BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.	)	Rulemaking 11-05-005 (Filed May 5, 2011)

COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) ON THE PROPOSED DECISION IMPLEMENTING PRODUCT CONTENT CATEGORIES FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

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I. INTRODUCTION AND BACKGROUND

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (the "Commission"), San Diego Gas & Electric Company ("SDG&E") hereby submits these comments concerning the proposed *Decision Implementing Portfolio Content Categories for the Renewables Portfolio Standard Program* (the "PD") issued in the above-captioned proceeding.

The PD implements changes to the Renewables Portfolio Standard ("RPS") program resulting from adoption of Senate Bill ("SB") x1 2 ("SB 2").[1/] Specifically, the PD establishes new portfolio content categories for RPS procurement in accordance with new Pub. Util. Code § 399.16, and sets limitations on the use of procurement in each category.[2/] In addition, the PD addresses the classification for RPS compliance purposes of certain contracts providing for transfer of renewable energy credits ("RECs") associated with generation received under California Department of Water Resources ("CDWR") contracts administered by SDG&E.

1/ Senate Bill x1 2 (Stats. 2011, Ch. 1).
2/ PD, p. 1. All statutory references herein are to the Public Utilities Code unless otherwise noted.

As is discussed in more detail below, SDG&E proposes certain modifications to the PD. Specifically, SDG&E proposes revisions intended to (i) clarify treatment of RECs associated with CDWR contracts; (ii) clarify that the up-front showing for § 399.16(b)(2) products does not require retail sellers to execute substitute energy contracts simultaneously with the renewable energy contract; (iii) recognize the relationship between Assembly Bill ("AB") 57 and the "compliance determinations" contemplated in the PD; and (iv) make clear whether the product content category definitions established in the PD will apply as of January 1, 2011 or December 10, 2011.

II.
DISCUSSION

A. The PD Should be Modified to Clarify Treatment of RECs Associated with CDWR Contracts

The PD finds that all unbundled REC transactions are included in the portfolio content category established pursuant to new § 399.16(b)(3) ("Category 3").[3/] Procurement that falls within Category 3 is subject to a 25% procurement cap.[4/] The PD proposes, however, to establish an exception to this general rule for certain contracts conveying RECs associated with generation received under CDWR contracts ("CDWR RECs") to the extent such CDWR RECs are "reunited" with the associated generation received under such CDWR contracts.[5/] SDG&E strongly supports adoption of the proposed exception. It notes, however, that the discussion of the proposed exception set forth in the PD must be clarified in order to ensure that the exception is applicable to SDG&E's purchase of RECs associated with the CDWR contracts it administers.

As the PD notes, SDG&E currently receives the generation produced by two California wind generation facilities, Cabazon Wind Partners, LLC ("Cabazon") and Whitewater Hill Wind

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[3/] PD, pp. 30-35, 46.
[4/] New § 399.16(c)(2).
[5/] PD, pp. 46-48.

Partners, LLC ("Whitewater"), pursuant to two contracts administered by SDG&E on behalf of the CDWR.[6/] Because the Cabazon and Whitewater CDWR contracts expressly provide that the RECs are retained by the seller, SDG&E receives the RPS-eligible power generated by these wind projects pursuant to the CDWR contracts, but not the RECs. Accordingly, SDG&E has entered into two Green Attribute Purchase and Sale Agreements ("GAPSAs") in order to acquire the RECs associated with the generation it receives under the Cabazon and Whitewater CDWR contracts. The GAPSAs are designed to reverse the disaggregation of RECs from the associated wind generation currently received by SDG&E pursuant to the CDWR contracts and to reunite the generation with its associated RECs.

