

Decision 09-06-050 June 18, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

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

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

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

1. Summary

This decision announces simplified and standardized procedures for Commission review of certain procurement contracts of investor-owned utilities under the renewables portfolio standard (RPS). The decision provides criteria for a fast-track review of RPS contracts that are less than 10 years in duration if the contracts meet specified criteria. The price will be considered per se reasonable and recoverable in rates if it satisfies the price benchmark requirements. The contract may be submitted for Commission approval using a Tier 2 advice letter if the contract is made with a generation facility that is in commercial operation or will commence commercial operation not later than six months from the date the contract is signed, contract price meets the price benchmark, the contract meets the requirements for contract terms and conditions, and the contract is otherwise consistent with all other applicable RPS program requirements.

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

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

- The contract is made with a generation facility that is in commercial operation or will commence commercial operation not later than six months from the date the contract is signed;

- The levelized price, including firming and shaping costs, over the life of the contract does not exceed a price benchmark calculated as 150% of the forward price for a contract of the same duration for non-renewable energy and that price does not exceed 90% of the market price referent for a contract of 10 years duration;
- The terms and conditions in the contract are the same (with allowance for minor modifications) as those provided in a pro forma contract submitted with the utility's RPS procurement plan and approved for use by the Commission;
- The contract is reviewed by the utility's Procurement Review Group and Independent Evaluator;
- The contract is consistent with the utility's least-cost best-fit criteria for RPS procurement; and
- The contract otherwise is consistent with the utility's approved RPS procurement plan.

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

- The contract is made with a generation facility that is in commercial operation or will commence commercial operation not later than six months from the date the contract is signed;
- The levelized price, including firming and shaping costs, over the life of the contract is less than or equal to the price benchmark for a contract of that length;
- The terms and conditions in the contract are the same (with allowance for minor modifications) as those provided in a pro forma contract submitted with the utility's RPS procurement plan and allowed to be used by the Commission;

- The contract is consistent with the utility's least-cost best-fit criteria for RPS procurement;
- The contract is reviewed by the utility's Independent Evaluator and its Procurement Review Group; and
- The contract otherwise is consistent with the utility's approved RPS procurement plan.

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

2. Procedural Background

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

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

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

Unless otherwise indicated, all subsequent citations to sections refer to the Public Utilities Code and citations to rules refer to the Rules of Practice and Procedure,

Footnote continued on next page

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

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

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

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

which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations.

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

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

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

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

SCE and PG&E made proposals in their 2009 procurement plans that are related to the issues transferred by the ACR. SCE proposes that all its RPS procurement contracts having a term of less than five years be preapproved and then reported in the utility's quarterly procurement advice letter filing, up to a cumulative limit of 10,000 gigawatt-hours (GWh) of RPS procurement over five

years. PG&E proposes a pilot program in which it submits Tier 1 advice letters⁴ for RPS contracts of any length that conform to Commission-approved terms and are priced at or below the market price referent (MPR). The program would be limited to a total of 800 GWh.

3. Discussion

3.1. General Considerations for Short-Term Contracts

The term “short-term” contracts covers all RPS contracts lasting at least one month but not more than 10 years. It applies both to contracts entered into as the result of an annual RPS solicitation and to contracts that are not the result of a solicitation (usually referred to as "bilateral" contracts). In D.08-02-008, the Commission authorized PG&E, SCE, and SDG&E⁵ to include requests for short-term contracts in their annual RPS solicitations.

Short-term contracts can play a useful role in RPS procurement. They are not, as a rule, a significant element in the financing of new RPS-eligible generation facilities. As the Commission found in D.06-10-019, in order to obtain financing for new RPS-eligible generation, the generation developer generally must have long-term contracts for the output of the facility. Parties agree that this is still true. Thus, short-term contracts are much more likely to be between utilities and generation facilities that are already built and operating, rather than with new facilities that are being developed. Such contracts may provide RPS-

⁴ Advice letters are governed by General Order 96-B. Advice letter "tiers" are set forth in Industry Rule 5 and are explained in D.07-01-024. A Tier 1 advice letter is effective upon filing, though staff retains the right to suspend the advice letter, and other parties have the right to protest the advice letter.

⁵ These utilities are sometimes referred to in this decision as “the three large utilities.”

eligible generators whose long-term contracts are expiring with greater flexibility; they may also allow the useful lives of the facilities to be extended for a few years. Some evidence reviewed in D.06-10-019 suggests that short-term contracts could also be useful to an RPS-eligible facility at other times, for example, if a facility comes on line before its contracted long-term deliveries start, or if there are periods when long-term contracts are not taking the entire output of the facility. For the utility, short-term contracts may fill procurement gaps when long-term contracts are not yet delivering energy. In some circumstances, a short-term contract may simply present a particularly attractive opportunity for acquisition of RPS-eligible energy.

3.2. Fast-track Treatment

Allowing utilities to submit certain short-term contracts using Tier 2 advice letters adds an expedited option for RPS procurement, while providing Energy Division staff with a reasonable opportunity to determine whether a particular contract merits closer review.⁶

The initial proposals of both Energy Division staff and the parties focused on developing a process for across-the-board preapproval of short-term contracts whose prices were at or below a price reasonableness benchmark. Parties were divided both about the need for a preapproval process at all, and about how to determine price reasonableness for such a process.⁷ In its initial comments, GPI asserts that there are likely to be too few short-term contracts to make the process of developing a preapproval method worthwhile. Aglet and DRA argue that

⁶ A Tier 2 advice letter is effective 30 days from filing, unless suspended by staff or protested by another party.

