 Mailed 6/14/2004

Decision 04-06-014 June 9, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement the California Renewables Portfolio Standard Program.	Rulemaking 04-04-026 (Filed April 22, 2004)

OPINION ADOPTING STANDARD CONTRACT TERMS AND CONDITIONS

I. Summary

This decision adopts standard contract terms and conditions for use in the California Renewables Portfolio Standard (RPS) Program, as required by Pub. Util. Code § 399.14(a)(2)(D), consistent with the March 8, 2004 Joint Ruling issued in Rulemaking (R.) 01-10-024.[1] With some minor modifications, we adopt the proposal of what we will refer to as the "CEERT Parties," a collaborative effort of the Center for Energy Efficiency and Renewable Technologies (CEERT), the Independent Energy Producers (IEP), Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E) and The Utility Reform Network (TURN).

[1] The full title of the Joint Ruling is "Joint Ruling of Assigned Commissioner and Administrative Law Judge Regarding Procedure for Adoption of Standard Contract Terms and Conditions."

In addition, we set forth the criteria and process by which the utilities' renewable procurement plans will be approved, order the three major utilities to issue Requests for Offers (RFOs), and clarify the Annual Procurement Target (APT) numbers and methodology set forth in the Order Instituting Rulemaking (OIR).

II. Background

Decision (D.) 03-06-071[2] addressed the initial proposals of the parties regarding the adoption of standard contract terms and conditions. (*Id.* pp. 54-58.) In that Decision, the Commission granted the request of CEERT and Southern California Edison (SCE) to allow and encourage further negotiation among the parties, in the hope that the parties could resolve this issue amongst themselves. As we stated at that time, "[T]he type and level of detail that is required for fully developing standard terms and conditions is something that falls better within the ability of the parties to determine, rather than the Commission." (*Id.* p. 56.)

Nevertheless, despite workshops conducted by the Commission's Energy Division in September 2003 in an effort to facilitate negotiations, the parties could not reach agreement. Accordingly, the assigned Administrative Law Judge (ALJ) issued a ruling in October 2003 setting forth a procedure for the Commission's adoption of standard contract terms and conditions.[3] In response to the Ruling, parties submitted briefs in November and December 2003, identifying which

[2] Modified on other grounds in D.03-12-065.

[3] The full title of the ALJ Ruling was: "Administrative Law Judge's Ruling Establishing Procedure for Adoption of Standard Contract Terms and Conditions," issued October 22, 2003.

terms and conditions should be standardized. Subsequently, the March 8, 2004 Joint Ruling modified and streamlined the process set forth in the ALJ Ruling. Parties submitted briefs recommending specific contract language in March and April 2004. Opening Briefs were received from the CEERT Parties, Green Power Institute (Green Power), Southern California Edison (SCE), Ridgewood Olinda (Ridgewood), Powerex Corp., and the CalWEA Parties (consisting of the California Wind Energy Association (CalWEA), the California Biomass Energy Alliance (CBEA), and Vulcan Power Company (Vulcan)); Reply Briefs were filed by the CEERT Parties, the CalWEA Parties, Green Power, SCE, Ridgewood, the Commission's Office of Ratepayers Advocates, and Calpine Corporation. A Settlement Conference was held on April 21, 2004, but the parties remained unable to reach agreement. We now order the adoption of standard contract terms and conditions as described below.

Pub. Util. Code § 399.14(b) requires the Commission to approve the renewable procurement plans of the utilities prior to commencement of renewable procurement by the utilities. The parties have expressed some disagreement or confusion as to the meaning of this code section. This decision resolves that dispute.

The OIR opening this proceeding described the APT, which is the amount of renewable generation a utility must procure each year in order to meet the requirements of the RPS statute. The OIR also described the method for calculating the APT, and set forth APT numbers for 2004, based on 2003 sales figures as reported by the three major utilities.

In their comments on the OIR, a number of parties expressed concern about the choice and calculation of the APT numbers and the corresponding baseline. We reiterate the distinction made in the OIR between the baseline or

existing amount of renewable generation, and the Incremental Procurement Target (IPT), which represents the additional amount of renewable procurement the utility must accomplish to satisfy its annual RPS obligations. These two elements together – the baseline and the IPT – represent the Annual Procurement Target for the utility. This decision clarifies our approach to calculation of the APT and baseline numbers.

III. Standard Contract Terms and Conditions

While the parties have not managed to fully resolve all outstanding issues regarding the adoption of standard contract terms and conditions, they have made significant progress. Most notably, a number of initially disparate parties have come together to make joint proposals. As mentioned above, those joint proposals have been presented by the "CEERT Parties" (described above) and the "CalWEA Parties" (consisting of the CalWEA, the CBEA, and Vulcan).

The CEERT Parties' proposal is particularly noteworthy, as it garnered support from groups that include renewable generators and consumers, as well as two major electric utilities. This broad-based support would, by itself, be enough for us to give serious consideration to the proposal of the CEERT Parties. The other proposals presented by the parties, while often thoughtful and carefully prepared, generally were less broadly representative (i.e. they clearly favored one contracting party), or were less complete than the CEERT Parties' proposal.

While we generally adopt the CEERT Parties' proposal, it is not only because of the range of the parties supporting the proposal. We do not blindly adopt proposals, even ones with support as broad as the CEERT Parties' proposal. This Commission has an obligation to ensure that its decisions are supported by the record and in the public interest. Accordingly, in this

proceeding we have examined and considered each and every term and condition proposed by the CEERT Parties, and compared them with the specific terms and conditions proposed by the other parties, and we have also considered the more general policy-focused comments made by the parties. The result of this analysis confirms that the standard contract terms and conditions proposed by the CEERT Parties are both reasonable and the best of those presented to this Commission.[4]

In addition, the proposal of the CEERT Parties is an integrated one, where the contract terms and conditions are intended to work together. In general, such an approach is preferable to an agglomeration of disparate terms and conditions selected in a mix-and-match fashion from a range of parties, which can sometimes result in confusion or inconsistency.

At the same time, we believe that some minor modifications to the CEERT Parties' proposal are necessary. Specifically, subsections 1 and 4 under "CPUC Approval" are too broad, and may improperly limit the Commission's authority. For example, these subsections could be construed to prevent the CPUC from taking appropriate action even if a particular solicitation or agreement is subsequently determined to be fraudulent or otherwise illegal or improper. Accordingly, subsection (1) is modified to read: "(1) 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." In addition, subsection (4) is eliminated.

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[4] We note that D.03-06-071 endorsed the proposal of SDG&E and TURN, two of the CEERT Parties, as providing the most balanced and considered starting point for further negotiations. (*Id.* p. 57.)

We also make some minor modifications to the language under SEP Awards, Contingencies to ensure that the contract language corresponds with the California Energy Commission's (CEC) administrative processes on this topic. Finally, pursuant to recommendations from Green Power, we make clarifying modifications to the CEERT Parties' proposed definition of a Renewable Energy Credit (REC).

As modified from the CEERT Parties' proposal, the standard contract terms and conditions that we adopt are attached as Appendix A. As stated in the March 8 Joint Ruling (in R.01-10-024), our purpose here is to develop a "year one" contract to enable the RPS solicitation to move forward, and we expect that the contract language will become more refined as the parties and the Commission gain further experience.

IV. Procurement Plan

Under Pub. Util. Code § 399.14(b): "The commission shall review and accept, modify, or reject each electrical corporation's renewable procurement plan 90 days prior to the commencement of renewable procurement pursuant to this article by the electrical corporation."

The parties do not agree as to the meaning of this provision.[5] Some parties argue that this means the Commission must approve a utility's renewable procurement plan 90 days before the utility issues a solicitation for renewable generation, while others argue that the Commission must approve the procurement plan 90 days before deliveries are made under the contract. (*Id.*)

[5] See, e.g. May 5, 2004 prehearing conference (PHC) Transcript, pp. 8, 29, 44.

The statute itself provides guidance, in the form of a definition, set forth in § 399.14(g):

> For purposes of this article, "procure" means that a utility may acquire the renewable output of electric generation facilities that it owns or for which it has contracted. Nothing in this article is intended to imply that the purchase of electricity from third parties in a wholesale transaction is the preferred method of fulfilling a retail seller's obligation to comply with this article.

