

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Establish Policies and  
Cost Recovery Mechanisms for Generation Procurement  
and Renewable Resource Development.

Rulemaking 01-10-024  
(Filed October 25, 2001)

**COMMENTS OF**  
**THE CALIFORNIA WIND ENERGY ASSOCIATION**  
**ON THE PROPOSED DECISION**

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**I. INTRODUCTION AND OVERVIEW**

Pursuant to Rules 77.2 and 77.3 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, the California Wind Energy Association ("CalWEA") submits its comments on the Proposed Decision of Administrative Law Judge Allen ("Proposed Decision") on the implementation of the California Renewables Portfolio Standard ("RPS") program. Although the Proposed Decision does not adopt all of CalWEA's proposals in this proceeding, it is nevertheless, on the whole, an extremely well-reasoned and balanced document.

CalWEA will not in these comments discuss at length many of the aspects of the Proposed Decision with which CalWEA agrees. Nonetheless, a few of the most important conclusions in the Proposed Decision bear recognition and should be adopted in the Commission's final decision. These include rulings that:

- lack of utility creditworthiness defers, rather than excuses, compliance with annual procurement targets ("APTs") (Proposed Decision at 7-8);<sup>1</sup>
- "long-term need" is not a precondition for APTs (*id.* at 37);
- the requirement that the utilities procure 20% of their retail sales by 2017 is an absolute obligation that is not subject to flexible compliance deferrals (*id.* at 35);

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<sup>1</sup> Page references are to the PDF version of the Proposed Decision posted on the Commission's website.

- the 20% renewable procurement requirement continues indefinitely beyond 2017 (*id.* at 38, n. 28);
- APT obligations will require utilities to make up for declines (i.e., the APT will be a “net increase” obligation) (*id.* at 42);
- APT obligations to procure energy are fulfilled when energy is acquired, not when contracts are signed (*id.* at 39, n. 29);
- contracts must be offered for 10, 15 and 20 year terms (*id.* at 50);
- an REC-based accounting mechanism should be employed (*id.* at 9-10);
- market price referents shall separate energy and capacity values (*id.* at 23);
- the value of capacity will be determined by the Commission instead of by the utilities (*id.* at 29);
- as-available capacity has value (*id.* at 18);
- the as-available market price referents are the same as the baseload or peaking referents, depending on the product bid (*id.* at 19);
- as-available capacity payments will be based on plant performance (*id.* at 30); and
- the Energy Commission’s expert integration cost studies and California Independent System Operator Corporation (“ISO”) Tariff Amendment 42 should be employed (*id.* at 31).

There are, however, several significant concerns that the Commission should remedy by modifying the Proposed Decision. In preview, the Commission should modify the Proposed Decision as follows:

- include additional reasons why the development of the market price referents does not violate the Public Utility Regulatory Policies Act of 1978 (“PURPA”) (*id.* at 24-26);
- clarify that the least-cost / best-fit bid ranking must be on a total cost basis, including anticipated capacity costs, and not just based on energy payments (*id.* at 28, 30);
- permit bidders to dispute utility estimates of transmission costs and benefits, when estimates are not prescribed by the Commission or the ISO, with further refinement of the process in the Commission’s Transmission proceeding, I.01-10-011 (“Transmission OI”) (*id.* at 32-34);
- adopt up-front penalties for noncompliance;
- specify, at a minimum, standards for non-compliance to be used in show cause proceedings (*id.* at 44);
- specify a penalty of \$50/MW if cause is not shown justifying noncompliance (*id.* at 45); and

- adopt standard contract terms and conditions, including performance requirements, by adopting CalWEA's proposed contract terms on an interim basis pending negotiations among the parties (*id.* at 49).

The Commission should adopt the Proposed Decision, with the modifications and clarifications listed above, as further discussed below. CalWEA's recommended changes to the Proposed Decision, including proposed findings of fact and conclusions of law, are listed in Appendix A, attached hereto.

