

APPENDIX C**MODIFIED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
INTERIM ORDER IN D.06-10-019****Findings of Fact**

1. It is reasonable to use 2005 as the procurement year for determining the baseline RPS procurement amounts of respondent ESPs in California, according to the formula: 2005 initial baseline procurement amount = (2001 RPS-eligible procurement/2001 total retail sales) x 2005 total California retail sales.

2. It is reasonable to use the first year of California retail operations as the year for determining the baseline RPS procurement amount for those ESPs, if any, commencing California operations on or after January 1, 2006, with the baseline being the total RPS-eligible procurement in the ESP's first calendar year of California retail operation.

3. It is reasonable to allow respondent ESPs to carry a deficit of up to 100% of their 2006 IPT without explanation, so long as this amount is fully made up within three years.

4. ESPs in California differ among themselves in the amount of RPS-eligible energy they have procured.

5. It is reasonable for ESPs to use the same flexible compliance mechanisms as other RPS-obligated LSEs, with the exception for 2006 noted above.

6. It is reasonable to require ESPs to follow the same RPS reporting and verification requirements as all other RPS-obligated LSEs.

7. It is reasonable to require ESPs to send copies of all contracts for procurement of RPS-eligible energy to Energy Division, as and when

requested by the Director of Energy Division, for reporting and compliance purposes.

8. There are currently no CCAs in operation in California.

9. It is reasonable to set initial RPS requirements for CCAs in order to allow potential CCAs to plan effectively for RPS compliance.

10. It is reasonable for the renewable procurement baseline of a CCA to be determined on the basis of the CCA's first year of operation, with the baseline being the total RPS-eligible procurement in the CCA's first calendar year of California retail operation.

11. It is reasonable for the initial IPT and APT for a CCA to be determined based on the CCA's retail sales in its first year of operation, and to apply them in the CCA's second year of operation.

12. It is reasonable to allow CCAs to carry a deficit of up to 100% of their first year IPT without explanation, so long as this amount is fully made up within three years, subject to the further development of the flexible compliance rules in accordance with SB 107.

13. It is reasonable for CCAs to use the same flexible compliance mechanisms as other RPS-obligated LSEs.

14. It is reasonable to require CCAs to follow the same RPS reporting and verification requirements as all other RPS-obligated LSEs.

15. It is reasonable to require CCAs to send copies of all contracts for procurement of RPS-eligible energy to Energy Division, as and when requested by the Director of Energy Division, for reporting and compliance purposes.

16. Substantially all new RPS-eligible generation in California has been built after the developer has secured a contract of at least 10 years in duration for the entire output of the project.

17. Access to a range of contract lengths could increase the ability of RPS-obligated LSEs to procure RPS-eligible resources.

18. It is reasonable to allow RPS-obligated LSEs to use a range of contract lengths to procure RPS-eligible resources.

19. The CEC's RPS verification system currently requires contracts to have a minimum length of one month for verification purposes.

20. It is reasonable to allow utilities to accept contracts of less than 10 years, but at least one month, in duration offered by developers of RPS-eligible generation in response to a utility solicitation seeking resources with contracts of a minimum of 10 years, subject to Commission approval through the advice letter process, and after SB 107 is in effect, subject to the other prerequisites to Commission approval of contracts less than 10 years in duration.

21. It is reasonable to allow all RPS-obligated LSEs to enter into bilateral contracts of any length, with a minimum duration of one month, for procurement of RPS-eligible resources, and after SB 107 is in effect, subject to the other prerequisites to Commission approval of contracts less than 10 years in duration.

22. It is reasonable to require bilateral contracts of utilities for procurement of RPS-eligible resources to be subject to Commission approval through the advice letter process.

23. It is reasonable to require utilities to use an independent evaluator in the negotiation of any bilateral contract with an affiliate for procurement of RPS-eligible resources.

24. Development and use of more consistent tools and standards for evaluating utility contracts of less than 10 years in duration would enhance the fair and efficient administration of the RPS program.

25. It is reasonable that any procurement contract on which any ESP or CCA relies for RPS compliance include four nonmodifiable terms and conditions relating to definition and ownership of RECs, eligibility, assignment, and applicable law, set out in Appendix A to D.04-06-014.

26. The delivery flexibility for RPS-eligible resources developed in D.05-07-039 and D.06-05-039 is available to all RPS-obligated LSEs.

27. It is not reasonable at this time to create a new category of unbundled REC transactions, characterized by the one-time transfer of RECs from an RPS-eligible generator to an LSE without the transfer of the energy associated with the REC, for RPS compliance.