The output of an electric generation facility is electricity. Accordingly, the plain meaning of "acquire the renewable output of electric generation facilities" is that one actually gets electricity. Since "renewable procurement" means that electricity flows to the acquiring utility, then § 399.14(b) means that the Commission "shall review and accept, modify, or reject each electrical corporation's renewable procurement plan 90 days prior to the commencement" of the flow of electricity to the procuring utility.

The argument that the Commission must complete its review of utility procurement plans 90 days before the utility even solicits bids from renewable generators is inconsistent with the plain meaning of the statute. We accordingly reject this interpretation. At the same time, common sense indicates that the 90-day period is a minimum - i.e., the Commission must approve the renewable procurement plan at least 90 days before electricity flows. It would be impossible, given the range of projects and their stages of development, for the Commission to always approve a procurement plan exactly 90 days before electricity begins to flow. Accordingly, the Commission may approve a renewable procurement plan more than 90 days before electricity begins to flow, but not less.

Commission approval of the utilities' renewable procurement plans (for 2004 only) will occur via the following process. Based on this decision being approved at the Commission meeting currently scheduled for June 9, 2004, the three major utilities will make a compliance filing on June 14, 2004, containing their renewable procurement plan. This compliance filing shall be in the form of a letter to the Director of the Energy Division, and shall be served on the service list in this proceeding.[6] Should any parties wish to submit comments on those compliance filings, those comments are to be filed and served on June 18, 2004.[7] Acceptance (or rejection)[8] of the compliance filings will be by letter from the Director of the Energy Division, to be served no later than June 25, 2004.[9] The utilities are ordered to issue their renewable RFOs by June 30, 2004, contingent upon Energy Division approval.

In order to provide guidance to the parties and to Energy Division, particularly given the accelerated time frame for submission and review of the procurement plans, we outline below what we expect the procurement plans to contain.

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[6] Electronic service of the compliance filing is required, and must be made no later than 4 pm.

[7] Electronic service of comments is required, and must be made no later than 4 pm.

[8] Modification of the procurement plan would most appropriately occur with the agreement of the utility. Should a utility refuse to modify its procurement plan, however, Energy Division may reject that plan.

[9] We note that it is not conventional practice for the Commission to delegate approval of a utility's compliance plan to the Energy Division. In this case, however, it is an appropriate and justified approach. This Commission has consistently specified the June 30, 2004 target for commencement of the first RPS solicitation. Given the limited scope of the plans, and the fact that the delegation is for this first year only, we are comfortable granting this limited delegation to Energy Division.

Pub. Util. Code § 399.14(a)(3) contains guidance regarding the contents of an RPS procurement plan. These plans are to contain:

> An assessment of annual or multi-year portfolio supplies and demand to determine the optimal mix of renewable generation resources with deliverability characteristics that may include peaking, dispatchable, baseload, firm, and as-available capacity; provisions for employing available compliance flexibility mechanisms established by the commission; (and) a bid solicitation setting forth the need for renewable generation of each deliverability characteristic, required online dates, and locational preferences, if any.

Regarding the first category of the plan, we recognize that a detailed supply and demand assessment will be difficult if not impossible to develop in the short time before RPS plans must be filed. We direct the utilities to provide the most specific guidance possible to RPS bidders regarding the type of products they are seeking to procure this year.

Regarding available compliance flexibility mechanisms, we refer to our determinations in D.03-06-071 initiating implementation of the RPS program, and note that utilities are free to bank forward eligible excess procurement from the interim renewable solicitations of 2002-2003. This excess procurement may be credited towards the IPTs for 2004, as described more fully in the next section.

Finally, we direct the utilities to file a draft RFO as part of their plan, reflecting the standard contract terms and conditions adopted here, along with the deliverability characteristics, online dates and locational preferences as allowed for in the statute.

V. Annual Procurement Target

Some parties agreed with the methodology that the OIR used to calculate the 2004 APT, while others disagreed with the Commission's approach, arguing that the Commission should not have adjusted the baseline figures to reflect renewable generation procured between the date of enactment of the RPS legislation and the issuance of the OIR. According to this argument,[10] the relevant statute (Pub. Util. Code § 399.15(a)(3)) requires the OIR to use eligible renewable resource figures for 2001, not 2003, in determining the 2003 RPS renewable baseline. The statute, however, requires that the baseline be adjusted going forward as new eligible renewables are added to the utility's portfolio. (*Id.*) The baseline is thus a dynamic, not a static, calculation, and 2001 is simply the first point of reference in what will be an ongoing evaluation of each utility's progress towards the RPS goals. Adding the eligible amount of generation from the interim renewables solicitation to the baseline is thus both necessary and appropriate, and the approach taken in the OIR is consistent with the statute.[11]

However, the manner in which the OIR used the interim renewable generation in calculating the baseline resulted in some confusion as to whether the utilities would be able to bank excess procurement from the 2002-2003 interim renewable solicitations. Placing all of the interim generation in the

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[10] Raised by CEERT, SDG&E, SCE, and TURN.

[11] TURN also argued that the OIR did not identify the portion of 2003 renewable procurement eligible to satisfy the IPT for each utility, focusing primarily on SCE and PG&E's agreements to purchase existing geothermal output from Calpine's Geysers facility. Under D.03-06-076 PG&E and SCE may use their interim procurement geothermal contracts to satisfy certain aspects of their RPS procurement requirements. The extent to which this interim procurement can be banked forward to satisfy future IPTs is subject to determination by the CEC. (*Id.* p. 36.)

category of "baseline" gave the impression that none of this power would be creditable towards future RPS targets. Since this Commission previously stated (D.02-10-062, p. 24) that interim renewable procurement conducted pursuant to D.02-08-071 would count towards future RPS requirements, we clarify that the utilities will be able to bank eligible renewable procurement in excess of the targets set in D.02-08-071 towards future RPS compliance. The revised IPT and baseline numbers are set forth in more detail in Appendix B.

VI. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Peter V. Allen and Julie M. Halligan are the assigned Administrative Law Judges for this proceeding.

VII. Comments on Draft Decision

Pursuant to Section 311(g)(2) of the Public Utilities Code that this decision must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of the parties in the proceeding.

At the PHC held on May 5, 2004, the parties stipulated to a shortened comment period. Accordingly, opening comments were filed onMay 28, 2004 and reply comments were filed on June 4, 2004. Opening comments were received from the CEERT Parties, Green Power, SCE, Ridgewood, SDG&E, PG&E, TURN, Solargenix and the CalWEA Parties; reply comments were received from the CEERT Parties and the three utilities.

In its opening comments, Green Power suggested changes to the definition of the environmental attributes contained in a Renewable Energy Credit (REC). The REC is the fundamental unit of accounting for purposes of RPS compliance,

and could be considered a fundamental currency in RPS transactions. Green Power argues that, for purposes of assessing the benefits of renewable generation, we should directly associate in our definition of a REC the production of renewable energy with the displacement of conventional alternatives. This association is fundamental to the goals of the RPS program – a megawatt-hour of renewable generation avoids a definable amount of emissions or hazards associated with a conventional generation alternative. The definition provided by the CEERT Parties and adopted in the Draft Decision establishes this relationship. For purposes of clarity, however, we make a minor adjustment to the definition, inserting language in Appendix A that makes this association with displaced conventional sources explicit.

Green Power also suggests a modification to the Draft Decision's treatment of environmental attributes associated with electrical production from landfill gas and biomass facilities. The Draft Decision recognizes that such facilities may receive tradable environmental attributes based on the amount of greenhouse gas (GHG) emissions that are avoided via their fuel use, while at the same time, these facilities may emit some amount of GHGs in the course of generating electricity.

The appropriate amount of offset emissions would therefore be the net GHG savings from using biomass or landfill gas as fuel, rather than disposing of these materials via traditional methods, such as open-field burning or landfill decomposition. Green Power recommends that we extend this "netting out" treatment to all emissions, not just GHGs. We agree with this principle, and modify Appendix A accordingly.

