

ALJ/BWM/sid

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Decision 08-02-008 February 14, 2008

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

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

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

**OPINION CONDITIONALLY ACCEPTING  
PROCUREMENT PLANS FOR 2008 RPS SOLICITATIONS**

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**OPINION CONDITIONALLY ACCEPTING  
PROCUREMENT PLANS FOR 2008 RPS SOLICITATIONS**

**1. Summary**

As part of the California Renewables Portfolio Standard (RPS) Program, each California retail seller is required each year to procure, with limited exceptions, a minimum quantity of electricity from eligible renewable energy resources. The amount must increase by at least 1% each year, and reach 20% of total retail sales no later than 2010. As part of fulfilling this requirement, each electrical corporation must prepare a renewable energy procurement plan (Plan). The Commission is required to review and accept, modify or reject each Plan.

In this order, we conditionally accept the Plans filed by Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E). In doing so, important steps we take include:

1. Address specific proposals (see Appendix A for more details):
  - a. Short-Term Contracts: include solicitation of short-term contracts within the 2008 solicitation;
  - b. 2008 Solicitation: neither postpone nor forgo the 2008 solicitation;
  - b. Flexible Compliance: modify flexible compliance provisions;
  - c. Transmission Ranking Cost Reports (TRCRs): decline to modify the TRCR process, particularly in light of the California Renewable Energy Transmission Initiative (RETI);
  - d. Standard Terms and Conditions (STCs): incorporate four non-modifiable STCs, and employ recommended language for modifiable STCs;

- e. Reporting on Transmission: not require specific additional reporting on transmission;
  - f. In-State Delivery: decline to modify current provisions;
  - g. SCE Biomass Program: recognize Biomass Program as part of SCE's Plan, but accept SCE's proposal to defer decisions pending submission of an application; and
  - h. SDG&E Integration Cost: reject SDG&E's proposal to include a non-zero integration cost.
2. Address limited general elements of the RPS Program:
- a. Margin of Safety: each Plan must include a reasonable margin of safety;
  - b. Tariffs for Smaller RPS Projects: encourage utilities to work with customers on this option, where reasonable, and provide additional information to the Commission;
  - c. Minimum Size: increase the minimum size of projects that may bid, from 1.0 megawatt (MW) to 1.5 MW;
  - d. Utility Ownership of RPS Facilities: not require utilities to build and own RPS facilities, but restate that utilities must consider this option; and
  - e. Coordination of Plans: Investor-owned utilities (IOUs) should continue to make incremental improvements in preparing Plans using a more uniform form and format.
3. Schedule: Adopt schedule for completing the 2008 solicitation cycle (see Appendix B) and process for initiating the 2009 solicitation cycle.

Within 14 days of the date this order is mailed, PG&E, SCE and SDG&E shall each file and serve an amended Plan, with a copy filed on the Director of

the Commission's Energy Division. Unless suspended by the Energy Division Director within 21 days of the date this order is mailed, each utility shall proceed to use its amended Plan for its 2008 RPS program and solicitation.

We continue to employ the presumption that utilities are able to use their business judgment in running their solicitations, within the parameters we establish and the guidance we provide. Utilities ultimately remain responsible for program implementation, administration and success, within application of flexible compliance criteria. We will later judge the extent of that success, including the degree to which each IOU implements the orders adopted herein, elects to take the guidance provided herein, demonstrates creativity and vigor in program administration and execution, and reaches program targets and requirements. This proceeding remains open.

## **2. Procedural Background**

Senate Bill (SB) 1078, effective January 1, 2003 (as amended by SB 107, effective January 1, 2007), established the California RPS Program.<sup>1</sup> Several Plans have been considered, and solicitations held, under the program.

A schedule was set for consideration of the 2008 RPS Plans by an amended Scoping Memo and Ruling of the Assigned Commissioner dated June 15, 2007. On July 31, 2007, an Assigned Commissioner's Ruling (ACR) directed the three IOUs to submit further information.

On August 1, 2007, the three IOUs filed and served their 2008 RPS Plans. On August 10, 2007, the three IOUs filed and served amended Plans. On August 20, 2007, comments were filed and served by the Division of Ratepayer

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<sup>1</sup> Stats. 2002, Ch. 516, Sec. 3, codified as Pub. Util. Code §§ 399.11, *et seq.* All subsequent code section references are to the Public Utilities Code unless noted otherwise.

Advocates (DRA). On August 30, 2007, comments were filed and served by the Green Power Institute (GPI). On September 6, 2007, PG&E filed and served a revised draft of its 2008 RPS Solicitation Protocol, including changes necessary to permit solicitation of short-term contracts (e.g., at least one month and less than 10 years). On September 14, 2007, reply comments were filed and served by PG&E, SCE and SDG&E.

Pursuant to authorization to file late, on October 22, 2007, the Center for Biological Diversity (Center) and the Sierra Club (Sierra) filed comments. On October 29, 2007, SDG&E filed reply comments.

The schedule provided dates for parties to move for evidentiary hearing. No party filed a motion for hearing, and no hearing was held.

### **3. Overview of RPS Program, 2008 Plans and Commission Duties**

Pursuant to the RPS Program, each retail seller is required each calendar year to procure, with some exceptions, a minimum quantity of electricity from eligible renewable energy resources as a percentage of total retail sales.<sup>2</sup> This is generally known as the annual procurement target, or APT. Each retail seller is also required, with some exceptions, to increase its total procurement from eligible renewable energy resources by at least 1% of retail sales per year until it reaches 20%. This is generally known as the incremental procurement target, or IPT, and results in annual incremental growth in the APT. (§ 399.15.)

To fulfill these requirements, each electrical corporation must prepare a Plan for the procurement of renewable energy. The Plan must include, but is not limited to (a) an assessment of demand and supply to determine the optimal mix

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<sup>2</sup> Exceptions include, for example, flexible compliance provisions.

of renewable resources, (b) use of compliance flexibility mechanisms established by the Commission, and (c) a bid solicitation. The Commission must review and accept, modify or reject each electrical corporation's Plan prior to the commencement of renewable resource procurement. (§ 399.14.) The Plans are summarized in Appendix C.

We have, in fulfilling our duties and allowing electrical corporations to fulfill theirs, followed an approach of "flexibility with accountability." That is, we have granted RPS-obligated electrical corporations considerable flexibility in the way they satisfy RPS Program goals. In exchange, each electric corporation must meet its RPS Program targets, within application of flexible compliance criteria. The Program includes penalties for unexcused failures to meet targets.

While we accept, reject or modify each procurement Plan before a particular solicitation, we neither write any Plan nor dictate with precise detail the specific language of any Plan. Rather, each electric corporation has considerable flexibility to develop and propose its own plan. Our review is at a reasonably high level.

Nor do we take over the procurement process. Procurement duties remain those of each IOU. Each IOU is ultimately responsible for achieving successful procurement using its Plan pursuant to, and consistent with, the RPS Program. Our responsibility involves reviewing the results of solicitations, and accepting or rejecting proposed contracts when submitted for approval, based on consistency with approved Plans. (§ 399.14(d).) The Plans accepted herein will be a fundamental, but not necessarily the only part of that review (as described in prior decisions, including Decision (D.) 06-05-039, D.07-02-011 and also below).



We have conditionally accepted prior Plans, provided guidance, taken steps to broaden and enhance the quantity and quality of RPS bids, and improved the contracting process.<sup>3</sup> We continue to do so here, taking into account relatively limited comments from four parties. Finally, we do not repeat existing Commission directions, requirements and guidance. All existing directions and guidance remain unchanged unless specifically addressed otherwise herein.

#### **4. Issues Common to All Plans**

We address the following 11 issues common to all plans:

- 4.1: Solicitation for Short-Term Contracts and Delaying or Foregoing 2008 Solicitation
- 4.2: Flexible Compliance and 33% by 2020
- 4.3: Transmission Ranking Cost Report
- 4.4: Standard Terms and Conditions
- 4.5: Reporting on Transmission
- 4.6: Margin of Safety
- 4.7: Tariffs for Small RPS Projects
- 4.8: Increase Minimum Size of Project to Participate
- 4.9: Utility ownership of RPS facilities
- 4.10: Coordination of Plans
- 4.11: In-State Delivery

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<sup>3</sup> For example, we require IOU Plans to: (a) include consideration of proposals with delivery points anywhere in California, (b) incorporate reasonable margins of safety (e.g., allowing for some possible project delays or failures while still meeting Program targets), (c) include interest on deposits, and (d) clearly state the evaluation criteria used in the least cost-best fit (LCBF) selection process. We have also adopted revised STCs for model contracts which, as revised, provide increased contracting flexibility. (See, for example, D.06-05-039, D.07-02-011 and D.07-11-025.)

#### **4.1. Solicitation for Short-Term Contracts and Delaying or Foregoing 2008 Solicitation**

The July 31, 2007 ACR asked each IOU to address whether or not pursuing one or both of the following two strategies would enhance its ability to reach the 20% by 2010 RPS goal:

1. Issuing a request for offer (RFO) for short-term contracts, and
2. Postponing or foregoing its 2008 RPS solicitation (to permit more concentrated effort on finalizing contracts with bidders from prior solicitations).

In response, each IOU affirms its desire to solicit short-term contracts. PG&E and SCE express no interest in postponing or foregoing the 2008 solicitation. SDG&E proposes that it be permitted to later decide on its own whether or not to conduct a solicitation in 2008.

We largely accept the IOUs' views. In particular, each IOU may solicit contracts for less than 10 years, as well as for 10 years or more, subject to (a) filing reasonable amended Plans to incorporate this option, and (b) counting short-term energy consistent with the condition adopted in D.07-05-028. Further, we neither delay nor forego the 2008 solicitation. We address SDG&E's proposal separately below.

##### **4.1.1. Short-Term Solicitations**

On September 6, 2007, PG&E filed its proposed revised draft Protocol to incorporate a short-term solicitation. SCE did not submit a revised draft, but states that opening its 2008 solicitation to short-term contracts will not require significant revisions to existing documents. This also appears to be the case for SDG&E. Thus, in addition to any additional refinements PG&E might make, our acceptance of the request to include solicitation of short-term contracts in the

2008 solicitation means SCE and SDG&E must each revise their documents to accommodate such proposals.

As provided below, amended Plans will be filed and served pursuant to this order, and may include solicitations for short-term contracts. The Plans will be subject to Energy Division review for consistency with this order and program protocols. The actual solicitation for short-term bids may be combined with, or separate from, that for long-term bids. Short-term contracts must be evaluated using criteria that accurately assess their LCBF characteristics, and parties should work with Energy Division staff, if and as necessary, to identify those criteria.

We recently adopted a condition relative to the use of short-term contracts. (D.07-05-028.) That condition applies here as well. The condition is that in order for an IOU to count the energy deliveries from short-term contracts with existing facilities for RPS compliance in a given year, the IOU must also sign contracts of at least 10 years' duration and/or contracts with new RPS-eligible generation facilities for energy deliveries equivalent to at least 0.25% of its prior year's retail sales. (D.07-05-028, Ordering Paragraphs (OP) 1 and 2.)

We also address but decline to adopt three related proposals. First, PG&E proposes an expedited review process and reasonableness criteria for short-term contracts, referring to comments PG&E submitted in Rulemaking (R.) 06-02-012.<sup>4</sup>

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<sup>4</sup> PG&E recommends that full rate recovery for short-term contracts of less than three years' duration be permitted without advance Commission approval. PG&E proposes that the price be treated as *per se* reasonable if the contract was executed after consultation with the Procurement Review Group (PRG), and reported in the IOU's Quarterly Report. PG&E asserts that the *per se* reasonable price should be up to the greater of market price referent (MPR) plus \$20/megawatthour (mWh) or market plus 10%.

*Footnote continued on next page*

We do not here adopt an expedited process or reasonableness criteria, but will address the matter in R.06-02-012 (where we are considering development of additional methods to implement the RPS Program, including details on short-term prices).

Second, SCE asks that the in-state delivery requirement for RPS projects be removed. (August 10, 2007 Amended Plan, p. 7.) We are not persuaded that any change is necessary, as discussed separately below.

Third, DRA suggests that each IOU's short-term procurement be above and beyond its annual target, including its procurement margin of safety. We decline to adopt this recommendation. Short-term contracts, as SDG&E points out, can fill temporary shortfalls and act as a bridge to the commercial online date of an RPS facility, particularly when the initial operation is delayed. Precluding use of short-term contracts until all other procurement goals have been satisfied, including a margin of safety, would deprive IOUs of a potentially useful and important compliance tool. We find no compelling reason to do so. Moreover, DRA's proposal is inconsistent with our recently adopted condition relative to use of short-term contracts. (D.07-05-028.) We considered relevant factors when adopting that condition, and are not persuaded by DRA to add to that condition now.