⁷ Parties' views on the price benchmark issues are discussed in Section 3.4, below.

only the shortest contracts (less than six months) should be allowed on a preapproved basis, without any Commission review. SDG&E and CEERT urge that a "strong showing" standard should be applied for approval of short-term RPS contracts, similar to that used for approval of contracts for non-renewable power. While questioning the need for a short-term price reasonableness benchmark, SCE, AReM, Powerex, and PacifiCorp initially support the concept of a preapproval process. PG&E supports both preapproval and a price benchmark.

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

We appreciate the efforts of parties and staff in formulating responses to the problem they initially identified, which we paraphrase as: "Should short-term RPS contracts be preapproved or should they be subject to the full Tier 3⁸ advice letter process?" Taking into consideration the evolution of the RPS program, however, this is no longer the most productive inquiry. Rather, asking "how can approval of short-term contracts best fit in the overall context of RPS

⁸ A Tier 3 advice letter is not effective until approved by the Commission through a resolution.

procurement?" makes the best use of the full range of experience of staff and the parties in the RPS process.

As an initial matter, the reservations about blanket preapproval of short-term contracts⁹ expressed by Aglet, DRA, Reid, and TURN are significant. Although several parties initially suggested that there would be relatively few contracts in this category, SCE's current proposal contemplates up to 10,000 GWh of contracts over five years. On an annual basis, this would exceed SCE's entire RPS incremental procurement target in each of those years.¹⁰ We agree with those parties urging that the Commission should retain the ability to review short-term contracts, even if the review can be simplified and expedited. While we encourage parties and Energy Division staff to pursue additional opportunities to continue standardizing and streamlining RPS procurement processes, at this time it makes the most sense to provide a fast track for review by Tier 2 advice letter of those contracts that meet the requirements for facility eligibility, price, and other contract terms.¹¹

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

- Utilities and generators may expedite contract negotiations.

⁹ In the case of PG&E's current proposal, some long-term contracts would also be in this category.

¹⁰ The incremental procurement target of an RPS-obligated load-serving entity is equal to 1% of its retail sales in the prior year. See D.06-10-050, Appendix A.

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

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

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

3.3. Eligible Facilities

The fast-track standards and procedures set out in this decision are based in part on the parties' comments that short-term contracts are most likely to be used for energy procurement from RPS-eligible generators that are already in operation. In comments on the proposed decision (PD), several parties¹² pointed out that valuable opportunities for short-term contracts could also arise with generation facilities in development that were close to commercial operation.

The viability of facilities not yet in operation is an issue to be considered in evaluating proposed contracts. The Commission has recently expressed its interest in a more focused review by utilities of the potential viability of new RPS-eligible generation for which contract approval is sought. In D.09-06-018, the Commission adopted a project viability calculator developed by staff and parties, to provide a uniform tool for utilities to use in screening potential projects. The Commission also made clear that, at this time, the project viability

¹² CEERT, GPI, PG&E, SCE, and SDG&E provided various comments on this point.

calculator is a screening tool, not a tool for making final decisions about which RPS-eligible projects should be offered contracts.

While it is important for utilities to use the project viability calculator and gain experience with it, it is less important that the calculator be applied to short-term contracts that are otherwise eligible for fast-track treatment – so long as the contract has a reasonably strong prospect of entering commercial operation within a short timeframe. Otherwise, the goals of both uniformity of project viability review and simplicity of fast-track treatment could be undermined. Therefore, any contract submitted for fast-track treatment in accordance with this decision must provide for procurement of an energy product from an RPS-eligible facility that is in commercial operation at the time the contract is signed, or is reasonably likely to be in commercial operation within six months of the date the contract is signed.¹³

This requirement, like the others in this decision, applies only to short-term contracts submitted under the fast-track procedure. Short-term contracts that are between a utility and a generation facility being developed that is not projected to be in commercial operation within six months may always be submitted for Commission review and approval in accordance with the usual RPS procedures.

¹³ If a utility submits a contract with a facility not yet in commercial operation for fast-track treatment, the Tier 2 advice letter must include an express statement that the utility reasonably and in good faith believes that the facility will be in commercial operation within six months of the date of the contract. The advice letter must include documentation of the basis for that belief; for example, evidence that the facility is built and is in a test phase.

3.4. Price Reasonableness Benchmark

The parties' initial comments on a price reasonableness benchmark for short-term contracts, like their comments on a process for short-term contract preapproval, were divided. CEERT, DRA, Powerex, and SDG&E initially saw no need to develop a short-term price reasonableness benchmark. PG&E, SCE, and AReM supported the general idea.¹⁴ In their 2009 proposals neither SCE nor PG&E includes a price reasonableness benchmark, though PG&E proposes that all contract prices at or under the MPR be included in its pilot program.

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

Two basic approaches to a short-term price reasonableness benchmark were suggested by Energy Division staff and addressed by the parties. One is the adaptation of the existing MPR¹⁵ for short-term contracts. The other is the

¹⁴ PacifiCorp proposed using a benchmark method specific to its situation. Because the process we adopt applies to PacifiCorp in few if any circumstances, we do not pursue this suggested method.

