

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA**

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

**STAFF WORKSHOP ON 2006 RPS PROCUREMENT
VERIFICATION DATA REVIEW**

03-RPS-1078

DOCKET	
02-REN-1038	
DATE	APR 03 2009
RECD.	APR 03 2009

April 3, 2009

Joseph M. Karp
Karleen M. O'Connor
Winston & Strawn LLP
101 California Street, Suite 3900
San Francisco, California 94111
Telephone: (415) 591-1529
Facsimile: (415) 591-1400
jkarp@winston.com
koconnor@winston.com

Attorneys for AES Wind Generation, Inc. and
Mountain View Power Partners, Inc.

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA**

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

**STAFF WORKSHOP ON 2006 RPS PROCUREMENT
VERIFICATION DATA REVIEW**

INTRODUCTION

In response to the Notice of Staff Workshop on 2006 RPS Procurement Verification Data Review (“Notice”), Mountain View Power Partners, LLP (“MVPP”) respectfully submits these responses to the questions posed by the California Energy Commission (“CEC”) in Attachment B to the Notice. Specifically, MVPP submits these responses to the Questions Regarding Outstanding Renewables Portfolio Standard Procurement Claims, Questions 1 through 7¹ as they relate to renewable energy credits (“RECs”) generated from the Mountain View I and II projects (collectively, the “Projects”).

I. Renewables Portfolio Standard Procurement from “Unbundled” Energy Contracts - Mountain View I and II Facilities

Question 1: Energy Commission staff has identified the following parties as having procured Renewable Energy Credits (RECs) from the Mountain View I and II facilities. The data in Tables 1-3 have been reported to the Energy Commission through the Senate Bill (SB) 1305 Power Source Disclosure Program and the Renewables Portfolio Standard Procurement Verification Program. The data do not include the wholesale purchases of Mountain View RECs from REC marketers, which are discussed in item 3 and shown in Table 4. The data listed assume that the parties listed in Tables 1-3, other than Southern California Edison (SCE), procured unbundled RECs from the Mountain View I and II facilities, and did not procure energy. Please inform staff if you have any corrections or additions to the data in Tables 1-3, particularly if you have information on any other party that procured (or claimed to procure) RECs from the Mountain View I and II facilities over the same period for other energy regulatory programs.

¹ MVPP does not have a position on the questions relating to “Procurement from Facilities Without RPS-Certification” and “Estimating Incremental Geothermal Procurement.”

Table 1

2004 Mountain View I and Mountain View II Procurement Claims				
Facility	SCE RPS- Procurement Claim (in kWh) ¹	3Phases Energy Services SB 1305- Procurement Claim (in kWh) ²	Total Procurement Claimed (in kWh)	Facility Generation (in kWh) ³
Mountain View I Wind	132,128,429	0	132,128,429	129,230,000
Mountain View II Wind	61,296,744	236,000	61,532,744	59,947,000
Total	193,425,173	236,000	193,661,173	189,177,000
¹ Reported by SCE in their 2004 CEC-RPS-Track filing. ² Reported by 3Phases Energy Services in their 2004 Annual Report to the SB 1305 Power Source Disclosure Program. ³ The generation data used here was reported by the facility to the Energy Information Administration and/or the Energy Commission Public Interest Energy Research – Renewables Program. Energy Commission staff followed up with Mountain View on the generation claims and in September 2008 received slightly different generation numbers.				

