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Additional submitted attachment is included below.

STATE OF CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:

Developing Guidelines for the 50 Percent
Renewables Portfolio Standard

Docket No. 16-RPS-01

**COMMENTS OF THE
CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION ON
DRAFT RENEWABLES PORTFOLIO STANDARD ELIGIBILITY GUIDEBOOK,
NINTH EDITION**

I. INTRODUCTION

The California Municipal Utilities Association (“CMUA”) appreciates the opportunity to provide comments to the California Energy Commission (“Commission”) on the *Draft Renewables Portfolio Standard Eligibility Guidebook, Ninth Edition* (“Draft Guidebook”), issued on July 11, 2016. Overall, CMUA supports the proposed revisions to the Guidebook and commends staff for their work in developing these proposals. CMUA strongly supports the Commission’s transition to the RPS Online System, and believes that this new structure can serve as model for other reporting requirements.

In order to achieve SB 350’s mandate of a 50 percent renewables portfolio standard (“RPS”) by 2030, while continuing to provide safe, reliable, and cost-effective electric service to our local communities, California must pursue a broad portfolio of renewable generation. Within the statutory definitions, the Commission should seek to ensure that all eligible technology types can reasonably obtain certification without unnecessary restrictions or limitations. The Commission should also use its role to study and advocate for the expansion of RPS-eligibility for new technologies.

In these comments, CMUA recommends a careful roll-out of the RPS Online System, with appropriate protections in case of delay. CMUA also recommends that the Guidebook be revised to (1) provide greater clarity on the determination of eligibility date; (2) provide more specificity on the types of energy storage use that requires an amendment to a certification; and (3) eliminate the Federal Energy Regulatory Commission (“FERC”) approval requirement for using a pro rata approach for determining the incremental generation of a facility. Finally, CMUA notes that the RPS Eligibility Guidebook is a large and complex document. In order to allow stakeholders sufficient time to review, the Commission should provide longer comment periods for revisions to the Guidebook.

II. COMMENTS ON THE DRAFT GUIDEBOOK

A. RPS Online System

1. The Commission’s Roll-Out of the RPS Online System Should Be Careful and Should Include Protections In Case of Unanticipated Delays.

CMUA strongly supports the Commission’s efforts to develop the RPS Online System. As CMUA described in previous comments, the new online system will play a critical role in the RPS program, and any delays or errors in this system could significantly impact the RPS obligations of POUs and retail sellers as well as the renewable developers with contractual obligations to POUs and retail sellers. Because of these consequences, CMUA recommends a careful, deliberate, and transparent process for rolling out the new system.

Further, it is critical that the transition to the new system not occur until it is fully functional. Therefore, the transition should not occur based on an artificial deadline, but should only be triggered when testing has demonstrated that the system is fully operational. If

additional time is needed to complete the system or to ensure the functionality of any part of the system, the Commission should be prepared to delay the rollout.

The Draft Guidebook states:

Effective October 1, 2016, the Energy Commission will no longer accept applications for certification including supplemental forms using the forms in the eighth edition of the RPS Eligibility Guidebook. All certification applications must be submitted in the RPS Online System when this guidebook takes effect.¹

CMUA understands that there will be a limited period of downtime after October 1, 2016, before the effective date of the new RPS Eligibility Guidebook, during which no applications may be submitted. CMUA recognizes the need for this downtime in order to allow the transition to take place. However, in light of the high level of importance of obtaining an RPS certification, CMUA recommends that some protection be put in place in case the RPS Online System is not functioning properly on the anticipated date for the transition or if the effective date of the Guidebook is delayed. One option would be to allow applicants to use the existing forms if for any reason the RPS Online System is not functioning properly by October 15, 2016.

CMUA also notes that the first opportunity to test the RPS Online System for submitting Compliance Reports will be the POUs' filing covering all of Compliance Period 2. Compliance Period filings are not only very important, but also very complex with substantial data entry requirements. CMUA recommends that the Commission consider options to ensure that this first filing functions smoothly. For example, the Commission may consider allowing POUs to use the existing forms for this first filing or include a functionality in the RPS Online System where filling out the online form populates a form that can be saved to the user's computer.

¹ Draft Guidebook at 37.

2. The RPS Online System Manual Should Be a Purely Technical Document Developed in an Open and Transparent Process.

The Draft Guidebook states that an RPS Online System Manual will “provide details about the RPS Online System, including instructions on setting up an account, creating and submitting an application, and completing and submitting the annual and compliance reports.”² This manual will be developed outside of the Guidebook process and will be updated periodically.³

The Commission must ensure that any substantive information regarding requirements for certification, verification, or compliance reporting be included in the Guidebook and not solely in the manual. This is because the RPS Online System Manual will not be subject to the same process requirements as the Guidebook, such as approval by the Commission. The Commission must also be careful to avoid conflict or confusion between the content in RPS Online System Manual and content in the Guidebook. Therefore, the Guidebook should clarify that the Manual is a purely technical document with appropriate instructional content. To help ensure this limitation, the Guidebook should provide greater detail on the process for developing and updating the Manual, which should include an opportunity for input from stakeholders.

