

DOCKETED

Docket Number:	16-RPS-01
Project Title:	Developing Guidelines for the 50 Percent Renewables Portfolio Standard
TN #:	212465
Document Title:	NLine Energy, Inc. Comments re Draft RPS Guidebook
Description:	N/A
Filer:	System
Organization:	NLine Energy, Inc./Matthew Klopfenstein
Submitter Role:	Public
Submission Date:	7/25/2016 4:55:24 PM
Docketed Date:	7/25/2016

Comment Received From: Matthew Klopfenstein

Submitted On: 7/25/2016

Docket Number: 16-RPS-01

NLine Energy, Inc. Comments re Draft RPS Guidebook

Additional submitted attachment is included below.



July 25, 2016

California Energy Commission
Docket No. 16-RPS-01
1516 Ninth Street
Sacramento, California 95814

Re: NLine Energy, Inc. Comments re Draft RPS Guidebook

1 Background

NLine Energy, Inc. (NLine) is a California-based conduit hydroelectric development company that specializes in the deployment of pressure reduction turbines (PRTs). NLine's clients for hydro projects are primarily the municipal water agencies in California that represent 90-percent of all water conveyed, treated, collected and recycled within the state. NLine offers the below comments following our experiences applying for RPS eligibility on several potential projects. Our goal is to help the CEC improve the RPS eligibility application process while still achieving its goals.

NLine appreciates the opportunity to provide comments to the *Notice Requesting Public Comments on Draft Renewables Portfolio Standard Eligibility Guidebook, Ninth Edition*.

2 Issues

NLine identified the following issues while applying for RPS eligibility for several conduit hydroelectric facilities. We have identified the issues below.

1. Information Requested is not Applicable.
RPS certification forms and information submittal requirements are specific to hydroelectric projects that involve stream diversion and discharges. NLine Energy's hydroelectric projects are typically conduit projects, do not involve stream diversion or discharge, and the water source is purchased water from the State Water Project.
2. Information Requested is Unrelated to the Project Being Certified.
The certification forms request information about projects other than the one being certified.

Each of these issues is described below together with suggested solutions and amendments.

2.1 Water Rights:

Requirement (Guidebook Section II.F.5.d, Form RPS-1.S2 Section VII.7): All applicants must clearly establish their right to divert water by submitting all necessary information as well as all appropriate licenses or permits. Within California, this information must identify the permitted volume, rate, and timing of water diversions, the place of diversion, and beneficial uses. This may be achieved through submittal of the appropriate SWRCB appropriation permit or license, or the Statement of Water Diversion and Use filed with SWRCB. For diversions not subject to an appropriation permit or license, a copy of any Statement of Water Diversion and Use filed with SWRCB should be provided. Facilities located outside California must provide similar documentation of an existing water right for water diversion.

Issue: Hydroelectric projects being designed and developed by NLine Energy on behalf of local water agencies typically utilize water purchased from the California State Water Project (SWP) via one of the State Water Contractors. The Department of Water Resources (DWR) holds the water rights to the SWP. The legal, financial, and economic foundations for operating the State Water Project are contained in the 29 long-term water supply contracts with the State Water Contractors. These contracts also contain the foundation for the State's water policy. Thus, individual water agencies do not necessarily have water rights as required by the CEC. Rather, these entities have longstanding purchase contracts for water. The submittal of a water purchase contract should be sufficient to prove to the CEC that the applicant has the legal right to water needed for a proposed project.

It is important to note that none of NLine's projects involve stream diversions or discharge into streams. These conduit hydroelectric facilities are constructed to replace traditional pressure reducing valves at the influent of water treatment plants or at groundwater recharge facilities.