Table 2

2005 Mountain View I and Mountain View II Procurement Claims						
Facility	SCE RPS- Procurement Claim (in kWh) ¹	Burbank Water and Power SB 1305- Procurement Claim (in kWh) ²	3Phases Energy Services SB 1305- Procurement Claim (in kWh) ³	Turlock Irrigation District SB 1305- Procurement Claim (in kWh) ⁴	Total Procurement Claimed (in kWh)	Facility Generation (in kWh) ⁵
Mountain View I Wind	146,754,659	Unknown	Unknown	Unknown	Unknown	143,893,000
Mountain View II Wind	72,835,598	Unknown	Unknown	Unknown	Unknown	73,760,000
Total	219,590,257	13,325,000	6,240,800	11,363,100	250,519,157	217,653,000
¹ Reported by SCE in their 2005 CEC-RPS-Track filing. ² Reported by Burbank Water and Power in their 2005 Annual Report to the SB 1305 Power Source Disclosure Program. They reported procurement from Mountain View Wind but did not allocate their procurement between the Mountain View I and the Mountain View II facilities. ³ Reported by 3Phases Energy Services in their 2005 Annual Report to the SB 1305 Power Source Disclosure Program. They reported procurement from Mountain View Wind but did not allocate their procurement between the Mountain View I and the Mountain View II facilities. ⁴ Reported by Turlock Irrigation District in their 2005 Annual Report to the SB 1305 Power Source Disclosure Program. They reported procurement from Mountain View Wind but did not allocate their procurement between the Mountain View I and the Mountain View II facilities. ⁵ The generation data used here was reported by the facility to the Energy Information Administration and/or the Energy Commission Public Interest Energy Research – Renewables Program. Energy Commission staff followed up with Mountain View on the generation claims and in September 2008 received slightly different generation numbers.						

Table 3

2006 Mountain View I and Mountain View II Procurement Claims				
Facility	SCE RPS- Procurement Claim (in kWh) ¹	City of Palo Alto Utilities SB 1305- Procurement Claim (in kWh) ²	Total Procurement Claimed (in kWh)	Facility Generation (in kWh) ³
Mountain View I Wind	149,324,803	-	149,324,803	151,940,000
Mountain View II Wind	72,268,946	3,604,000	75,872,946	73,760,000
Total	221,593,749	3,604,000	225,197,749	225,700,000
¹ Reported by SCE in their 2006 CEC-RPS-Track filing. ² Reported by the City of Palo Alto Utilities in their 2006 Annual Report to the SB 1305 Power Source Disclosure Program. ³ The generation data used here was reported by the facility to the Energy Information Administration and/or the Energy Commission Public Interest Energy Research – Renewables Program. Energy Commission staff followed up with Mountain View on the generation claims and in September 2008 received slightly different generation numbers.				

Response to Question 1: MVPP is providing a chart, attached as Attachment A, which details the counterparties to whom MVPP sold RECs from 2004 to 2006 and in what quantities. MVPP verified this information by reviewing all available attestation forms. MVPP validated the data in Attachment A via attestation forms provided to the counterparties certifying the creation and transfer of RECs. MVPP acknowledges that for 2004 and 2006, the values do not exactly correspond to those in Table 4, Attachment B of the Notice of Staff Workshop on 2006 RPS Procurement Verification Data Review. MVPP is presently unable to account for the discrepancies of roughly 3% in 2004 and 2% in 2006. As the current owner of MVPP, (AES Windpower, Inc. acquired MVPP in 2008), it is conceivable that not all of the attestation forms for 2004 and 2006 are in MVPP's possession, custody or control. The information contained in Attachment A represents the best information MVPP has been able to compile.

Question 2: Also in Tables 1-3, staff has identified the amount of energy SCE procured from the Mountain View I and II facilities. Please inform staff if you have any corrections or additions to the data, particularly if you have information on any other party that procured (or claimed to procure) energy from the Mountain View I and II facilities over the same period. The following tables show the Mountain View I and II claims that are in question for the years 2004-2006. It is important to note that this same issue applies for the year 2007, but this RPS Verification Report will only cover through year 2006.

Response to Question 2: See response to Question 1 above.

Question 3: In Table 4 below, staff has identified the amount of wholesale RECs claimed by REC marketers and sold into the voluntary REC market as reported to the Energy Commission by Green-e Energy. There are entities such as Safeway, Sustainable Websites, Facebook's Green Energy Application: Green My Vino, and others that have been and are making public claims to Mountain View RECs on the voluntary market. Additionally, some of these claims may be captured in Tables 1-3 above, as purchases made from entities reporting to the Senate Bill 1305 Power Source Disclosure Program. Staff understands these voluntary market claims to have been made possible through the purchase of Mountain View RECs from wholesale REC marketers.

