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 REPORT

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Southern California Edison Company ("SCE") respectfully submits these comments on the California Energy Commission ("CEC") staff Draft Renewables Portfolio Standard 2006 Procurement Verification Report ("Draft 2006 RPS Verification Report").

I.

INTRODUCTION AND BACKGROUND

Although the power purchase agreement covering the Mountain View I and II wind facilities (the "DWR Mountain View Wind Contract") was signed by the California Department of Water Resources ("DWR") in the midst of the energy crisis of 2001 and 2002, SCE's customers have been paying for and receiving deliveries of eligible renewable energy from the Mountain View I and II wind facilities since 2003 pursuant to a California Public Utilities Commission ("CPUC") allocation decision. Under the California Renewables Portfolio Standard ("RPS") law in existence at the time, SCE's customers are entitled to receive RPS credit for these State-contracted California renewable resources[1] for the 2003 through 2006 time period.

[1] The State has characterized the DWR Mountain View Wind Contract as a renewable contract. The contract is currently listed in the renewable contract table on DWR's website as a renewable resource under long-term contract. *See* http://wwwcers.water.ca.gov/pdf_files/other_contracts/010303_renewable_table.pdf.

However, the Draft 2006 RPS Verification Report recommends prohibiting SCE from counting renewable energy deliveries from the Mountain View I and II wind facilities for 2003 through 2006 towards California's RPS because: "1) SCE procured unbundled energy and unbundled energy procurement is not eligible for California's RPS, and 2) accepting SCE's procurement claim would effectively sanction a double counting of [renewable energy credits ('RECs')], in conflict with the Energy Commission's responsibility to protect against such double counting."[2] The Draft 2006 RPS Verification Report reaches this erroneous conclusion by relying on RPS law and rules that did not exist at the time of the Mountain View procurement at issue.

As explained in further detail below, until Senate Bill ("SB") 107 took effect on January 1, 2007, the RPS legislation measured RPS compliance solely based on the procurement of the energy generated by an eligible renewable energy resource.[3] The statute made no mention of RECs or renewable attributes and such credits or attributes could not be used for RPS compliance. Nor did the statute require such RECs or renewable attributes in order for a resource to count for RPS compliance. Even today, RECs devoid of energy cannot be used for RPS compliance.

Accordingly, on the basis of then current law, SCE's customers' payment for and the delivery of all eligible renewable energy from the Mountain View I and II wind facilities to SCE served as sufficient basis for SCE to receive credit under California's RPS law. No RPS credit could have been given for the holding of the renewable attributes alone. Moreover, the RPS statute did not measure compliance based on RECs or renewable attributes; it measured RPS compliance based on energy deliveries from eligible renewable energy resources. Under State policy, SCE was the only entity that could legitimately claim RPS compliance credit from these State-contracted renewable resources.

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2 Draft 2006 RPS Verification Report at A-8.
3 *See* SB 1078 (2002).

In verifying RPS procurement claims, the CEC must apply the RPS law and rules in effect at the time of renewable resource deliveries. Applying then current law is not only a legal requirement; it is necessary to maintain regulatory certainty. If the State is to achieve its renewable energy goals, parties must be able to rely on current law and RPS program rules. However, the Draft 2006 RPS Verification Report denies RPS credit to SCE's customers for 2003 through 2006 Mountain View procurement based on legal requirements and rules that were not in effect during that time period. This is contrary to the requirements of the RPS legislation and risks undermining the State's renewable energy program by creating unacceptable regulatory uncertainty.

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 CEC has already verified SCE's RPS procurement claims for the DWR Mountain View Wind Contract. In SCE's 2003 RPS compliance filing with the CEC, SCE indicated that it did not hold the renewable attributes for the Mountain View I and II resources.[4] Additionally, the DWR Mountain View Wind Contract, which states that the seller retains the renewable attributes associated with the projects, is publicly available.[5] Nevertheless, the CEC verified the RPS eligibility of the deliveries from the Mountain View I and II facilities in its 2004 and 2005 RPS verification reports.[6] As the CEC verified SCE's RPS claims in 2004 and 2005, 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.