In its comments, SCE argues that it should not be ordered to issue a solicitation at this time. According to SCE, it already expects that in 2004 it will

procure 20% of its retail sales from eligible renewable resources currently under contract, and accordingly it would be unnecessary and counterproductive for the Commission to require SCE to conduct an additional solicitation for 2004. SCE raises a valid point. As SCE points out, solicitations are to be made pursuant to a Commission-approved renewable procurement plan, and SCE will be filing its plan on June 14, 2004. If, as expected, SCE's renewable procurement plan indicates that it need not conduct a solicitation for 2004, then no such solicitation will be required. We will modify the relevant Findings of Fact, Conclusions of Law, and Ordering Paragraphs to clarify this point. Since we have not yet reviewed SCE's renewable procurement plan, however, it would be premature to pre-exempt SCE from a 2004 solicitation. SCE may continue and conclude its negotiations with short-listed bidders from its August 2003 renewable solicitation.

SCE and the CEERT Parties seek restoration of aspects of the "CPUC Approval" language originally proposed by the CEERT Parties. However, neither set of comments mentions the reason why that language was modified in the draft decision: the language was overbroad, and could have been construed to prevent the CPUC from taking appropriate action even if (for example) a particular solicitation or agreement were subsequently determined to be fraudulent. The Commission certainly does not intend to unreasonably bar rate recovery of utility payments to renewable generators, but the parties have not alleviated or even attempted to address this Commission's concerns regarding the possible implications of the proposed language.

The CEERT Parties recommend modifications to the terms "Net Out of Settlement Amounts" and "Eligibility," and the reinstatement of the provision entitled "Right of First Refusal Option", which was deleted in the Draft Decision.

In their March 26, 2004 joint brief, the CEERT Parties conditioned adoption of the "Right of First Refusal Option" (under Supplemental Energy Payment (SEP) Awards, Contingencies) on Commission adoption of subsection (1) under CPUC Approval. Since that subsection (1) was not adopted as proposed, the Draft Decision eliminated the CEERT Parties' proposed language regarding the Right of First Refusal Option.

In their comments on the Draft Decision, the CEERT Parties reconsidered the elimination of this option, requesting that even with changes to the "CPUC Approval" term, the "Right of First Refusal Option" be reinstated as subpart (b) of the "PGC Funding Termination Event" in the SEP Awards, Contingencies term. Specifically, the Buyer (utility), in its advice letter filing requesting approval of its RPS contracts, will also have the opportunity to request rate recovery for payments to be made under this "Right of First Refusal Option." We have accordingly reinstated "Right of First Refusal Option" as subpart (b) of the "PGC Funding Termination Event" in the SEP Awards, Contingencies term in Appendix A.

With regards to the "Eligibility" term, the Draft Decision adopted the CEERT Parties' recommended language, including the phrase "as such code provisions may be amended or modified from time to time", thus offering language that could be used in current and future solicitations. However, in their comments, the CEERT Parties have concluded that this phrase injects uncertainty into the ongoing status of the seller after the contract has been signed, as a seller cannot ensure that it will meet changeable standards. This renders the contract potentially unfinanceable. The proposed solution is for the Commission to direct the replacement of currently stated code section numbers with any newly adopted code sections, if applicable in future solicitations. We agree with this

recommendation and have modified the “Eligibility” term in Appendix A to reflect the revised language proposed by the CEERT Parties.

The CEERT Parties also note in their comments that the language adopted in the Draft Decision on "Net Out of Settlement Amounts" provision in the "Non-Performance/Termination Penalties" term reflects the language proposed in Appendix A of the CEERT Parties' Joint Opening Brief (March 26, 2004). However, in their Reply Brief at page 14, the CEERT Parties altered this position, and adopted the language suggested by the CalWEA Parties. The language provided in the CEERT Parties' Reply Brief is intended to protect a non-defaulting party from having to enrich a defaulting party by paying the defaulting party in the event that the net settlement amount calculation reflects a positive amount owing from a non-defaulting party upon termination of the RPS contract. We agree with the altered position of the CEERT Parties and have modified the "Net Out of Settlement Amounts" term in Appendix A to reflect the revised language proposed by the CEERT Parties.

The CEERT Parties, SCE, and the CalWEA Parties note that a Joint Ruling issued on March 8, 2004 (in R.01-01-024) identified which terms and conditions could be modified by the parties through negotiation, but the draft decision omits that identification. Consistent with the March 8 Joint Ruling, Appendix A now indicates the negotiability of each standardized term and condition.

The CalWEA Parties's opening comments argue that that the draft decision lacks the legally-required level of analysis, primarily because it does not address in detail the rejected proposals of the CalWEA Parties. We agree that the Commission must indeed support its decisions by sufficient analysis. The Commission has done that here, and has provided a fully adequate basis for the standard contract terms and conditions that it has adopted. A perceived paucity of discussion of rejected positions does not mean that the decision is legally

insufficient. In addition, the reply comments of the CEERT Parties clearly and specifically rebut each of the substantive criticisms of the CalWEA Parties.

TURN argues that the Commission should provide more direction regarding Annual Procurement Targets for the years 2005 through 2007, as the utilities need to be shown more specifically how to reach the target of 20% renewables by the year 2010. We decline to provide more specific numbers at this time, but we reiterate our commitment to the Energy Action Plan, reaffirmed in the OIR that opened this proceeding, which calls for attainment of the 20% RPS goal by 2010. This is not particularly complex to understand, and utilities should bear this in mind in planning their renewable procurement.

TURN also takes exception to the draft decision's treatment of incremental geothermal procurement. As discussed in the reply comments of PG&E and SCE, the adopted treatment of incremental geothermal procurement is consistent with both the law and with previous Commission decisions. In order to clarify our treatment of this issue, we have added a footnote to Appendix B.

In its opening comments, Solargenix states that under the "Performance Standards/Requirements" there is no specific renewable exemption for solar thermal, which may have limitations associated with the renewable "fuel" or resource associated with the technology, similar to other forms of renewable energy. Consequently, Solargenix proposed specific language be added to the "Performance Standards/Requirements" term to address specific exemptions for solar thermal. While no other parties addressed this (either in support or opposition) in reply comments, we are reluctant to adopt this provision, as this issue was not previously addressed on the record in this proceeding. Solargenix may wish to raise this issue again as this proceeding moves forward in refining the standard contract terms and conditions adopted today.

VIII. Scheduling Issues

PG&E has requested a ten-day extension of the due date for filing its RPS plan. No party opposed this request, provided that PG&E be prepared to issue its RFO in short order following Commission approval of its plan, and provided that SDG&E not be delayed in its own solicitation as a result. Both of these conditions can be met, and PG&E's request is therefore granted. The deadline for PG&E plan filing is extended from June 14th to June 24th. Party comment on the plan is due on June 28th, and Energy Division review of the plan and comments will be concluded expeditiously. PG&E should be prepared to initiate its RFO in short order following Energy Division review.

The approval of RPS plans for PG&E and SDG&E can thus be accomplished with sufficient time to allow the utilities to initiate their RFOs by the July 1st deadline the Commission has established. However, in response to comments from the utilities and in view of the complexity of preparing this first RPS RFO, we establish a 15-day window within which the utilities may issue their RFOs and still be in compliance with Commission direction. Accordingly, the first RPS solicitations by PG&E and SDG&E must be initiated by July 15th, 2004.

Findings of Fact

1. Under Pub. Util. Code § 399.14(a)(2)(D), the Commission is required to adopt standard contract terms and conditions to be used by the utilities in contracting for eligible renewable energy resources.

2. D.03-06-071 allowed the parties to negotiate further on the precise standard terms and conditions to be used, and provided guidance to the parties for use in their negotiations.

3. The Commission provided staff assistance to the parties to facilitate negotiation and agreement on standard terms and conditions.

4. The parties could not reach agreement on standard terms and conditions.

5. The proposal of the CEERT Parties represents a relatively broad spectrum of interests in this proceeding.

6. The Commission has considered all parties' proposals for each term and condition.

7. The Commission has considered the record in this proceeding and in the RPS phase of R.01-10-024, the procurement rulemaking.

