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03-RPS-1078
DATE April 03 2009
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CRS center for resource solutions

April 3, 2009

California Energy Commission
Re: Docket No. 02-REN-1038
and Docket No. 03-RPS-1078
Docket Unit, MS-4
1516 Ninth Street
Sacramento, CA 95814-5504

RE: California Energy Commission Staff Workshop on 2006 RPS Procurement Verification Data Review; Comments of the Center for Resource Solutions Regarding Renewables Portfolio Standard Procurement; Attachment B: Questions Regarding Outstanding Renewables Portfolio Standard Procurement Claims

Dear Commissioner Julia Levin and Chairman Karen Douglas:

Center for Resource Solutions ("CRS") appreciates the opportunity to provide feedback in this workshop. The questions raised in this workshop are of vital importance to California renewable energy generators, consumers and businesses participating in the voluntary renewable energy market. California plays a major role in the U.S. voluntary renewable energy market. Up to 14 percent of the renewable generation sold in the voluntary market and 13 percent of the sales in the voluntary market are attributable to California. The market provides a significant revenue stream for California generators, and allows many California consumers and business who support renewable energy to increase their use of renewable energy above the requirements of the Renewable Portfolio Standard ("RPS"). The California Energy Commission's ("CEC" or the "Commission") actions in this case will have profound impacts on the integrity of thousands of contracts and marketing claims, and CRS urges the CEC to avoid making a decision or recommendation that would destabilize the voluntary renewable energy market and potentially create repercussions for future legislative and regulatory decision-making.

CRS recommends that the Commission:

- Uphold the integrity of the REC transactions between Mountain View I and II (including all current and prior owners) and 3Degrees and any other party with contractual rights to the renewable attributes or renewable energy certificates;

- Hold Southern California Edison to its obligation under the California RPS;
- Not allow Southern California Edison to claim any generation from the Mountain View facilities toward its RPS obligations, as it did not purchase any renewable attributes.

CRS can provide unique insight into these proceedings due to its role of providing consumer protection in the voluntary renewable energy market through the Green-e® Energy renewable energy certification program. Green-e Energy certifies and verifies over two thirds of retail renewable energy certificate ("REC")[1] sales and half of overall retail renewable energy sales in the voluntary renewable market in the USA, as well as a considerable amount in Canada.[2] Total Green-e Energy Certified retail sales of renewable energy in 2007 reached nearly 15.7 million megawatt-hours ("MWh"), an increase of nearly 60 percent over 2006. In 2007, sales of Green-e Energy certified RECs reached 13.8 million MWh, their highest yet and a 58 percent increase over 2006 sales. Nearly 260,000 residential customers and over 10,000 commercial customers across the U.S. and Canada purchased Green-e Energy certified renewable energy in 2007, including many of the largest purchasers in the U.S. Environmental Protection Agency's Green Power Partnership.

Stakeholder-driven standards supported by rigorous verification audits are a cornerstone of the Green-e Energy program and enable CRS to provide independent third party certification of renewable transactions. CRS is an Associate Member of the International Social and Environmental Accreditation and Labeling Alliance ("ISEAL"), which sets best practice standards for independent certification programs like Green-e Energy.

Question 1: *Please inform staff if you have corrections or additions to the data in Tables 1-3.*

Staff at CRS compiled data from the annual reporting records required of all sellers participating in Green-e Energy and has provided corrections and additions to the Tables included in *Attachment B: Questions Regarding Outstanding Renewables Portfolio Standard Procurement Claims* (the "Tables" or "Tables 1 - 4") below. CRS has records of transactions not reported to the CEC as part of RPS reporting, including purchases from Mountain View facilities I and II ("Mountain View") and subsequent wholesale transactions that involve parties other than 3Degrees.

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[1] *The U.S. Department of Energy defines RECs as the following: "Renewable energy certificates, also known as green certificates, green tags, or tradable renewable certificates, represent the environmental attributes of the power produced from renewable energy projects and are sold separate from commodity electricity." Accessed Apr. 2, 2009.*
http://apps3.eere.energy.gov/greenpower/markets/certificates.shtml?page=0

[2] *Voluntary renewable energy products include Renewable Energy Certificates ("RECs"), competitive renewable electricity products sold in restructured electricity markets, and voluntary utility green pricing programs.*

As detailed in our answer to Question 3, many more market participants and MWh of transactions related to Mountain View have been reported to Green-e Energy than appear in Tables 1 - 4. These Tables should be modified to include the total number of transactions of kWh claimed by the voluntary market.[3]

CRS has provided two tables to illustrate the magnitude of sales of Mountain View RECs in the voluntary renewable energy market (see attached). These tables are titled "Table CRS A: Green-e Certified Sales of Mountain View RECs - Number of Customers and kWh by Generation Year", and "Table CRS B: Green-e Certified Wholesale Sales of Mountain View I and II RECs - kWh by Generation Year and Purchaser."