## II. DISCUSSION

### A. MARKET PRICE REFERENT

#### 1. **The Commission Should Adopt The Proposed Decision's Treatment of Capacity.**

The Proposed Decision contains several conclusions that are very important to ensure the success of the RPS program and a level playing field for all renewable resources, including intermittent resources (such as wind-powered generators). The Commission should ensure that these proposals are adopted in its final decision. These include (i) adopting separate energy and capacity market price referents, *Proposed Decision* at 23; (ii) Commission-determination of the value of capacity (instead of determinations by the utilities), *id.* at 29; (iii) finding that as-available capacity has value, *id.* at 18; (iv) using the same market price referent for as-available capacity as is used for baseload or peaking capacity, *id.* at 19; and (v) determining as-available capacity payments based on plant performance, *id.* at 30.

The importance of these determinations cannot be overstated. First, adopting separate energy and capacity market price referents instead of a simple all-in benchmark allows the Commission to compare the relative value of individual products in a coherent and unbiased manner. *CalWEA Opening Brief* at 6-7.

Second, the Commission should determine the value of capacity to avoid the obvious bias of the utilities against intermittent and as-available resources. *CalWEA Reply Brief* at 18-19. In addition, as CalWEA has pointed out, this approach (as adopted by the Proposed

Decision) is transparent and easy to implement because the predetermined capacity value will be translated into a standardized capacity payment based on the relevant product. Moreover, since bidders only need bid the energy price, there is no likelihood of bidder confusion or gaming. *Id.* at 18.

Third, it is very important that the Commission recognize the value of as-available resources in the contexts of developing the market price referent, the least-cost / best-fit evaluation, and contract payments. As the Commission has long recognized, as-available resources can and do provide capacity value to the utilities. *Id.* at 19. Failing to account for this value would prejudice the RPS solicitations against intermittent resources and hamper efforts to reach the RPS program goals.

Lastly, the Proposed Decision correctly based capacity payments on plant performance, as recommended by TURN and CalWEA. *Proposed Decision* at 19. This should allow for a consistent methodology between the market price referent, the least-cost / best-fit bid evaluation process and the standard contract terms and conditions. *CalWEA Opening Brief* at 5-7.

These key findings and conclusions will ensure that as-available resources such as wind will be able to participate in the RPS programs fairly and effectively. Because wind energy is among the least-cost renewable resources, the fair treatment of wind will, in turn, increase the likelihood of meeting the legislature's 20% renewables goal. It is thus imperative that the Commission adopt the above findings and conclusions in its final decision.

**2. The Commission Should Include In the Proposed Decision Additional Reasons Why The Development Of RPS Market Price Referents Does Not Violate PURPA.**

The Proposed Decision correctly rejects Southern California Edison Company's ("Edison") threat that setting a benchmark too high will violate PURPA. *Id.* at 24-26. In particular, the Proposed Decision concludes that FERC provides state commissions great latitude in the determination of the avoided costs and will not second-guess the actual numbers if the process used in determining the avoided costs is consistent with PURPA. *Id.* at 24-25. The Proposed Decision also argues that setting the market price referent is different

from setting avoided costs because the utilities are not required to enter into contracts at the market price referent. *Id.* at 25-26.

Anticipating that Edison may continue its litigious practices, the Commission should bolster its position by adding to the Proposed Decision the Commission's concurrence with various other arguments raised by parties in their briefs. For example, CalWEA pointed out several reasons in its reply brief (in addition to the arguments addressed by the Proposed Decision) why Edison's argument fails.

First, as the market price referents are to be used, exclusively, for allocating contract costs between utilities and the public goods charge ("PGC") fund, establishing market price referents under the RPS program is not establishing wholesale rates and does not implicate preemption concerns. If, for example, the Legislature and Commission were to design and implement the RPS auction program without a market price referent mechanism, there clearly would be no preemption concern. In that case, the utilities would have to pay whatever price results from the auction. The implementation of a market price referent only sets an outer limit on what the utilities are required to pay; it does not set the rate. *CalWEA Reply Brief* at 23-24. The rate paid by consumers and received by sellers may be higher than, less than, or equal to the market price referent.