Now, up to six years after the years 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 deliveries. The output from the Mountain View I and II wind facilities makes a

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4 *See* SCE Report to the CEC Utility Procurement of Renewable Energy in 2003.

5 *See* http://wwwcers.water.ca.gov/mountain_view.cfm.

6 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).

significant contribution to SCE's RPS procurement. For 2003 through 2006, the Draft 2006 RPS Verification Report proposes to remove approximately 828 million kilowatt-hours ("kWh") from SCE's RPS-eligible procurement. SCE cannot fill these deficits three to six years after the fact. Moreover, because of the RPS program construct which 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 ("MPR") 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 State-contracted Mountain View wind facilities.

SCE urges the CEC to give SCE's customers credit for their long-term commitment to renewable resources by verifying SCE's claims to RPS credit from the Mountain View I and II wind facilities for 2003 through 2006. If SCE were to retroactively lose RPS credit for these resources, it will be left with no way to fill previous years' gaps which it could not have planned for as the CEC had already verified the use of the DWR Mountain View Wind Contract for RPS compliance purposes. This will cause SCE's customers to bear additional costs for higher cost resources in the future, in addition to the costs SCE's customers are already paying for the Mountain View I and II wind resources. 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 complied with the State's RPS rules.

Counting this contract towards SCE's RPS obligations will also recognize the unique history of the DWR Mountain View Wind Contract and continue the State's policy of recognizing the special circumstances surrounding DWR 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. If the CEC does not grant SCE such RPS compliance credit, the State will be faced with the absurd situation of State-contracted California wind

resources being paid for by California customers not receiving any credit towards California's RPS goals.

For all these reasons, SCE should receive RPS compliance credit for the Mountain View I and II wind facilities for 2003 through 2006. If the CEC does not grant SCE such credit, however, the CEC should work with the CPUC to recommend options that will minimize the harm to SCE's customers caused by this retroactive denial of RPS credit. Such options include allowing SCE to match voluntary REC purchases with the Mountain View energy and count such energy towards the RPS or foregoing any RPS procurement deficits that result from the retroactive denial of SCE's Mountain View RPS claims.

II.

THEN CURRENT RPS LAW ENTITLES SCE'S CUSTOMERS TO RPS CREDIT FOR MOUNTAIN VIEW PROCUREMENT FROM 2003 THROUGH 2006

In denying SCE's customers any credit under California's RPS for the renewable energy purchased from the Mountain View I and II wind facilities from 2003 through 2006, the Draft 2006 RPS Verification Report relies extensively on RPS rules and requirements that did not take effect until after 2006. In particular, the Draft 2006 RPS Verification Report repeatedly states that RECs or renewable attributes must be procured with renewable energy to meet the requirements for RPS compliance.[7] However, before 2007, the California RPS legislation measured renewable energy procurement, not RECs or renewable attributes. California's RPS law did not even contemplate the use of RECs or renewable attributes for RPS compliance until SB 107 took effect on January 1, 2007.

The original RPS legislation SB 1078, effective January 1, 2003, measured RPS compliance solely based on the procurement of renewable energy. "Renewables portfolio standard" was defined as "the specified percentage of ***electricity*** generated by ***eligible renewable resources*** that a retail seller is required to ***procure*** pursuant to Sections 399.13 and 399.15."[8]

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[7] Draft 2006 RPS Verification Report at ix, 14, 22, 26, A-3, A-7-A-9.

[8] SB 1078 (2002), Cal. Pub. Util. Code § 399.12(c) (emphasis added).