The GAPSAs operate to unite generation received by SDG&E under the CDWR contracts with the associated RECs for 2009, 2010 and 2011. Thus, the GAPSAs are an integral component of a larger transaction involving the CDWR contracts which, viewed in its entirety, results in conveyance to SDG&E of *both* renewable wind generation and associated RECs. The Commission approved the GAPSAs in Resolution E-4335 (the "Resolution"). The Resolution takes a narrow view of the overall CDWR/GAPSA transaction, ignoring the delivery of renewable wind generation under the CDWR component of the deal and finding that under the definitions adopted in Decision ("D.") 10-03-021, *et seq*., "the [GAPSAs] are REC-only contracts because they are for the procurement of only RECs."[7/]

From a practical perspective, the Resolution's classification of the Cabazon and Whitewater RECs as "unbundled" undermines SDG&E's ability to achieve RPS compliance under the existing RPS program rules. If the exception proposed in the PD is not adopted or is adopted in a form that makes it inapplicable to SDG&E's purchase of CDWR RECs (either

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[6/] *Id*. at pp. 46-47.

[7/] Resolution E-4335, pp. 14. The Resolution defers the issue of classification of the GAPSAs under SB 2. *Id*.

pursuant to the GAPSAs or in a potential future CDWR REC transaction), SDG&E's ability to achieve RPS compliance in SB 2 Compliance Period 1 (January 1, 2011 – December 31, 2013) would, similarly, be negatively impacted.[8/] SDG&E briefly describes below the RPS compliance difficulties caused by classifying these transactions as unbundled in order to illustrate the importance of ensuring that the exception for CDWR contracts contemplated in the PD is implemented effectively.

With regard to compliance under the existing RPS program rules, treatment of the CDWR RECs as unbundled is problematic beginning in the 2011 compliance year. SDG&E is required to retire the 2009 "re-bundled" CDWR RECs in December 2011. In the context of the existing RPS program, when the 2009 CDWR RECs are added to the unbundled RECs from SDG&E's existing REC-only contracts (*i.e.*, SDG&E's Glacier 1 & Glacier 2 contracts), SDG&E's unbundled REC total equals approximately 27% of SDG&E's 2011 annual procurement target ("APT") in 2011.[9/] Thus, given the current uncertainty regarding timing and details of implementation of the new SB 2 RPS program rules, any additional procurement of RECs to meet compliance requirements under the existing RPS rules for the 2011 compliance period exposes SDG&E to the material risk that it will be unable to use such additional RECs for RPS compliance in the new SB 2 RPS program and unable to recover the costs associated with procuring the additional RECs.

8/ *See* new § 399.15(b)(1)(A).

9/ *See* D.10-03-021. p. 45. Under the existing RPS program rules, SDG&E may avoid exceeding the 25% cap in 2011 by retiring Glacier 1 and 2 RECs in 2012. In the event implementation of SB 2 is delayed and existing RPS program rules continue to apply in 2012, deferring retirement of Glacier 1 and 2 unbundled RECs to 2012 would cause SDG&E to greatly exceed the 25% unbundled REC cap for the 2012 compliance period, and would require it to further defer retirement of Glacier 1 and 2 unbundled RECs to 2013. SDG&E would be unable to defer retirement of Glacier 1 and 2 RECs beyond 2013. Thus, if existing RPS program rules continue to apply in 2013, SDG&E would lose in 2013 the volume of Glacier 1 and 2 unbundled RECs that exceeded the 25% cap.

In the context of the new SB 2 RPS program, if the CDWR RECs are classified as unbundled Category 3 RECs, SDG&E will be at or nearly at its 25% limit for Category 3 procurement for Compliance Period 1.[10/] This would mean that SDG&E would be unable to respond to potential procurement deficits in Compliance Period 1 by purchasing additional unbundled RECs, which are typically less costly, in order to achieve RPS compliance. This would greatly increase the difficulty and expense of achieving RPS compliance in Compliance Period 1.

Given the importance to SDG&E's RPS compliance of classification of the CDWR RECs as bundled, SDG&E strongly supports Ordering Paragraph 11 in the PD, which provides that SDG&E may acquire the RECs associated with the Cabazon and Whitewater CDWR contracts and treat the product as a "bundled" product:

> 11. The general rules about the use of unbundled renewable energy credits for compliance with the California renewables portfolio standard should not be applied in the unique and limited circumstance of the contracts signed by the Department of Water Resources during the energy crisis with Cabazon Wind Partners LLC and Whitewater Hill Wind Partners LLC and assigned to San Diego Gas & Electric Company, which may be allowed to acquire the unbundled renewable energy credits separately from the energy but receive credit for compliance with the California renewables portfolio standard as though they had been purchased together.[11/]

