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Decision 06-10-050 October 19, 2006

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)

OPINION ON REPORTING AND COMPLIANCE METHODOLOGY FOR RENEWABLES PORTFOLIO STANDARD PROGRAM

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Attachment A – Renewables Portfolio Standard (RPS) Rules for Reporting and Determining Compliance with RPS Procurement Targets

Attachment B – Tentative Schedule for Determining RPS Compliance

OPINION ON REPORTING AND COMPLIANCE METHODOLOGY FOR RENEWABLES PORTFOLIO STANDARD PROGRAM

1. Summary

Senate Bill (SB) 1078, effective January 1, 2003, established the California Renewables Portfolio Standard (RPS) Program.[1] The Program's objective is to increase the amount of California's electricity generated from renewable resources to meet several identified purposes.[2]

To achieve these purposes, each California load serving entity (LSE) is required each year to procure a minimum quantity of electricity from eligible renewable energy resources.[3] The quantity is a specific percentage of total

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[1] Added by Stats. 2002, Ch. 516, Sec. 3, codified in Pub. Util. Code Article 16, §§ 399.11, et seq. All subsequent code section references are to the Public Utilities Code unless noted otherwise.

[2] These purposes include increasing generation resource diversity, enhancing electric reliability, protecting and improving public health, improving environmental quality and benefits, promoting stable electricity prices, stimulating economic development, creating new employment opportunities, and reducing reliance on foreign fuels. (§ 399.11.)

[3] LSEs are electrical corporations, electric service providers (ESPs), or community choice aggregators (CCAs). (§ 380(j).) LSEs, including ESPs and CCAs, are subject to the same basic RPS Program requirements as applicable to electrical corporations, even if the manner of their participation may vary. (§§ 380(e) and 399.11 et seq.; also see Decision (D.) 05-11-025, Finding of Fact 4, Conclusion of Law 2.) Eligible renewable resources are determined by the California Energy Commission (CEC) and may include (but are not limited to) wind, geothermal, bioenergy, small hydro, solar thermal, and photovoltaic. We note that the Order Instituting Rulemaking erroneously named Central California Power as a respondent in this proceeding. Central California Power has been a participant, and will remain on the service list as a party, but should be removed from the category of respondent. We took this same action recently in D.06-10-019.

annual retail energy sales. The quantity must increase annually by at least 1% of retail sales compared to the procurement in the prior year, reaching 20% by 2010.

The legislation directs the Commission and the CEC to implement and administer the RPS Program. Commission implementation includes setting procurement targets and adopting rules for flexible compliance. The rules for flexible compliance must permit an LSE to apply excess procurement to subsequent years, or makeup inadequate procurement in one year within no more than the following three years. LSEs are permitted reasonable flexibility in complying with program requirements, but are subject to penalties for failure to comply. LSEs must periodically report targets and results.

The concepts and terms used for reporting electricity generated from RPS-eligible resources are stated in the legislation, Commission decisions, and CEC documents. We here adopt a revised paper (see Attachment A) prepared by Energy Division (ED) staff as the primary guide for reporting RPS Program targets and results. It consolidates, defines and clarifies the sometimes complex concepts and terms used for reporting and compliance. The adopted methodology applies equally to all LSEs. Unique aspects of the rules, if any, as they apply to ESPs, CCAs, and small and multi-jurisdictional investor owned utilities (IOUs) will be determined in Rulemaking (R.) 06-02-012.

Key elements of the adopted methodology and decisions made herein are:

- The adopted methodology requires reporting and assessment of actual annual procurement (AP) and the annual procurement target (APT); it does not require separate reporting and assessment of baseline procurement (BP) against a baseline procurement target (BPT), nor incremental procurement (IP) against the incremental procurement target (IPT).

- Each large IOU has a baseline procurement amount, but no procurement target, for 2003; the first year it has an APT is 2004; its 2003 initial baseline procurement amount is developed from 2001 RPS-eligible procurement.
- Each subsequent procurement target is calculated based on the prior year's target, not the prior year's actual procurement.
- Any RPS-eligible procurement may be used to satisfy any portion of the APT, including the IPT.
- An LSE is out of compliance with RPS targets in any year in which its actual AP is less than its APT; flexible compliance rules provide the opportunity for an LSE to defer enforcement while the LSE seeks to achieve compliance.
- Flexible compliance rules are clarified to be in relationship to the IPT, not APT.
- Existing flexible compliance applies to procurement through 2009 (allowing an excused 2009 deficit to be fulfilled by the end of 2012).
- The 20% target must be met in 2010 and beyond with actual deliveries, and more than 20% in 2010 and after may be required to fulfill prior deficits that have been deferred.
- Flexible compliance in 2010 and beyond is the subject of further comment, and will be addressed in a future decision.

Two compliance reports are due each year. A reporting format is adopted, and may be further modified, as provided herein. The three largest IOUs shall pay costs for contractors to be hired and managed by the Commission. This proceeding remains open.

2. Procedural Background

Reporting and compliance fundamentals are stated in the implementing legislation. Requirements and terms are defined, discussed, explained and applied in several Commission decisions. These include Commission orders initiating the RPS Program, establishing initial procurement targets, and setting

reporting templates.[4] They are also addressed in several CEC documents, including those which establish eligibility for the program, state eligibility for supplemental energy payments, and verify qualifying energy deliveries.[5]

The legislation is in some ways relatively complex, and Commission implementation began quickly. As a result, Commission development of reporting obligations and flexible compliance options has taken place in several decisions since 2003.

By notice published in the Commission's Daily Calendar beginning January 24, 2006, the ED staff announced that it would circulate proposals addressing reporting and compliance requirements, and conduct a workshop on February 16, 2006 to discuss proposals and receive comment. Among the goals was to summarize in one document the reporting and compliance rules developed over several years in several decisions and documents, thereby assisting the Commission and parties with reporting, measurement of progress, and enforcement.

On February 15, 2006, the Commission's ED staff served its White Paper, titled "RPS Annual Procurement Targets: Reporting and Compliance" (hereinafter referred to as the initial proposal). On February 16, 2006, staff conducted a workshop. By ruling dated February 23, 2006, the ED staff paper

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[4] For example, D.03-06-071, D.04-06-014, and D.05-07-039.

[5] For example, Renewables Portfolio Standard Eligibility Guidebook (updated April 2006), New Renewable Facilities Program Guidebook (updated April 2006), Overall Guidebook for the Renewable Energy Program (updated April 2006), and Renewables Portfolio Standard Procurement Verification Report (February 2006).

was served on the service list, with dates established for the filing of comments and reply comments.

On or before March 13, 2006, comments were filed and served by 11 parties: Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), Division of Ratepayer Advocates (DRA), The Green Power Institute (GPI), The Utility Reform Network (TURN), Union of Concerned Scientist (UCS), Alliance for Retail Energy Markets (AReM), Center for Energy Efficiency and Renewable Technologies (CEERT), City and County of San Francisco (CCSF), and City of Chula Vista (Chula Vista). On March 22, 2006, reply comments were filed and served by 9 parties: PG&E, SCE, SDG&E, DRA, GPI, TURN, UCS, AReM and CEERT.

3. Revised Methodology

Parties generally agree the ED staff White Paper facilitates program administration by bringing complex issues and definitions into one document, and providing reasonable explanations and examples. Parties disagree with staff on various issues, which we address and resolve below.

3.1. Guiding Principles

SCE proposes 9 Guiding Principles (GPs) to use in developing the methodology for RPS accounting and reporting. PG&E concurs with these 9 principles. We think they are generally helpful, and employ them to guide our work, as discussed below. These principles are:

GP 1: The rules must comply with RPS legislation.

GP 2: The rules should adhere to prior decisions.

GP 3: The rules should be fair.

GP 4: The rules should be applied equally to all LSEs.

GP 5: Simpler is better.

GP 6: The rules should not create market power for LSEs, renewable generators or other market participants.

GP 7: Each kilowatt-hour (kWh) of renewable energy should only be counted once.

GP 8: The rules should not unfairly advantage or disadvantage any type of renewable technology.

GP 9: The rules should account for the realities of the renewable energy market and the transmission infrastructure in California.

We briefly discuss and clarify some GPs immediately below, and later in this order as needed.

3.1.1. GP 2: Adhere to Prior Decisions

We agree with SCE that the rules must adhere to prior Commission decisions, but that the Commission retains flexibility to clarify or adopt modifications to prior decisions, as necessary. This flexibility is important particularly, as SCE correctly points out, where past decisions were ambiguous, led to confusion, or turn out to not be the best method for achieving RPS program goals (e.g., carry forward in relation to IPT (not APT), as explained more below).

3.1.2. GP 4: Equal Application of All LSEs

The adopted reporting methodology applies equally to all LSEs. Issues raised by parties in comments on the initial proposal which are unique to ESPs, CCAs, or small and multi-jurisdictional utilities are not addressed in this order (e.g., whether or not to set the initial baseline at zero, whether or not to grow the baseline at more than 1% per year). Rather, we focus here on a reporting methodology that applies equally to all LSEs. Unique elements of

implementation for ESPs, CCAs, or small and multi-jurisdictional utilities, if any, have been, are, or will be, addressed in R.06-02-012.

3.1.3. GP 5: Simpler is Better

We agree with several parties that simpler is better, but only as long as the reporting methodology is consistent with law and includes the proper incentives. Each report must also state targets and results necessary to measure whether or not program goals have been—or are in the process of being—met. As explained more below, we find that an APT-based methodology does this.

3.1.4. GP 7: Energy Counted Only Once

As recommended by SCE, the adopted reporting system counts each kWh only once. Thus, we only identify the APT once annually, and count the energy to fulfill the APT only once annually. A continuing deficit for more than one year, however, is not the same thing, as explained further below.

3.1.5. GP 8: Resource Neutrality

GPI takes issue with GP 8, saying resource neutrality is not part of the original legislation, and is not consistent with §§ 383(a)(2), 383(a)(3) and 389. GPI contends there may be legitimate cost and other reasons to give advantage to specific renewable technologies. In comments on the proposed decision, GPI clarifies its view that resource neutrality is the correct approach for reporting and compliance, but not necessarily for the RPS program generally. We agree to the extent explained below.

We have implemented the RPS Program on a resource (technology) neutral basis. For example, we have consistently rejected the use of "resource stacks," and explicit or implicit preferences based thereon. (D.06-05-039, pp. 38-40.) While we require reporting of results by technology type, reporting is itself neutral with respect to technology.

Nonetheless, on April 25, 2006, the Governor issued Executive Order S-06-06. This Executive Order sets a target for the use of biomass in the generation of electricity at 20% within the already established renewable generation goals for 2010 and 2020.[6] The August 21, 2006 Scoping Memo in this proceeding identifies this as an issue for parties' comments. We expect parties to address how the Governor's goal should be implemented here, and in other proceedings, as relevant. Thus, we adopt GP 8 here for purposes of guiding us in the reporting and compliance methodology, not necessarily all aspects of the RPS Program.

3.2. Methodology Based on Reporting

In deciding disputed issues related to the adopted methodology, we point out that our decisions herein are largely based on reporting matters rather than compliance and enforcement. That is, we address compliance to the extent compliance relates to reporting (e.g., banking of surpluses; carrying deficits forward for up to three years; reporting up to, during and after 2010). Similarly, we address enforcement only as necessary to clarify aspects of reporting or as desirable to provide limited guidance (e.g., each APT is a separate annual target independently subject to reporting, compliance and enforcement; estimated penalties may be reported even if not due and payable).

We emphasize that the adopted reporting methodology itself is neutral with respect to enforcement and penalties. Respondents and parties later—in appropriate subsequent proceedings—will have the opportunity to present all

[6] For example, 20% biomass within the goal of 20% renewables by 2010 means a target of 4% biomass by 2010.

material and relevant facts and argument within the adopted reporting framework to reasonably permit proper measurement of compliance and application of enforcement, including penalties, as necessary.

The result of our using the 9 GPs, with a focus on reporting, is a revised reporting method based on AP and APT. ED staff has prepared a revised document which incorporates this reporting structure and other decisions made herein. (See Attachment A). The adopted reporting document states definitions, equations, flexible compliance rules, and provides examples.

We adopt Attachment A as the fundamental methodology document to guide LSE reporting of RPS program targets and results. It promotes a uniform understanding of necessary concepts and terms. Further, it permits consistent reporting of program progress and results.

PG&E correctly notes, however, that reporting and compliance rules are multi-faceted and complex, and must be fully understood by application to specific circumstances. We do not preclude future modifications based on such understanding. We make incremental improvements here. The Commission will be reasonable, but we remind each LSE that within the RPS structure each LSE must in turn do everything reasonable to meet the 20% by 2010 goal.

4. APT-Based Methodology

The February 2006 initial proposal tracks procurement in three categories: baseline, annual and incremental. It requires adoption of a target for each category: BPT, APT, and IPT.[7] It also involves measuring actual procurement,

[7] The APT is the sum of the BPT and IPT, but is separately tracked in the initial proposal.

and allowing flexible compliance, in each of these three categories: BP, AP and IP. Among its attributes, this approach may result in an LSE being in compliance with the overall AP but not having the right mix of BP and IP. The LSE may or may not then be subject to separate enforcement for baseline and incremental elements, even if its total AP equals its APT. It potentially provides a strong incentive for new generation facilities powered by renewable resources.

SCE, GPI and AReM recommend an alternative methodology that measures only one item: total procurement. This approach first establishes the APT. The APT grows by at least 1% each year. Actual AP (with banking of surpluses and limited carrying forward of deficits) is measured against APT. Any RPS-eligible procurement may be used to meet any portion of the APT, including the IPT. As SCE accurately points out, this reporting focus measures every aspect of an LSE's renewable procurement that is relevant: baseline, increasing procurement by at least 1% each year, and achieving 20% by 2010.

A useful guiding principle is "simpler is better." Using this principle, we adopt the simplest reporting method consistent with the law and achieving program goals: the APT-based reporting method proposed by SCE, GPI, and AReM. We do this for the reasons stated by its advocates, as discussed below.

4.1. Simpler

An APT-based method is simpler. It measures one, not three, categories. It does not require application of flexible compliance rules for three categories, along with potentially complicated accounting of surpluses and deficits in three categories.

