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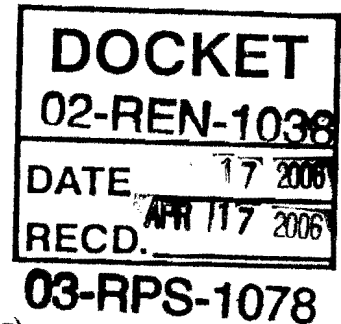
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California Energy Commission
Dockets Office, MS-4
1516 Ninth Street
Sacramento, CA 95814-5512

Dear Commissioners:



RE: Docket No. 03-RPS-1078; Docket No. 02-REN-1038 (RPS Proceeding)

San Diego Gas & Electric Company ("SDG&E") appreciates this opportunity to offer its comments concerning draft revised versions of the *New Renewable Facilities Program Guidebook* (the "New Facilities Guidebook") and the *Renewables Portfolio Standard Eligibility Guidebook* (the "Eligibility Guidebook") prepared by the Renewables Committee (the "Committee") of the California Energy Commission (the "Commission"). While SDG&E supports many of the revisions proposed by the Committee, it outlines below its concerns regarding certain aspects of the draft revised Guidebooks.

Draft New Renewable Facilities Program Guidebook

The draft New Facilities Guidebook provides that the Commission may terminate any Funding Confirmation Letter or SEP Award Agreement for "reasonable cause" and sets forth specific examples of events constituting such "reasonable cause."¹ The Commission notes, for example, that it would consider termination of a Funding Confirmation Letter or SEP Award Agreement if "[t]he funding needed to finance a SEP award is not available through the Renewable Resource Trust Fund." It further advises that a seller's failure to meet project milestones may result in termination. SDG&E submits that inclusion of these events of termination in the New Facilities Guidebook will seriously undermine the stability of the RPS program and will impair the utilities' ability to meet the 20% by 2010 objective.

In order to meet its Renewable Portfolio Standard ("RPS") goals, SDG&E must be assured of its ability to contract with renewable developers capable of offering reliable access to renewable energy resources. Accordingly, circumstances that hinder developers' ability to provide reliable access to such resources may also negatively impact the utility. SDG&E is concerned that the potential for termination of SEP funding due to events outside the control of the renewable energy developer may render it impossible for such developers to obtain financing critical to the success of their operations. The prospect of an unforeseeable elimination of the availability of SEP funds – a key funding source for some developers – would act as a powerful disincentive to potential lenders and investors. Absent the certainty that they will have access to the SEP funds awarded to them, developers may find it difficult, if not, impossible to adequately capitalize their projects. This could substantially reduce participation in the RPS program and may result in a corresponding increase in the challenge faced by the

¹ Draft New Facilities Guidebook, pp. 14-16.

utilities in meeting the 20% by 2010 goal. Accordingly, SDG&E recommends that the Committee remove this provision from the draft New Facilities Guidebook and further that the Commission endeavor to establish a means for ensuring that SEP funds awarded in Funding Confirmation Letters and/or SEP Award Agreements remain available to renewable energy developers, pursuant to the terms set forth in such Confirmation Letters and/or Award Agreements.

SDG&E is likewise concerned that inclusion of a milestone requirement in the SEP fund award will inject uncertainty into the SEP allocation process. Satisfaction of milestone requirements is an implementation issue that is appropriately monitored by the utility and the California Public Utilities Commission (the “CPUC”). Contracts between developers and utilities typically involve milestones of varying significance – major milestones, such as the commercial operation date of the project (the “COD”), and minor milestones, such as obtaining necessary licenses or permit – and differing remedies that apply depending upon the nature of the milestone. It is highly unlikely, for example, that a contract would be terminated due to the developer’s failure to obtain a permit or license by a particular date, and certainly not before the developer was afforded an opportunity to cure the failure. While contractual milestones play an important role in keeping a project on track and alerting the utility to potential problems, it is not unusual as a practical matter for milestone deadlines to slip and this slippage does not necessarily indicate imminent failure of a project. The Commission already has the right to terminate a SEP award in the event that the relevant contract is terminated. Tying termination of SEP awards to the failure to meet project milestones rather than to the status of the contract itself could result in premature SEP award termination, which would inflict serious harm on the RPS program. Moreover, as noted above, Commission oversight over contract implementation is outside the scope of its responsibilities and will merely add a third layer of review and attending bureaucracy without meaningfully increasing the odds of successful implementation of renewables projects.