#### **4.1.2. No Delay in 2008 Solicitation**

No respondent asks for a Commission order to delay or forego the 2008 solicitation, and no party recommends a delay or suspension. We agree. Now is not the time to delay or forego the 2008 solicitation.

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## **4.2. Flexible Compliance**

SDG&E, SCE and PG&E each request modification of Commission flexible compliance rules. We agree. Flexible compliance provisions, as modified, are discussed below, and summarized in Appendix D.

### **4.2.1. 2010 and After**

Our existing flexible compliance provisions apply through 2009, but do not apply in 2010 and thereafter. (D.06-10-050, OP 2.) SCE and others point out that recent legislation (SB 107) modified the statute such that flexible compliance must apply not only up to 2009, but to all years. They are correct.<sup>5</sup> The law now specifically requires that flexible compliance rules apply in all years, and we make that modification. (See Appendix D.)

We recently noted that current flexible compliance rules are in the context of reaching the 20% goal, and that existing rules:

“are likely to lose considerable relevance once the 20% goal is reached... That is, flexible compliance may or may not have some separate usefulness after a ‘steady-state’ of 20% is reached...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 of less than the full three years.” (D.06-10-050, pp. 28-29.)

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<sup>5</sup> "The commission shall adopt... flexible rules for compliance, including rules permitting retail sellers to apply excess procurement in one year to subsequent years or inadequate procurement in one year to no more than the following three years. The flexible rules for compliance shall apply to all years, including years before and after a retail seller procurers at least 20 percent of total retail sales of electricity from eligible renewable energy resources." (§ 399.14(a)(2)(C)(i).)

Nonetheless, SCE and others argue here that the most logical extension of flexible compliance rules is to simply apply current rules to 2010 and beyond. The record contains few proposals regarding different rules for 2010 and beyond, and no party convincingly argues that flexibility should be for a period less than three years. Absent a viable alternative, we adopt SCE's proposal to extend current rules, subject only to the minimal modifications noted below.

We expect continuing consideration of the issue, however, and encourage parties to make proposals. For example, current rules are complex. We welcome parties making reasonable proposals that will simplify the rules while both maintaining incentives to achieve targets and recognizing the realities of "lumpy" investments (i.e., wherein capacity additions are not necessarily made smoothly from year to year but may be made in large or discontinuous increments). We discuss this further below in the context of 33% by 2020.

Current rules allow a load serving entity (LSE) to carry forward a deficit in relation to 25% of its IPT (e.g., up to 25% of its IPT for up to three years without explanation, and over 25% of IPT for up to three years with certain allowed explanations). (For example, see D.06-10-050, Attachment A, p. 9.) SCE recommends the substitution of "0.25% of prior year retail sales" for "25% of IPT." We agree. IPT does not apply to 2010 and beyond. SCE's proposed change does not alter the fundamental calculation in the original rule but is necessary, and we make this change.

#### **4.2.2. Transmission**

In 2006, we said:

"We will not be sympathetic to granting waivers or reducing penalties due to lack of transmission, for example, without the electrical corporation demonstrating that it took all reasonable action to bring the problem to our attention timely, presented

realistic solutions, filed applications timely for necessary projects, and took any and all other actions that could reasonably have been expected to address, if not solve, the problem.” (D.06-05-039, p. 20.)

IOUs point out the law now specifically requires that provisions for flexible compliance address situations where a deficit occurs as a result of insufficient transmission. They are correct.<sup>6</sup>

#### **4.2.2.1. Necessary Showing**

Parties do not propose the precise and exact language they seek to have adopted in a specific rule regarding flexible compliance due to insufficient transmission. They do not propose specific language (e.g., insertions and deletions) to modify our adopted “Renewables Portfolio Standard (RPS) Rules for Reporting and Determining Compliance with RPS Procurement Targets.” (D.06-10-050, Attachment A.) No specific proposals are made regarding how parties would ensure that these rules do not conflict with the electrical corporation’s overall procurement plan (as submitted pursuant to § 454.5). DRA says a shortfall created by lack of transmission raises many questions, and makes it impossible to formulate a flexible compliance mechanism. (Opening

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<sup>6</sup> Effective January 1, 2007, § 399.14(a)(2)(C)(ii) provides that: “The flexible rules for compliance shall address situations where, as a result of insufficient transmission, a retail seller is unable to procure eligible renewal energy resources sufficient to satisfy the requirements of this article. Any rules addressing insufficient transmission shall require a finding by the commission that the retail seller has undertaken all reasonable efforts to do all of the following:

- (I) Utilize flexible delivery points.
- (II) Ensure the availability of any needed transmission capacity.
- (III) If the retail seller is an electric corporation, to construct needed transmission facilities.

*Footnote continued on next page*

Comments, p. 5.) We agree questions arise, but disagree that it is impossible to implement § 399.14(a)(2)(C)(ii).

We implement this provision by requiring a retail seller to make a showing when seeking to invoke insufficient transmission as a permissible reason for failing to satisfy its RPS Program targets. The burden of proof rests with the entity requesting the relief. The showing must demonstrate that the retail seller has undertaken all reasonable efforts to do at least all of the following:

- (1) Utilize flexible delivery points.
- (2) Ensure the availability of any needed transmission capacity.
- (3) If the retail seller is an electric corporation, to construct needed transmission facilities.
- (4) Done nothing to conflict with its overall procurement plan (§ 454.5).

Broad, general statements would be insufficient to meet a retail seller's burden of proof. To be compelling, the showing must include specific facts and details.

If authorized, the deferral may be for up to three years. That is, the Commission is obligated to adopt flexible rules for compliance "including rules permitting retail sellers to apply...inadequate procurement in one year to no more than the following three years." (§ 399.14(a)(2)(C)(i).) Thus, consistent with the flexible compliance framework in the statute, the allowed deficit due to

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(IV) Nothing in this subparagraph shall be construed to revise any portion of Section 454.5." (§ 454.5 involves each electrical corporation's overall procurement plan.)



insufficient transmission may be applied “to no more than the following three years.”

#### **4.2.2.2. Particular Transmission Line Issues**

Center and Sierra contend SDG&E’s 2008 Procurement Plan should not be accepted to the extent it seeks to link RPS compliance to the approval of certain transmission projects. Center and Sierra argue that this shifts accountability from SDG&E to the Commission and others, and that inadequacy of transmission should not be permitted as an excuse for failing to meet RPS Program targets.

While we agree with Center and Sierra that compliance with RPS Program targets is the responsibility of retail sellers (not the Commission or others), Center and Sierra fail to acknowledge current provisions in law regarding transmission and flexible rules for compliance. The law requires that Plans include provisions for employing available compliance flexibility, and that flexible rules for compliance address situations where insufficient transmission causes a retail seller to incur an RPS deficit. (§§ 399.14(a)(3)(B) and (a)(2)(C)(ii).) We do that here, and are not persuaded by Center and Sierra otherwise.

At the same time, we expect each retail seller to reasonably diversify its RPS procurement portfolio, taking generation and transmission project development risk into account. We will not shield a retail seller from possible RPS non-compliance penalties who fails to reach RPS program targets due to unreasonable failure to diversify.

Center and Sierra also express concern regarding timely action by a retail seller to address transmission line issues. Center and Sierra state that misconduct relative to timely action should not be rewarded by allowing a retail seller to evade penalties if it also fails to meet RPS targets. In particular, Center

and Sierra make various contentions alleging misconduct by SDG&E relative to projects and untimely actions regarding the Sunrise transmission line and a new substation connecting to the Southwest Powerlink. Center and Sierra conclude that SDG&E should not be excused from penalties.

It is premature here to reach any conclusion regarding penalties or penalty avoidance for SDG&E. Center and Sierra may raise their concerns and specific allegations in the future if and when SDG&E actually applies flexible compliance provisions to avoid or defer a penalty. Concerns regarding specific projects or transmission line issues are likely to be best addressed in specific proceedings (e.g., Application (A.) 06-08-010 for the Sunrise Powerline Transmission Project), and we decline to address those specific issues here.

#### **4.2.3. Banked Surplus and Pooling**

SCE requests two determinations regarding the use of flexible compliance. We authorize both requests.

##### **4.2.3.1. Banked Surplus**

First, SCE requests a Commission statement that:

“If an LSE earmarks future deliveries toward its APT requirement and the project does not deliver enough actual deliveries to fill the APT requirement prior to the end of the third year after the compliance year towards which the output of the project has been earmarked, the LSE may then use its bank excess procurement to fill the deficit.” (Plan, p. 5.)

In support, SCE says this is consistent with the Commission's previous findings that the use of banked excess procurement is "unlimited." SCE is correct. We have said this before. We reaffirm it now. (D.03-06-071, p. 44; D.06-10-050, p. 24.)

#### **4.2.3.2. Pooling**

Second, SCE requests a Commission statement that:

"If the future energy deliveries earmarked by an LSE do not materialize within three years, the LSE may use actual energy deliveries from any other contract eligible for earmarking to satisfy the deficit." (Plan, p. 5.)

SCE contends that the current RPS reporting format requires an LSE to choose the specific contract it elects to earmark along with the quantity of earmarked future energy deliveries from each contract. SCE asserts that an LSE should not be found deficient for failing to predict precisely which contracts eligible for earmarking produce the actual procurement several years later. We agree.

An LSE needs to execute contracts that result in actual deliveries within three years, but should be allowed to satisfy a deficit by using actual energy deliveries from any contract that is otherwise eligible for earmarking.<sup>7</sup> That responsibility should not include the burden of forecasting the exact contract and future deliveries. We encourage Energy Division to work with LSEs to revise reporting forms, if and as needed, to treat earmarked contracts as a pool for purposes of flexible compliance (with pooled contracts accurately tied to the deficit year).

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<sup>7</sup> Otherwise eligible for earmarking means (as PG&E and SCE say in reply comments on the proposed decision) that the applicable energy meets all other requirements for earmarking. Contrary to GPI's concern, this does not negate the safeguards that are in current earmarking rules, create unlimited earmarking, or change any existing rules. This is the case because pooling does not alter whether a contract is eligible for earmarking, the time limits associated with earmarking, or the amounts of energy permitted to be earmarked from year to year. (SCE Reply Comments on Proposed Decision, p. 2; also see, D.05-07-039, p. 13 and D.06-10-050, Attachment A, p. 10.)

#### **4.2.4. Other Mechanisms**

SDG&E recommends consideration of two other flexible compliance mechanisms:

1. unbundled renewable energy credits (RECs), and
2. unlimited carry-forward of any shortfall due to either:
  - a. failure of a developer to perform up to contract commitments,  
or
  - b. delay caused by lack of transmission.

SDG&E also recommends (a) setting workshops as soon as possible to allow participants to offer other flexible compliance mechanisms, and (b) convening a future proceeding as expeditiously as possible. (Plan, pp. 4 and 11.) We decline to adopt these recommendations for the following reasons.

##### **4.2.4.1. Unbundled RECs**

The treatment of RECs is being addressed in R.06-02-012. We will not prejudge the REC issues here.

##### **4.2.4.2. Unlimited Deficit Carry-Forward**

SDG&E recommends unlimited carry-forward of procurement deficits in certain cases. Center and Sierra object. We agree with Center and Sierra.

Existing legislation permits carry-forward of “inadequate procurement in one year to no more than the following three years.” (§ 399.14(a)(2)(C)(i).) We are not persuaded by SDG&E that the law provides unlimited deficit carry-forward.

Even if it did, unlimited deficit carry-forward would make the 20% target essentially, if not completely, meaningless. It would eliminate any need for reasonable planning and procurement margins of safety to offset delays or

failures in generation projects or transmission lines. It would shift substantial burden for achieving RPS Program goals from electric corporations to developers of generation and transmission projects. This is unreasonable.

The better balance is to allow deferrals up to a defined period of time, but continue to require periodic market solicitations by electric corporations to tap new opportunities. This permits an electrical corporation to take all reasonable actions, including portfolio diversification, to overcome barriers to RPS compliance. We continue to require that RPS procurement goals and targets, along with compliance determinations, are ultimately measured in actual deliveries. (See, for example, D.05-07-039, Findings of Fact 12 and 13.)

SDG&E contends that the Commission has already endorsed its proposals, particularly with regard to carry-forward of shortfalls due to seller non-performance. (Reply Comments, p. 4, citing D.03-06-071 in support.) SDG&E is incorrect. Our authorized carry-forward of procurement deficits is in the context of three years. For example, in 2003, we rejected what we characterized as the “extreme” proposals of PG&E and SCE, but pointed out that even those proposals were for only up to three years. (D.03-06-071, p. 46.) We adopted The Utility Reform Network/SDG&E approach, permitting carry-forward for up to three years, and required the electric corporation to “satisfy this deficit with that three-year period.” (D.03-06-071, p. 49.)