SDG&E notes, however, that the discussion of the exception set forth in the PD creates confusion regarding the basis for the exception, which could interfere with application of the exception to SDG&E's purchase of CDWR RECs. In setting forth the rationale for the PD, the PD describes the genesis of the CDWR REC transactions, identifies the specific CDWR contracts involved (*i.e.*, the above-mentioned Cabazon and Whitewater contracts, and the

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[10/] *See* new § 399.16(c)(2). This analysis is based upon SDG&E's expectation that its Glacier 1 and Glacier 2 contracts will be grandfathered pursuant to new § 399.16(d) and, therefore, will not count against Category 3 limits.

[11/] PD, Ordering Paragraph 11.

Mountain View Power Partners contract administered by Southern California Edison Company ["SCE"]), and finds that in the "unique and limited" circumstance presented by the three named contracts and associated REC purchases, "SDG&E and SCE should be allowed to acquire the RECs separately from the energy but receive RPS compliance credit as though they had been purchased together."[12/] The PD reasons that "[n]either the utilities nor their ratepayers had any part in DWR's decision to buy only the electricity and not the RECs; neither the utilities nor their ratepayers should be disadvantaged by the assignment to them of these DWR contracts."[13/]

Thus, the PD establishes the limited scope of the exception – specifically identifying the three CDWR contracts for which associated RECs can be acquired separately and treated as bundled – and provides a clear rationale for creation of the exception. The PD goes on, however, to observe that the contracts at issue were signed prior to June 1, 2010 and "would be subject to the special rule set forth in new § 399.16(d)."[14/] This could create the perception that the CDWR REC purchase agreement must satisfy the grandfather provision requirements in order to fit within the exception. This is problematic for two reasons.

First, by appearing to condition applicability of the exception on the finding that the contracts to acquire CDWR RECs are grandfathered, the PD would foreclose SDG&E's future ability to acquire RECs associated with generation received under the Cabazon and Whitewater contracts. The PD states, "making this one-time exception [for SDG&E's GAPSAs] will have no lasting impact on the administration § 399.16(d) . . . [since] all contracts at issue were signed prior to June 1, 2010 [and] would be subject to the special rule set forth in new § 399.16(d) . . ."[15/] As noted above, SDG&E has contracted to receive only the 2009, 2010 and 2011 RECs

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[12/] PD, pp. 46-47.
[13/] *Id.* at p. 47.
[14/] *Id.*
[15/] *Id.*

associated with these CDWR contracts; it may in the future seek to acquire RECs associated with generation received under the Cabazon and Whitewater contracts in 2012 and 2013.[16/]

The policy rationale for creating the exception – *i.e.*, that neither the utilities nor their ratepayers had any part in DWR's decision to buy only the electricity and not the RECs, and that neither the utilities nor their ratepayers should be disadvantaged by the assignment to them of these CDWR contracts – applies equally to contracts that SDG&E may enter into in the future to purchase and "reunite" RECs associated with generation it receives under the Cabazon and Whitewater CDWR contracts in 2012 and 2013. Thus, the PD should be revised to make clear that any future transactions involving "reuniting" of generation from SDG&E's Cabazon and Whitewater CDWR contracts and associated RECs will be covered by the exception established in the PD.[17/]

Second, the conclusion that a CDWR REC purchase agreement must satisfy the grandfather provision requirements in order to fit within the exception created in the PD creates uncertainly inasmuch as the parameters of the grandfather provision have yet to be fully worked out. In particular, it is not yet clear how the Commission will interpret the amendment component of the grandfather provision set forth in § 399.16(d)(3). Depending upon how § 399.16(d)(3) is implemented, SDG&E's GAPSAs might be excluded from the CDWR contract exception – an outcome that would clearly contravene the intent of the PD.

Section § 399.16(d) provides as follows:

> (d) Any contract or ownership agreement originally executed prior to June 1, 2010, shall count in full towards the procurement requirements established pursuant to this article, if all of the following conditions are met:

[16/] The Cabazon and Whitewater CDWR contracts expire at the end of 2013.

