STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

PUBLIC UTILITIES COMMISSION
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SAN FRANCISCO, CA 94102-3298

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TO PARTIES OF RECORD IN RULEMAKING 06-02-012

This is the proposed decision of Commissioner Michael R. Peevey. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to Administrative Law Judge Simon at aes@cpuc.ca.gov and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ JACQUELINE A. REED for
Karen V. Clopton, Chief
Administrative Law Judge

KVC:avs

Attachment

Decision **PROPOSED DECISION OF COMMISSIONER PEEVEY**
(Mailed 8/25/2010)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Develop Additional Methods to Implement the California Renewables Portfolio Standard Program.	Rulemaking 06-02-012 (Filed February 16, 2006)

DECISION MODIFYING DECISION 10-03-021 AUTHORIZING USE OF RENEWABLE ENERGY CREDITS FOR COMPLIANCE WITH THE CALIFORNIA RENEWABLES PORTFOLIO STANDARD AND LIFTING STAY AND MORATORIUM IMPOSED BY DECISION 10-05-018

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1. Summary

This decision modifies Decision (D.)10-03-021, which authorizes the procurement and use of tradable renewable energy credits (TRECs) for compliance with the California renewables portfolio standard (RPS) program. D.10-03-021 also sets forth the structure and rules for a TREC market and for the integration of TRECs into the RPS flexible compliance system.

This decision modifies D.10-03-021 by:

1. Increasing the extent to which the large investor-owned utilities may rely on REC-only transactions, as defined in D.10-03-021, by modifying the temporary TREC usage cap to allow up to 40% of their RPS annual procurement targets to be met using TREC-only transactions.
2. Modifying the provisions in D.10-03-021 relating to the characterization of contracts approved prior to the effective date of the TRECs decision as REC-only, so that all contracts that were approved by the Commission before the effective date of D.10-03-021 will be characterized as bundled contracts for RPS compliance purposes and will not count toward the temporary REC usage cap adopted in D.10-03-021 and as modified herein.

D.10-03-021, as modified by this decision, is effective March 11, 2010.

Further, because this decision resolves the two petitions for modification of D.10-03-021, the stay of D.10-03-021 imposed in D.10-05-018 is no longer necessary. The stay is therefore lifted. Similarly, the moratorium on Commission approval of certain RPS contracts imposed in D.10-05-018 is no longer relevant, and is ended.

2. Procedural Background

The Commission issued Decision (D.)10-03-021 on March 15, 2010, with an effective date of March 11, 2010. On April 12, 2010, Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E) filed the Joint Petition of Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company for Modification of Decision 10-03-021 (utility petition). Filed with the utility petition were the Joint Motion of Southern California Edison Company, Pacific Gas and Electric Company and San Diego Gas & Electric Company to Shorten Time to Respond to Petition for Modification of Decision 10-03-021 and for an Expedited Decision and the Motion of Southern California Edison Company and San Diego Gas & Electric Company for Stay of Decision 10-03-021 (joint stay motion).

On April 14, 2010, the assigned Commissioner issued the Assigned Commissioner's Ruling Setting Schedule for Consideration of Joint Petition for Modification of Decision 10-03-021 and Joint Motion for Stay of Decision 10-03-021 (ACR). The ACR shortened the time for responses and replies to the joint stay motion and for responses and replies to the utility petition.

On April 15, 2010, the Independent Energy Producers Association (IEP) filed the Petition of the Independent Energy Producers Association for Modification of Decision 10-03-021 Authorizing Use of Renewable Energy Credits for RPS Compliance (IEP petition). IEP also filed the Motion of the Independent Energy Producers Association to Shorten Time with its petition. The Administrative Law Judge's (ALJ) Ruling Granting Motion of the Independent Energy Producers Association to Shorten Time (April 16, 2010)

aligned the timing of consideration of the IEP petition with that of the utility petition.

Responses to the joint stay motion were filed April 21, 2010.[12] SCE filed a reply to the responses to the joint stay motion on April 23, 2010. In D.10-05-018, the Commission stayed D.10-03-021 on its own motion, pending the resolution of the two petitions for modification. D10-05-018 also instituted a temporary moratorium on approval of any RPS procurement contracts for compliance with the renewables portfolio standard program (RPS) signed after May 6, 2010 (the effective date of the stay decision) that would be defined under D.10-03-021 as transactions transferring only renewable energy credits (RECs) and not energy.

Responses to the utility petition and the IEP petition were filed May 4, 2010.[13] SCE, PG&E, and SDG&E filed a joint reply to the responses to the utility petition on May 10, 2010.

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[12] Responses to the joint stay motion were filed by the Alliance for Retail Energy Markets (AReM); Center for Energy Efficiency and Renewable Technologies; City and County of San Francisco (CCSF); PG&E; Shell Energy North America (Shell); Sierra Pacific Industries; The Utility Reform Network (TURN); Union of Concerned Scientists (UCS); and Western Power Trading Forum (WPTF).

[13] Responses to the petitions for modification were filed by AReM; Bloom Energy; California Independent System Operator (CAISO); California Wind Energy Association (CalWEA); CCSF; Division of Ratepayer Advocates (DRA); Green Power Institute (GPI); Iberdrola Renewables, Inc. (Iberdrola); LS Power Associates, L.P. (LS Power); Large Scale Solar Association (LSA); Mountain Utilities and Bear Valley Electric Service (jointly; collectively, MU); NextEra Energy Resources; Renewable Energy Coalition; SCE; Sempra Generation; Shell; Sacramento Municipal Utility District (SMUD); Solar Alliance; TURN; UCS; WPTF; and Zephyr Power Transmission, LLC and Chinook Power Transmission, LLC (jointly; collectively, Zephyr).