Question 2: *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 1 and II facilities.*

Green-e Energy has no corrections or additions regarding energy procurement in 2004-2006 from the Mountain View facilities beyond what has been provided in Tables CRS A and B. CRS staff recognizes that Green-e Energy does not have audited data addressing all sales made in the voluntary market,[4] and so surmises that the number of parties involved in the sale and retirement of Mountain View RECs in the voluntary market is higher than Green-e Energy is able to report in the attached Tables CRS A and B.

Question 3: *Please inform staff if you have any corrections or additions to Table 4, particularly info on any other wholesale marketer procurement claims from the Mountain View 1 and II facilities.*

CRS has information relevant to Table 4. This data can also be found in the attached CRS Tables A and B. In addition, CRS has provided data broken out by year of generation for 2004 through 2007, below.

The tables depict sales reported to Green-e Energy as retail transactions, as well as sales that CRS believes are likely to be retail (as they are sales to companies not participating in the Green-e Energy program). As Green-e Energy does not certify all RECs in the voluntary market, it is likely that there are many more transactions of Mountain View RECs than identified below. In the years 2004 through 2007, our records show that 604,485,535 unique kWh were sold into the voluntary market. Of these 301,702,966 kWh of renewable attributes were sold in retail transactions to at least 71,447 retail customers. Of these customers, 56,472 purchased the renewable attributes from California municipal utilities. At least 24 unique parties were involved in wholesale

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[3] *The CEC's Power Source Disclosure Program may have additional information about Mountain View RECs sold to California retail customers.*

[4] *Green-e Energy is a voluntary program, and only renewable energy sellers who agree to participate in the program provide renewable energy purchase and sales data to CRS. There are renewable energy sellers in the voluntary renewable energy market that do not participate in Green-e Energy who may have purchased and sold RECs from Mountain View.*

transactions of the environmental attributes associated with Mountain View facilities for a total of at least 1,061,885,103 kWh of transactions. These transactions and sales are detailed by year in the sections below.

Retail and wholesale voluntary market sales of Mountain View renewable attributes generated in 2004

CRS has attestation forms documenting that 79,116,135 unique kWh generated by the Mountain View facilities in 2004 were sold into the voluntary market. At least 134 retail customers may have received RECs from these facilities, and at least six wholesale customers purchased the remaining RECs.[5] At a minimum, voluntary market contracts relating to 88,257,252 kWh could be affected.

CRS has documentation that 3Degrees purchased 76,366,135 kWh of 2004 generation from the generator. CRS also has documentation of other wholesale purchases from the generator in the amount of 2,750,000kWh. 3Degrees sold 9,141,117 kWh to five wholesale customers.

Retail and wholesale voluntary market sales of Mountain View renewable attributes generated in 2005

CRS has attestation forms documenting that 195,289,230 unique kWh generated by the Mountain View facilities in 2005 were sold into the voluntary market. At minimum, 17 retail customers may have received these RECs and at least 11 wholesale customers received RECs. Our records show 297,084,052 kWh of contracts in the voluntary market were affected.

CRS has documentation that 3Degrees purchased 195,289,320 kWh of 2005 generation from the generator. 3Degrees sold 91,916,822 kWh to 10 wholesale customers. One of these wholesale customers resold 9,878,000 kWh to a third wholesaler.

Retail and wholesale voluntary market sales of Mountain View renewable attributes generated in 2006

CRS has attestation forms documenting that 220,080,170 unique kWh generated by the Mountain View facilities in 2006 were sold into the voluntary market. At minimum, 69,742 retail customers may have received these RECs, of whom 56,471 are customers of California municipal utilities.[6] At least eight wholesale customers received Mountain View RECs generated in 2006 either directly from the generator or via 3Degrees. Our records show 396,448,799 kWh of contracts in the voluntary market were affected.