[17/] SDG&E notes that Green Attributes associated with 2012 and 2013 energy deliveries under the Cabazon and Whitewater CDWR contracts were bid into SDG&E's 2011 RPS solicitation. The bid for 2012 and 2013 CDWR RECs was shortlisted after all standard procedures were observed.

> (1) The renewable energy resource was eligible under the rules in place as of the date when the contract was executed.
>
> (2) For an electrical corporation, the contract has been approved by the commission, even if that approval occurs after June 1, 2010.
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> **(3) Any contract amendments or modifications occurring after June 1, 2010, do not increase the nameplate capacity or expected quantities of annual generation, or substitute a different renewable energy resource. The duration of the contract may be extended if the original contract specified a procurement commitment of 15 or more years.** (Emphasis added.)

The Commission has not yet addressed whether § 399.16(d)(3) is properly interpreted as applying to all contract amendments, including those made *before* the relevant contract is approved by the Commission, or instead applies more narrowly to amendments to Commission-approved contracts. This distinction is important in the instant case because while the GAPSAs were executed on September 17, 2009, and would therefore meet the threshold requirement of § 399.16(d), SDG&E amended the GAPSAs in June, 2011 – *before* they were approved by the Commission – in order to, *inter alia*, modify the delivery term to specifically provide for the purchase of the RECs associated with underlying CDWR generation received beginning on January 1, 2009 instead of on the date of Commission approval of the GAPSAs.[18/] Thus, under a broad reading of § 399.16(d)(3), it could be argued that the GAPSAs are not grandfathered since they were amended after June 1, 2010 in a manner that effectively increased the expected quantities received under the contracts.

SDG&E emphasizes that it does not support the above interpretation of § 399.16(d)(3). As it explained in comments, "if a contract submitted for Commission approval is amended while the Advice Letter requesting approval is still pending – *i.e.*, amended *prior* to Commission approval of the contract – [§ 399.16(d)(3)] does not apply. **In other words, this provision**

[18/] SDG&E Advice Letter 2118-E-A, filed June 2, 2011.

applies *only* where the amendment or modification is to a contract that has *already* been approved by the Commission."[19/] The PD does not, however, address § 399.16(d)(3) or provide certainty regarding this distinction raised by SDG&E. Thus, if it is assumed, *arguendo*, that the exception created in the PD for CDWR RECs depends upon satisfaction of the § 399.16(d) grandfather criteria, and that the modifications to the GAPSAs made in June 2011 preclude grandfather treatment of the GAPSAs, the result would be that SDG&E's GAPSAs would not fit within the exception proposed in the PD and could not be treated as bundled for RPS compliance purposes. As detailed above, this would have a negative impact on SDG&E's RPS compliance efforts and would impose a significant cost burden on its ratepayer customers.

In order to eliminate the potential for confusion regarding the applicability of the CDWR contract exception, the PD should be revised to delete the reference to § 399.16(d) in the discussion of the proposed exception. It should make clear that contracts that fit within the exception are classified as "Category 1" products – *i.e.*, products that fall into the portfolio content category established pursuant to new § 399.16(b)(1) – regardless of the applicability of the grandfather provision. This proposed modification would not weaken the rationale for adoption of the exception. As noted above, the justification for the exception is set forth separately in the discussion that precedes the reference to § 399.16(d); the reference to § 399.16(d) is *dictum* that is not essential to the finding that the exception is in the public interest. Revising the PD to eliminate the discussion of grandfathering in the context of the CDWR contract exception would effectuate the apparent intent of the PD, which is to afford bundled

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[19/] SDG&E *Comments on Ruling Regarding Implementation of New Portfolio Content Categories for the Renewables Portfolio Standard Program Dated July 12, 2011*, filed August 8, 2011 in R.11-05-005, p. 15 (emphasis added).

treatment to transactions that result in "reuniting" of CDWR generation with associated RECs.[20/] Accordingly, the PD should be revised to ensure that its intended outcome is realized.

