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 QUESTIONS REGARDING OUTSTANDING RENEWABLES PORTFOLIO STANDARD PROCUREMENT CLAIMS

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Dated: April 3, 2009

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Southern California Edison Company ("SCE") respectfully submits these comments in response to the questions regarding outstanding renewables portfolio standard ("RPS") procurement claims attached to the notice of staff workshop on 2006 RPS procurement verification data review (the "Notice").

I.

INTRODUCTION AND BACKGROUND

The power purchase and sale agreement covering the Mountain View I and II wind facilities predates California's RPS program and the rules and regulations developed to implement that program. The contract is a product of California's energy crisis. Due to skyrocketing electricity prices in 2000 and 2001, the Governor directed the California Department of Water Resources ("DWR") to purchase power on behalf of the State's investor-owned utility customers. During 2001 and 2002, DWR entered into numerous long-term power contracts, including the long-term contract with the Mountain View I and II wind projects.

On May 31, 2001, DWR and PG&E Energy Trading – Power, L.P. entered into a 10-year contract (the "DWR Mountain View Wind Contract") for the purchase and sale of the output of the Mountain View I and II facilities, two wind projects located in Riverside County, California

with a total capacity of approximately 66 MW.[1] The Mountain View I and II wind facilities began commercial operation in September 2001.[2] On October 1, 2002, DWR and PG&E Energy Trading – Power, L.P. renegotiated the DWR Mountain View Wind Contract, reducing the price from $58.50 per MWh to $57.00 per MWh.[3] Under the DWR Mountain View Wind Contract, the seller retains the renewable attributes associated with the projects. However, 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.[4] The current seller under the DWR Mountain View Wind Contract is Mountain View Power Partners, LLC, a subsidiary of AES Wind Generation, Inc.

SCE is not a party to the DWR Mountain View Wind Contract. The contract was negotiated and executed by DWR, and SCE had no involvement in the contract negotiation. More than a year after the contract was executed, on September 19, 2002, the DWR Mountain View Wind Contract was allocated to SCE by the California Public Utilities Commission ("CPUC"), effective as of January 1, 2003.[5] Under the CPUC allocation, SCE did not become a party to the contract. DWR remains the buyer under the DWR Mountain View Wind Contract. However, although SCE had no power to negotiate the terms and conditions of the contract, SCE's customers have been paying for the DWR Mountain View Wind Contract since 2003 pursuant to the CPUC's allocation decision.

SCE has counted deliveries from the DWR Mountain View Wind Contract for compliance with the RPS since 2003. The renewable deliveries under the contract are approximately 200 GWh per year, a significant portion of SCE's annual RPS targets. SCE

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1 Master Power Purchase and Sale Agreement between DWR and PG&E Energy Trading – Power, L.P. (available at http://wwwcers.water.ca.gov/pdf_files/power_contracts/mountain_view/053101_pge_et_ppa.pdf).

2 *See* DWR News Release, DWR Restructures Two Long-Term Power Contracts (September 20, 2002) (available at http://wwwcers.water.ca.gov/pdf_files/press_releases/092002pr_colton_pge_reneg.pdf).

3 Amended and Restated Master Power Purchase and Sale Agreement between DWR and PG&E Energy Trading – Power, L.P. (available at http://wwwcers.water.ca.gov/pdf_files/power_contracts/mountain_view/092002_pge_et_amended_ppa.pdf).

4 *See* http://wwwcers.water.ca.gov/pdf_files/other_contracts/010303_renewable_table.pdf.

5 CPUC Decision ("D.") 02-09-053 at 3-4 (September 19, 2002).

claimed RPS credit for the DWR Mountain View Wind Contract energy deliveries because then current California law did not contemplate the unbundling of renewable resources for RPS compliance purposes. 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.[6] The statute made no mention of renewable energy credits ("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. Indeed, even though SB 107 allowed the CPUC to authorize the use of RECs to satisfy the requirements of the RPS upon certain conditions being met,[7] the CPUC has not yet authorized the use of RECs for RPS compliance.

