

DRAFT

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

ENERGY DIVISION

Agenda ID# 22802  
RESOLUTION E-5343  
August 22, 2024

**R E D A C T E D**  
**R E S O L U T I O N**

Resolution E-5343. PacifiCorp long-term Purchase of Renewable Energy Credits with 3Degrees Group, Inc.

PROPOSED OUTCOME:

- This Resolution approves without modification PacifiCorp's long-term unbundled Renewable Energy Credit Purchase and Sale Agreement with 3Degrees Group, Inc. as requested per Advice Letter 737-E.

SAFETY CONSIDERATIONS:

- The Purchase and Sale Agreement will not alter existing agreements or any facility operations.

ESTIMATED COST:

- Costs of the Purchase and Sale Agreement are confidential at this time.

By Advice Letter 737-E, Filed on April 16, 2024.

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**SUMMARY**

This Resolution approves PacifiCorp's Renewable Energy Credit (REC) Purchase and Sale Agreement (Agreement) with 3Degrees Group, Inc. (3Degrees). The Agreement is for the annual procurement of 40,000 Portfolio Content Category (PCC) 3 RECs commencing from the effective date of the contract and continuing for a 10-year term. The RECs will come from 3Degrees' choice of certified RPS-eligible, non-PacifiCorp-owned facilities.

The Agreement with 3Degrees was executed as the result of PacifiCorp's Request for Proposals (RFP) in November 2023. PacifiCorp asserts in AL 737-E that the Agreement satisfies the preferred project characteristics of its November 2023 RFP and is intended to contribute towards PacifiCorp meeting its RPS and long-term contracting requirements in future Compliance Periods.

PacifiCorp's execution of the Agreement is consistent with PacifiCorp's 2023 Integrated Resource Plan (IRP) filed on March 31, 2023, as well as its 2023 On-Year Supplement, which was conditionally approved by the California Public Utilities Commission (CPUC) in Decision (D.) 23-12-008. Additionally, RPS deliveries pursuant to the Agreement are reasonably priced compared to other offers made at its 2023 RFP for RECs.

## **BACKGROUND**

### **Overview of the Renewables Portfolio Standard (RPS) Program**

The California RPS program was established by Senate Bill (SB) 1078, and has been subsequently modified by SB 107, SB 1036, SB 2 (1X), SB 350 and SB 100.<sup>1</sup> The RPS program is codified in Public Utilities Code Sections 399.11-399.33.<sup>2</sup>

The RPS program administered by the CPUC requires each retail seller to procure eligible renewable energy resources so that the amount of electricity generated from eligible renewable resources equals 60 percent of retail sales by December 31, 2030.<sup>3</sup>

Additional background information about the CPUC's RPS program, is available at <http://www.cpuc.ca.gov/PUC/energy/Renewables/overview.htm>.

## **NOTICE**

PacifiCorp states that a copy of Advice Letter (AL) 737-E was mailed and distributed in accordance with Section 4 of General Order 96-B.

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<sup>1</sup> SB 1078 (Sher, Chapter 516, Statutes of 2002); SB 107 (Simitian, Chapter 464, Statutes of 2006); SB 1036 (Perata, Chapter 685, Statutes of 2007); SB 2 (1X) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session); SB 350 (de León, Chapter 547, Statutes of 2015); SB 100 (de León, Chapter 312, Statutes of 2018).

<sup>2</sup> All further statutory references are to the Public Utilities Code unless otherwise specified.

<sup>3</sup> D.11-12-020 established a methodology to calculate procurement requirement quantities for the three different compliance periods covered in SB 2 (1X) (2011-2013, 2014-2016, and 2017-2020). D.16-12-040 established additional procurement requirement quantities for the three compliance periods established by SB 350: 2021-2024, 2025-2027, 2028-2030.

## **PROTESTS**

Advice Letter 737-E was not protested.

## **DISCUSSION**

### **PacifiCorp requests approval of a REC purchase Agreement with 3Degrees**

On April 16, 2024, PacifiCorp filed AL 737-E requesting CPUC approval of a long-term RPS Purchase and Sale Agreement with 3Degrees for Portfolio Content Category 3 RECs.

Pursuant to the Agreement terms, PacifiCorp will purchase 40,000 unbundled RECs per year for a 10-year period at a specific price, as provided in Confidential Appendix A.

### **Energy Division evaluated the Agreement based on the following criteria:**

- Consistency with PacifiCorp's RPS Procurement Plan;
- Consistency with the CPUC's least-cost best-fit requirements;
- Cost reasonableness;
- Consistency with RPS standard terms and conditions (STC);
- Consistency with Portfolio Content Categories (PCC);
- Consistency with long-term contracting requirements;
- Compliance with the interim Greenhouse Gas Emissions Performance Standard; and,
- Safety Considerations.