NLine staff discussed this issue with CEC staff to find resolution. One suggested course of action was to obtain a permit from the State Water Resources Control Board (SWRCB) stating that the project has rights to use the water. However, this is not an appropriate resolution nor is it possible. According to the SWRCB, "Besides riparian right holders and ground water users, permits are not required of users of purchased water . . ." ¹

¹ http://www.waterboards.ca.gov/waterrights/board_info/water_rights_process.shtml#process

Suggested Solutions: 1) Eliminate the requirement to provide water rights for hydroelectric projects that utilize water purchased from the California State Water Project. 2) Allow submittal of water purchase contract in lieu of proof of water right.

These suggested amendments make sense for conduit hydroelectric facilities because those do not involve stream diversions or discharges. Further, the current requirements erect an undue impediment for water agencies that contract for their water supplies from the California State Water Project.

Amendment: The following suggested amendment should be added to Chapter 2.F.5.d.:

“For conduit hydroelectric facilities, submittal of a water purchase contract may satisfy the requirements of this section.”

2.2 Hydrologic Data:

Requirement (Guidebook Section II.F.5.e, Form RPS-1.S2 Section VII.8): The applicant must submit appropriation and/or diversion data for the last five years or for the period of operation if the project has been operating less than five years. Information contained in any legally required reports may be used to meet this requirement if sufficient information is included in the report. For other projects, the hydrologic data submitted must be accompanied by a description of how the data is collected. Flow data shall be provided at the frequency set forth in the applicable water appropriation permit. For example, if the permit specifies minimum and maximum flows on a monthly basis, that is the level of information necessary to be submitted.

Issue: First, it is not clear what hydrologic data is being requested (stream flows, rainfall, etc.) as specific types of data are not indicated. It is NLine’s assumption that this requirement applies to stream diversion projects and the information required is volume of water diversion over time (flow data).

Second, as none of the projects being developed by NLine Energy involve stream diversions or discharge into streams, NLine staff reached out to the CEC for clarification of this issue. The suggested course of action was to provide a spreadsheet that would show the hydrologic data for an appropriate period of time (or an estimate of future data). This suggested solution is not applicable to in-conduit hydroelectric projects that do not utilize stream diversions for hydroelectric power generation.

Suggested Solution: 1) Rename this Chapter 2.F.5.e, “Flow Data” as the text under this section does not describe “Hydrologic Data.” 2) Allow submittal of water purchase contract in lieu of hydrologic data to demonstrate volume of water. If the CEC is looking for projected flow forecasts through the hydroelectric station, that can be provided as well.

Amendment: 1) Delete “Hydroelectric Data” and replace with “Flow Data” in the title line of Chapter 2.F.5.e.

2) Amend Chapter 2.F.5.e as follows:

“The applicant shall submit appropriation and/or diversion data for the last five years or for the period of operation if the facility has been operating less than five years, including a description of how the data are collected. Flow data shall be provided at the frequency set forth in the applicable water appropriation permit. For conduit hydroelectric facilities that do not involve stream diversions, applicants may submit water purchase contracts and a projected flow forecast to satisfy the requirements of this section.”

2.3 Environmental Documentation

Requirement (Guidebook Section II.F.5.g, Form RPS-1.S2 Section VII.10): The applicant shall submit copies of any permits, agreements, contracts, or other requirements affecting the operation of the facility, especially those that affect the volume, rate, timing, temperature, turbidity, and dissolved oxygen content of the stream water before and after the points of diversion.

Issue: The requirement for environmental data assumes the hydroelectric project involves stream flow diversion and discharging of water into streams.

Suggested Solutions: 1) Remove this requirement for hydroelectric projects that do not involve stream diversion or discharge. 2) Accept instead other project environmental documentation such as CEQA Categorical Exemption or Initial Study/Mitigated Negative Declaration.

Amendment: The following language should be added to Chapter 2.F.5.g:

“For conduit hydroelectric facilities, applicants may submit copies of any Categorical Exemption or Initial Study/Mitigated Negative Declaration pursuant to the California Environmental Quality Act to satisfy the requirements of this section.”