Second, the RPS program, similar to the renewable programs implemented in many other states, does not implement the avoided-cost, or any other, provisions of PURPA, and the Commission's authority to adopt the RPS program is completely independent of PURPA. Unlike to PURPA, which promotes the development of qualifying facilities ("QFs"), the RPS program is open to all renewable generators (both QFs and non-QFs) but not to all QFs (since non-renewable QFs may not participate in the RPS program). *Id.* at 23. Indeed, SB 1078 specifically provides that the establishment of the RPS program "shall not constitute implementation of [PURPA]." *Cal. Pub. Util. Code* §399.15(d). As such, the avoided-costs requirements of PURPA do not apply to the RPS program.

Including these additional arguments will bolster the legal foundation of the Commission's decision and forestall Edison's ability to obstruct the RPS program.

**B. LEAST-COST / BEST-FIT**

**1. The Commission Should Clarify That The First Ranking In The Least-Cost / Best-Fit Process Will Include Both Energy And Capacity Values.**

The Proposed Decision describes the "basic process" for least-cost / best-fit bid evaluation, citing CalWEA's proposal: "the basic process to be used should be consistent with the general recommendations of CalWEA, that bids must be evaluated *on a total cost basis . . .*" *Proposed Decision* at 28 (emphasis added). Later in the Proposed Decision, however, in describing the first bid ranking process, the decision states that "bidders submit only an energy price; the capacity price is pre-determined; *bids are ranked on energy only*, as recommended by CalWEA and SCE." *Id.* at 30 (emphasis added). The inconsistency in these two statements must be rectified in favor of the initial statement.

Ranking on the basis of the energy bid only, and failing to include the anticipated value of the capacity payments that would be made to the bidder if its bid is accepted, is inconsistent with the "basic process" for a total cost evaluation as initially set forth in the Proposed Decision, and does not reflect CalWEA's position.<sup>2</sup> *CalWEA/Beach Ex. RPS-12, Ch. 2*, at 2. Moreover, because an energy-only valuation would ignore capacity costs, the valuation would not necessarily produce a least-total-cost result, as is required by statute. *Pub. Util. Code* § 399.14(a)(2)(B); *CalWEA Opening Brief* at 12. This is because a product with a lower total cost, but higher energy cost, may be available in lieu of a product with a higher total cost but lower energy cost. *Id.*

In addition, using only energy bids for ranking would disadvantage as-available resources (such as wind generators) in comparison to the firm or peaking technologies that may receive a much higher capacity payment. Because as-available resources will receive less capacity payments, most of their fixed costs will be recovered through energy payments (instead of recovering a greater share of fixed-costs through capacity payments as most firm and peaking resources do). This means that as-available resources will tend to have higher

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<sup>2</sup> CalWEA did state, however, that PGC payments could be based on the energy bid, as compared to the energy component of the market price referent, because putting the capacity component into both the bid and the market price referent would produce the same PGC result.

energy bids than firm or peaking resources. Comparing bids based on a total cost basis avoid the cost-allocation difference between as-available, firm and peaking resources.

As such, the Commission should modify the statement on page 30 of the Proposed Decision to state that the first bid ranking will include the energy bid and the anticipated capacity payments. *CalWEA Opening Brief* at 12.

**2. The Commission Should Allow the Prospective Bidders to Comment On and Appeal Utility Estimates of Transmission Costs.**

In determining the indirect transmission cost bid adder under § 399.14(a)(2)(B), the Proposed Decision would use the transmission cost estimates established by the ISO or by the Commission in the Transmission OII, or if such estimates are not yet available, the utilities' estimated transmission costs based on Pacific Gas & Electric Company's proposal. *Proposed Decision* at 32. Although this is fundamentally a reasonable approach, the Commission should allow potential bidders the opportunity to comment on the utilities' estimate of transmission costs in the absence of available data from the ISO or the Transmission OII. In particular, bidders should have the opportunity to present alternative costs and benefits information to the utilities, the Procurement Review Group ("PRG") and the Commission in advance of (or contemporaneous with) bid submissions. This will allow the bid evaluators an opportunity to weight the various positions and, hopefully, arrive at a better decision.