8. Under Pub. Util. Code § 399.14(b) the Commission is required to review and accept, modify, or reject each utility's renewable procurement plan.

9. Pub. Util. Code § 399.14(a)(3) provides guidance as to the necessary contents of each utility's renewable procurement plan.

10. In order to procure renewable generation resources under the RPS process, the utilities need to issue RFOs for renewable resources, consistent with their renewable procurement plans.

11. The parties disagreed as to the propriety and outcome of the methodology for calculating the APT set forth in the OIR.

Conclusions of Law

1. Adoption of standard contract terms and conditions is required by statute.

2. Further negotiation by the parties does not appear likely to result in standard contract terms and conditions.

3. The standard contract terms and conditions proposed by the CEERT Parties are generally reasonable and are supported by the record in this proceeding and in R.01-10-024.

4. The language proposed by the CEERT Parties for the standard term and condition addressing SEP Awards, Contingencies may not be consistent with the processes of the CEC.

5. Under Pub. Util. Code § 399.14(b) the Commission's review and acceptance, modification, or rejection of each utility's renewable procurement plan must occur 90 days prior to the flow of electricity to the procuring utility from the relevant renewable generation facilities. The contents of each utility's renewable procurement plan should be consistent with Pub. Util. Code § 399.14(a)(3).

6. The utilities should issue RFO's for renewable generation resources consistent with their renewable procurement plans

7. The methodology used for calculating the APT set forth in the OIR is proper, but could be clarified.

O R D E R

IT IS ORDERED that:

1. The standard contract terms and conditions for the California Renewables Portfolio Standard program, as set forth in Appendix A, are adopted.

2. The process for approval of the utilities' renewable procurement plans, as described above, is adopted.

3. The three major electric utilities will make a compliance filing on June 14, 2004, containing their renewable procurement plan, as described above.

4. Comments on the utilities' compliance filings are due by June 18, 2004, as described above.

5. Acceptance or rejection of the compliance filings will be by letter from the Director of the Energy Division, to be served no later than June 25, 2004, as described above.

6. The three major electric utilities have from June 30, 2004 to July 15, 2004 to issue their renewable Requests for Offers, consistent with their renewable procurement plans and contingent upon Energy Division approval, as described above.

7. The renewable procurement plans shall include all statutorily required elements, as described above.

8. The methodology used to calculate the Annual Procurement Target and baseline is clarified as set forth in Appendix B.

9. This order is effective immediately.

Dated June 9, 2004, San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

I reserve the right to file a dissent.

/s/ CARL WOOD
Commissioner

I reserve the right to file a dissent.

/s/ LORETTA M. LYNCH
Commissioner

Appendix A

Renewable Portfolio Standard
Standard Contract Terms and Conditions

(1) CPUC APPROVAL (MAY NOT BE MODIFIED)

"CPUC Approval" shall be added as a new General Definition in Article One of the Agreement as follows:

> "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:
>
> (1) 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.
>
> (2) finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource 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;
>
> (3) finds that any procurement pursuant to this Agreement constitutes incremental procurement or procurement for baseline replenishment by Buyer from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation to increase its total procurement of eligible renewable energy resources that it may have pursuant to the California Renewables Portfolio Standard, CPUC Decision 03-06-071, or other applicable law; and
>
> CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable."

Appendix A

Renewable Portfolio Standard
Standard Contract Terms and Conditions

(2) DEFINITION AND OWNERSHIP OF RECS (MAY NOT BE MODIFIED)

"Environmental Attributes" shall be added as a new General Definition in Article One of the Agreement as follows:

> "Environmental Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Unit(s), and its displacement of conventional energy generation. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights to these avoided emissions such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on kWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy. Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Unit(s), (ii) production tax credits associated with the construction or operation of the energy projects and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Unit(s) for compliance with local, state, or federal operating and / or air quality permits. If Seller's Unit(s) is a biomass or landfill gas facility and Seller receives any tradable Environmental Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with

Appendix A

Renewable Portfolio Standard
Standard Contract Terms and Conditions

sufficient Environmental Attributes to ensure that there are zero net emissions associated with the production of electricity from such facility."

New Section 3.4 shall be added to the Agreement as follows:

"3.4 Environmental Attributes. Seller hereby provides and conveys all Environmental Attributes from the Unit(s) to Buyer as part of the Product being delivered, as such term is described in the applicable Transaction confirmation for the period set forth in such confirmation. Seller represents and warrants that Seller holds the rights to all Environmental Attributes from the Unit(s), and Seller agrees to convey and hereby conveys all such Environmental Attributes to Buyer as included in the delivery of the Product from the Unit(s)."

(3) SEP AWARDS, CONTINGENCIES (MAY NOT BE MODIFIED)

The following provision shall be included as a standard term in the Confirmation(s) for the Transactions(s) entered into under the Agreement:

"Seller Termination Right

(a) If Seller's Bid Price exceeds the Market Price Referent, Seller may seek a PGC Funding Award from the California Energy Commission, or its successor agency ("CEC"), for an amount (in $ per MWh) equal to the positive difference derived by subtracting (a) the Market Price Referent (in $ per MWh) from (b) the Bid Price (in $ per MWh) ("PGC Fund Amount"). To the extent that Seller seeks such PGC Fund Award, Seller shall use best efforts to comply with all funding criteria and obtain the PGC Fund Amount and Buyer shall reasonably support Seller's efforts. If Seller does not obtain a PGC Funding Confirmation or PGC Funding Award by 11:59 p.m. Pacific Standard Time on the 120th day from the date on which Buyer files this Transaction for CPUC Approval ("Funding Termination Deadline"), then Seller may unilaterally terminate this Transaction prior to the Funding Termination Deadline effective as of the date on which Buyer receives Seller's written notice of termination. If Seller exercises this termination right, neither Buyer nor Seller shall be subject to liability of any kind.

Appendix A

Renewable Portfolio Standard
Standard Contract Terms and Conditions

(b) At any time prior to the Funding Termination Deadline, if applicable, Seller shall send to Buyer within ten (10) days of (i) obtaining a PGC Funding Confirmation or PGC Funding Award, written notice of such confirmation or award and a copy of the final funding award agreement entered into by the California Energy Commission, or its successor agency ("CEC") and Seller, if the funding award agreement has been granted at that time, or (ii) receiving written notice from the CEC denying Seller's application for the requested PGC Fund Amount , a copy of such notice and a written statement from Seller, in which Seller shall (A) waive its termination rights under this Section __ or (B) notify Buyer that the Transaction is terminated, pursuant to the terms of this Confirmation. If Seller has the right to terminate this Transaction, but fails to send written notice of termination by the Funding Termination Deadline, then Seller's termination right per this Section __ shall be deemed waived in its entirety

"Bid Price" means the price as bid by Seller in response to the RFP or such other price as may be arrived at through negotiation.

"Market Price Referent" means the market price referent applicable to this Agreement, as determined by the CPUC in accordance with Public Utilities Code Section 399.15(c).

"Public Goods Charge Funding" or "PGC Funds" means any supplemental energy payments, pursuant to Public Utilities Code Section 399.15, as shall be modified or amended from time to time.

"PGC Funding Award" means the final award of allocated PGC Funds from the CEC to Seller, pursuant to Section [25743(a) of the Public Resource Code], as shall be modified or amended from time to time."

"PGC Funding Confirmation" means a written notice from the CEC to the Seller acknowledging Seller's request for PGC Funds and the availability of such funds for Seller in a future PGC Funding Award.

The following provision shall be included as a standard term in the Confirmation(s) for the Transactions(s) entered into under the Agreement:

Appendix A

Renewable Portfolio Standard
Standard Contract Terms and Conditions

"PGC Funding Termination Event"

(a) PGC Funding Revocation. If at any time after Seller obtains a PGC Funding Confirmation or PGC Funding Award, (i) the PGC Funding Confirmation or PGC Funding Award is revoked in whole or in part by the CEC for reasons not caused by Seller's action or inaction, (ii) such revocation occurs prior to the issuance of a PGC Funding Award or during the term of the PGC Funding Award, and (iii) Seller has not received a financial benefit in the form of tax credits or any other source of public funding or credit directly related to the Product sold under this Confirmation, which benefit would offset the loss incurred from the revocation of the PGC Funding Confirmation or PGC Funding Award, then Seller shall have the right to terminate this Transaction, subject to Buyer's Right of First Refusal Option. If Seller exercises this termination right neither Buyer nor Seller shall be subject to liability arising from such termination.