3. Discussion

3.1. The Petitions for Modification

3.1.1. The Utility Petition

The utility petition proposes wide-ranging changes to the decision on tradable renewable energy credits (TRECs). It makes 12 specific proposals.[14]

1. The Commission should revise the criteria for determining what transactions are bundled transactions and what transactions are for RECs only by ratifying the characterization of the transaction in the contract. That is, if the contract states that only RECs are being conveyed, the transaction should be classified as REC-only. If the contract states that RECs and energy are being conveyed, the transaction should be classified as bundled, regardless of any other characteristics of the contract or the transaction.

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[14] As noted by CCSF, the utility petition fails to comply with Rule 16.4(b) of the Commission's Rules of Practice and Procedure. That rule provides that:

> A petition for modification of a Commission decision must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision. Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit.

The utility petition proposes specific wording for only one of its requested modifications. It contains no citations to the record of the proceeding and does not propose that any matters be officially noticed. It does not provide any declarations or affidavits to present any factual material in the petition that is not the record of this proceeding.

Because the utility petition raises issues of significant importance to the RPS program, ratepayers, and the public, the Commission will consider the utility petition on the merits, despite its failure to comply with the rules governing petitions for modification.

2. The Commission should apply the criteria for classification of contracts as REC-only or bundled to contracts that are submitted for Commission approval after the effective date of the TRECs decision. For all contracts submitted for approval prior to that date, the characterization of the contract that would have obtained prior to D.10-03-021 should be used.
3. The Commission should eliminate the temporary limit on the use of TRECs for RPS compliance by the large utilities. The TRECs decision imposed a temporary limit of 25% of the RPS annual procurement target (APT) of a large utility, which expires on December 31, 2011 unless the Commission takes some action that would extend it, or would terminate it before that date.
4. If the Commission does not eliminate the temporary limit on the large utilities' use of TRECs for RPS compliance, it should extend that limit to all RPS-obligated retail sellers.
5. If the Commission does not eliminate the temporary limit on the large utilities' use of TRECs for RPS compliance, it should provide that the limit will unconditionally expire on December 31, 2011, without further review.
6. The Commission should eliminate the temporary cap of $50.00/TREC on the price that utilities are allowed pay for TRECs.
7. If the Commission does not eliminate the temporary cap on the price utilities may pay for TRECs for RPS compliance, it should extend that price cap to all RPS-obligated retail sellers.
8. If the Commission does not eliminate the temporary cap on the price utilities may pay for TRECs for RPS compliance, it should provide that the cap will unconditionally expire on December 31, 2011, without further review.

9. The Commission should expand the rules for "earmarking"[15] TREC contracts. Instead of allowing earmarking of contracts for TRECs only between an RPS-obligated retail seller and one generator that is the source of the TRECs and associated energy, the utility petition proposes that the Commission allow earmarking of contracts between a retail seller and one seller of all the TRECs in the contract.

10. The Commission should remove the requirement that the new standard terms and conditions set out in D.10-03-021 be added to RPS procurement contracts that were submitted for Commission approval, but not yet approved, prior to the effective date of the TRECs decision.

11. The Commission should expand and/or revise the rules for using TRECs for RPS compliance to:

    - allow the use of TRECs associated with energy generated in 2008 and 2009 to meet retail sellers' APTs for 2008 and 2009;
    - allow earmarking of REC-only contracts entered into prior to 2010 to apply to APTs prior to 2010 (if the Commission does not adopt either the utility petition's requested change to the criteria for classifying a contract as REC-only or the request to allow all deliveries from all previously approved contracts to be counted as bundled); and
    - allow use of TRECs for APTs for 2008 or 2009 without any usage limit (if the Commission does not eliminate the temporary TREC usage limit for large utilities).

[15] Earmarking is a flexible compliance mechanism by which deliveries from a future RPS procurement contract may be designated to make up, within three years, shortfalls in RPS procurement in the same year in which the earmarked contract was signed.

12. The Commission should clarify the status of RECs associated with energy generated by qualifying facilities (QFs) not located in California that is under contract with a utility that is also not located in California.

3.1.2. The IEP Petition

The IEP petition proposes changes to the TRECs decision that are less sweeping than the changes suggested in the utility petition. The IEP petition makes proposals in two areas: criteria for classifying transactions as REC-only or bundled, and the methodology for least-cost best-fit (LCBF) analysis of RPS procurement options.

1. The Commission should revise the criteria for determining what transactions are bundled transactions and what transactions are REC-only transactions, creating a rebuttable presumption that three types of transactions will be considered bundled transactions:
   - transaction providing real-time delivery using firm transmission;
   - transactions using firm transmission in which firmed and shaped energy is delivered within 90 days of the generation of the energy associated with the RECs; and
   - firmed and shaped transactions using nonfirm transmission in which firmed and shaped energy is delivered within 90 days of the generation of the energy associated with the RECs.
2. The Commission should revise the LCBF methodology to provide for the explicit consideration of the geographic and related attributes that the Commission determines would increase the value of RPS transactions for California consumers.

3.2. Plan of this Decision

The discussion in this decision will follow the order of the topics set out in D.10-03-021. The requests in the petitions for modification and the responses to the petitions will be addressed in the context of the topics in D.10-03-021 to which they relate.

These modifications, like D.10-03-021, implement the Commission's existing authority under Pub. Util. Code § 399.16[16] to authorize the use of RGCs for compliance with RPS procurement targets. Pursuant to §§ 399.11 and 399.15(b)(c), these targets are 20% of the retail sales of each RPS-obligated retail seller.

The modified findings of fact, conclusion of law, and Order will be attached as Appendix A to the issued decision.

3.3. Authorization

No party seeks changes to the authorization to use of TRECs for RPS compliance.

3.4. Sources of TRECs

No party seeks changes to the discussion of the sources of TRECs. Nevertheless, we conclude that one change is in order.