The statute also provided that "[i]n order to fulfill unmet long-term resource needs, the commission shall establish a renewables portfolio standard requiring all electrical corporations to ***procure a minimum quantity of output from eligible renewable energy resources as a specified percentage of total kilowatthours sold to their retail end-use customers each calendar year***. . . ."[9] Similarly, the law stated that each retail seller was required to "increase its total ***procurement of eligible renewable energy resources*** by at least an additional 1 percent of retail sales per year so that 20 percent of its retail sales are ***procured from eligible renewable energy resources*** no later than December 31, 2017."[10]

An "eligible renewable energy resource" meant "an electric generating facility" that met certain criteria, none of which involved RECs or renewable attributes.[11] Further, the RPS statute defined "procure" to mean "that a utility may ***acquire the renewable output*** of electric generation facilities that it owns or for which it has contracted."[12] Under these definitions, the actual generation output of an eligible renewable energy resource counted for RPS compliance without regard to the recognition, definition, or transfer of a REC or renewable attribute. The statute made no mention of RECs or renewable attributes and such credits or attributes could not be used for RPS compliance. Nor did the statute require RECs or renewable attributes to be transferred in order for a resource to count for RPS compliance.

Indeed, the RPS law authorized the CEC to design and implement an accounting system "to ensure that ***renewable energy output*** is counted only once for the purpose of meeting the renewables portfolio standard of this state or any other state. . . ."[13] The statute made no mention of the CEC's accounting system tracking RECs or renewable attributes.

It was not until SB 107, which was approved in September 2006 and effective January 1, 2007, that the RPS law made any reference to RECs or renewable attributes. SB 107 allows

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9 *Id.*, Cal. Pub. Util. Code § 399.15(a) (emphasis added).
10 *Id.*, Cal. Pub. Util. Code § 399.15(b)(1) (emphasis added).
11 *Id.*, Cal. Pub. Util. Code § 399.12(a).
12 *Id.*, Cal. Pub. Util. Code § 399.14(g) (emphasis added).
13 *Id.*, Cal. Pub. Util. Code § 399.13(b) (emphasis added).

for the use of RECs to satisfy the requirements of the RPS once authorized by the CPUC and subject to certain conditions being met, including an operational tracking system for RECs.[14] Indeed, SB 107 authorizes the CEC to "[e]stablish a system for tracking and verifying ***renewable energy credits*** that, through the use of independently audited data, verifies the generation and delivery of electricity associated with each ***renewable energy credit*** and protects against multiple counting of the same ***renewable energy credit***."[15] The CEC's REC tracking system, the Western Renewable Energy Generation Information System ("WREGIS"), was not launched until June 2007. Moreover, the CPUC has not yet approved a final decision permitting RECs to be used for RPS compliance purposes. Accordingly, unbundling the energy from the renewable attributes is still not authorized for California's RPS program.

In short, there was no statutory basis to use RECs or renewable attributes for RPS compliance purposes prior to SB 107 taking effect in 2007. Prior to the effectiveness of SB 107, the RPS law provided that RPS compliance was to be measured and tracked solely based on renewable energy procurement or output. Accordingly, SCE should receive RPS credit for the renewable energy deliveries from the Mountain View I and II wind facilities for 2003 through 2006. As the taker of the renewable energy under the long-term DWR Mountain View Wind Contract, SCE is the only party that can claim RPS credit for the contract deliveries from 2003 through 2006 because SCE is the only party that received the eligible renewable energy deliveries from the projects.