Finally, we decline to order workshops or a further proceeding on this issue at this time. Other reasonable opportunities are currently available to pursue this issue. As noted above, for example, we welcome further proposals on flexible compliance rules, particularly those which might simplify the flexible compliance framework while maintaining incentives and recognizing other important realities. At the same time, however, parties are fully engaged on

multiple issues in this and other proceedings. We will not increase their burdens by establishing workshops or another proceeding.

#### **4.2.5. 33% by 2020**

We slightly modify existing flexible compliance rules above (e.g., transmission, pooling) but essentially continue existing rules in 2010 and beyond. We do this in large part because we expect RPS procurement to grow beyond 20% by 2010 toward 33% by 2020. The goal of 33% by 2020 is a proposed goal of the Governor, and has been conditionally adopted by the California Energy Commission (CEC) and Commission.<sup>8</sup> This is approximately an additional 1% per year from 2010 to 2020. Existing rules are in the context of the legislatively required growth of no less than 1% per year to 20% by 2010. Continuation of existing rules is not necessarily unreasonable when the growth factors underlying those rules are expected to continue.

GPI, among others, supports the 33% by 2020 target, observing that to rest at 20% by 2010 would result in a quick burst of activity followed by an abrupt and precipitous halt. Also, as recently stated, we agree “with Aglet that pursuing a 33% target is a policy goal of the Commission and one that should be pursued by the IOUs at this time.” (D.07-12-052, p. 255.)

We do not at this time, however, subject any retail seller to the possibility of penalties for failure to procure more than 20%. That is, the trajectory of RPS resource procurement past 2010 is not composed of annual or final targets with penalties attached for failure to achieve targets. The only specific goals to which

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<sup>8</sup> Energy Action Plan II (October 2005, Section II.3.5, p. 8). Also see CEC 2007 Integrated Energy Policy Report (November 2007, CEC-100-2007008-CTF, p. 129, adopted December 5, 2007).

penalties apply are the annual 1% growth targets to achieve 20% by 2010, and the final 20% target (subject to flexible compliance rules). At the same time, however, we reaffirm our recent direction that parties work with Energy Division staff to refine a methodology for resource planning and analysis to address the issue of a 33% renewables target by 2020. (D.07-12-052, p. 256.) Development of this methodology may include assessment of whether or not to apply penalties for failure to achieve certain targets beyond 20%.

#### **4.2.6. General Application**

In comments on the proposed decision, Mountain Utilities (MU) says this decision, particularly regarding flexible compliance, should apply only to SCE, PG&E and SDG&E. Alternatively, MU says the Commission should (a) allow electric micro-utilities to easily obtain deficit forgiveness and (b) adopt flexible compliance rules concerning transmission constraints that allow electric micro-utilities to obtain deficit forgiveness for up to three years with further forgiveness upon a Tier 1 advice letter showing. No other party supports MU's specific comments, including no comments in support from other small and multi-jurisdictional utilities (SMJUs).

We decline to adopt MU's recommendations. Rather, we have said before and restate here that all RPS rules, unless we say otherwise, apply equally to all LSEs, including electric service providers, community choice aggregators and SMJUs. (See, for example, D.05-11-025, D.06-10-019, D.06-10-050, D.07-07-025, D.07-05-028.)

We specifically clarify here that the flexible compliance rules adopted today apply to all LSEs. Any adjustments that may or may not be necessary for SMJUs will be addressed in R.06-02-012. In the meantime, however, LSEs may rely on the additional flexible compliance provisions adopted herein (e.g.,

flexible compliance beyond 2009, certain deficits permitted upon a showing relative to insufficient transmission, pooling). This advances the program consistent with recent changes in law without causing any party undue hardship or prejudging outcomes. It permits further refinements, if and as necessary. It allows these important changes to be used for upcoming reports due soon (e.g., March 1, 2008).

#### **4.3. Transmission Ranking Cost Report**

Parties were asked to consider experience with the current Transmission Ranking Cost Report (TRCR) process and recommend improvements, if any. SDG&E recommends that the TRCR be completed based on actual bids offered in each solicitation. We decline to adopt SDG&E's recommendation for the reasons explained below. We first briefly explain the current process.

Transmission costs may be considered within the LCBF analysis. To do this, each IOU first seeks expressions of interest from potential project developers regarding the IOU's upcoming RPS solicitation. The IOU also seeks certain data to calculate applicable costs. The costs are calculated using a Commission-adopted methodology and reported in the TRCR, including relevant transmission information and resulting "transmission cost adders." The TRCR is filed and served for comment by parties. The assigned Commissioner considers comments and issues an ACR regarding the TRCR results to be used for a particular solicitation. The ACR is filed before the solicitation begins, thereby permitting the IOU to include TRCR information and "adders" in its solicitation documents. This information may then be used by prospective bidders as they consider projects and develop bids. This also ensures that the "adders" are available in a transparent form for use by each IOU in its LCBF



ranking of projects. (See D.04-06-013, D.05-07-039, D.05-07-040, D.06-05-039 and D.07-02-011.)

In support of its proposal, SDG&E says the current process creates a TRCR for projects that do not necessarily match the projects bid into the solicitation. SDG&E says its 2007 bid results, for example, included only two out of thirty-four projects that participated in the TRCR process. In such case, the IOU, according to SDG&E, has a difficult time assessing the appropriate transmission cost for projects bid into the solicitation. On the other hand, SDG&E says if the TRCR is based on actual bids, then all projects are included in the analysis and only projects actually under consideration are studied. SDG&E asserts this is also an important workload consideration. (Plan, p. 18.) No other respondent or party supports SDG&E's proposal.

Accuracy and workload are important considerations, but we must balance many factors. For example, SDG&E presents no data in support of its proposal regarding the magnitude of potential accuracy gains, or how its LCBF ranking might be different. One reason for the current TRCR schedule is to permit potential projects to take transmission costs into account when submitting bids. SDG&E's proposal does not suggest a viable alternative so that bidders may have relevant transmission information during the bid preparation stage.

We are concerned that the efficiency gains (or cost savings) from waiting to do the TRCR may be offset by delays in each IOU developing its project short-list. This could delay the entire solicitation process. SDG&E presents no information on this tradeoff.

We also note that considerable work is now underway as a result of the California Renewable Energy Transmission Initiative (RETI). RETI is a statewide initiative to help identify the transmission projects needed to accommodate

California's clean energy goals, support future energy policy, facilitate transmission corridor designation, and mitigate difficulties in transmission and generation siting and permitting. It begins with a thorough assessment of renewable energy potential in California and neighboring regions. We think focusing efforts of IOUs and parties on RETI is likely to be a better use of limited time and resources than modifying the TRCR process. We repeat our encouragement that IOUs and all other parties participate fully in RETI. (D.07-12-052, pp. 75-76.)

#### **4.4. Standard Terms and Conditions**

PG&E states that, as an important change from its 2007 Plan, the model contract in its final 2008 Plan will be modified to conform to the Commission's recent decision on standard terms and conditions (STCs) for model contracts. While PG&E's Plan was filed before adoption of our STC order, PG&E correctly notes the relevance of the recent order. The model contracts in the Plans of SCE and SDG&E must similarly conform.

That is, we recently addressed STCs, and found four STCs to be non-modifiable. (D.07-11-025.) The model contracts in the IOUs' 2008 Plans submitted pursuant to this order must include the four non-modifiable STCs in conformance with our order.

On the other hand, we found 10 STCs to be modifiable. We require that the initial language for these 10 STCs incorporate the principles behind each STC, as adopted in prior Commission orders.<sup>9</sup> We generally seek consistent and

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<sup>9</sup> For example, STC 15 on contract modification essentially requires that no amendments or modifications are enforceable unless entered into in writing by both

*Footnote continued on next page*

uniform model contract language for these 10 STCs, but permit each IOU to propose its own initial language, subject to being vetted in the process leading to Commission acceptance, rejection or modification of each Plan. Consistent with our adopted approach, IOUs proposed language for the 10 modifiable STCs. No parties comment. We accept the 10 modifiable STCs as proposed by each IOU, unless specifically noted otherwise herein.

SCE asks for clarification regarding STC 3 (Supplemental Energy Payments – SEPs). In particular, SCE says that, in the event SCE exercises its option to replace denied SEP funding from the CEC, the “right of first refusal option” in STC 3 requires SCE to make higher cost replacement payments before SCE obtains Commission approval. SCE says it assumes it would be permitted to recover such costs in rates, but seeks clarification. Absent clarification, SCE says it would be required to modify its model contract.

We have determined that STC 3 is modifiable, and need not be included in contracts that do not involve SEPs. (D.07-11-025.) Moreover, the SEP process is substantially changed by passage of SB 1036, and the relevance of STC 3 will continue to decline as SB 1036 is implemented over the course of the next few months. Nonetheless, to the extent it is meaningful during the transition, we affirm SCE’s understanding of STC 3.

#### **4.5. Reporting on Transmission**

DRA recommends that future RPS Plans state (a) the estimated online dates for anticipated transmission lines and (b) how much of each IOU’s RPS effort relies on any particular transmission line. In support, DRA asserts that

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parties. Initial language proposed by an IOU must be consistent with this principle. (D.07-11-025, p. 23.)

transmission issues are important in meeting RPS goals. DRA also states that this information is needed because not all transmission line concerns are the same, IOU's Plans fail to differentiate between lines likely to be in operation by 2010 versus those after 2010, some Plans confuse the impact of transmission limitations with other efforts to meet RPS goals, and some Plans provide little support for assertions regarding the need for transmission to meet RPS goals.

We decline to adopt DRA's recommendations. PG&E correctly points out that the IOUs already provide information and status updates on transmission lines in quarterly Assembly Bill (AB) 970 reports to the Commission. Adequate planning and status information is available elsewhere without requiring that it also be included in the RPS Procurement Plan. Moreover, considerable effort is underway in other venues on transmission issues, including RETI. We decline to require further work and detail here.

Nonetheless, we agree with DRA's general concern. While we do not expect the RPS Procurement Plan to become a report on transmission issues and transmission lines, we remind IOUs that the RPS Procurement Plan must reasonably address all important issues that concern the RPS Program and the IOU's planned procurement. To the extent transmission is a reasonably important issue the Plan must address the issue to the extent necessary. This may be by reference to other filed documents, as appropriate. IOUs generally did so with the 2008 Plans, and should continue to do so.

#### **4.6. Margin of Safety**

Each IOU's Plan includes a margin of safety, thereby building in a buffer to recognize potential project delays or failures while still permitting reasonable opportunity to achieve Program targets. For example, PG&E states it will procure between 1% and 2% of its annual incremental requirement (not just the

minimum 1% annual growth). SCE states that it is procuring to a High Need Case Scenario (assuming only 70% delivery from certain contracts, not 100%). SDG&E says it will seek to procure between 24% and 26% of retail sales for its 2010 goal (rather than 20%).

Parties continue to raise concerns about the risk of not achieving 20% by 2010. In particular, Center and Sierra argue that SDG&E's procurement goals and margin of safety are inadequate. Center and Sierra recommend the Commission highlight in this decision that IOUs, and in particular SDG&E, proceed at their own risk.

We have addressed the need for each IOU Plan to include a reasonable margin of safety, and that each IOU remains responsible for achieving program goals, within reasonable application of flexible compliance rules. (See, for example, D.06-05-039, pp. 21-24; D.07-12-052, pp. 74-75.) We agree with Center and Sierra that each IOU Plan must include a reasonable margin of safety, each IOU must undertake all reasonable actions to achieve RPS Program goals, and results are not measured by contracts but actual energy deliveries. Nothing offered by Center and Sierra persuades us to modify our prior discussion, direction and orders in this regard, nor do we need to highlight our orders for one entity.

GPI believes IOUs are being seduced by attractive bids that will never be fulfilled while overlooking realistic bids which, even if more expensive, are more likely to deliver energy. GPI asserts that utilities are not selecting enough high-quality, likely-to-succeed projects. GPI concludes that IOUs need to assign realistic probabilities of success to various bids so that they select quality projects.

IOUs correctly point out in response that these factors are already taken into account as part of the LCBF process. For example, LCBF assessment includes not only total price but seller's capability to perform, economic viability, technological viability and project viability (e.g., stage of project development, developer experience, availability of financing).