B. The PD Should be Modified to Clarify that the Up-Front Showing for § 399.16(b)(2) Products Does Not Require Retail Sellers to Execute Substitute Energy Contracts Simultaneously With the Renewable Energy Contract

New § 399.16(b)(2) establishes a product category applicable to "[f]irmed and shaped eligible renewable energy resource electricity products providing incremental electricity and scheduled into a California balancing authority." In interpreting the requirements of new § 399.16(b)(2), the PD defines "incremental" energy as substitute energy that is newly procured by the retail seller as a part of the firming and shaping transaction.[21/] The PD further determines that when making its up-front showing to the Commission, a retail seller seeking to count RPS procurement in this category must provide sufficient information to permit Energy Division staff to determine whether the substitute energy scheduled into a California balancing authority is "incremental".[22/] In order to avoid injecting an element of complexity and burden into § 399.16(b)(2) transactions that is unreasonable and contrary to legislative intent, the PD should be revised to clarify that retail sellers are not required to negotiate and seek approval for a new contract for substitute energy in parallel with the negotiation and approval of a contract for RPS generation.

Negotiating long-term commercial agreements is a time-consuming and resource-intensive undertaking. Retail sellers typically cannot control the timing of the negotiation process, which can be subject to delays caused by counter-parties and/or competing internal demands. A classification scheme that demands that the negotiation of two separate commercial agreements occur on the same timeline, with simultaneous executions and submittals for

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[20/] *See* PD, Ordering Paragraph 11.
[21/] *See* PD, p. 41.
[22/] *See* id. at p. 44.

approval, is unworkable. The requirement is overly onerous and creates a major obstacle to RPS compliance through reliance on § 399.16(b)(2) products. In addition, the requirement to seek approval of both new contracts (for renewable and substitute generation) simultaneously will interfere with the Commission's ability to control the timing of contract approvals, and will increase the burden placed on the Commission's Energy Division staff, which will be responsible for concurrently reviewing both contracts. Finally, it not clear what the outcome would be if, hypothetically, the contract for substitute energy was not approved. This would jeopardize approval of the contract for renewable energy and could create a major RPS compliance obstacle for the retail seller.

The Supreme Court of California has made clear that "[i]n construing a statute, a court may consider the consequences that would follow from a particular construction and will not readily imply an unreasonable legislative purpose."[23/] SB 2 is intended to address the compliance challenges faced by retail sellers under the existing RPS program. Adoption of a requirement that *increases* the difficulty faced by retail sellers and reduces the likelihood that they will achieve RPS compliance directly contravenes this intent. In addition, the proposal to require parallel negotiation of two separate commercial agreements in order to fit within § 399.16(b)(2) violates the Guiding Principles for implementing § 399.16 articulated by the

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[23/] *California Correctional Peace Officers Assn. v. State Personnel Bd.*, 10 Cal.4th 1133, 1147 (1995).

Commission.[24/] Specifically, the complexity inherent in requiring two separate contracts to be simultaneously negotiated and approved in order to fit within the product category will complicate administration of the statute, in violation of the goal of efficiency established in Guiding Principle 1.

Thus, the PD should clarify that the upfront showing requirements for this product category should not include an executed contract for substitute power. Retail sellers should have the flexibility to finalize and execute such substitute power contracts after the renewable energy contract has been filed for Commission approval.

C. The PD Should be Modified to Expressly Acknowledge that the Commission's "Compliance Determinations" Must be Undertaken in Accordance with the Requirements of Assembly Bill 57

Assembly Bill ("AB") 57 was adopted in 2002 for the purpose, *inter alia*, of eliminating the need for after-the-fact reasonableness reviews (with potential disallowance) of utility procurement that satisfies "upfront achievable standards and criteria" set forth in a Commission-approved procurement plan.[25/] Consistent with AB 32, SB 2 requires the Commission to direct each electrical corporation to annually prepare a renewable energy procurement plan that includes

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[24/] *See Administrative Law Judge's Ruling Requesting Comments on Implementation of New Portfolio Content Categories for the Renewables Portfolio Standard Program* ("ALJ Ruling"), p. 3. The ALJ Ruling set forth the following four Guiding Principles:

1. Parties' proposals should further the fair, efficient, and transparent administration of the RPS program. In particular, proposals should facilitate efficient contract review by Energy Division staff; straightforward calculation of direct and indirect procurement costs of an RPS procurement transaction; and ease of verifying the categorization of an RPS procurement transaction.
2. Proposals should provide RPS market certainty, to the extent possible.
3. Proposals should avoid creating unnecessary transaction costs for buyers and sellers in RPS procurement transactions and should encourage least-cost and best-fit procurement.
4. Proposals should enable a clear delineation among the three portfolio content categories set out in new § 399.16(b).