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. Instead of focusing on the RPS law that was in effect during 2003 through 2006, the Draft 2006 RPS Verification Report 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. The Draft 2006 RPS Verification Report notes that "Public Utilities Code

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[14] SB 107 (2006), Cal. Pub. Util. Code § 399.16(a).
[15] *Id.*, Cal. Pub. Util. Code § 399.13(c) (emphasis added).

section 399.16(a)(5) is relevant in considering SCE's claims from Mountain View."[16] However, Section 399.16(a)(5), which governs RECs from contracts executed prior to January 1, 2005, did not become part of the RPS law until SB 107 took effect on January 1, 2007. Therefore, it is not relevant to the 2003 through 2006 period at issue here. Similarly, the Draft 2006 RPS Verification Report references the RPS legislation's definition of a REC, which was not added to the RPS law until SB 107, CPUC decisions on the conveyance of RECs, which were not adopted until 2008, and the current version of the CEC's RPS Eligibility Guidebook, which was not adopted until 2008, none of which have any relevance to 2003 through 2006 RPS procurement claims.[17]

Furthermore, as discussed above, the Draft 2006 RPS Verification Report's statements that unbundled renewable energy procurement is not eligible for California's RPS are not supported by the RPS law in effect during 2003 through 2006. The Draft 2006 RPS Verification Report refers to "early editions" of the RPS Eligibility Guidebook, which referenced CPUC Decision ("D.") 03-06-071 and stated that generation must be bundled with associated RECs to qualify for the RPS.[18] Although RECs that are unbundled from the associated generation may not be used for RPS compliance until authorized by the CPUC (and were not even contemplated for RPS compliance purposes until the enactment of SB 107), as explained above, there was no requirement in the RPS law that eligible renewable energy must be bundled with RECs to receive RPS credit. The CEC and CPUC cannot impose RPS eligibility requirements that are contrary to the RPS legislation.

Moreover, in D.03-06-071, the CPUC declined to consider a REC trading system for RPS compliance.[19] The CPUC did recommend a REC-based accounting system.[20] However, the CPUC also noted that the CEC is ultimately responsible for the design and implementation of the

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16 Draft 2006 RPS Verification Report at A-3.
17 *Id.* at A-3 n.80, A-8-A-9.
18 *Id.* at A-8.
19 CPUC D.03-06-071 at 9 (June 19, 2003).
20 *Id.* at 11.

accounting system to be used to verify compliance with the RPS.[21] Until WREGIS launched in June 2007, the CEC did not have a REC-based accounting system. The CEC's interim tracking system measured renewable energy deliveries, not RECs or renewable attributes. Indeed, the CEC verified SCE's RPS claims for procurement from the Mountain View I and II facilities in its 2004 and 2005 verification reports,[22] despite the fact that SCE indicated that it did not hold the renewable attributes for the Mountain View I and II resources in a prior RPS compliance filing.[23] Based on these verifications by the CEC, SCE believed the CEC agreed with SCE that it was appropriate to give SCE's customers RPS compliance credit for the output from the DWR Mountain View Wind Contract.

The Draft 2006 RPS Verification Report also denies SCE's customers RPS credit for deliveries from the Mountain View I and II facilities on the grounds that providing such credit "would effectively sanction a double counting of RECs, in conflict with the Energy Commission's responsibility to protect against such double counting."[24] Again, however, the Draft 2006 RPS Verification Report relies on RPS requirements that were not in effect at the time of the 2003 through 2006 Mountain View RPS claims. Prior to the enactment of SB 107, the RPS statute authorized the CEC to implement an accounting system "to ensure that ***renewable energy output*** is counted only once for the purpose of meeting the renewables portfolio standard in this state or any other state, and for verifying retail product claims in this state or any other state."[25] It was only with the adoption of SB 107 that the RPS legislation discussed protecting against double counting of RECs.[26]

There is no double counting of renewable energy output in this case. Certain parties other than SCE have apparently claimed credit for RECs coming from the Mountain View I and

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21 *Id.*

22 CEC Renewables Portfolio Standard Procurement Verification Report, Appendix at SCE-5-SCE-7 (February 2006); CEC Renewables Portfolio Standard 2005 Procurement Verification, Appendix at SCE-5-SCE-6, SCE-31-SCE-32 (August 2007).