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[5] *CRS has data showing that RECs were sold to at least one load-serving entity for which we do not have retail sales data. Due to this lack of data, the number of retails customers was assumed to be at least one and was counted as only one in order to provide a conservative estimate of retail sales.*

[6] *CRS has data showing that RECs were sold to at least one load-serving entity for which we do not have retail sales data. Due to this lack of data, the number of retails customers was assumed to be at least one and was counted as only one in order to provide a conservative estimate of retail sales.*

CRS has documentation that 3Degrees purchased 220,080,170 kWh generated in 2006 from the generator. 3Degrees sold 123,868,629 kWh to seven wholesale customers. A total of 52,500,000 kWh of these RECs were sold to a three other wholesale customers.

Retail and wholesale voluntary market sales of Mountain View renewable attributes generated in 2007

CRS has attestation forms documenting that 110,000,000 unique kWh generated by the Mountain View facilities in 2007 were sold into the voluntary market. At minimum 1,554 retail customers may have received these RECs and at least seven wholesale customers received RECs. Our records show 280,095,000 kWh of contracts in the voluntary market were affected.

CRS has documentation that 3Degrees purchased 45,000,000 kWh of 2007 generation from the generator. CRS also has documentation of other wholesale purchases from the generator in the amount of 110,000,000 kWh. Of this amount, 77,856,000 kWh was resold to six more wholesale customers. One of these wholesale customers resold 47,239,000 kWh to a third wholesaler.

As stated above, CRS suggests that Tables 1 - 3 be amended to show both the number of end use customers that received Mountain View RECs and all wholesale transactions of Mountain View RECs. This number would encompass all wholesale and retail transactions of the RECs, both from the generator and from subsequent wholesalers. These amended tables would demonstrate the size of the voluntary market transactions potentially impacted by a Commission decision to uphold Southern California Edison's ("SCE") RPS claims on Mountain View generation and provide the scale of the impacts of certain findings of this workshop.

Question 4: *Identify processes, mechanisms, or safeguards are in place to protect 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.*

There are strong measures in place to protect purchasers of renewable energy, to prevent double counting and assure that only one REC is created and sold for each renewable MWh generated.

Protection of REC buyers

The cornerstone of Green-e Energy's efforts to protect customers is the annual verification audit, which checks that sales of renewables are matched by supply of renewables of the type and quantity promised by the seller and that the seller had sole, clear contractual ownership of the renewables it sold. All renewable energy sellers participating in Green-e Energy are required on an annual basis to fill out a comprehensive set of worksheets detailing their supply and sales, and then hire an auditor to verify that these claims are correct and prepare a report documenting compliance with Green-e Energy rules. Green-e Energy staff also reviews and double-checks these reports, worksheets, and supporting attestations.

Participants in Green-e Energy also contractually agree to abide by the program's Code of Conduct and Customer Disclosure Requirements, which dictate the types of claims and product disclosure that must be made to their customers. This allows customers to make informed choices about their renewable energy purchases. Green-e Energy staff monitor marketing materials used by participating sellers to ensure that the materials are accurate, do not present misleading information, and are consistent with the Green-e Energy governing documents and the guidelines on environmental marketing produced by the Federal Trade Commission and the National Association of Attorneys General.