Moreover, GPI acknowledges that selecting quality renewable projects may include some subjective judgment that takes into account many factors (e.g., experience, backing, developer's technical expertise, technology). (GPI comments, p. 4.) We appreciate GPI's candor. Neither GPI nor any other party proposes a scientific method that guarantees selection today of only the highest quality projects certain to succeed tomorrow. Rather, the highest quality, most likely-to-succeed projects are winnowed-out using a process. The process includes requiring each electric corporation to have an RPS Procurement Plan. Procurement is by tariffs/standard contracts for some projects (e.g., up to maximum megawatt limits for small water, wastewater and other customer generation). It is by bilateral negotiations for some projects, and by competitive bids for other projects. Selection, as appropriate, includes an LCBF analysis, certain deposits, credit assessment, PRG review, independent evaluator (IE) review, public comment and Commission review. The process involves some measurable elements, and some judgment.

An important component of each IOU's Plan is inclusion of a reasonable margin of safety, with IOUs ultimately being responsible for reaching Program targets, subject to flexible compliance provisions. We welcome specific proposals for additional improvements, but accept that some subjective judgment will always be a necessary part of the selection process as decisions are made about various projects based on informed views of future events and the likelihood of a

range of outcomes. While we reiterate our support for including a margin of safety, it is up to each IOU to determine the optimal level (subject to review, as necessary, such as in a possible assessment of a penalty for failure to meet certain RPS targets).

#### **4.7. Tariffs for Small RPS Projects**

We recently approved tariffs and standard contracts for IOU purchases of electricity from small RPS generators (less than 1.5 MW) owned by water and wastewater agencies. We also approved a limited expansion of these tariffs and standard contracts to other small generators in the PG&E and SCE service areas. For the three IOUs, the total authorized procurement pursuant to these tariffs/standard contracts is 476.9 MW. (D.07-07-027.)

We directed that each IOU notify its water, wastewater and certain other customers on the availability of this new opportunity. (D.07-07-027, OP 4.) We also directed that the IOUs provide reasonable information to the Commission. (D.07-07-027, OP 3.)

We clarify here that we do not want the IOUs to take a passive approach to this opportunity. Rather, we expect IOUs to not only notify their water, wastewater and certain other customers (including Commission-regulated water and wastewater utilities) of this new option, but to work with these customers, as necessary and appropriate, to facilitate reasonable development of renewable projects. This may mean, for example, offering a workshop for these customers to explain the tariffs/standard contract option; holding workshops, or individual meetings, to help customers identify generation potential; and helping customers consider financing opportunities (e.g., whether energy efficiency funds may be available in some circumstances for certain projects which increase energy efficiency while generating output).

In this regard, we are interested in learning more about the opportunities for, and impediments to, the success of this program. If requested by staff (e.g., either the Director of the Water or Energy Divisions), each of the three IOUs should prepare a report on the IOU's work with its water and wastewater agency customers (and other customers to the extent requested); the generation opportunities identified; the impediments that may exist; recommended solutions, if any, to each impediment; and anything else relevant to advancing the success of tariffs and standard contracts for smaller RPS projects. This goal might also be advanced by individual meetings or a workshop. We encourage staff to schedule meetings or a workshop, if useful.

#### **4.8. Increase Minimum Size of Project to Participate**

Each utility's Plan requires that projects be at least 1.0 MW in order to participate in a solicitation.<sup>10</sup> This is in part because, in order to meet the hundreds of MW embedded in the 20% by 2010 objective, utilities primarily need (and generally want) to devote limited time and resources to bid processing and LCBF analysis for larger rather than smaller projects.<sup>11</sup>

A minimum size to participate in a bid solicitation may also make sense for many developers. That is, from the developer's perspective, smaller projects tend to have a difficult time participating in solicitations and such participation

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<sup>10</sup> PG&E, 2008 Solicitation Protocol, August 1, 2008, Chapter III.D.1.a (p. 6). SCE, 2008 RFP, Article 2.06 (p. 5). SDG&E 2008 RFO, Chapter 7 (p. 17).

<sup>11</sup> The minimum size is even larger for some projects. For example, PG&E requires offers for dispatchable products to be at least 25 MW. (2008 Solicitation Protocol, Chapter III.D.1.a, p. 6.) SDG&E requires offers to be at least 5 MW if the facility is outside the SDG&E service area. (SDG&E 2008 RFO, Chapter 7, p. 17.)



may be unreasonably costly (e.g., sorting through what may be complex documents, attending bidders conferences and/or workshops, preparing documents, engaging in post-bid negotiations). To address these and other concerns, utilities and developers now have the option of using tariffs/standard contracts for smaller projects up to 1.5 MW. (D.07-07-027.)

Based on the availability of the tariff/standard contract option for smaller projects, it is reasonable to slightly increase the minimum size of projects participating in RPS solicitations. We therefore accept the IOUs' Plans on the condition that they are amended to increase the minimum size for projects to bid into a solicitation from 1.0 MW to 1.5 MW. This will help focus projects on efficient use of tariffs/standard contracts, and permit utilities to generally devote attention to larger projects. This does not, however, foreclose the use of another approach (e.g., bilateral negotiation, individual contract) if a particular project requires unique treatment.

We also note that the focus of RPS solicitations is largely intended to be on commercially viable projects evaluated using an LCBF methodology. Slightly increasing the MW limit for projects to submit bids is consistent with that focus, while at the same time using a streamlined approach for commercially viable, but smaller, projects.

We also expect utilities to consider projects which employ emerging technologies. We are separately considering a request by PG&E and SDG&E to implement an Emerging Renewable Resource Program (ERRP). (See A.07-07-015.) If approved, emerging projects may perhaps be better evaluated via the ERRP rather than periodic RPS project solicitations. For improved clarity, it may be appropriate to have a solicitation for emerging, pilot and demonstration projects that is separate from the solicitation intended for

commercially viable projects. IOUs should work with Energy Division on this, if appropriate.

Nonetheless, we expect utilities to evaluate all projects (including emerging, pilot, demonstration) no matter the method in which they are brought to the attention of the utilities, and despite the regulatory review process at the Commission. If evaluated via RPS bid solicitations, utilities may need to develop slightly different evaluation criteria for emerging, pilot and demonstration projects. Utilities should work with Energy Division on identifying those criteria, if any and as necessary. Utilities should present those projects (emerging, pilot, demonstration) in separate and clearly identified filings for Commission consideration.

#### **4.9. Utility Ownership of RPS Facilities**

We do not require IOUs to build RPS resources in order to meet RPS Program goals but we note, as we have before, that we expect IOUs to consider the option. For example, in enforcing the 20% by 2010 requirement, we will take into account whether or not each IOU undertook all reasonable actions to comply, including building and owning RPS resources. (See, for example, D.07-02-011, p. 23, citing D.06-05-039, p. 24.)

In this regard, the June 15, 2007 amended Scoping Memo directed that each IOU's Plan include information on its current consideration of whether or not to build its own renewable resources to reach 20% by 2010. Each IOU responded, indicating that it is considering the option, particularly when ownership would be cost-effective. Each also notes certain impediments,

however, such as tax considerations, and the lack of a development group within the utility.<sup>12</sup>

We appreciate the responses, but note that the showings are relatively short, generally inconclusive, and unlikely to meet the standard we stated in 2007. Our prior statement on this matter regarding prior plans remains succinct and clear. We adopt it again here:

“In particular, we note (as we similarly did last year) that minimal discussion in an RPS Plan about a utility building a renewable energy resource does not itself excuse an IOU from compliance with RPS goals. Our conditional acceptance of these Plans does not constitute a finding that each IOU has undertaken all reasonable actions to comply with RPS Program goals. We do not here require utilities to build resources. Nonetheless, we encourage IOUs to actively assess the feasibility of utility ownership, and pursue such ownership when and where it makes sense. We are unlikely to look favorably on a showing prepared in 2010, for example, regarding whether the IOU should have built plant earlier in the decade. Rather, we think the most convincing showing, if any, would likely include information created contemporaneously with each annual RPS Plan.” (D.07-02-011, p. 25.)

We also note three items from our recent decision on the IOUs’ long-term procurement plans. First, there may be a unique and important role for utility-owned RPS generation. Utility-owned generation from renewable energy resources, for example, can put downward pressure on what are otherwise

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<sup>12</sup> For example, utility-owned RPS facilities are ineligible for certain investment tax credits and property tax exemptions. Regarding project development, SDG&E points out that it recently left the development business and re-entering the field is a significant undertaking not currently contemplated in its general rate case (GRC). (Plan, p. 26.) SCE, on the other hand, points out that its test year 2006 GRC decision (D.06-05-016) permits recovery of costs that support studying new generation, including renewables. (Plan, pp. 28-29.)

increasing renewable energy prices. This satisfies an important policy objective that justifies strong consideration of utility ownership. (D.07-12-052, p. 77.)

Second, we have identified five unique circumstances warranting utility ownership when a competitive bidding process is otherwise infeasible. One such circumstance is in the procurement of preferred resources, including renewables.<sup>13</sup> While we continue to rely on markets where feasible, we note:

“there is no reason to limit our options and [we] intend to continue to deploy all resources available to us, including utility development and ownership, to meet California’s vital environmental policy objectives.” (D.07-12-052, p. 211.)<sup>14</sup>

Third, we have recently agreed with parties that a “one-size-fits-all” ratemaking regime for utility-owned generation is undesirable, and have specifically eliminated our prior 50/50 cost cap-sharing mechanism.<sup>15</sup> We will now consider all ratemaking proposals when and as made on a case-by-case

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<sup>13</sup> Preferred resources in order of preference are: energy efficiency, demand response, renewables, distributed generation and clean fossil-fuel. (D.07-12-052, p. 211, footnote 240.)

<sup>14</sup> This may include electric utility ownership of electric generation sited at a water or wastewater company (including Commission-regulated Class A and B water utilities), with ownership by the electric utility or partial ownership in combination with the water or wastewater utility.

<sup>15</sup> We previously required IOUs to bid utility-built projects into competitive solicitations and, for successful bids: (a) would not allow recovery from ratepayers of initial capital costs in excess of the final bid price (“cost cap”) and (b) required 50/50 sharing of the savings between ratepayers and utilities when final capital costs were under the cost cap. (D.07-12-052, p. 213, citing D.04-12-048, pp. 128-129.)

basis. (D.07-12-052, p. 221.) We expect this new approach to facilitate consideration of utility-owned RPS generation.<sup>16</sup>

#### **4.10. Coordination of Plans**

IOUs are to submit Plans in the form and format in which they seek their acceptance by the Commission. At the request of the assigned Commissioner, IOUs coordinated on further improvements in form and format for the 2008 Plans, and reported on those efforts. In particular, each IOU adopted the same outline for the summary document addressing its 2008 Plan (employing a list of items identified in the Amended Scoping Memo). We appreciate the uniform structure of that document.

As we did last year, however, we continue to note that each Plan is complex, with many attachments that are not easy to assess and use.<sup>17</sup> In particular, the form and format of the attached solicitation documents (e.g.,

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<sup>16</sup> For example, SCE stated that: “should SCE identify a cost-effective renewable energy generation opportunity, it would pursue the development of the associated generating facility under the assumption that it would receive a successful resolution of cost sharing issues.” (August 1, 2008 Plan, p. 29.) We had only six months earlier advised SCE that, absent compelling reason otherwise, we were unlikely to agree with SCE that the asymmetric treatment alone would justify SCE deciding not to build RPS resources. (D.07-02-011, p. 25.) Nonetheless, we have now addressed SCE’s concern.

<sup>17</sup> Each Plan, for example, includes an overall summary and multiple additional documents. In addition to the summary, PG&E’s Plan includes a Solicitation Protocol with 12 attachments (e.g., solicitation protocol agreement, form of letter of credit, offer form, FERC Order 2004 Waiver, model contract for as-available product, model contract for firm product, term sheet, confidentiality agreement). SCE’s Plan includes a Request for Proposals (RFP) with six appendices (e.g., notice of intent to submit proposal, pro forma agreement, form of seller’s proposal, TRCR, revenue calculator). SCE’s form of seller’s proposal itself contains six exhibits (e.g., proposal checklist, transmittal letter). SDG&E’s Plan includes an RFO and six documents in its Appendix B (e.g., offer

*Footnote continued on next page*

Protocol, RFP, RFO) differ between IOUs, as do the various related forms and model contracts. We are not convinced that such complexity is necessary, and we encourage IOUs to continue to seek incremental improvements. As we said last year:

“Each Plan is a complex document that is not easy to assess and use. Each Plan is quite different in structure than the other Plans. We note that improvements have been made in the Plans over the previous cycles, but each remains relatively complex. We are not certain they need to be.