In addition to its concerns regarding the termination provisions, SDG&E submits that the Committee’s proposal to require the utilities to provide certain information related to bids, as well as unredacted advice letters, is unreasonable and overbroad. The draft New Facilities Guidebook proposes that the utilities be required to provide “data including the price and expected deliveries for each bid received.”² In addition, the Commission would require detailed information for *all* bids received (not merely those for which SEP funds are requested) and aggregated data for bids below the MPR.³ As the rationale for this request, the draft New Facilities Guidebook states that the Commission must “make informed and timely decisions in evaluating SEP requests.”⁴ This reasoning implies an intent to engage in a qualitative analysis of bids received and contracts entered into by the utilities that is outside the scope of the Commission’s responsibilities under the RPS program. While the Commission is charged with the responsibility of issuing SEP awards, its consideration of bids and contracts is limited to its involvement in the utilities’ Procurement Review Groups (“PRGs”). In addition to exceeding the scope of the Commission’s responsibilities under the RPS program, the additional analysis apparently contemplated by the Commission – analysis for which no proposed standard of review has been articulated – will cause delay and uncertainty in the SEP award process, which may hamper the utilities’ efforts to achieve the 20% by 2010 goal.

The Committee’s proposal to require the utilities to file an unredacted version of the CPUC advice letter as part of the SEP fund application will also cause confusion and delay.⁵ Under the current process, notification of the SEP fund award is necessary in order to finalize the contract. Notification must therefore be received *before* the advice letter may be filed with the CPUC. The Committee’s proposed process, however,

² Draft New Facilities Guidebook, p. 4.

³ *Id* at p. 9.

⁴ *Id*.

⁵ *Id* at p. 10.

contemplates that the SEP fund application will not be considered complete until the advice letter has been submitted to the Commission. It is illogical to require as a precondition to receipt of a SEP award an action that can occur only *after* the SEP award has been granted. Thus, the unredacted advice letter filing requirement must be deleted from the application process.

With regard to confidential treatment of certain information submitted during the SEP fund application process, the draft New Facilities Guidebook advises that parties may request confidential treatment under the Commission's applicable regulations. SDG&E submits, however, that in order to expedite the handling of SEP applications and to thereby promote the success of the RPS program, the Commission should issue a blanket confidentiality designation applicable to certain types of commercially-sensitive information. SDG&E notes that the Commission's collaborative partner in the RPS program, the CPUC, is expected to issue in the near term a decision setting forth particular types of information that will be categorically afforded confidential treatment for specified periods of time.⁶ SDG&E recommends that the Commission incorporate into the New Facilities Guidebook the categorical confidentiality designations and periods of confidential treatment adopted by the CPUC.

Draft Renewables Portfolio Standard Eligibility Guidebook

The draft Eligibility Guidebook provides that "[c]ertification and pre-certification must be renewed once every two years to confirm that all certified renewable energy resources remain eligible for the RPS."⁷ SDG&E supports the Commission's aim of ensuring the continued eligibility of certified renewable energy resources, but notes that it is equally important to protect the stability of the RPS program. The success of the RPS program depends on the consistent application of program requirements. Renewable energy developers must be able to predict the conditions of RPS participation, otherwise uncertainty and the inability to predict risk will paralyze their efforts to develop a successful business plan and to obtain necessary financing. Accordingly, SDG&E recommends that the provision referenced above be revised to clarify that in the bi-annual recertification process, certified renewable energy resources will be held to the same standard of certification as was in place when they originally received certification. This clarification is critical to renewable energy developers' ability to comprehend and ensure ongoing compliance with certification requirements. The failure to include this clarification could ultimately result in the de-certification of renewable energy resources relied upon by the utilities and a corresponding set-back in the utilities' efforts to achieve the 20% by 2010 goal.

For the reasons above stated reasons, SDG&E urges the Committee to further revise the draft New Facilities Guidebook and Eligibility Guidebook in accordance with the recommendations set forth above.

Yours sincerely,

Bernie Orozco

⁶ CPUC Rulemaking 05-06-040.

⁷ Draft Eligibility Guidebook, p. 24.