BEFORE THE CALIFORNIA ENERGY COMMISSION

Implementation of Renewables Investment Plan Legislation and Implementation of Renewables Portfolio Standard Legislation	)	Docket No. 02-REN-1038 Renewable Energy Program Docket No. 03-RPS-1078 RPS Proceeding

COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY ON DRAFT RENEWABLES PORTFOLIO STANDARD 2006 PROCUREMENT VERIFICATION STAFF REPORT REGARDING TRADABLE RENEWABLE ENERGY CREDITS

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Southern California Edison Company ("SCE") respectfully submits these comments on the impact of the Calfornia Public Utilities Commission's ("CPUC") recent decision authorizing the procurement and use of tradable renewable energy credits ("RECs" or "TRECs") on the California Energy Commission ("CEC") Draft Renewables Portfolio Standard 2006 Procurement Verification Staff Report ("Draft 2006 Verification Report").

I.

INTRODUCTION AND BACKGROUND

On March 16, 2010, the CPUC issued Decision 10-03-021, titled "Decision Authorizing Use of Renewable Energy Credits for Compliance with the California Renewables Portfolio Standard" (the "REC Decision"). On April 7, 2010, the CEC requested public comments regarding the impact of the REC Decision on the Draft 2006 Verification Report. Although the REC Decision contains significant errors, which SCE and other parties have addressed through Petitions for Modification and Applications for Rehearing filed at the CPUC,[1] SCE does not

[1] *See* Joint Petition of Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company for Modification of Decision 10-03-021 (filed April 12, 2010); Joint Application of Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company for Rehearing of Decision 10-03-021 (filed April 15, 2010); Joint Motion of Southern California Edison Company and San Diego Gas & Electric Company for Stay of Decision 10-03-021 (filed April 12, 2010); Petition of the Independent Energy Producers Association for Modification of Decision 10-03-021

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address the majority of those issues here. Instead, SCE focuses these comments on the market destabilizing effect of the REC Decision's encroachment upon the CEC's statutory jurisdiction over certain portions of the Renewables Portfolio Standard ("RPS") program and the direction the CEC should take in its 2006 Verification Report in light of the REC Decision. The conclusions regarding each of these issues support revision of the Draft 2006 Verification Report to provide SCE's customers with RPS credit for energy delivered from the Mountain View I and II wind facilities during the years 2003 through 2006.

II.

THE REC DECISION CREATES UNACCEPTABLE REGULATORY UNCERTAINTY BY ENCROACHING ON THE CEC'S AUTHORITY TO DETERMINE RPS ELIGIBILITY AND DELIVERY REQUIREMENTS

The REC Decision reclassifies most bundled renewable contracts with out-of-state renewable resources (including existing contracts) as REC-only contracts, regardless of their delivery structure and whether such contracts actually provide both RECs and energy.[2] The REC Decision then places a 25% annual limit on the use of these REC-only contracts beginning in 2010 for the investor-owned utilities, but not electric service providers, community choice aggregators, or small utilities.[3] These restrictions on the RPS eligibility of certain out-of-state renewables fundamentally call into question the certainty of a CEC determination of RPS eligibility.[4]

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Authorizing Use of Renewable Energy Credits for RPS Compliance (filed April 15, 2010); Application of the Center for Energy Efficiency and Renewable Technologies for Rehearing of Decision 10-03-021 (filed April 15, 2010); Application of NaturEner USA, LLC for Rehearing of Decision 10-03-021 (filed April 15, 2010); Application of TransAlta Corporation for Rehearing of Decision 10-03-021 Authorizing Use of Renewable Energy Credits (filed April 15, 2010).

2 REC Decision at 97-98.

3 *Id.* at 101.

4 For example, an out-of-state bundled contract that was signed, but not yet approved by the CPUC, before the adoption of the REC Decision that meets all of the CEC's RPS eligibility and delivery requirements would now be subject to a further screen to determine whether it is above the 25% limit before it could be eligible for the RPS.