Not more than ten (10) days from the Seller's receipt of written notification regarding revocation of the PGC Funding Confirmation or PGC Funding Award in whole or part, Seller shall notify Buyer in writing of the revocation of the PGC Funding Confirmation or PGC Funding Award, certify it has not received an offsetting financial benefit per clause (iii) above, and certify that such revocation is not due to Seller's action or inaction. Seller shall also provide Buyer with a copy of such CEC notification. ("Revocation Notice"). Seller shall specify in its Revocation Notice what percentage of lost PGC funding it is willing to accept to continue to perform under this Transaction (not exceeding 100%).

Appendix A

Renewable Portfolio Standard
Standard Contract Terms and Conditions

(b) Right of First Refusal Option.

(i) Option. Buyer, in its sole discretion, shall have the right, but not the obligation, to pay to Seller the percentage of lost PGC funding specified in its Revocation Notice ("Lost PGC Funds") and Seller shall continue performing under the Transaction for the remaining term of the Transaction (the "Option"). Buyer shall have 30 days from its receipt of the Revocation Notice to exercise the Option ("Exercise Period"), subject to Option Approval, as defined below.

(ii) Exercise of Option. If Buyer chooses to exercise the Option, Buyer shall send written notice to Seller stating that Buyer is exercising the Option, conditioned upon Buyer's receipt of Option Approval, as defined below, within 180 days of date on which Buyer received the Revocation Notice. The effectiveness of the Option exercise shall be subject to Buyer's receipt of a final, non-appealable order issued by the CPUC, satisfactory to Buyer, approving Buyer's exercise of the Option and recovery of costs associated with the payment of the percentage of lost PGC Funding ("Option Approval"). The date on which Buyer provides written notice of its Option exercise to Seller shall be the "Exercise Date." Buyer shall file an advice filing or application seeking the Option Approval within 30 days of the Exercise Date.

(iii) Payment. Prior to Buyer's receipt of Option Approval, Buyer shall pay Seller the Lost PGC Funds, which would have been due to Seller on a monthly basis for the period between the Exercise Date and the next invoice following the date on which the Option Approval is issued. Upon receipt of Option Approval Buyer shall continue paying Seller's Lost PGC Funds on a monthly basis until the expiration of the term of Seller's PGC Funding Award, or Reinstatement of Seller's PGC funding, whichever comes first.

Appendix A

Renewable Portfolio Standard
Standard Contract Terms and Conditions

(iv) Seller's Termination Right. Seller may terminate the Transaction in accordance with subsection (a) above upon the occurrence of any of the following events: (A) Buyer provides written notice to Seller rejecting the exercise of the Option, (B) the Option expires without being exercised, (C) Buyer fails to seek Option Approval within 30 days of the Exercise Date, or (D) Buyer fails to obtain Option Approval within 180 days of Buyer's receipt of the Revocation Notice. If Seller then terminates the Transaction, such termination shall be effective 30 days from the date on which Seller notifies Buyer of such termination. Both Parties shall continue to perform under this Transaction until the effectiveness of any such termination by Seller."

(c) Reinstatement of PGC Funding. If the PGC Funding Award is reinstated in its entirety, including retroactive payments for lost PGC Funds, at anytime before (i) Seller's termination of this Transaction or (ii) Buyer's exercise of the Option, then Seller shall no longer be permitted to terminate this Transaction, pursuant to Section __(a), and both Parties shall continue to perform under this Transaction. If the PGC Funding Award is reinstated in whole or in part at anytime after Buyer has exercised the Option, then Buyer shall be relieved of all further obligations to pay any of Seller's lost PGC Funds, which will be covered by the reinstated PGC Funding Award. If PGC Funding Award is reinstated in whole or in part on a retroactive basis after Buyer has exercised the Option, then Buyer shall have the right to offset against payments due to Seller that portion of such award amount equivalent to the lost PGC Funds paid by Buyer to Seller between the period in which the PGC Funds were revoked and reinstated. Seller shall notify Buyer in writing of any such reinstatement of PGC Funds within 10 days of receiving notice of such reinstatement from the CEC, CPUC, or other regulatory agency responsible for the PGC Funds program, which notice shall include a copy of the such notice.

Appendix A

Renewable Portfolio Standard
Standard Contract Terms and Conditions

(4) CONFIDENTIALITY (MAY BE MODIFIED TO PERMIT ADDITIONAL DISCLOSURE ONLY)

Section 10.11 of the Agreement is deleted in its entirety and is replaced with the following provision, irrespective of the election made by Seller on the Cover Sheet:

> "Confidentiality: Neither Party shall disclose the non-public terms or conditions of this Agreement or any Transaction hereunder to a third party, other than (i) the Party's employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential, (ii) for disclosure to the Buyer's Procurement Review Group, as defined in CPUC Decision (D) 02-08-071, subject to a confidentiality agreement, (iii) to the CPUC under seal for purposes of review, (iv) disclosure of terms specified in and pursuant to Section 10.12 of this Agreement; (v) in order to comply with any applicable law, regulation, or any exchange, control area or ISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in subsection (vi); or (vi) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the Federal Energy Regulatory Commission. In connection with requests made pursuant to clause (v) of this Section 10.11 ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts: (i) to notify the other Party prior to disclosing the confidential information and (ii) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (i) prohibited from complying with a Disclosure Order or (ii) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation."

Appendix A

Renewable Portfolio Standard
Standard Contract Terms and Conditions

The following new Section 10.12 shall be added as follows:

> "10.12 RPS Confidentiality. Notwithstanding Section 10.11 of this Agreement at any time on or after the date on which the Buyer makes its advice filing letter seeking CPUC Approval of the Agreement either Party shall be permitted to disclose the following terms with respect to such Transaction: Party names, resource type, delivery term, project location, and project capacity. If Option B is checked on the Cover Sheet, neither Party shall disclose party name or project location, pursuant to this Section 10.12, until six months after such CPUC Approval."

The Cover Sheet of the Agreement shall be amended by adding to Article 10, Confidentiality, a new "Option B," as follows:

> ☐ Option B RPS Confidentiality Applicable. If not checked, inapplicable"
>
> ☐ Option C Confidentiality Notification: If Option C is checked on the Cover Sheet, Seller has waived its right to notification in accordance with Section 10.11 (v)."

(5) CONTRACT TERM (MAY NOT BE MODIFIED)

The following provision shall be included as a standard term in the Confirmation(s) for the Transaction(s) entered into under the Agreement:

> "Delivery Term: The Parties shall specify the period of Product delivery for the "Delivery Term," as defined herein, by checking one of the following boxes:
>
> ☐ Delivery shall be for a period of ten (10) years.
>
> ☐ Delivery shall be for a period of fifteen (15) years.
>
> ☐ Delivery shall be for a period of twenty (20) years.
>
> ☐ Non-standard Delivery shall be for a period of ____ years."

If the "Non-standard Delivery" contract term is selected, Parties need to apply to the CPUC justifying the need for non-standard delivery.

Appendix A

Renewable Portfolio Standard
Standard Contract Terms and Conditions

(6) ELIGIBILITY (MAY NOT BE MODIFIED)

The following new subsection 10.2(xiii) shall be added to the Agreement:

> "10.2(xiii) [Party __ or Seller], and, if applicable, its successors, represents and warrants throughout the term of the Delivery Term of each Transaction entered into under this Agreement that: (a) the Unit(s) qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (b) the Unit(s) output delivered to [Party __, or Buyer] qualifies under the requirements of the California Renewable Portfolio Standard."