**3. The Commission Should Establish a Policy for the Treatment of Transmission Costs that Produce Network Benefits.**

In discussing the treatment of transmission costs in the bid evaluation process, the Proposed Decision states that the utilities should: seek descriptions from bidders of the potential network benefits that would result from the addition of their renewable generation to the grid; apply transparent criteria in evaluating such claims; and present the results of their evaluations to the PRGs for consideration. *Proposed Decision* at 33. The issue of how transmission costs that produce network benefits are handled is too important to leave to the utilities' discretion and to the PRG members whose resources are very limited. The

Commission must carefully consider this issue and establish rules on how network benefits should figure into bid evaluations.

Consider, for example, a hypothetical renewable resource area that is developed with a transmission system upgrade that also results in relieving the NP-15/SP-15 transmission constraint. Adding the cost of that upgrade to the associated bids, without factoring in the transmission benefits that accrue, could improperly doom the bids. The Commission should resolve the treatment of network benefits later this year; otherwise, solicitations that are conducted in the near-term will ignore potentially major benefits to ratepayers.

**4. The Commission Should Require the Utilities to Solicit Resources With On-Line Dates Several Years Into the Future.**

CalWEA has proposed that the utilities solicit bids from renewable resources that have online dates several years into the future. *CalWEA/Rader, Ex. RPS-12, Ch. 3*, at 3-4. As CalWEA pointed out in its direct testimony, the utilities may wish to defer procurement of renewable resources if the least-cost / best-fit bid evaluation process demonstrates that substantial benefits can be captured through a deferral in procurement. *Id.* CalWEA has proposed that the utilities solicit bids for deliveries commencing up to three years into the future so that the utilities possess all of the information they need to evaluate longer-term options. *Id.* at 4, n. 5. The Proposed Decision does not address this issue. The Commission should modify the Proposed Decision to include such a requirement.

**5. The Commission Should Strike the Reference to Favoring Dispatchable and Peaking Renewables in the Short Term**

In its discussion of one of the Office of Ratepayer Advocates' ("ORA") positions, the Proposed Decision states that "for the short-term, renewable generation that can operate as dispatchable or peaker power is higher on the 'procurement hierarchy.'" *Proposed Decision* at 27. This statement should be qualified to be a reference only to ORA's proposal, and not a conclusion of the Commission. There is no justification for a short-term exception to the Proposed Decision's long-term goal of seeking the least-cost renewables with "fossil fuel procurement helping to contour the renewable generation to the utilities' load shapes." *Id.*

Likewise, the Commission should strike the statement in the Proposed Decision that “the utility may prefer the products identified in their Commission-approved plan” as this opens the door to utility actions that are not consistent with the least-cost, best-fit rules. *Proposed Decision* at 29. If the utilities can best meet their needs by purchasing renewable products that do not correspond to those identified in the long-term plans for a lower cost, there is no reason to prefer the products identified in the plans.

**C. COMPLIANCE FLEXIBILITY AND PENALTIES**

**1. The Commission Should Adopt Up-Front and Significant Penalties to Ensure Utility Compliance**

One area where the Proposed Decision falls short significantly is in the area of flexible compliance. Although the Proposed Decision did not adopt the “no chance for a penalty” approach of Edison and PG&E, the Proposed Decision adopts a new flexible compliance mechanism not proposed by any of the parties. In particular, the Proposed Decision allows the utilities to defer 100% of the APT for one year without any justifications and then 50% of the original shortfalls for another year. If the utility does not make up at least 50% of the deferred APT (after first meeting the APT for that current year), or if, by the third year, the utility does not make up 100% of the deferred APT, an order to show cause (“OSC”) hearing will be conducted. *Proposed Decision*, at 44-45. The Proposed Decision does not articulate any standard for evaluating utility conduct or for imposing penalties in the OSC proceeding. This mechanism is problematic, and the Commission should modify it to ensure effective compliance of the RPS program.