On the basis of then current law, SCE interpreted its customers' payment for and the delivery of all eligible renewable energy from the Mountain View I and II wind facilities to SCE as sufficient basis for receiving 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. Accordingly, under State policy, SCE was the only entity that could legitimately claim RPS compliance credit from these resources. With no current authorization of the use of unbundled RECs for RPS compliance, SCE is still the only entity that can claim RPS credit for the output of the Mountain View I and II wind projects.

SCE's position was bolstered by the California Energy Commission's ("CEC") verification of 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

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6 *See* SB 1078 (2002).
7 SB 107 (2006), Cal. Pub. Util. Code § 399.16.

renewable attributes for the Mountain View I and II resources.[8] Additionally, the DWR Mountain View Wind Contract, which states that the seller retains the renewable attributes associated with the projects, is publicly available.[9] 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.[10] 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. Since California still does not allow the use of RECs or renewable attributes for RPS compliance, SCE continued to claim RPS credit for the DWR Mountain View Wind Contract in 2006 and 2007.

Although the Notice states that various parties other than SCE have claimed credit for RECs coming from the Mountain View I and II facilities under the SB 1305 Power Source Disclosure Program and in the voluntary REC market, the data shows that SCE is the only party that procured renewable energy from the projects.[11] As discussed above, RECs may not be used for compliance by any entity within California's RPS program. The same thing is true with respect to the SB 1305 Power Source Disclosure Program.[12] Therefore, there can be no double counting of the DWR Mountain View Wind Contract output under these programs because SCE is the only party that received renewable energy from the facilities. Additionally, to the extent parties announce their purchases of RECs from the Mountain View I and II facilities in the voluntary REC market, the CEC's task should be to first maintain the integrity of the State's RPS program, instead of allowing the voluntary market to govern what can receive credit under California's RPS.

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

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

10 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).

11 Notice, Attachment B at 1-4.

12 *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.").

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 all of the years in which such claims have been made. Counting this contract towards SCE's RPS obligations will 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. Moreover, if SCE were to retroactively lose RPS credit for these resources, it will be left with virtually 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 customers to bear additional costs for higher cost resources in the future, in addition to the costs SCE 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.

For all these reasons, SCE should receive RPS compliance credit for the Mountain View I and II wind facilities in 2004 and 2005 (as the CEC has already found), 2006, and until RECs may be used for RPS compliance.

II.

QUESTIONS REGARDING OUTSTANDING RPS PROCUREMENT CLAIMS

A. RPS Procurement from Mountain View I and II Facilities

1. 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.

SCE has no corrections or additions to make to the data in Tables 1 through 3. SCE confirms that it made the RPS procurement claims listed in the first column of each table titled SCE RPS – Procurement Claim (in kWh). SCE cannot confirm any of the other values in the tables.

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.

SCE has no corrections or additions to make to the data in Tables 1 through 3. SCE confirms that it made the RPS procurement claims listed in the first column of each table titled SCE RPS – Procurement Claim (in kWh). SCE cannot confirm any of the other values in the tables.

3. **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.**

SCE has no information regarding the accuracy of the volumes claimed by wholesale REC marketers. Accordingly, SCE has no basis for making any corrections or additions to Table 4.

4. **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.**

This question is inapplicable to SCE because SCE does not sell RECs in the voluntary market, and SCE is required to use the RPS interim tracking system and WREGIS.

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 produced provides that all rights and interest in the associated RECs remain with the owner of the facilities? Please explain why or why not?**

Yes, SCE's procurement of energy from the Mountain View I and II facilities in 2004 through 2006 should be counted as RPS-eligible procurement. No other entity can claim RPS credit for such procurement since only SCE took delivery of energy from these facilities. Additionally, SCE should be allowed to continue to count these resources towards its RPS obligations until the CPUC authorizes the use of RECs for RPS compliance.

As explained above, the DWR Mountain View Wind Contract is an energy crisis contract that was executed by DWR more than a year before the RPS legislation was adopted. SCE did not negotiate the contract, and had no power to affect the terms and conditions of the agreement. However, the CPUC allocated this energy crisis DWR contract to SCE.[13] Therefore, SCE customers have been paying for the State's long-term commitment to buy renewable energy from the Mountain View I and II wind facilities since 2003.

