

## Attachment A

### Background Information Regarding Outstanding Renewables Portfolio Standard Procurement Claims

#### 1. Procurement from “Unbundled” Energy Contracts for Renewables Portfolio Standard purposes

Retail sellers report Renewables Portfolio Standard (RPS) procurement claims from individual generating facilities to the Energy Commission on the CEC-RPS-Track form each year and sign an attestation that states:

“...the renewable electricity and associated Renewable Energy Certificates used for RPS compliance have not otherwise been, nor will be, sold, retired, claimed or represented as part of electrical[sic] energy output or sales, or used to satisfy obligations in jurisdictions other than California, and for no other reason than to comply with California's Renewable Portfolio Standard.”

#### Unbundled Renewable Energy Credits are not eligible for Renewable Portfolio Standard

Unbundled Renewable Energy Credits<sup>1</sup> (RECs) have not been nor are they currently eligible towards RPS compliance. Early editions of the *RPS Eligibility Guidebook* refer to RECs in a section titled “Outstanding Issues” and reference the California Public Utilities Commission’s (CPUC) Decision 03-06-071 (June 19, 2003), stating that generation must be bundled with associated RECs to qualify for the RPS. This earlier edition of the *RPS Eligibility Guidebook* goes on to note that any action by the Energy Commission and the CPUC to allow RPS eligibility for RECs that are traded separately from energy would require further deliberations and public input.<sup>2</sup>

The current version of the *RPS Eligibility Guidebook*<sup>3</sup> states the following:

“RECs and energy procured together as a ‘bundled’ commodity are eligible for the California RPS. RECs sold separately from the underlying energy are termed ‘tradable’ and are not eligible toward California RPS procurement requirements.”

Southern California Edison Company (SCE) has claimed procurement from the Mountain View I and Mountain View II wind facilities towards its RPS targets from the years 2003 through 2007. However, SCE's procurement from the Mountain View facilities I and II did not include the RECs for the wind energy. The contract covering

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<sup>1</sup>Renewable Energy Certificates (also termed “renewable energy credits” or RECs) represent renewable and environmental attributes associated with energy production.

<sup>2</sup> *Renewables Portfolio Standard Eligibility Guidebook*, April 2006, CEC-300-2006-007-F. <http://www.energy.ca.gov/2006publications/CEC-300-2006-007/CEC-300-2006-007-F.PDF>

<sup>3</sup> *Renewables Portfolio Standard Eligibility Guidebook, Third Edition*, January 2008. <http://www.energy.ca.gov/2007publications/CEC-300-2007-006/CEC-300-2007-006-ED3-CMF.PDF>

the Mountain View I and II facilities is a vestige of the California Department of Water Resources (DWR) contracts that were executed during California's electricity crisis. These energy contracts explicitly excluded the associated RECs. Following the electricity crisis, the CPUC subsequently assigned responsibility for the DWR contracts to SCE, San Diego Gas and Electric Company, and Pacific Gas & Electric Company to manage. Mountain View makes up approximately 0.27-0.30 percent of SCE's annual retail sales for the years 2004-2006.

Because the Energy Commission inadvertently counted SCE's claims for the Mountain View generation towards SCE's RPS obligations in the past, SCE has stated that it has continued to plan for such procurement based on the belief that these claims were, in fact, eligible for RPS.

### Allowing unbundled Renewable Energy Credits for RPS would allow double counting of Renewable Energy Credits

The Energy Commission has learned that there have been competing claims to the RECs for the Mountain View I and II facilities for the years 2004 through 2006 by publicly owned utilities and electric service providers. The other procurement claims by publicly owned utilities and energy service providers were reported to the Energy Commission in their respective Annual Reports submitted to the Energy Commission's Senate Bill 1305 Power Source Disclosure Program. The publicly owned utilities and energy service providers that claimed procurement from the Mountain View I and Mountain View II facilities claimed these specific purchases on their Power Content Labels. Entities such as Safeway,<sup>4</sup> Sustainable Websites,<sup>5</sup> Facebook's Green Energy Application: Green My Vino,<sup>6</sup> and others have been and are making claims to the RECs from the Mountain View I and II Facilities on the voluntary market.

## **2. Procurement from facilities without RPS-certification**

Most investor owned utilities and energy service providers are making procurement claims from RPS-certified facilities; however, PacifiCorp has claimed generation from facilities that are not RPS-certified, and has requested that these facilities remain part of PacifiCorp's compliance portfolio.

The *RPS Eligibility Guidebooks* require that a retail seller procure energy and the associated RECs from a facility that is RPS-certified in order to count the procurement toward the seller's RPS obligations. For example, the *April 2006 RPS Eligibility Guidebook*<sup>7</sup> states:

“Procurement in 2001 and 2002 may count toward a retail seller's RPS obligation even though facilities were not RPS certified at the time of procurement. The electricity will not be considered eligible, however, and will not be counted toward

<sup>4</sup> [http://shop.safeway.com/corporate/safeway/windenergy/windenergy\\_mountainview.htm](http://shop.safeway.com/corporate/safeway/windenergy/windenergy_mountainview.htm)

<sup>5</sup> <http://www.sustainablewebsites.com/>

<sup>6</sup> [http://apps3.eere.energy.gov/greenpower/news/news\\_template.shtml?id=1375](http://apps3.eere.energy.gov/greenpower/news/news_template.shtml?id=1375)

<sup>7</sup> Renewables Portfolio Standard Eligibility Guidebook, April 2006, CEC-300-2006-007-F.  
<http://www.energy.ca.gov/2006publications/CEC-300-2006-007/CEC-300-2006-007-F.PDF>

meeting an RPS obligation until the facility is certified by the Energy Commission as being eligible for the RPS. This applies to all facilities regardless of whether they previously registered with the Energy Commission's Renewable Energy Program."