First, the OSC process is too uncertain to provide any real deterrent effect. Without precise standards and predefined penalties, the utilities will have too much of an opportunity to delay any negative consequences through litigation tactics. And, while the OSC is taking place, the utilities are still free not to make up for any prior compliance. In short, the process will create unnecessary delays in procurement and provide an incentive for the utilities to take their chances at the OSC proceeding instead of focusing their efforts to ensure adequate procurement.

Second, the Commission should recognize that a predefined penalties mechanism also should provide a level of comfort to the utilities. In particular, by defining up front what qualifies as a legitimate excuse for non-compliance, as CalWEA has proposed, *CalWEA/Rader, Ex. RPS-12, Ch. 3*, at 3-4, the utilities can be more certain that they will not be subject to sanctions so long as they conform to the adopted standards. Leaving things to an undefined, after-the-fact OSC process serves no party's real interest.

The Commission should therefore modify the Proposed Decision to include precise standards and a predetermined penalty instead of adopting the OSC process, as discussed below.

**2. If The Commission Nevertheless Wants To Adhere To The OSC Process, It Should Be Made More Transparent.**

- a. The Commission should incorporate CalWEA's proposed deferral criteria into the OSC proceeding.*

As discussed above, while CalWEA believes that automatic penalties provide the clearest signal to the utilities, and hold the most promise for the success of the RPS program, CalWEA urges the Commission, at a minimum, to add specific standards for use in the OSC proceeding, should the Commission prefer that process. These standards would provide the parties and the utilities a basis on which to know if the utilities' rationale for noncompliance is or is not legitimate. Adopting a standard set of criteria or justifications for the utilities' failure to meet the procurement requirements should provide transparency and clear guidelines for both the utilities and the market participants. This also should simplify the litigation in the individual OSC proceeding.

In particular, CalWEA has proposed that utilities may be excused from compliance with APTs if (i) force-majeure events (e.g., fires, floods, governmental actions) prevented their compliance, or (ii) if there are demonstrated least-cost / best-fit benefits associated with such non-compliance<sup>3</sup> (and only if contracts are being signed for future deliveries to bring the

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<sup>3</sup> To determine whether resources with longer lead-times offer greater benefits, it is also necessary, as CalWEA discussed above, for utilities to solicit projects with on-line dates several years into the future.

utilities into compliance). *CalWEA/Rader, Ex. RPS-12, Ch. 3*, at 3-4.<sup>4</sup> The criteria should not include circumstances within the utilities' control or such things as the failure of renewable generators to come on-line by a date expected by the utilities, or to generate an amount expected by the utilities. The utilities are sophisticated power purchasers and can easily compensate for such factors by, for example, using milestones and other mechanisms to ensure timely project development and signing contracts for more renewable resources than are minimally required to compensate for possible project attrition (given the unlimited ability to forward-bank renewables). Adopting these criteria will provide the utilities clear guidance and avoid the uncertainties that the utility faces if it has to wait until an OSC to know whether its decision to defer compliance may be approved.