We encourage each IOU to continue to seek ways to improve its RPS Plan. We encourage IOUs as a group to use a common form and format. There does not appear to be anything so particularly unique about the plan to buy, or the contract to buy, electricity from a third-party RPS generator that each IOU must have its own form and format (even if some of the details in a Plan, or some particular contract clauses, might be different).

Consistent with the direction above, each 2008 [and 2009] proposed Plan must be in a form and format which the LSE seeks to be adopted by the Commission. It must be complete and current. Moreover, we encourage IOUs to seek ways to organize, format and present each Plan in a manner that facilitates its use by all involved, including bidders and the Commission.

Finally, we encourage IOUs and parties to give serious consideration to further development of improved model contracts, including standard terms and conditions. Better and more uniform model contracts will likely to be useable by more bidders without requiring substantial further negotiation and modification. This will permit a more streamlined process for bidding, negotiation and

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response forms, credit applications, consent form, offer summary sheet and check list, contract documents).

Commission review. The additional time spent “up front” could potentially be small compared to the time savings for the entire remainder of the process. Further, by reducing transaction time plus transaction and other costs, it might make the overall RPS structure more transparent, efficient and competitive. This could offer an opportunity to assist LSEs and California achieve the overall RPS goals sooner at lower cost.” (D.07-02-011, pp. 62-63.)

SCE reports that the IOUs faced significant challenges in making the 2008 solicitation forms and model contracts substantially similar. For example, SCE says the IOU’s bid solicitation materials diverged several years ago, and it would be difficult to agree to identical or similar documents now. Each IOU has incorporated lessons learned that are specific to that IOU, according to SCE, and a requirement to use a single set of documents could potentially omit those lessons learned. Finally, SCE contends that it would not make sense for IOUs to negotiate over a standard form and format since the “enormous amount of time and effort it would take” to develop common documents would not produce any more contracts, nor streamline contracting time, because developers always demand changes. (SCE Plan, p. 30.) SCE strongly recommends the Commission not attempt to create additional similarities between bid solicitation materials other than the Procurement Plan.

We disagree. Materials diverged initially because exigencies largely required using a pragmatic approach. IOUs made proposals within a general framework, but we did not require uniformity. We do not now require uniformity, but think incremental improvements may be made each year toward that goal. Further, not all lessons learned by one IOU are unique to that IOU. Many such lessons should be employed more generally for the benefit of the entire State. Lastly, we are not seeking an “enormous” amount of time, but incremental improvements in form and format.

As we noted above, the additional time spent “up front” should be small compared to the time savings for the entire remainder of the process, including the Commission’s time in reviewing endlessly different contracts. Additional uniformity will make the overall RPS structure more transparent, efficient and competitive. It may also promote desirable simplicity in a relatively complex Program. Nonetheless, we do not order a uniform form and format, but encourage IOUs and parties to build on past improvements (including those made for the 2008 Plan) and continue to make incremental progress.

#### **4.11. In-State Delivery**

SCE notes that the RPS Program is limited to renewable resources that meet the definition of “in-state renewable electricity generation facility.” (§ 399.12(b) and Pub. Res. Code § 25741(b).) SCE asserts that this limits the pool of resources that can compete in solicitations, thereby reducing competition and increasing prices. SCE notes that legislation may be required, but recommends that the Commission consider relaxing or removing the in-state delivery requirement. (August 10, 2007 Amended Plan, p. 7.)

No party supports SCE’s recommendation, and GPI objects, contending that some RPS Program benefits are dependent upon location (e.g., reduced pollutants, rural development opportunities). SDG&E and PG&E assert they will solicit bids both anywhere in California as well as outside California, to the extent consistent with law.

We are not persuaded that any change is necessary. An eligible renewable energy resource for the purpose of the RPS program means a facility, subject to certain limitations, that meets the definition of an in-state renewable electricity



generation facility in § 25741 of the Public Resources Code.<sup>18</sup> (§ 399.12(b).) While this generally requires delivery to an "in-state" location, facilities may be located in-state, out-of-state, or even outside the United States.<sup>19</sup>

There are complexities in tracking RPS electricity and its attributes (e.g., RECs). Relaxing or removing current in-state delivery requirements could introduce additional complexity. It may require new legislation. This must be balanced with a judgment regarding whether or not the current market is reasonably competitive. SCE provides no data on the potential benefits, if any, compared to the additional burdens, and no other party provides data to support SCE's recommendation.

We are confident that a reasonable pool of resources may be tapped in all regions (in-state, out-of-state, out-of-country) within current protocols, thereby permitting reasonable competition. We think this properly balances all competing needs and interests, and permits effective competition. If bid prices are elevated due to a lack of effective competition, however, the law provides that SCE or another party may bring this to the attention of the Commission, and we may direct renegotiation of contracts or a new solicitation, as appropriate. (§ 399.14(d).) SCE has also raised the issue in R.06-02-012, and we will address it further there to the extent necessary.

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<sup>18</sup> The CEC is responsible for implementing this definition. (See, for example, "RPS Eligibility Guidebook," CEC-300-2007-006-CMF, adopted March 14, 2007.)

<sup>19</sup> See, for example, Resolution E-4128 adopted on November 16, 2007, approving PG&E's acquisition of electricity from PPM Klondike III in Sherman County, Oregon.

## **5. Limited Issues Specific to an IOU Plan**

We comment further below on limited issues specific to each Plan. As we have said before, conditional acceptance of these Plans does not constitute endorsement or adoption of proposed policy measures that have not yet been fully vetted. It also does not constitute endorsement or adoption of each aspect of each Plan.<sup>20</sup> Rather, we conditionally accept each Plan, subject to limited required amendments and several suggestions made herein. Each utility remains ultimately responsible for proposing and executing reasonable Plans that achieve RPS targets, including 20% by 2010, subject to flexible compliance rules. We will later judge the extent of each IOU's success, including the degree to which each IOU implements Commission orders, applies the Commission guidance, demonstrates creativity and vigor in program execution and, most importantly, reaches program targets and requirements.

### **5.1. PG&E**

We limit our comments to three elements of PG&E's Plan: short-term offer schedule, short-term offer pricing, and bidder workshop.

#### **5.1.1. Short-Term Offer Schedule**

PG&E proposes an April 4, 2008 deadline for most offers, but April 25, 2008 for short-term offers. (Revised Draft 2008 Solicitation Protocol, September 6, 2008, pp. 3 and 45.) In general, we think the same deadline is likely to be clearer and less confusing, but leave this to PG&E's judgment, subject to PG&E meeting RPS Program goals.

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<sup>20</sup> See, for example, D.06-05-039 (pp. 61-62), D.07-02-011 (p. 53) and D.07-012-052 (p. 299, Conclusion of Law 63).

### **5.1.2. Short-Term Offer Pricing**

PG&E states that sellers of as-available, baseload and peaking products will be paid for energy delivered according to time-of-delivery (TOD) periods. PG&E also requires that sellers of baseload or peaking products meet certain capacity factors by TOD period. PG&E, however, does not require participants making short-term offers from existing eligible renewable energy resources to include TOD factors. Nor does it require short-term baseload products to meet certain capacity factors. (Revised Draft 2008 Solicitation Protocol, September 6, 2008, pp. 25-26 and 46-47.)

Short-term offers are for periods up to 10 years. To the extent it is relevant for products 10 years and over to be paid by TOD (e.g., so they are given an incentive to provide energy during times when it is most needed) and meet certain capacity factors (e.g., so reliance for resource adequacy is more secure) it also appears relevant for multi-year products up to 10 years. PG&E fails to provide adequate justification to support its reasons to eliminate these provisions. Our general approach is to allow PG&E to exercise its judgment on such items. We point out, however, that PG&E is subject to meeting overall program goals, and decisions regarding application of flexible compliance provisions will also take into account the flexibility given PG&E in procurement design and execution (with the flexibility in procurement design and execution expected to increase PG&E's ability to reach program targets).

### **5.1.3. Bidder Workshop**

PG&E notes that, for the first time with its 2007 solicitation, it conducted a bidders' workshop in addition to a bidders' conference. The workshop was used to inform bidders of the details of solicitation forms and contracts, and answer general procurement questions. PG&E reports that the workshop proved

effective, with offers in 2007 on the whole more complete than those in 2006. PG&E says it intends to conduct a bidders' workshop again as part of the 2008 solicitation.

PG&E is on the right track. Just as we did in 2006, we re-emphasize that IOUs should undertake all reasonable actions to reach RPS goals, including workshops if and when useful. (See D.06-05-039, p. 47.) We encourage other IOUs to follow PG&E's lead where doing so will advance the RPS Program.

## **5.2. SCE**

We comment only on one item: SCE's Biomass Program.

We expect RPS Procurement Plans to include and explain each significant method an IOU intends to use to acquire RPS resources for purposes of meeting RPS Program targets. The amended Scoping Memo specifically directed IOUs to prepare 2008 Procurement Plans that are inclusive and comprehensive of the methods each will use to meet RPS Program targets.

In response, SCE states it will not only use its 2008 RFP and pro forma agreement, but will also use two other contracting options: (a) Biomass Program and (b) tariff and standard contract to implement § 399.20 pursuant to D.07-07-027. We comment on SCE's Biomass Program, and begin with a brief description.

On May 14, 2007, SCE issued a press release announcing the availability of three standard contracts for biomass projects. The contracts are available to facilities with capacities of less than 1 MW, 1 MW to 5 MW, and greater than 5 MW to 20 MW. SCE offers all three contracts to RPS-eligible biomass resources for terms of 10, 15 and 20 years at an energy price set at the MPR. SCE states it voluntarily initiated this program to support the Governor's goal of promoting energy production from biomass fuel sources. (See Executive Order S-06-06.)

The standard contracts, according to SCE, address difficulties smaller biomass projects have had participating in SCE's annual solicitations, and eliminate the complex negotiation process required of other projects. SCE declares that the Biomass Program will remain open until the earlier of December 31, 2007 or until such time as SCE has signed contracts totaling 250 MW in the aggregate. SCE says it also reserves the right to cancel or extend the program at its sole discretion. (SCE Plan, p. 31.) SCE concludes by saying:

"Finally, it should be noted that SCE is not necessarily seeking approval of its biomass program or the standard contracts as part of its 2008 Procurement Plan. Instead, SCE intends to file an application, along with a batch of executed agreements, seeking standing approval of any agreements signed pursuant to the standard contracts and of the agreements included therewith." (*Id.*, p. 32.)

We note four things about SCE's Biomass Program. First, if it closes on December 31, 2007, it is not relevant for the 2008 Procurement Plan. Second, no party provides material comments (e.g., recommending specific changes to one or more standard contracts or the applicable price).

Third, our application of the legislative structure for the RPS Program is to allow each electrical corporation considerable flexibility in the way it meets RPS goals. In exchange, each electric corporation must meet its RPS Program targets, within application of flexible compliance criteria, and penalties will apply for unexcused failures to meet targets. We accept, reject or modify each Plan before a particular solicitation, but we do so at a reasonably high level.

In that context, SCE's Biomass Program appears to be a reasonable application of SCE's business judgment, including whether or not SCE elects to cancel or extend the program. SCE is not necessarily seeking Commission acceptance, rejection or modification of its Biomass Program or the related

standard contract in the context of its 2008 Plan, and, with one limited exception, we decline to make that judgment.

The exception is, if SCE elects to extend the program into 2008, we accept SCE's Biomass Program as part of SCE's 2008 RPS Plan. In that way, such contracts may be judged based on consistency with this Plan.<sup>21</sup>

Fourth, SCE does not request acceptance of its three standard contracts, nor use of the MPR price level. Rather, SCE says it "intends to file an application, along with a batch of executed agreements, seeking standing approval of any agreements signed pursuant to the standard contracts and of the agreements included therewith." Because we reach no decision here on the three standard contracts and/or price, we will make those judgments if and as needed when SCE files an application.

### **5.3. SDG&E**

We address two items: (a) integration cost and (b) whether and when to conduct a solicitation.

#### **5.3.1. Integration Cost**

SDG&E reports that bids for RPS projects are assessed using evaluation criteria consistent with directives contained in various Commission decisions (e.g., D.03-06-071, D.04-06-013, D.04-07-029). The bids are then ranked in an

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<sup>21</sup> Contracts submitted for our consideration that are not part of an accepted Plan may be reviewed by application of other criteria, such as those used for a bilateral contract. SDG&E notes, for example, that RFOs are only one means of procurement. SDG&E says the Western Electricity Coordinating Council has a well-established and liquid bilateral market. Not only is the bilateral market an important tool for procurement, according to SDG&E, but it is available year-around where the RPS RFOs tend to be annual. (Plan, p. 9.)