23 SCE Report to the CEC Utility Procurement of Renewable Energy in 2003.

24 Draft 2006 RPS Verification Report at A-8.

25 SB 1078 (2002), Cal. Pub. Util. Code § 399.13(b) (emphasis added).

26 SB 107 (2006), Cal. Pub. Util. Code § 399.13(c).

II facilities under the Power Source Disclosure Program and in the voluntary REC market.[27] However, these parties did not procure any renewable energy deliveries from the projects. SCE is the only party that received actual renewable energy output. Accordingly, because unbundled RECs cannot be used for RPS compliance purposes, there will be no double counting of the Mountain View I and II resources for RPS compliance. SCE is the only party that can possibly count these resources towards the State's RPS goals until RECs are authorized for RPS compliance. Similarly, the Power Source Disclosure Program does not allow the use of RECs.[28] Therefore, there can be no double counting of the Mountain View output under that program.

Although parties may announce their purchase of RECs from the Mountain View I and II facilities in the voluntary REC market, this does not impact or relate to the State's RPS program. The CEC should focus on maintaining the integrity of the State's RPS program, and not allow the voluntary market to govern what can receive credit under California's RPS. This is consistent with the CEC's statutory responsibilities to protect against double counting for RPS and retail product claim purposes.[29] The California RPS program is a State-mandated program, and the CEC has statutory obligations associated with the implementation of the RPS. As the Draft 2006 RPS Verification Report acknowledges, the CEC has no authority over the voluntary REC market.[30]

In verifying RPS procurement claims, the CEC must apply the RPS law and rules in effect at the time of the procurement. The Draft 2006 RPS Verification Report acknowledges this fact by recognizing that SB 107's requirements should not be applied prior to 2007.[31] However, in ruling on SCE's 2003 through 2006 Mountain View procurement claims, the Draft

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27 Draft 2006 RPS Verification Report at A-6.

28 *See* Cal. Pub. Util. Code § 398.1 *et seq.*; CEC Frequently Asked Questions on Senate Bill 1305, Power Source Disclosure, and the Power Content Label (available at http://www.energy.ca.gov/sb1305/faq.html) ("A specific purchase must be a purchase of electricity, not of just the right to claim an attribute of particular generation facilities.").

29 SB 1078 (2002), Cal. Pub. Util. Code § 399.13(b).

30 Draft 2006 RPS Verification Report at A-4.

31 The Draft 2006 RPS Verification Report notes that although SB 107 eliminated the CEC's responsibility to certify and measure incremental geothermal production, the CEC is still quantifying incremental geothermal procurement for 2006 because the change in the RPS statute did not go into effect until 2007. *Id.* at 2, 53.

2006 RPS Verification Report relies on SB 107 and other rules that did not take effect until 2007 or later. As explained above, then current law entitles SCE's customers to RPS credit for the Mountain View deliveries for 2003 through 2006. Consistent with the law in effect at the time, the CEC should give SCE's customers full credit for their commitment to the Mountain View I and II wind facilities for 2003 through 2006 by verifying SCE's RPS claims for these resources. If the CEC does not allow SCE to count the DWR Mountain View Wind Contract towards its RPS goals, not only would SCE's customers receive no acknowledgement of their long-term support of these renewable resources, but the State's renewable contract would not count in any way towards the overall success of California's RPS program. This is not in the interests of California electricity customers.

III.

THE CEC SHOULD NOT RETROACTIVELY REVERSE ITS VERIFICATION OF SCE'S MOUNTAIN VIEW RPS CLAIMS

The CEC has already verified SCE's RPS claims for the Mountain View I and II facilities in 2004 and 2005.[32] SCE relied on this verification in counting the Mountain View renewable energy procurement towards the RPS for the 2003 through 2006 period. The output from these facilities makes a significant contribution to SCE's RPS targets. For 2003 through 2006, the Draft 2006 RPS Verification Report proposes to eliminate approximately 828 million kWh from SCE's RPS-eligible procurement.[33] If the CEC also denies SCE RPS credit for the Mountain View procurement from 2007, SCE will lose more than 1 billion kWh of RPS procurement.