The text in section 4.3.2. of D.10-03-021 should be clarified with respect to the nature of the distributed generation (DG) being discussed and the role of the California Energy Commission (CEC). The original text could engender confusion about the relationship of this Commission's discussion of TRECs from DG sources to the CEC's authority, pursuant to § 399.13, to determine what

[16] All subsequent references to sections refer to the Public Utilities Code, unless otherwise noted.

resources are RPS eligible. We clarify that our decision to authorize the use of TRECs is not intended to imply that RECs associated with energy from customer-side DG installations generated prior to the effective date of D.10-03-021 are (or are not) RPS-eligible. The CEC will make those eligibility determinations. Therefore, section 4.3.2. should be rewritten, with the underlining constituting new text, as follows:

> AReM, BVES, PG&E, SCE, and TURN suggest that various forms of DG[17] may provide some available TRECs, though not at a very large scale over the next few years.
>
> Customer-side DG projects may utilize a variety of renewable technologies. These include solar photovoltaic (PV) installations, largely constructed under the aegis of the California Solar Initiative (CSI) and the self-generation incentive program (SGIP) administered by this Commission, and the New Solar Homes Partnership (NSHP) administered by the CEC; generation using biodiesel or biogas; and small biomass facilities.
>
> Any customer-side DG must be found RPS-eligible by the CEC. At this time, almost no customer-side DG is RPS-eligible. The Eligibility Guidebook (at 18) explains that:
>
> > "The Energy Commission will not certify distributed generation PV and other forms of customer-sited renewable energy into the RPS at this time, with the following exception.

[17] This discussion considers generation on the customer side of the meter as DG, in accordance with the CEC's *RPS Eligibility Guidebook* (3d ed., December 2007), at 17-19 (available at http://www.energy.ca.gov/2007publications/CEC-300-2007-006/CEC-300-2007-006-ED3-CMF.PDF .) Generation projects on the system side of the meter that are developed to connect to the distribution system are not considered "distributed generation" for purposes of this discussion.

> The Energy Commission will certify facilities that would have been considered distributed generation facilities except that they are participating in a standard contract/tariff executed pursuant to Public Utilities Code § 399.20, as implemented through the CPUC Decision 07-07-027 (R.06.05.027), executed pursuant to a comparable standard contract/tariff approved by a local publicly owned electric utility. . ., or if the facility is owned by a utility and meets other requirements, to become certified as RPS-eligible . . . .
>
> The Energy Commission will not certify distributed generation facilities as RPS-eligible unless the CPUC authorizes tradable RECs to be applied toward the RPS."

Thus, although there are technologies that can be used for customer-side renewable DG, most current installations are not in fact RPS-eligible because they have not been certified by the CEC.

In anticipation of the eventual use of customer-side DG for RPS compliance, both this Commission and the CEC have addressed the issue of the availability of TRECs from such installations. In D.07-01-018, the Commission determined that owners of customer-side DG installations own the RECs associated with the generation, and can therefore sell them, regardless of whether the DG owners participate in net metering, CSI, or the SGIP.[18] In D.07-07-027 and D.08-09-033, implementing § 399.20, the Commission provided for tariffs or standard contracts for utilities' bundled purchase of RPS-eligible generation from DG of not more than 1.5 megawatt (MW) in size located at public

[18] The CEC has likewise determined that the system owner of customer-side DG does not need to relinquish claim over the RECs in order to participate in the NSHP. See *New Solar Homes Partnership Guidebook* (3d edition April2010) at 7. This guidebook is available at http://www.energy.ca.gov/2010publications/CEC-300-2010-001/CEC-300-2010-001-CMF-REV1.PDF.

> water and wastewater facilities and other customers, with an overall statewide limit on such purchases. The generation so acquired counts toward the utilities' RPS targets. In this program, customers may sell to the utility either the full output of the DG facility (energy and RECs) or only the excess (energy and RECs) not used for on-site consumption. In the latter case, the RECs associated with the energy used on-site remain with the system owner.[19]
>
> AReM states that the CSI program estimates that the program will have installed about 800 gigawatt hours (GWh) of generation by 2010. AReM additionally estimates that CSI will have provided incentives for approximately 1,100 GWh by 2011. No other party provides quantitative DG estimates.[20]

3.5. Guiding Principles

No party has sought changes in the guiding principles set forth in Section 4.4, and we make none.

3.6. REC-only Transactions

The IOUs and IEP in their respective petitions request a number of modifications related to REC-only transactions. These include modifications to the definition of REC-only transactions, and thus, by extension, the definition of

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[19] TRECs from RPS-eligible DG installations that are tracked in WREGIS are, for RPS compliance purposes, the same as TRECs from RPS-eligible utility-scale generation. No matter the type of DG generation or the kind of transaction, RECs associated with RPS-eligible DG—like RECs from any other RPS-eligible generation—"shall be counted only once for compliance with the renewables portfolio standard of this state or any other state, or for verifying retail product claims in this state or any other state." (§ 399.16(a)(2).)

[20] In D.09-06-049, the Commission approved a new SCE program to procure RPS-eligible energy from rooftop solar PV installations of one to two MW in size. Because the program is new, it is not currently possible to know what, if any, impact it will have on DG as a resource for RPS procurement over the next two to three years.

bundled transactions, modifications to the limits placed on the use of REC-only transactions, and the treatment of contracts entered into prior to the issuance of D.10-03-21.

Regarding the definition of what is considered a REC-only transaction, both the IOUs and IEP argue that the definition of a REC-only transaction adopted in D.10-03-021 is overbroad. To address this, the IOUs advocate counting as REC-only transactions only those contracts that expressly convey only RECs, not energy. All other contracts would be treated as bundled transactions. IEP takes a more nuanced view, agreeing that as a practical matter, some of the contract structures that are written to convey RECs and energy and that meet the CEC's delivery requirements, are nonetheless functionally equivalent to REC-only transactions. To address this, IEP suggests that the definition of bundled transactions be broadened to include contracts that provide for real time delivery of energy via firm transmission, as well as shaped and firmed transactions, provided that an equivalent amount of incremental energy is delivered to a California Balancing Authority (CBA) within 90 days of when the renewable energy was physically generated via firm transmission or the project can otherwise demonstrate that there was sufficient transmission capacity to allow for the delivery of an equivalent amount of incremental energy to a CBA. In all cases, under IEP's proposal, energy deliveries would need to be validated with North American Reliability Council (NERC) eTags demonstrating delivery of the corresponding amount of energy to a CBA.