Table 4 represents the claims made by the wholesale REC marketers; therefore, it does not show an accounting of Mountain View REC claims by non-REC marketers. Please inform staff if you have any corrections or additions to the data, particularly if you have information on any other wholesale marketer procurement claims from the Mountain View I and II facilities over the same period and not accounted for in Table 4.

Table 4

Amount of Mountain View REC Claims by Marketer on the Voluntary REC Market			
Year	Amount of wholesale Mountain View I & II REC only Claims by REC Marketers ^{1,2}	Reported Generation for Mountain View I & II (MWh) ³	Percent of Mountain View RECs Claimed on the Voluntary Market
2004	79,117	189,177	42%
2005	195,928	217,653	90%
2006	222,903	225,700	99%

¹ RECs are generated per MWh and represent REC claims from Mountain View Wind Facilities I & II combined.
² Reported to Energy Commission by Green-e Energy, based on annual reporting by participants in Green-e Energy.
³ The generation data used here was reported by the facility to the Energy Information Administration and/or the Energy Commission Public Interest Energy Research – Renewables Program. Energy Commission staff followed up with Mountain View on the generation claims and in September 2008 received slightly different generation numbers. The original amount was reported in kWh. Because one REC is generated per one MWh and REC-Marketers report in MWh, staff has converted this number to MWh to make the table easier to read.

Response to Question 3: See response to Question 1 above.

Question 4: The Energy Commission’s Renewable Energy Office uses the “interim tracking system” in which staff uses spreadsheets to manually check procurement claims for each retail seller per generating facility with generation data reported to the Federal Energy Information Administration and/or different reporting programs within the Energy Commission. Staff has recently started using a database program to assist in the verification process and will be using the database in preparation of data presented in this workshop and that will be included in the Draft 2006 RPS Procurement Verification Report. Starting in reporting year 2008, retail sellers will begin using the Western Renewable Energy Generation Information System (WREGIS) WREGIS to report their RPS procurement claims.

The WREGIS was launched in June 2007 and was designed to “...ensure that electricity generated by an eligible renewable resource is counted only once for the purpose of meeting the renewables portfolio standard of this or any other state, to certify renewable energy certificates produced by eligible renewable energy resources, and to verify retail product claims in this or any other state.” [Pub. Util. Code sec. 399.13 (b).] This tracking system is also designed to protect “...against multiple counting of the same renewable energy credit...” [Pub. Util. Code sec. 399.13 (c).] Parties involved in renewable energy transactions to serve California’s RPS were required to use the interim tracking system and now WREGIS for purposes of verifying RPS compliance. Parties participating in the voluntary REC market, however, may not be procuring renewable energy or RECs for purposes of California’s RPS and are not required to use the interim tracking system or WREGIS.

For parties selling RECs in the voluntary market or who are otherwise not required to use the RPS interim tracking system or WREGIS, please describe what processes, mechanisms, or

safeguards are in place to protect you and the REC buyer and ensure that RECs are not double counted and that only one REC is created for each MWh of renewable energy generated.

Response to Question 4: MVPP and buyers of MVPP's RECs are assured that (1) the RECs that MVPP sells are not double counted; and (2) only one REC is created for each MWh of renewable energy because MVPP only sells its RECs once. MVPP only sells one REC for each MWh of renewable energy created, and MVPP only sells that REC once, whether it is bundled with renewable energy or unbundled. Once it is sold, MVPP cannot and will not resell it, as it no longer has title to the REC. MVPP's REC agreements for the period between 2004 and 2006 required that the RECs be validated through the Green-E certification process and through specific attestations provided by MVPP to the counterparty.

Question 5: Should SCE's procurement of energy from the Mountain View I and II facilities in 2004-2006 be counted as RPS-eligible procurement, even though the DWR contract under which the energy was procured provides that all rights and interest in the associated RECs remain with the owner of the facilities? Please explain why or why not.