Such retroactive reclassification and limitation of RPS-eligible resources injects new and troubling regulatory uncertainty into an RPS program that relies on certainty for decisions to be made on long-term commitments to renewables by the customers paying for the resources, the banks financing the development of new renewables, and the developers building the new resources.[5] As one market participant noted, "[t]he Decision . . . upsets the reasonable expectations of market participants . . . by redefining virtually all out-of-state transactions as TRECs, including those transactions that meet CEC delivery requirements."[6]

The CPUC previously recognized that "regulatory uncertainty undermines [its] ability to effectively implement RPS policy and will not benefit RPS program goals or ratepayer interests."[7] However, by redefining the resources that can count toward the RPS program in any given year, the REC decision creates unacceptable regulatory uncertainty that has real consequences for the State's ability to reach its renewable energy goals.

The REC Decision also conflicts with the CEC's statutory authority over RPS eligibility and delivery requirements. Public Utilities Code Section 399.13, entitled "Duties of the Commission," provides that the CEC shall certify eligible renewable energy resources that meet the criteria for delivery of electricity into California.[8] The CEC has exercised its jurisdiction under this statute by issuing guidelines for when a generation facility is an "eligible renewable energy resource" and whether energy from such a resource is "delivered" into the California grid.[9]

The REC Decision acknowledges that the RPS statute gives the CEC, and not the CPUC, "the responsibility to determine RPS eligibility, including establishing the criteria for delivery of

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5 *See* Application of the Center for Energy Efficiency and Renewable Technologies for Rehearing of Decision 10-03-021 at 4 ("Thus, clarity in the rules by which that compliance can be achieved, consistent with the jurisdictional and statutory scheme for developing and implementing those rules, is critical to RPS goals being realized. Uncertainty diminishes and undermines reliance and in turn chills needed investment.").

6 Application of TransAlta Corporation for Rehearing of Decision 10-03-021 Authorizing Use of Renewable Energy Credits at 7.

7 CPUC Resolution E-4170 at 19 (May 15, 2008).

8 Cal. Pub. Util. Code § 399.13(a).

9 *See* CEC Renewables Portfolio Standard Eligibility Guidebook, Third Edition (January 2008).

RPS-eligible electricity."[10] In particular, the RPS legislation specifically defines "delivery" for RPS purposes to mean that the electrical output of an RPS-eligible facility "is used to serve end-use retail customers located within the state."[11] Thus, the determination as to whether RPS-eligible energy serves California load is part of the definition of "delivery," and is therefore a determination that rests within the CEC's jurisdiction. Nevertheless, in the REC Decision, the CPUC invades the CEC's jurisdiction over the determination of delivery requirements for RPS-eligible electricity by finding that transactions that comply with the CEC's delivery requirements do not serve California load, and are therefore REC-only transactions that are subject to a 25% usage limit.[12]

While a legal determination of this jurisdictional issue is still pending, the CEC should note parties' general comments about the importance of regulatory certainty within the RPS program as it considers modifications to the Draft 2006 Verification Report.

III.

THE CEC'S 2006 VERIFICATION REPORT SHOULD PROVIDE REGULATORY CERTAINTY

Just as the REC Decision has upended the regulatory certainty that is needed for a successful RPS program, the Draft 2006 Verification Report unnecessarily undermines the certainty the CEC had previously provided to SCE and its customers regarding the RPS eligibility of deliveries from the Mountain View I and II wind facilities. As SCE previously noted, the Draft 2006 Verification Report recommends prohibiting SCE from counting renewable energy deliveries from the Mountain View resources for 2003 through 2006 towards California's RPS based on legal requirements and rules that were not in effect during that time period. The Draft 2006 RPS Verification Report's conclusion that SCE cannot count Mountain View deliveries for 2003 through 2006 towards the RPS is particularly troubling because the

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[10] REC Decision at 30 (citing Cal. Pub. Util. Code § 399.13).
[11] Cal. Pub. Res. Code § 25741(a).
[12] REC Decision at 27-35.

CEC already verified SCE's RPS procurement claims for the Mountain View facilities in two separate reports.[13]

As the CEC verified SCE's RPS claims for the Mountain View facilities, SCE believed that the CEC agreed with SCE that it was appropriate to give SCE's customers RPS compliance credit for their long-term financial commitment to the Mountain View resources, and planned its future procurement in reliance on the CEC's determinations. Now, up to seven years after the deliveries at issue, the Draft 2006 RPS Verification Report proposes to reverse the CEC's prior decisions and give SCE's customers no RPS credit for Mountain View renewable deliveries. This retroactive changing of rules for RPS compliance sets a dangerous precedent which ultimately threatens customers by imposing additional, future procurement obligations even after an entity has been told by the CEC that it has demonstrated compliance with the State's RPS rules.