Several parties disagree with these proposals, arguing in general that broadening the definition as requested by the IOUs or by IEP would run counter to the efficacy of the temporary REC usage cap by allowing transactions that are

effectively REC-only to continue to be used without limit. We agree with these parties in the context of the petitions for modification.

We continue to prefer the approach, as we set out in D.10-03-021, of staff investigating issues related to the use of firm transmission in RPS procurement and developing information on the basis of which transactions using firm transmission could be classified as bundled RPS procurement. This will allow parties, staff, and the Commission the opportunity to review the technical and policy issues and provide the most comprehensive array of information on which to base any determination about the role of firm transmission in RPS procurement.

We decline to adopt IEP's other proposals as well as those of the IOUs on this issue. We agree with parties that argue that these other approaches appear relatively easy to game in a way that would compromise our preference that RPS contracts provide incremental energy to the utilities' portfolios. As TURN notes in its response to IEP's petition, for shaped and firmed transactions, nothing would preclude a retail seller from matching RECs with energy that is already scheduled into California apart from and irrespective of the associated REC transaction. This is true whether or not the contract includes firm transmission. The role of an intermediary facility and the temporal disconnect between renewable energy production and delivery gives rise to this concern. Thus, we remain of the view that at this time, shaped and firmed transactions should be treated as REC-only for compliance purposes.

For similar reasons, we do not adopt the utilities' proposal to only count those transactions that expressly convey only RECs and not energy as REC-only and everything else as bundled. This proposal is overly expansive and, as TURN notes, would allow transactions that, for all practical purposes, are

REC-only, to be treated as bundled, rendering meaningless any limits or rules governing the role of REC-only transactions in the RPS program.

Another issue related to the definition of REC-only and bundled transactions concerns the scope of contracts to which these definitions, and any related compliance rules, apply. The utilities object to the treatment of deliveries from contracts approved by the Commission prior to D.10-03-021 as REC-only deliveries after the effective date of that decision, if the contracts would be considered REC-only contracts under the definitions of D.10-03-021. This objection is joined by almost all parties.[21]

[21] DRA supports this determination.

The parties focus on the asserted disruption to commercial arrangements and expectations caused by the prospective reclassification of some deliveries as REC-only, though RPS-eligible. They argue that, having approved the contracts, it is not fair for the Commission now to determine that future deliveries from these contracts will be classified as REC-only.[22] They assert that this would deprive the utilities of some of the RPS compliance benefit of their contracts, and would generally destabilize the market for RPS-eligible energy transactions in the near future.

We are persuaded that, although our initial policy preference for consistency in future treatment of RPS deliveries was reasonable, the benefit of consistency does not justify the impact on RPS-eligible transactions that parties have identified. Contracts approved by the Commission prior to adoption of D.10-03-021 became effective on that approval.[23] These contracts were final, and it is reasonable for parties to rely on the regulatory rules in place at that time. On the other hand, contracts not yet approved were not yet effective, and subject to changes by the parties or the Commission. Therefore, we will modify D.10-03-021 to set the new rules on a going forward basis. Accordingly, all RPS

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[22] In resolutions approving such contracts, the Commission expressed its intention to decide questions related to TRECs in this proceeding. Relying on the CEC's determination that the contract structures met RPS eligibility requirements, the Commission approved the contracts while recognizing that the question of whether transactions like those at issue in the advice letter would ultimately be determined to be REC-only. See, e.g., Resolution (Res.) E-4192, at 14-15 (available at http://docs.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/91720.pdf); Res. E-4244, at 20 (available at http://docs.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/102740.pdf.

[23] See D.08-04-009, Appendix A, at 3 (STC 1: CPUC Approval).

procurement contracts approved by the Commission prior to the effective date of D.10-03-021 (March 11, 2010) will be treated as "bundled" contracts, conveying both energy and RECs, for the duration of the contract. This treatment is subject to two important caveats:

- It does not apply to any extension of a given contract beyond the expiration date existing on March 11, 2010; and
- It does not apply to any deliveries under a given contract beyond the maximum deliveries identified in the contract as the contract read on March 11, 2010.

In light of the forgoing discussion and determinations, the following modifications of D.10-03-021 should be made:

1. The last two paragraphs of section 4.5 are deleted and the following substituted:

   The determination of classification of RPS procurement contracts made in this decision applies to all RPS procurement contracts approved by the Commission after the effective date of this decision.

2. Conclusion of Law 11 should be rewritten as follows:

   Transactions in which RECs and RPS-eligible energy are procured from a generator whose first point of interconnection with the WECC interconnected transmission system is not a California balancing authority, and the transaction does not make use of dynamic transfer arrangements with a California balancing authority, where the contracts were approved by the Commission prior to the effective date of this decision, should be counted as bundled transactions for RPS compliance purposes.

3. Conclusion of Law 13 should be rewritten as follows:

   In order to recognize the legitimate expectations of the parties to RPS contracts now classified as REC-only that were approved by the Commission prior to the effective

date of this decision, the temporary limit on the use of TRECS for RPS compliance provided in this decision should not be applied to deliveries made under contracts approved prior to the effective date of this decision. These contracts and all related energy deliveries shall be treated as bundled transactions for RPS compliance purposes. ~~to an LSE from contracts classified as REC-only by this decision, but which were previously approved by the Commission, if the deliveries would cause the LSE to exceed the TREC usage limit. In this circumstance, the LSE should not be allowed use any TRECs associated with contracts that were not approved by the Commission prior to the effective date of this decision for compliance in that year that would exceed the 25% annual limit."~~

4. Ordering Paragraph 6 should be modified as follows:

   As of the effective date of this decision, a transaction for purposes of compliance with the California renewables portfolio standard shall be considered a transaction that procures only renewable energy credits if that transaction either:

   a. Expressly transfers only renewable energy credits and not energy from the seller to the buyer; or

   b. Transfers both renewable energy credits and energy from the seller to the buyer but does not meet the Commission's criteria for considering a procurement transaction a bundled transaction for purposes of compliance with the California renewables portfolio standard.