Note that California Public Utilities Code section 399.16(a)(5) states:

“No renewable energy credits shall be created for electricity generated pursuant to any electricity purchase contract with a retail seller or a local publicly owned electric utility executed before January 1, 2005, unless the contract contains explicit terms and conditions specifying the ownership or disposition of those credits. Deliveries under those contracts shall be tracked through the accounting system described in subdivision (b) of Section 399.13 and included in the baseline quantity of eligible renewable energy resources of the purchasing retail seller pursuant to Section 399.15.”

Staff is aware that the DWR Mountain View contract assigned to SCE contains explicit terms and conditions specifying that the ownership of the RECs belongs with the owner of the facility. How does §399.16(a)(5) impact DWR contracts, if at all? Should the RPS-eligibility of procurement from renewable energy contracts executed by DWR be treated differently than procurement under other renewable energy contracts where the buyer procures only unbundled energy? If so, what is the basis for treating such DWR contracts differently? If so, should the exception apply to all similarly structured DWR contracts?

Both PG&E and SDG&E were assigned DWR-electricity contracts that do not include RECs, but they have not claimed the generation from these contracts towards their RPS procurement targets, recognizing that the contracts provide unbundled energy. SCE's procurement claim from Mountain View makes up approximately 0.27-0.30 percent of SCE's annual retail sales. SCE's Annual Procurement Target (APT) for 2004-2006 ranged from 16.9 -17.9 percent of SCE's annual retail sales. Accordingly, Table 5 shows staff's draft estimates of SCE's RPS Eligible Procurement with and without Mountain View claims during the years 2004-2006, showing a 0.27-0.30 percent difference towards SCE's APT depending on whether Mountain View claims are counted. These are draft estimates and should not be considered final as they may be subject

to change as a result of the RPS procurement verification process; however, the numbers provide a sense of the magnitude that the Mountain View procurement claims have on SCE's progress in meeting their APT.

Table 5

SCE Percent of RPS-eligible Procurement Claims assumes including Mountain View and not including Mountain View				
Reporting Year	* Annual Procurement Target	** RPS Procurement claimed by SCE - including Mountain View	** Estimate of Total SCE RPS Procurement - NOT including Mountain View	APT Percent Difference from including and not including Procurement from Mountain View
2004	16.93%	18.94%	18.66%	0.27%
2005	17.39%	17.87%	17.57%	0.30%
2006	17.92%	16.94%	16.65%	0.30%
<p>*Mountain View is not part of the initial baseline because there was not a Mountain View claim in 2001.</p> <p>** Procurement percentages are based on current year's procurement and previous year's retail sales. Energy Commission staff is verifying RPS procurement claims as part of development of the <i>Draft 2006 RPS Procurement Verification Report</i>. These draft numbers should not be considered final.</p> <p><u>Notes on staff's calculation of Targets:</u></p> <p>Annual Procurement Targets for IOUs do not start until 2004.</p> <p>Annual Procurement Target = Previous Annual Procurement Target plus Incremental Procurement Target.</p> <p>Incremental Procurement Target = 1 percent of Previous Year's Retail Sales.</p>				

Response to Question 5: MVPP does not take a position as to whether SCE's procurement of energy from the Projects in 2004-2006 should be counted as RPS-eligible procurement with respect to SCE. Nevertheless, at all times, MVPP rightfully and legally owned and sold environmental attributes, including RECs, associated with the production of renewable energy from the Projects. Pursuant to the DWR contract, MVPP holds exclusive title to the RECs and has the right to sell the RECs to any third party, which it lawfully did.

As the CEC has acknowledged, the DWR contract contains explicit terms and conditions specifying the ownership or disposition of the RECs from the Projects. In particular, the DWR contract states that "[a]ll rights and interests in the renewable attributes, emission reductions or credits (offsets) relating to the Projects shall remain the property of Party A." MVPP is Party A.

Question 6: Under what conditions, if any, could SCE be allowed to claim that its unbundled procurement from the Mountain View I and II facilities is RPS-eligible?