It is appropriate for the CEC to count the DWR Mountain View Wind Contract towards SCE's RPS obligations because the California RPS measures renewable energy procurement, not RECs or renewable attributes. California's RPS law did not even contemplate the use of unbundled 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."[14] 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***. . . ."[15] 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."[16]

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[13] CPUC D.02-09-053 (September 19, 2002).
[14] SB 1078 (2002), Cal. Pub. Util. Code § 399.12(c) (emphasis added).
[15] *Id.*, Cal. Pub. Util. Code § 399.15(a) (emphasis added).
[16] *Id.*, Cal. Pub. Util. Code § 399.15(b)(1) (emphasis added).

An "eligible renewable energy resource" meant "an electric generating facility" that met certain criteria, none of which involved RECs or renewable attributes.[17] 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."[18] 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.

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 for the use of RECs to satisfy the requirements of the RPS once authorized by the CPUC.[19] However, the statute requires certain conditions to be met before the CPUC may allow the use of RECs for RPS compliance:

> ***Prior to authorizing any renewable energy credit to be used toward satisfying annual procurement targets***, the commission and the Energy Commission shall conclude that the tracking system established pursuant to subdivision (c) of Section 399.13, is operational, is capable of independently verifying the electricity generated by an eligible renewable energy resource and delivered to the retail seller, and can ensure that renewable energy credits shall not be double counted by any seller of electricity within the service territory of the Western Electricity Coordinating Council (WECC).[20]

The CEC's tracking system, WREGIS, was launched in June 2007, and the CPUC and CEC have since found that WREGIS meets the RPS legislation's requirements.[21] Although the CPUC issued a proposed decision authorizing the use of RECs for RPS compliance in October

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17 *Id.*, Cal. Pub. Util. Code § 399.12(a).
18 *Id.*, Cal. Pub. Util. Code § 399.14(g) (emphasis added).
19 SB 107 (2006), Cal. Pub. Util. Code § 399.16(a).
20 *Id.*, Cal. Pub. Util. Code § 399.16(a)(1) (emphasis added).
21 CPUC Resolution E-4178 (November 21, 2008); CEC Tracking System Operational Determination, CEC-300-2008-001-CMF (approved by CEC on December 3, 2008).

2008[22] and a revised proposed decision allowing the use of RECs for RPS compliance in March 2009,[23] 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. The CPUC's proposed decision would allow RECs tracked in WREGIS associated with electricity generated on or after January 1, 2008 to be used for RPS compliance.[24] Therefore, even after the CPUC authorizes RECs for RPS compliance, no party other than SCE could claim RPS compliance for the Mountain View I and II facilities for 2004 through 2007 because SCE was the only entity that received renewable energy from the resources.

Because there was no statutory basis to use RECs or renewable attributes for RPS compliance purposes prior to SB 107 taking effect in 2007, SCE should receive RPS credit for the energy deliveries from the Mountain View I and II wind facilities for 2004 through 2006. As the off-taker of the long-term DWR Mountain View Wind Contract, SCE is the only party that can claim RPS credit for the contract deliveries from 2004 through 2006 because SCE is the only party that received the eligible renewable energy deliveries from the projects. As explained above, no party can claim RPS credit for the RECs or renewable attributes from the facilities that may have been sold for that period. Indeed, SCE should be allowed to continue to count the DWR Mountain View Wind Contract for RPS compliance until RECs from the facilities may be used for RPS compliance.

The Notice refers to various additions of the RPS Eligibility Guidebook, which referred to CPUC D.03-06-071 and stated that generation must be bundled with associated RECs to qualify for the RPS.[25] 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

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22 CPUC Proposed Decision Authorizing Use of Renewable Energy Credits for Compliance with the California Renewables Portfolio Standard (October 29, 2008).

23 CPUC Proposed Decision Authorizing Use of Renewable Energy Credits for Compliance with the California Renewables Portfolio Standard (March 26, 2009).

24 *Id.* at 62.