If SCE were to retroactively lose RPS credit for these resources, it will be left with no way to fill previous years' gaps which it could not have planned for as the CEC had already verified the use of the DWR Mountain View Wind Contract for RPS compliance purposes. It has been more than six years since the 2003 claims and more than three years since the 2006

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[32] 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).

[33] Draft 2006 RPS Verification Report at 25.

claims. SCE cannot replace the Mountain View resources three to six years after the fact. SCE cannot purchase the Mountain View RECs for 2003 through 2006 because they have been sold to other parties. Nor can SCE enter into additional procurement contracts that would provide 2003 through 2006 deliveries. Additionally, filling the cumulative deficits that would result if the Mountain View procurement is found retroactively ineligible will be extremely costly to SCE's customers. Using the CPUC's 2009 MPR for 5-year contracts coming on-line in 2010 as a rough estimate of price, it could cost approximately $64 million to replace the Mountain View procurement for 2003 through 2006. Using the 2009 MPR for 20-year contracts coming on-line in 2010, it could cost more than $80 million.

Certainty regarding the RPS eligibility of resources is necessary for an orderly RPS program that will allow for the achievement of the State's goals at the lowest cost to California customers. The Draft 2006 RPS Verification Report asserts that allowing the Mountain View generation to count for RPS compliance would create regulatory uncertainty.[34] However, the Draft 2006 RPS Verification Report ignores the uncertainty that will result from a retroactive changing of rules for RPS compliance that will lead to higher customer costs by imposing additional, future procurement obligations on load-serving entities that will likely be filled with higher cost resources. Accordingly, SCE should receive RPS compliance credit for the DWR Mountain View Wind Contract for 2003 through 2006. At a minimum, the CEC should give SCE RPS credit for the years previously verified.

The Draft 2006 RPS Verification Report states that the CEC "must retain discretion to revise the results and findings of prior verification reports in order to correct data that is inaccurate, false, or misleading."[35] Retroactively changing SCE's previously verified Mountain View procurement claims three to six years after the fact goes beyond a mere correction of data. As explained above, it leaves SCE virtually no way to fill prior years' gaps and imposes on SCE's customers the burden of procuring expensive replacement power to fill cumulative

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[34] *Id.* at 14.
[35] *Id.* at A-9.

deficits. This is especially troubling given the special circumstances surrounding the DWR Mountain View Wind Contract. DWR executed the contract is the midst of the energy crisis, more than a year before the RPS legislation was adopted. At that time, DWR did not have the benefit of knowing the rules surrounding RPS compliance. Moreover, although the CPUC allocated the DWR Mountain View Wind Contract to SCE, and SCE customers have been paying for the contract since 2003, SCE is not a party to the contract and played no role in its negotiation. The State has recognized the special circumstances surrounding the DWR energy crisis contracts in other regulatory contexts.[36] Counting the DWR Mountain View Wind Contract towards SCE's RPS obligations for 2003 through 2006 will recognize the unique history of the contract and continue the State's policy of recognizing the special circumstances surrounding DWR contracts that were executed before the implementation of regulatory programs such as the RPS and outside the control of the investor-owned utilities.

Although SCE's customers should be allowed to receive RPS credit for the full value of the DWR Mountain View Wind Contract for 2003 through 2006 for all the reasons stated above, in the event that the CEC discounts any of SCE's RPS claims to the Mountain View I and II facilities for 2003 through 2006, the CEC should recommend policy options for remedying the harm to SCE's customers. SCE has included the table of RPS policy options for the DWR Mountain View Wind Contract that it provided in its prior comments on this issue in Appendix A. One option is to allow SCE to procure voluntary market RECs to match with the energy procured through the DWR Mountain View Wind Contract and to count all such energy for RPS compliance. The Draft 2006 RPS Verification Report rejects this option and states that "SCE may not retroactively match unbundled RECs with energy procured under the DWR contract with Mountain View towards its RPS obligations for any years in which unbundled RECs are not authorized to be used toward RPS compliance."[37]

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[36] For example, the CPUC has found that DWR contracts are eligible for resource adequacy purposes even if certain features of the contracts would otherwise exclude a non-DWR contract with the same terms and conditions. CPUC D.04-10-035 at 29-30 (October 28, 2004).