[25/] Assembly Bill 57, Sec. 2, §§ 454.5(c)(3) and 454.5(d)(2) (Stats. 2002, Ch. 835).

upfront achievable standards and criteria for procurement within the RPS program.[26/] SB 2 further provides that "[p]rocurement and administrative costs associated with contracts entered into by an electrical corporation for eligible renewable energy resources pursuant to this article and approved by the commission are reasonable and prudent and shall be recoverable in rates."[27/]

The PD would direct the Energy Division to develop a methodology for "compliance determinations" related to the portfolio content categories established in the PD.[28/] SDG&E does not object to this proposal, provided that the compliance determination focuses solely on contract administration and compliance with specified portfolio content category criteria, and does not involve an after-the-fact review of the reasonableness of the transaction.

D. The PD Should be Modified to Clarify the Date Upon Which the Portfolio Content Category Definitions Established in the Proposed Decision will Apply

The PD notes that the portfolio content categories defined in the PD will become effective on December 10, 2011, and that the requirements for demonstrating RPS eligibility under those categories will be imposed starting on that date.[29/] However, the first compliance period under SB 2 commences on January 1, 2011. Thus, the PD should be revised to make clear whether the product content category definitions established in the PD will apply as of January 1, 2011 or December 10, 2011.

[26/] *See* new § 399.13(a)(1). The investor-owned utilities' ("IOUs'") most recent RPS procurement plans were approved by the Commission in D.11-04-030.
[27/] *See* new § 399.13(g).
[28/] *See, e.g.*, PD, p. 13.
[29/] *See, e.g.*, *id*. at pp. 26-27.

ATTACHMENT

Proposed Conclusions of Law and Ordering Paragraphs

Proposed Conclusions of Law

9. Because new types of information will be necessary to evaluate retail sellers' compliance with the procurement requirements of the new portfolio content categories, the Director of Energy Division should be authorized to develop**, in accordance with Assembly Bill (AB) 57,** methods for evaluating compliance with the new portfolio content categories and to require retail sellers to provide necessary information, as determined by the Director of Energy Division, for such evaluation.

10. Because new types of information will be necessary to evaluate the value to ratepayers of IOUs' procurement that meets the requirements of the new portfolio content categories, the Director of Energy Division should be authorized to develop**, in accordance with Assembly Bill (AB) 57,** methods for evaluating the value to ratepayers of IOUs' procurement meeting the requirements the new portfolio content categories and to require IOUs to provide necessary information, as determined by the Director of Energy Division, for such evaluation at the time an IOU seeks Commission approval of an RPS procurement contract.

16. Procurement from contracts signed on or after June 1, 2010 may be counted in the portfolio content category described in Pub. Util. Code § 399.16(b)(2), as effective December 10, 2011, if the generation facility from which the electricity is procured is certified as eligible for the California RPS and the generation from that facility is firmed and shaped with substitute electricity scheduled into a California balancing authority within the same calendar year as the generation from the facility eligible for the California RPS, and if the substitute electricity provides incremental electricity, if the following conditions are met, so long as the renewable energy credits originally associated with the electricity have not been unbundled and transferred to another owner, and all other procurement requirements for compliance with the California RPS are also met:

- the buyer simultaneously purchases energy and associated RECs from the RPS-eligible generation facility;
- the energy purchased from the RPS-eligible generation facility is available to the buyer (i.e., the purchased energy must not in practice be already committed to consumption by another party);
- the buyer acquires the substitute energy **before the project providing the RPS eligible energy comes online** ~~at the same time as it acquires the RPS-eligible energy~~.