LCBF order. For 2008, SDG&E proposes to include a non-zero integration cost as part of its evaluation criteria and LCBF assessment. The integration cost adder, according to SDG&E, would account for added costs created by resources that require additional ancillary services, load following capability, over-generation mitigation and/or VAR support. SDG&E says it intends to develop an integration cost adder, and will review the adder with its PRG prior to its inclusion in its 2008 evaluation criteria.

We decline to accept this item in SDG&E's Plan. We currently direct IOUs to follow the CEC determination that integration costs are negligible.

(D.04-07-029, p. 12.) SDG&E does not point to any different determination made by CEC, and we are not persuaded to vary from the CEC's determination here.

We recently declined to permit SCE to include an integration cost adder.

(D.07-02-011, p. 56.) SDG&E presents no information why it should be treated differently. Moreover, one very important function of requiring IOUs to periodically file RPS Procurement Plans, as done here, is to provide an opportunity for public review and comment. We are not inclined to permit an IOU to develop an arguably important element of its LCBF assessment subject only to PRG review without the opportunity for public input.

### **5.3.2. Election to Conduct 2008 Solicitation**

SDG&E proposes that each IOU be permitted to decide on its own whether or not to conduct a solicitation in 2008. We are not entirely persuaded.

We addressed this same concept two years ago, and nothing convinces us to conclude differently now. Just as we said in 2006, and for all the same reasons, we think foregoing a solicitation in 2008 would be poor judgment. No utility is so certain of achieving 20% by 2010 that it should err on the side of postponing

or foregoing a solicitation. Moreover, nothing prohibits an IOU from achieving 20% before 2010. Each IOU should vigorously pursue early success.

We do not order SDG&E to conduct a solicitation, but we will evaluate its decision should SDG&E later fail (beyond flexible compliance provisions) to achieve its annual targets or 20% by 2010. Absent a very good reason to the contrary, we expect each IOU to conduct a solicitation at least once each year, and – if IOUs assist us craft it – on a more frequent or continuous basis. (See D.06-05-039, pp. 65-66.)

## **6. Schedule and Organization for 2008 Solicitation and 2009 Plans**

### **6.1. 2008 Solicitation**

The IOUs proposed a uniform solicitation schedule. We generally adopt their proposal. (See Attachment C.) We limit the adopted schedule to major milestones. This permits IOUs and staff reasonable flexibility, just as we did in 2007. We adjust the dates to be consistent with the date of this order.

### **6.2. 2009 Plan**

We adopt the same basic approach used in developing and reviewing the 2006, 2007 and 2008 Plans for the 2009 cycle. (D.05-07-039, p. 29; D.06-05-039, p. 58; D.07-02-011, p. 61.) That is, we expect the filing and service of 2009 draft RPS plans and draft RFOs later this year (e.g., by August 1 so they potentially may be accepted at one of our meetings in December 2009). The specific schedule will be set by the assigned Commissioner or Administrative Law Judge (ALJ).

Moreover, as we have also done before, we authorize the assigned Commissioner to assess the adequacy of TRCRs used in the LCBF ranking of bids. (D.04-06-013, D.05-07-040 and D.06-05-039.) The assigned Commissioner



or ALJ should set dates, as needed, for utilities to request information for the TRCRs, to file draft TRCRs, and for parties to file comments and replies on the draft TRCRs. The assigned Commissioner should then assess the adequacy of the draft TRCRs, and determine whether the reports should be modified or other steps taken before the results are used in the ranking of bids. (D.05-07-040, OP 7; D.06-05-039, OP 7; D.07-02-011, OP 5.)

## **7. Comments on Proposed Decision**

On January 11, 2008, the proposed decision of ALJ Mattson in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and Rule 14.3 of the Commission's Rules of Practice and Procedure (Rules). Comments were filed on January 31, 2008 by SCE, PG&E, SDG&E, GPI, MU and Independent Energy Producers Association (IEP). Reply comments were filed on February 5, 2008, by SCE, PG&E, SDG&E, GPI, IEP and California Wind Energy Association. As required by our rules, comments must focus on factual, legal or technical errors and, in citing such errors, must make specific references to the record. Comments which merely reargue positions taken in the proceeding are given no weight. (Rule 14.3.)

We carefully considered comments which focus on factual, legal or technical errors, with citation to the record, and make appropriate changes to the proposed decision. In particular, we clarify that pooling does not change existing earmarking rules, explain that the revised flexible compliance rules apply to all LSEs, delete the discussion of TOD factors, and make other modifications as appropriate.

## **8. Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner, and Burton W. Mattson and Anne E. Simon are the assigned ALJs for this proceeding.

### **Findings of Fact**

1. Parties generally do not recommend rejection of proposed Plans, but recommend specific improvements without wholesale or extensive changes to Plans before their acceptance by the Commission.

2. No motion for hearing was filed.

3. IOUs seek acceptance of including solicitation of short-term (as well as long-term) contracts within the 2008 solicitation, and do not request postponing or foregoing the 2008 solicitation.

4. IOU procurement plans (particularly for SCE and SDG&E) must be amended to incorporate provisions for solicitation of short-term contracts.

5. In May 2007, the Commission adopted a condition relative to use of short-term contracts (D.07-05-028).

6. For purposes of flexible compliance rules, "0.25% of prior year retail sales" is equivalent to "25% of IPT."

7. IPT does not apply to 2010 and beyond under current provisions of the RPS Program.

8. A shortfall in RPS procurement created by lack of transmission raises questions regarding how to formulate a flexible compliance mechanism with regard to insufficient transmission, but does not make it impossible to do so.

9. The current RPS reporting format requires an LSE to choose the specific contract and energy deliveries it elects to earmark.

10. Unlimited carry-forward of an RPS deficit would make the 20% target meaningless, eliminate any need for reasonable planning and procurement margins of safety, and shift substantial burden for achieving RPS Program goals from electric corporations to developers of generation and transmission projects.

11. Existing flexible compliance rules are in the context of the legislatively required growth of no less than 1% per year to 2010, and continuation of existing rules in 2010 and beyond is not necessarily unreasonable when approximately the same annual growth factor underlying those rules is expected to continue.

12. Considerable work relative to renewable energy potential and transmission issues is now underway as a result of RETI, and modifying the TRCR process (to calculate transmission adders based on actual bids rather than information obtained prior to actual bids) would introduce the potential for undesirable delay in creation of project short-lists by IOUs.

13. IOUs currently provide information and status updates on transmission lines in quarterly AB 970 reports and other venues, including RETI.

14. It is reasonable to expect IOUs to take an active approach and work with certain customers (i.e., water, wastewater, other) and Commission staff regarding potential development of relatively smaller renewable projects using tariffs/standard contracts implemented pursuant to § 399.20 and D.07-07-027.

15. Each IOU's Plan requires projects to be at least 1.0 MW in size in order to participate in a solicitation, while IOU tariffs/standard contracts pursuant to D.07-07-027 are available for projects up to 1.5 MW.

16. It is reasonable to slightly increase the minimum size of projects participating in RPS solicitations, given the availability of the tariff/standard contract option for smaller projects.

17. The information in each IOU's Plan regarding its current consideration of whether or not to build its own renewable resources to reach 20% by 2010 is, as it was in previous plans, relatively short and generally inconclusive.

18. IOU Plans continue to be relatively complex documents (including many attachments, different model contracts, and multiple related forms), and

continuing with incremental improvements toward more uniformity in form and format is likely to be desirable while also advancing goals of increased simplicity, transparency, efficiency and competition.

19. SCE does not necessarily seek approval of its Biomass Program, or the three related standard contracts, as part of its 2008 Plan.

20. Regarding integration cost, IOUs are currently under Commission direction to use the CEC determination that integration costs are negligible, SDG&E does not point to any different determination by CEC, and we recently declined to permit SCE to include a non-zero integration cost adder.

21. No utility is so certain of achieving 20% by 2010 that it should err on the side of postponing or foregoing a solicitation; nothing prohibits an IOU from achieving 20% before 2010; and each IOU should vigorously pursue early success.

### **Conclusions of Law**

1. With some exceptions, electrical corporations are required to prepare a renewable energy procurement plan, and the Commission is required to review and accept, modify, or reject each plan.

2. PG&E, SCE and SDG&E should continue to have reasonable flexibility in the way each satisfies RPS program requirements, subject to Commission guidance, limited specific requirements, and certain specific dates for the 2008 solicitation cycle.

3. Conditional approval of each 2008 RPS Plan (including Protocol, RFO, RFP, model contracts, other forms) does not constitute endorsement or adoption of each element of each Plan; rather, each IOU remains responsible for overall program success, subject to rules for flexible compliance and tests of reasonableness (e.g., how each entity administers the program, including the

extent to which each entity takes Commission guidance; demonstrates creativity and vigor in program execution; and successfully reaches program goals, targets and requirements).

4. The proposed 2008 RPS Procurement Plans of PG&E, SCE and SDG&E should each be conditionally accepted, subject to the guidance, necessary modifications, changes and clarifications stated in this order, including, but not necessarily limited to, each item summarized in Appendix A.

5. PG&E, SCE and SDG&E should each, within 14 days of the date this order is mailed, file an amended Plan, serve it on the service list, and file it on the Energy Division Director. Unless suspended by the Energy Division Director within 21 days of the date this order is mailed, each utility should use its amended Plan for its 2008 RPS program and solicitation.

6. Each 2008 Plan should permit short-term (as well as long-term) bids, revised Plans that include solicitation of short-term contracts should be subject to review by Energy Division, and the treatment of procurement under short-term contracts should be consistent with the condition adopted in D.07-05-028.

7. The Commission should not direct IOUs to either postpone or forego the 2008 solicitation.

8. Flexible compliance provisions should be modified to extend existing rules to 2010 and thereafter, and change "25% of IPT" to "0.25% of prior year retail sales."

9. Flexible compliance provisions should allow insufficient transmission as a permissible reason for failure to satisfy RPS Program targets if the retail seller makes a showing, and the Commission makes a finding, that the retail seller has undertaken all reasonable efforts to do at least all of the following: (a) utilize flexible delivery points; (b) ensure the availability of any needed transmission

capacity; (c) if the retail seller is an electric corporation, to construct needed transmission facilities; and (d) done nothing to conflict with its overall procurement plan (§ 454.5). The burden of proof should rest with the entity requesting the relief and, if authorized, the deferral should be permitted up to three years.

10. For purposes of meeting RPS targets, an LSE must execute contracts that result in actual deliveries within three years, but should be allowed to satisfy a procurement deficit by using actual energy deliveries from any contract that is otherwise eligible for earmarking with respect to a given year's deficit (without being required to forecast the exact contract and energy deliveries).

11. Unlimited carry-forward of a procurement deficit is incompatible with the statutory provision that inadequate procurement in one year may be carried-forward to no more than the following three years (§ 399.14(a)(2)(c)(i)).

12. RPS procurement goals and targets, and compliance determinations for enforcement purposes, should continue to be measured in actual deliveries.

13. Retail sellers should be expected to increase RPS procurement each year toward a goal of 33% by 2020, but should not, at this time, be subject to penalties for failure to procure more than 20% by 2010.

14. The TRCR process should not be modified at this time.

15. Model contracts in the 2008 Plans should include the four non-modifiable STCs adopted in D.07-11-025.

16. SCE's understanding of treatment of STC 3 should be affirmed.

17. IOUs should not take a passive approach to implementing and administering the tariffs/standard contracts for smaller RPS facilities but should work with those customers and Commission staff, as necessary and appropriate, to facilitate reasonable development, and should also report to the Water and/or

Energy Divisions, if requested, on opportunities, impediments, solutions and anything else necessary to provide reasonably complete information to the Commission.

18. IOU Plans should be accepted upon the condition that the minimum project size a bidder may submit in a solicitation is increased from 1.0 MW to 1.5 MW.

19. To the extent IOUs have reasonable flexibility in program administration (e.g., credit and collateral policies and amounts, disclaimer and waiver language, margins of safety, short-term offer schedule and pricing, election to offer or withdraw availability of Biomass Program, election to conduct 2008 solicitation), an IOU later requesting deferral or waiver of a penalty should have the burden to present a complete showing in support of that request which, among other things, demonstrates reasonable program administration within Commission guidelines.

20. Commission enforcement of each APT, and 20% by 2010, should take into account whether or not each electrical corporation undertook all reasonable actions to comply, including but not limited to, whether or not it reasonably considered building its own RPS resources.

21. IOUs should continue to make incremental improvements toward adopting a common form and format for RPS Plans, including the overall summary document and the multiple attachments (including Protocol, RFP, RFO, model contracts and multiple related forms).

22. If SCE elects to extend its Biomass Program, Commission acceptance of SCE's 2008 Plan should include SCE's Biomass Program.