- b. *The Commission should adopt the presumptive \$50/MW penalty if the utility cannot satisfy its burden of proof.*

In addition to adopting specific standards for use in the OSC proceeding, the Commission should also adopt specific "presumptive" penalties should the utilities not be able to meet their burden of proof in the OSC proceeding. Adopting an expected penalty amount upfront will take away the guessing game and provide a clear signal of the Commission's intent to ensure the success of the RPS program. A presumed penalty amount will create an incentive for the utilities to try to comply with the RPS program, instead of taking the gamble that the Commission would not impose significant penalties if a utility is found to be out of compliance. In fact, in other instances where the Commission is given authority to impose penalties under the Public Utilities Code, the Legislature included predetermined penalty amounts. *See e.g., Pub. Util. Code §§210-2119.*

CalWEA has proposed and the Commission should adopt a \$50/MW penalty. *CalWEA/Rader, Ex. RPS-12, Ch. 3*, at 4-5; *CalWEA Opening Brief* at 23. This penalty

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<sup>4</sup> The Proposed Decision has mischaracterized CalWEA's proposals on flexible compliance. The Commission should strike the various statements such as "CalWEA's true-up proposal essentially collapses the three-year deficit banking provision into three months," *Proposed Decision* at 40 (citing *Edison Opening Brief* at 19), and "the five percent margin proposed by CalWEA is simply inadequate to deal with the uncertainties of the real world issue facing the utilities." *Proposed Decision* at 39-40. The Proposed Decision focuses on only one element of CalWEA's proposal, and fails to recognize the element of CalWEA's proposal that provided for 3-year compliance deferrals where specific justifications are made in advance.

amount should be sufficient to encourage compliance, while not being unduly burdensome. *Id.* The Commission will, of course, retain discretion to adjust the amount in appropriate circumstances.

**3. The Commission Should Decide That Temporary Shortfalls In PGC Funds Defer, Rather Than Excuse, RPS Compliance**

Just as the Proposed Decision found that lack of utility creditworthiness should defer, rather than excuse, RPS compliance (*Proposed Decision* at 7-8), the Commission should also find that, if there are insufficient PGC funds to permit compliance in a given year, the unmet portion of the APT should be deferred into the next compliance year.

There are a number of factors that would enable shortfalls to be made up in future years, and a logical reading of the RPS statute makes clear that it was not the Legislature's intent to extinguish permanently an APT due to a lack of PGC funds. *CalWEA Reply Brief* at 10-12.

**D. STANDARD TERMS AND CONDITIONS**

**1. The Proposed Decision Would Commit A Legal Error By Failing To Adopt Standard Contract Terms And Conditions, Including Performance Requirements.**

The only obvious legal error identified by CalWEA in the Proposed Decision involves its failure to adopt standard contract terms and conditions, including performance requirements. SB 1078 clearly requires the Commission to adopt, by June 30, 2003, "standard terms and conditions to be used by all electrical corporations in contracting for eligible renewable energy resources, including performance requirements for renewable generators." *Pub. Util. Code* § 399.14(a)(2)(D). This is unambiguous language with which the Proposed Decision fails to comply. Instead, the Proposed Decision adopts a process for creating standard terms and conditions in the future. *Proposed Decision* at 45. Although CalWEA acknowledges that SB 1078 does not require the Commission to adopt a complete contract (even though the Commission should do so), it does require the Commission to, at a minimum, adopt standard terms and conditions, including performance requirements.

Adopting a process for the parties to negotiate the standard terms and conditions simply does not satisfy the statutory requirement.

The Commission should correct this legal error in the Proposed Decision by (i) adopting CalWEA's proposed standard contract terms and conditions, including performance requirements, and (ii) directing the parties to negotiate any additions, subtractions, or modifications to the standard contract terms. Disputes could be brought to the Commission for resolution. In reality, this is not a significant practical change from the Proposed Decision. What it would do is (aside from complying with applicable law) give the parties a starting point for their negotiations beyond the mere list of terms contained in the proposal of SDG&E and TURN.