   All deliveries from transactions described in subsection b, above, associated with contracts approved by the Commission prior to the effective date of this decision will be counted as bundled transactions for purposes of compliance with the California renewables portfolio standard.

3.7. Market Structure and Rules

3.7.1. Temporary Limits on Use of TRECs

The utility petition argues for the wholesale elimination of the temporary cap on the use of TRECs for RPS compliance purposes adopted in D.10-03-021. As described more fully below, we are sensitive to the concerns of the utilities and others about the problems of taking a strictly categorical approach to determining what transaction structures are, and are not, more, or less valuable to ratepayers. The utilities are generally correct in their assertion that the temporary limitation on the use of TRECs limits their ability to enter into some transactions that may reduce the costs of RPS compliance. As the utilities note in their petition, the broader the market for renewables that the utilities can access, the lower the costs are likely to be. For these reasons, the temporary cap adopted in D.10-03-021 on the use of TRECs for RPS compliance is an interim step while we develop better methodologies to reasonably assess the value of REC-only transactions as compared to bundled transactions. That said, the utilities present reasonable arguments regarding the potentially adverse impacts of a relatively low cap on their ability to meet their renewable energy obligations at reasonable cost. Although we stop short of fully eliminating the temporary cap on REC-only transactions, we believe that increasing the cap to 40% of APT is warranted. Thus, until the cap expires (December 31, 2011), the large utilities may meet up to 40% of their annual procurement targets using TRECs. As an interim measure, the limits adopted in D.10-03-021, as modified by this decision, are reasonable given ongoing concerns regarding the value to ratepayers of REC-only procurement and our ability to assess that value in a reasonable and consistent way.

The utilities also request that, if it continues the temporary usage limit on RECs, the Commission make an unconditional commitment to ending the limit on December 31, 2011 without additional review or consideration. This request for the Commission's promise could be granted, but it would not be meaningful. A party may file a petition for modification of a Commission decision, in accordance with Rule 16.4. A petition for modification seeking to extend the temporary usage limit, for example, would require the Commission to reexamine the termination date of the termination date of the temporary limit. The Commission could not promise in advance to reject such a petition out of hand. Moreover, the Commission always has the authority to review or modify its decisions, whether or not it has formally stated its intention to do so.

In light of the forgoing discussion and determinations, the following modifications should be made to D.10-03-021:

1. Finding of Fact 10 should be rewritten as follows:

> REC-only contracts are likely to provide fewer potential benefits to ratepayers than contracts for RPS procurement that include both RECs and RPS-eligible energy. In light of this differential in potential benefits, it is reasonable to impose on the three large IOUs a temporary limit of 40% ~~25%~~ of APT annually on their use of TRECs for RPS compliance.

2. Ordering Paragraph 17 should be rewritten as follows:

> Pacific Gas and Electric Company, San Diego Gas and Electric Company, and Southern California Edison Company may each use renewable energy credits procured under contracts for renewable energy credits only to meet no more than 40 ~~25~~ percent of their annual procurement targets for the California renewables portfolio standard, beginning with the 2010 compliance year.

3. Conforming changes should be made to several sections of the text that refer to the temporary limit on TREC usage. Instead of 25% of APT, the limit should be stated as 40% of APT.

   a. The reference in the Summary should be changed to read:

      Under this limit, the three large California utilities may use TRECs to meet no more than ~~25~~ 40 percent of their annual RPS procurement obligations.

   b. All the references to a temporary limit of 25% of APT in section 4.6.3 should be changed to "40% of APT."

   c. The reference in Appendix D should be changed to read:

      Temporary limit on use of TRECs for RPS compliance PG&E, SCE, and SDG&E may meet no more than 40% ~~25%~~ of their APT with TRECs. This limitation will sunset December 31, 2011 unless the Commission acts to extend it.

3.8. Cost Recovery

3.8.1. Bid Evaluation

IEP's petition asks the Commission to expand the review of LCBF methodology for RPS procurement that is ordered in Ordering Paragraph (OP) 34. IEP seeks to include additional issues in the review, and to impose a time limit by which the review should be complete. LSA and the Solar Alliance support these proposed modifications. TURN, UCS, and SCE oppose them.

IEP proposes the addition of several issues to the LCBF review, suggesting that rather than relying on TREC usage, the Commission instead work to incorporate the various elements that contribute to a given transaction's value from a state policy and ratepayer perspective into the LCBF methodologies used by the IOUs for purposes of project selection. While the specific elements

IEP suggests appear overbroad and, as TURN suggests, subjective, in concept IEP's proposal is consistent with the Commission's desire to compare, on a value and cost basis, different procurement options in the RPS program in a consistent and objective way. A REC-only transaction may be the best deal for ratepayers if the net cost of bundled contracts, once the energy, capacity, and other benefits are subtracted out, prove more expensive. However, we do not feel that such a value based approach has been sufficiently vetted and standardized.

While these issues may be important and worthwhile, they are not appropriately addressed by modification of D.10-03-021. As already reflected in OP 34 of D.10-03-021, the assigned Commissioner is authorized to initiate a review and revision of the LCBF methodology. IEP and other interested parties may, if they choose, file a motion for consideration of these issues in the LCBF review. We will not impose the time limit IEP proposes (September 2010), because it will have passed before this decision is issued. Since, it is difficult to set meaningful short-term deadlines for complex work, we decline to modify OP 34 to do so. However, we continue to encourage expeditious initiation of a comprehensive review of LCBF methods.