(7) PERFORMANCE STANDARDS/REQUIREMENTS (MAY BE MODIFED BY PARTIES)

A. The following shall be included in the applicable post Commercial Operation Date performance standards / requirement provisions of the Agreement or Confirmation for "As Available" projects:

> "Energy Production Guarantees
> The Buyer shall in its sole discretion have the right to declare an Event of Default if Seller fails to achieve the Guaranteed Energy Production in any [12 month period] [or] [24 month period] and such failure is not excused by the reasons set forth in subsections (ii), (iii), or (v) of Section ___ of this Agreement, "Excuses for Failure to Perform."
>
> Guaranteed Energy Production = _____MWh."

B. The following shall be included in the applicable performance standards / requirement provisions, as "Excuses for Failure to Perform" in the Agreement or Confirmation for "As Available" projects:

"Seller shall not be liable to Buyer for any damages determined pursuant to Article Four of the Agreement in the event that Seller fails to deliver the Product to Buyer for any of the following reasons:

i. if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System

Appendix A

Renewable Portfolio Standard
Standard Contract Terms and Conditions

(GADS) Forced Outage reporting guidelines) and such Forced Outage is not the result of Seller's negligence or willful misconduct;

ii. Force Majeure;

iii. by the Buyer's failure to perform;

iv. by scheduled maintenance outages of the specified units;

v. a reduction in Output as ordered under terms of the dispatch down and Curtailment provisions (including CAISO or Buyer's system emergencies); or

vi. [the unavailability of landfill gas which was not anticipated as of the date this [Confirmation] was agreed to, which is not within the reasonable control of, or the result of negligence of, Seller or the party supplying such landfill gas to the Project, and which by the exercise of reasonable due diligence, Seller is unable to overcome or avoid or causes to be avoided; OR

insufficient wind power for the specified units to generate energy as determined by the best wind speed and direction standards utilized by other wind producers or purchasers in the vicinity of the Project or if wind speeds exceed the specified units' technical specifications; OR

the unavailability of water or the unavailability of sufficient pressure required for operation of the hydroelectric turbine-generator as reasonably determined by Seller within its operating procedures, neither of which was anticipated as of the date this [Confirmation] was agreed to, which is not within the reasonable control of, or the result of negligence of, Seller or the party supplying such water to the Project, and which by the exercise of due diligence, such Seller or the party supplying the water is unable to overcome or avoid or causes to be avoided.]

The performance of the Buyer to receive the Product may be excused only (i) during periods of Force Majeure, (ii) by the Seller's failure to perform or (iii) during dispatch down periods"

Appendix A

Renewable Portfolio Standard
Standard Contract Terms and Conditions

C. The following shall be included in the applicable performance standards / requirement provisions as "Excuses for Failure to Perform" in the Agreement or Confirmation for "Unit Firm" projects:

> "Net Rated Output Capacity. If the Net Rated Output Capacity at the Commercial Operation Date or at the end of the first twelve (12) consecutive months after the Commercial Operation Date [and every twelve (12) consecutive months thereafter] is less than _____MW, Buyer shall have the right to declare an Event of Default. For subsequent contract years, Buyer shall trigger an Annual Capacity Test to determine each year's Net Rated Output Capacity by scheduling Deliveries from the facility for two consecutive weeks. Buyer shall provide Seller two (2) weeks notice of the Annual Capacity Test. For the second year and thereafter the Net Rated Output Capacity shall be the ratio of the sum of average hourly Energy Delivered for two (2) weeks divided by 336 hours (24 hours x 14 days). Energy Delivered shall exclude any energy greater than ____MW average in each hour. The resulting Net Rated Output Capacity shall remain in effect until the next Annual Capacity Test. The Net Rated Output Capacity shall not exceed the Contract Capacity of ___MW.
>
> Additional Event of Default. It shall be an additional Event of Default if (i) the Availability
> Adjustment Factor is less than _____% for ___ consecutive months, or (ii) Net Rated Output
>
> Capacity falls below _____MW. In no event shall the Seller have the right to procure Energy from sources other than the Facility for sale and delivery pursuant to this Agreement."

D. The following shall be included in the applicable performance standards / requirement provisions of the Agreement or Confirmation for "Unit Firm" projects:

"Seller shall be excused from achieving the Availability Adjustment Factor for the applicable time period, in the event that Seller fails to deliver the Product to Buyer for any of the following reason:

> i. during Force Majeure;
>
> ii. by Buyer's failure to perform; or,

Appendix A

Renewable Portfolio Standard
Standard Contract Terms and Conditions

iii. a reduction in Output as ordered under terms of the dispatch-down and Curtailment provisions (including CAISO or Buyer's system emergencies.)

E. The following shall be included in the applicable performance standards / requirement provisions as "Excuses for Failure to Perform" in the Agreement or Confirmation for "Unit Firm," "Baseload," "Peaking," and "Dispatchable" Products:

"Seller shall not be liable to Buyer for any damages determined pursuant to Article Four of the
Agreement, in the event that Seller fails to deliver the Product to Buyer for any of the following reason:

iv. if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) and such Forced Outage is not the result of Seller's negligence or willful misconduct;

v. Force Majeure;

vi. by the Buyer's failure to perform;

vii. by scheduled maintenance outages of the specified units; or, a reduction in Output as ordered under terms of the dispatch down and Curtailment provisions (including CAISO or Buyer's system emergencies)."

The performance of the Buyer to receive the product may be excused only (i) during periods of Force Majeure, (ii) during periods of dispatch-down, or (iii) by the Seller's failure to perform."

Appendix A

Renewable Portfolio Standard
Standard Contract Terms and Conditions

(8) PRODUCT DEFINITIONS (MAY BE MODIFIED BY PARTIES)

The following new Product Definition shall be added to Schedule P of the EEI Agreement:

" "As Available" means, with respect to a Transaction, that Seller shall deliver to Buyer and Buyer shall purchase at the Delivery Point the Product from the Units, in accordance with the terms of this Agreement and subject to the excuses for performance specified in this Agreement."

The "Unit Firm" Product Definition in Schedule P of the EEI Agreement shall be deleted in its entirety and replaced with the following:

""Unit Firm" means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a specified generation asset or assets specified in the Transaction. The following Products shall be considered "Unit Firm" products:

> "Peaking" means with respect to a Transaction, a Product for which Delivery Periods coincide with Peak Periods, as defined by Buyer.
>
> "Baseload" means with respect to a Transaction, a Product for which Delivery levels are uniform for all Delivery Periods.
>
> "Dispatchable" means with respect to a Transaction, a Product for which Seller makes available unit-contingent capacity for a Buyer to schedule and dispatch up or down at Buyer's option."

Appendix A

Renewable Portfolio Standard
Standard Contract Terms and Conditions

(9) NON-PERFORMANCE OR TERMINATION PENALTIES AND DEFAULT PROVISIONS (May be modified by parties)

DEFAULT PROVISIONS

The following provisions are offered as "Default Provisions" for the Agreement:

Section 5.1 of the EEI Agreement shall be adopted in its entirety and included in the Agreement as follows:

"5.1 Events of Default. An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

(b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;

(c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article Four) if such failure is not remedied within three (3) Business Days after written notice;

(d) such Party becomes Bankrupt;

(e) the failure of such Party to satisfy the creditworthiness / collateral requirements agreed to pursuant to Article Eight hereof;

(f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;

Appendix A

Renewable Portfolio Standard
Standard Contract Terms and Conditions

(g) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefore one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);

(h) with respect to such Party's Guarantor, if any:

(i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;

(ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;

(iii) a Guarantor becomes Bankrupt;

(iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or

(v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty."

Appendix A

Renewable Portfolio Standard
Standard Contract Terms and Conditions

Section 5.1 of the Agreement, as provided above, shall be modified as follows:

Section 5.1(c) is amended by deleting the reference to "three (3) Business Days" and replacing it with "thirty (30) days; " and

Sections 5.1(b) and 5.1(h)(i) are amended by adding the following at the end thereof: "or with respect to the representations and warranties made pursuant to Section 10.2 of this Agreement or any additional representations and warranties agreed upon by the parties, any such representation and warranty becomes false or misleading in any material respect during the term of this Agreement or any Transaction entered into hereunder.""