2.4 Capacity

Requirement (Guidebook Section not located, Form RPS-1.S2 Section VII.11):

For small and conduit hydroelectric facilities, the applicant must demonstrate how the project will comply with the 30 MW nameplate capacity size limitations under the RPS and not cause an adverse impact on instream beneficial uses or a change in the volume or timing of stream flow.

Issue: It is understood, based on conversations with CEC-RPS staff, that the purpose of this requirement is to protect the environment (waterways) from excessive diversions by any single hydroelectric project or any group of closely spaced hydroelectric projects on the same waterway.

While the nameplate capacity of the project is easy to provide, the instream impacts requirement is not applicable as NLine Energy's conduit hydroelectric projects do not involve stream diversion or discharge.

Suggested Solution: Clarify that, for conduit hydroelectric facilities, the requirement to "demonstrate a project does not cause an adverse impact on instream beneficial uses" can be satisfied by proving the project will be in-conduit rather than in-stream.

Amendment: Amend the following paragraph in Chapter 2.F.5:

"An applicant for these facilities must demonstrate that the facility does not cause an adverse impact on the instream beneficial uses. A facility could have an adverse impact on the instream beneficial uses if it causes an adverse change in the chemical, physical, or biological characteristics of water, including a change in the volume, rate, timing, temperature, turbidity, or dissolved oxygen content of the stream water. An applicant for a conduit hydroelectric facility may demonstrate that the facility does not cause an adverse impact on the instream beneficial uses by demonstrating the project will not involve stream diversion or discharge. In accordance with Public Utilities Code section 399.12.5 (d), a hydroelectric facility that is certified as RPS-eligible as of January 1, 2010, shall not lose its eligibility if the facility causes a change in the volume or timing of streamflow required by license conditions approved pursuant to the Federal Power Act (Chapter 12 [commencing with section 791a] of Title 16 of the United States Code) on or after January 1, 2010."

2.5 Hydroelectric Facilities within a One-Mile Radius of the Facility

Requirement (Form RPS-1 Section XV.25). To ensure that the facility meets the requirements specified in the RPS Eligibility Guidebook, please list all hydroelectric facilities, project, and/or units that are within a one-mile radius of the facility, regardless of size. Include the facility name, RPS ID, and nameplate capacity.

Issue: This requested information is related to the capacity requirement, to determine if there are multiple hydroelectric projects close together on the same waterway. The responsibility for providing information on other hydroelectric facilities is placed upon the applicant. Additionally, this requirement should not apply to conduit hydroelectric facilities because they do not involve stream diversion.

This can be an especially onerous request for applicants located in or near urban areas, as there may be multiple operators of unrelated conduits within the same area. An applicant may not have access to data regarding other water agencies. Because conduit hydroelectric facilities do not impact nearby facilities like an instream facility might, NLine believes its proposed solution would still provide the CEC with sufficient data to consider whether multiple facilities should be considered as one for sizing purposes.

Suggested Solution: For conduit hydroelectric facilities, this requirement should be removed or limited to only those hydroelectric facilities within one mile that are along the same pipe, ditch, flume, siphon, tunnel, canal, or other man-made conduit as the applicant's facility.

Amendment: As this information requirement is not explicitly provided in the Guidebook, NLine proposes the following amendment to the Guidebook, but separately recommends a corresponding change to Form RPS-1 to limit the data request to other hydroelectric facilities along the same conduit. NLine recommends amending Chapter 2.F as follows:

“A hydroelectric facility must meet the applicable conditions of a “project” as defined in the Glossary of Terms in this guidebook. When assessing the size of a hydroelectric facility, the Energy Commission will consider the capacity of all hydroelectric units located within a one-mile radius of the facility consistent with the definition of “project.” For a conduit hydroelectric facility, the Commission shall consider only those hydroelectric units located within a one-mile radius of the facility that are located along the same pipe, ditch, flume, siphon, tunnel, canal, or other man-made conduit as the applicant facility.”

NLine greatly appreciates the opportunity to provide the comments to the *Draft RPS Guidebook, Ninth Addition*.

Sincerely,

/s/ Matthew Swindle

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