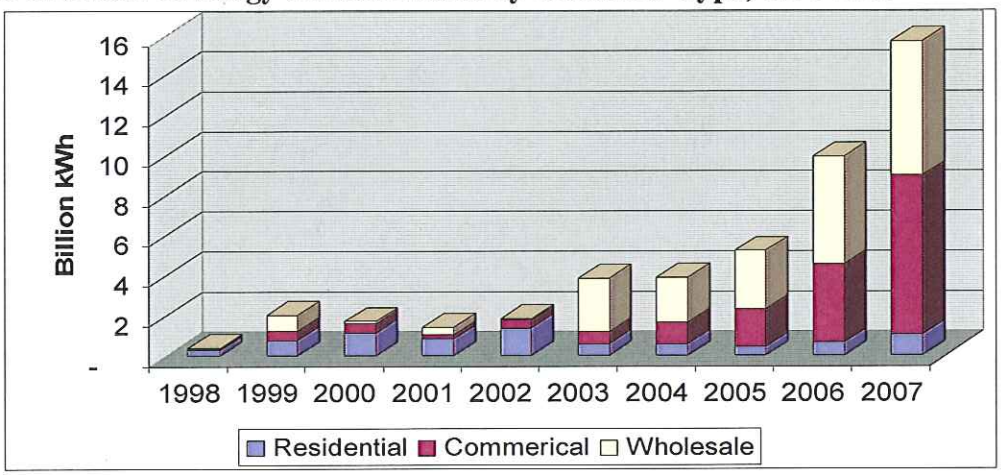
No double counting

The annual verification audit described above ensures that a seller is only selling a particular REC once and that the seller has legal ownership of the RECs it sells. An additional part of the verification process requires REC sellers to notify certain regulators of their REC transactions. One of the purposes of this practice is to assure that regulated utilities that purchase null power (electricity that has been generated by a renewable generator but from which the renewable attributes have been sold off separately) are not claiming the same RECs. For example, if a REC seller purchases RECs from a facility, and the electricity that is generated with the RECs is sold to a utility, then the seller is obligated to prove to Green-e Energy that the utility's oversight body has been notified that the RECs were not sold to the utility and are being sold in the voluntary market. In this way, regulators calculating RPS compliance are informed by Green-e Energy to not count certain electricity toward an RPS requirement. Between 2004 and 2006, sellers of Mountain View RECs sent notification to the CEC and the California Public Utilities Commission ("CPUC") alerting them to the fact that certain Mountain View RECs were being claimed in the voluntary market and were not available for use toward the California RPS.

Because Green-e Energy is national in its reach and certifies the majority of the RECs sold at the retail level in the voluntary market, the program has access to tremendous amounts of information on REC transactions that it uses to prevent double counting among participating sellers. A chart showing growth of Green-e Energy certified sales is included as Figure 1, below.

Chain of custody tracking of RECs also serves to prevent double counting. Green-e Energy uses attestation-based chain of custody tracking whereby each party that owns a REC, from the generator to the final seller, signs a specific attestation declaring that they are only selling each REC once and only once to the purchaser named on the attestation. In electronic tracking systems like the Western Renewable Energy Generation Information System ("WREGIS") (which was not yet online in 2006), an agreement similar to such an attestation is signed by the generator and each MWh is tracked in a software system, much like an online bank account. Such a system only allows a REC to exist in one account at a time, avoiding double counting. Green-e Energy can rely on either method for its annual verification, and both systems are used for various states' RPS verification.

Figure 1: Green-e Energy Certified Sales by Customer Type, 1998-2007



One REC per MWh

Tracking systems like WREGIS also provide the service of issuing RECs with unique serial numbers, meaning that a given REC can be traced back to its period of generation and checked against total generation at a given facility.

Green-e Energy and RPS verification systems are also able to track all generation reported to them and corroborate this data with Energy Information Administration data and other data on facilities' total generation.

Green-e Energy was started in 1997 to specifically address the concerns raised in Question 4 as they pertain to the voluntary market. The program is overseen by an independent governance board, and the Green-e Energy National Standard was developed and is periodically revised through an open stakeholder process in order to ensure that the National Standard and the program are both driving and meeting the needs of the voluntary renewable energy market. As mentioned above, CRS is an Associate Member of ISEAL, which sets best practice guides for standard-setting organizations. All Green-e Energy program documents, including the National Standard, attestations and the annual verification report, are available at www.green-e.org/energy.

Question 5: *Should SCE's procurement of energy from the Mountain View 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?*

CRS' answer is no. SCE's procurement of electricity should not be claimed toward the RPS because the utility did not purchase any of the renewable attributes associated with the Mountain View generation. It is a well accepted industry practice that one must possess the renewable attributes of generation in order to make any claim related to renewable electricity use, including RPS claims. Other parties have purchased and claimed these renewable attributes in the form of RECs including at least 71,447 retail customers, of which 56,472 were customers of California municipal utilities.

Because of the requirements of Green-e Energy, REC sellers are careful to include specific language in contracts detailing the ownership of RECs and renewable attributes. It is clear that SCE's contract with Mountain View's owner provide only unbundled or "null" electricity (electricity from which the RECs have been stripped and sold off separately), without any renewable attributes. The contract shows that the RECs remain with the facility owner. SCE has no title to the renewable attributes of the Mountain View electricity and therefore should not be allowed to claim the null electricity it purchased toward its obligations under the California RPS.