3.8.2. Temporary Limits on Payments for TRECs

Similar to their request related to the REC usage limit, the IOUs request that we eliminate the temporary cap on the maximum price they can pay for RECs via REC-only transactions. D.10-03-021 set this amount at $50/REC. As with the REC usage limit adopted in the decision, this cap is set to expire, unless the Commission takes action to extend it, on December 31, 2011. In their petition, the utilities do not provide any specific rationale for this request, apparently confining this to the heading of a section of their petition, "If Not Eliminated, Any TREC Usage Limit or Price Cap Should be the Same for All

LSEs". Nowhere else in their petition do the utilities provide any additional detail on this specific proposal.

We do not believe the IOUs have met their burden to convince us to modify this aspect of the decision. They offer no arguments, much less new arguments, in support of their position on this issue, and thus, we see no reason to modify our position. It should be noted that as with the usage cap, the price cap is intended as an interim, albeit preliminary, approach to ensure that while we develop experience with, and a methodology to assess the value of, different contract structures and products, we place reasonable limits to protect ratepayers from unreasonable outcomes.

The utilities also request that, if it continues the temporary limit on payments for TRECs, the Commission make an unconditional commitment to ending the price limit on December 31, 2011 without additional review or consideration. As discussed with respect to the usage limit, this request for the Commission's promise could be granted, but it would not be meaningful in light of the Commission's existing procedures. Additionally, for all the reasons noted above, given the current limitations in our ability to assess the relative value of REC-only and bundled transactions on a consistent and objective basis, the price cap, as a temporary measure, is a reasonable safeguard against adverse outcomes while we develop an appropriate methodology to make these comparisons and value determinations.

The text of section 4.7.3, therefore, remains unchanged. OP 21 also remains unchanged.

3.9. Application of TREC Usage and Price Caps to Other RPS Obligated Load Serving Entities

In their petition, the IOUs request that if the TREC usage and price caps are not eliminated, that they be applied consistently to all RPS-obligated

load serving entities. Because we are comprehensively addressing this and other issues related to harmonizing the RPS rules as applied to the IOUs and other RPS obligated retail sellers pursuant to new Section 365.1, enacted by Senate Bill 695 (Kehoe), 2009 Stats., ch. 337, in Rulemaking (R.) 08-08-009, we do not adopt the modifications requested by the IOUs as they relate to these two specific issues. As we stated in D.10-03-021, "We prefer to approach equalization of RPS requirements through a comprehensive review of all program requirements to be undertaken in R.08-08-009, rather than by changing this one element…"[24]

3.10. Transactions Subject to §§ 399.16(a)(5) and (6)

The utilities identify what they characterize as an inconsistency between the text of section 4.8 in D.10-03-021 and the implementation of that discussion in OP 9. We agree that OP 9 does not reflect the Commission's full intention, as set forth in the discussion. We therefore adopt the proposed modification of OP 9 to eliminate the reference to facilities located in California, as follows:

> Renewable energy credits associated with electricity generation that is eligible for the California renewables portfolio standard delivered under procurement contracts of California utilities for both energy and renewable energy credits pursuant to the federal Public Utility Regulatory Policies Act of 1978 that were signed after January 1, 2005 ~~with qualifying facilities located in California~~ shall be used for compliance with the California renewables portfolio standard only if they are not transferred to an entity other than the original buyer in the Western Renewable Energy Generation Information System prior to being retired for

[24] D.10-03-021, fn 79.

compliance with the California renewables portfolio standard.

3.11. Compliance and Reporting

3.11.1. Earmarking of TREC Contracts

In D.10-03-021, the Commission concluded that, at least at the beginning of the TREC market, the ability to earmark REC-only contracts for RPS compliance should be limited to contracts between one retail seller (buyer) and one RPS-eligible generator that supplies all the RECs. (OP 15.) The utility petition asks that this restriction on earmarking TREC contracts be modified to allow contracts between a retail seller and one seller of all the RECs. UCS opposes this proposal.

The utility proposal would introduce a complexity in administration and enforcement that the Commission rejected in D.10-03-021. The utility proposal would, for example, allow earmarking of a contract between a retail seller and a REC broker or aggregator, in which the RECs were to be produced by any number of generation facilities, in several states within the WECC. The utilities have not persuaded us that the time and effort involved in ascertaining the viability of the disparate elements of such a contract are worth the limited contribution to RPS compliance that such complex instruments might make.

Like all other RPS procurement and compliance rules, this limitation is subject to review by the Commission as the TREC market matures. Experience may show that it could be relaxed or eliminated. At the outset, however, this limitation on earmarking remains a sensible approach to expanding RPS compliance through the use of TRECs.

3.11.2. Other Compliance Issues

The utility petition also requests clarification on three points related to the use of TRECs in making up deficits in APT from prior years. These issues

largely arise from the classification made in D.10-03-021 of future deliveries from contracts characterized as REC-only. Since the effect of this classification determination has been modified by this decision, these questions are no longer relevant. To the extent any issues may remain, they can and should be addressed through the application of the RPS flexible compliance rules, which apply to both bundled and REC-only transactions.

3.12. Standard Terms and Conditions

In their petition, the IOUs suggest that in the interest of market certainty, and to reduce the administrative burden associated with revisiting already signed contracts, that the requirement to add additional terms and conditions to contracts pending approval at the Commission be eliminated. We consider this concern to be exaggerated. Although there is some administrative burden, the value of consistent treatment of RECs in RPS procurement contracts outweighs it. We therefore make no change to this requirement.

3.13. Timing Issues

No party proposes changes to this section. On review, however, we conclude that one clarification is needed. The text in D.10-03-021 inadvertently elided the role of the CEC in determining RPS eligibility. In order to avoid potential confusion, the first sentence of section 4.11 is revised to read:

> Beginning on the effective date of this decision, TRECs tracked in WREGIS and certified by the CEC as associated with RPS-eligible electricity, for which the RPS-eligible electricity associated with the TREC was generated on or

after January 1, 2008 may be procured, traded, and used for RPS compliance.[25]

3.14 Comparison to March 2009 PD

This section of D.10-03-021 is not relevant to the modifications made by this decision, and is now likely to engender confusion. D.10-03-021 is therefore modified to eliminate Section 4.12, Comparison to March 2009 PD.