Moreover, it does not need to address complications within and between the three categories. For example, output from a baseline resource might be reduced temporarily during years of poor water or wind. Output might be

reduced permanently over time as the facility ages, or when the facility is retired. Either temporary or permanent reduction is known as baseline erosion. The initial proposal requires separately measuring BP, and addressing how to treat baseline erosion, with what can be complex and controversial rules.[8]

Also, contracts for nearly all (if not all) baseline resources will eventually be candidates for renewal or renegotiation. The initial proposal requires addressing treatment of these renewed or renegotiated contracts to determine whether these baseline resources remain baseline, or may (in some or all cases) become incremental. This determination may or may not be different when the renewal or renegotiation is with the same LSE compared to becoming a new contract with a different LSE. Importantly, the adopted treatment with the initial proposal could in some cases provide an incentive, as SCE describes it, of one LSE "poaching" an existing baseline resource from another LSE in order to create an "incremental" resource.[9]

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[8] For example, in the initial proposal any deviation in baseline procurement would be determined to be a deficit, including either normal fluctuation in the output of a baseline resource or permanent reduction. Further, the replacement energy would need to be procured in the year of the deficit, not later. Finally, the deficit would be counted within IPT, not baseline. PG&E recommended that baseline erosion be limited to permanent curtailment or shutdown of a baseline generating facility, the replacement energy not be required until the year after (not the year of) the erosion, and baseline erosion not be added to IPT. In support, PG&E argued that normal fluctuation should be considered normal, that an LSE will not necessarily know in advance if and when a plant will be retired, and it unnecessarily complicates IPT calculations to count baseline erosion in IPT. This level of detail and debate (including how much to count as normal variation, if any) is reasonably eliminated with an APT-based methodology.

[9] As SCE accurately points out, the way such rule treats poaching may conflict with GP 6 (that the rules not create market power for LSEs, renewable generators or other market participants). Again, this level of detail and debate is reasonably eliminated with an APT-based methodology.

Further, the initial proposal requires rules with respect to baseline or incremental treatment of output from phased projects or from repowered projects. All of these potential complications are avoidable with an APT-based method. As TURN and USC say: "No party argues against simplification of the reporting requirements, accounting protocols, and compliance rules." (Reply Comments, p. 5.)

4.2. Easier to Understand and Administer

An APT-based method is easier to understand and administer. As AReM points out, administrative complexity may itself be a deterrent to reaching RPS goals.

For example, the Commission has already spent a considerable amount of time balancing parties' initially competing proposals to implement flexible compliance under the law. Some LSEs have in turn spent a substantial amount of time and resources on further details and argument related to flexible compliance, full earmarking, determination of baseline versus incremental status of resources, and penalty avoidance. This has in turn required the use of additional Commission and other party time and resources to address these matters.

At the same time, we have stressed the importance of all parties focusing more attention on strategies for success rather than on the nuances of compliance and penalty avoidance. (D.06-05-039, pp. 24-32.) We have said, repeated, and again repeat here: "the utilities' focus should now be on seeking and signing the best possible contracts for renewable energy, rather than on seeking adjustments to compliance standards." (D.06-05-039, p. 29, citing D.05-07-039, p. 12.)

In this context, the preferred reporting method is the one that is easiest to understand and administer as long as it is consistent with law and facilitates

reaching RPS program goals. The APT-based method does this, as explained more below. Adopting this method now will facilitate LSEs focusing on attaining a renewable procurement portfolio of 20% of retail sales by 2010, and potentially 33% by 2020. Moreover, CEC has advocated a more transparent, less complex RPS program. (CEC Integrated Energy Policy Report, November 2005, p. 107.) An APT-based reporting method is consistent with that objective.

4.3. Incorporates Incentives

An APT-based method reasonably provides all necessary incentives. That is, as SCE correctly asserts, it holds each LSE accountable for maintaining its baseline, since otherwise the LSE has an even greater challenge meeting its targets. It also requires each LSE to annually increase its procurement by at least 1% of prior year retail sales and reach 20% by 2010.

An important reason behind the initial proposal was to ensure adequate incentive for the development of new resources. Separate measurement of BP and IP in the initial proposal, along with the requirement that IP be fulfilled only from new resources, provides this direct incentive. Otherwise, some were concerned that LSEs would buy only from existing resources. In particular, there was a concern that existing Geysers geothermal resources could provide so much renewable energy capacity that other new renewable projects would be shut out of the procurement process.

AReM convincingly shows, however, that these fears are unfounded. In 2004, only 10.2% of the state's electricity was produced by renewable resources. To reach 20% by 2010, California will need to double its existing renewable resource base. Existing resources simply cannot provide enough output to reach state-adopted goals, and significant amounts of new renewable generation are required. Even more will be required if some existing resources (now in the

10.2% renewables base) are not repowered but are retired. An additional increment will be required if there is positive growth in retail sales. Moreover, while existing geothermal at the Geysers may have some effect, there is no credible evidence that it will materially affect the need for substantial amounts of new renewable resources. As SCE says:

> "…all existing renewable generation is already in some LSE's portfolio and all LSEs are currently short renewables. The only long-term solution for LSEs is to contract for new renewable generation." (Comments, p. 33.)

And specifically with respect to a three part versus a one part reporting method, we agree with GPI that:

> "The fact is that statewide California already has a deficit of renewable energy generating capacity. The RPS program is already motivating the development of new renewables, regardless of whether separate accounts are kept for Incremental and Baseline." (Comments, p. 7.)

TURN and UCS state another concern with an APT-based method. While they agree that the reporting methodology has become incredibly complex, they are concerned that an APT-only method may create an opportunity for an LSE to roll-forward deficits indefinitely. (Comments, p. 6.)

TURN and UCS are correct that we have rejected LSEs being able to carry deficits forward indefinitely, and would do so again here. We are not persuaded, however, that an APT-only method will have this result. Rather, carrying deficits forward is a function of flexible compliance rules, not the reporting methodology. The reporting method itself, and the complexity or simplicity of that method, has no effect on rolling-forward of deficits.

Thus, an APT-based reporting system is consistent with providing reasonable incentives for an LSE to maintain its baseline resources, increase

procurement by at least 1% per year and acquire new resources. It does not facilitate rolling forward deficits indefinitely.

4.4. Consistent with Law

An APT-based method is consistent with the law. Specifically, the RPS legislation requires that the Commission establish an initial baseline for the purpose of setting APTs. (§ 399.15(a)(3).[10]) We have done so for the three largest investor owned utilities, and are doing so for others. (See D.04-06-014, and Proposed Decision of Administrative Law Judge (ALJ) Simon mailed August 22, 2006 in R.06-02-012.) The APT-based method is consistent with this requirement.

The law requires that the Commission implement APTs, and that APTs grow by at least 1% per year. (§ 399.15(b).) The APT-based reporting methodology does this.

In contrast, the initial proposal would require reporting and tracking three categories, not one. This is based on the law's clear purpose of providing an incentive for new investment in renewable generation. This purpose is evident in several aspects of the law.

For example, in establishing the program the legislature declared "a target of 20 percent renewable energy…" (§ 399.11(a).) There would have been no need to establish a target if renewable energy was already 20% of California's resource mix.

[10] References here are to code sections pursuant to SB 1078. Some code sections change under SB 107, effective January 1, 2007. The principles discussed in this section, however, remain the same.

Similarly, contracts are to be of no less than 10 years in duration, absent specific approval otherwise. (§ 399.14(a)(4).) This duration is specified in order to permit reasonable development of new resources.

The Commission is required to establish the program in order "to fulfill unmet long-term resource needs…" (§ 399.15(a).) Further, we are required to consider at least four long-term factors in establishing a methodology to determine the market price of electricity. These include long-term market price, along with long-term ownership, operations and fixed price fuel costs. (§ 399.15(c).) The requirements to fulfill unmet long-term resource needs, and consider long-term factors, are consistent with the development of new renewable resources.[11]

Our view that the program seeks to develop new resources is not new. Since at least 2003 we have recognized that a fundamental program goal is to develop new resources, and bring additional renewable generation on line. (D.03-06-071, pp. 45, 58.) No party disputes that this concept is consistent with the law. TURN and UCS agree, saying some parties raise issues that should be given little weight because they "distract the Commission from the real intent of the RPS program—to bring about new renewable resources." (TURN/UCS Reply Comments, p. 1.)

While the program purpose to stimulate new investment in renewable resources is clear, it does not take a three-part reporting system to accomplish

[11] In related law regarding resource adequacy requirements for LSEs, we are required to establish requirements that "shall…facilitate development of new generating capacity." (§ 380(b)(1).) Also, we shall ensure "investment is made in new generating capacity." (§ 380(h)(2).)

this purpose. Rather, an APT-based system, with compliance and enforcement based on APT, will provide the necessary incentive for new investment, as discussed above. This incentive will be powerful given that the current overall renewable resource base is only about 10%. There is no credible evidence of any incremental benefit of separately enforcing a BPT and an IPT. On the other hand, it is clearly more complex and costly to do so, and the incremental benefits, if any, will not outweigh the complexity and cost.

While the law's intention to stimulate new investment is clear, the law does not specifically direct Commission implementation of that intent by separate creation and treatment of baseline, annual and incremental categories. It does not state that the Commission shall enforce compliance in each of three categories, nor that flexible compliance rules are to be devised for each of three categories. The Legislature knows how to make its directions specific when appropriate and necessary. It did not in this case uniquely and exclusively create three separate categories in a reporting, compliance and enforcement scheme.

An APT-based reporting method is clearly consistent with the letter of the law. It is also consistent with the legislative purpose of stimulating new investment in renewable resources. Thus, we conclude it is consistent with law.

4.5. Test of Proposals

GPI used example numbers to test the initial proposal (three-part reporting method) against the APT-based (one-part) reporting method. GPI's test demonstrates several things, including that the one-part method is simpler, easier to understand, and equally effective in implementing the state's RPS Program.

We agree with GPI on the merits of the simpler system. We also agree with GPI that the more complex system provides few incremental benefits, if

any. For example, there is no compelling evidence that any different level of penalties under the more complex system provides incremental incentives for success not adequately incorporated in the APT-based approach. Rather, the ultimate outcome in either system is the same: 20% by 2010. GPI's test data show that either system requires an immediate and sustained procurement effort by each LSE, with the majority of the eligible procurement available only from new renewable resources. GPI shows that the maximum penalty is the likely outcome under either reporting system for at least one of the largest LSEs, absent substantial and sustained effort otherwise. This is likely to be the case for other LSEs, absent similar substantial and sustained effort. Adoption of the more complex reporting system provides no meaningful incremental benefits.

Therefore, we conclude that the APT-based system is simpler; easier to understand and administer; reasonably incorporates necessary incentives; is consistent with the letter and spirit of the law; and, based on GPI's test data, is reasonable.

5. Adopted Comments and Clarifications Regarding Initial Proposal

5.1. Three Years to Make Up Deficit

PG&E believes the initial proposal mistakenly states that deficits must be made up within two, not three, years. We clarify here that inadequate procurement in year 1 must be made up within the following three years (i.e., year 2, year 3, and/or year 4). This is clarified in the revised methodology (Attachment A).

5.2. Carry Forward in Relation to IPT

Our flexible compliance rules, regarding explanation of deficits of certain sizes, are currently stated in relation to APT.[12] The initial proposal corrected this to IPT. Parties' comments on flexible compliance are generally in relation to IPT. No party initially commented on the clarification relative to IPT.

This makes sense. The flexible compliance rules recognize that acquisition of renewable resources may not be smooth. They also take into account reasonable flexibility in program administration. As a result, up to 25% of the target each year may be under-procured without explanation.

At the same time, the Commission does not want any LSE to get so far behind in its procurement that the LSE simply cannot meet the 20% goal. Also, the Commission does not want any LSE to roll over deficits each year indefinitely. As a result, the under-procurement beyond 25% is subject to explanation. If the explanation is inadequate, a penalty may apply at that time, without deferral. This balances reasonable flexibility and administrative ease for the LSE with the state's interest in monitoring the progress and success of the program. It permits timely enforcement by the Commission if the LSE's explanation is inadequate, thereby providing a reasonable incentive for

[12] We currently require that an LSE meet 75% of its APT each year, but may carry over a deficit of 25% for up to three years without explanation. Shortfalls in excess of 25% (with a limited exception) are also permitted for up to three years, but require a successful demonstration of one of four conditions. (D.03-06-071, pp. 49-50.) Shortfalls in excess of 25% are also permitted upon a persuasive showing of lack of effective competition, or that deferral would promote ratepayer interests and the overall procurement objectives of the RPS Program. (D.03-06-071, p. 53.) Finally, an LSE may reduce or eliminate a penalty upon a showing of good cause. (D.03-12-065, p. 8.) In each case, these requirements are stated in relation to APT.

compliance. It defers enforcement if the explanation reasonably demonstrates the LSE has a plan to succeed, or that the market simply did not provide resources to permit success. (D.03-06-071, pp. 49-53.)

These concerns are reasonable only in relation to IPT. For example, assume the APT in target year "x" is 16% of retail sales. Allowing the carry over of 25% of the APT without explanation would allow carry over of a 4% deficit in the LSE's resource base (25% of 16%) that is otherwise being used to serve retail sales. A deficit of 4% is very large by any measure. A deficit of this size for three years without explanation, and without Commission assessment of a plan to make this up, is unreasonable, and not what the Commission intended. Similarly, it would be unreasonable to allow an LSE without explanation to decline to procure an IPT of 1% of retail sales in each of approximately four years (for a total of 4% of retail sales).

The existing flexible compliance rules are in the context of incremental growth to reach the 20% target. The proper application of the 25% carry forward without explanation is with regard to IPT, not APT. The adopted, revised paper in Attachment A makes this clarification and correction. We also clarify that any amount over 25% of the IPT (theoretically up to 100% of the APT) may be deferred for up to three years based on a reasonable excuse. The LSE may assert the claimed justification with the appropriate report. The Commission will assess the reason and determine whether or not that reason justifies deferral of a related penalty and/or no longer reporting of the amount of energy to otherwise be procured.