PROPOSED ORDERING PARAGRAPHS

IT IS ORDERED that:

2. A retail seller claiming that procurement for compliance with the California renewables portfolio standard from a contract signed on or after June 1, 2010 counts in the portfolio content category described in Pub. Util. Code § 399.16(b)(2), as effective December 10, 2011, must provide information to the Director of Energy Division sufficient to demonstrate that the generation from that facility is firmed and shaped with substitute electricity scheduled into a California balancing authority within the same calendar year as the generation from the facility eligible for the California renewables portfolio standard, and that the substitute electricity provides incremental electricity, if the following conditions are met:

- the buyer simultaneously purchases energy and associated renewable energy certificates (RECs)from the RPS-eligible generation facility;
- the energy purchased from the RPS-eligible generation facility is available to the buyer (i.e., the purchased energy must not in practice be already committed to consumption by another party);
- the buyer acquires the substitute energy **before the project providing the RPS eligible energy comes online** ~~at the same time as it acquires the renewables portfolio standard-eligible energy~~.

The retail seller must also demonstrate that the renewable energy credits originally associated with the electricity have not been unbundled and transferred to another owner, and that all other requirements for procurement compliance with the California renewables portfolio standard are met by the procurement.

4. In submitting any contract for procurement to meet the California renewables portfolio standard to the Commission for approval on or after December 10, 2011, an investor owned utility must provide sufficient information for the Commission to evaluate, ~~without limitation and~~ in addition to any other requirements for information **and in accordance with Assembly Bill (AB) 57**, the following elements: the claimed portfolio content category of the proposed procurement; the risks that the procurement will not ultimately be classified in the claimed portfolio content category; the value to ratepayers of the procurement as proposed and the value to ratepayers if the procurement is not ultimately classified in the claimed portfolio category.

5. The Director of Energy Division is authorized to require any investor owned utility that has submitted a contract for procurement to meet the

California renewables portfolio standard that was signed after June 1, 2010 but was not approved by the Commission prior to December 10, 2011 to provide additional information to allow the Commission to evaluate, ~~without limitation and~~ in addition to any other requirements for information **and in accordance with Assembly Bill (AB) 57,**, the following elements: the claimed portfolio content category of the proposed procurement; the risks that the procurement will not ultimately be classified in the claimed portfolio content category; the value to ratepayers of the procurement as proposed and the value to ratepayers if the procurement is not ultimately classified in the claimed portfolio category.

6. The Director of Energy Division is authorized to develop**, in accordance with Assembly Bill (AB) 57,** any methods and requirements for information to be provided by investor owned utilities seeking approval of contracts for procurement to meet the California renewables portfolio standard to allow the Commission to evaluate, without limitation, the following elements: the claimed portfolio content category of the proposed procurement; the risks that the procurement will not ultimately be classified in the claimed portfolio content category; the value to ratepayers of the procurement as proposed and the value to ratepayers if the procurement is not ultimately classified in the claimed portfolio content category.

11. The general rules about the use of unbundled renewable energy credits for compliance with the California renewables portfolio standard should not be applied in the unique and limited circumstance of the contracts signed by the Department of Water Resources during the energy crisis with Cabazon Wind Partners LLC and Whitewater Hill Wind Partners LLC and assigned to San Diego Gas & Electric Company, which may be allowed to acquire the unbundled renewable energy credits separately from the energy but receive credit for compliance with the California renewables portfolio standard as though they had been purchased together. **Any such transactions approved by the Commission, including transactions entered into after the effective date of this decision, will count in the portfolio content category described in Pub. Util. Code § 399.16(b)(1).**

III.
CONCLUSION

For the reasons set forth above, the PD should be modified in accordance with the discussion herein.

Respectfully submitted this 27th day of October, 2011.

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AFFIDAVIT

I am an employee of the respondent corporation herein, and am authorized to make this verification on its behalf. The matters stated in the foregoing **COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) ON THE PROPOSED DECISION IMPLEMENTING PRODUCT CONTENT CATEGORIES FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM** are true of my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed this 27th day of October, 2011, at San Diego, California

/s/ Hillary Hebert
Hillary Hebert
Partnerships and Programs Manager
Origination and Portfolio Design Department