28. There is no current impediment to the use for RPS compliance of RPS-eligible energy from generators located in California that is firmed or shaped prior to delivery, so long as the CEC's requirements for generator eligibility, delivery eligibility, and verification are met.

29. The RPS eligibility of RPS-eligible energy from generators located outside California that is firmed or shaped prior to delivery is determined by the CEC.

30. Central California Power was erroneously included as a respondent in the OIR for this proceeding.

Conclusions of Law

1. The year 2005 should be used as the procurement year for determining the baseline RPS procurement of respondent ESPs in California, according to the formula: 2005 initial baseline procurement amount = (2001 RPS-eligible procurement/2001 total retail sales) x 2005 total California retail sales.
2. The first year of California retail operations should be used as the year for determining the baseline RPS procurement amount for those ESPs, if any, commencing California operations on or after January 1, 2006, with the baseline being the total RPS-eligible procurement in the ESP's first calendar year of California retail operation.
3. Respondent ESPs should be allowed to carry a deficit of up to 100% of their 2006 IPT without explanation, so long as this amount is fully made up within three years.
4. ESPs should use the same flexible compliance mechanisms as other RPS-obligated LSEs, including the same penalty provisions for noncompliance, with the exception for 2006 noted above.
5. ESPs should follow the same RPS reporting and verification requirements as all other RPS-obligated LSEs.
6. ESPs should send copies of all contracts for procurement of RPS-eligible energy to Energy Division, as and when requested by the Director of Energy Division, for reporting and compliance purposes.
7. Initial RPS requirements for CCAs should be set in order to allow potential CCAs to plan effectively for RPS compliance.
8. The renewable procurement baseline of a CCA should be determined on the basis of the CCA's first year of operation, with the

baseline being the total RPS-eligible procurement in the CCA's first calendar year of California retail operation.

9. The initial IPT and APT for a CCA should be determined based on the CCA's retail sales in its first year of operation, and should be applied in the CCA's second year of operation.

10. CCAs should be allowed to carry a deficit of up to 100% of their first year IPT without explanation, so long as this amount is fully made up within three years, subject to the further development of flexible compliance rules in accordance with SB 107.

11. CCAs should use the same flexible compliance mechanisms as other RPS-obligated LSEs, including the same penalty provisions for noncompliance.

12. CCAs should follow the same RPS reporting and verification requirements as all other RPS-obligated LSEs.

13. CCAs should send copies of all contracts for procurement of RPS-eligible energy to Energy Division, as and when required by the Director of Energy Division, for reporting and compliance purposes.

14. RPS-obligated LSEs should be allowed to use a range of contract lengths to procure RPS-eligible resources.

15. Utilities should be allowed to accept contracts of less than 10 years in duration, but not less than one month, if they are offered by developers of RPS-eligible generation in response to a utility solicitation seeking resources with contracts of a minimum of 10 years, subject to Commission approval through the advice letter process, and, after SB 107 is in effect, subject to the other prerequisites to Commission approval of contracts less than 10 years in duration.

16. All RPS-obligated LSEs should be allowed to enter into bilateral contracts of any length, with a minimum of one month, for procurement of RPS-eligible resources, with utilities' bilateral contracts submitted for Commission approval via advice letter, so long as, after SB 107 is in effect, the other prerequisites to Commission approval of contracts less than 10 years in duration are met.

17. Consistent tools and standards for evaluating utility contracts of less than 10 years in duration should be developed.

18. Utilities should be required to use an independent evaluator in the negotiation and execution of any bilateral contract with an affiliate for procurement of RPS-eligible resources.

19. Any procurement contract on which any ESP or CCA relies for RPS compliance should, until further notice, include the following nonmodifiable terms and conditions set out in Appendix A to D.04-06-014:

Definition and ownership of RECS;
Eligibility;
Assignment; and
Applicable law.

20. The delivery flexibility for RPS-eligible resources developed in D.05-07-039 and D.06-05-039 should be available to all RPS-obligated LSEs.

21. Unbundled REC transactions, as defined in today's decision, should not be allowed for RPS compliance at this time.

22. The use of RPS-eligible energy from generators located in California that is firmed or shaped prior to delivery should be allowed

for RPS compliance, so long as the CEC's requirements for generator eligibility, delivery eligibility, and verification are met.