PG&E states a concern that the adopted approach subjects an LSE to strict, immediate liability for non-compliance. This is not the case. No amount is immediately due and payable unless the LSE accepts that it is out of compliance,

and agrees to pay the penalty. Rather, each LSE may seek deferral of a penalty based on a justified reason. Once such deferral is sought, no penalty is due until payment is later ordered by the Commission.

In comments on the proposed decision, PG&E asks that the rules be modified to permit satisfaction of only the current year's IPT, not the entire APT, before deliveries may be credited toward retirement of a previous year's IPT deferral. We decline to modify existing rules on application of deliveries to retire debts.

We point out, however, that justified and reasonable excuses may permit deferral of amounts over 25% of the IPT (potentially up to the full APT). This approach balances an LSE's need for flexibility to achieve RPS goals with the state's need to ensure each LSE remains on a path to success without falling so far behind that it cannot reach the state's RPS goals.

PG&E specifically asks that deferral of the up to 25% of the IPT that may be deferred without reason continue to be deferred without reason when that amount is otherwise included in next year's APT. We decline to further complicate the reporting of deferrals with and without excuses based on inclusion of one IPT into the next year's APT. Rather, an LSE should properly track and report deferrals, including both the (a) up to 25% of IPT without excuses and (b) over 25% of IPT with excuses. Where appropriate, the LSE may identify the portion of an APT that was up to 25% of the prior year's IPT and excused without explanation. When thus stated and properly tracked, it would appear reasonable to continue deferral without additional excuse or explanation (absent clear justification to do otherwise). This approach will assist with accurate reporting, plus understandable and logical tracking of relevant amounts of energy.

5.3. 2003 Initial Baseline Procurement Amount

The February 2006 initial proposal defined the 2003 initial baseline procurement amount as 2001 RPS-eligible procurement plus 1% of 2001 total retail sales. The revised proposal (attached to the September 2006 proposed decision) modified the definition to be total 2003 eligible renewable procurement less any 2002 or 2003 eligible procurement in excess of the 2002/2003 interim procurement benchmark. PG&E, SCE and TURN address this change and argue that the correct formula is essentially as originally proposed. We agree.

The originally proposed definition tracks the statutory language more precisely and is preferable given the state of the program. Moreover, it permits consistent use of 2003 as the first baseline year with the first APT in 2004.

That is, the RPS Program initially became effective in 2003, with the first target year 2004. D.04-06-014 developed an APT for 2004 based on 2001 retail sales and interim procurement in 2002/2003 to determine both the 2003 baseline and adjusted 2003 IPT. We expressly provided that renewable generation procured in 2002/2003 in excess of the amount required by D.02-08-071 would be bankable procurement, which could be applied to the 2004 APT or future years. (D.04-06-014, p. 11; also Appendix B.)

Several parties, however, now raise credible new questions regarding inclusion in the baseline of unusually high hydro production in 2003, our treatment of banked energy, and whether, as a result, we incorrectly disallowed banking of some 2003 RPS-eligible procurement in excess of the interim procurement benchmark. This may or may not have resulted in our effectively adopting an IPT of more than 1%, and may or may not have been clear to all at the time. No party challenges the assertion that the February 2006 initial proposal (i.e., 2001 plus 1%) is more in line with the statutory language than is

the September 2006 revised approach (i.e., reducing 2003 procurement). Nor does any party either allege or convincingly show that the current questions are baseless.

The best way to ensure correct program development before we undertake more detailed compliance and enforcement is to use 2001 deliveries as the basis from which we calculate the 2003 baseline in a manner more directly consistent with the underlying statutory language. This will enable IOUs to bank interim procurement consistent our intention, as expressed in D.04-06-014. The definition of the 2003 initial baseline procurement amount in the February 2006 initial proposal permits us to do this, and we adopt it here.

5.4. Banking of Surpluses

SDG&E and others are concerned that the adopted reporting methodology limits banking of surpluses. We clarify that there is no such limitation. Rather, unlimited forward banking of surplus procurement is consistent with the law and, as we have said previously, it makes sense (e.g., it promotes RPS development by creating an incentive for early procurement). Thus, we do not disturb our earlier decision on this point: "we will permit unlimited forward banking of excess procurement." (D.03-06-071, pp. 43-44.)

5.5. Other

Other modifications are made to enhance clarity, and improve examples.

6. Rejected Comments and Other Clarifications

We here discuss the more important comments which do not change, or are not incorporated into, the adopted revised methodology. We do this to further explain the adopted approach, and provide other guidance going forward.

6.1. Reject 100% Earmarking

We recently considered and declined to adopt full earmarking, but said we might consider it further in this decision. (D.06-05-039, p. 24.) PG&E continues to argue here for full earmarking. Neither PG&E nor any party, however, presents anything substantially new that requires additional consideration or comment beyond what we already stated in our May 2006 order.

Further, earmarking largely has to do with penalty avoidance. The matter at issue here is reporting. Parties may present arguments at the appropriate time on whether or not penalties should apply. Those arguments are for the most part premature now, and are unpersuasive with respect to modifying our reporting structure. Therefore, we decline to change our policy on earmarking. We discuss full earmarking further below in the context of flexible compliance.

6.2. Flexible Compliance in 2010 and Thereafter

Several parties assert that flexible compliance must be permitted for deliveries in 2010 and thereafter. This is not the case pursuant to existing rules, but may be shortly, as explained below. CEERT recommends placing an "end-date" on flexible compliance. We do so by restating existing policy, but note that we may consider this further based on additional evidence to be filed in this proceeding.

6.2.1. Existing Policy

We determined (before accelerating the 2017 target to 2010) that:

> "The language requiring utilities to procure 20 percent of retail sales no later than December 31, 2017 is clear and unequivocal. The 2017 deadline is absolute." (D.03-06-071, p. 40; emphasis in original.)

Within this deadline, we developed flexible compliance rules. Those rules, however, did not change the determination that 20% by the end of 2017 is

an absolute deadline. We also ordered that failure "to meet the 20% renewable procurement obligation by the end of 2017 will result in additional penalties." (*Id.*, Ordering Paragraph (OP) 24, as modified by D.03-12-065, OP 1(h).)

Our approach is clear: flexible compliance rules apply to incremental progress leading to 20%. There was, and is, no language indicating that a deficit in 2017 may be carried forward for three years before the utility may be subject to a penalty. In fact, the opposite is true. We clearly said "by the end of 2017." (*Id.*, OP 24.) We did not say, for example: "by the end of 2020 (i.e., due to flexible compliance)."

The state energy agencies accelerated the 20% by 2017 to 20% by 2010.[13] In doing so, no language stated that the absolute deadline in 2017 was not similarly accelerated to be an absolute deadline in 2010. To the contrary, the most recent language is as clear and unequivocal as that said in our 2003 order regarding the attainment of 20%: "The year 2010 is the year by which the Commission expects 20% of energy sold to retail end-users to be delivered from eligible renewable resources." (D.06-05-039, Finding of Fact (FOF) 8.)

6.2.2. Arguments for Perpetual Flexible Compliance

Several parties argue for perpetual flexible compliance. PG&E argues, for example, that long lead times and lack of transmission facilities make it difficult to select the best mix of renewable resources while achieving actual deliveries of 20% by 2010. PG&E asserts that the absolute need to have 20% by

[13] See Energy Action Plan (EAP) I (May 2003), p. 2; EAP II (October 2005), p. 8; Commission Decision (D.) 05-07-038 (pp. 14-15); D.05-11-025 (p. 24, COL 1); D.06-05-039 (p. 24, FOF 8); California Energy Commission (CEC) 2003 Energy Report; CEC 2004 Energy Report Update; CEC 2005 Integrated Energy Policy Report.

2010 discourages LSEs from contracting for the development of a potential mix that is the best fit, including recognition of emerging technologies. LSEs are forced to accept bids offering a 2010 on-line date, according to PG&E, even if those bids reflect inferior value to customers in violation of the principle behind least cost/best fit (LCBF). PG&E concludes that flexible compliance must be permitted in 2010 and every year of the RPS program.

We are not convinced. We have already considered and dismissed these arguments. (D.06-05-039, pp. 24-33.) We are as committed as is each LSE to achieving the LCBF mix. Neither PG&E nor any other party, however, presents compelling evidence on the cost of various mixes, or the cost savings from potential emerging technologies. There will always be concerns and unknowns with regard to project lead times, transmission issues, possible technology improvements, potential cost reductions, and other variables. The state policy of attaining 20% by 2010, however, already balances various factors, and the state's public policy officials have determined that the benefits justify the accelerated target.

We agree with CEERT that the IOUs:

> "apparent effort to discredit projects with the 'shortest on-line date'…seems peculiar at best and disturbing at worst especially if that project results in steel in the ground and renewable power being produced to meet current targets. Such a project would also seem to carry far less risk in terms of confirming project viability than projects that have much longer lead times and/or are transmission constrained." (CEERT Reply Comments, p. 3.)

We take these near-term lost opportunities seriously. LSEs should also.

6.2.3. Earmarking for More Than Three Years and Post 2010

In addition, and related, to flexible compliance for 2010, PG&E, SCE and SDG&E also recommend allowing earmarking for more than three years. (SCE Reply Comments, p. 19.) In support, they argue that this will, in a fair and reasonable way, address impediments due to long lead time development and other events beyond their control. We are not persuaded. Rather, GPI has it right:

> "If the current RPS compliance targets are in fact unreasonable, then the solution should be to re-examine and reset the targets, and possibly to restructure the program, not to weaken the compliance system. In this regard the flexible compliance proposals of both PG&E and SCE must be rejected, or the result will be a gutted RPS program. We do not think it is in anybody's best interest to let that happen, certainly not the citizens of California who strongly support the RPS program objectives." (GPI Reply Comments, p. 4.)

The current RPS compliance targets are reasonable, and we are not persuaded to weaken the compliance system. If targets are not met, LSEs will have ample opportunity to present defenses at the appropriate time.

We also note that flexible compliance is limited to allowing deficits to run forward for no more than three years. (§ 399.14(a)(2)(C).) Thus, we are not persuaded that a deviation for earmarking beyond three years is permitted but, even if allowed, we are not convinced to do so.

6.2.4. Further Consideration

Our flexible compliance rules are in the context of reaching the 20% goal. They recognize, for example, the lead time to conduct solicitations and build new plant through 2009. In this context, existing flexible compliance rules are likely to lose considerable relevance once the 20% goal is reached.

Nonetheless, we will consider parties' recommendations before adopting specific flexible compliance rules for 2010 and thereafter, as described below.

That is, flexible compliance may or may not have some separate usefulness after a "steady-state" of 20% is reached (or 33% as discussed below). In a steady-state context, for example, it may be a better balance of competing interests to more strictly apply the "no more than the following three years" statutory language. (§ 399.14(a)(2)(C).) This may result in restricting flexible compliance to a period less than the full three years.

Similarly, flexible compliance in the current context (both without and with an excuse) is in relationship to IPT (e.g., up to 25% of IPT and over 25% of IPT). IPT no longer has meaning after an LSE reaches 20% of retail sales (or other steady-state). There may, however, still be normal fluctuations in the RPS generation base (e.g., good or bad wind or water years) or unexpected variations in total retail sales. Flexible compliance in a steady-state context might be more reasonable as a percentage variation in total renewable generation or retail sales rather than IPT. It may or may not also be reasonable to adjust the percentage trigger for permissible deficit carry-forward without an excuse and with an excuse (e.g., from 25% of IPT to something other than 25% of total retail sales).

We also note that the state's stated goal is to increase RPS generation from 20% to 33% of total retail sales by 2020. (See Energy Action Plan II.) Reasonable flexible compliance rules may need further revision in the context of reaching this higher goal.

The August 21, 2006 Scoping Memo already seeks comments on this issue. (Scoping Memo, Attachment A, Issue 6, pp. 12-13.) We will adopt specific flexible compliance rules for use in 2010 and thereafter based on the further record that is being developed.

We also observe that recently enacted SB 107 will become effective January 1, 2007. At that time, new language will provide that: "The flexible rules for compliance shall apply to all years, including years before and after a retail seller procures at least 20 percent of total retail sales of electricity from eligible renewable resources." (New § 399.14(a)(2)(C)(i).) We anticipate implementing this new language pursuant to our consideration of comments noted above, or supplemented, as needed, when SB 107 becomes effective.

6.2.5. Conclusion

Nothing presented here convinces us now to alter the clearly stated requirement of 20% by 2010. To the contrary, we maintain that the reportable target by 2010 is 20% of retail sales. The reportable result is actual deliveries.

We are similarly not persuaded to adopt earmarking for more than three years. We will address enforcement and penalty matters as they arise later.

Existing flexible compliance rules are in the context of reaching 20% by 2010. Nothing convinces us to change prior decisions by an immediate, wholesale implementation of existing rules to a steady-state or other condition. Rather, we will give further consideration to this based on additional comments filed pursuant to the August 21, 2006 Scoping Memo, and as we implement SB 107. Within this context, each retail seller must procure 20% of its retail sales no later than December 31, 2010, consistent with prior policy and new statute (new § 399.15(b)(1), effective January 1, 2007, pursuant to SB 107.)

6.3. Flexible Compliance Prior to 2010

6.3.1. Flexible Compliance in 2007-2009

SDG&E asserts that failure to permit flexible compliance in 2010 and beyond "would essentially deprive the utilities of these mechanisms after 2006." (Comments, p. 8.) We disagree. Flexible compliance prior to 2010 does not

change. A deficit in 2009 may be carried forward for up to three years (e.g., 2010, 2011, 2012), but must be satisfied by the end of the third year (i.e., end of 2012).[14]

SDG&E is also concerned that an LSE may not be able to achieve the 20% by 2010 target despite its best efforts due to transmission issues, plant permitting issues, or developer contract failures. SDG&E states that it supports the 20% by 2010 goal, but believes that adding certainty to the process will benefit all parties. SDG&E urges the Commission to address these and related matters sooner rather than later. (Comments, pp. 8-9.)