¹⁵ The MPR is based on a model of a new California generating facility using a combined cycle gas turbine. It is calculated for contracts ranging in duration from 10 to 25 years. See D.08-10-026; Resolution (Res.) E-4214.

development of price benchmarks based on market prices for energy. DRA, Aglet, SCE, and AReM support the use of a short-term price benchmark based on or adapted from the existing MPR. CEERT, Powerex, PG&E, and SDG&E argue that a price benchmark, if any is necessary or actually adopted, should not be based on the MPR. GPI does not favor adoption of a benchmark, but suggests that if one is adopted, the MPR could be used as the basis for contracts 5-10 years in duration as long as an "renewable adder" that recognizes renewable value is included.

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

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

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

parties and staff that forward, rather than spot, energy prices are the relevant market.¹⁶ The availability of relevant market information is the most important determinant of how to develop the price benchmark.¹⁷ Parties suggest various periods of time for which such prices should be used. PG&E initially suggested a term of three years.¹⁸ TURN suggests a period of three years; SCE and GPI propose a period of five years.¹⁹

The large utilities initially proposed the use of generally accepted market indices to determine forward prices, including the Intercontinental Exchange (ICE) index and Platts, among others. Platts and ICE have since merged their products.²⁰ The Platts-ICE index covers four years of forward prices, which is in the range suggested by the parties. As a practical matter, because this is the time period covered by a major index, four years is also a reasonable period of time to consider for the use of forward prices as part of the price benchmark.

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

¹⁶ SDG&E suggests that spot prices be used, but without extended justification. All other parties either advocate or assume the use of forward market prices.

¹⁷ See D.08-10-026 for a discussion of this principle with respect to the MPR.

¹⁸ The pilot program proposal made by PG&E in its 2009 RPS plan uses the MPR (without any short-term adaptation) as the price benchmark for contracts of any duration.

¹⁹ SCE's current proposal for preapproval of certain contracts is limited to contracts of five years or less, but includes no proposed price benchmark.

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

short-term contracts." Contracts four years to 10 years in duration will be referred to as "moderately short-term contracts." Both groups together are "short-term contracts."

3.4.1. Very Short-Term Price Benchmark

Parties agree that, if a market-based method is used in setting the very short-term price benchmark, an adder for the value of the renewable character of the electricity should be included. As GPI notes, such an adder cannot be developed by reference to a market price for renewable attributes, because no such market currently exists in California.²¹ PG&E proposes a numerical approach: that an adder be the greater of 10% more than the market price, or \$20/megawatt-hour (MWh).²²

In the absence of a market that provides a valuation for renewable attributes (which in the RPS context are understood as RECs), PG&E's suggestion of a percentage adder for the very short-term price benchmark has the virtues of simplicity and transparency. In order to allow for variations in the index price, we adopt a 50% premium. The very short-term price benchmark will thus be 150% of the forward energy price for a contract with conventional resources of the same duration and commencement date.

We base this choice on the nature of the very short-term RPS contract, *not* on a valuation (even an approximate valuation) of the renewable attributes of the

²¹ This Commission has the authority pursuant to § 399.16 to authorize the use of tradable renewable energy credits (RECs) for compliance with RPS requirements, but has not yet done so.

²² SDG&E supports this idea, but suggests that the value should be 20% more than the market price or \$20/MWh.

energy. The 50% premium is the component of the very short-term price benchmark that incorporates the value to customers of obtaining RPS-eligible energy rather than non-renewable energy in a very short-term contract. Since such a contract does not contribute to the development of a new RPS-eligible generation resource, the value to ratepayers is not as great as that of a long-term contract that will support new construction of RPS-eligible generation. But the value is not zero. Procuring RPS-eligible energy through short-term contracts is in accordance with both the RPS statutory mandate and overall state policy to increase California's use of renewable energy.²³ Such contracts can also encourage the continued production of RPS-eligible energy by facilities that have been doing so for many years, and whose energy is already reflected in utilities' RPS baselines.²⁴

Tying the price benchmark for very short-term RPS contracts to forward prices for conventional generation could, however, import a significant element of price volatility to the calculation. To ensure that the fast-track option will not be available for very short-term RPS contracts with extraordinarily high prices, we place an absolute cap of 90% of the MPR for a 10-year contract on the very short-term price benchmark. Looking at two different cases, in which a contract is executed at the benchmark price, shows how this cap would work:

Case 1

Index price	=	\$50/MWh
Price benchmark	=	1.5 x \$50 = \$75/MWh
10-year MPR	=	\$100/MWh
90% of 10-year MPR	=	\$ 90/MWh

²³ See, e.g., Executive Order S-14-08.

²⁴ See § 399.14(a); D.04-04-026; D.06-10-050.

Price meets fast-track requirements ($\$75 < \90)

Case 2

Index price	=	\$80/MWh
Price benchmark	=	$1.5 \times \$80 = \$120/\text{MWh}$
10-year MPR	=	\$100/MWh
90% of 10-year MPR	=	\$ 90/MWh

Price does not meet fast-track requirements ($\$120 > \90).

The benchmark price and the cap on its value are absolute requirements for using the fast-track approval process for very short-term contracts. That is, a very short-term contract that meets all other requirements but does not have a levelized price (including firming or shaping costs) equal to or below 150% of the index price (as determined by Energy Division staff) and below 90% of the 10-year MPR as well will not be eligible for the fast track. It could, however, be submitted for approval in accordance with the ordinary RPS contract review and approval process.

