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COMMISSION

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NEW RENEWABLE FACILITIES PROGRAM

DRAFT GUIDEBOOK

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Arnold Schwarzenegger, *Governor*

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These guidelines were formally adopted by the California Energy Commission on February 19, 2003, pursuant to Public Utilities Code Section 383.5, Subdivision (h). These guidelines were subsequently revised and formally adopted by the California Energy Commission pursuant to Public Utilities Code Section 383.5, Subdivision (h), and Public Resources Code Section 25747, Subdivision (a), on April 21, 2004, May 19, 2004 and April XX _____, 2006.

The requirements in this guidebook are based on applicable law, the *Renewables Portfolio Standard Decision on Phase 1 Implementation Issues* (publication number 500-03-023F), the *Renewables Portfolio Standard Decision on Phase 2 Implementation Issues* (publication number 500-03-049F), staff analysis, advice from the Energy Commission's technical support contractor, and public input.

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Introduction

The California Energy Commission developed this *New Renewable Facilities Program Guidebook* pursuant to Senate Bill 1038 (Sher), Chapter 515, Statutes of 2002,¹ and Senate Bill 1078 (Sher), Chapter 516, Statutes of 2002.² The guidebook describes the requirements to qualify for and receive production incentives, referred to as supplemental energy payments (SEPs), from the New Renewable Facilities Program (NRFP) element of the Energy Commission's Renewable Energy Program.

SB 1078 directs the Energy Commission to "allocate and award supplemental energy payments" to "eligible renewable energy resources to cover above-market costs of renewable energy." The California Public Utilities Commission (CPUC), in consultation with the Energy Commission, will determine what constitutes these above-market costs by establishing a market price referent.

The Energy Commission will award SEPs to eligible renewable energy facilities through the NRFP, which is currently allocated approximately \$69.525 million by SB 1038.

SEPs will be available to cover the appropriate above-market costs of renewable resources selected by retail sellers to fulfill their Renewables Portfolio Standard (RPS) obligations. For the purposes of this guidebook, "retail sellers" refers to Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric Company (SDG&E), and Southern California Edison Company (SCE). These entities are also referred to as "electrical corporations" as defined in the glossary included in the *Overall Program Guidebook for the Renewable Energy Program* (*Overall Program Guidebook*).

SB 1038 contains the following specific directions for awarding SEPs. The Energy Commission:

- Shall make payments for ten years or for the length of the contract with the electrical corporation if it is of a lesser duration.
- Shall reduce or terminate SEPs for facilities that either fail to commence or maintain operations in accordance with contractual obligations or that fail to meet eligibility requirements.
- Shall manage the funds in an equitable manner so that retail sellers may meet their RPS obligations.

¹ The pertinent provisions of SB 1038 were formerly codified in Public Utilities Code Sections 383.5 and 445, but are now codified in Public Resources Code Sections 25740 through 25751 as a result of Senate Bill 183 (Sher), Chapter 666, Statutes of 2003, Section 2.

² The pertinent provisions of SB 1078 are codified in Public Utilities Code section 399.11 through 399.15. This law was subsequently amended to add sections 399.16 and 399.17 pursuant to Senate Bill 67 (Bowen), Chapter 731, Statutes of 2003, and Assembly Bill 200 (Leslie), Chapter 50, Statutes of 2005, respectively.

- May establish payment caps.
- May require an applicant competing for funding to post a forfeitable bid bond or other financial guaranty of the applicant's good faith intent to move forward with the facility expeditiously.
- May provide preference to facilities that provide tangible, demonstrable benefits to communities with a plurality of minority or low-income populations.

SB 1038 further states that facilities may NOT receive SEPs if the electricity produced is any of the following:

- Sold under an existing long-term contract with an existing in-state electrical corporation if the contract includes fixed energy or capacity payments.
- Used on-site or sold to customers in a manner that excludes competitive transition charge payments, or is otherwise excluded from competitive transition charge payments.
- Produced by a facility owned by an electrical corporation or a local publicly owned electric utility.

Related Publications

The Energy Commission has adopted other guidebooks to address the requirements for receiving funding from other elements of the Renewable Energy Program, as well as guidelines governing the overall administration of the program. The *Overall Program Guidebook* describes how the Renewable Energy Program will be administered and includes information on requirements that apply to all program elements of the Renewable Energy Program.