We do so by clarifying that the current flexible compliance scheme (e.g., deficit carry-forward for up to three years based on one of four predetermined reasons) applies only in the context of reaching 20%, as provided in prior Commission decisions. (See D.03-06-071.) This currently applies up to and through 2009. It does not apply in the same way to 2010 and thereafter, since the requirement is for each RPS-obligated LSE to have actual renewable energy deliveries of 20% by 2010, or be out of compliance. Failure to meet a target may occur for any number of reasons, as SDG&E clearly states (e.g.,

[14] That is, up to 25% of the 2009 IPT may be carried forward without explanation through the end of 2012. It must be fulfilled by actual energy deliveries by the end of 2012, or penalties may apply. The amount of 2009 deficit in excess of 25% of the 2009 IPT may be carried forward through the end of 2012 if one of four conditions is met, there is a lack of effective competition, deferral would promote ratepayer interests and the overall procurement objectives of the RPS Program, or upon a showing of good cause. (D.03-06-071, pp. 49-50, 53; D.03-12-065, p. 8.) If one of the four conditions or other circumstances are not met for this portion of the 2009 procurement deficit upon a showing in 2010, the penalty may be applied in 2010. If one of the four conditions or other circumstances are met for this portion of the 2009 procurement deficit upon a showing in 2010, however, the deficit may be carried forward but must be fulfilled by actual energy deliveries by the end of 2012, or penalties may apply in 2013.

transmission issues, permitting issue, developer contract failures). An LSE may seek temporary or permanent waiver of any resulting penalty at the appropriate time based on what the LSE believes to be justifiable reasons.[15]

6.3.2. Makeup of Deficit After Reaching 20%

SCE and others argue that the law contains an absolute limit on procurement, wherein an electrical corporation cannot be required to further increase its renewable procurement after reaching 20%.[16] (Reply Comments, pp. 15-16.) Under this theory, SCE and others argue that the Commission cannot require makeup of any under-procurement in years through 2009 after the entity reaches 20%, such as in 2010. This is not the case.

Pursuant to the legislation, each electrical corporation shall increase its total procurement of eligible renewable resources by at least an additional 1% of retail sales per year. (§ 399.15(b)(1).) This is mandatory, not discretionary. It is separate and discrete from the 20% target. Further, Commission adoption of flexible compliance rules is mandatory. Those rules may permit applying inadequate procurement in one year to no more than the following three years. (§ 399.14(a)(2)(C).) Existing flexible compliance rules do not excuse shortfalls, but permit makeup within a period of time. Entities subject to the RPS Program are required to procure additional eligible resources in subsequent years to compensate for a failure to procure sufficient resources in a given year to meet an

[15] "The utility may reduce or eliminate the pre-determined penalty upon showing of good cause." (D.03-12-065, p. 8.)

[16] "An electrical corporation with 20 percent of retail sales procured from eligible renewable energy resources in any year shall not be required to increase its procurement of such resources in the following year." (§ 399.15(b)(1).)

APT. (§ 399.15(b)(3).[17]) The Commission shall exercise its authority to require compliance with adopted plans by entities subject to the RPS Program. (§ 399.14(d).[18]) These are mandatory provisions.

Read as a whole, and giving effect to each provision, an electrical corporation that has reached 20% in a given year is excused from increasing its procurement the next year only if it has met the APT in each of the prior years. A reading that excuses an entity from making up past shortfalls because it has reached the 20% target would negate the separate and discrete APT requirement in prior years, undercut the purpose underlying the statutory requirement regarding rules for flexible compliance, negate the requirement to procure additional eligible resources in subsequent years to compensate for a failure to procure sufficient resources in a given year to meet an APT, and void the requirement that the Commission exercise its authority to require compliance. Such reading would not reasonably harmonize all statutory provisions.

That is, for example, under SCE's theory an entity that failed to reach its APT in 2007, 2008 and 2009 could otherwise claim in 2010, upon reaching 20%, that there is no requirement to procure more than 20% to make up prior shortages.[19] If this were true, the statutory mandate of each year fulfilling the

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[17] This becomes § 399.15(b)(4) effective January 1, 2007.

[18] This becomes § 399.14(e) effective January 1, 2007. At that time it will also include Commission enforcement of comparable penalties on any retail seller that fails to meet its APTs.

[19] Under the "up to three years" provision, the entity would be permitted to make up a shortage in 2007 by the end of 2010, a shortage in 2008 by the end of 2011, and a shortage in 2009 by the end of 2012.

APT, and the annual increase in procurement of at least 1% of retail sales, could be ignored. In fact, at the extreme, the entity could elect to wait to acquire the entire 20% in 2010, and nothing before. This is clearly unreasonable, however, given that each APT, the 1% growth, and Commission enforcement of the APT within flexible compliance rules, are all mandatory.

As an alternative, the flexible compliance rules could provide that procurement of sufficient energy to fill prior shortages must be satisfied by no later than December 31, 2009. That is, the statute provides that inadequate procurement may be applied for no more than the following three years. If the 20% in 2010 is read to be an absolute maximum, meaningful flexibility of no more than three years could be reasonably provided only by slowly reducing the time allowed for deferral from three years to zero.[20] We have not done so, and do not do so here. Rather, a more reasonable reading of the RPS legislation as a whole, while giving reasonable reading to its individual parts, is to permit deferral for up to three years after 2009, even if that requires in excess of 20% to be procured in some years. Once all deferrals are satisfied and the 20% has been achieved, however, the entity is excused from increasing its procurement beyond 20% in any following year. While this discussion is in relationship to the 20% goal, we also note that California has adopted a 33% goal, and the same considerations apply.[21]

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[20] In this interpretation, the entity would be permitted to make up a shortage in 2006 by the end of 2009, a shortage in 2007 by the end of 2009, and a shortage in 2008 by the end of 2009, and any shortage in the early portion of 2009 by the end of 2009.

[21] State goals expressed by the Governor include 33% by 2020 and, as expressed by the Commission and CEC, include 33% by 2020 in light of cost-effectiveness and risk analysis. (Energy Action Plan II, Specific Action Area 3, Key Action 5, p. 8.) The

Footnote continued on next page

6.4. Procurement Deficit Must Continue to be Reported

Several parties contend that when three years have tolled after a deficit year, there is no need to continue to report the deficit. They argue this is particularly true once a penalty has been paid.

To the contrary, the deficit must continue to be reported until it is made up or otherwise "written off" by Commission order. That is, as appropriate and reasonable, the Commission may later allow LSEs to no longer report deficits after considering the relevant reports and reasons for non-procurement. While the program is being developed, however, we decline to adopt a generalized rule permitting elimination of deficit reporting absent further consideration. Whether or not penalties apply is a separate matter, as discussed further below.

6.5. APT and IPT Based on Retail Sales

PG&E and others argue that APT and IPT should be based on actual procurement. We disagree.

The RPS legislation requires that we establish an APT, and that it grow by at least 1% per year. The APT is a target. It is initially made up of a baseline amount, calculated as a percentage of retail sale procured from renewable energy. (§ 399.15.) This is the only time actual procured energy is used in relationship to the targets. Going forward, the APT is made up of the prior year's APT plus an IPT. The required minimum annual growth reflected in the

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Assigned Commissioner has sought comment on flexible compliance after 2010, including consideration of the 33% goal. (August 21, 2006 Scoping Memo, Attachment A, p. 12.) Based on an additional record, we may later address whether flexible compliance regarding makeup of deficits on the path of reaching 33% require an entity to procure more than 33% in any year.

IPT is relative to actual retail sales per year. (§ 399.15(b)(1).) Neither the APT nor IPT are related to actual renewable procurement (other than once, when creating the baseline). Rather, each is a target related to retail sales. Actual procurement is measured against targets to assess progress. Actual procurement does not reset the targets.

Moreover, banking surpluses would be largely or completely meaningless if actual results were automatically incorporated into the APT for the next year (because there could never be a surplus when calculated based on actual procurement rather than a target). Similarly, some deficits might never need to be made up (at least before 2013, based on three year carry forward), and APTs could actually decrease year to year, if actual under-procurement in any year was essentially "forgiven" by only increasing the target by 1% from the prior actual deliveries (rather than 1% of retail sales).

Thus, we do not base the target for the next year on the actual procurement result in the prior year. Rather, we agree with the comment that an "LSE's targets should not be affected by its actual procurement." (SCE Comments, p. 25.)

6.6. Estimation of Penalties

Several parties state that penalties should not be estimated with the report due each March. Rather, they assert that one of the four reasons stated in D.03-06-071 permitting non-compliance may apply, and no penalty is "automatic," as might be inferred from a penalty calculation. We agree no penalty is "automatic," but are unconvinced that a penalty should not be estimated and reported.

The estimated penalty related to a reported deficit may be calculated when the deficit in any particular year is known. That does not make the penalty due

and payable. Rather, parties are correct that the LSE may identify one of the four conditions which permit deferral or temporary waiver. (D.03-07-071, pp. 50-51). Alternatively, the LSE may seek to demonstrate lack of effective competition, that deferral promotes ratepayer or program interests, or other good cause. (D.03-06-071, p. 53; D.03-12-065, p. 8.)

The ability to assert deferral or temporary waiver, however, does not excuse stating an estimated potential penalty. Rather, the report each March and August (with May update) should state the applicable deficit for the prior year, if any, and the accompanying estimated penalty. The same report may cite earmarking or another reason why the penalty is, or should be, deferred or temporarily waived. We will then assess the stated reason why a penalty should be deferred or temporarily waived. (See D.03-06-071, p. 53.) We may hold hearings, if necessary and appropriate. (See R.06-05-027, p. 5; August 21, 2006 Scoping Memo in R.06-05-027, p. 3.) If we determine the reason is insufficient or inadequate, we will take the appropriate action at that time. Knowing the estimated penalty will reasonably inform respondents, parties and the Commission of relevant information during consideration of appropriate action, if any.

PG&E asserts that, as a publicly traded corporation, it must disclose events that have a potentially adverse impact upon the value of its stock. PG&E contends that the requirement to report an estimated penalty presumes wrong-doing, is overly broad, will create confusion over actual liability, and unnecessarily harms PG&E's reputation even if PG&E is later determined to have acted reasonably. PG&E concludes that an LSE should not be required to include a penalty calculation with its procurement reports.

We are not convinced. PG&E fails to convincingly show that its disclosure obligation, if any, is not already reasonably triggered under the existing regime but would be triggered pursuant to PG&E reporting an estimated penalty. That is, we have already clearly said that the issue of pre-determined penalties will not be re-litigated. (D.03-06-071, p. 51, footnote 46.) Within this penalty structure, PG&E says it is unnecessary for an LSE to estimate the penalty because "interested parties can estimate potential penalties based upon utility's semi-annual procurement reports." (Comments on proposed decision (PD), p. 12.)

Thus, the penalty structure is not subject to future litigation, and it is reasonably easy to estimate based on periodic reports. If PG&E must disclose events that have a potentially adverse impact upon its stock, this obligation would seemingly be triggered based on the pre-determined penalty structure and the report of a deficit. We are not convinced by PG&E that stating an otherwise easy-to-calculate estimated penalty, along with one or more reasons why the estimated penalty is likely not then due and payable based on existing Commission provisions, triggers a disclosure that, if required at all, was not previously required.

We are also not convinced that it presumes wrong-doing, is overly broad, or unnecessarily harms an LSE's reputation. Rather, in its report the LSE may state one or more reasons (including one of four pre-determined reasons) why a penalty may be properly deferred. This information can be reasonably explained to the public, if and as necessary.

6.7. Ongoing Penalties

SCE and others contend that once an LSE is penalized for a deficit that has not been made up within the allowed three years, the deficit should be retired,

and no further penalties applied. We disagree and comment on this as it relates to reporting, penalties, and deferral or waiver.

6.7.1. Reporting

The deficit must continue to be reported until actual, physical deliveries satisfy the deficit. That is because the RPS program is established to achieve certain actual, physical goals: growth in procured renewable energy each year of at least 1% of retail sales, and an overall level of procured renewable energy of 20% of retail sales. It is neither framed in the law, nor in Commission decisions, such that an LSE may simply pay a penalty and thereafter be forgiven from achieving the minimum 1% growth per year, or an absolute level of 20%.

Said differently, deficits are no longer reportable only after they have been satisfied by actual deliveries of renewable energy. We agree with TURN and UCS that "deficits are retired through procurement of eligible renewable resources, not through the payment of financial penalties." (Joint Comments of TURN/UCS, p. 4.) Separately below we address other situations in which deficits may reasonably qualify for no longer being reported.

6.7.2. Penalties

Regarding penalties, SCE argues that:

> "If the deficit were not retired after the LSE is penalized on the deficit, then the LSE would be required to make up the same deficit it had already been penalized on in the next year, and the next year, and the next year, and so forth, and the LSE would be subject to double, triple, quadruple, or more penalties on the exact same kWhs of IPT deficit." (Comments, p. 24.)

We make no final decisions here regarding enforcement and penalties. Nonetheless, we note three items as guidance to LSEs.

First, the APT each year is a separate target. Each separate target must be met, subject to flexible compliance rules and possible deferral or waiver of penalties. Whether or not a deficit occurs in one year and a penalty is paid, the entire APT for the next year is a separate, enforceable target.

Second, a continuing violation of a Commission order can involve separate and distinct offenses.[22] Failure to make up a deficit from year 1 within the following three years, and continuing failure to make up that deficit in years after year 4, may expose an LSE to a penalty for the year 1 deficit each year after year 4 in which the deficit has not been made up. To that extent, SCE may be correct. This is the nature of a continuing offense and may or may not be applicable in any particular case based on the facts.

Third, pre-determined penalties are not the only remedy available to the Commission to enforce its orders. What we said before merits repeating: "We remind utilities that section 399.14(d) does not limit us to only one means to ensure compliance with the RPS program. Therefore, utilities are on notice that, if necessary, we shall use other remedies authorized under section 399.14(d)." (D.03-12-065, pp. 12-13.) In fact, each RPS-obligated LSE is on such notice.

6.7.3. Deferral or Waiver

SCE argues that the threat of unending penalties for failure to reach an APT violates fundamental rules of fairness, and fails to promote the goals of the program. As a result, SCE continues to assert that once an LSE pays a

[22] "Every violation of the provisions of this part or of any part of any order, decision, decree, rule, direction, demand, or requirement of the commission, by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense." (§ 2108.)

penalty associated with a shortfall the deficit should be retired, and the LSE should no longer be exposed to penalties. We are not persuaded.