Each REC sold on the voluntary market corresponds to a MWh of renewable generation beyond the RPS requirement. The ability of a REC purchase to push the generation of new renewables beyond what is required by the state is critical to the value of the REC.

The voluntary market would suffer severe damage if SCE is given RPS credit for procuring null electricity, as would the compliance market. It is critical to have reliability of expectations and stability in both markets because both consist of transactions of intangible commodities.

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

There are no conditions under which SCE should be allowed to claim its procurement of energy from Mountain View to meet its RPS obligation. SCE did not have title to the renewable attributes. The contract language, legislative intent of the RPS, the regulatory interpretations and the standard industry practice all support the conclusion that SCE can not claim RPS compliance for the unbundled electricity purchased from Mountain View. If SCE is allowed to claim these RECs to meet its RPS obligation, the effect will be to invalidate more than 1,061,885 MWh of transactions of Mountain View RECs in the voluntary market, in turn creating contractual liabilities and harming the reputations of each company involved, invalidating purchases made by thousands of California customers, and damaging the entire voluntary market.

Question 6(a): 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 claim 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.

CRS does have corrections and additions to Table 4. Please see our attached Tables CRS A and B as well as our answers to Questions 2 and 3.

Once RECs are sold to retail customers, the RECs are retired and a claim has been made. Such claims frequently appear in marketing materials for business customers who have

purchased the RECs. Further, retail customers purchase RECs in order to be able to be the only entity claiming those specific environmental attributes. These retail customers have retired or claimed a REC and can not resell the REC to SCE or any other party; RECs cannot be resurrected.

Question 6(b): Should SCE be allowed to retroactively procure RECs from other RPS-certified facilities to match or 'rebundle' them with energy SCE procured through the MV contract?

SCE should be required to comply with its obligation under the California RPS. SCE should be required to purchase eligible renewables to meet its RPS requirements.

Any remedy should not invalidate the legitimate claims made within the voluntary market. Voluntary purchases are often made specifically in order to reduce supply available to utilities under RPS obligations, therefore requiring the construction of new renewable energy facilities in order for these utilities to meet RPS requirements.

Question 7. The evaluation of the RPS eligibility of SCE's procurement from Mountain View facilities may have consequences for SCE's ratepayers, parties who procure RECs from these facilities, and other interested parties. Describe how the conditions or actions may affect you or other interested parties. What remedies, if any, should the CEC and/or CPUC consider to address these issues?

In the case that the RECs in question were retroactively taken from voluntary market customers and awarded to SCE, Green-e Energy would have a number of requirements for REC sellers participating in Green-e Energy that had sold Mountain View RECs. Primarily, the sellers would have to make whole the customers from whom the RECs had been taken by buying replacement RECs and provide Green-e Energy with proof that those customers had been made whole. As noted above, this would impact over 1 billion kWh of contracts, and more than likely ultimately come back to the facility owner who would then have inappropriately sold the RECs in the first place as the first seller into the voluntary market. Another major impact would be that retail sellers who made claims around buying Mountain View RECs would have those claims invalidated, and would have to make retroactive statements about their former claims. CRS would require all participants in Green-e Energy during the years in question that sold Mountain View RECs to inform all of their customers that purchased Mountain View RECs that the Commission retroactively awarded renewable energy claims to SCE, and that the customers had in fact never owned the renewable attributes that they purchased and in order to make claims. The customers would then be informed of how their suppliers would compensate them for this loss.

Of paramount importance to CRS and all of the tens of thousands of affected participants in the voluntary market is maintaining the legitimacy of the sales made to voluntary market customers, as well as upholding legitimate contracts for RECs/renewable

attributes. Furthermore, any remedy should not serve to lower the emissions reductions achieved through the RPS.

Conclusion

In summary, the Commission's actions in this case will have profound impacts on the integrity of thousands of contracts and marketing claims. SCE's request to use the Mountain View generation during this time period for its RPS procurement obligations is not supported by the contracts for supply from the generation facilities. SCE's claims damage REC marketers as participants in the market and as sellers of a product under warrantee that they may not have delivered (depending on the findings of the Commission). The parties that are most damaged are the retail customers and businesses that received Mountain View RECs, as they were sold their REC purchases as above and beyond the RPS, but are in danger of having the benefits of their purchases totally nullified by SCE's double claims.