### **Consistency with PacifiCorp's RPS Procurement Plan**

In D.08-05-029, issued May 30, 2008, the CPUC authorized PacifiCorp to use its IRP prepared for regulatory agencies in other states to satisfy the RPS procurement plan requirement, supplemented with annual filings, to fulfil the requirement to prepare a renewable energy procurement plan. PacifiCorp was also directed to file a supplement in years in which the IRP is filed in other jurisdictions (on-year supplement) as well as years in which an IRP is not filed (off-year supplement).

PacifiCorp filed its 2023 IRP with the CPUC on March 31, 2023. PacifiCorp later filed its draft 2023 On-Year Supplement to its 2023 IRP on August 29, 2023,<sup>4</sup> which was conditionally approved by the CPUC in D.23-12-008. In accordance with D.23-12-008, PacifiCorp filed its final 2023 On-Year Supplement on March 7, 2024.

Pursuant to statute, PacifiCorp's 2023 IRP includes: a multi-year assessment of supply and demand; description of potential RPS compliance delays; status update of projects within its RPS portfolio; and an assessment of the project failure and delay risk within its RPS portfolio. PacifiCorp's 2023 On-Year Supplement provides further details to complement the 2023 IRP.

The 2023 IRP and 2023 On-Year Supplement both include PacifiCorp's plan to procure and use PCC 3 unbundled RECs for California RPS compliance as needed. PacifiCorp asserted in their 2023 On-Year Supplement that consistent with D.11-12-052, as a small and multi-jurisdictional utility (SMJU) they are not restricted by PCC limitations<sup>5</sup> and thus plan to "utilize RFPs to purchase unbundled RECs in the future."<sup>6</sup> The CPUC accepted this approach, finding in D.23-12-008 that PacifiCorp's 2023 On-Year Supplement was consistent with CPUC requirements.

As such, the procurement pursuant to the Agreement is consistent with PacifiCorp's 2023 On-Year Supplement, and thus its RPS Procurement Plan.

### **Consistency with CPUC's least-cost best-fit requirements**

In D.04-07-029, the CPUC directs the utilities to use certain criteria in their Least-Cost Best-Fit (LCBF) selection of renewable resources. The decision offers guidance regarding the process by which the utility ranks bids in order to select or "shortlist" the bidders with which it will commence negotiations. Further, in D.10-03-021, as modified by D.11-01-025, the CPUC noted that utilities should explain in their advice letters seeking approval of REC-only contracts their methodology for evaluating the contracts.

In AL 737-E, PacifiCorp notes that when evaluating 3Degrees' offer against other offers from its November 2023 solicitation, PacifiCorp found that 3Degrees' offer satisfied all of the preferred project characteristics solicited in its RFP and that the REC price was

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<sup>4</sup> Updated 2023 On-Year Supplement To Its 2023 Integrated Resource Plan, filed August 29, 2023.

<sup>5</sup> See PacifiCorp's 2023 On-Year Supplement, p.15.

<sup>6</sup> See PacifiCorp's 2023 On-Year Supplement, p.23; see also IRP, Table 1.3, p.27 and Table 10.1, p. 331 ("As needed, [PacifiCorp will] issue RFPs seeking then current-year or forward-year vintage unbundled RECs that will qualify in meeting California RPS targets through 2024.").

competitive compared to the prices of similar RPS products available to PacifiCorp at the time of the solicitation.

Thus, AL 737-E is consistent with D.10-03-021, as modified, satisfying the least-cost best-fit criteria for REC-only contracts.

### **Cost reasonableness**

The CPUC's reasonableness review for RPS contract prices includes comparisons of proposed contracts to recent RPS solicitations and contracts executed in the 12 months prior to the proposed contract's execution date. PacifiCorp received four offers in response to its November 2023 RFP that were all within close proximity to one another on price. The cost reasonableness review of the REC Agreement also reflects that 3Degrees' price offer is aligned with market prices of similar products available around the time of PacifiCorp's November 2023 solicitation.

For more information on the reasonableness analysis see Confidential Appendix A for a detailed discussion.

The total expected cost of the Agreement is reasonable based on its price relative to PacifiCorp's other competing offers made during the subject solicitation.

Provided that the RECs are from an eligible renewable energy resource, payments made by PacifiCorp pursuant to the Agreement are fully recoverable in rates over the life of the Agreement, subject to CPUC review of PacifiCorp's administration of the Agreement.

### **Compliance with RPS Standard Terms and Conditions**

The CPUC adopted a set of standard terms and conditions (STCs) required in RPS contracts, five of which are considered "non-modifiable." The STCs were compiled in D.08-04-009 and subsequently amended in D.08-08-028, D.10-03-021, as modified by D.11-01-025, and D.13-11-024.