The cap of 90% of the 10-year MPR on the price paid is intended to be transitional and temporary. Because the market in RPS-eligible energy is still developing and a liquid short-term market does not now exist, ratepayer price protections are needed. As the share of RPS-eligible energy in California's energy mix increases, the need for a price restriction like that imposed here may change. Therefore, the cap of 90% of the 10-year MPR on the price of very short-term contracts in order for the contracts to be eligible for the fast-track process will expire on December 31, 2011, unless the Commission changes, extends, or terminates it at an earlier date.²⁵

²⁵ This date is chosen to be consistent with the January 1, 2012 effective date of binding regulations under the California Global Warming Solutions Act, Assembly Bill 32 (Nuñez/Pavley), Stats. 2006, ch. 488.

The determination of the very short-term benchmark should be made by Energy Division staff, in consultation with the parties. Staff and parties should use generally accepted indices²⁶ in developing a simple method for calculating the benchmark that is appropriate to the use of a Tier 2 advice letter. Once developed by Energy Division staff, the methodology should be circulated to the service list by the Director of Energy Division prior to being used.

3.4.2. Moderately Short-Term Price Benchmark

The issues involved in developing an MPR-based price benchmark for contracts four to 10 years in duration are less complex. As parties acknowledge, the MPR is well-known and the MPR methodology has been developed with extensive input over the course of several years. Although it is possible to consider changes to the basic MPR methodology as part of the moderately short-term price benchmark, that is not likely to produce results commensurate with the effort. This is the case especially because the moderately short-term price benchmark is a requirement for fast-track consideration only, not an absolute price cap or a determination of reasonableness of all prices for moderately short-term contracts. Therefore, the existing MPR methodology should be used to calculate the moderately short-term price benchmark, generating price benchmarks for each duration (4-9 years) of moderately short-term contracts from the MPR model.

We recognize that an adaptation of the MPR for the moderately short-term price benchmark will not include any "green adder," as urged by GPI and

²⁶ SDG&E's suggestion of using broker quotes is not consistent with the Commission's preference for the use of more generally available market information. See, e.g., D.05-12-042.

CEERT.²⁷ However, since moderately short-term contracts are unlikely to contribute to the development of new renewable facilities, the absence of an adder is a reasonable reflection of the value of the contract to ratepayers.

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

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

3.5. Confidentiality of Prices

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

²⁷ Costs of compliance with greenhouse gas emission regulation are included in the MPR. See D.08-10-026 and Res. E-4214.

For moderately short-term contracts, the calculation of the price benchmark will provide the upper limit of the price (but not the actual price) of a contract submitted under the fast-track procedure. For very short-term contracts, the use of market indices as the base of the price benchmark makes disclosure more problematic. An indication of prices may be available, however, without threatening either contract confidentiality or price information that may not be public. For example, SDG&E points out that disclosure of a 30-day rolling average of index prices is an accepted industry practice. As part of the development of a method for establishing the index price to be used for the very short-term price benchmark, staff should also identify a method of making relevant, but more general or averaged, price data available in the public version of the advice letter.

3.6. Contract Terms and Conditions

An important part of the fast-track process is the short-term contract itself. In order to use the Tier 2 advice letter process, the contract's terms and conditions must be standard and consistent with terms that have previously been reviewed for either very short-term contracts or moderately short-term contracts. Each utility intending to use the fast-track process must submit a *pro forma* very short-term contract and a *pro forma* moderately short-term contract with its annual RPS procurement plan.²⁸ Each *pro forma* contract must be submitted in its full form, clearly labeled as to whether it is for very short-term or

²⁸ For 2009, these *pro forma* contracts may be submitted with any 2009 RPS procurement plan amendments a utility submits, or as separate amendments within 14 days of the date of this decision.

moderately short-term contracts, or stating that the utility intends to use one *pro forma* contract for both types.

The non-modifiable standard terms and conditions for RPS contracts must not be modified in the utility's *pro forma* contract for short-term contracts. These terms and conditions may not be modified in any contract submitted under the fast-track procedure. If any of the modifiable standard terms and conditions are modified in the *pro forma* short-term contract, the modifications and the rationale for the changes must be clearly identified when the *pro forma* contract is submitted with the utility's procurement plan (or amendments). Utilities may seek fast-track treatment for short-term RPS contracts that include minor modifications to the approved *pro forma* contract. All modifications to the *pro forma* contract must be detailed in a redline version of the contract submitted with the advice letter. If Energy Division staff determines that any modified contract terms require further evaluation, the contract may be removed from the fast track.

The standard RPS contract term on Commission approval will apply if a contract is removed from the fast track and requires Commission approval by means of a resolution. As PG&E points out in its comments on the PD, utilities may include in their short-term *pro forma* contracts a provision for the contract to become effective according to the Commission approval process used. The Commission may consider adding such a provision to the standard terms and conditions in the future, but at this time such a provision, if included, should simply be identified in the submission of the short-term *pro forma* contract, filed as amendments to each utility's 2009 RPS procurement plan.