23. SDG&E's proposal to include a non-zero integration cost should not be accepted.

24. The 2008 solicitation schedule in Appendix B should be adopted.

25. The same approach for Commission review and acceptance, rejection or modification of the 2009 Plan should be used as employed for prior Plans, with the assigned Commissioner setting the specific schedule and addressing TRCRs.

26. Evidentiary hearing is not necessary.

27. This proceeding should remain open.

28. This order should be effective today so that the 2008 RPS solicitation may proceed without delay.

## **O R D E R**

### **IT IS ORDERED** that:

1. Each utility-proposed renewable energy procurement plan (Plan) as part of the California Renewables Portfolio Standards (RPS) Program is conditionally accepted for the next RPS solicitation cycle. Each Plan includes, but is not limited to, Protocols, Request for Proposals (RFPs), Request for Offers (RFOs), model contracts and/or Power Purchase Agreements (PPAs). The Plans are in the following documents:

- a. The Pacific Gas and Electric Company (PG&E) "2008 Renewable Energy Procurement Plan" filed August 1, 2007, amended August 10, 2007, amended September 6, 2007, including the 2008 Solicitation Protocol.
- b. The Southern California Edison Company (SCE) "2008 Renewables Portfolio Standard Procurement Plan" filed August 1, 2007, amended August 10, 2007, including the 2008 RFP.



- c. The San Diego Gas & Electric Company (SDG&E) "2008 Draft Renewable Procurement Plan" filed August 1, 2007, amended August 10, 2007, including the 2008 RFO.
  2. Each document referenced above is adopted on the condition that:
    - a. Within 14 days of the date this order is mailed, PG&E, SCE and SDG&E shall each file and serve an amended Plan that is consistent with all the orders in this decision, plus all guidance in this decision with which the utility agrees, and simultaneously file a copy with the Director of the Energy Division. The orders and guidance are summarized in, but not limited to, Appendix A.
    - b. Unless suspended by the Energy Division Director within 21 days of the date this order is mailed, each utility shall use its amended Plan for its next solicitation.
  3. The 2008 RPS procurement cycle shall be as stated in Appendix B. The schedule may be modified by the Energy Division Director as reasonable and necessary for efficient administration of this solicitation. Parties may seek schedule modification by letter to the Executive Director (pursuant to Commission Rules of Practice and Procedure).
  4. The flexible rules for compliance with RPS Program targets are modified as described in this order, and summarized in Appendix D, including (a) extension of existing rules to 2010 and thereafter; (b) allowance of insufficient transmission as a permissible reason for failing to satisfy a retail seller's RPS Program targets, upon a finding by the Commission that the retail seller has undertaken all reasonable actions to do all of several things identified in the law; and (c) use of banked surpluses and pooling of earmarked deliveries.
  5. SCE, PG&E and SDG&E shall each actively assist water, wastewater and other customers (including, but not limited to, Commission-regulated Class A

and B water and wastewater utilities) to understand and use tariffs and standard contracts to facilitate reasonable development of smaller RPS generation projects. This may include workshops and/or meetings with customers and/or Commission staff to explain the tariff/standard contract, help identify potential, consider financing options, and other matters. If requested by either the Director of the Water or Energy Division, each investor-owned utility (IOU) shall participate in a staff-convened workshop and/or meeting, respond to data requests, and shall each submit a report to the appropriate Division Director. The report shall describe each IOU's work with its water and wastewater agency customers (and other customers to the extent requested); the generation opportunities identified; the impediments that may exist; recommended solutions, if any, to each impediment; and anything else relevant to advancing the success of tariffs and standard contracts for smaller RPS projects.

6. Consistent with all prior Commission orders and directions, each utility ultimately remains responsible for reasonable RPS program outcomes, within application of flexible compliance criteria. The Commission shall later review the results of renewable resource solicitations submitted for Commission approval, and accept or reject proposed contracts based on consistency with each approved Plan. The Commission shall also judge contract results, program results, and non-compliance pleadings by, but is not limited to, considering the degree to which each utility implements Commission orders; reasonably elects to take or reject the guidance provided herein; reasonably demonstrates creativity, innovation and vigor in program execution; reaches program targets and requirements; and shows it took all reasonable actions to achieve compliance, including but not limited to the factors identified in this and prior orders.

7. The assigned Commissioner or Administrative Law Judge (ALJ) in this proceeding (or its successor proceeding with regard to ongoing implementation and administration) shall set a schedule for the filing and service later this year of draft RPS Plans for the 2009 solicitation, and subsequent draft RPS Plans, as necessary. The assigned Commissioner or ALJ shall set a schedule for matters related to Transmission Ranking Cost Reports (TRCRs) to be used in the ranking of bids in an RPS solicitation. The assigned Commissioner shall assess the adequacy of each TRCR based on filed comments and reply comments, and shall determine whether each TRCR shall be accepted, modified, or other steps taken before a TRCR is used in ranking bids in an RPS solicitation.

8. Rulemaking 06-05-027 remains open.

This order is effective today.

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

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

**APPENDIX A**  
**REVIEW OF AND CHANGES TO 2008 PLANS**

The attached decision reviews and conditionally accepts the 2008 Procurement Plans of Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E). The orders and guidance (while not limited by this summary) are summarized below.

1. **Short-Term Contracts**: Each 2008 solicitation may include requests for bids for contracts that are short-term (less than 10 years) as well as long-term (10 years and longer). The Plans will be subject to Energy Division review for consistency with this order and program protocols, and may be suspended by Energy Division. Energy deliveries from short-term contracts may count toward renewables portfolio standard (RPS) compliance to the extent permitted by Decision (D.) 07-05-028.
2. **2008 Solicitation**: No delay is ordered in the 2008 solicitation.
3. **Flexible Compliance**: Provisions for flexible compliance are modified to extend existing rules to 2010 and thereafter, and recognize insufficient transmission, as further summarized in Appendix D.
4. **Standard Terms and Conditions (STCs)**: Each Plan and model contract must include four non-modifiable STCs. (See D.07-11-025.) The remaining 10 modifiable STCs are accepted as proposed by each investor-owned utility (IOU) in this proceeding. SCE's interpretation of STC 3 is affirmed (to the extent still relevant).
5. **Tariffs for Smaller RPS Projects**: Each IOU shall actively work with its customers to facilitate understanding and reasonable use of tariffs and standard contracts for smaller RPS generation projects. This may include an IOU holding workshops and meetings as reasonable and appropriate (e.g., to facilitate understanding, help customers identify potential projects, address impediments, consider opportunities to solve impediments). Each IOU shall participate in any staff-convened workshop or meeting on this

topic, and shall respond to data requests from Commission staff. If requested, each IOU shall file a report with the Director of the Water and/or Energy Divisions. The report shall address the IOU's work with its water and wastewater agency customers (and other customers to the extent requested); the generation opportunities identified; the impediments that may exist; recommended solutions, if any, to each impediment; and anything else relevant to advancing the success of tariffs and standard contracts for smaller RPS projects.

6. **Minimum Size of Projects to Participate in Solicitation**: Solicitation Plans are accepted on the condition that the minimum size project which may submit a bid is increased from 1.0 megawatt (MW) to 1.5 MW. IOUs should work with Energy Division staff, as appropriate, to identify evaluation criteria for emerging, pilot and demonstration projects, and such projects should be submitted for Commission consideration in filings which are separate and clearly identified from other projects.
7. **Utility Ownership of RPS Projects**: IOUs must actively consider utility ownership of such facilities, particularly where such ownership will put downward pressure on prices, in unique circumstances when competitive bidding is otherwise infeasible to meet California's vital energy and environmental goals, and where ratemaking options are now available to facilitate reasonable development and ownership.
8. **Coordination of Plans**: IOUs must continue to consider and make incremental improvements in the form and format of RPS Procurement Plans to help reduce transaction time and costs, and make the overall RPS Program simpler and more transparent, efficient and competitive.
9. **PG&E**:
  - a. **Short-Term Schedule**: Consider employing the same dates for short-term and long-term bids.
  - b. **Short-Term Price**: Consider using same provisions for TOD and capacity factors for all bidders.

- c. **Bidder Workshop:** PG&E is commended for holding a bidder workshop, and other IOUs should follow PG&E's lead where doing so will advance the RPS Program.
- 10. **SCE:** If SCE elects to extend its Biomass Program into 2008, SCE's Biomass Program is accepted as part of SCE's 2008 Plan (for purposes of judging whether contracts are or are not consistent with the Plan). Specific decisions on SCE's three standard contracts and prices are reserved to a subsequent filing wherein SCE states that it will seek approval of such agreements.
- 11. **SDG&E:**
  - a. **Integration Cost:** SDG&E's Plan is accepted on the condition that it does not include SDG&E's proposal for treatment of a non-zero integration cost.
  - b. **2008 Solicitation:** Absent very compelling reasons to the contrary (which SDG&E would present in a subsequent pleading, such as to avoid a non-compliance penalty), SDG&E should conduct a solicitation at least once each year, including in 2008.
- 12. **Schedule:**
  - a. **2008:** The schedule is adopted as stated in Appendix B.
  - b. **2009:** The assigned Commissioner or Administrative Law Judge will set the specific schedule. The assigned Commissioner shall rule on the proposed Transmission Ranking Cost Reports.

(END OF APPENDIX A)

**APPENDIX B**

**ADOPTED SCHEDULE  
FOR 2008 SOLICITATION**

**[Note: This is essentially the same as 2007 Schedule]**

<b>LINE NO.</b>	<b>ITEM</b>	<b>NO. OF DAYS</b>	<b>DATES</b>
1	Commission's Conditional Approval of RPS Plans	0	
2	IOUs file amended RPS Plans	14	
3	IOUs issue RFOs (unless amended Plans are suspended by Energy Division Director by Day 22)	21 (a)	(a)
4	IOUs notify Commission when bidding is closed	113	
5	IOUs submit short lists to Commission and PRG	151	
6	IOUs submit report on evaluation criteria and section process; Independent Evaluators submit Preliminary Reports	165	
7	IOUs submit ALs with PPAs for Commission consideration (as necessary for earmarking)	By ___	by 12/31

Note: The Energy Division Director may change these dates. Party requests for changes must be directed to the Executive Director (Rule 16.6).

(a) An IOU may adjust this date to a day after day 21, as necessary, without Commission approval.

**(END OF APPENDIX B)**

## APPENDIX C

### SUMMARY OF 2008 RPS PROCUREMENT PLANS

A brief summary of the 2008 RPS Procurement Plans of Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E) follows.

#### 1. Pacific Gas and Electric Company

PG&E says the main purpose of its 2008 Plan is to describe actions PG&E will take to meet California's goal that 20% of PG&E's retail sales are from renewable resources by 2010. PG&E reports it is currently on track to meet the 2010 goal using flexible compliance, and plans to sign additional renewable energy contracts of about 1% to 2% of its annual retail sales as a result of the 2008 solicitation (approximately 750 gigawatt-hours (GWh) to 1,500 GWh<sup>1</sup>).

In particular, PG&E says its combined current deliveries plus signed contracts for future deliveries have increased from 9% in 2003 to 18% in 2007, and it anticipates its combined percentage will meet or exceed 20% of retail sales by 2010. PG&E says actual deliveries of 20% will initially occur in the 2011 or 2012 timeframe. To meet its goals, PG&E says it will use both its annual solicitation process and outreach efforts on a bilateral basis.

PG&E's 2008 Plan is influenced by its long-term electric procurement needs, according to PG&E. PG&E states that among the key assumptions from its current Long-Term Procurement Plan (LTPP) used in formulating the 2008 RPS Plan are:

- A 75% average renewal rate is assumed on baseline RPS contracts.

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<sup>1</sup> This is about 107 aMW to 214 aMW at an 80% capacity factor (CF).



- The incremental procurement mix is 50% wind, 20% solar, 15% geothermal, 10% biomass and 5% other (but this likely to change based on expansion of procurement efforts and availability of new technologies).
- The average lead times (from solicitation to delivery) are three years for wind and four years for all other projects.

PG&E says the optimal offers are those with the best combination of market value, project viability and scores on other evaluation criteria.<sup>2</sup> PG&E is seeking offers for deliveries in 2008 and beyond, with earlier deliveries preferred to later deliveries. PG&E's Solicitation seeks proposals for (a) power purchase, (b) power purchase and buyout option, (c) purchase and sale of generating facility, (d) purchase of site for development, and (e) short-term offers.