[37] Draft 2006 RPS Verification Report at A-8.

However, as the Draft 2006 RPS Verification Report acknowledges, the CPUC has jurisdiction over the use of RECs.[38] The CEC can recommend that the CPUC allow SCE to procure voluntary market RECs to match with the Mountain View energy. Allowing the purchase of voluntary market RECs as a one time exception to the RPS rules to account for the uniqueness of the DWR Mountain View Wind Contract's circumstances would ensure that both the voluntary market and the California RPS program receive all the benefits of each of those efforts and that customer interests are appropriately balanced. It would also alleviate concerns with double counting under the RPS program and the voluntary market. At a minimum, the CEC should remove any language in the Draft 2006 RPS Verification Report which states that SCE may not match RECs with Mountain View energy given that it is not within the CEC's jurisdiction to make such a determination.[39]

The CEC can also make other recommendations to the CPUC such as forgoing any RPS procurement deficits that result from the CEC's retroactive change in the verification of the Mountain View RPS claims. This will help to remedy the harm to SCE's customers caused by the proposed change in the CEC's verification decision regarding the Mountain View wind resources.

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[38] *Id.* at A-7. *See also* Cal. Pub. Util. Code § 399.16(a).
[39] Draft 2006 RPS Verification Report at 22, A-7-A-8.

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.

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APPENDIX A
RPS POLICY OPTIONS FOR THE DWR MOUNTAIN VIEW WIND CONTRACT

Option	Dates	Rationale	Potential Concerns
1. **Fully RPS Compliant**	2004-2006 Fully Compliant	-California RPS law measured RPS compliance solely based on the procurement of renewable energy and did not allow for unbundled RECs or renewable attributes until SB 107 took effect in 2007. Accordingly, no entity can claim a REC-only contract for RPS credit between 2004 and 2006. -Indeed, RECs still cannot be used for RPS compliance. -Because only delivered renewable energy is eligible for California's RPS, the entity receiving the energy should receive RPS credit. -Recognizes special circumstances surrounding this DWR contract: State contracted for renewable resources during the energy crisis, before the RPS program was adopted, CPUC allocated DWR contract to SCE, SCE customers have been paying for contract since 2003. -Recognizes the RPS value of these State-contracted resources and the long-term financial commitment made by SCE customers.	-Creates possible "double counting" of resources in voluntary market. -May not acknowledge contractual ownership of renewable attributes for RPS compliance purposes.