In a letter to Energy Commission RPS staff, dated December 12, 2008, PacifiCorp noted that the:

"California Public Utilities Commission (CPUC) did not issue its final decision on Small and Multi-Jurisdictional Utilities (SMJUs) participation in the RPS program until May 29, 2008, and that until that point, PacifiCorp awaited guidance as to how it could comprehensively comply with the California RPS program..."<sup>8</sup>

In addition to the delay in the CPUC's guidance on RPS rules for small and multi-jurisdictional utilities, PacifiCorp stated that the Energy Commission failed to provide adequate guidance regarding RPS eligibility for small and multi-jurisdictional utilities:

"PacifiCorp was subject to a similar lack of regulatory guidance concerning how to comply with CEC RPS compliance directives. Specifically, California Public Utilities Code § 399.17 states that for an 'electrical corporation with 60,000 or fewer customer accounts in California, ... an eligible renewable energy resource includes a facility that is located outside California.' As PacifiCorp's out-of-state facilities are presumed eligible for the RPS program, at the time of PacifiCorp's CEC RPS Report, the CEC had not yet developed rules or other guidance for how out-of-state facilities would be certified."<sup>9</sup>

PacifiCorp apparently had a different understanding of the statute and presumed its out-of-state facilities were RPS eligible by virtue of the renewable energy resource being located outside California, and that the out-of-state generation would be counted toward its RPS obligations. However, the law states that in order for generation from retail sellers such as PacifiCorp and Sierra Pacific to count for the RPS program the facility must meet certain conditions, including that:

"The Energy Commission verifies that the electricity generated by the facility is eligible to meet the annual procurement targets of this article."<sup>10</sup>

Since April 2006, the Energy Commission's *RPS Eligibility Guidebook* has applied not only to the large investor owned utilities, but also to the small and multi-jurisdictional utilities, such as PacifiCorp and Sierra Pacific Power Company. The *March 2007 RPS Guidebook* states the following for out-of-state eligibility requirements for these multi-jurisdictional utilities:

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<sup>8</sup> On August 15, 2008, PacifiCorp and Sierra Pacific Power Company filed a Joint Motion for review of RPS compliance template revisions pursuant to the CPUC's March 12, 2007 administrative law judge ruling regarding how to properly interpret the CPUC's compliance reporting obligations. A CPUC decision on this motion is pending.

<sup>9</sup> December 12, 2008 letter from Ryan Flynn PacifiCorp Legal Counsel to Energy Commission - Renewable Portfolio Standard - Verification Report Project Manager, Gina Barkalow.

<sup>10</sup> California Public Utilities Code Section 399.17 Section (b)(3).

For retail sellers that serve end-use customers outside California and have 60,000 or fewer customer accounts in California under Public Utilities Code Section 399.17, such as PacifiCorp and Sierra Pacific Power, electricity procured from a facility located out-of-state must, in lieu of the foregoing criteria, meet the following criteria to be eligible for the RPS:

- a) The generation must be procured by the retail seller on behalf of its California customers and is not used to fulfill its renewable energy procurement requirements in other states or any other renewable energy retail claim.
- b) The facility is connected to the Western Electricity Coordinating Council (WECC).
- c) The facility and retail seller must participate in an RPS tracking and verification system approved by the Energy Commission.”<sup>11</sup>

### **3. Estimating Incremental Geothermal Procurement**

Using criteria in previous editions of the *RPS Eligibility Guidebook*, the Energy Commission’s Renewable Energy Program certified incremental geothermal capacity in previous *RPS Procurement Verification Reports*. Because previous *RPS Verification Reports* have not included energy service providers and small and multi-jurisdictional utilities, staff allocated all incremental geothermal procurement to the investor owned utilities. The enactment of Senate Bill 107 eliminated the Energy Commission’s responsibility to certify incremental geothermal capacity starting in 2007. Since the requirements for certifying incremental geothermal capacity existed in 2006, the *2006 RPS Procurement Verification Report* will include an estimate of the generation from incremental geothermal resources.

Generation from facilities that have RPS-certified incremental geothermal capacity has been claimed by both investor owned utilities and energy service providers. Previously, eligibility towards a retail seller’s Incremental Procurement Target (IPT) was limited to generation from new RPS contracts or from incremental geothermal capacity. However, recent legislation determined that all RPS-eligible generation could count towards a retail seller’s IPT. The incremental geothermal procurement section of the *2006 RPS Procurement Verification Report* will provide an estimate of the amount of energy produced and procured from capacity certified as incremental geothermal by the Energy Commission.

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<sup>11</sup>Renewables Portfolio Standard Eligibility Guidebook, Second Edition, March 2007 Page 25-26. <http://www.energy.ca.gov/2007publications/CEC-300-2007-006/CEC-300-2007-006-CMF>.