25 Notice, Attachment A at 1.

for RPS compliance purposes until the enactment of SB 107), as discussed above, there was no requirement in the RPS law that eligible renewable energy must be bundled with RECs to receive RPS credit. In D.03-06-071, the CPUC declined to consider a REC trading system for RPS compliance.[26] The CPUC did recommend a REC-based accounting system.[27] However, the CPUC also noted that the CEC is ultimately responsible for the design and implementation of the accounting system to be used to verify compliance with the RPS.[28] 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,[29] 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.[30] 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.

Certain parties other than SCE have apparently claimed credit for RECs coming from the Mountain View I and II facilities under the SB 1305 Power Source Disclosure Program and in the voluntary REC market.[31] However, these parties did not procure any renewable energy deliveries from the projects.[32] 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 SB 1305 Power

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26 CPUC D.03-06-071 at 9 (June 19, 2003).
27 *Id.* at 11.
28 *Id.*
29 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).
30 SCE Report to the CEC Utility Procurement of Renewable Energy in 2003.
31 Notice, Attachment B at 1-4.
32 *Id.*

Source Disclosure Program does not allow the use of RECs.[33] Therefore, there can be no double counting of the DWR Mountain View Wind Contract output under that program.

To the extent parties may announce their purchase of RECs from the Mountain View I and II facilities in the voluntary REC market, 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. The California RPS program is a mandatory program, and the CEC has statutory obligations associated with the implementation of the RPS. The CEC has no such obligations in connection with the voluntary REC market. SCE customers have made a long-term financial commitment to the Mountain View I and II wind facilities and paid significant costs for the resources. SCE customers will suffer substantial harm if they do not receive RPS credit for the DWR Mountain View Wind Contract as SCE will have gaps in its RPS procurement that it cannot fill two to four years after the fact. The CEC should give SCE's customers full credit for their commitment to the Mountain View I and II wind facilities by verifying SCE's RPS claims for the resources. As explained above, no other party can receive RPS credit for the renewable energy deliveries SCE received from these wind projects. Therefore, 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[34] 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.

Furthermore, the DWR Mountain View Wind Contract is a special case. 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

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[33] *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.").

[34] *See* http://wwwcers.water.ca.gov/pdf_files/other_contracts/010303_renewable_table.pdf.

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. Since the RPS program was adopted, SCE has contracted for the "environmental attributes" or "green attributes" in its renewable contracts in accordance with the CPUC's standard terms and conditions for RPS contracts.[35] SCE did not have that opportunity in the case of the DWR Mountain View Wind Contract signed by the State. As discussed below, the State has recognized the special circumstances surrounding the DWR energy crisis contracts in other regulatory contexts. 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.[36] Similar treatment of the DWR Mountain View Wind Contract for RPS purposes is justified here. Counting the DWR Mountain View Wind Contract towards SCE's RPS obligations 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.

Finally, the CEC has already verified SCE's RPS claims for the Mountain View I and II facilities for 2004 and 2005. As the Notice explains, the output from these facilities makes a significant contribution to SCE's RPS targets.[37] If SCE were to retroactively lose RPS credit for these resources, it will be left with virtually 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. 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. This retroactive changing of rules for RPS compliance will lead to higher customer costs by imposing additional, future procurement obligations on

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35 *See* CPUC D.04-06-014 (June 9, 2004); CPUC D.08-04-009 (April 10, 2008); CPUC D.08-08-028 (August 21, 2008).

36 CPUC D.04-10-035 at 29-30 (October 28, 2004).

37 Notice, Attachment B at 5-6.

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 all the years claimed.

a. How does § 399.16(a)(5) impact DWR contracts, if at all?

Public Utilities Code section 399.16(a)(5) provides that:

> 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.

Section 399.16(a)(5) did not become part of the RPS law until SB 107 took effect on January 1, 2007. Therefore, it is not relevant to the 2004 through 2006 period at issue here. Furthermore, even after SB 107 took effect, section 399.16(a)(5) only becomes relevant once the CPUC authorizes the use of RECs for RPS compliance. At that time, a DWR contract that specifies the ownership or disposition of RECs may create RECs.

b. 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?

The DWR contracts arose out of a crisis period. Due to skyrocketing electricity prices during the 2000 and 2001 energy crisis, the State purchased power on behalf of investor-owned utility customers. Although investor-owned utility customers are paying the long-term costs of such contracts pursuant to the CPUC allocation of the contracts, the investor-owned utilities did not have the right to negotiate the terms and conditions of the contracts. Moreover, the DWR

contracts were executed before the adoption of the RPS program; therefore, the State did not have the benefit of knowing RPS program rules when it negotiated the contracts.