**2. Bilateral Contracts Above The Benchmark Should Be Subject To Individual Commission Approvals And Should Not Receive PGC Funds.**


In response to a proposal by SDG&E, the Proposed Decision states that bilateral contracts can only be signed if they are priced below the applicable market price referent, and that no PGC funds may be applied to bilateral contracts. While CalWEA agrees that bilateral contracts should not be eligible for PGC funds, CalWEA believes that the outright prohibition on contracts priced above the market price referent may be unduly harsh. As CalWEA proposed, the utilities should be free to negotiate and enter into bilateral contracts at any price, subject to express Commission approval. *CalWEA Reply Brief* at 32-33. Since the contracts will not be subject to the same least-cost / best-fit bid evaluation process, however, they should not be eligible for PGC funds, as the Proposed Decision correctly recognizes. This will allow the utilities the freedom to enter into contracts outside of the RPS program that may ultimately benefit ratepayers and increase purchases from renewables, without imposing undue burdens on the PGC funds.

One practical reason for this modification to the Proposed Decision is that, since the benchmark is established after bids from a solicitation are submitted, the benchmark is always changing. Thus, it may be impossible to know if the price of a bilateral contract is above or below the benchmark. As such, the Commission should modify the Proposed Decision to allow for bilateral contracts, subject to approval by the Commission, and continue to provide that such contracts are not eligible to receive PGC funds.

### III. CONCLUSION

CalWEA urges the Commission to adopt the Proposed Decision, with the modifications as discussed above.

Respectfully submitted,



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June 9, 2003

## Appendix A

### CalWEA's Proposed Findings of Fact and Conclusions of Law

#### Findings of Facts

The Commission should modify its findings of facts as follows:

43. ~~The Edison Electric Institute contract~~ **CalWEA's proposed standard terms and conditions, including performance requirements,** provides a reasonable starting point for development of standard contract terms and conditions.

44. ~~The Edison Electric Institute contract requires modification in order to be appropriate for the RPS program.~~

45. ~~The parties are in a better position than the Commission to evaluate specific terms and conditions.~~

The Commission should make the additional findings of facts as follows:

**The utilities may defer procurement if they can show that deferral is (i) due to force-majeure events or (ii) based on evaluation of benefits in the least-cost / best-fit bid evaluation process and contracts are signed to bring the utilities into compliance in the future.**

**It is reasonable that the utilities should solicit contracts several years into the future.**

**A presumptive penalty of \$50/MW is reasonable and does not create undue burden upon the utilities.**

#### Conclusions of Law

The Commission should modify its conclusions of law as follows:

26. **CalWEA's proposed standard terms and conditions, including performance requirements, should be adopted on an interim basis.** Parties should have further opportunity to ~~develop~~ **negotiate and to modify the** standard terms and conditions.

27. ~~Bilateral contracts should only be allowed,~~ **subject to Commission approval, but if they do not require will not be eligible to receive** any PGC funds.

28. ~~The process adopted for the development of standard contract terms and conditions is consistent with the statutory requirements.~~

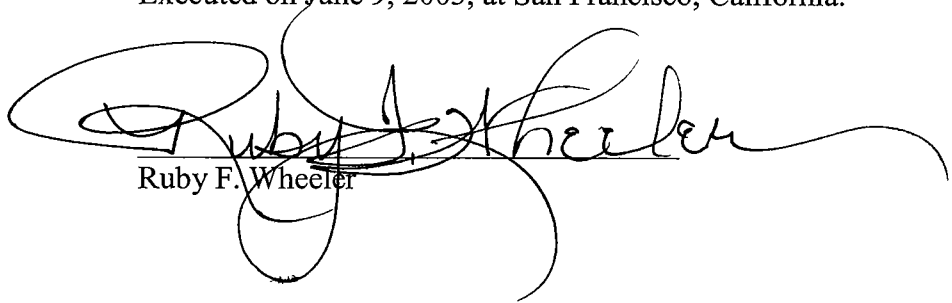
**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the

**COMMENTS OF THE CALIFORNIA WIND ENERGY ASSOCIATION ON THE  
PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE PETER V. ALLEN**

on all known parties to R.01-10-024 named in the official service list by electronic mail for all parties providing an email address, and by mailing a properly addressed copy by first-class mail with postage prepaid to each of the parties not providing an email address.

Executed on June 9, 2003, at San Francisco, California.



Ruby F. Wheeler