The Agreement includes all CPUC-adopted RPS "non-modifiable" standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, and D.10-03-021, as modified by D.11-01-025 and D.13-11-024.

### **Consistency with Portfolio Content Categories**

In D.11-12-052, the Commission defined and implemented portfolio content categories for the RPS program. In addition, the Commission authorized the Director of Energy Division to require the investor-owned utilities to provide information regarding the proposed contract's Portfolio Content Category classification in each advice letter seeking Commission-approval of an RPS-eligible contract. The purpose of the information is to allow the CPUC to evaluate the claimed Portfolio Content Category of the proposed RPS contract and the risks and value to ratepayers if the proposed contract is subsequently classified as a different Portfolio Content Category.

However, D.11-12-052 affirmed that SMJUs meeting the criteria set out in Section 399.18(b) and Section 399.17(b) of the Public Utilities Code are not subject to the requirements and limitations of procurement from each Portfolio Content Category.

In AL 737-E, PacifiCorp claims that the procurement pursuant to the Agreement will be classified as Portfolio Content Category 3. To support its claim, PacifiCorp states that the products being purchased are unbundled RECs and that the RECs will be associated with energy generated from a certified RPS-eligible facility.

Consistent with D.11-12-052, PacifiCorp provided information in AL 737-E regarding the expected Portfolio Content Category classification of the RECs procured pursuant to the Agreement.

In this resolution, however, the CPUC makes no determination regarding the proposed Agreement's Portfolio Content Category classification because the RPS contract evaluation process is a separate process from the Portfolio Content Category classification which requires consideration of several factors based on various showings in a compliance filing<sup>7</sup>. Thus, making a portfolio content classification determination in this resolution regarding the procurement considered herein is not appropriate. PacifiCorp should incorporate the procurement resulting from the Agreement and all applicable supporting documentation to demonstrate PCC classification in the appropriate compliance showing(s) consistent with all applicable RPS program rules.

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<sup>7</sup> D.11-12-052, pp. 8, 12.

### **Consistency with long-term contracting requirements**

D.12-06-038 established a minimum quantity condition on the ability of retail sellers to count an eligible contract of less than 10 years duration for compliance with the RPS program. D.17-06-026 implemented new rules for long-term contracts and excess procurement for all Compliance Periods beginning 2021.

PacifiCorp must demonstrate that at least 65 percent of the RECs that it counts toward compliance with its RPS Procurement Quantity Requirement in a given Compliance Period are associated with contracts for eligible renewable energy resources that are long-term (10 or more years in duration).

Because the Agreement is 10 years in duration, it will contribute towards PacifiCorp' RPS long-term contracting requirements pursuant to D.12-06-038 and D.17-06-026.

### **Compliance with the interim Greenhouse Gas Emissions Performance Standard**

Sections 8340 and 8341 of the Public Utilities Code require that the CPUC consider emissions costs associated with baseload power contracts of five years or greater procured on behalf of California ratepayers.

D.07-01-039 adopted an interim Greenhouse Gas Emissions Performance Standard (EPS) that establishes an emission rate for obligated facilities at levels no greater than the greenhouse gas emissions of a combined-cycle gas turbine power plant. Generating facilities using certain renewable resources are deemed compliant with the EPS.

Pursuant to D.07-01-039, long-term contracts that specify and contain assurances that power will be delivered exclusively from preapproved renewable technologies or resources comply with the EPS even if none of the generating sources are specified.<sup>8</sup> The Agreement contains terms that require RECs be provided from projects already certified by the CEC for California RPS compliance and thus are from preapproved or exempt renewable resources.

As such, the Agreement complies with the interim Emissions Performance Standard.

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<sup>8</sup> See D.07-01-039, Finding of Fact 145.

### **Safety Considerations**

California PU Code §451 requires that every public utility maintain adequate, efficient, just, and reasonable service, instrumentalities, equipment and facilities to ensure the safety, health, and comfort of the public.

The Agreement is for the sale of unbundled PCC 3 RECs and does not alter existing power purchase agreements or any facility operations. Based on the information provided, the agreement does not appear to result in any adverse safety impacts on the facilities or operations of PacifiCorp.

### **RPS ELIGIBILITY AND CPUC APPROVAL**

Pursuant to section 399.25 of the Public Utilities Code, the CEC certifies eligible renewable energy resources. Generation from a resource that is not CEC-certified cannot be used to meet RPS requirements. To ensure that only CEC-certified energy is procured under a CPUC-approved RPS contract, the CPUC has required standard and non-modifiable “eligibility” language in all RPS contracts. That language requires a seller to warrant that the project qualifies and is certified by the CEC as an “Eligible Renewable Energy Resource,” that the project’s output delivered to the buyer qualifies under the requirements of the California RPS, and that the seller use commercially reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.<sup>9</sup>

The CPUC requires a standard and non-modifiable clause in all RPS REC-only contracts that requires “CPUC Approval” of an agreement to include an explicit finding 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.), D.11-12-020 and D.11-12-052, or other applicable law.”<sup>10</sup>

Notwithstanding this language, the CPUC has no jurisdiction to determine whether a project is an eligible renewable energy resource, nor can the CPUC determine prior to final CEC certification of a project, that “any procurement” pursuant to a specific contract will be “procurement from an eligible renewable energy resource.”