In addition, the Energy Commission has adopted guidelines governing the eligibility and certification of renewable energy facilities under the RPS. These guidelines are set forth in the *Renewables Portfolio Standard Eligibility Guidebook* describing the Energy Commission's eligibility guidelines and certification process, including criteria for SEP eligibility. The guidebooks are available online at [www.energy.ca.gov/portfolio/documents/index.html].

To qualify for SEPs under the NRFP, an applicant must satisfy the requirements contained in this *New Renewable Facilities Program Guidebook*, the *Overall Program Guidebook*, and the *Renewables Portfolio Standard Eligibility Guidebook*.

The Energy Commission also provides production incentive payments to eligible existing renewable resources that are not eligible for SEPs but may be eligible for the RPS. For more information, please refer to the *Existing Renewable Facilities Program Guidebook*.

Guidebook Organization

This guidebook is organized as follows:

1. Introduction
2. Program Overview
3. Eligibility
4. Prevailing Wage Requirements
5. Multiple Awards
6. Award Determination
7. Eligible Generation
8. Payment Terms
9. Forms and Samples

Program Overview

The NRFP is intended to foster the development of new in-state renewable facilities and secure for California the environmental, economic, and reliability benefits these facilities will provide. Towards this end, the NRFP provides funding to eligible in-state renewable facilities. It also provides funding to eligible out-of-state renewable facilities but only under certain conditions as specified in the *Renewables Portfolio Standard Eligibility Guidebook*.

The NRFP provides grant funding in the form of production incentives, referred to as SEPs, to eligible renewable facilities for each kilowatt-hour of eligible electricity they generate. To qualify for funding, applicants must show that their proposed renewable facility meets a number of requirements as specified in Public Resources Code Section 25743. The *Renewables Portfolio Standard Eligibility Guidebook* provides more information on eligibility criteria.

First, these facilities must be certified by the Energy Commission as an eligible renewable energy resource for purposes of meeting the state's Renewables Portfolio Standard. Second, the facilities must begin commercial operations or be repowered on or after January 1, 2002, or such later date as determined by the Energy Commission. Finally, the facilities must not be owned by a retail seller or local publicly owned electric utility, and the electricity generated must not be sold under certain long-term contracts with an in-state retail seller, used on-site, or sold in a manner avoiding competitive transition charge payments.

Applicants for eligible renewable facilities must compete for NRFP funding by participating in competitive RPS solicitations held by PG&E, SCE and SDG&E. Applicants who are selected by these utilities as winning bidders under the solicitations may be awarded power purchase contracts to supply power. Any contracts proposed by the utilities are subject to CPUC approval.

The contracts will be based in part on the energy price bid by the applicants in the solicitations, measured in cents per kilowatt-hour. If the energy price bid is above a benchmark price, or market price referent (MPR), established by the CPUC, then the bidder may be eligible to receive SEPs from the NRFP. SEPs are calculated based on the difference between the contract price and the MPR, up to any Energy Commission-established caps. SEPs are to be paid for the lesser of ten years or the length of the utility contract, with a further restriction that no SEPs will be made for contracts with terms of less than three years.

Contract negotiations occur on a case-by-case basis, so the Energy Commission is likely to receive SEP requests one at a time rather than collectively. However, awarding SEPs on a first-come, first-served basis without information on the potential demand for SEPs may result in inefficient use of public funds. Consequently, PG&E, SCE, and SDG&E must provide the Energy Commission with data to inform policy makers about the potential demand for SEP funds before the Energy Commission will consider awarding SEPs to winning bidders from these retail sellers' RPS solicitations. Within 30 days of the date that the CPUC adopts the MPR, each retail seller must provide data including the price and expected deliveries for each bid received. Additionally, the Energy Commission may require that each retail seller provide updated information for all bids on its short list to support the Energy Commission's analysis of the potential SEP demand. The Energy Commission will consider applications to hold the above mentioned data confidential pursuant to its regulations for confidential designation, California Code of Regulations, Title 20, Section 2501, et seq.

After a Seller representing an eligible new or repowered renewable facility executes a contract through an RPS solicitation at a price higher than the MPR, the Seller may apply for SEPs from the Energy Commission. If the contract is priced at or below the MPR, then the contract does not qualify for SEPs. When the retail seller files an advice letter to the CPUC requesting approval of the contract, the advice letter will identify whether or not the Seller is seeking SEPs.