SCE presents an example in support of its assertion that ongoing penalties produce absurd and punitive results. SCE's example assumes that a one-time shortage in 2007 cannot be filled with actual deliveries until 2013. According to SCE, this exposes the LSE to the maximum $25 million in penalties each year for 6 years, or $150 million.[23]

We restate that we make no final decisions here regarding enforcement and penalties. The focus of this order is reporting and compliance. Enforcement and penalties, if any, will be determined after LSE's have adequate opportunity to present all relevant information and defenses.

Nonetheless, SCE's example is incomplete, and thereby not compelling. It fails to address any of the many ways a penalty may be deferred or waived (e.g., insufficient response to a solicitation, earmarking, inadequate public goods funds, seller non-performance, lack of effective competition, promotion of ratepayer/program interests, showing of good cause). That is, upon a convincing showing of any of several reasons, neither the $25 million, nor the $150 million total, would be assessed.

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[23] The example assumes the LSE's APT is 15,000 GWh each year, the LSE meets this APT each year except one (2007), the LSE meets 20% in 2010, the one-time shortage in 2007 is 500 GWh, and the shortage is not filled until 2013. According to SCE, the LSE faces a penalty of $25 million per year (500 GWh at $0.05/kWh) for six years (2007-2012), for a potential total of $150 million. (SCE Comments in PD, p. 4.) SCE did not cite this example back to the record, as otherwise required by Rule 14.3. Nonetheless, we grant this limited deviation from the rules and address it here because of the apparent strongly held concern. Our additional explanation should assist parties going forward with the RPS Program.

In further support of its proposal, SCE asserts that "problems surrounding transmission and market response are beyond the control of the RPS-obligated entities" and, thus, the shortage should be waived upon payment of the penalty. (Comments on PD, p. 5.) We will amend flexible compliance rules to recognize insufficient transmission (as required by new § 399.14(a)(2)(C)(ii) added by SB 107), but expect to do so only after first hearing from parties. Existing rules address "market response" (e.g., insufficient response, lack of effective competition, other good cause). Thus, the only reasons in support advanced by SCE are (or will be) addressed in the program.

AReM also argues in support of no further reporting of a deficit upon payment of a penalty. AReM contends something must be seriously wrong if an LSE cannot make up a deficit within a reasonable time. (Comments on PD, p. 10.) We generally agree, but note again that this decision is with respect to reporting. We require continued reporting until the facts regarding non-compliance are known. We may later determine that continued reporting of a deficit is unnecessary based upon payment of a penalty and/or subsequent facts (e.g., insufficient response to a solicitation, earmarking, inadequate public goods funds, seller non-performance, lack of effective competition, promotion of ratepayer/program interests, showing of good cause). That issue, however, is beyond the scope of this order.

6.8. Alternative Approach

CEERT recommends not just an alternative methodology, but an alternative approach. CEERT asserts little if any renewable generation is being delivered from projects constructed pursuant to the RPS program, and significant program changes appear necessary to meet the 20% by 2010 goal. CEERT supports a simpler and more transparent program. DRA, GPI, SDG&E

and others endorse some or all of CEERT's recommendations (e.g., a more holistic approach, more streamlining), while others argue CEERT's proposals are beyond the scope intended for this decision.

We agree with those who contend that most of CEERT's comments are beyond the scope of the task before us. For example, CEERT recommends abandoning separate proceedings for renewables, other generation and transmission. Rather, CEERT advocates a holistic approach to renewables procurement, with full integration of renewable procurement within all other procurement and transmission planning proceedings and decisions. CEERT recommends LSE and Commission development of an integrated RPS implementation workplan. CEERT proposes phasing out of Procurement Review Groups (PRGs), with assumption of PRG duties by ED and the Commission. CEERT also proposes the streamlining of the renewable procurement process and full integration with long term procurement planning.

These are not unmeritorious goals. To the extent feasible, for example, the Legislature intends that the Commission's review of proposed RPS procurement plans be part of a general procurement plan process. (§ 399.14(a).) We expect to do so when this proceeding is completed. The August 21, 2006 Scoping Memo in this proceeding, for example, asks for specific recommendations on how and when to transition the RPS bidding process to the all-source procurement process. (Scoping Memo, Attachment A, p. 2.) Further, the Assigned Commissioner in our proceeding to integrate procurement policies and consider long-term procurement plans recently issued a Scoping Memo. (September 29, 2006 Scoping Memo in R.06-02-012.) As a result, we will there explore additional integration of the broad range of activities in complete, comprehensive long-term procurement plans.

The task here, however, is more limited. We seek to consolidate, define and clarify the sometimes complex concepts and terms used for reporting and compliance, and thereby assist the Commission and parties with reporting obligations and measurement of program progress. We agree with PG&E and several other parties that this is the time and place to make incremental improvements, and not begin an overall new course of action. (PG&E Reply Comments, p. 11.)

Nonetheless, we adopt two of CEERT's proposals. First, as CEERT recommends, we clarify and place an "end-date" on existing flexible compliance rules to promote transparent and non-discriminatory compliance, for the reasons discussed above.

Second, we order parties to develop a transparent compliance report, with adoption by the ALJ after public comment, as discussed more below. We also require a periodic report with information through 2020 which will be (or may be a component of) an integrated implementation workplan. This is consistent with CEERT's overall goals of more transparency, tracking and verification in a public venue.

7. Timing of Reports and Reporting Format

7.1. Timing of Reports

Compliance reports are now due each year on March 1 and August 1, with supplemental or amended reports due by May 1. (D.05-07-039, OP 17.) The staff draft paper proposed the following changes:

a. The March 1 report be submitted on May 1 (to coincide with LSE completion of CEC and Federal Energy Regulatory Commission (FERC) reports, facilitating use of the same data).

b. The August 1 report be deleted, with the same information incorporated in the LSE's short-term procurement plan to be filed during the 4th quarter of each year.

Parties generally agree with staff's proposal. GPI opposes delaying the March 1 report, contending that performance under the RPS program is of considerable interest. GPI argues that IOUs can submit data on March 1, as demonstrated by IOUs successfully filling March 1 reports in 2006. Also, GPI asserts it is important to get data annually as soon as possible.

We already considered and rejected both the May/November schedule, and setting reporting dates in accordance with solicitation cycles. (D.05-07-039, p. 27.) Nonetheless, the issue is before us again, and with limited exception, parties do not oppose some modification.

We agree with the goal of using common data, where feasible. We also agree that early reporting is desirable given considerable interest in this program. In pursuit of these conflicting goals, we retain the reporting dates required by prior Commission orders.

This results in a report early in the year, on March 1, timed to provide performance information on a program that continues to draw considerable interest. It permits an update, as necessary, by May 1, facilitating the use of common data. It requires a second report on August 1. If there are no changes from prior reports, on August 1 the LSE may report that result.

We decline to incorporate the second report into an LSE's filing of its short-term procurement plan. We are reassessing whether or not to continue with an annual procurement cycle. (See August 21, 2006 Scoping Memo, Attachment A, p. 1.) It is unwise to complicate that decision by linking it to a report with independent importance. Also, reports from LSEs are necessary even

if some entities need not file procurement plans (e.g., ESPs, CCAs). Thus, at least for now, reporting should be kept separate.

We note, however, that the March 1 and August 1 dates may be adjusted for good cause. These dates may be changed by request to the Commission's Executive Director, made by letter or electronic mail at least three days before the date for compliance, with service of the request on the service list and the Chief ALJ. (Rule 16.6) of the Commission's Rules of Practice and Procedure.) The Executive Director will authorize revised dates, as appropriate.

Moreover, we note that the "opportunity to supplement or amend the March filing by May 1" (D.05-07-039, OP 17) is not itself limiting. The May 1 date is an opportunity—not a requirement—to supplement or amend. Nonetheless, LSEs are obligated to keep the Commission informed of all relevant and material information on a timely basis. The opportunity to supplement by May 1 does not excuse an LSE from informing the Commission on another date where otherwise reasonable to do so. This includes upon CEC's adoption of the relevant Verification Report.

Thus, an LSE must update its March 1 report by May 1, on May 1, or after May 1, as necessary and reasonable. The Energy Division Director may set a date to coordinate filings to be made on or about May 1, as appropriate, to coincide with LSE filing of reports at other agencies. Such coordination does not require a Rule 16.6 request for extension by a party. Whether or not such other date is set, we direct each RPS-obligated LSE to file an updated report within 30 days of the date CEC adopts the relevant Verification Report.

7.2. Reporting Format

As we first specified in 2005, compliance reports must show renewable procurement by type (e.g., biomass, biogas, geothermal, small hydro, solar,

wind). They must show APT, IPT, surpluses, deficits, and other appropriate elements. (D.05-07-039, Attachment A.) Given the further clarification and further orders herein, the adopted reporting format may need modification.

GPI presents its proposed simplified reporting method with example numbers as follows:

GPI Proposed
Simplified Reporting and Compliance System

Example, Simplified Scheme	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Retail Sales	1,000	1,010	1,020	1,030	1,041	1,051	1,062	1,072	1,083	1,094	1,105
IPT		10	10	10	10	10	11	11	11	11	11
APT	100	110	120	130	141	151	162	214	217	219	221
Total Renewable Generation	100	105	106	109	126	164	195	211	217	221	221
Total Surplus / Deficit	0	-5	-14	-21	-14	13	33	-4	1	3	0
renewable as % of retail sales		10.3%	10.4%	10.6%	12.1%	15.6%	18.3%	19.7%	20.0%	20.2%	20.0%
AP Bank Balance, EOY	0	0	0	0	0	0	0	0	0	0	0
Bank Deposit / Withdrawal		0	0	0	0	0	0	0	0	0	0
Carried Deficit		5	14	21	14	0	0	4	0	0	0
Credited from yr + 1		0	0	0	0	0	0	1	0	0	0
Credited from yr + 2		0	0	0	12	0	0	3	0	0	0
Credited from yr + 3		0	13	21	0	0	0	0	0	0	0
Unretired Deficit		5	1	0	2	0	0	0	0	0	0

(Source: GPI Comments, p. 10.)

We adopt the GPI proposed reporting system as the structure and foundation upon which reports should be based. To this report must be added the estimated penalty, as discussed above. The report must also state under "total renewable generation" the amount procured or projected to be procured from each renewable resource type.[24] In addition to the amount of energy, it

[24] For example, it must show how much is procured or projected to be procured from biomass, biogas, geothermal, small hydro, solar, wind. (See D.05-07-039, Appendix A.) Parties may propose other categories, and the ALJ may adopt other categories, as appropriate and reasonable (e.g., solar thermal, photovoltaic). The requirement to show the amount by type is only with respect to total procurement. It does not apply to other

Footnote continued on next page

must also state the percentage of each resource type related to the total.[25] It must also state relevant information with regard to each earmarked contract, to the extent any earmarked contract is being used.[26] The report must state each reason an LSE asserts in support of deferral or waiver of any penalty related to any reported deficit. If no reason is stated, the penalty should be paid. If paid (or to be paid), the report should state all relevant information (e.g., amount, date, to whom paid). Finally, the report must state anything else an LSE believes is necessary for a full and complete reporting to the Commission in order to allow an informed decision on compliance. This may include, for example, footnotes and other explanatory information as necessary and reasonable to fully and accurately describe any unique or particular situation.

We direct PG&E, SCE and SDG&E to develop and propose a draft compliance report, starting with the GPI proposed spreadsheet and format, and

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lines on the report (e.g., IPT, APT, total surplus/deficit, AP bank balance, bank deposits/withdrawals).

[25] For example, it might show actual renewable generation from biomass 30 kWh (10%), biogas 45 kWh (15%), geothermal 75 kWh (25%), wind 150 kWh (50%), and total 300 kWh (100%). The APT each year (e.g., 12% in year "x," with 20% in 2010) applies to total procurement only. There are no individual targets by renewable resource type. Nonetheless, the Governor's Executive Order S-06-06 seeks 20% biopower within the 20% target by 2010. Therefore, among other things, a statement of the percent of each resource type will assist tracking of biopower as a percentage of total procurement to assess progress toward the Governor's goal. If biomass and biogas are separate items but part of bioenergy, the report should list a subtotal for biopower.

[26] The energy from an earmarked contract shall be shown in the year in which physical delivery is actually expected, not the year to which it may be "administratively" applied. Text, a footnote, or other device, may be used to show how the LSE is applying the energy to a prior year consistent with the 25% IPT factor to support temporary deferral or waiver of a penalty.

consistent with the revised, adopted reporting methodology adopted herein. The proposal shall include entries as appropriate for each year beginning with 2003 (the baseline beginning of the RPS Program) and through the reporting year, and at least three years forward (whether or not any surpluses are banked forward, or deficits are carried forward). The proposal shall also clearly identify the data categories which are expected to be publicly available and those for which confidential treatment may be sought (consistent with Commission orders and guidance in D.06-06-066).

The three large IOUs shall collaborate on this with the staffs of the Commission and the CEC beginning today. The draft proposal will be filed in this docket, and served on the service list, within 30 days of the date this order is mailed. If a consensus is reached among the three IOUs, the consensus reporting spreadsheet and format will be filed and served. If no consensus is reached, PG&E, SCE and SDG&E shall each file and serve its own proposal. The three IOUs should accommodate the participation of other LSEs and parties to the extent other LSEs and parties are able and wish to participate.

If necessary or useful, ED staff should then hold a workshop. Whether or not a workshop is held, comments on the proposal shall be filed and served within 21 days of the date the proposal is filed, and reply comments within 7 days of the date comments are filed. The assigned ALJ may modify these dates upon request of parties, or as appropriate.

After reviewing comments, the ALJ should by ruling file and serve a standardized reporting spreadsheet and format. Each LSE shall use this standardized reporting spreadsheet and format for filing each report going forward. In addition to the report in the standardized format, an LSE may submit another, separate report in another format or with other information to

the extent it believes another format or other information is necessary to fully and accurately describe its particular situation.

7.3. Updated Compliance Reports and Possible Enforcement

The ALJ should issue a ruling as soon as the standardized reporting spreadsheet and format is determined. The ruling should set a date for all applicable LSEs to file and serve updated compliance reports.