3.7. Least-Cost Best-Fit

A utility's evaluation of potential RPS contract bids includes review using the utility's least-cost best-fit criteria. Since D.08-02-008 authorized the large utilities to solicit bids for short-term contracts, their least-cost best-fit evaluation now extends to short-term as well as long-term contracts.²⁹ These criteria are therefore available for the evaluation of short-term contracts that are otherwise eligible for fast-track review, and should be applied to those contracts.

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

3.8. Review by Procurement Review Group and Independent Evaluator

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

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

²⁹ D.08-02-008, at 9.

contract is filed.³⁰ This should also be the case with a fast-track Tier 2 advice letter, except in the unusual situation that a short-term contract could not be presented to the PRG in time for the advice letter to become effective prior to the commencement of deliveries under the contract. Even in this circumstance, the utility must explain in the advice letter why the PRG could not be informed about the contract in sufficient time to allow its review of the contract.

An Independent Evaluator (IE) reviews a utility's annual RPS solicitation and writes a report evaluating the entire solicitation, evaluation, and selection process. (D.06-05-039, at 46.) The IE's final report is a required part of the Tier 3 advice letter filing for RPS contracts. There is currently no market for short-term RPS-eligible resources comparable to the short-term or spot markets for conventional generation. There are a small number of sellers and buyers and there is an ever-closer goal of 20% of retail sales by the end of 2010. In these circumstances, the IE's participation in review of even very short-term contracts provides additional assurance that a particular short-term contract is a reasonable choice of the utility in the procurement circumstances of that year, as well as providing review of any transactions with utility affiliates. IE reports will also provide some additional information to utilities and to staff that is likely to be helpful in reviewing the effectiveness of the fast-track process set up in this decision.

To the extent possible, the paperwork should be tailored to the problem. For very short-term contracts, the IE report may be in the short form authorized

³⁰ Procurement transactions with delivery periods that are greater than three months are to be reviewed by a utility's PRG. (D.04-12-048.) The use of the PRG for RPS solicitations is discussed in D.05-07-039.

by Energy Division.³¹ For moderately short-term contracts, the full IE report should be supplied. As discussed further in Section 3.12, below, these IE requirements apply equally to all very short-term and moderately short-term contracts, whether through a solicitation or bilaterally negotiated.

3.9. Application to Small Utilities

Bear Valley Electric Service (BVES) and Mountain Utilities (MU) are California utilities, but they are so much smaller than the three large utilities that they sometimes face different issues of RPS procurement and compliance. Although the procedures set forth in this decision are generally applicable, in practice, they will not apply to either BVES or MU at this time.

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

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

3.10. Application to Multi-Jurisdictional Utilities

RPS procurement by PacifiCorp and Sierra Pacific Power Company (Sierra) is governed by § 399.17, as applied by D.08-05-029. These utilities may each proportionally allocate their system-wide RPS-eligible procurement to their

³¹ Suggestions made by PG&E in comments on the PD were helpful to the discussion of the role of the IE.

California RPS obligations without signing procurement contracts for RPS-eligible electricity that is specifically for their California customers. If these utilities decide to procure RPS-eligible electricity exclusively for their California customers, that procurement is subject to the same rules as apply to the California utilities.

The RPS fast-track procedures set forth in this decision are California-specific procedures. They therefore apply to PacifiCorp and Sierra only when either utility signs a short-term contract for RPS-eligible electricity exclusively for the use of its California customers.³² If such a contract meets the requirements in this decision, it may be submitted by means of a Tier 2 advice letter.

3.11. PG&E and SCE Proposals

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

3.11.1. PG&E

PG&E proposes to apply Tier 1 advice letter treatment to all contracts with prices at or below the MPR and in conformity with the Commission's standard terms and conditions, up to 800 GWh. This would apparently include even

³² Because this Commission does not exercise supervisory authority over the multi-jurisdictional utilities' contracting, the requirements set out in § 3.7 regarding least-cost best-fit and § 3.8 regarding review by procurement review groups and independent evaluators would not apply to PacifiCorp or Sierra.

contracts of 10 or 20 years in duration with new facilities under development. This proposal is inconsistent with the Commission's adoption of uniform criteria for utilities' evaluation of project viability in D.09-06-018. In addition, even as a pilot program, PG&E's proposal, as DRA and Reid argue, has the potential to put large contracts outside the normal RPS review process. PG&E does not propose any method to screen the potential long-term contracts in this program, leaving open the possibility that ratepayer resources would be committed to projects that would not be highly ranked in the ordinary RPS contract review process.

PG&E's proposal also creates pricing problems for short-term contracts. By asserting that any contracts with prices at or below the MPR³³ should be eligible for Tier 1 treatment, PG&E in effect offers the MPR as a price reasonableness benchmark for all short-term contracts. As explained in Section 3.4.1, above, however, this could allow short-term contracts with prices substantially higher than their real value to ratepayers to become effective immediately. This is not consistent with the balance between short-term contract cost and ratepayer value that we have struck in this decision.

PG&E's proposal is therefore denied.³⁴

3.11.2. SCE

SCE proposes that all RPS contracts of less than five years' duration be preapproved and reported in the utility's quarterly report³⁵ for a period of the

³³ PG&E does not specify the term of years for the MPR that it would apply to short-term contracts for this purpose.