23. Central California Power should be removed as a respondent in this proceeding, while remaining a party.

IT IS ORDERED that:

1. The renewables portfolio standard (RPS) obligations of each electric service provider (ESP) and community choice aggregator (CCA) shall be calculated in accordance with the method set forth in Appendix B, with the renewable procurement baseline amount of each respondent ESP calculated in accordance with the formula: 2005 Initial Baseline Procurement Amount = (2001 RPS-eligible procurement/2001 total retail sales) x 2005 total California retail sales.

2. Each respondent ESP shall be allowed to carry a deficit of up to 100% of its 2006 incremental procurement target (IPT) without explanation, so long as this amount is fully made up within three years.

3. The Executive Director, in consultation with Energy Division, shall establish renewable procurement baselines and IPTs and annual procurement targets (APTs) for all ESPs, after receipt of appropriate information from each ESP.

4. The assigned ALJ is authorized to issue any rulings necessary to facilitate the acquisition of appropriate information for the development of baselines, IPTs, and APTs for ESPs.

5. ESPs shall use the same flexible compliance mechanisms as other RPS-obligated LSEs, including the same penalty provisions for noncompliance, with the exception for 2006 noted above.

6. ESPs shall follow the same RPS reporting and verification requirements as all other RPS-obligated load serving entities (LSEs).
7. ESPs shall send copies of all contracts for procurement of RPS-eligible energy to Energy Division, as and when requested by the Director of Energy Division, for reporting and compliance purposes.
8. The renewable procurement baseline of a community choice aggregator (CCA) shall be the total RPS-eligible procurement in the CCA's first calendar year of California retail operation.
9. The initial IPT and APT for a CCA shall be determined based on the CCA's retail sales in its first year of operation, and shall apply to the CCA's second year of operation.
10. The Executive Director, in consultation with Energy Division, shall establish renewable procurement baselines and IPTs and annual procurement targets (APTs) for each CCA, after receipt of the CCA's RPS implementation plan and receipt of appropriate information from each CCA.
11. The assigned ALJ is authorized to issue any rulings necessary to facilitate the acquisition of appropriate information for the development of baselines, IPTs, and APTs for CCAs.
12. CCAs shall be allowed to carry a deficit of up to 100% of their first year IPT without explanation, so long as this amount is fully made up within three years, subject to the further development of flexible compliance mechanisms in accordance with SB 107.
13. CCAs shall use the same flexible compliance mechanisms as other RPS-obligated LSEs, including the same penalty provisions for noncompliance, subject to the first-year exception noted above.

14. CCAs shall follow the same RPS reporting and verification requirements as all other RPS-obligated LSEs.

15. CCAs shall send copies of all contracts for procurement of RPS-eligible energy to Energy Division, as and when required by the Director of Energy Division, for reporting and compliance purposes.

16. Utilities shall be allowed to accept contracts of less than 10 years in duration, but not less than one month, if they are offered by developers of RPS-eligible generation in response to a utility solicitation seeking resources with contracts of a minimum of 10 years, subject to Commission approval through the advice letter process, and, after SB 107 is in effect, subject to the other prerequisites to Commission approval of contracts less than 10 years in duration.

17. All RPS-obligated LSEs shall be allowed to enter into bilateral contracts of any length, with a minimum length of one month, for procurement of RPS-eligible resources, with utilities' bilateral contracts submitted for approval via advice letter so long as, after SB 107 is in effect, the other prerequisites to Commission approval of contracts less than 10 years in duration are met.

18. Energy Division is authorized to develop a price evaluation methodology for use in reviewing utilities' RPS procurement contracts with a duration less than 10 years.

19. Utilities shall be required to use an independent evaluator in the event they undertake the negotiation and execution of any bilateral contract with an affiliate for procurement of RPS-eligible resources.

20. Any procurement contract on which any ESP or CCA relies for RPS compliance shall, until further notice, include the following nonmodifiable terms and conditions set out in Appendix A to D.04-06-014:

Definition and ownership of RECS;

Eligibility;

Assignment; and

Applicable law.

21. The delivery flexibility for RPS-eligible resources developed in D.05-07-039 and D.06-05-039 may be used by all RPS-obligated LSEs.

22. RPS-eligible energy from generators located in California that is firming or shaped prior to delivery may be used for RPS compliance, so long as the CEC's requirements for generator eligibility, delivery eligibility, and verification are met.

23. Transactions using unbundled renewable energy credits, as defined in today's decision, for RPS compliance shall not be allowed at this time.

24. Central California Power shall be removed as a respondent but retained as a party in this proceeding.

This order is effective today.

(END OF APPENDIX C)