Transfer of renewable energy credits; (2) Tracking of RECs in WREGIS; (3) Applicable Law.
- REC-only contracts of California IOUs other than MJUs must contain a fourth STC: Commission Approval.
- IOUs may enter into voluntary TREC transactions even if their cost limitation pursuant to § 399.15(d) has been reached, so long as they comply with the requirements of this decision.

Delivery rules for TREC transactions

- The CEC decides whether a TREC contract satisfies RPS delivery rules. 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 B)