Regarding the first two reports, one should be for 2004 and one for 2005. Each report will only need to demonstrate compliance if the LSE has met its APT, and should show banking of surplusses, if any. If the LSE reports an energy deficit, the accompanying penalty should be estimated and reported, whether or not the LSE asserts temporary deferral of the penalty. If the LSE reports an energy deficit of less than or equal to 25% of its IPT, the report does not need to state a reason for non-compliance, but should state whether or not it is carrying the energy deficit forward and for how many years (up to three). If the LSE reports an energy deficit greater than 25% of its IPT, the report must state the reason, if any, why the energy deficit in excess of 25% should be permitted to be carried forward for up to three years, how many years the LSE seeks to carry the energy deficit forward (up to three), and why any penalty associated with the energy deficit should be temporarily deferred or waived. Alternatively, the LSE may simply pay the penalty.

Whether the first reports show either compliance (with or without a surplus) or an energy deficit (with or without reasons in support of penalty deferral), the ALJ should schedule a round of comments, and motions for hearing, as necessary. This will provide an opportunity to hear from parties whether or not there is any dispute regarding either asserted compliance or the

request for deferral or temporary waiver of a penalty. The ALJ may issue a ruling, or prepare a proposed decision if Commission action is required, to conclude the review process for 2004 and 2005, as necessary. A tentative schedule for determining RPS compliance is in Attachment B.

7.4. Ongoing Reporting

Going forward, each LSE's periodic compliance report (e.g., March and August, with May updates), shall be filed with the Energy Division Director, and served on the service list. It need not be filed in this docket.

Finally, each LSE should also file with the ED Director, and serve on the service list, a report that states its targets and procurement for the current year, and projects targets and procurement each year forward through 2020. Projected procurement should clearly differentiate energy to be procured from (a) existing and/or signed contracts and resources and (b) other contracts and resources (e.g., from a future solicitation, under negotiation, to be built). This report should be made once per year as part of the second report (i.e., due August 1 unless modified by the Executive Director). This requirement should expire with the report filed in 2010.

7.5. Updated Reporting Spreadsheet and Format

The Executive Director may change the standardized reporting spreadsheet and format as necessary going forward if changes are necessary after this RPS proceeding is closed. Such modification, for example, may permit exclusion of historic years as they become less relevant after a few cycles of reports. If modified by the Executive Director, the modification should be in writing, served on each LSE subject to the RPS program, and served on the service list.

7.6. Requests for Confidential Treatment

If an LSE seeks confidentiality protection for information contained in the reports discussed in this section, it shall comply with the substantive and procedural rules set forth in D.06-06-066, the Commission's recent decision in its confidentiality proceeding (R.05-06-040), and any subsequent decision issued in the same, or subsequent confidentiality, proceeding. Each LSE should be aware that D.06-06-066 finds that most RPS information should be publicly filed and is not entitled to confidentiality protection.

8. Additional Resources

We take this opportunity to address the administrative and technical process, and place resource needs in perspective. As a result, for the reasons explained below, we authorize the Executive Director to hire and manage one or more contractors to perform certain tasks, with cost recovery from ratepayers through the large IOUs.

We recently adopted a schedule for the 2006 solicitation that granted PG&E, SCE and SDG&E more time, but reduced other time (compared to that in the ALJ's proposed order) for the Commission and its staff to perform its many jobs. We did this to assist IOUs reach program goals, while still seeking to maintain the process on an annual cycle completed by the end of the calendar year. We authorized the ED Director to modify the schedule, as needed, but our goal remains to complete the 2006 solicitation by the end of 2006, or no later than early 2007. (D.06-05-039, pp. 59-60; also OP 3.) Nonetheless, for good cause the ED Director has already extended the schedule. This puts further strain on the Commission and its staff.

We are implementing a program with the goal of maintaining and creating a resource base equal to 20% of retail sales within a very few years. If the

underlying resource base for those sales is 40,000 megawatts (MW), for example, 20% is 8,000 MW. This is a very large quantity of resources, and our implementation and administration is an important task that often involves many significant technical details and Commission resources.

At the same time, we must be responsive to LSE needs to accomplish program goals in order to advance the public interest. We can do this best if LSEs supplement Commission resources. Therefore, we authorize the Executive Director to hire and manage a contractor, or contractors, to provide technical and other support to assist staff address some or all the following areas:

1. refining and calculating the market price referent
2. evaluating the impact of increasing California's RPS goals from 20% by 2010 to 33% by 2020 through further technical analysis (e.g., energy, economic and environmental modeling of renewable technologies; analyzing the impact of RPS generation on transmission planning, construction and operation; calculating the rate impact of the RPS Program)
3. others as necessary to promote RPS Program goals (e.g., integrating energy efficiency, renewables, demand response, distributed generation and climate change).

The Commission will send approved invoices to PG&E, SCE and SDG&E for payment of these costs on a proportional basis in relation to the annual retail sales used for the RPS Program, as reported in each March 1 report. PG&E and SDG&E are authorized to establish a Renewables Portfolio Standard Costs Memorandum Account (RPSCMA). SCE is authorized to modify its existing RPSCMA to add a line item to record third party costs associated with RPS technical contractor activities invoiced through the Commission. The IOUs are authorized to record these RPS third party technical support costs into the RPSCMA until December 31, 2010. These costs may be recorded when paid, for

later recovery via generation rates. We shall limit the total amount (that will in turn be prorated to the three IOUs) to a cap of $400,000 annually. Other LSEs are excused (since we do not regulate the rates of ESPs and CCAs, while small and other IOUs will have fewer sales compared to those of the three IOUs, making the complication of additional invoicing for a small amount of money more than the benefit of spreading the cost to all IOUs).[27]

9. Categorization and Need for Hearing

The Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearing is necessary. These determinations were affirmed in the August 21, 2006 Scoping Memo and Ruling of the Assigned Commissioner, and a method established for setting hearing, as needed. No appeal of the category determination has been filed. No party moved for hearing, and no hearing was determined necessary by the ALJ. We affirm that no hearing is needed on the matters before us in this decision.

10. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Burton W. Mattson is the assigned Administrative Law Judge (ALJ) for this proceeding.

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[27] An expense of $400,000 would in turn be charged approximately as follows: $180,000 for PG&E, $180,000 for SCE and $40,000 for SDG&E. If cost recovery was spread more widely, a small IOU or other entity with 10% of SDG&E's retail sales would be assessed about $4,000, or approximately $333 per month. The additional billing complexity for such a small recovery outweighs the benefit of spreading the cost to more customers.

11. Comments on Proposed Decision

The proposed decision of ALJ Mattson in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and Rule 14.2(a) of the Rules of Practice and Procedure. Comments were filed on October 4, 2006 by PG&E, SCE, SDG&E, TURN, DRA, AReM, GPI and CEERT. Reply comments were filed on October 10, 2006 by PG&E, SCE, AReM, GPI, TURN, UCS and Mountain Utilities.

We change or clarify the proposed decision based on comments and replies relative to several items. This includes (a) changing the formula for the 2003 initial baseline procurement amount; (b) clarifying that reasons for deficit carry-forward are permitted relative to under-procurement for anything over 25% of the IPT (not just the remaining 75% of the IPT); (c) explaining that existing flexible compliance rules apply through 2009, and rules for other conditions (e.g., steady-state, growth to 33%) will be adopted in the near future; and (d) reinforcing that a surplus in any year may be banked forward indefinitely. We also make other changes to further clarify the order based on parties' comments. Where appropriate, we ignore comments not based on the record, and those which merely reargue positions already taken in filed documents. (Rule 14.3.)

Several parties recommend changes to the proposed decision based on passage of SB 107. We generally decline to make changes before we hear from parties. For example, we want to first hear from parties before changing flexible compliance rules relative to non-procurement excuses due to inadequate transmission. This is also true regarding flexible compliance for all years (including before and after a retail seller procures at least 20% of total retail sales from eligible renewable energy resources). As we recently did in another

decision, however, we make some limited changes to promote efficiency given the short period of time between the date of this decision and January 1, 2007. (See D.06-10-019, p. 10.)

Findings of Fact

1. The February 2006 initial proposal tracks procurement in three categories (baseline, annual, incremental) and, among its attributes, this approach may result in an LSE being in compliance with the overall AP but not having the right mix of BP and IP.

2. An APT-based reporting methodology measures each of the most important elements of an LSE's renewable procurement: baseline, increasing procurement by at least 1% each year, and achieving 20% by 2010.

3. Compared to the initial proposal, an APT-based system is simpler; easier to understand and administer; reasonably incorporates necessary incentives; is consistent with the letter and spirit of the law; and, based on test data, is reasonable.

4. In 2004, only 10.2% of the state's electricity was produced by renewable resources and, in order to reach 20% by 2010, California will need to approximately double its existing renewable resource base.

5. Existing renewable resources cannot provide enough output to reach state-adopted renewable resource goals; rather, significant amounts of new renewable generation are required, and even more will be required if some existing resources are retired, or there is positive growth in retail sales.

6. An APT-based reporting method is consistent with CEC's recommendation for a more transparent, less complex RPS program.

7. Carrying deficits forward is a function of flexible compliance rules, not the reporting methodology.

8. It does not take a three part reporting system to accomplish the RPS program purpose of stimulating new investment in renewable resources.

9. An APT-based system, with compliance and enforcement based on APT, will provide a powerful incentive for new investment.

10. There is no credible evidence of any incremental benefit of separately enforcing a BPT and an IPT, while it is clearly more complex and costly to do so, and the incremental benefits, if any, will not outweigh the complexity and cost.

11. The ultimate outcome in either reporting system is the same: 20% by 2010.

12. Test data used with the two reporting schemes shows that either system requires an immediate and sustained procurement effort by each LSE and, given that existing renewable resources makeup only about 10% of the existing resource base, the majority of the eligible procurement must come from new renewable resources.

13. Commission flexible compliance rules are currently stated in relationship to APT; the initial proposal corrected this to IPT, and no party initially commented on the clarification relative to IPT.

14. Flexible compliance rules balance flexibility and administrative ease for the LSE with the state's interest in monitoring the progress and success of the program; they do this by recognizing that acquisition of renewable resources may not be smooth, taking into account reasonable flexibility in program administration for each LSE, but also recognizing that the Commission does not want any LSE to get so far behind in its procurement that the LSE simply cannot

meet the 20% by 2010 goal, nor that any LSE should be permitted to carry forward deficits indefinitely.

15. Flexible compliance rules which balance these competing goals are fundamentally reasonable only in relationship to IPT, not APT.

16. In accelerating the renewables goal from 20% by 2017 to 20% by 2010, the absolute deadline in 2017 (as stated in law and Commission decision) was similarly accelerated to be an absolute deadline in 2010, as the Commission unequivocally made clear (D.06-05-039, FOF 8).

17. Existing flexible compliance rules are in the context of reaching the 20% goal (e.g., time to conduct solicitations and build new plant); the existing rules lose considerable relevance once the 20% goal is reached; and whether or not the existing rules have relevance in any other context (e.g., variations in total retail sales, normal variations in resource output) is currently the subject to parties' comment pursuant to the August 21, 2006 Scoping Memo.

18. Banking of procurement surpluses, and rules for carry-forward of deficits, would be largely or completely meaningless, and APTs could actually decrease over time, if actual procurement results were used as the basis of the APT for the next year.

19. Estimation of a penalty related to a reported deficit does not make the penalty due and payable, but knowing the estimated penalty can potentially inform respondents, parties and the Commission of relevant information during consideration of appropriate action, if any.

20. The RPS program is established to achieve certain actual, physical goals (e.g., growth in procured renewable energy each year of at least 1% of retail sales, an overall level of procured renewable energy of 20% of retail sales), and the

program is designed to provide incentives for LSEs to reach these goals, not to permit waiving these goals by the payment of penalties.

21. The RPS Program involves maintaining and creating a very large quantity of resources in a very few years, and is a very important task involving many significant technical details.

22. Central California Power was erroneously included as a respondent in the OIR for this proceeding.

Conclusions of Law

1. The intent of the RPS Program is to increase the amount of California's electricity generated from renewable resources to meet several identified purposes.

2. The Commission has flexibility to clarify or adopt modifications to prior decisions, as necessary, where past decisions were ambiguous, led to confusion, or turned out to not be the best method for achieving RPS program goals.

3. The adopted reporting methodology applies equally to all LSEs, with unique elements of implementation for ESPs, CCAs, or small and multi-jurisdictional utilities, if any, addressed in R.06-02-012.

4. The reporting methodology in Attachment A, based on AP and APT, should be adopted as the methodology to guide LSE reporting of RPS program targets and results, thereby promoting a uniform understanding of necessary concepts and terms, and permitting consistent reporting of program progress and results.

5. An APT-based method is consistent with the law since it uses an initial baseline for the purpose of setting APTs, increases the APT by at least 1% of prior year retail sales per year, and provides a powerful incentive for new investment in renewable generation, all as required by the letter or spirit of the law.

6. The law does not specifically direct Commission implementation of the legislative intent to stimulate new investment by separate creation and treatment of baseline, annual and incremental categories; flexible compliance rules for each of three categories; nor enforcement in each of three categories; and does not uniquely identify and exclusively create three separate categories (baseline, annual, incremental) in a reporting, compliance and enforcement scheme.

7. The adopted methodology with respect to flexible compliance under existing rules should clearly permit inadequate procurement in year 1 to be made up within the following three years (i.e., year 2, year 3, and/or year 4).

8. The adopted method should correct the application of existing flexible compliance rules from APT to IPT.

9. The requirement of 20% by 2010 has been clearly stated but should be clearly restated here.

10. An electrical corporation that has reached 20% in a given year is excused from increasing its procurement the next year (or subsequent years) only if it has met its APT in each of the prior years, or is otherwise exercised by the Commission.

11. Deferral of a deficit in 2009 for up to three years after 2009 is permitted under the existing flexible compliance rules; this may require in excess of 20% to be procured in some years after 2009 until all deficits are made up.

12. A procurement deficit should continue to be reported until it is made up with actual energy deliveries, whether or not three years have tolled after the deficit year, and whether or not a penalty has been paid, unless and until the Commission subsequently finds a deficit need not continue to be reported.

13. APT and IPT are targets based on retail sales, not in relationship to the actual procurement of renewable energy in the prior year.

14. Predetermined penalties that apply with any reported deficit should be estimated and reported with each compliance report.