CRS recommends that the Commission uphold the transactions between the generator and 3Degrees and any other party with contractual rights to the renewable attributes and renewable energy certificates; hold SCE to its RPS obligation; and not allow SCE to claim any generation from the Mountain View facilities for RPS compliance as SCE did not purchase any renewable attributes.

CRS urges the Commission to avoid making a decision or recommendation that would deprive other parties of the benefits of their purchases of RECs and decrease consumer confidence in the voluntary renewable energy market with potentially destabilizing effects.

Thank you for accepting and considering our comments as you deliberate the outstanding renewable portfolio standard procurement claims. CRS is pleased to participate in these important discussions.

Sincerely,

Alex Pennock

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ATTACHMENTS

Table CRS A: Green-e Energy Certified Sales of Mountain View I and II RECs

Table CRS B: Green-e Energy Certified Wholesale Sales of Mountain View I and II RECs

Table CRS A: Green-e® Energy Certified Sales of Mountain View I and II RECs - Number of Customers and kWh by Generation Year

Year of Generation*	Total Unique kWh sold in voluntary Market	Min. Number of Retail Customers that may have Received	Min. Number of Retail Customers of CA Municipal Utilities that may have Received	Min. Number of Wholesale Customers that did Receive	Total Customers that may have Received (R+W)	kWh Sold in Retail Transactions	kWh of All Wholesale Transactions (kWh of Contracts Potentially Affected)****
2004	79,116,135	134	1 **	7	141	69,975,018	88,257,252
2005	195,289,230	17	0	12	29	103,372,407	297,084,052
2006	220,080,170	69,742	56,471 **	11	69,753	96,211,541	396,448,799
2007	110,000,000	1,554	0	9	1,563	32,144,000	280,095,000
Total	604,485,535	71,447	56,472	24 ***	71,471	301,702,966	1,061,885,103

* RECs generated in a particular year may have been sold during that year, the preceding year or the following year.

** Because certain load-serving entities ("LSEs") that purchased Mountain View RECs did not sell a Green-e Energy certified product at the time, Green-e Energy does not have specific documentation of the number of the LSEs' customers that received Mountain View RECs. The number of customers was assumed to be at least one and was counted as only one in order to provide a conservative estimate of retail sales. It is presumed that the RECs were sold to more than one retail customer, and so the number of affected customers is likely much higher than reported here.

*** Unique purchasers. Some purchasers purchased Mountain View RECs in multiple years.

**** kWh in last column may include multiple instances of the same kWh as it is sold in multiple wholesale transactions between multiple parties. Therefore, retail sales plus wholesale sales of RECs from a particular year will add up to be more than the total unique kWh sold in the voluntary market. This was done to give a sense of the total kWh involved in wholesale contracts across the voluntary market.

Prepared by the Center for Resource Solutions in response to questions posed in Attachment B - Questions Regarding Outstanding Renewables Portfolio Standard Procurement Claims. 4/3/2009

Table CRS B: Green-e® Energy Certified Wholesale Sales of Mountain View I and II RECs - kWh by Generation Year and Purchaser

Year of Generation	First Purchasers		Second Purchasers		Third Purchasers	
	First Purchaser	kWh Purchased from Generator	Number of First Purchasers' Wholesale Customers	kWh Purchased by Wholesale Customers	Number of Wholesale Customers' Wholesale Customers	kWh Purchased by Wholesale Customers
2004	3Degrees	76,366,135	5	9,141,117	-	-
	Other	2,750,000	0	0	-	-
	Subtotal	79,116,135	5	9,141,117	-	-
2005	3Degrees	195,289,230	10	91,916,822	1	9,878,000
2006	3Degrees	220,080,170	7	123,868,629	3	52,500,000
2007	3Degrees	45,000,000	0	0	0	0
	Other	110,000,000	6	77,856,000	1	47,239,000
	Subtotal	155,000,000	6	77,856,000	1	47,239,000
Total 2004-2007		649,485,535		302,782,568		109,617,000
Total Wholesale Transactions			1,061,885,103			
Total Unique Parties Involved in Wholesale Transactions			24			

Prepared by the Center for Resource Solutions in response to questions posed in Attachment B - Questions Regarding Outstanding Renewables Portfolio Standard Procurement Claims. 4/3/2009