

September 20, 2013

California Energy Commission
Dockets Office, MS-4
Re: Docket Nos. 11-RPS-01
RPS Proceeding
1516 Ninth Street
Sacramento, CA 95814-5512



RE: Staff Workshop on Station Service in the RPS

The Independent Energy Producers Association (IEP) appreciates the opportunity to participate in and comment on the staff workshop regarding the treatment of station service in the renewables portfolio standard program (September 10, 2013).¹

As addressed in the staff presentation, the key question is “what is station service”? As the staff presentation and workshop comments made abundantly clear, the definitions of station service are abundant. Each definition may be appropriate in an application for which they were designed. Most, however, are not appropriate in the context of the renewable portfolio standard (RPS) program.

Moreover, the workshop discussion made it abundantly clear that the process of “slicing/dicing” a definition of station service as proposed by staff (and WREGIS) in the context of each of the eligible renewable resource technologies serving the California RPS is very messy, extremely complicated, a tremendous resource sink, with little if any incremental value. IEP recommends avoiding this path. Rather, we urge the Commission to adopt in its RPS Guidebook the FERC definition of station service for the following reasons:

- (a) Provides a measure of regulatory certainty needed to develop RPS eligible resources; and
- (b) Minimizes commercial uncertainty.

Furthermore, IEP urges the Commission to use its good offices to convince WREGIS to return to the earlier definition of station service that avoided the controversy now before us. This can be accomplished by WREGIS (and the Program Administrators as needed) eliminating the new, expanded definition of station service as represented in the Program Administrator Advice Letter dated May 2012.

IEP addresses these matters in more detail below.

¹ Previously, in response to the Staff Draft Guidebook, IEP provided comments related to RPS Tracking, Reporting, and Verification; Station Service; Incremental Generation; Energy Storage; Biomethane Treatment; and, we proposed a model for the CEC to apply to provide guidance to RPS Buyers and/or Sellers re Commercial Transactions and Procurement Content Categories, i.e., a model based on the IRP “private letter ruling” mechanism. To the extent appropriate, we include those comments here by reference.

1. Retaining the FERC Definition of Station Service Provides a Needed Measure of Regulatory Certainty

As IEP noted in its prior comments, the FERC and appellate court rulings have established a public record and a measure of regulatory consistency that helps guide renewable development and operations. Applying the FERC definition of station service helps ensure regulatory consistency between the state and federal arenas. It also will help ensure consistent treatment across all eligible renewable technologies in the context of REC creation, accounting, and verification.

To be clear, IEP is not aware of any controversy related to the treatment of station service prior to WREGIS modifying its policy in the spring of 2012. It was the action of WREGIS that changed the status quo, upset development, and engendered the unnecessary uncertainty facing developers today. The FERC definition provides a clear, acceptable standard that facilitates the investment in and development of eligible renewable resources. Specifically, FERC defines station power to be the “electric energy used for the heating, lighting, air-conditioning, and office equipment needs of the buildings on a generating facility’s site, and for operating the electric equipment that is on the generating facility’s site.”² Energy consumption outside this definition is not treated as station power. While the FERC definition is used to distinguish between wholesale and resale transactions, the common definition used throughout the country also helps in the context of developing resources as it provides certainty and consistency as to the treatment of the power generated from the resource irrespective of its geographical location.

On the other hand, moving to a new definition of station service, as WREGIS proposes, creates problems intentional or otherwise. Were the Commission to pursue the approach essentially proposed by staff (and WREGIS), the Commission will be embracing a “we know it when we see it” approach to REC creation and REC counting. In reality, the regulatory oversight and intrusion necessary to totally eliminate so-called “brown power” from the counting of RPS renewables is unnecessary and probably unachievable. However, as evidenced at the Workshop, if the Commission chooses this path, the demand for comparable treatment across RPS facilities and, indeed, across renewable technologies will demand a level of resource commitment and attention and will not be warranted by the perceived gains in purifying REC counting.

2. Minimize Commercial Uncertainty

Adopting the FERC definition of station service is helpful in a number of ways. First, because the FERC definition is relatively “stable” from a regulatory perspective in its application, the use of the FERC definition of station service enables the developer of the RPS resource to more effectively plan revenue from the sales of energy, capacity, and renewable attributes. This helps facilitate the financing of renewable projects needed to meet the California RPS at a lower cost. Secondly, use of the FERC definition of station service avoids undermining the integrity of existing RPS sales agreements. Hundreds of power purchase agreements (“PPAs”) have been developed and financed to help load-servings (“LSEs”) meet their RPS obligations, and these agreements include the sale of energy, capacity, and/or environmental attributes or RECs. By modifying the definition of station service, the Commission risks

² PJM Interconnection, LLC, 94 FERC 61,251 (2001), at p. 21.

undermining the terms and conditions of the original contract as well as the balance of benefits commonly allocated between Buyer and Seller entering into such contracts. This harms the developer who premised the RPS project on assumptions of REC creation; yet, this also risks harming the LSEs who made assumptions regarding RPS compliance/achievement based on the original sales agreement and the assumptions of REC creation associated with facility operations and production.³

3. Commission Should Lead WREGIS To IEP's Proposed Solution

As noted in IEP's prior comment to the Commission, WREGIS should not be a policy-setting entity. At its inception, WREGIS was designed to be an accounting/tracking entity available to support the states within the WECC (and potentially beyond), i.e. essentially providing an administrative function related to tracking and verification. The value of WREGIS lay in creating an instrument (i.e. a WREGIS Certificate) that would contain sufficient information to enable each and every state to rely on the information contained within the WREGIS Certificate to determine whether a MWh of production from a generating facility could/would count against that state's own renewable energy compliance obligation.

What was not contemplated was that WREGIS would establish itself as the policy-setting body operating in the stead of the individual states. IEP believes that WREGIS acted in this manner when it developed and applied a definition/standard for station service that differs from the FERC definition commonly applied throughout the country. By prohibiting the creation of a WREGIS Certificate in certain circumstances, e.g., by expanding the definition of station service and then essentially netting station service power against metered output, WREGIS acted in a manner that precludes a state from making its own determination as to the eligibility of that power for purposes of its own renewable energy compliance obligation.

Enabling WREGIS to serve this role raises a number of concerns. First, WREGIS is not subject to common rules of transparency and ordered decision-making that govern state regulatory agencies. Equally important, deference to the WREGIS definition of station power raises the specter of arbitrary, unequal treatment across renewable technologies based on their operational configurations and fuel demands. Finally, deference to WREGIS definition of station service raises concerns regarding the potential for arbitrary and capricious treatment of existing Qualifying Facilities (QF) once their existing standard offer QF contracts are terminated. Existing QF contracts, unless otherwise amended, do not convey environmental attributes, and as a result they are not required to participate in WREGIS; yet, their production is counted in full against a utility's RPS obligation in California. Once these existing contracts terminate, assuming application of the current WREGIS definition of station power, then these resources may see a significant decline in their ability to produce WREGIS certificates due to their operational configuration rather than any change in their operational behavior.

IEP thanks the CEC for the opportunity to comment on the issues raised in the Staff Workshop on September 10, 2013

³ In light of the impact on existing contracts from changes in the definition of station service, the Commission should consider at a minimum how best to maintain the balance of risk and rewards in the existing contracts, including the potential for grandfathering of such contracts and/or consideration of de minimus levels of allowable station service (presuming no change in the current WREGIS definition) that would not be subject to netting.

Respectfully submitted,

A handwritten signature in black ink that reads "Steven Kelly". The signature is written in a cursive style with a large, stylized "K" and a long, sweeping underline.

Steven Kelly
Policy Director