

DOCKETED

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Memorandum

To: Commissioner David Hochschild
Renewables Lead Commissioner

Date: July 10, 2017

From: Mona Badie, Staff Counsel
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California Energy Commission
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Subject: **Docket No. 16-RPS-01 Revision to Renewables Portfolio Standard Eligibility Guidebook, Ninth Edition (Revised)**

Summary

This memo addresses the application of the California Environmental Quality Act (CEQA) to the Commission's adoption of a proposed revision to the *Renewables Portfolio Standard Eligibility Guidebook, Ninth Edition (Revised)* (hereinafter referred to as the Guidebook), as reflected in the Notice of Proposed Change to Renewables Portfolio Standard Guidelines dated June 30, 2017. The Guidebook is being changed to revise the Renewable Portfolio Standard (RPS) certification requirements for aggregated units. If adopted by the Commission, the proposed revision will be effective upon adoption, but the actual revision will not appear in the Guidebook until the next edition.

Based on a review of CEQA and the pertinent legal authority, I have concluded that the Commission's adoption of the proposed Guidebook revision is exempt from CEQA, either because the action is not a "project" under CEQA, or because the action is exempt under what is commonly referred to as the "common sense" exemption to CEQA. This is the same conclusion that was made by Staff Counsel Gabe Herrera in a Memorandum dated January 20, 2017 with regards to the proposed adoption of the *Renewables Portfolio Standard Eligibility Guidebook, Ninth Edition* as well as in a Memorandum dated April 18, 2017 I sent you regarding adoption of proposed non-substantive changes to the Guidebook which resulted in the most recent *Renewables Portfolio Standard Eligibility Guidebook, Ninth Edition (Revised)*.

Background

The Guidebook describes the eligibility requirements and administrative procedures for certifying electrical generating facilities as eligible renewable energy resources for California's RPS in accordance with Public Utilities Code, section 399.11 et seq., and Public Resources Code, section 25740 et seq. The Guidebook identifies the statutory requirements specific to each type of RPS-eligible renewable energy resource (biomass, wind, solar, geothermal, hydroelectric, landfill gas, etc.) and administrative procedures for certifying facilities for the RPS. The Guidebook also describes how the Commission tracks and verifies compliance with the RPS and includes procedures for this purpose.

The Commission first adopted the Guidebook in April 2004 and has since revised it multiple times to implement changes in law and to clarify the requirements and process for certifying facilities and verifying the generation and procurement from such facilities. These Guidebook revisions were adopted pursuant to Public Resources Code, section 25747 (a). Most recently, the Commission adopted the *Renewables Portfolio Standard Eligibility Guidebook, Ninth Edition (Revised)* on April 27, 2017.

In summary, the currently proposed revision to the Guidebook will do the following:

- Correct the provision in the *Renewables Portfolio Standard Eligibility Guidebook, Ninth Edition (Revised)* that appears to not allow aggregated units to be RPS-eligible if they do not fall within one of three specified categories appearing in Chapter 5, Section C(2)(e). The correction will be accomplished by deleting Section C(2)(e). Section C(2)(e) contains language that Commission staff has determined (based on its review of the Fourth, Fifth and Sixth Editions of the Guidebook) was inadvertently included in the Guidebook and was not intended to limit the RPS eligibility of aggregated units.

CEQA

CEQA (Public Resources Code, § 21000 et seq.) requires state agencies to consider the environmental impacts of their discretionary decisions. CEQA generally applies to “discretionary projects proposed to be carried out or approved by public agencies...” (Public Resources Code, § 21080(a)). The CEQA Guidelines (Cal. Code Regs., Title 14, Chapter 3) define a “project” to mean “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment...” (CEQA Guidelines, 14 CCR § 15378(a)). The CEQA Guidelines lists activities that may be considered a “project,” including approvals by public agencies for public works construction or related activities, contracts, grants, loans or other forms of assistance, or leases, permits, licenses, certificates, or other entitlements (CEQA Guidelines, 14 CCR § 15378(a)(1) - (3)). The CEQA Guidelines also list several activities that do not fall within the meaning of the term “project” and thus are not subject to CEQA, including a public agency’s “[c]ontinuing administrative or maintenance activities such as ... general policy and procedure making....” (CEQA Guidelines, § 15378(b)(2).)

Adoption of Revision to the Guidebook

The proposed revision is administrative in nature. As such, the Commission’s approval of the proposed revision should be characterized as a continuing administrative or maintenance activity related to general policy and procedure making, and thereby excluded from the definition of a “project” under CEQA Guidelines, 14 CCR § 15378(b)(2) and not subject to CEQA.

However, if the adoption of the proposed revision does in fact constitute a “project” under CEQA, the Commission’s action is nevertheless exempt under CEQA Guidelines, 14 CCR § 15061(b)(3), commonly referred to as the “common sense” exemption. Where there is no possibility that the activity in question may have a significant effect on the environment, the activity is exempt from CEQA under this exemption (CEQA Guidelines, 14 CCR § 15061(b)(3)). The proposed revision seeks to clarify RPS certification requirements for aggregated units so it would not have a significant effect on the environment. Additionally, the Commission has already determined the Guidebook is exempt under the common sense exemption, so revisions thereto should fall under the same analysis.

For these reasons, the Commission’s adoption of the proposed revision to the Guidebook is exempt from CEQA.