B. Revisions to the Guidebook Supported by CMUA

1. CMUA Supports Extending the Time Limit For Submitting an Application For Certification from 90 Days to 180 Days From the COD.

CMUA supports keeping a hard deadline for submitting an application for certification after the commercial operations date (“COD”) to keep the earlier eligibility date. A firm deadline is valuable because it puts a clear obligation on the developers/operators of renewable facilities to complete the certification process in a timely manner. Allowing too much delay

² Draft Guidebook at 37.

³ *Id.*

between the COD and initiating the certification process only increases the amount of generation that will have an uncertain RPS eligibility. If an applicant is ultimately not able to obtain a certification status, the consequences could be severe for any POU or retail seller depending on that generation for RPS compliance.

CMUA understands that a 90-day limit was challenging for many applicants to meet. The proposed 180-day time limit should address these problems, while maintaining the same basic structure. CMUA supports this proposal as a reasonable compromise of the various interests involved.

2. CMUA Supports Keeping the 24-Month Timeline to Request Retroactive REC Creation.

CMUA opposed the previous proposal to reduce the time allowed to 12 months for requesting the creation of retroactive RECs for generation that precedes the date of request. This proposal would have been challenging to meet because the need to create such RECs may not be discovered for some time, and there are significant amounts of time and resources necessary to comply with the current Guidebook requirements for a retroactive REC creation request. CMUA supports the Draft Guidebook maintaining the 24-month timeline.

3. CMUA Supports the “Other WREGIS Adjustment” as a Replacement for the Interim Tracking System Process.

CMUA and a broad group of stakeholders have consistently supported the retention of the Interim Tracking System (“ITS”) as part of the Guidebook. The ITS provided the necessary flexibility to address unanticipated circumstances where WREGIS cannot be used to track otherwise eligible RECs. The new “Other WREGIS Adjustment” process appears to maintain this flexibility while protecting the integrity of the Commission’s verification program. CMUA supports the addition of the “Other WREGIS Adjustments” process as a vital and important tool.

4. CMUA Supports the Removal of the 30-Day Limit on the Extension of Reporting Due Dates.

While the current Guidebook allows the Commission's Executive Director to extend the due date for any of the reporting deadlines in the Guidebook, this extension is limited to 30 days. While 30 days is likely typically sufficient, there may be unique circumstances that necessitate a greater extension. Therefore, CMUA supports the proposal in the Draft Guidebook to remove the 30-day limit, and leave the length of the extension within the discretion of the Executive Director.

5. CMUA Supports the Proposals to Increase the Time Limit for Submitting an Amended Application from 90 Days to 180 Days of the Date of a Change to the Information Previously Submitted to the Commission.

Consistent with the proposed changes for submitting an application for certification, the Draft Guidebook also proposes to extend the time limit for submitting an amended application. This time limit is similarly extended from 90 days to 180 days. Failure to submit an amended application within the specified deadline can have serious consequences, including loss of RPS eligibility. In light of these severe consequences, it is important to ensure that the specified time limit is reasonable. CMUA supports the extension of the time limit that an applicant must submit an amended application.

C. Recommended Changes to the Guidebook

1. The Commission Should Clarify and Revise the Eligibility Date for Precertifications.

The Draft Guidebook provides new language on the eligibility date that is provided for both applications for precertification and certification.⁴ For a precertification, the Draft Guidebook proposes to set the eligibility date as the date that the application for precertification

⁴ Draft Guidebook at 46-47.

is received, “provided that all the eligibility requirements are met.” It is unclear what “eligibility requirements” would need to be met to get this earlier eligibility date. Applications for precertification are typically submitted well in advance of the COD, meaning that many of the eligibility requirements will likely be impossible to demonstrate. In contrast, for applications for certification, the Draft Guidebook sets the eligibility date as the “WREGIS eligibility date” if certain specified requirements are met and if the application for certification is submitted within 180 days of the COD. This seems to be a reasonable approach and avoids the potential for confusion associated with the current precertification proposal. The Commission may be able to provide greater clarity if the precertification language was more closely aligned with the certification language.

An additional value that precertification could provide over other certification types would be increasing the certainty that precertification provides. Increasing this certainty can assist projects in gaining financing. One key mechanism for achieving this goal would be to apply the requirements of the RPS Eligibility Guidebook in place at the time the application for *precertification* is submitted to the Commission as long as the project does not substantially differ from the project described in the application for precertification.

2. The Commission Should Clarify When an Amended Application Is Required for Energy Storage Activity.

Applicants must submit an amended application for certification if any of the information in the original application changes. The amended application is typically evaluated under the Guidebook in place at the time that the original application was submitted. However, certain changes are deemed significant enough to merit review under the Guidebook in place at the time the amended application is submitted. The Draft Guidebook adds “the Use of Energy Storage” as a new change that trigger review under the more current Guidebook.

The Commission should provide a clearer definition on the types of energy storage use that trigger both this requirement and any requirement to submit an amended application. It is likely that energy storage applications will commonly be sited at locations with existing renewable generation facilities. For example, a battery storage unit could be located on the same property as a solar project. However, this should not automatically trigger a requirement to amend the renewable project's application or cause the project to be reviewed under a new Guidebook. The current Guidebook permits but *does not require* an applicant to treat energy storage as an enhancement or addition to a renewable facility if the energy storage device is integrated into the renewable facility or directly connected behind the same meter as the facility. Therefore, the Commission should not *require* an applicant to file an amended application simply because energy storage is added. At a minimum, the Commission should clarify that an amended application is only required if the energy storage is integrated with or directly connected behind the meter of the renewable project.

3. The Commission Should Allow Broader Use of the Pro Rata Approach for Measuring Incremental Generation.

Public Utilities Code section 399.12.5 provides that the incremental generation from upgrading a hydroelectric facility can be RPS-eligible, if certain requirements are met. The Draft Guidebook, similar to the current Guidebook, provides three different methods to calculate the amount of incremental RPS-eligible generation. The first method is the Direct Measurement Method, which is unlikely to be used for an incremental hydroelectric facility. The second method is the Calculated Measurement Method, which uses 20 years of historical generation⁵ to

⁵ The 20-year baseline excludes the time the facility was under reconstruction or modification as well as when the facility was undergoing "major maintenance or economic events" that reduced generation more than 25 percent. Thus, more than 20 years of historical data may be required.

calculate a baseline, generation above which is RPS-eligible.⁶ The third approach is the “Rated Facility Improvement” or pro rata method, which uses an engineering approach of comparing electric generation at various water flow levels before and after the upgrade to determine the amount of incremental RPS-eligible generation.

Although the “Rated Facility Improvement” approach appears both simpler and more accurate than the historical baseline approach, POUs are unable to use this method. This is because the Draft Guidebook requires that the following condition be met:

[t]he proposed pro rata approach has been approved by FERC under the FERC Renewable Energy Production Tax Credit, pursuant to the Energy Policy Act (2005) as evidenced by an application complying with FERC’s published guidance document and a FERC Order Certifying Incremental Hydropower Generation.⁷

The use of the Rated Facility Improvement method was first proposed by Pacific Gas and Electric (“PG&E”) at the Commission’s January 28, 2014 workshop on the RPS Eligibility Guidebook. In response to PG&E’s proposal, the CMUA submitted comments noting that requiring FERC certification or approval under the FERC Renewable Energy Production Tax Credit would exclude the use of this method by POUs that are either not subject to FERC regulation or ineligible for the production tax credit.

Since POUs are unable to take advantage of private financing and the use of production tax credits, they are unable to use the pro rata methodology to determine their incremental RPS-eligible generation. This imposes an unwarranted criterion of having RPS-eligibility for a resource determined by how the project was financed, rather than being based on the underlying technology used to generate the RPS-eligible power. This limitation unfairly treats POUs differently.

⁶ Draft Guidebook at 40.

⁷ Draft Guidebook at 41.

Additionally, even the investor-owned utilities are disadvantaged by this language as it exposes them to the vagaries of Congressional reauthorization of the production tax credit. The tax credit for incremental hydroelectric facilities, for example, expired on December 31, 2013, was renewed in December, 2015 retroactive to January 1, 2015, and is set to expire at the end of 2016.⁸ Thus, for most of the time that the Eighth Edition of the Guidebook was in effect, and almost as soon as the Ninth Edition is adopted, the pro rata methodology may be unavailable to both the investor owned utilities and the POU's.

An easy solution to this problem is to allow applicants (both investor- and publicly-owned utilities) to utilize the FERC methodology without requiring FERC approval. Applicants would have to meet the same criteria contained in FERC's published guidance document for determining the amount of incremental upgrades and then provide that information to the Commission for review and approval.

III. CONCLUSION

CMUA appreciates the opportunity to provide comments on the Draft Guidebook.

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Respectfully submitted,



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⁸ See, e.g., the U.S. Department of Energy's summation of the Consolidated Appropriations Act, 2016 at <http://energy.gov/savings/renewable-electricity-production-tax-credit-ptc>.