³⁴ Although PG&E proposes a modified pilot project in its comments on the PD, we prefer to adopt a uniform fast track process. We encourage PG&E to use it. If PG&E continues to believe that its pilot proposal would meet a need not met by the fast-track process, it is free to make a new proposal with its 2010 RPS procurement plan.

next five years, up to 10,000 GWh. DRA, Reid, and TURN observe that this proposal would effectively remove Commission oversight of short-term contracts for hundreds of megawatts of RPS-eligible generation over the next five years. SCE does not present any evidence that short-term contracting opportunities are being lost because utilities must use an advice letter process for contract approval. The RPS contracting process is not yet thoroughly standardized and the program itself is not yet fully mature; we are therefore not willing to allow such a potentially large amount of RPS procurement to occur with no Commission review at all.

SCE's request is therefore denied.

3.12. Bilateral Contracts

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

Experience with the RPS program as it has matured suggests that the early concerns about bilateral contracts can best be resolved by holding bilateral contracts to the same review standards as contracts that come through a solicitation. The Commission now uses uniform standards for reviewing

³⁵ This is formally the utility's procurement plan compliance report quarterly advice letter filing.

contracts that come through a solicitation. See Res. E-4199. No party has provided a reason not to apply the same standards to bilateral contracts.

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

Applying the same principles, long-term bilateral contracts should be reviewed according to the same processes and standards as contracts that come through a solicitation. This includes review by the utility's Procurement Review Group and its Independent Evaluator. This requires only one adaptation to the current process. The MPR by its terms applies only to long-term contracts that come through a solicitation.³⁶ It makes no sense, however, to develop an independent price evaluation tool for long-term bilateral contracts that are otherwise the same as long-term contracts that are the result of a solicitation. The MPR should therefore be used as a price benchmark for the evaluation of long-term bilateral contracts. In all other respects, including evaluation of price reasonableness, Energy Division's contract review processes should apply equally to bilateral contracts and contracts from a solicitation.

³⁶ It also is the point used to determine whether contracts are eligible for above-market funds under SB 1036. This, too, is limited to contracts from a solicitation. See Pub. Util. Code §§ 399.15(c) and (d); Res. E-4199.

3.13. Implementation

Energy Division staff is authorized to develop the short-term price benchmarks set forth in this decision and to make any revisions to the RPS advice letter template that are necessary to effectuate this decision. Staff should undertake these tasks as expeditiously as possible, and should consult with the parties where appropriate. Until the fast-track process is implemented, staff may review any short-term RPS contracts submitted for Commission approval using existing processes and standards.

4. Comments on Proposed Decision

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

Opening comments were filed on May 26, 2009 by CEERT, DRA, GPI, PG&E, SCE, SDG&E, and Shell Energy North America (US) L.P. Reply comments were filed on June 1, 2009 by PG&E, SCE, and TURN.

The comments and reply comments have been carefully considered and some changes to the PD have been made in response to them. The changes have been made in keeping with the purpose of the PD to provide more efficient RPS contracting processes for utilities, not to make major changes in RPS procurement rules.

Overall, parties express most concern about the price benchmark for very short term contracts. Acknowledging the parties' observations that the index price for conventional power can and does vary significantly, the very short-term price benchmark has been revised to be 150% of the index price. The absolute price limit of 90% of the 10-year MPR remains in place, to protect ratepayers

from transitory very high index prices that yield excessively high very short-term price benchmarks. The price limit of 90% of the 10-year MPR has been revised to expire on December 31, 2011, unless the Commission acts on it prior to that date.

Several parties also were concerned that the PD's requirement that a generation facility be in operation for at least a month was unnecessarily restrictive, though DRA found it too lenient and TURN thought it appropriate. Taking into consideration the Commission's recent discussion of project viability in D.09-06-018, the PD has been revised to allow contracts with facilities that are within six months of commercial operation to be included in the fast-track process.

PG&E's proposal for aligning the requirements for an IE report with those set out in D.08-11-008 for conventional procurement is adopted in part.

PG&E also presents a modification to the pilot project proposal put forth in its 2009 RPS procurement plan. Because it was made so late in the process, PG&E's new proposal is not adopted. If, after experience with the fast-track procedures adopted in this decision, PG&E is still interested in proposing a pilot project, it would be free to do in its next RPS procurement plan.

Outside the scope of the PD are CEERT's suggestion for changes in the method of publication of resolutions on advice letters submitting RPS contracts for Commission approval and GPI's suggestion that the long-term MPR include a renewable adder. Suggestions by several parties for workshops or other actions by Energy Division staff are more appropriately directed to the Director of Energy Division.

Some changes to the PD 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 and Burton W. Mattson are the assigned Administrative Law Judges in this proceeding.

Findings of Fact

1. The majority of utilities' short-term contracts to acquire RPS-eligible bundled energy are likely to be from RPS-eligible generation facilities that are already in commercial operation at the time the contract is signed.

2. Many older RPS-eligible generation facilities could make use of short-term contracts after their current long-term contracts with California utilities expire.

3. Most of the RPS-eligible generation from older RPS-eligible facilities is already part of the RPS baseline amount for California utilities.

4. California utilities may have opportunities to obtain short-term contracts with RPS-eligible facilities that are being built but are not yet in commercial operation.

5. In order to provide relevant information about short-term contracts with RPS-eligible facilities that are within six months of commencing commercial operation at the time the contract is signed, it is reasonable to require utilities to provide in their advice letters the basis of their judgment that the facility will be in commercial operation within six months of the date of the contract.