4. Comments of Proposed Decision

The proposed decision of Commissioner Peevey in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code, and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____ and reply comments were filed on _____ by _____.

5. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Anne E. Simon is the assigned Administrative Law Judge for this portion of this proceeding.

Findings of Fact

1. Allowing the use of TRECs for RPS compliance will give RPS-obligated retail sellers increased options for RPS compliance, and may reduce complexity in RPS procurement contracting.

2. Modifying D.10-03-021 will simplify RPS compliance for retail sellers obligated under the RPS program.

3. Modifying D.10-03-021 is likely to increase regulatory certainty for participants in the new TREC market.

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[25] This date is used because 2008 is the first year that WREGIS issued certificates; it is also the first year data from WREGIS is reported to the CEC to verify RPS procurement. (*RPS Eligibility Guidebook* at 46.)

Conclusions of Law

1. The use of TRECs for RPS compliance should be authorized.
2. D.10-03-021 should be modified as set forth in this decision.
3. In order to allow the use of TRECs for RPS compliance as soon as practicable, this order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The Joint Petition of Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company for Modification of Decision 10-03-021, filed April 12, 2010, is granted to the extent set forth in the Ordering Paragraphs below. In all other respects, the Joint Petition of Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company for Modification of Decision 10-03-021 is denied.
2. The Petition of the Independent Energy Producers Association for Modification of Decision (D.) 10-03-021 Authorizing Use of Renewable Energy Credits for RPS Compliance, filed April 15, 2010, is granted to the extent set forth in the Ordering Paragraphs below. In all other respects, the Petition of the Independent Energy Producers Association for Modification of D.10-03-021 Authorizing Use of Renewable Energy Credits for RPS Compliance is denied.
3. Decision (D.) 10-03-021 is modified as explained in this decision. The specific modifications are set forth as follows:

A. Section 4.3.2 of the text is modified to read:

> AReM, BVES, PG&E, SCE, and TURN suggest that various forms of DG[26] may provide some available TRECs, though not at a very large scale over the next few years.
>
> Customer-side DG projects may utilize a variety of renewable technologies. These include solar photovoltaic (PV) installations, largely constructed under the aegis of the California Solar Initiative (CSI) and the self-generation incentive program (SGIP) administered by this Commission, and the New Solar Homes Partnership (NSHP) administered by the CEC; generation using biodiesel or biogas; and small biomass facilities.

Any customer-side DG must be found RPS-eligible by the CEC. At this time, almost no customer-side DG is RPS-eligible. The *Eligibility Guidebook* (at 18) explains that:

> The Energy Commission will not certify distributed generation PV and other forms of customer-sited renewable energy into the RPS at this time, with the following exception.
>
> The Energy Commission will certify facilities that would have been considered distributed generation facilities except that they are participating in a standard contract/tariff executed pursuant to Public Utilities Code § 399.20, as implemented through the CPUC Decision 07-07-027 (R.06.05.027), executed pursuant to a comparable standard contract/tariff approved by a local publicly owned electric utility. . ., or if the facility is owned

[26] This discussion considers generation on the customer side of the meter as DG, in accordance with the CEC's *RPS Eligibility Guidebook* (3d ed., December 2007), at 17-19 (available at http://www.energy.ca.gov/2007publications/CEC-300-2007-006/CEC-300-2007-006-ED3-CMF.PDF .) Generation projects on the system side of the meter that are developed to connect to the distribution system are not considered "distributed generation" for purposes of this discussion.

> by a utility and meets other requirements, to become certified as RPS-eligible . . . .
>
> The Energy Commission will not certify distributed generation facilities as RPS-eligible unless the CPUC authorizes tradable RECs to be applied toward the RPS.

Thus, although there are technologies that can be used for customer-side renewable DG, most current installations are not in fact RPS-eligible because they have not been certified by the CEC.

In anticipation of the eventual use of customer-side DG for RPS compliance, both this Commission and the CEC have addressed the issue of the availability of TRECs from such installations. In D.07-01-018, this Commission determined that owners of DG installations own the RECs associated with the generation, and can therefore sell them, regardless of whether the DG owners participate in net metering, CSI, or the SGIP.[27] In D.07-07-027 and D.08-09-033, implementing § 399.20, the Commission provided for tariffs or standard contracts for utilities' bundled purchase of RPS-eligible generation from DG of not more than 1.5 megawatt (MW) in size located at public water and wastewater facilities and other customers, with an overall statewide limit on such purchases. The generation so acquired counts toward the utilities' RPS targets. In this program, customers may sell to the utility either the full output of the DG facility (energy and RECs) or only the excess (energy and RECs) not used for on-site consumption. In the latter case, the RECs associated

[27] The CEC has likewise determined that the DG system owner does not need to relinquish claim over the RECs in order to participate in the NSHP. See *New Solar Homes Partnership Guidebook* (3d edition April 2010) at 7. This guidebook is available at http://www.energy.ca.gov/2010publications/CEC-300-2010-001/CEC-300-2010-001-CMF-REV1.PDF.

with the energy used on-site remain with the system owner.[28]

AReM states that the CSI program estimates that the program will have installed about 800 gigawatt hours (GWh) of generation by 2010. AReM additionally estimates that CSI will have provided incentives for approximately 1,100 GWh by 2011. No other party provides quantitative DG estimates.[29]

B. The last two paragraphs of section 4.5 of the text are modified to read:

> The determination of classification of RPS procurement contracts made in this decision applies to all RPS procurement contracts approved by the Commission after the effective date of this decision.

C. The first sentence of section 4.11 of the text is modified to read:

> Beginning on the effective date of this decision, TRECs tracked in WREGIS and certified by the CEC as associated with RPS-eligible electricity, for which the RPS-eligible electricity associated with the TREC was generated on or after January 1, 2008 may be procured, traded, and used for RPS compliance.[30]

---

[28] TRECs from RPS-eligible DG installations that are tracked in WREGIS are, for RPS compliance purposes, the same as TRECs from RPS-eligible utility-scale generation. No matter the type of DG generation or the kind of transaction, RECs associated with RPS-eligible DG—like RECs from any other RPS-eligible generation—"shall be counted only once for compliance with the renewables portfolio standard of this state or any other state, or for verifying retail product claims in this state or any other state." (§ 399.16(a)(2).)