If the contract requires SEPs, then the Seller should apply to the Energy Commission for SEP funding, and the retail seller must provide supplemental information to the Energy Commission regarding the Seller's application. The Energy Commission will review the application to determine whether the facility qualifies for SEPs, the amount of SEPs the contract qualifies for, and whether a cap on available SEPs is necessary. The Energy Commission will send the Seller, retail seller, and CPUC a Funding Confirmation Letter specifying the total amount of SEPs the Energy Commission anticipates awarding to the applicant. If the Funding Confirmation Letter specifies a lesser amount of SEPs than was requested by the Seller, then the retail seller and the Seller have an opportunity to renegotiate and restructure their contract terms based on SEP availability.

When the Energy Commission issues a Funding Confirmation Letter, the Energy Commission will disclose information on its Web site identifying the name of the Seller, the procuring retail seller, and the total anticipated SEP award amount.

Once the contract is approved and the facility completes any required environmental review for the renewable facility under the National Environmental Policy Act and/or the California Environmental Quality Act, the Energy Commission may enter into a grant agreement with the Seller. This grant agreement is referred to as a “Supplemental Energy Payment Award Agreement.” The SEP Award Agreement will be considered for adoption by the Energy Commission at a Business Meeting and once adopted will be made publicly available. Once the renewable facilities are constructed and commence commercial operations, the applicants may submit monthly invoices to the Energy Commission to begin receiving SEPs under their NRFP grants.

Eligibility

A checklist for SEP eligibility is shown below, followed by a description of each item.

- Facility is certified/pre-certified as an eligible renewable energy resource by the Energy Commission.

To be eligible for SEPs through a Funding Confirmation Letter, a facility must be either pre-certified or certified by the Energy Commission as an eligible renewable resource qualifying for the RPS and for SEPs. However, to be awarded an SEP Award Agreement, the facility must be certified as eligible for the RPS and SEPs. The certification process is described in the *Renewables Portfolio Standard Eligibility Guidebook*.

Only new or repowered facilities as defined in the *Renewables Portfolio Standard Eligibility Guidebook* may be eligible for SEPs. Existing facilities may be eligible to receive production incentive payments from the Energy Commission’s Existing Renewable Resources Program. For more information, please refer to the *Existing Renewable Facilities Program Guidebook*.

- Facility/facility owner has met all fuel-specific eligibility and/or reporting requirements described in the *Renewables Portfolio Standard Eligibility Guidebook*.
- Facility/facility owner has a power purchase contract with a retail seller that has been approved by the CPUC and resulted from a CPUC-approved RPS solicitation.

The Energy Commission will pay SEPs to the party with which a retail seller holds a contract for the purchase of power generated by a certified new or repowered renewable energy facility under the provisions of the RPS.

If the contracting entity is not the owner of the certified renewable energy facility, the contracting entity must identify and establish its rights to sell the power generated by the certified renewable energy facility. Further, any renewable energy facility that

sells its generation to a contracting entity will be obligated to document the facility's eligibility and generation.

To receive SEPs, applicants must be selected as a winning bidder in a CPUC-approved RPS solicitation and enter into a power purchase contract with the retail seller conducting that solicitation. In addition, the power purchase contract must be approved by the CPUC. Parties with bilateral contracts signed outside of a CPUC-approved RPS solicitation are not eligible for SEPs.

- Facility owner does not have an existing Senate Bill 90 (SB 90, Chapter 905, Statutes of 1997, Sher) funding award for the renewable energy facility, or
- Facility owner has an existing SB 90 funding award for the renewable facility and agrees to relinquish that award to be eligible for SEPs. If so, facility must specify that it has either:
 - ✓ Commenced commercial operations and received SB 90 payments, or
 - ✓ Not commenced commercial operations and not received SB 90 payments.

Facilities cannot receive both SEPs and SB 90 award payments. A facility with a conditional funding award from the Energy Commission's New Renewable Resources Account under SB 90 can participate in an RPS solicitation to secure a power purchase contract but must relinquish its SB 90 award if it wishes to receive SEPs.