The following new "Events of Default" shall be included in Section 5.1 of the Agreement, as amended:

Section 5.1 (i) is added as follows: "if at any time during the Term of Agreement, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement electrical power that was not generated by the Unit(s)"; and

Section 5.1(j) is added as follows: "failure to meet the performance requirements agreed to pursuant to Section __ hereof."

NON- PERFORMANCE/TERMINATION PENALITES:

The following modifications to Article One of the EEI Agreement are offered as "Non-Performance / Termination Penalties" for the Agreement:

The definition of "Gains" shall be deleted in its entirety and replaced with the following:

""Gains" means with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction for the remaining term of such Transaction, determined in a commercially reasonable manner. Factors used in determining economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties, including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets market referent prices for renewable power set by the CPUC, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for

Appendix A

Renewable Portfolio Standard
Standard Contract Terms and Conditions

the remaining term of the applicable Transaction and include the value of Environmental Attributes."

Appendix A

Renewable Portfolio Standard
Standard Contract Terms and Conditions

The definition of "Losses" shall be deleted in its entirety and replaced with the following:

""Losses" means with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction for the remaining term of such Transaction, determined in a commercially reasonable manner. Factors used in determining the loss of economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market referent prices for renewable power set by the CPUC, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g. NYMEX), all of which should be calculated for the remaining term of the applicable Transaction and include value of Environmental Attributes."

The definition of "Costs" shall be deleted in its entirety and replaced with the following:

""Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction".

The definition of "Settlement Amount" shall be adopted in its entirety as follows:

"1.56 "Settlement Amount" means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2."

Section 5.2 of the Agreement shall be deleted in its entirety and replaced with the following:

Appendix A

Renewable Portfolio Standard
Standard Contract Terms and Conditions

"5.2 Declaration of Early Termination Date and Calculation of Settlement Amounts: If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("Non-Defaulting Party") shall have the right to (i) designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. The Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount."

Section 5.3 through 5.5 of the Agreement shall be adopted in their entirety. For reference Section 5.3 – 5.5 are as follows:

> "5.3 Net Out of Settlement Amounts. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article Eight, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment"). If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Termination Payment shall be zero."

Appendix A

Renewable Portfolio Standard
Standard Contract Terms and Conditions

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within two (2) Business Days after such notice is effective.

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment."

(12) CREDIT TERMS (May be modified by parties)

Sections 8.1 through 8.3 of the EEI Agreement shall be adopted in their entirety for inclusion in the Agreement as follows:

"8.1 Party A Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet and shall only apply if marked as "Applicable" on the Cover Sheet.

(a) Financial Information. Option A: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party B's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Party B diligently pursues the preparation, certification and delivery of the statements.

Appendix A

Renewable Portfolio Standard
Standard Contract Terms and Conditions

Option B: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party A may request from Party B the information specified in the Cover Sheet.

(b) Credit Assurances. If Party A has reasonable grounds to believe that Party B's creditworthiness or performance under this Agreement has become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice Party B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party A plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold, then Party A, on any Business Day, may request that Party B provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold (rounding upwards for any fractional amount to the next Party B Rounding Amount) ("Party B Performance Assurance"), less any Party B Performance Assurance already posted with Party A. Such Party B Performance Assurance shall be delivered to Party A within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash),

Appendix A

Renewable Portfolio Standard
Standard Contract Terms and Conditions

Party B, at its sole cost, may request that such Party B Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party B's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party B Rounding Amount). In the event that Party B fails to provide Party B Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.1(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party A as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party B to Party A, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party B, then Party A may require Party B to provide Performance Assurance in an amount determined by Party A in a commercially reasonable manner. In the event Party B shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party B shall deliver to Party A, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party A.

8.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet and shall only apply if marked as "Applicable" on the Cover Sheet.

(a) Financial Information. Option A: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party A's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall

Appendix A

Renewable Portfolio Standard
Standard Contract Terms and Conditions

not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

Appendix A

Renewable Portfolio Standard
Standard Contract Terms and Conditions

Option B: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party B may request from Party A the information specified in the Cover Sheet.

(b) Credit Assurances. If Party B has reasonable grounds to believe that Party A's creditworthiness or performance under this Agreement has become unsatisfactory, Party B will provide Party A with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice Party A shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party B. In the event that Party A fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party B plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold (rounding upwards for any fractional amount to the next Party A Rounding Amount) ("Party A Performance Assurance"), less any Party A Performance Assurance already posted with Party B. Such Party A Performance Assurance shall be delivered to Party B within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash),

Appendix A

Renewable Portfolio Standard
Standard Contract Terms and Conditions

Party A, at its sole cost, may request that such Party A Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party A's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount). In the event that Party A fails to provide Party A Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.2(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party B as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party A to Party B, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party A, then Party B may require Party A to provide Performance Assurance in an amount determined by Party B in a commercially reasonable manner. In the event Party A shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party A shall deliver to Party B, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party B.

8.3 Grant of Security Interest / Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a "Pledgor") hereby grants to the other Party (the "Secured Party") a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-

Appendix A

Renewable Portfolio Standard
Standard Contract Terms and Conditions

Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full."

If the parties elect as being applicable on the Cover Sheet, the following new Section 8.4 shall be added to Article Eight of the EEI Master Agreement:

To secure its obligations under this Agreement, in addition to satisfying any credit terms pursuant to the terms of Section [8.1 or 8.2] to the extent marked applicable, Seller agrees to deliver to Buyer (the "Secured Party") within thirty (30) days of the date on which all of the conditions precedent set forth in Section __ are either satisfied or waived, and Seller shall maintain in full force and effect a) until the Commercial Operation Date a [INSERT TYPE OF COLLATERAL] in the amount of $_____], the form of which shall be determined in [the sole discretion of] [or] [by] Buyer and (b) from the Commercial Operation Date until the end of the Term [INSERT TYPE OF COLLATERAL]in the amount of $____], the form of which shall be determined [in the sole discretion of] [or][by] the Buyer. Any such security shall not be deemed a limitation of damages.

(15) CONTRACT MODIFICATIONS (MAY MODIFY ONLY THOSE TERMS THAT ARE MODIFIABLE)

The following provision of Section 10.8 of the EEI Agreement shall be adopted as follows:

"Except to the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both parties."

Appendix A

Renewable Portfolio Standard
Standard Contract Terms and Conditions

(16) ASSIGNMENT (MAY NOT BE MODIFIED)

Section 10.5 of the EEI Agreement, "Assignment," shall be deleted in its entirety and replaced with the following:

> "Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to its financing providers and the financing provider(s) shall assume the payment and performance obligations provided under this Agreement with respect to the transferring Party provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request."

(17) APPLICABLE LAW (MAY NOT BE MODIFIED)

Section 10.6 of the EEI Master Agreement, "Governing Law," shall be included in the Agreement and amended by deleting "NEW YORK" and inserting "CALIFORNIA" in place thereof.

(18) APPLICATION OF PREVAILING WAGE (MAY BE MODIFIED)

To the extent applicable, Seller shall comply with the prevailing wage requirements of Public Utilities Code section 399.14, subdivision (h).

(END OF APPENDIX A)

Appendix A

Renewable Portfolio Standard
Standard Contract Terms and Conditions

Appendix B

RPS Annual Procurement Target (APT) Methodology

Definitions:

1) Initial Renewable Baseline

   a) RPS generation baseline is defined as all RPS-eligible renewable generation in a utility's 2003 portfolio[1], not including any renewable generation procured in excess of what was required by D.02-08-071.

2) Bankable Renewable Generation

   a) Eligible generation procured in 2002-2003, in excess of the amount required by D.02-08-71. This amount may be applied by the utility to the APT for 2004 and future years.