APPENDIX A
RPS POLICY OPTIONS FOR THE DWR MOUNTAIN VIEW WIND CONTRACT

2. Previously Verified Amounts Are Fully RPS Compliant As Are Claimed Amounts For 2006 (Less Amounts Claimed In Power Source Disclosure Program And Voluntary Markets)	2004-2005 Fully Compliant	-Honors previous CEC verification. Closes books on previous years. -Gives California some RPS benefit from these State-contracted renewable resources. -Gives SCE customers some benefit for their long-term financial commitment to the DWR Mountain View Wind Contract. -Recognizes special circumstances surrounding this DWR contract: State contracted for renewable resources during the energy crisis, before the RPS program was adopted, CPUC allocated DWR contract to SCE, SCE customers have been paying for contract since 2003. -Addresses concerns about "double counting" of the resources in voluntary market.	-No entity can count these State-contracted renewable resources for RPS credit for some periods. -Ignores legal ineligibility of RECs until 2007. -SCE customers will not receive the full benefit of their investment in the Mountain View renewable resources. - Harms customers by leaving them no mechanism for filling newly created RPS gaps. -Creates different standards for different years. -Creates uncertainty about State policy regarding the use of historical RECs.
	2006 Fully Compliant Less Amounts Claimed by Others		
3. Only Previously Verified Amounts Are Fully RPS Compliant	2004-2005 Fully Compliant	-Honors previous CEC verification. Closes books on previous years. -Gives California some RPS benefit from these State-contracted renewable resources. -Gives SCE customers some benefit for their long-term financial commitment to the DWR Mountain View Wind Contract. -Recognizes special circumstances surrounding this DWR contract: State contracted for renewable resources during the energy crisis, before the RPS program was adopted, CPUC allocated DWR contract to SCE, SCE customers have been paying for contract since 2003. -Establishes a going-forward policy to eliminate "double counting," which may occur when purchases from the voluntary market are reported.	-No entity can count these State-contracted renewable resources for RPS credit for some periods. -Ignores legal ineligibility of RECs until 2007. -SCE customers will not receive the full benefit of their investment in the Mountain View renewable resources. -Harms customers by leaving them no mechanism for filling newly created RPS gaps. -Creates different standards for different years. -Creates uncertainty about State policy regarding the use of historical RECs.
	2006 Not Compliant		

APPENDIX A
RPS POLICY OPTIONS FOR THE DWR MOUNTAIN VIEW WIND CONTRACT

4. RPS Compliance for Claimed Amounts (Less Amounts Claimed In Power Source Disclosure Program And Voluntary Markets)	2004-2006 Fully Compliant Less Amounts Claimed by Others	-Indicates a high level of concern about "double counting" in voluntary market even though RECs currently have no RPS accounting value. -Recognizes contractual ownership of renewable attributes for RPS compliance purposes even though renewable attributes currently have no RPS accounting value.	-Leaves vast amounts of delivered renewable energy from a State-contracted California facilities unaccounted for in the RPS program. -Ignores legal ineligibility of RECs until 2007. -Ignores special circumstances surrounding DWR contracts. -SCE customers will not receive the benefit of their investment in the Mountain View renewable resources. -Harms customers by leaving them no mechanism for filling newly created RPS gaps. -Creates uncertainty about State policy regarding the use of historical RECs.
5. No RPS Compliance Credit For Any Amounts Claimed	2004-2006 Not Compliant	-Indicates a high level of concern about "double counting" in voluntary market even though RECs currently have no RPS accounting value. -Recognizes contractual ownership of renewable attributes for RPS compliance purposes even though renewable attributes currently have no RPS accounting value.	-Leaves vast amounts of delivered renewable energy from State-contracted California facilities unaccounted for in the RPS program. -Ignores legal ineligibility of RECs until 2007. -Ignores special circumstances surrounding DWR contracts. -SCE customers will not receive the benefit of their investment in the Mountain View renewable resources. -Harms customers by leaving them no mechanism for filling newly created RPS gaps. -Creates uncertainty about State policy regarding the use of historical RECs.
For Any Options Where Claimed Amounts Are Discounted, Allow SCE To Purchase Voluntary Market RECs To Match With Energy	2004-2006 Fully Compliant	-Addresses concerns about "double counting" of the resources in voluntary market. -Recognizes special circumstances surrounding this DWR contract: State contracted for renewable resources during the energy crisis, CPUC allocated DWR contract to SCE, SCE customers have been paying for contract since 2003. -Recognizes the RPS value of these State-contracted resources and the long-term financial commitment made by SCE customers.	-Imposes cost of purchasing voluntary market RECs on SCE customers, in addition to the amounts they have already paid for the DWR Mountain View Wind Contract. -Ignores legal ineligibility of RECs until 2007. -Creates uncertainty about State policy regarding the use of historical RECs.