Given the unique circumstances surrounding the DWR energy crisis contracts, SCE believes that such contracts should be treated differently than other contracts for RPS compliance purposes. The CPUC recognized the need to create special exceptions under certain regulatory programs for DWR contracts allocated to investor-owned utilities. As described above, 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.[38] It would be also be appropriate to develop RPS rules that recognize the special nature of DWR contracts.

The Notice suggests that Pacific Gas and Electric Company ("PG&E") and San Diego Gas & Electric Company ("SDG&E") were assigned DWR contracts with renewable resources that do not include renewable attributes, and that PG&E and SDG&E chose not to count such DWR contracts for RPS compliance.[39] Based on the information provided by PG&E at the March 26, 2009 workshop, it is not clear that PG&E was allocated any DWR contracts with renewable resources that do not include renewable attributes. SCE believes that any RPS rules related to DWR contracts should apply to all similarly structured DWR contracts.

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?

SCE has included a table of RPS policy options for the DWR Mountain View Wind Contract in Appendix A. For all of the reasons set forth in Section 5 above, SCE's customers should be allowed to receive RPS credit for the full value of the DWR Mountain View Wind Contract that was allocated to them until the time when California authorizes the use of RECs for RPS compliance (all years until the CPUC authorizes the use of RECs for RPS compliance).

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[38] CPUC D.04-10-035 at 29-30 (October 28, 2004).
[39] Notice, Attachment B at 5.

Such action is the only way to lawfully give California RPS credit for the resources which the State signed during the energy crisis. Granting SCE customers RPS compliance credit for the DWR Mountain View Wind Contract for the years claimed by SCE recognizes that the RPS law during that period measured RPS compliance based on procurement from eligible renewable energy resources, not RECs or renewable attributes. It also honors the CEC's previous verifications of SCE's Mountain View RPS claims and recognizes the special circumstances surrounding the DWR contracts. If the DWR Mountain View Wind Contract is counted towards SCE's RPS compliance for the years claimed by SCE, SCE customers will receive the full benefit of their long-term financial commitment to the Mountain View I and II facilities and these State-contracted renewable resources will count towards California's RPS goals. Otherwise, electricity generated from these State-contracted renewable facilities paid for by SCE customers will only be reflected through voluntary accounting mechanisms and not through the State's official RPS program. Moreover, if the CEC denies SCE's Mountain View RPS claims, SCE customers will be harmed because SCE will be left with no mechanism to fill prior year RPS procurement gaps. These gaps will result in higher future procurement obligations that will need to be met with higher cost resources at a higher cost to SCE customers.

Purchasing voluntary market RECs to match with the renewable energy deliveries from the Mountain View I and II resources will impose additional costs on SCE's customers with no appreciable benefit to the State. Therefore, SCE urges the CEC to count the DWR Mountain View Wind Contract towards SCE's RPS compliance without requiring the purchase of any voluntary market RECs. However, in the event that the CEC discounts any of SCE's RPS claims to the Mountain View I and II resources because RECs from these projects were purchased through the Green-e Energy voluntary REC market, then SCE should be allowed to procure Green-e Energy 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. Similarly, if the CEC discounts any of SCE's RPS claims because RECs from the Mountain View I and II facilities were purchased in another voluntary REC market, SCE should be allowed to purchase

RECs in that voluntary market and match those RECs with the energy procured from the Mountain View resources.[40] 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.

SCE should not be required to purchase the actual RECs from the Mountain View I and II facilities. If, as the CEC notes, the actual RECs from the Mountain View I and II facilities have been sold and/or retired, then it is not possible to rebundle those exact RECs with the energy for RPS compliance purposes. Moreover, even if it could be accomplished, requiring SCE to purchase the Mountain View RECs from their current owners would give such owners market power.

Nor should SCE be required to purchase other voluntary market RECs from the 2004 through 2006 time period. It is not clear if such RECs are even available, and if they are, it is likely that the supply of such RECs is limited. Therefore, the owners of any voluntary market RECs from that time period would also have market power over SCE.