3) Incremental Procurement Target (IPT)

   a) Defined as at least 1% of the previous year's total retail electrical sales, including power sold to a utility's customers from its DWR contracts. 2 The Commission retains the authority to increase this amount above 1% to meet state goals for renewable generation

[1] See, Order Instituting Rulemaking R.04-04-026, p. 4
[2] See, SB 1078, Sections 399.15(b)(1) and 399.15(b)(2)

Appendix B

RPS Annual Procurement Target (APT) Methodology

4) Annual Procurement Target (APT)

a) The amount of renewable generation a utility must procure in order to meet the statutory requirement that it increase its renewable procurement by at least 1 percent of retail sales per year.[3]

b) Annual procurement targets are mandatory (id., pp. 41-42)[4], and consist of two separate components: the baseline, described above, representing the amount of renewable generation a utility must retain in its portfolio to continue to satisfy its obligations under the RPS targets of previous years; and the incremental procurement target (IPT), defined as at least 1% of the previous year's total retail electrical sales, including power sold to a utility's customers from its DWR contracts. [5]

i) APT = prior year renewable baseline + IPT

[3] See, D.03-06-071, p. 7, fn. 9.
[4] Although there are flexible rules for compliance. *Id.*, pp. 39-54.
[5] See, Order Instituting Rulemaking R.04-04-026, p. 5

Appendix B

RPS Annual Procurement Target (APT) Methodology

Calculation for PG&E's 2004 RPS Annual Procurement Target

2002 - 2003 Interim Procurement Banking/ Deficit for 2003 RPS Compliance

	PG&E		Calculation
A	2001 Retail Sales (kWh) [1]	75,320,000,000	--
B	2002/ 2003 Interim Procurement Benchmark (kWh	753,200,000	1% * A
C	2002/ 2003 Actual Interim Procurement (kWh) [3]	817,500,000	--
D	2003 Renewable Banking/ Deficit (kWh)	64,300,000	C - B

2004 RPS Annual Procurement Target (APT)

	PG&E	2003	Calculation
E	Baseline Renewable Generation (kWh) [4]	8,763,765,000	--
F	Retail Sales (kWh) [5]	71,099,363,000	--
G	Baseline Renewable Generation (%)	12.3%	E / F
H	Incremental Procurement Target (kWh)	710,993,630	1% * F
I	Renewable Generation Banking/ Deficit (kWh)	64,300,000	D
J	Adjusted Incremental Procurement Target (kWh) [6]	710,993,630	--
K	**2004 Annual Procurement Target (kWh)**	**9,474,758,630**	E + J
L	Excess Banking/ Deficit Carried Forward (kWh) [7]	64,300,000	--

Note:

1/ PG&E data response (No.# ED_001-01), May 5, 2004

2/ See, D.02-10-062, (pg. 23)

3/ PG&E's Compliance Filing Reporting Achievement of 2003 APT for Renewable Generation, May 4, 2004

4/ PG&E data response (No.# ED_001-01), May 5, 2004. Energy Division reduced 2003 renewable baseline by the amount of interim procurement in excess of the 1% order by D.02-08-071. Specifically, under D.03-06-076 PG&E may use their interim procurement geothermal contracts to satisfy certain aspects of their RPS procurement requirements. The extent to which this interim procurement can be banked forward to satisfy future IPTs is subject to determination by the CEC

5/ PG&E data response (No.# ED_001-01), May 5, 2004

6/ Adjusted IPT was left at 1% - CPUC will leave it to the utilities to determine if they want to reduce their IPT with excess procurement that can be banked forward

7/ Excess/ deficit 2002/ 2003 Interim Procurement to meet future RPS compliance obligations

Appendix B

RPS Annual Procurement Target (APT) Methodology

Calculation for SCE's 2004 RPS Annual Procurement Target

2002 - 2003 Interim Procurement Banking/ Deficit for 2003 RPS Compliance

	SCE		Calculation
A	2001 Retail Sales (kWh) [1]	74,806,895,489	--
B	2002/ 2003 Interim Procurement Benchmark (kWh)	748,068,955	1% * A
C	2002/ 2003 Actual Interim Procurement (kWh) [3]	1,208,000,000	--
D	2003 Renewable Banking/ Deficit (kWh)	459,931,045	C - B

2004 RPS Annual Procurement Target (APT)

	SCE	2003	Calculation
E	Baseline Renewable Generation (kWh) [4]	12,029,871,629	--
F	Retail Sales (kWh) [5]	70,617,000,000	--
G	Baseline Renewable Generation (%)	17.0%	E / F
H	Incremental Procurement Target (kWh)	706,170,000	1% * F
I	Renewable Generation Banking/ Deficit (kWh)	459,931,045	D
J	Adjusted Incremental Procurement Target (kWh) [6]	706,170,000	--
K	**2004 Annual Procurement Target (kWh)**	**12,736,041,629**	E + J
L	Excess Banking/ Deficit Carried Forward (kWh) [7]	459,931,045	--

Notes:

1/ SCE data response -- CPUC RPS Baseline Data Request 4-19-04.xls, April 21, 2004

2/ See, D.02-10-062, (pg. 23)

3/ SCE data response -- 2004-02-02~P~SCE Report Regarding 2003 Annual Procurement Target.pdf, February 2, 2004

4/ SCE data response -- CPUC RPS Baseline Data Request 4-19-04.xls, April 21, 2004. Energy Division reduced 2003 renewable baseline by the amount of interim procurement in excess of the 1% order by D.02-08-071. Specifically, under D.03-06-076 SCE may use their interim procurement geothermal contracts to satisfy certain aspects of their RPS procurement requirements. The extent to which this interim procurement can be banked forward to satisfy future IPTs is subject to determination by the CEC.

5/ SCE data response -- CPUC RPS Baseline Data Request 4-19-04.xls, April 21, 2004

6/ Adjusted IPT was left at 1% - CPUC will leave it to the utilities to determine if they want to reduce their IPT with excess procurement that can be banked forward

7/ Excess/ deficit 2002/ 2003 Interim Procurement to meet future RPS compliance obligations

Appendix B

RPS Annual Procurement Target (APT) Methodology

Calculation for SDG&E's 2004 RPS Annual Procurement Target

2002 - 2003 Interim Procurement Banking/ Deficit for 2003 RPS Compliance

	SDG&E		Calculation
A	2001 Retail Sales (kWh) [1]	14,998,806,069	--
B	2002/ 2003 Interim Procurement Benchmark (kWh	149,988,061	1% * A
C	2002/ 2003 Actual Interim Procurement (kWh) [3]	427,058,000	--
D	2003 Renewable Banking/ Deficit (kWh)	277,069,939	C - B

2004 RPS Annual Procurement Target (APT)

	SDG&E	2003	Calculation
E	Baseline Renewable Generation (kWh) [4]	272,897,543	--
F	Retail Sales (kWh) [5]	15,043,864,828	--
G	Baseline Renewable Generation (%)	1.8%	E / F
H	Incremental Procurement Target (kWh)	150,438,648	1% * F
I	Renewable Generation Banking/ Deficit (kWh)	277,069,939	D
J	Adjusted Incremental Procurement Target (kWh) [6]	150,438,648	--
K	**2004 Annual Procurement Target (kWh)**	423,336,191	E + J
L	Excess Banking/ Deficit Carried Forward (kWh)[7]	277,069,939	--

Notes:

1/ SDG&E data response -- "SDG&E Response to Request for Renewable Energy Purchase Data", April 16, 2004

2/ See, D.02-10-062, (pg. 23)

3/ SDG&E data response -- email dated 5/ 14/ 04 from SDG&E's Meredith Allen

4/ SDG&E's Comments on Renewable Generation Baselines and Annual Procurement Targets, fn.5, April 30, 2004. Energy Division reduced 2003 renewable baseline by the amount of interim procurement in excess of the 1% order by D.02-08-071. Specifically, under D.03-06-076 SDG&E may use their interim procurement contracts to satisfy certain aspects of their RPS procurement requirements. The extent to which this interim procurement can be banked forward to satisfy future IPTs is subject to determination by the CEC

5/ SDG&E data response -- email dated 4/ 5/ 04 from SDG&E's Joseph R Kloberdanz.

6/ Adjusted IPT was left at 1% - CPUC will leave it to the utilities to determine if they want to reduce their IPT with excess procurement that can be banked forward

7/ Excessdeficit 2002/ 2003 Interim Procurement to meet future RPS compliance obligations

(END OF APPENDIX B)