The Draft 2006 Verification Report recommends removing 828 million kilowatt-hours ("kWh") from SCE's RPS-eligible procurement for years long since past, without recognizing that it will now be impossible for SCE to fill the deficits the CEC's proposed action will create. SCE cannot acquire the renewable attributes of the Mountain View facilities for 2003 through 2006 because some have been sold to other parties. Nor can SCE enter into contracts for resources with deliveries between 2003 through 2006 three to seven years after the fact. Moreover, because the CPUC's implementation of the RPS program requires SCE to fill previous years' deficits, the cost of replacing the missing energy today will place a significant burden on SCE's customers. Using the publicly available 2009 market price referent as a very rough estimate of price, it could cost approximately $64 million to $80 million to replace the Mountain View renewable energy for 2003 through 2006, in addition to the substantial long-term investment SCE's customers have already made in the Mountain View wind facilities.

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[13] *See* CEC Renewables Portfolio Standard Procurement Verification Report, CEC-300-2006-002-CMF, Appendix at SCE-5-SCE-7 (February 2006); CEC Renewables Portfolio Standard 2005 Procurement Verification, CEC-300-2007-001-CMF, Appendix at SCE-5-SCE-6, SCE-31-SCE-32 (August 2007).

The Draft 2006 Verification Report also creates uncertainty by relying on RPS law and rules that did not exist at the time of the Mountain View procurement at issue. As SCE previously explained, there was no statutory basis to use RECs or renewable attributes for RPS purposes prior to Senate Bill ("SB") 107 taking effect in 2007. During the 2003 through 2006 time period at issue, the RPS legislation measured RPS compliance solely based on the procurement of the energy generated by an eligible renewable energy resource.[14] The Draft 2006 RPS Verification Report ignores the difference in the RPS legislation's treatment of RECs and renewable attributes before and after the effectiveness of SB 107, and relies on the provisions of SB 107, which were not in effect at the time, to deny SCE's customers RPS credit for the renewable energy deliveries from the Mountain View I and II wind facilities for 2003 through 2006. In that respect, the Draft 2006 Verification Report retroactively changes the impact of the law, to the detriment of SCE's customers.[15]

To avoid precisely the type of uncertainty that the REC Decision created, SCE urges the CEC to reiterate its previous verifications of SCE's Mountain View RPS claims and give SCE's customers RPS credit for the Mountain View deliveries for 2003 through 2006. If the CEC does not give SCE any RPS credit for its Mountain View procurement for 2003 through 2006, the CEC should, at a minimum, recommend that the CPUC not hold against SCE any deficits attributed to the removal of the Mountain View deliveries from SCE's RPS-eligible procurement. Such a recommendation would acknowledge the unique circumstances of the Department of Water Resources contracts that were executed before the implementation of regulatory programs such as the RPS and under terms that were outside the control of the investor-owned utilities, the retroactive removal of RPS credit for the Mountain View deliveries

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[14] *See* SB 1078 (2002).

[15] Notably, the REC Decision supports SCE's claims for RPS credit for the Mountain View facilities' deliveries for 2003 through 2006 by acknowledging that RPS-eligible RECs cannot be procured or traded separately from a resource's energy unless the energy was generated on or after January 1, 2008. REC Decision at 97. SCE is the only party that should be eligible to receive RPS credit for the Mountain View deliveries for 2003 through 2006 as the RECs for generation produced between 2003 and 2006 could not be procured or traded separately from the energy during that period under the RPS program.

up to seven years after the fact, and SCE's likely inability to fill the gaps created by any adverse action taken by the CEC.

IV.

CONCLUSION

For all the foregoing reasons, the CEC should verify SCE's RPS claims for deliveries from the Mountain View I and II facilities for 2003 through 2006. At a minimum, the CEC should recommend that the CPUC not hold against SCE and its customers any deficits created by the removal of such deliveries from SCE's RPS-eligible procurement.

Respectfully submitted,

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