- a. Energy Commission Staff has explored the concept of SCE procuring existing RECs from the Mountain View I and II facilities and bundling the RECs with the energy SCE procured from these facilities. However, staff from the Center for Resources Solutions' Green-e Energy program has informed Energy Commission staff that the Mountain View RECs accounted for by the Green-e Energy program are not available, as all of these RECs have been sold in voluntary market transactions. Please inform staff if you have any corrections or additions to the claim that the RECs accounted for through the Green-e Energy program from the Mountain View I and II facilities have been sold into the voluntary market. Based on this information, the calculations in Table 4 show that: 40 percent of 2004; 90 percent of 2005; and 99 percent of 2006 Mountain View RECs have been sold into the voluntary market as reported to Green-e Energy.

Response to 6(a): See MVPP's response to Question No. 1.

b. Should SCE be allowed to retroactively procure RECs from other RPS-certified facilities to match or 'rebundle' them with the energy SCE procured through the Mountain View contract? Please explain why or why not. Current RPS rules would prohibit this option. If you believe that this option has merit, identify what CPUC and/or Energy Commission rules pertain. Would statutory changes be needed? If so, please identify them.

Response to 6(b): MVPP does not take a position on this issue.

Question 7: Energy Commission staff is aware that the evaluation of the RPS eligibility of SCE's procurement from the Mountain View I and II facilities may have consequences for Attachment B: Questions Regarding Outstanding Renewables Portfolio Standard Procurement Claims. SCE's ratepayers, parties who procured RECs from these facilities, and other interested parties. Please describe how the conditions or actions you proposed in response to the above questions may affect you or other interested parties. What remedies, if any, should the CEC and/or CPUC consider to address these issues?

Response to Question 7: MVPP does not take a position on any actions, conditions or remedies that the CEC or California Public Utilities Commission ("CPUC") ultimately takes vis-a-vis SCE, SCE's ratepayers or any other interested party, except that MVPP's contractual rights to create and own the RECs from the Projects, as delineated in the DWR contract, as well as MVPP's right to sell those RECs to a third party pursuant to its REC contracts, must be honored. The CEC and CPUC should not take any action to interfere with those lawful transactions.

Question posed by the Commission during the Workshop: How does the seller of the RECs confirm what is sold to the buyer, i.e. 3 Degrees or 3 Phases?

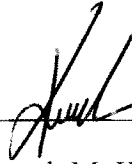
Response: During the relevant time period in question, 2004 – 2006, MVPP was owned by Centennial Power, Inc. ("Centennial"). Centennial, and not MVPP, entered into contracts for the sale of RECs to 3 Phases Energy Services, LLC ("3 Phases") from the MVPP Projects. When AES purchased MVPP in 2008, the contracts for the sale of RECs between Centennial and 3 Phases Energy did not run with the project or otherwise transfer to AES. Thus, MVPP does not have first hand knowledge concerning how the seller of the REC confirmed the quantities of RECs sold, because the seller of the RECs during the relevant time period was Centennial, not MVPP.

Nevertheless, a review of the REC contracts attached to 3 Degrees' comments submitted during the workshop reveals that pursuant to the REC contracts, the seller bore the responsibility to attest to the quantity of RECs sold to buyer. For example, section 1(b) of the REC Agreement with an effective date of October 15, 2004 states that "Seller shall present an invoice and attestation to Buyer for purchases made by Buyer." The REC contracts contain a form attestation, which is to be completed by hand and submitted annually. As indicated in response to Question 1, MVPP has obtained copies of attestations from 2004 to 2006 and attempted to

reconcile the amount of RECs MVPP sold from 2004 to 2006 and in what quantities, see Attachment A.

April 3, 2009

Respectfully submitted,



Joseph M. Karp
Karleen M. O'Connor
Winston & Strawn LLP
101 California Street, Suite 3900
San Francisco, California 94111
Telephone: (415) 591-1529
Facsimile: (415) 591-1400
jkarp@winston.com
koconnor@winston.com

Attorneys for AES Wind Generation, Inc. and
Mountain View Power Partners, Inc.

Exhibit A

Mountain View Power Partners, LLC Renewable Energy Credit Procurement Claims 2004-2006

2004 Vintage		2005 Vintage		2006 Vintage	
Counterparty	Quantity	Counterparty	Quantity	Counterparty	Quantity
3 Phases Energy	76,377	3 Phases Energy	195,928	3 Phases Energy	220,136