SCE has already seen evidence of such market power. After the March 26, 2009 workshop, REC marketers contacted SCE offering voluntary market RECs at ***five times*** the price they had previously offered such RECs to SCE before the workshop. In order to protect SCE customers' interests, SCE should be allowed to purchase any RECs from the relevant voluntary market. Moreover, the CEC should cap the price SCE customers are required to pay for such voluntary market RECs at the prices paid in the voluntary market for the RECs from the

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[40] Appendix A discusses options for 2004 through 2006 because those are the years at issue in this CEC RPS Procurement Verification Report. To the extent that the CEC makes a determination to require SCE to purchase voluntary market RECs to count any of its Mountain View RPS claims for RPS compliance, SCE suggests that determination cover 2007 as well. This will allow all outstanding Mountain View RPS claims to be resolved at one time.

Mountain View I and II facilities. Otherwise, SCE customers will be required to pay more than the Mountain View RECs were worth because REC prices have increased since 2004 through 2006. The CEC should work with Green-e Energy and other voluntary REC markets to determine the prices paid for the Mountain View RECs.

As noted above, SCE believes the DWR Mountain View Contract can be counted for RPS compliance purposes until the CPUC authorizes the use of RECs for RPS compliance under the current RPS law. Accordingly, SCE does not think any statutory changes are required to accomplish this option. The CEC and CPUC will need to work together to authorize SCE's purchase of any voluntary market RECs.

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 procured from these facilities. However, staff from the Center for Resource 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 claims that the RECs accounted for through the Green-e Energy program from the Mountain View I and II facilities have been sold in the voluntary market.

SCE has no basis for making corrections or additions to the claim that all of the RECs for the Mountain View I and II facilities accounted for through the Green-e Energy program have been sold in the voluntary market.

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.

See response to Question 6 above.

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 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?**

As explained above, SCE customers have been paying for the output of the Mountain View I and II wind facilities pursuant to DWR's long-term commitment to such resources since 2003. If the CEC denies SCE RPS credit for the DWR Mountain View Wind Contract, SCE customers will not receive the full value of the resources. Indeed, these State-contracted renewable resources will not count in any way towards the State's RPS program goals. That is an inequitable and unnecessary result.

Furthermore, retroactively denying SCE's previously approved RPS claims for the Mountain View I and II projects would create gaps in SCE's RPS procurement for prior years. SCE could not have anticipated such gaps because the CEC previously verified SCE's RPS claims related to the DWR Mountain View Wind Contract. Moreover, it would be very difficult for SCE to fill any deficits created by the CEC's change in position on the DWR Mountain View Wind Contract two to four years after the fact. As a consequence, SCE would have higher future RPS obligations that would need to be met with higher cost resources at a greater cost to SCE customers.

As discussed above, this unnecessary harm to SCE's customers can be avoided by counting the renewable energy deliveries from the Mountain View I and II facilities towards

SCE's RPS obligations for 2004 through 2006, and until RECs are authorized for RPS compliance. At a minimum, SCE should be allowed to procure voluntary market RECs to match the Mountain View I and II energy deliveries and to count such energy and voluntary market RECs for RPS compliance.

B. Estimating Incremental Geothermal Procurement

1. Senate Bill 107 has removed incremental geothermal requirements from 2007 forward, and staff proposes to continue to allocate all incremental geothermal procurement to the IOUs for 2006, and discontinue the incremental geothermal analysis section from the *2007 RPS Procurement Verification Report*. For 2006, are there any foreseeable problems with continuing to allocate incremental geothermal procurement to the IOUs, as was the practice in previous *RPS Procurement Verification Reports*?

The allocation of the incremental geothermal procurement is not essential to any aspect of the RPS program. There is no critical need for information relating to incremental geothermal production. If the CEC chooses to continue to perform this analysis, SCE is not currently aware of any foreseeable problems with continuing allocation of geothermal procurement to the investor-owned utilities.

III.

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 2004 through 2006, and for all years until unbundled RECs are authorized for RPS compliance.

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Dated: April 3, 2009

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.