6. In order to protect ratepayers from unnecessarily high prices for RPS-eligible energy procured through short-term contracts with generation facilities that are in commercial operation or will commence commercial operation not later than six months from the date the contract is signed, it is reasonable to establish price reasonableness benchmarks for short-term contract prices.

7. In view of the structure of the current energy market, it is reasonable to identify two groups of short-term RPS contracts, based on duration: contracts of one month to four years (very short-term contracts), and contracts of four to ten years (moderately short-term contracts).

8. For purposes of the fast-track procedure, forward prices for conventional energy contracts of similar duration provide a reasonable component of a price reasonableness benchmark for very short-term contracts.

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

10. Taking into account the forward prices for conventional energy contracts of comparable length and the value to ratepayers of obtaining RPS-eligible energy, a premium of 50% over the forward market price for non-renewable energy contracts of comparable length is a reasonable component of the very short-term price benchmark.

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

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

13. In view of the public importance of the RPS program, it is reasonable to develop a method of providing publicly available information about short-term

price benchmarks while protecting actual prices of individual contracts from disclosure.

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

15. In order to promote consistency of evaluation of all RPS procurement contracts, it is reasonable to authorize Energy Division staff to review bilateral RPS contracts using the same methods and criteria, including those for reviewing price reasonableness, as are used to review contracts that result from the utilities' annual RPS solicitation, using the MPR as a price reasonableness benchmark for long-term bilateral contracts.

Conclusions of Law

1. In order to facilitate short-term RPS contracts while maintaining the safeguards of Commission oversight, fast-track procedures for short-term contracts that do not exceed price benchmarks and meet certain additional standards should be developed.

2. Fast-track procedures should be limited to short-term contracts with RPS-eligible generation facilities that are near or already in commercial operation.

3. Separate price reasonableness benchmarks should be established as part of the fast-track procedures for contracts for RPS-eligible energy products that are one month to four years in duration (very short-term contracts) and for contracts for RPS-eligible bundled energy products that are four years to ten years in duration (moderately short-term contracts).

4. A price reasonableness benchmark for very short-term contracts for purposes of the fast-track procedure should include both forward prices for contracts for conventional energy of similar duration and a premium to reflect the value of RPS-eligible energy to utility customers.

5. Energy Division staff, in consultation with the parties, should develop a method to calculate the very short-term price benchmark, and should notify the service list of this proceeding or its successor of the calculation method chosen.

6. Energy Division staff, in consultation with the parties, should develop a method for public disclosure in the advice letter of a forward price range used in the very short-term benchmark calculation, while preserving confidentiality of the actual contract price.

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

8. A very short-term contract between a utility and an RPS-eligible generator that is in commercial operation or will commence commercial operation within six months of the date the contract is signed, that has been presented to the utility's PRG, has been reviewed by the utility's Independent Evaluator, has a levelized price (including firming or shaping costs) equal to or below the price benchmark for very short-term contracts (and in any event not more than 90% of the market price referent for 10-year contracts), and contract terms that conform (with allowance for minor alterations) to the pro forma contract for very short-term contracts that is approved as part of a utility's annual RPS procurement plan meets the requirements for submission to the Commission using a Tier 2 advice letter.

9. The cap of 90% of the market price referent for 10-year contracts on the price for a very short-term contract to be eligible for fast-track review should expire on December 31, 2011, unless the Commission chooses to change, extend, or terminate the cap at an earlier date.

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

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

12. Because this decision establishes a fast-track procedure for Commission approval of short-term contracts that meet certain requirements, PG&E's request for a pilot program using Tier 1 advice letters is unnecessary, and should be denied.

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

for preapproval of short-term contracts of less than five years in duration is unnecessary, and should be denied.

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

O R D E R

IT IS ORDERED that:

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

- a. The contract has a duration of at least one month but less than 48 months;
- b. The contract is made with a generation facility that is in commercial operation or will commence commercial operation not later than six months after the date the contract is signed;
- c. The contract has a levelized price, including any firming or shaping costs, less than or equal to the price reasonableness benchmark for a contract of such duration signed on such date as determined by the Director of Energy Division in accordance with this decision;
- d. Notwithstanding any provision of subparagraph c, no contract of one month to four years duration having a levelized price, including any firming or shaping costs, of more than 90% of the value of the market price referent established pursuant to Pub. Util. Code § 399.15(c) for contracts 10 years in duration calculated for the year in which the contract is signed may be submitted for Commission consideration using the procedure set out in this Ordering Paragraph;

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

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

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

- b. The contract is made with a generation facility that is in commercial operation or will commence commercial operation not later than six months after the date the contract is signed;
- c. The contract has a levelized price, including any firming or shaping costs, less than or equal to the price reasonableness benchmark for a contract of such duration as determined by the Director of Energy Division in accordance with this decision;
- d. The contract contains all the non-modifiable standard terms and conditions required in renewables portfolio standard contracts and such terms are not modified;
- e. The contract in all other respects conforms to the *pro forma* contract for durations of four years to 10 years that was included with that utility's most recent annual renewables portfolio standard procurement plan and conditionally approved by the Commission; provided that minor modifications to modifiable terms of the approved *pro forma* contract that are clearly indicated (for example, by the use of redline format) may be allowed in the discretion of the Director of Energy Division;
- f. The contract results either from negotiations undertaken as a result of that utility's annual solicitation for contracts for compliance with the renewables portfolio standard or from negotiations undertaken outside such a solicitation;
- g. The contract has been presented to the utility's Procurement Review Group and has been reviewed by the utility's Independent Evaluator;
- h. The contract is consistent with the utility's approved renewables portfolio standard procurement plan; and
- i. Nothing in the contract is inconsistent with statutory requirements or prior Commission decisions with respect to the renewables portfolio standard program.