15. Each APT each year is a separate target, and each separate target must be met, subject to flexible compliance rules.

16. A continuing violation of a Commission order can result in separate and distinct offenses such that failure to make up a deficit from year 1 within the following three years, and continuing failure to make up that deficit in years after year 4, may expose an LSE to a penalty for the year 1 deficit each year after year 4 in which the deficit has not been made up.

17. Two of CEERT's proposals should be adopted: (a) clarification and placing an "end-date" on existing flexible compliance rules and (b) development of a transparent compliance report with a periodic report of information through 2020 to assist with assessing each LSE's implementation workplan.

18. The requirement for compliance reports each year on March 1 and August 1 (with updates by May 1) should not be modified in this order, but RPS-obligated LSEs should be required to file an updated report within 30 days of CEC adoption of the relevant Verification Report.

19. The reporting format should continue to include all the data previously specified by the Commission, modified to implement the GPI proposed reporting structure, and to include the items specified in this order (e.g., estimated penalties, procured energy amounts and percent, earmarked contract information, reasons in support of deferral or waiver, other; also data through 2020 in the second report each year).

20. PG&E, SCE and SDG&E should develop and propose a final reporting format as provided in this order, subject to comment and adoption by the ALJ, as provided herein.

21. Compliance reports going forward, except as otherwise directed herein or by the ALJ, should be filed with the ED Director, and served on the service list, but not filed in this docket.

22. The Executive Director may change the standardized reporting spreadsheet and format as necessary after this proceeding is closed, subject to reasonable notice.

23. The Executive Director should hire and manage one or more consultants to provide technical support and assist staff with certain tasks, with cost recovery on a proportional basis from the three largest IOUs, as provided herein.

24. PG&E, SCE and SDG&E should be authorized to establish a RPSCMA, or modify existing RPSCMAs, to record these RPS technical contractor costs into the RPSCMA until December 31, 2010; the costs should be recorded when paid; each IOU should be authorized to later apply for authority to recover these costs via rates; the costs should be subject to a limit on the total prorated amount to the three IOUs of $400,000 annually.

25. Central California Power should be removed as a respondent in this proceeding, while remaining a party.

26. This order should be effective immediately so that respondents, parties and the Commission may proceed without delay to finalize the reporting format as ordered herein, updated reports may be filed, and compliance and enforcement may proceed.

O R D E R

IT IS ORDERED that:

1. The document in Attachment A ("Renewables Portfolio Standard (RPS) Rules for Reporting and Determining Compliance with RPS Procurement Targets") is adopted to guide each RPS-obligated load serving entity (LSE) on reporting of RPS Program targets and results, as further discussed in, and subject to, the text of this order.

2. Flexible compliance as previously ordered by the Commission is permitted within the following parameters:

   a. Flexible compliance shall be with respect to the incremental procurement target (IPT), not the annual procurement target. Up to 25% of the IPT may be deferred for no more than three years without stated reason or Commission approval; an amount over 25% of the IPT may be deferred for no more than three years based on a stated reason consistent with Commission orders.

   b. Carrying forward of an energy deficit for up to three years after the year the deficit is incurred shall apply to a deficit first incurred up to or through 2009. It shall not apply to a deficit first incurred in 2010 or thereafter, subject to further Commission order.

   c. The reportable target by 2010 is 20% of annual retail sales, and the reportable result is actual eligible renewable energy deliveries. Failure to meet the 20% renewable procurement obligation by the end of 2010 shall result in application of pre-determined penalties, unless the Commission reduces or waives such penalty based on a compelling showing by the LSE.

3. In addition to other compliance reports addressed in prior Commission orders (e.g., March 1, August 1, and May 1 update), each RPS-obligated LSE shall file and serve an updated compliance report within 30 days of the date the California Energy Commission adopts the applicable and relevant Verification Report related to energy procurement for a reportable year.

4. Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E) shall develop a draft compliance report as described in this order. This work shall be done in collaboration with the staff of the Commission, the staff of the California Energy Commission, other LSEs, and parties who wish to participate. PG&E, SCE and SDG&E shall each file and serve a draft proposal, or shall jointly file a consensus proposal if one is reached, within 30 days of the date this order is mailed. Parties may file comments. Such comments shall be filed and served within 21 days of the date the proposal(s) is filed, and reply comments within 7 days of the date comments are filed. The Administrative Law Judge (ALJ) may change these dates as necessary. After review of comments, the ALJ shall by ruling file and serve a final, standardized report to be used by each RPS-obligated LSE. The Executive Director may subsequently change the standardized reporting format, as necessary and reasonable, after this proceeding is closed.

5. The ALJ may issue a ruling regarding the filing and service by certain LSEs of RPS compliance reports for 2004 and 2005, and the first report, ordered below, containing data through 2020. Thereafter, each such periodic RPS Program compliance report shall be filed with the Energy Division Director, and served on the service list, but not filed in this docket, unless directed otherwise by the ALJ or the Commission.

6. In addition to (or as part of) other compliance reports, each RPS-obligated LSE shall file with the Energy Division Director, and serve on the service, a report that states its targets and procurement for the current year, and projected for each year through 2020. This report shall be filed and served once per year concurrently with (or as part of) the second report (i.e., due August 1). This requirement shall expire with the report filed in 2010.

7. If any LSE seeks confidentiality protection for information contained in the reports discussed in this decision, it shall comply with the substantive and procedural rules set forth in D.06-06-066, the Commission's recent decision in its Confidentiality proceeding, R.05-06-040, and any subsequent decision issued in the same or subsequent proceeding.

8. The Executive Director may hire and manage one or more contractors to perform tasks described in this order for the purpose of advancing RPS Program goals. Such costs, if any, shall not exceed a total annual amount of $400,000, and the total shall be paid by PG&E, SCE and SDG&E on a proportional basis in relationship to retail sales reported each year in the March 1 RPS compliance report (or other first report each year as directed by the Executive Director). PG&E and SDG&E are authorized to establish a Renewables Portfolio Standard Costs Memorandum Account (RPSCMA) for the purpose of recording such payments. SCE is authorized to modify its existing RPSCMA to record such payments. PG&E, SCE, SDG&E are authorized to record these RPS technical contractor costs into the RPSCMA until December 31, 2010. These costs shall be recorded when paid, and each company may later apply for recovery in rates.

9. Central California Power shall be removed as a respondent but retained as a party in this proceeding.

10. This proceeding remains open.

This order is effective today.

Dated October 19, 2006, in Fresno, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners

Commissioner Dian M. Grueneich, being necessarily absent, did not participate.

ATTACHMENT A

RENEWABLES PORTFOLIO STANDARD (RPS)
RULES FOR REPORTING AND DETERMINING COMPLIANCE
WITH RPS PROCUREMENT TARGETS

Renewables Portfolio Standard (RPS)

Rules for Reporting and Determining Compliance with RPS Procurement Targets

Prepared by the Energy Division of the California Public Utilities Commission

In collaboration with the Renewable Energy Program
of the California Energy Commission

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I. Introduction

California Senate Bill (SB) 1078 established the California Renewables Portfolio Standard (RPS) program with the stated intent of ensuring that 20% of electricity purchases in California come from eligible renewable energy sources by 2017. The legislation requires all load-serving entities (LSEs) to which it applies to increase their renewable energy procurement by at least 1% of retail sales per year.[1] The State's Energy Action Plan (EAP) accelerated the achievement of the 20% RPS target by seven years to 2010. The 20% by 2010 target has been adopted as state policy in the *2003 Energy Report*, *2004 Energy Report Update*, and *2005 Integrated Energy Policy Report*, and the California Public Utilities Commission (CPUC) reiterated its commitment to reaching this objective in the Order Instituting Rulemaking (R.)04-04-026 issued on April 28, 2004[2] and in Decision (D.) 05-07-039, D.05-11-025 and D.06-05-039.[3] The 20% by 2010 target will be added as a requirement of the code in 2007.[4]

The legislation also requires that the CPUC develop flexible rules for compliance including, but not limited to, permitting electrical corporations to apply excess procurement in one year to subsequent years or inadequate procurement in one year to not more than the following three years.[5]

RPS-obligated LSEs are currently required to report twice annually to the CPUC regarding their renewable energy procurement and to show whether they meet the requirements of the RPS program. The CPUC has developed flexible compliance rules allowing banking of surplus procurement and limited carrying forward of deficits, and has also laid out some specific conditions under which LSEs may demonstrate allowable reasons for noncompliance (see Section IV below).

A clear set of procurement target equations, definitions of RPS-eligible procurement and flexible compliance rules will help LSEs report on and evaluate progress toward RPS-eligible procurement, and will help CPUC, the California Energy Commission (CEC) and interested parties evaluate progress toward RPS goals. This white paper opens with a review of the CEC and CPUC roles in RPS reporting and compliance and then clarifies the equations, definitions and rules for reporting and compliance that apply to all RPS-obligated LSEs.[6]

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[1] See Public Utilities Code § 399.15(b)(1).

[2] See R.04-04-026, p. 6.

[3] See D.05-07-039, p. 14, D.05-11-025, p. 24, CoL 1 and D.06-05-039, pp. 2, 5, 21-22.

[4] See SB 107 §399.15(b)(1).

[5] See SB 1078, § 399.14(a)(2)(C).

[6] RPS-obligated LSEs include investor-owned utilities (including large, small and multi-jurisdictional utilities), energy service providers (ESPs) and community choice aggregators (CCAs). Exceptions to the reporting and compliance rules listed here, if any, that apply to ESPs, CCAs, and small and multi-jurisdictional utilities will be determined in R.06-02-12.

II. Overview of CEC and CPUC Responsibilities

Pursuant to SB 1078, CPUC and CEC collaboratively implement California's RPS program. The division of labor pursuant to the legislation and collaborative agreement is as follows:

CPUC is responsible for:

- Approving or rejecting contracts executed to procure RPS-eligible electricity for most LSEs
- Establishing each LSE's initial baseline procurement amount and adjusting the baseline going forward as needed
- Determining each LSE's procurement targets
- Developing and implementing flexible compliance rules
- Making determinations regarding RPS compliance
- Administering enforcement for noncompliance
- Developing rules that CEC may use to identify RPS-eligible procurement

CEC is responsible for:

- Certifying renewable generating facilities as RPS-eligible
- Verifying the RPS-eligibility of energy procured to meet RPS targets[7]
- Verifying, to the extent possible, that RPS procurement exclusively serves the California RPS and does not support a separate market claim for renewable energy procurement
- Verifying that RPS procurement from out-of-state facilities meets delivery requirements
- Applying statutory requirements and CPUC's rules, where applicable, to identify RPS-eligible procurement

III. RPS-Eligible Procurement and Procurement Targets: Definitions and Methodologies

RPS-obligated LSEs are only required to comply with one RPS procurement target each year, the annual procurement target (APT), rather than two separate procurement targets, baseline and incremental. LSEs may use any type of RPS-eligible procurement to meet the APT, subject to the applicable flexible compliance rules.

[7] The California Energy Commission will develop and refine its verification of RPS procurement in its *RPS Eligibility Guidebook* based on legislation and on the RPS reporting and compliance rules adopted by the CPUC.

A. RPS-Eligible Procurement

RPS-eligible procurement (sometimes referred to herein as "eligible procurement") is defined, pursuant to § 399.12, as procurement from a facility that meets the definition of 'in-state renewable electricity generation facility' in §25741 of the Public Resources Code, subject to certain restrictions.[8] An LSE may use eligible procurement to meet any portion of its APT. Any RPS-eligible procurement may be used to meet the IPT, which is a component of the APT. Specifically, procurement from eligible resources such as small hydro, geothermal, and municipal solid waste combustion facilities may be used to satisfy any portion of an LSE's APT.

The CEC must list procurement as RPS-eligible in a procurement verification report in order for it to be used to meet RPS procurement targets.

B. Annual Procurement Target (APT)

An LSE's APT for a given year is the amount of renewable generation an LSE must procure in order to meet the statutory requirement that it increase its total eligible renewable procurement by at least 1% of retail sales[9] per year. All RPS procurement targets, baseline procurement amounts, and actual procurement amounts in years with RPS targets should be listed as both megawatt-hour (MWh) amounts and as percentage levels in RPS compliance reports.

1. APT Calculation Methodologies

i. There is No APT in 2003, Only an Initial Baseline Procurement Amount

There is no APT for 2003 because 2003 was the first year of the RPS program.[10] Instead, each large IOU has a 2003 initial baseline procurement amount that is used for determination of APTs in 2004 and beyond.

For purposes of setting annual procurement targets, the initial baseline for each electrical corporation is the actual percentage of retail sales procured from eligible renewable energy resources in 2001, and, to the extent applicable, adjusted going forward.

The 2003 initial baseline procurement amount for the IOUs is calculated using the following equation:

2003 Initial Baseline Procurement Amount = 2001 RPS-eligible procurement + 1% of 2001 total retail sales

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[8] See §399.12 for restrictions on RPS eligibility of certain hydroelectric facilities and municipal sold waste facilities.

[9] Retail sales means total retail electrical sales in California, including power sold to an LSE's customers from DWR contracts. See § 399.15(b), D.03-06-071, p. 7, fn. 9 and R.04-04-026, p. 5.

[10] As discussed in D.03-06-076, pp. 35-36, CPUC set a 2002/2003 interim procurement benchmark for renewable procurement, but since the benchmark was set before the enactment of SB 1078 and the creation of the RPS program, it is not an RPS procurement target.

Any 2003 RPS-eligible procurement that an LSE procured in excess of 1% of 2001 total retail sales should be excluded from the 2003 initial baseline procurement amount; rather, it should be counted as surplus procurement that can be used to meet future year RPS procurement targets.[11]

ii. 2004 APT Calculation

2004 is the first year of RPS compliance for obligated LSEs.[12] 2004 is the first year for which each LSE that was in operation in 2003 (except ESPs) has an APT.[13]

The 2004 APT is calculated using the following equation:

2004 APT = 2003 initial baseline procurement amount +
2004 IPT (1% of 2003 total retail sales)[14]

iii. 2005-2009 APT Calculation

The 2005-2009 APT consists of two separate components:[15]

a. Prior year APT: the LSE's renewable procurement requirement in the prior year that the utility must retain in its portfolio.

b. Incremental procurement target (IPT): 1% of the previous year's total retail electrical sales (see section III.B.2. for discussion of the incremental procurement target)

The 2005-2009 APT is calculated using the following equation:

Current year APT = prior year APT + current year IPT

Table 1: Sample 2005 – 2009 Procurement Target Calculations (kWh)

#		2005	2006	2007	Calculation
A	Retail Sales	1000	1000	1000	- -
B	Incremental Procurement Target	10	10	10	Prior year A * 1%
C	Annual Procurement Target	510	520	530	Prior year C + B

[11] See D.04-06-014 Appendix B, p. B-1.

