

Decision 08-02-010

February 14, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Rulemaking 06-05-027  
(Filed May 25, 2006)

**ORDER MODIFYING DECISION (D.) 07-07-027  
AND DENYING REHEARING OF THE DECISION, AS MODIFIED.**

In 2006, the Legislature added Public Utilities Code section 399.20 (Assembly Bill (“AB”) 1969).<sup>1</sup> Under section 399.20 each electrical corporation (“IOU”) must establish a tariff for the purchase of Renewables Portfolio Standard (“RPS”) generated electricity from certain water and wastewater customers (“sellers” or “customers”), and purchase that electricity at a market price determined by the Commission. The market price must be made available until the combined statewide cumulative rated capacity of eligible sellers reaches 250 megawatts (MW), with each buyer required to offer service until it meets its proportionate share of the 250 MW based on the ratio of its peak demand to total statewide peak demand. The electricity purchased applies toward the IOU’s RPS Program annual target.

In Decision (D.) 07-07-027, we adopted rules and standard contracts for the purchase of electricity from water and wastewater customers as required by section 399.20. Specifically, we required Southern California Edison (“Edison”), Pacific Gas &

<sup>1</sup> All section references are to the Public Utilities Code, unless otherwise noted.

Electric (“PG&E”), San Diego Gas & Electric Company (“SDG&E”), PacifiCorp, Sierra Pacific Power Company (“Sierra”), Bear Valley Electric Service Division of Golden State Water Company, and Mountain Utilities to file and serve advice letters that transmit tariffs and standard contracts that are consistent with the requirements set forth in D.07-07-027, Attachment A.<sup>2</sup>

In addition, we adopted similar rules and standard contracts for the purchase of electricity from other non-water, non-waste water customers (“small customer generators”) of Edison and PG&E, but exempted SDG&E and other utilities from offering the tariffs to their small customer generators.<sup>3</sup> We also gave participating sellers in the Edison, PG&E, and SDG&E service areas the option to sell to the electrical corporation either all the power produced (“full buy/sell”) or the power produced that is in excess of their on-site consumption (“excess sales”).

Two parties timely filed applications for rehearing: Edison and the Center for Energy Efficiency and Renewable Technologies (“CEERT”). In its rehearing application, Edison asserts the following legal errors: (1) D.07-07-027 impermissibly allowed participating customers to choose an “excess sales” arrangement instead of requiring a “full sales” agreement, (2) section 399.20 does not permit us to extend the program to other small customer generators (with an additional 228.4 MW cap), (3) we have no authority under section 399.20 to require only Edison and PG&E to offer the extended program, and (4) section 399.20 does not give us the authority to require Edison and PG&E, but not the smaller IOUs, to offer the excess sales option.

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<sup>2</sup> Sierra was not required to file a standard contract.

<sup>3</sup> In the March 12, 2007 Amended Scoping Memo the Assigned Commissioner states that: “Section 399.20 does not, however, necessarily exclude application of the concept to a broader group of customers, nor prohibit employing a concurrently broader definition. Other customer groups have expressed interested in a standardized tariff or contract. I would like to explore this here.” Consistent with this statement parties were given 30 days to make a subsequent filing going to, among other things, “whether or not the proposed standard tariff can be made available to other groups of, or all, customers of the electrical corporation.” (March 12, 2007 Amended Scoping Memo and Ruling of Assigned Commissioner, pp. 8-10.)

In its rehearing application, CEERT alleges legal error on claims that D.07-07-027 fails to state whether its tariff calculation of the market price includes the cost of the electricity as well as a premium for the renewable attribute. More specifically, CEERT argues that D.07-07-027's claim that the market price referent (MPR) provides the right price signal and compensation, without further analysis or explanation, is legal error as it conflicts with the meaning of "market price" and MPR as used in the context of the applicable RPS Program law.

Both Green Power Institute ("GPI") and Sustainable Conservation filed responses to the CEERT and Edison applications for rehearing. CEERT filed a response to Edison's application for rehearing.

Edison filed a motion to stay the effectiveness of D.07-07-027. In its motion, Edison was seeking a stay of the effectiveness of D.07-07-027 pending the resolution of the instant application for rehearing. With today's order disposing of Edison's rehearing application, the stay motion is denied as being moot.

## **I. DISCUSSION**

### **A. The Edison Application for Rehearing**

#### **1. Section 399.20 does not require full sales agreements.**

##### **a) D.07-07-027 is consistent with the plain language of section 399.20.**

Edison argues that this Commission acted in a manner inconsistent with section 399.20, because D.07-07-027 gives participating sellers the option to sell to the electrical corporation only the power in excess of on-site consumption. (Edison Application for Rehearing, p. 5.) In this regard Edison asserts that D.07-07-027 wrongly allows participating customers to choose an "excess" sales arrangement rather than directing them to sell all the energy they produce via a "full" sales agreement as required by section 399.20.

Edison's arguments are without merit. Specifically, Edison supports its argument by claiming that "the plain language of the statute supports a finding that AB 1969 requires that a participating customer/generator sell its entire RPS-generated output to the buyer/electrical corporation." (Edison Application for Rehearing, p. 5, emphasis in original.) Edison cites subdivisions (d) and (f) of section 399.20 as supporting its claim. These sections provide that:

The tariff shall provide for payment for every kilowatthour of renewable energy output produced at an electric generation facility. (Pub. Util. Code, §399.20, subds. (d).)

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Every kilowatthour of renewable energy output produced by the electric generation facility shall count toward the electrical corporation's renewable portfolio standard [RPS] annual procurement targets .... (Pub. Util. Code, §399.20, subds. (f).)

Edison asserts that " '[e]very kilowatthour produced' can only mean one thing: 'every kilowatthour produced' " and argues that section 399.20 therefore requires customers to sell either all or none of the electricity they produce.<sup>4</sup> (Edison Application for Rehearing, p. 6.)

Edison's argument is flawed in that the plain language of the statute does not set forth such a requirement. Rather than refer to 'every kilowatt hour produced' as Edison claims, the provisions cited "refer to every kilowatt hour of output produced by the electric generation facility." (Edison Application for Rehearing, p. 6, emphasis added.) Following Edison's reasoning, had the Legislature simply meant every 'kilowatt hour produced,' it would have said every kilowatt hour produced without reference to "output." Instead, by referencing "every kilowatt hour of output produced," the

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<sup>4</sup> Edison does not alledge error in D.07-07-027's treatment of the counting of the renewable energy toward the corporation's portfolio standard pursuant to subdivision (f) of section 399.20.

Legislature effectively differentiates between power generated (kilowatt hour produced) and power sold (kilowatt hour output) by these entities.

The Commission's interpretation in D.07-07-027 is further supported by recently enacted Assembly Bill ("AB") 946 (Stats. 2007, ch. 112). AB 946 amended the language in sections 399.20(d) and (f). The amendments were effective as of January 1, 2008. Subdivisions (d) and (f) reads as follows:

(d) The tariff shall provide for payment for every kilowatthour of ~~renewable energy output produced at~~ **electricity generated by** an electric generation facility.

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(f) Every kilowatthour of ~~renewable energy output produced at~~ **electricity generated by an electric generation** facility shall count toward the electrical corporation's renewables portfolio standard [RPS] annual procurement targets ....

(AB 946 (Stats. 2007, ch. 112), §1, emphasis added.)

D.07-07-027 interprets section 399.20(d) as requiring this Commission to ensure that the IOUs stand ready to provide payment for every kilowatthour of electricity generated. Neither the amended nor original language in section 399.20(d) say anything about requiring generators to sell every kilowattthour generated. Instead, as noted in the legislative history associated with the AB 946, this is a "must buy" provision.<sup>5</sup> Contrary to Edison's 'must sell' interpretation, section 399.20(d) requires the IOU to be ready to purchase the full amount generated (subject to the IOU's proportional cap). Section 399.20 does not impose a "must sell" requirement on the generator.<sup>6</sup>

<sup>5</sup> Senate Energy, Utilities and Communications Com., Hearing on Assem. Bill No. 946 (2007 -2008 Reg. Sess.) June 19, 2007, p.1

<sup>6</sup> "[Edison] provided tariff language and a proposed form contract that complied with every requirement of the statute, including the requirement that the tariff provided for the payment for every kilowatthour of renewable energy produced by the participating generating facility. This last requirement was accomplished through a provision in the [Edison] contract that required the participating generator to sell to [Edison] every kilowatthour of renewable power generated by the facility." (Edison Application for Rehearing, p. 3.)

Edison goes on to argue that the section 399.20(g) requirement that “[t]he physical generating capacity of an electric generation facility shall count toward the electrical corporation’s resource adequacy requirement for purposes of [s]ection 380” supports its claim because, under the “counting rules” in D.05-10-042 “the purchasing utility would not be able to rely on the full generating capacity of the utility for that purpose if the facility first served onsite load before exporting the excess.” (Application for Rehearing, p. 6, emphasis added.) Edison’s reliance on D.05-10-042 is flawed. This decision does not state the counting rule that Edison alleges. (See generally, D.05-10-042, pp. 37-41.)

Consistent with section 399.20(g), D.07-07-027 allows the physical generating capacity of the electric generation facility to be counted toward the electrical corporation’s resource adequacy requirement for purposes of section 380.<sup>7</sup> The difference between our interpretation and Edison’s is that D.07-07-027 does not inject the word “full” into the statute, and thereby produce a meaning contrary to the plain language.

Absent the language Edison erroneously reads into section 399.20, there is no conflict between the excess sales approach we set forth in D.07-07-027 and section 399.20. The excess sales option we set forth in D.07-07-027 therefore represents a reasonable interpretation that is consistent with the plain language of section 399.20.

**b) D.07-07-027 furthers the legislative intent of section 399.20 intent of section 399.20.**

This Commission’s interpretation of section 399.20 as allowing an excess sales option is also more reasonable than Edison’s interpretation. As a practical consideration, under the full sale only approach, differences between the sale and purchase prices create a disincentive for customers to sell any excess energy produced; the customer would also have to sell self-generated energy that could be used to meet its

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<sup>7</sup> In contrast to resource adequacy which can be considered indicative of how much capacity the IOU has, D.07-07-027 affords IOUs RPS credits only in proportion to the amount of energy they purchase.

needs, and then purchase energy to meet these needs at a higher price. Eliminating the excess sales option as Edison urges, would likely reduce the impact of the program. This adverse consequence is set forth in Finding of Fact (“FOF”) #19 in D.07-07-027:

Sellers have reduced incentive to enter into contracts for the sale of their generation at a market rate if then required to buy back that same generation to serve their own on-site needs at a much higher retail rate (D.07-07-027, p. 56 [FOF #19].)

Beyond merely being consistent with the plain language of section 399.20, the excess sale option we provide for in D.07-070-27 is necessary to further the legislative intent underlying section 399.20. The legislative intent underlying section 399.20 was to foster the production of “green” energy. As noted in Section 1(d) of AB 1969:

Despite improvements in power plant licensing, successful energy efficiency programs, and continued technological advancements, the development of new energy supplies is not keeping pace with the state's increasing demand. Moreover, the development of new renewable resources has been slower than anticipated and limited by existing transmission constraints. (AB 1969, Stat. 2006, ch. 731, §1, subd. (d).)

Indeed, the legislative objective of fostering and increasing California’s “green” energy production underlies the entirety of Article 16 of which section 399.20 is a part. For example, section 399.11(b) provides that:

Increasing California’ reliance on renewable energy resources may promote stable electricity prices, protect public health, improve environmental quality, stimulate sustainable economic development, create new employment opportunities, and reduce reliance on imported fuels. (Pub. Util. Code, §399.11, subd. (b).)

Thus, in addition to creating disincentives that are at odds with the entire RPS program, Edison’s interpretation is contrary to the legislative intent underlying the

enactment of section 399.20. In marked contrast, by providing both the “full” and “excess” sales options in D.07-07-027, we are acting in a manner consistent with the plain language of section 399.20 and in furtherance of the broader statutory scheme of which section 399.20 is a part.

**2. Decision 07-07-027 properly extended the tariff program to Edison and PG&E small generation customers.**

Edison asserts that this Commission wrongly extended the program to other small generation customers with an additional 228.4 MW cap. Edison further argues that in D.07-07-027 we unlawfully adopted a program expansion for it and PG&E only, while not requiring smaller electrical corporations to offer the excess sales option.<sup>8</sup> In essence then Edison argues that the Commission can’t extend the program and, if the program can be extended, it must be extended to all the electrical corporations. Edison’s interrelated claims are without merit.

Edison argues that D.07-07-027 errs in creating a similar program for it’s (and PG&E’s) small generator customers up to an additional 228.4 MW because section 399.20 “... says nothing about expanding a similar program to other customers, nor does it authorize an extension of the program by an additional 228.4 MW.” (Edison Application for Rehearing, pp. 10-11.) In effect, Edison argues that this Commission lacks the authority to offer the expanded program to small customer generators.<sup>2</sup>

Edison’s claim is without merit. Section 399.20 does not prohibit an expansion of the program. We address this issue in D. 07-07-027 where we state:

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<sup>8</sup> At page 49 of D.07-07-027 we note that other utilities were exempted from the program expansion in part because of their smaller size and smaller RPS share. As discussed immediately below, rather than argue that this Commission can’t treat it and PG&E, the two largest IOUs in the state differently from other IOUs and require them to extend the program, the substance of Edison’s argument is that section 399.20 doesn’t authorize this Commission to extend the program to particular IOUs. (Edison Application for Rehearing, p. 10.)

<sup>2</sup> In its response to the March 12, 2007 Amended Scoping memo and Ruling of Assigned Commissioner, Edison proposed an expansion of the AB 1969 program to non-water and non- wastewater agencies with the full buy option. (See Edison’s April 11, 2007 filing and Application for Rehearing, p. 10.)

Section 399.20 applies to public water and wastewater agencies. It adopts a definition of “electric generation facility” specific to those agencies. It does not exclude application of the concept to a broader group of customers. Nor does it prohibit employing the same or similar definition of generation facility to this expanded group. (D.07-07-027, p.43.)

We can lawfully expand the program. We have broad constitutional and statutory authority in the regulation of public utilities. (See e.g., Cal. Const., art. XII, §§5 & 6; Pub. Util. Code, 216, 217, 218, 399, 399.11, 399.14, 399.15, 399.16, 451, 454, 761.) As noted in *Southern California Edison Co. v. Peevey* (2003) 31 Cal.4th 781, 792:

[The Commission’s] authority derives not only from statute but from the California Constitution, which creates the agency and expressly gives it the power to fix rates for public utilities. (Cal. Const., Art. XII, sections 1, 6.) Statutorily, [the Commission] is authorized to supervise and regulate public utilities and to “do all things ... which are necessary to convenient in the exercise of such power and jurisdiction” (section 701); this includes authority to determine and fix “just, reasonable [and] sufficient rates” (section 728) to be charged by the utilities. Adverting to these provisions, we have described PUC as “ ‘a state agency of constitutional origin with far-reaching duties, functions and powers’ ” whose “ ‘power to fix rates [and] establish rules’ ” has been “liberally construed.” (*San Diego Gas & Electric Co. v. Superior Court* (1996) 13 Cal 4th 893, 914-915 [55 Cal.Rptr.2d 724, 920 P.2d 669], quoting *Consumers Lobby Against Monopolies v. Public Utilities Com.* (1979) 25 Cal.3d 891, 905 [160 Cal.Rptr. 124, 603 P.2d 41].)

Pursuant to this broad grant of authority, this Commission may “do all things ... which are necessary and convenient in the exercise of its power and jurisdiction” to regulate public utilities, including those programs that involve procurement, resource adequacy, renewables, and energy efficiency. (See generally, Pub. Util. Code, §§216, 701, 399, & 399.11, et. seq.) Thus, this Commission has the authority to extend the

program to small customer generators, adopt the 228.4 MW program expansion for Edison and PG&E only, and/or exempt smaller electrical corporations from the excess sales option.

Moreover, Edison's claim that section 399.20 was not intended to be applied to small customer generators is irrelevant. In D. 07-07-027 we do not rely on section 399.20 for the new small customer generators program. As set forth therein:

The expanded availability is separate and distinct from the program to implement [section] 399.20. Therefore, the tariffs/standard contracts should also be separate and distinct. (D.07-07-027, p. 43.)

Consistent with this distinction, in D. 07-07-027 we require Edison and PG&E to file separate tariffs for small customer generators. (D.07-07-027, p. 62 [Ordering Paragraph 2].) Thus, this Commission simply establishes that additional tariffs/standard contracts must be made available to those small customer generators that seek to sell electricity generated by renewable resources from projects of 1.5 MW or less. Notably, though these tariffs "must be made available" they do not preclude or prohibit the utilities from offering other terms and conditions, including those that are currently available. (D.07-07-027, p. 47.)

Edison next argues that, "in extending this special treatment, including the right to receive an MPR-based payment for renewable energy outside the competitive solicitation process, to other non-water customers, the Decision violates the directives for the procurement of renewable resources set forth in RPS laws." (Edison Application for Rehearing, p 11.) Here again, Edison's claim lacks merit.

Edison fails to specifically identify which provision of RPS law it claims the Commission violated.<sup>10</sup> Further, D.07-07-027 is consistent with the overall RPS

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<sup>10</sup> By failing to specify which statute it claims this Commission violated Edison has failed to comply with section 1732, which requires that "[t]he application for a rehearing shall set forth specifically the ground or grounds on which the applicant considers the decision or order to be unlawful."

statutory framework. D.07-07-027's expanded program is only available to projects of 1.5 MW or less, and Edison specifically limits its competitive RPS proposals to facilities of at least one (1.0) MW.<sup>11</sup> Assuming that Edison's claim goes to future contracts between D.07-07-027's 1.5 MW ceiling and Edison's 1.0 MW floor, the claim nonetheless fails.

Edison relies on section 399.14(b) to support its argument. In relevant part, section 399.14(b) provides:

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 plain language of this section gives this Commission the discretion to accept, reject, or modify the terms in Edison's request for proposals. Thus, even if Edison were inclined to negotiate generation contracts greater than 1.0 MW and less than 1.5 MW, the very RPS statutes referenced by Edison provides this Commission the authority to require the contracts to be consistent with D.07-07-027.<sup>12</sup>

Finally, neither the plain language nor legislative history of section 399.20 express an intent to carve out a limited "exception from the broader RPS framework, for water and wastewater agencies ..." as Edison wrongly claims. (Edison Application for Rehearing, p. 11.) The statute does not prohibit any other exception that this Commission may opt to adopt pursuant to its authority to regulate public utilities. Rather, section 399.20 simply expresses the legislature's intent to "encourage energy production from renewable resources at public water and wastewater facilities..."<sup>13</sup> (See Pub. Util.

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<sup>11</sup> Section 2.06 of Edison's 2007 Request for Proposals from Eligible Renewable Energy Resource Suppliers for Electric Energy Procurement Protocol establishes a 1.0 MW minimum for proposals.

<sup>12</sup> Edison's 2008 Request for Proposals from Eligible Renewable Energy Resource Suppliers for Electric Energy Procurement Protocol, is on file and awaiting Commission approval.

<sup>13</sup> As noted above, "[t]he expanded availability is separate and distinct from the program to implement § 399.20." (D.07-07-027, p. 43.)

Code, §399.20, subd. (a).) In extending this objective to small customer generators, in D.07-07-027 we act in a manner consistent with the Legislature's intent.

Thus, in the context of the broader RPS statute of which section 399.20 is a part, the Commission has the authority to develop similar tariffs for Edison's and PG&E's small customer generators. (See generally, Pub. Util. Code, §§399.11, et seq.; see also, generally, Cal. Const., art. XII, §§5 & 6; Pub. Util. Code, §§216, 217, 218, 399, 451, 454, 761.)

### **B. The CEERT Application for Rehearing.**

CEERT claims that in D.07-07-027 this Commission unlawfully failed to specify whether the tariff calculation of the market price includes the cost of the electricity as well as a premium for the renewable attribute. Specifically, CEERT argues that:

... D.07-07-027 states that, for purposes of the RPS compliant power procured pursuant to the tariffs, the "MPR provides the right price signal and compensation." ... These conclusions by D.07-07-027, without further analysis or explanation, are in error and conflict with the meaning of "market price" and MPR within the context of the applicable RPS Program law. (CEERT Application for Rehearing, p. 6.)