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

- a. The contract has a duration of at least one month but less than 48 months;
- b. The contract is made with a generation facility that is in commercial operation or will commence commercial operation not later than six months after the date the contract is signed;
- c. The contract has a levelized price, including any firming or shaping costs, less than or equal to the price reasonableness benchmark for a contract of such duration signed on such date as determined by the Director of Energy Division in accordance with this decision;
- d. Notwithstanding any provision of subparagraph c, no contract of one month to four years duration having a levelized price, including any firming or shaping costs, of more than 90% of the value of the market price referent established pursuant to Pub. Util. Code § 399.15(c) for contracts 10 years in duration calculated for the year in which the contract is signed may be submitted for Commission consideration using the procedure set out in this Ordering Paragraph;
- e. The contract contains all the non-modifiable standard terms and conditions required in renewables portfolio standard contracts and such terms are not modified;
- f. The contract in all other respects conforms to the *pro forma* contract for durations of one month to 48 months that was included with that utility's most recent integrated resource plan or supplement and conditionally approved by the Commission; provided that minor modifications to modifiable terms of the approved pro forma contract that are clearly indicated (for

example, by the use of redline format) may be allowed in the discretion of the Director of Energy Division; and

- g. Nothing in the contract is inconsistent with statutory requirements or prior Commission decisions with respect to the renewables portfolio standard program.

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

- a. The contract has a duration of at least four years but less than 10 years;
- b. The contract is made with a generation facility that is in commercial operation or will commence commercial operation not later than six months after the date the contract is signed;
- c. The contract has a levelized price, including any firming or shaping costs, less than or equal to the price reasonableness benchmark for a contract of such duration as determined by the Director of Energy Division in accordance with this decision;
- d. The contract contains all the non-modifiable standard terms and conditions required in renewables portfolio standard contracts and such terms are not modified;
- e. The contract in all other respects conforms to the *pro forma* contract for durations of four years to ten years that was included with that utility's most recent integrated resource plan or supplement and conditionally approved by the Commission; provided that minor modifications to modifiable terms of the approved *pro forma* contract that are clearly indicated (for example, by the use of redline format) may be allowed in the discretion of the Director of Energy Division; and

- f. Nothing in the contract is inconsistent with statutory requirements or prior Commission decisions with respect to the renewables portfolio standard program.

5. The Director of Energy Division is authorized to develop a methodology to calculate a price reasonableness benchmark for procurement contracts for energy products for compliance with the renewables portfolio standard that have a duration of at least one month but less than 48 months based on forward market prices for conventional energy contracts of similar duration signed at similar dates plus a premium not to exceed 50% of such forward market prices. Prices for such contracts that are equal to or less than the price reasonableness benchmark are per se reasonable and may be recovered in rates, provided that such prices do not exceed 90% of the market price referent for contracts 10 years in duration that is established pursuant to Pub. Util. Code § 399.15 and calculated for the same solicitation year as the year the contract is signed.

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

7. The Director of Energy Division is authorized to review procurement contracts to meet the renewables portfolio standard that are negotiated outside a utility's annual solicitation (bilateral contracts) and are submitted for Commission approval by using the same methods and criteria as are used to

review contracts that are negotiated as a result of a utility's annual solicitation for contracts to meet the renewables portfolio standard, provided that, in reviewing any bilateral contracts 10 years or longer in duration, the Director of Energy Division uses the market price referent calculated for the same solicitation year in which the contract is signed as a price reasonableness benchmark, and for no other purpose in the review of the contract.

8. The request of Pacific Gas and Electric Company to establish a pilot program in which Pacific Gas and Electric Company could submit up to 800 gigawatt-hours of contracts for renewable energy to meet procurement targets under the renewables portfolio standard using Tier 1 advice letters, so long as the contracts contain the standard terms and conditions required by the Commission and the price of the contract does not exceed the market price referent established pursuant to Pub. Util. Code § 399.15, is denied.

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

10. In order to make use of the Tier 2 advice letter process for approval of procurement contracts in the 2009 solicitation year to meet the renewables portfolio standard, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company shall each submit their pro forma short-term contracts as amendments to their 2009 renewables portfolio standard procurement plans not later than 14 days from the date of this decision.

11. In order to make use of the Tier 2 advice letter process for approval of procurement contracts in the 2009 solicitation year to meet the renewables portfolio standard, PacifiCorp and Sierra Pacific Power Company shall each submit pro forma short-term contracts as amendments to their integrated resource plan supplements not later than 30 days from the date of this decision.

12. The restriction on eligibility for the fast-track process established in this decision that the price of a contract of one month to 48 months in duration may be no more than 90% of the market price referent for a contract 10 years in duration established pursuant to Pub. Util. Code § 399.15 and calculated for the same solicitation year as the year the short-term contract is signed, will expire on December 31, 2011, unless the Commission changes, extends, or terminates the restriction at an earlier date.

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

This order is effective today.

Dated June 18, 2009, at San Francisco, California.

MICHAEL R. PEEVEY
President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners