

BEFORE THE CALIFORNIA ENERGY COMMISSION

11-RPS-01

DOCKET

02-REN-1038

DATE NOV 02 2011

RECD. NOV 02 2011

**In the matter of:
Implementation of Renewables
Portfolio Standard Legislation**

Docket No. 11-RPS-01

and

**Implementation of Renewables
Investment Plan Legislation**

Docket No. 02-REN-1038

**COMMENTS OF THE NORTHERN CALIFORNIA POWER AGENCY
ON THE PROPOSED CHANGES TO THE RENEWABLES PORTFOLIO STANDARD
ELIGIBILITY GUIDEBOOK AND THE OVERALL PROGRAM GUIDEBOOK FOR
THE RENEWABLE ENERGY PROGRAM**

The Northern California Power Agency¹ (NCPA) offers the following comments to the California Energy Commission (CEC or Commission) on the October 2011 Staff Draft Guidebooks: (1) *Renewable Portfolio Standard (RPS) Eligibility, Draft Staff Guidebook, Fifth Edition* (RPS Eligibility Guidebook) and (2) the *Renewable Energy Program Overall Program Guidebook, Staff Draft Guidebook, Third Edition* (Overall Program Guidebook), collectively referred to as “the RPS Guidebooks”, and the October 21, 2011 Staff Workshop.

I. INTRODUCTION

Senate Bill (SB) X1-2 makes significant changes to the state’s renewable portfolio standard (RPS) program, many of which must be implemented by the Commission. With the impending effective date of the legislation, there is a need to revise the RPS Guidebooks in order

¹ NCPA members include the cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, and Ukiah, as well as the Bay Area Rapid Transit District, Port of Oakland, and the Truckee Donner Public Utility District. NCPA’s Associate Members are the Plumas-Sierra Rural Electric Cooperative and Placer County Water Agency.

to ensure that the information provide in these documents is unambiguous, current, and consistent with the mandates specified in SBX1-2. NCPA appreciates the considerable effort that the CEC staff has put into drafting proposed revisions into the two RPS Guidebooks to address the implementation of SBX1-2, but there exists additional outstanding issues that require further clarification. In the past, only limited portions of the RPS Guidebooks were directly applicable to publicly owned utilities (POUs), despite their relevance to statewide renewable program objectives. However, the latest revisions more directly impact the POUs, and therefore it is imperative that the Guidebook documents provide definitive information regarding the matters contained therein, as well as interaction with pending regulations that also address implementation of SBX1-2.

II. COMMENTS ON PROPOSED REVISIONS

A. Scope of the RPS Guidebooks

References to SBX1-2: As a practical matter, it is important for the RPS Guidebooks to clearly set forth the scope of the matters covered by its guidance. In several instances, the RPS Eligibility Guidebook includes narrative descriptions of matters relevant only to POU enforcement, which is the subject of a separate rulemaking. Beginning on page 17, the RPS Eligibility Guidebook contains details regarding the requirements of the POU procurement plans; during the October 21 Workshop, staff noted that it is not their intent for this document to address the POU specific elements of the RPS procurement plan, but rather to address those elements that are common to POU and retail seller tracking and verification. Accordingly, rather than include an abbreviated description of the requirements for a POU procurement plan, NCPA recommends that these summations be stricken and that the RPS Eligibility Guidebook include a reference to the applicable statutory provisions. An attempt to summarize the sometimes complex statutory provisions in this document could result in conflicting or erroneous information, and serves no purpose in clarifying the role of the Commission in the verification process.

Correction of Statutory Deadlines: One example of the kind of confusion that could ensue is contained on page 17. The Guidebook states “the law requires the governing board of

each POU, no later than January 1, 2012, to adopt and implement a procurement plan . . .”. However, there is no such requirement in the statute. Pursuant to § 399.30(e), the law requires program **for enforcement** by January 1, 2012, with no deadline in § 399.30(a) regarding the timing of the adoption and implementation of the RPS procurement plan. This inadvertent reference exemplifies the misunderstandings that can ensue when the Guidebook attempts to summarize these provisions.

B. Treatment of Pre-June 1, 2010 Resources

On page 15, the RPS Eligibility Guidebook includes a discussion regarding the certification requirements for pre-June 1, 2010 resources. Without a reference to the applicable code sections, the proposed language would require that these resources meet “eligibility requirements set forth in *this guidebook*.” (p. 15, emphasis added) NCPA urges the Commission to further review this reference and what is intended by imposing such a requirement. It is important that the Guidebook correctly interpret the law, and NCPA does not believe that this statement does so, nor does it take into account the extensive legislative debate that resulted in the provisions regarding the treatment of “grandfathered” resources. When addressing this issue, it is also important for the Commission to keep in mind the goal of the author of the statute and the intent of the legislature to ensure that the considerable investments made by retail sellers and publicly owned utilities in renewable resources prior to June 2010 are acknowledged as part of the updated RPS program.

Indeed, the notion of requiring a resource to be consistent with “this guidebook” – a document that is regularly revised and subject to change – contradicts the concept of grandfathering “resources eligible under the rules *in place as of the date when the contract was executed*.” (§ 399.16(d)(1), emphasis added) NCPA urges the Commission to clarify this section of the RPS Eligibility Guidebook so that the language clearly reflects the intent and purpose of § 399.16, and ensures that the pre-June 1, 2010 resources that otherwise meet the requirements of § 339.16 are not subject to changing eligibility requirements.

C. Referral of a Violation to CARB

The Guidebook correctly notes that the CEC verifies POU compliance, as it does for retail sellers, and in the event of noncompliance by a POU, penalty authority rests with the California Air Resources Board (CARB). On page 18, the RPS Eligibility Guidebook states that the CEC determines a POU's compliance and refers the matter to CARB "for penalties." When enacting the statute, the author of SBX1-2 intended to show a clear delineation between the verification process undertaken by the CEC and the referral of a violation to CARB. Upon such referral, CARB "may impose penalties." (§ 399.30(o)) Thus, it is important for the Guidebook to acknowledge that penalties are not automatically imposed when a POU fails to meet the statutory mandate. Rather, since penalties are determined based on a wide ranging metric, it is conceivable that there are instances when monetary penalties are not appropriate. Accordingly, NCPA believe that the Guidebook should mention that the referral to CARB is to determine whether or not the imposition of penalties is warranted.²

D. Flexibility in Treatment of WREGIS Approval Date

The Guidebook proposes that facilities serving POU's must be registered with, and approved by, WREGIS by July 1, 2012. (RPS Eligibility Guidebook, p. 21) NCPA believes that there are instances where this requirement may not be feasible. NCPA urges greater flexibility with regard to registering resources with WREGIS, as the WREGIS approval process may be delayed for reasons that are outside the control of the POU. Accordingly, the RPS Eligibility Guidebook should be revised to clarify that RECs will be eligible for the RPS program based on the date the application is submitted to WREGIS by the POU. There is no reason that a paperwork or ministerial delay outside the control of the POU should adversely impact the ability of a POU to utilize RECs from otherwise eligible renewable resources.

This clarification should also be addressed in the context of the *RPS Tracking, Reporting, and Verification* discussed in Section IV. Particularly, on page 102, where the Guidebook states: "beginning in July 2012, the Energy Commission will only accept WREGIS Compliance Reports from POU's. Procurement claims for generation before July 2012 may be reported using the ITS

² NCPA notes that on page 103, the proposed revisions properly references a referral of a notice of violation "to the [CARB] for possible penalties."

for data that are not available in WREGIS.” This section should be modified to allow ITS reporting for all procurement claims associated with resources registration pending with WREGIS.

E. Biomethane

The Guidebook highlights the discussion on biomethane, but notes that this issue will be further reviewed in a subsequent version of the Guidebook revisions. As was evidenced by the number of comments and the amount of feedback the CEC received not only in response to the September 20, 2011 Biomethane Workshop, but during the October 21 Workshop as well, this is an issue of significant importance to many affected stakeholders. NCPA urges the CEC to retain existing requirements as they are set forth in the current Guidebook. It is important for the CEC to address this issue as soon as possible and for certification of resources to continue under the current version of the eligibility Guidebook.

Furthermore, NCPA urges the Commission to thoroughly review the applicability of these resources in the context of the state’s overall greenhouse gas reduction (GHG) and renewable energy strategies and objectives. Electric generation fueled by pipeline biomethane is properly eligible to count towards a retail seller’s or POU’s portfolio content category one requirements. The use of biomethane and biofuel resources provides value and benefits in several different respects, including the fact that they are cost-effective resources that supplement and replace fossil-fuels in electric generation and do so by utilizing existing waste fuels. Accordingly, rather than be restricted by unrealistic notions of tracking actual molecules of gas, these resources should continue to be recognized as eligible, and additional development should be encouraged. Any revisions to the RPS Guidebooks that would exclude the ability of entities to count as procurement content category 1 electric generation resources that are derived from biomethane and biofuel combustion will adversely impact the state’s renewable energy and GHG objectives.

F. Consolidated Reports

Avoid Unnecessary Reporting and Workshops: During the October 21 Workshop and beginning on page 103 of the proposed revisions to the RPS Eligibility Guidebook, there is a discussion regarding the Commission's current intent "to conduct a verification process for each retail seller and POU for each intervening year during the compliance periods established by SBX1-2." This section goes on to discuss the process, which will include a public workshop "to present the Energy Commission's findings and discuss outstanding issues." NCPA has questions regarding the scope of this "public workshop" and the role it is intended to play in the RPS tracking and verification process. While annual verifications will facilitate the CEC in making its final determination of compliance at the end of the compliance period, since SBX1-2 does not require any specific RPS procurement targets during the intervening years (2014 and 2015 for the second compliance period, and 2017, 2018, and 2019 for the third compliance period), it is important to remain cognizant of the fact that any interim verification process is not for purposes of determining compliance with SBX1-2, but rather would merely be a step in the overall process of gathering information that will be used as part of the total compliance period calculation. NCPA urges the Commission to avoid imposing unnecessary administrative burdens on retail sellers and the POUs associated with these interim years, and ensure that the "public workshops" are not presented as a forum for making judgments regarding RPS procurement strategies.

Consolidate Reporting: In the context of SBX1-2 implementation discussions, the Commission Staff and stakeholders alike have agreed that it is important to avoid redundant or duplicative reports. NCPA urges the Commission to keep this objective in mind when refining the reporting requirements necessary to ensure compliance with SBX1-2. There is no reason for the preparation or submittal of duplicative documents, and in large part, the information mandated under SBX1-2 is already being provided to the CEC in some form. Consolidation and streamlining of this process is the best way to promote efficiencies for all parties involved, including retail sellers, POUs, and the Commission.

III. CONCLUSION

The Guidebooks are an important element of the RPS program, and revisions are both necessary and warranted. NCPA appreciates the opportunity to provide these comments to CARB regarding the proposed revisions to the RPS Guidebooks, and welcomes the opportunity to discuss any of the issues addressed herein directly with the CEC. If you have any questions, please do not hesitate to contact the undersigned or Scott Tomashefsky at 916-781-4291 or scott.tomashefsky@ncpa.com.

Dated this 2nd day of November, 2011.

Respectfully submitted,



C. Susie Berlin
MCCARTHY & BERLIN, LLP
100 W. San Fernando Street, Suite 501
San Jose, CA 95113
Phone: 408-288-2080
Fax: 408-288-2085
Email: sberlin@mccarthylaw.com

Attorneys for the:
NORTHERN CALIFORNIA POWER AGENCY