PG&E's 2008 RPS Plan is largely similar to, and builds on, previous Plans. PG&E identifies the following seven important changes from its 2007 Plan:

- Changes in the evaluation process leading to creation of the shortlist for purposes of further streamlining:
  - Offers will be ranked by market value rather than partial ordering, then considered for the shortlist based on information and scores from other evaluation criteria, judgment and PRG feedback, and
  - Portfolio fit is modified to be a qualitative criterion, seeking to balance projects on the shortlist regarding location, technology, online date and counterparty concentration.

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<sup>2</sup> These include portfolio fit, credit, RPS goals, transmission cost adders and integration costs, and contract modifications.

- Collateral will be based on a portion of average rather than maximum revenue.
- Bidders submitting projects for PG&E ownership are encouraged, but no longer required, to provide fixed prices for operations and maintenance or fuel supply, where applicable.
- The Power Purchase Agreement Cover Sheet is removed for simplification.
- STCs will be conformed to the upcoming decision on petition for modification of D.04-06-014.
- Permission is requested to conduct a short-term RPS solicitation (i.e., contracts less than 10 years).
- Authority may later be sought to make changes to the 2008 Plan if REC trading is authorized.

PG&E reports that lessons learned from prior solicitations contributed to several of the seven important changes noted above. In addition, PG&E says for the first time in its 2007 RPS Solicitation it conducted not only a bidders conference, but also a bidders' workshop in order to inform bidders of the details of solicitation forms and contracts, and to answer general procurement questions. The workshop proved effective, according to PG&E, with 2007 offer packages on a whole more complete than in prior years. PG&E says it intends to conduct a bidders' workshop again with its 2008 Solicitation.

As part of its 2008 RPS Plan, PG&E asks that:

1. Flexible Compliance: The Commission incorporate SB 107 flexible compliance provisions into the Commission's compliance rules by finding that the carrying forward of an energy deficit for up to three years after the deficit is incurred applies to any year and not just for a deficit first incurred up to or through 2009.

2. Solicitation of Short-Term Contracts: PG&E be authorized to conduct a solicitation for short-term contracts as part of its 2008 RPS Plan.
3. Expedited Review of Short-Term Contracts: Short-term contracts be subject to an expedited review process per PG&E's proposal in R.06-02-012.

## **2. Southern California Edison Company**

SCE'S 2008 RPS Procurement Plan states SCE seeks to procure renewable resources to augment those under contract from prior solicitations and those executed pursuant to the 2006 and 2007 solicitations. SCE says it is difficult to assess its procurement needs for 2008, however, given that it has only recently completed its 2006 solicitation, and only within the last few months completed the initial evaluation and project short-list from the 2007 solicitation. In this context, however, SCE explains that its procurement plan is straightforward. That is, SCE says it will secure resources from the 2008 solicitation as necessary to ensure that SCE meets the overall goal of 20% renewables as soon as possible, and with a reasonable margin of safety.

In addition to procuring resources to meet the 20% goal as soon as possible, SCE reports that it intends to procure renewables based on its High Need Case scenario.<sup>3</sup> Transmission is a serious impediment to bringing these resources on line, however, given SCE has received relatively few bids from renewable generators that do not require significant transmission upgrades,

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<sup>3</sup> According to SCE, its Base Case assumes a 100% on-time delivery of all currently executed contracts, and its High Need Case assumes 70% delivery from executed, but not yet delivering, contracts.

according to SCE. SCE states it needs both near-term and long-term renewable energy but its evaluation criteria will favor proposals for near-term deliveries.

As is the case with PG&E's Plan, SCE's 2008 RPS Plan is largely similar to, and builds on, previous SCE Plans. SCE identifies the following seven important changes from its 2007 Plan:

- Common Format: Coordination with PG&E and SDG&E on a common organizational structure for the 2008 Plan, with the actual contents of the Plan in a separate document.
- TOD Factors: Updated its time-of-delivery (TOD) factors to reflect (a) changes in SCE's valuation methodology, and (b) more current market information.
- STCs: Changes to certain STCs to conform more closely with the STCs in D.04-06-014 (e.g., SEPs, delivery term), with all non-modifiable STCs highlighted to conform to PG&E's format and discourage changes.
- Interconnection: Delivery point for CAISO interconnected facilities now at the first point of interconnection with the CAISO operated grid rather than at SP-15.<sup>4</sup>
- MRTU Risk: Computation and sharing of risks related to Market Redesign and Technology Update (MRTU) implementation are eliminated.

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<sup>4</sup> Path 15 is a transmission interface located in the southern portion of PG&E's service area that is in the middle of the CAISO control area. It is comprised of several high voltage lines, and runs approximately 90 miles between the Los Banos and Gates substations in the San Joaquin Valley. SP-15 is the zone south of Path 15. (D.03-05-083, pp. 11-12.)

- Wind: Sharing of the price risk associated with changes in capacity factors for wind development projects that do not have a final wind report.
- Procurement Protocol: Changes in SCE's Procurement Protocol for consistency with substantive changes in the model contracts (e.g., delivery point, delivery term), clarification of instructions to potential sellers (e.g., interconnection process, interconnection costs, conditions for return of bid deposit, necessary information from sellers in their proposals, alternate performance standard for wind facilities), and updated information since the last solicitation.

As part of its 2008 RPS Plan, SCE asks that:

1. Flexible compliance be clarified or modified as follows:
  - a. 2010 and beyond: The Commission allow flexible compliance for all years of the RPS program based on § 399.14(a)(2)(C), with the most logical path being, according to SCE, for the Commission to adopt and apply current flexible compliance rules to the years 2010 and beyond.
  - b. Transmission: The Commission include insufficiency of transmission as a basis for forgiving shortfalls in meeting RPS goals based on § 399.14(a)(2)(C)(ii).
  - c. Earmarking and Banked Procurement: The LSE may use its banked excess procurement to fill a deficit if an LSE earmarked future deliveries from a project toward its APT but the project fails to deliver enough actual output to fill the APT prior to the end of the third year after the compliance year.
  - d. Earmarking and Other Contracts: The LSE may use actual energy deliveries from any other contract eligible for earmarking to satisfy a deficit if the future deliveries earmarked by an LSE fail to materialize within three years.

2. STC 3 (SEPs): The SEP STC be affirmatively clarified to permit an LSE to recover certain pre-approval payments in the event the Commission ultimately denies payment of prices above MPR.
3. Standards for all LSEs: That all LSE's, not just the IOUs, be held to the same standards for achieving 20% renewables by 2010.
4. Short-Term Solicitation: SCE be permitted to solicit short-term contracts as part of its 2008 solicitation.
5. In-State Delivery: The Commission considers relaxing or removing the in-state delivery requirement for the RPS program.<sup>5</sup>

### **3. San Diego Gas & Electric Company**

SDG&E's 2008 RPS Procurement Plan states SDG&E expects renewable energy in 2008 to not only meet but exceed its 2008 APT (assuming all current resources deliver as contracted), with surplus banked to cover future APTs. SDG&E says it submits its 2008 Procurement Plan with the goal of achieving 20% by 2010 but, in order to accomplish this, it has identified several needs: flexible compliance in 2010 and thereafter, short-term contracts, and new transmission lines. In order to provide a margin of safety in the event contracted resources do not achieve commercial operation by 2010, SDG&E says it plans to contract for deliveries of 24% to 26% in 2010.

SDG&E's 2008 RPS Plan is largely similar to, and builds on, previous Plans. SDG&E identifies the following nine items it characterizes as important changes from its 2007 Plan:

- Type of Solicitation/Contract Term: Emphasized the need to solicit short-term agreements with terms from one to nine years.

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<sup>5</sup> Doing so would likely require legislation, according to SCE.

- Bid Evaluation: Added integration costs as part of the LCBF analysis.
- Bilateral Negotiations: Indicated the need for bilateral agreements to achieve 20% by 2010.
- Procurement: Added comments regarding procuring 24% to 26% (rather than 20%) in order to provide a margin of safety in the event of failed contracts.
- Flexible Compliance Mechanism: Added the ability to earmark contracts, carry forward shortfalls for three years, utilize unbundled RECs, and the ability to carry forward without limit any shortfall that is created by (a) the failure of a developer to perform under contract and (b) any shortfall that resulted from a delay caused by the lack of transmission. Indicated the urgency of the Commission to establish flexible compliance rules for 2010 and encouraged workshops to identify other flexible compliance mechanisms.
- Transmission/Congestion/Impediments to Reaching 20% by 2010: Identified need for the Sunrise Powerlink transmission line to enable delivery to the California grid of renewable projects located in Imperial Valley, east San Diego County and northern Mexico. Identified transmission delay affecting the Pacific Wind project located in the Tehachapi. Stated that without the Sunrise Powerlink it is highly unlikely that SDG&E will achieve 20% by 2010.
- Lessons Learned: Identified problems with the TRCR process and recommended performing the analysis on actual bids received pursuant to the RFO.
- Available Renewable Resources: Identified resources in the La Rumorosa area of Mexico.
- Development Specifications: Removed wind facility specifications and asked bidder to provide.

SDG&E also identifies the following two items as new for its 2008 Plan:

- Green Attributes: The definition of Green Attributes was changed pursuant to D.07-05-057.
- Resource Adequacy: SDG&E simplified the definition of Resource Adequacy provided at Attachment D to its model contract.

As part of its 2008 RPS Plan, as amended, SDG&E recommends several things, and asks that the Commission address the following:

1. Flexible Compliance:
  - a. SDG&E says it will avail itself of existing flexible compliance mechanisms, and asks that the Commission consider others, such as unbundled RECs and the ability of an IOU to carry forward without limit any shortfall created by either (a) the failure of a developer to perform up to contract commitments or (b) shortfalls resulting from lack of transmission.
  - b. SDG&E proposes that the Commission clarify that flexible compliance rules currently in effect will remain in effect through 2010 and beyond.
  - c. SDG&E recommends that workshops be held as soon as possible to allow participants to offer other flexible compliance rules.
2. Shorter Term: Solicitation be permitted of contracts less than 10 years.
3. Integration Costs: Integration costs be calculated and included in the LCBF evaluation.
4. TRCR: The TRCR be completed based on actual bids received pursuant to the RFO (rather than as done now based on a request for information from possible developers before the RFO is released).



5. 2008 Solicitation: Each IOU be permitted to decide on its own whether or not to conduct a 2008 RFO based on each IOU's progress in completing contracts pending pursuant to existing offers.
6. Solicitation for Short-Term Contracts: Any changes to the 2008 RFO to include a solicitation for less than 10 years would be reviewed by the PRG and transmitted to the Executive Director for approval prior to issuance.
7. Margin of Safety: The Commission should make clear that it approves of a prudent contract margin as a hedge against contract failure.
8. RPS and LTPP Procurements: The RPS procurement should be combined with the LTPP procurement process beginning with the 2008 solicitations.

**(END OF APPENDIX C)**

## APPENDIX D

### FLEXIBLE COMPLIANCE PROVISIONS

Commission flexible compliance provisions are summarized below:

1. Flexible compliance provisions apply in all years.
2. Surpluses may be banked and applied in any year (past, present or future).
3. Allowed deficits are allowed for up to three years after the year of the deficit.
4. Up to 100% of IPT in first year of IPT (1% of prior year sales): retail seller may defer up to 100% of IPT for the first year in which retail seller has an IPT without stated reason; deferral may be for up to three years.
5. Up to 25% of the IPT in any year of IPT (0.25% of prior year sales<sup>1</sup>): retail seller may defer this amount for up to three years after the year of the deficit without stated reason.
6. Greater than 0.25% of prior year retail sales in any year: deficit permitted if retail seller makes a convincing showing relative to:
  - a. Insufficient response to a solicitation,
  - b. Earmarking,
  - c. Inadequate SEPs,
  - d. Seller non-performance,
  - e. Lack of competition,

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<sup>1</sup> A factor of 0.25% of prior year sales is equivalent to 25% of IPT. Because IPT does not apply to years 2010 and beyond, we agree with SCE and change the standard to 0.25% of prior year retail sales as it applies to 2010 and beyond.

- f. Deferral would promote ratepayer interests and overall procurement objectives of RPS Program, or
  - g. Other good cause.
7. Pooling: Earmarking does not require identification and application of a specific contract to a specific deficit; rather, eligible contracts (to be considered for earmarking in a particular solicitation year) may be treated as a pool from which a retail seller may draw an amount to apply to a specific deficit.
8. Transmission: Upon a Commission finding, a deficit may be excused for up to three years where, as a result of insufficient transmission, the retail seller demonstrates that it has undertaken all reasonable efforts to do at least all of the following:
- a. Utilize flexible delivery points,
  - b. Ensure availability of any needed transmission capacity,
  - c. If retail seller is an electric corporation, to construct needed transmission facilities, and
  - d. Not conflict with any requirement relative to the retail seller's overall procurement plan.

**(END OF APPENDIX D)**