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<sup>9</sup> See, e.g. D. 08-04-009 at Appendix A, STC 6, Eligibility.

<sup>10</sup> See, e.g. D. 08-04-009 at Appendix A, STC 1, CPUC Approval.



Therefore, while we include the required finding here, this finding has never been intended, and shall not be read now, to allow the generation from a non-RPS eligible resource to count towards an RPS compliance obligation. Nor shall such a finding absolve PacifiCorp from its obligation to obtain CEC certification or absolve the purchasing utility of its obligation to enforce compliance with Standard Term and Condition 6, set forth in Appendix A of D.08-04-009 and included in the Agreement. Such contract enforcement activities shall be reviewed pursuant to the CPUC's authority to review the administration of such contracts.

### **CONFIDENTIAL INFORMATION**

The Commission, through the implementation of section 454.5(g) of the Public Utilities Code, has determined in D.06-06-066, as modified by D.07-05-032 and D.21-11-029, that certain material submitted to the Commission as confidential should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations. D.06-06-066, as modified, adopted a time limit on the confidentiality of specific terms in RPS contracts. Such information, such as price, may be kept confidential until 30 days after the commercial operation date/energy delivery start date or eighteen months from the date of Commission approval, whichever comes first or one year after contract termination, except contracts between IOUs and their affiliates, which are public.

The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.

### **COMMENTS**

This is an uncontested matter in which the resolution grants the relief requested. Accordingly, pursuant to section 311(g)(2) of the Public Utilities Code, the otherwise applicable 30-day period for public review and comment is being waived.

### **FINDINGS**

1. The procurement pursuant to the Agreement is consistent with PacifiCorp's 2023 On-Year Supplement and thus its RPS Procurement Plan.
2. AL 737-E is consistent with D.10-03-021's, as modified, Least-Cost Best-Fit methodology for evaluating a REC-only contract.

3. The total expected cost of the Agreement is reasonable based on its price relative to PacifiCorp's other competing offers made during the subject solicitation.
4. Provided that the RECs are compliant with Standard Term and Condition 6, set forth in Appendix A of D.08-04-009 and included in the Agreement, payments made by PacifiCorp pursuant to the Agreement are fully recoverable in rates over the life of the Agreement, subject to CPUC review of PacifiCorp's administration of the Agreement and any other conditions contained herein or required by law.
5. The Agreement includes all CPUC-adopted RPS "non-modifiable" standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, and D.10-03-021, as modified by D.11-01-025 and D.13-11-024.
6. Consistent with D.11-12-052, PacifiCorp provided information in AL 737-E regarding the expected Portfolio Content Category classification of the RECs procured pursuant to the Agreement.
7. The CPUC makes no determination regarding the proposed Agreements' Portfolio Content Classification because the RPS contract evaluation process is a separate process from the Portfolio Content Category classification review and determination.
8. Because the Agreement is 10 years in duration, it will contribute towards PacifiCorp's RPS long-term contracting requirement per D.12-06-038 and 17-06-026.
9. The Agreement complies with the interim Emissions Performance Standard.
10. Procurement pursuant to the Agreement is procurement from an eligible renewable energy resource for purposes of determining PacifiCorp'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.*), D.11-12-020 and D.11-12-052, or other applicable law.
11. The immediately preceding finding has never been intended and shall not be read to allow generation from a non-RPS eligible renewable energy resource under the Agreement to count towards an RPS compliance obligation absent CEC certification. Nor shall that finding absolve PacifiCorp of its obligation to obtain CEC certification or the utility of its obligation to enforce compliance with the Agreement or pursue remedies for breach of contract.

12. The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.
13. AL 737-E should be approved without modification.

**THEREFORE IT IS ORDERED THAT:**

1. PacifiCorp's request to enter into a Purchase and Sale Agreement for Renewable Energy Credits with 3Degrees Group, Inc., as requested in Advice Letter 737-E, is approved without modification.

This Resolution is effective as of August 22, 2024.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on August 22, 2024; the following Commissioners voting favorably thereon:

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RACHEL PETERSON  
Executive Director

**CONFIDENTIAL APPENDIX A**

Evaluation Summary of the Agreement with 3Degrees Group, Inc.

REDACTED