[12] One exception is for ESPs that were in operation since at least 2005. For these ESPs, the baseline year is 2005 and the first APT is in 2006. See D.06-10-019, pp. 11-12 for a discussion of how the 2005 baseline procurement amount and the 2006 APT are to be calculated for such ESPs.

[13] By analogy, any RPS-obligated LSE coming into operation after 2003 will have its first APT in its second year of operation. The APT for such an LSE will be calculated by adding its first year baseline procurement amount to its second year IPT (see section III.B.2. below for a discussion of IPT.)

[14] The CPUC may set the IPT amount above 1% to meet state goals. (D.04-06-014, p. B1).

[15] See R. 04-04-026, p. 5.

iv. APT Calculation for 2010 and the Years Following

The APT in the years 2010 and beyond is calculated using the following equation:

APT = 20% of prior year total retail sales[16]

2. Incremental Procurement Target (IPT)

The incremental procurement target (IPT) represents the amount of RPS-eligible procurement that the LSE must purchase, in a given year, over and above the total amount the LSE was required to procure in the prior year. An LSE's IPT equals at least 1% of the previous year's total retail electrical sales, including power sold to a utility's customers from its DWR contracts.[17] Many LSEs will need to exceed the 1% incremental annual procurement increase in at least one year in order to achieve the required 20% by 2010.

As stated in Section III.A above, any RPS-eligible procurement is eligible to count towards meeting the IPT or any other portion of the APT.

In the years 2004-2009, the IPT is a portion of the APT and does not stand separately from the APT as a procurement target. In 2010 and beyond, when LSEs have an APT of 20% of prior year retail sales, the IPT is the delta between the prior year's APT and 20% of the prior year's retail sales. For example, if an LSE's APT in 2009 is 13%, its IPT in 2010 is 7% of 2009 total retail sales.

i. IPT Calculation

The IPT in 2004-2009 is calculated using the following equation: [18]

IPT = 1% of the prior year's retail sales

IV. RPS Flexible Compliance Rules

In order to be in compliance in a given year, LSEs must meet the APT in full with delivered eligible procurement.[19] If an LSE is out of compliance without an allowable reason it may be

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[16] Energy Action Plan II orders that implementation paths for achieving 33% renewables by 2020 be evaluated and developed, contingent upon cost-benefit and risk analysis. (Energy Action Plan II, October 2005, Specific Action Area 3, Key Action 5, p. 8.)

[17] See, SB 1078, Sections 399.15(b)(1) and 399.15(b)(2), and D.04-06-014, p.B-1. The IPT is 1% unless set higher by the Commission (see D.04-06-014, p. B-1).

[18] D.04-06-014, p. B-1.

[19] See D.03-06-071, pp. 46-47, R.04-04-026, p. 5 and D.04-06-014, p. B-2.

subject to penalties[20] for any procurement deficits.[21] However, pursuant to SB 1078 and to D.03-06-071 and D.05-07-039, LSEs are allowed some flexibility regarding RPS compliance.

Specifically, and as further described below, LSEs may bank surplus procurement, may maintain a procurement deficit for up to three years following the year in which the deficit is incurred, and may, in certain cases, provide allowable reasons for noncompliance.

As an additional flexible compliance allowance, D.03-06-071 allows the three large IOUs to defer 100% of their IPT for the first year in which they have an IPT without explanation.[22] Any use of this 100% deferral for the first year is subject to the requirement that it be made up within three years.[23]

A. Procurement Surpluses and Deficits

1. Procurement Surpluses

If eligible procurement is not used to meet the APT in the year in which it was procured, it may be reported as surplus procurement and may be banked and used to meet procurement targets in past or future years.

For example, if an LSE procures 100 MWh of eligible procurement in 2005 but only has a 2005 APT of 60 MWh, it may bank the extra 40 MWh as surplus procurement and use it to help meet any outstanding 2004 procurement deficits or deficits in the years 2006 and beyond.

2. Procurement Deficits in the Years Prior to 2010

A procurement deficit occurs when an LSE's eligible procurement is less than the LSE's APT. LSEs must continue to report procurement deficits for as long as the deficits exist, regardless of whether penalties have been assessed or paid (subject to further Commission order).

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[20] D.03-06-071, p. 50 adopts an interim penalty of 5 cents per kilowatt-hour, with an overall annual penalty cap of $25 million per utility.

[21] For example, suppose an LSE had an APT of 350 GWh in Year X, which included an IPT of 80 GWh. If it procured 310 GWh of eligible procurement, it would have a deficit of 40 GWh. If it was found to be out of compliance with no allowable reason, it could be assessed 40 * 1,000,000 * $0.05 = $2,000,000 for the Year X deficit.

[22] D.03-06-071, p. 49 allows IOUs to use this first-year flexible compliance mechanism. D.06-10-019 CoL 2 and 12 allows ESPs and CCAs to do the same, subject to further development of flexible compliance mechanisms in accordance with SB 107.

[23] See D.03-06-071, p. 49, fn. 41. As we note in section IV.A.2. below, prior decisions including D.03-06-071 have referred to the 1% IPT as APT when discussing what size deficits an LSE may carry without explanation. This white paper clarifies the distinction.

An LSE must make up any shortfall created by procurement deficits with additional delivered procurement in order to be in compliance with its APT.

A procurement deficit measuring less than or equal to 25% of that year's IPT may be carried, without CPUC approval, for up to three years. Only procurement in the following three years that is *in excess* of what is needed to meet those years' APTs may be used to satisfy that earlier year deficit. In other words, earmarking may not be used for a procurement deficit that is less than or equal to 25% of IPT (see discussion of earmarking in IV.A.2.i. below).[24]

Pursuant to D.03-06-071, LSEs are allowed to carry, for up to three years, procurement deficits greater than 25% of that year's IPT (including deficits larger than 100% of the IPT) without penalty if they have demonstrated to the CPUC an allowable reason for noncompliance, four of which are:[25]

1) Insufficient response to the RPS solicitation
2) Contracts already executed will provide future deliveries sufficient to satisfy current year deficits (see section IV.A.2.i. on earmarking below)
3) Inadequate public goods funds to cover above-market renewable contract costs
4) Seller non-performance

Shortfalls in excess of 25% of the IPT are also permitted upon a persuasive showing of lack of effective competition, that a deferral would promote ratepayer interests and the overall procurement objectives of the RPS program, or upon showing of good cause.[26]

Note: Past decisions did not expressly state that the flexible compliance rules regarding whether deficits need an allowable reason to be carried forward are based on procurement deficit sizes in relation to the IPT, not the APT. We clarify here that the rule allowing deficits of up to 25% to be carried without explanation, but allowing larger deficits only with an allowable reason, is in relationship to the size of IPT, not to the APT. See Table 2 below for an example.

i. Earmarking Procurement

D.05-07-039 expanded upon the flexible compliance rules outlined in D.03-06-071 by allowing LSEs, beginning in 2005, to use "earmarked" contracts with future deliveries as a temporary allowable reason for noncompliance and an accounting mechanism for calculating an LSE's return to compliance. Earmarking does not allow contracts to

[24]See D.05-07-039, p. 13. For example, if an LSE has a procurement deficit of less than 25% of its IPT in both years 1 and 2, then in year 3 the LSE must meet its procurement obligations in the following order: Year 3 IPT (current year), then Year 1 deficit, then Year 2 deficit.

[25] See D.03-06-071, p. 49.

[26] See D.03-06-071, p. 53 and D.03-12-065, p. 8.

count as compliance with procurement targets. Only delivered generation may be used to meet procurement targets. Earmarking allows an LSE to use signed contracts with future deliveries as a temporary reason for noncompliance with the current year's APT, allowing any actual deliveries from earmarked contracts to count towards deficits for the year they were earmarked. To count as an allowable reason for noncompliance, earmarked contracts must deliver enough procurement to fill the deficit no more than three years after the year in which the deficit occurs.

Table 2: Procurement Deficit Eligible to be Met with Earmarked Contracts

#		Year 1	Calculation
A	IPT	12	Prior year retail sales * 1%
B	APT	102	A + prior year APT
C	Delivered eligible procurement	95	- -
D	Procurement deficit	7	B – C
E	Procurement deficit that may be carried for up to 3 years without explanation, and that must be made up with procurement in excess of APT in Years 2, 3 or 4	3	A * 25%
F	Procurement deficit that may be carried for up to 3 years only with an allowable reason, such as earmarking	4	D - E

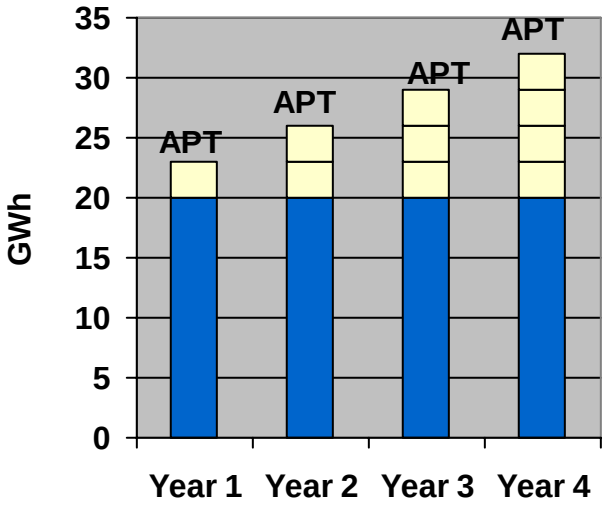
Earmarking may only be used for a procurement deficit that is greater than 25% of a given year's IPT. In Table 2 above, the amount of the LSE's deficit that is up to 25% of its IPT will need to be made up within the following three years with procurement that is in excess of the procurement targets in those three years. The remaining 4 units may be earmarked in Year 1 and, if the earmarked procurement is delivered within the following three years, used to bring the LSE into compliance for Year 1, regardless of whether there is enough additional procurement purchased to meet those three following years' APTs.

Note: Flexible compliance rules and treatment of procurement deficits in 2010 and after are expected to be determined in a subsequent Commission order.

3. Procurement Targets in the Years Prior to 2010 Increase Regardless of Past Years' Deficits

Each year's procurement targets and deficits are separate and distinct from the targets and deficits of other years. APTs build on prior year APTs, not on prior year actual procurement. LSEs are responsible for meeting each year's APT (subject to the applicable flexible compliance rules) regardless of past years' procurement deficits. If, as in Figure 1 below, an LSE has a procurement deficit in Year 1, it may incur separate (and increasingly larger, since APTs increase year to year) procurement deficits in following years during which the LSE does not procure more RPS-eligible energy than it did in Year 1.

Figure 1: APTs Increase By 1% Annually
Regardless of Past Years' Actual Procurement



In Figure 1 above, an LSE procures a steady 20 GWh each year and incurs increasingly larger deficits in each year as APTs continue to increase by 1% of the prior year's retail sales annually. Therefore, as shown in Table 3 below, the LSE must report each deficit separately (and calculate associated penalties regardless of any stated reasons for non-compliance).

Table 3: Multiple Deficits Are Incurred When Eligible Procurement Does Not Increase

#		Year 1	Year 2	Year 3	Year 4	Calculation
A	Total Retail Sales	300 GWh	300 GWh	300 GWh	300 GWh	- -
B	APT	23 GWh	26 GWh	29 GWh	32 GWh	prior year B + (prior year A * 1%)
C	Delivered Eligible Procurement	20 GWh	20 GWh	20 GWh	20 GWh	- -
D	Annual Deficit (not cumulative)	3 GWh	6 GWh	9 GWh	12 GWh	B - C
E	Annual Penalty (not cumulative)	$150,000	$300,000	$450,000	$600,000	D * ($0.05 * 1,000,000)

(END OF ATTACHMENT A)

ATTACHMENT B
Page 1

TENTATIVE SCHEDULE FOR DETERMINING RPS COMPLIANCE

Compliance reports must be filed by each load serving entity (LSE) subject to the Renewables Portfolio Standard (RPS) Program (Pub. Util. Code §§ 399.11 et seq.). Each compliance report shows whether or not the LSE has procured enough renewable energy to satisfy its annual procurement target (APT) in a particular year. If not, the report may state reasons in support of an LSE's request for deferral or waiver of applicable penalties, if any. An initial compliance determination can be made during the year after the year of procurement. This initial determination is after the California Energy Commission (CEC) adopts the relevant verification report, and upon an updated showing of the LSE using the verified information. A final compliance determination cannot be made in some cases until four years after the year of procurement, since existing flexible compliance rules allow a procurement deficit in years prior to 2010 to be carried forward for up to three years. Given these facts, a tentative schedule for Commission determination of RPS compliance and enforcement of penalties is as follows:

ATTACHMENT B
Page 2

TENTATIVE SCHEDULE FOR DETERMINING RPS COMPLIANCE

Year	Initial Determination	Final Determination	Notes
2004	2007	2008	LSEs may carry forward deficits until end of 2007[1]
2005	2007	2009	Subject to earmarked contracts[2]
2006	2007	2010	Subject to earmarked contracts[2]
2007	2008	2011	Subject to earmarked contracts[2]
2008	2009	2012	Subject to earmarked contracts[2]
2009	2010	2013	Subject to earmarked contracts[2]
2010	2011	2011	No carry forward of deficits under existing rules[3]
2011	2012	2012	No carry forward of deficits under existing rules[3]

[1] D.03-07-061, p. 50, footnote 41.

[2] Contracts earmarked for each year (i.e., 2005, 2006, 2007, 2008, 2009) must be approved or rejected by the Commission before a final compliance determination may be made.

[3] Rules for flexible compliance in 2010 and after are currently being given further consideration in comments filed pursuant to the August 21, 2006 Scoping Memo in R.06-05-027 and SB 107.

(END OF ATTACHMENT B)