CEERT's argument has no merit. The statement regarding the MPR providing the right price signal was made in the context of the MPR, being reasonably the same as the avoided/incremental cost. (D.07-07-027, p. 37.) Avoided/incremental cost has many times over the last three decades been noted by us and others as being the right price signal for future investment.<sup>14</sup> It remains so. Moreover, avoided/incremental cost and MPR may, in certain circumstances, include internalized external costs (e.g., green house gas adders). (See *Rulemaking to Implement the California Renewables Portfolio*

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<sup>14</sup> See, for example, *Investigation into the electric resource plan and alternatives of PG&E* [D.91109] (1979) 3 Cal.P.U.C.2d 1 (implemented a full avoided cost standard for the purchase of electricity from cogenerators and small power producers in advance of the Federal Energy Regulatory Commission adopting the same standard to implement the Public Utilities Regulatory Policies Act of 1978).

*Standard Program* [D.07-09-024] (2007) \_\_\_ Cal.P.U.C.3d \_\_\_, pp. 8-9 (slip op.).) CEERT is mistaken that our statement is in conflict with the meaning of market price and MPR. Also, the cited text expressly acknowledges that the MPR established in D.07-07-027 is for the limited purposes of “the RPS-compliant power procured pursuant to the tariffs.” (D.07-07-027, p. 37, emphasis added.) Nonetheless, based on this claim, CEERT wrongly concludes that:

“...the discussion of MPR pricing by D.07-07-027 and its adoption, without explanation, as the tariff rate, results in an [sic] determination that the MPR is an appropriate price for and represents the value of renewable generation. This is simply not the law and is a mistake that the Commission must correct to avoid inconsistent implementation of the RPS Program and potential damage to renewables procurement in this state. (CEERT Application for Rehearing, p. 7.)

CEERT’s claim, that our decision results in a determination that the MPR is an appropriate price beyond the tariff program, is speculative at best. As CEERT subsequently notes, rather than being applicable to all green generation, D.07-07-027 only goes to the RPS-compliant power procured pursuant to the tariffs. (CEERT Application for Rehearing, p. 6.)

CEERT continues its erroneous line of reasoning where it argues “if the MPR is the tariff rate, it is in fact not only a ceiling on payment for this renewable generation, but is the price to be paid per kilowatthour for such generation.” (CEERT Application for Rehearing, p. 7.) CEERT’s assumption that the market price approved for the tariff constitutes a floor or ceiling on payment for renewable generation is unfounded. The fact is, the tariff required by D.07-07-027 is only applicable to renewable generators that choose to sell under the tariff and/or enter into particular contracts. Nothing in D.07-07-027 prevents renewable generators from obtaining rates other than those in the tariffs. For example, the price might be lower (or higher) than the

MPR if a project is selected during a competitive solicitation and the winning bid is below (or above) the MPR.<sup>15</sup> Or, as Edison notes:

Customers always have the option of serving their onsite load outside of a power purchase arrangement. In addition, for many renewable generating facilities less than 1 MW there is the option of net metering. Renewable generating facilities greater than 1 MW may also participate in the renewables portfolio standard solicitations of the utilities or the utilities' all source solicitation. In addition, biomass projects sized from a few kW through 20 MW may elect to execute one of the standardized contracts recently made available by SCE to such facilities in order to implement the Governor's Executive Order S.06-06. Furthermore, projects that are 100 kW or less and certified by the FERC as qualifying facilities can obtain a standard offer contract. Finally, sellers are always welcome to discuss the option of a bilateral arrangement with SCE. (Edison Application for Rehearing, p. 9, citing Executive Order S.06-06, Section 1.b.)

Though its legal argument lacks merit, CEERT identifies an ambiguity that warrants modifying the decision. We therefore modify D.07-07-027 to clarify this issue, as set forth below in Ordering Paragraph No.1.

**THEREFORE, IT IS ORDERED** that:

1. Finding of Fact 11 on page 55 is modified to read as follows:

“11. The MPR methodology does not include a provision for reducing the MPR for Scheduling Coordinator services or benefits provided to the seller. It is not dependent upon the standard terms and conditions, and, while it can be used to establish the tariff rate consistent with and specific to the tariffs approved in this decision, it is not intended to serve as either the floor or ceiling price paid for renewables procurement generally.”

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<sup>15</sup> A price at or below the MPR is per se reasonable. (Pub. Util. Code, § 399.14, subd. (g).) A price above the MPR may or may not be reasonable, but is not per se unreasonable.

2. Rehearing of D.07-07-027, as modified, is hereby denied.
3. Edison's motion to stay is denied as moot.

This order is effective today.

Dated February 14, 2008, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
TIMOTHY ALAN SIMON  
Commissioners