[29] In D.09-06-049, the Commission approved a new SCE program to procure RPS-eligible energy from rooftop solar PV installations of one to two MW in size. Because the program is new, it is not currently possible to know what, if any, impact it will have on DG as a resource for RPS procurement over the next two to three years.

[30] This date is used because 2008 is the first year that WREGIS issued certificates; it is also the first year data from WREGIS is reported to the CEC to verify RPS procurement. (*RPS Eligibility Guidebook* at 46.)

D. Section 4.12 of the text is deleted.

E. Conforming changes are made to several sections of the text that refer to the temporary limit on TREC usage. Instead of 25% of APT, the limit shall be stated as 40% of APT.

a. The reference in the Summary is modified to read:

Under this limit, the three large California utilities may use TRECs to meet no more than 40 percent of their annual RPS procurement obligations.

b. All the references to a temporary limit of 25% of APT in section 4.6.3 are modified to read: "40% of APT."

c. The reference in Appendix D is modified to read:

Temporary limit on use of TRECs for RPS compliance - PG&E, SCE, and SDG&E may meet no more than 40% of their APT with TRECs. This limitation will sunset December 31, 2011 unless the Commission acts to extend it.

F. Finding of Fact 10 is modified to read:

10. REC-only contracts are likely to provide fewer potential benefits to ratepayers than contracts for RPS procurement that include both RECs and RPS-eligible energy. In light of this differential in potential benefits, it is reasonable to impose on the three large IOUs a temporary limit of 40% of APT annually on their use of TRECs for RPS compliance.

G. Conclusion of Law 11 is modified to read:

11. Transactions in which RECs and RPS-eligible energy are procured from a generator whose first point of interconnection with the WECC interconnected transmission system is not a California balancing authority, and the transaction does not make use of dynamic transfer arrangements with a California balancing authority, where the contracts were approved by the Commission prior to the effective date

of this decision, should be counted as bundled transactions for RPS compliance purposes.

H. Conclusion of Law 13 is modified to read:

13. In order to recognize the legitimate expectations of the parties to RPS contracts now classified as REC-only that were approved by the Commission prior to the effective date of this decision, the temporary limit on the use of TRECS for RPS compliance provided in this decision should not be applied to deliveries made under contracts approved by the Commission prior to the effective date of this decision. These contracts and all related energy deliveries shall be treated as bundled transactions for RPS compliance purposes.

I. Conclusion of Law 24 is modified to read:

24. Utilities that are required to submit their RPS procurement contracts for Commission approval should submit contracts conveying only RECs and not energy for approval not earlier than October 1, 2010.

J. Ordering Paragraph 4 is modified to read:

Any renewable energy credits tracked in the Western Renewable Energy Generation Information System that conform to the requirements of Decision 08-08-028 and any subsequent Commission decision or any applicable California legislation characterizing renewable energy credits, and that meet the criteria for eligibility set by the California Energy Commission, may be used for compliance with the California renewables portfolio standard, subject to the restrictions in Ordering Paragraphs 8 and 9, below.

K. Ordering Paragraph 6 is modified to read:

6. As of the effective date of this decision, a transaction for purposes of compliance with the California renewables portfolio standard shall be considered a transaction that procures only renewable energy credits if that transaction either:

a. Expressly transfers only renewable energy credits and not energy from the seller to the buyer; or

b. Transfers both renewable energy credits and energy from the seller to the buyer but does not meet the Commission's criteria for considering a procurement transaction a bundled transaction for purposes of compliance with the California renewables portfolio standard.

All deliveries from transactions described in subsection b, above, associated with contracts approved by the Commission prior to the effective date of this decision will be counted as bundled transactions for purposes of compliance with the California renewables portfolio standard.

L. Ordering Paragraph 9 is modified to read:

9. Renewable energy credits associated with electricity generation that is eligible for the California renewables portfolio standard delivered under procurement contracts of California utilities for both energy and renewable energy credits pursuant to the federal Public Utility Regulatory Policies Act of 1978 that were signed after January 1, 2005 shall be used for compliance with the California renewables portfolio standard only if they are not transferred to an entity other than the original buyer in the Western Renewable Energy Generation Information System prior to being retired for compliance with the California renewables portfolio standard.

M. Ordering Paragraph 17 is modified to read:

17. Pacific Gas and Electric Company, San Diego Gas and Electric Company, and Southern California Edison Company may each use renewable energy credits procured under contracts for renewable energy credits only, to meet no more than 40 percent of their annual procurement targets for the California renewables

portfolio standard, beginning with the 2010 compliance year.

N. Ordering Paragraph 18 is deleted.

O. Ordering Paragraphs 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, and 37 are renumbered as 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36 respectively.

P. Ordering Paragraph 38 is renumbered as 37 and modified to read:

37. Not earlier than October 1, 2010, utilities may submit for Commission approval contracts conveying only renewable energy credits and not energy that conform to the requirements of this order.

Q. Ordering Paragraph 39 is renumbered as 38.

4. The stay of Decision (D.) 10-03-021 imposed by D.10-05-018 is dissolved, as of the effective date of this decision.

5. The temporary moratorium imposed by Decision (D.) 10-05-018 on Commission approval of any procurement contracts for compliance with the renewables portfolio standard program signed after May 6, 2010 that would have been defined under D.10-03-021 as transactions transferring only renewable energy credits and not energy is ended, as of the effective date of this decision.

This order is effective today.

Dated _____, at San Francisco, California.

(APPENDIX A)

(to be supplied with issued decision)

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated August 25, 2010, at San Francisco, California.

/s/ ANTONINA V. SWANSEN
Antonina V. Swansen

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

* *

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