Bidders with SB 90 awards whose facilities have not commenced commercial operations must state their intention to either (1) keep their SB 90 award and agree to be ineligible for SEPs or (2) relinquish the SB 90 award and compete for potential SEPs. Bidders with SB 90 awards whose facilities are already online must do the same, with the further understanding that any funding awarded through SEPs will be reduced by the amount of SB 90 payments already made to these facilities.

A winning bidder in an RPS solicitation that chooses to keep its SB 90 award can receive payments under the terms and conditions of the SB 90 award but cannot receive SEPs resulting from the RPS solicitation. A winning bidder that chooses to relinquish its SB 90 award and any payments already made under that award must do so once it executes a contract with a utility. This must be done even if the bidder does not ultimately qualify for SEPs because its bid was below the market price referent for that solicitation. If a bidder does not secure a contract under the RPS solicitation, however, the bidder will not be required to relinquish its SB 90 award.

Winning bidders in an RPS solicitation that choose to keep their SB 90 awards must comply with the Energy Commission's RPS requirements, including the RPS tracking and verification requirements, to the same extent as winning bidders who

are awarded SEPs. It may be necessary to amend a winning bidder's SB 90 funding award agreement to implement this requirement.

Prevailing Wage

Facilities owners that are awarded SEPs are subject to the state prevailing wage law with respect to any of the following types of work performed on the facility:

- Construction (includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work).
- Alteration.
- Demolition.
- Installation.
- Repair.

Work of this type is subject to the state prevailing wage law pursuant to Public Utilities Code Section 399.14, subdivision (h), and the Department of Industrial Relations (DIR) Determination *Re: Salton Sea 6 Geothermal Power Plant Project, Public Work Case 2002-043 (April 10, 2003)*.

A facility owner is not subject to the state prevailing wage law with respect to maintenance work that is performed on the facility. Pursuant to DIR Determination *Re: Maintenance, Renewable Energy Resources, Public Work Case 2002-043 (November 12, 2003)*, maintenance work on a renewable energy facility does not fall within the scope of Public Utilities Code Section 399.14, Subdivision (h), and therefore is not subject to the payment of prevailing wage.

For purposes of compliance with the prevailing wage law, the facility owner shall comply with the provisions applicable to recipients of public funds AND the provisions applicable to an awarding body. As such, compliance with the state prevailing wage law includes without limitation the following:

1. Determining work activities and trades subject to the prevailing wage law.
2. Ascertaining applicable prevailing wage rate for each covered worker performing work activities subject to the prevailing wage law on the Project.
3. Specifying in calls for bids, bid specifications, and construction contracts the applicable prevailing wage.
4. Ensuring all contracts for work activities on the Project subject to prevailing wage include appropriate flowdown provisions.
5. Posting the applicable prevailing wage information at each job site of the Project.
6. Paying the prevailing wage as applicable.
7. Overtime and working hour requirements.
8. Apprenticeship obligations.
9. Payroll recordkeeping requirements.
10. Withholding payments from contractors as necessary to satisfy wage and penalty assessments issued by the Labor Commissioner.

11. Other obligations as required by law.

The applicable provisions of the state prevailing wage law are set forth in Chapter 1 of Part 7 of Division 2 of the Labor Code, commencing with Section 1720; and, California Code of Regulations, Title 8, Chapter 8, Subchapter 3, commencing with Section 16000.

Facility owners must comply with the state prevailing wage law as a condition of receiving a SEP Award Agreement and any SEPs. All SEP Award Agreements will include appropriate provisions requiring the facility owner to comply with the state prevailing wage law as both the recipient of public funds and the awarding body and requiring the facility owner to include appropriate flowdown provisions in all agreements with contractors and subcontractors for the performance of work activities on the facility that are subject to the prevailing wage law. In addition, once the facility is constructed, the facility owner and all construction contractors and subcontractors that performed work activities on the facility subject to prevailing wage law must submit a certification verifying compliance with the state prevailing wage law. The facility owner must submit this certification within 90 days of completing the facility's construction. Lastly, the facility owner must certify as part of any payment invoice submitted to the Energy Commission that it has continued to comply with the state prevailing wage law.

Multiple Awards

A facility owner or operator that divides the electrical generation from its facility among two or more separate power purchase contracts may be eligible for SEPs provided that all of the generation from each contract is reported to the Energy Commission's RPS tracking and verification system. Facility owners and operators, however, are only eligible for SEPs for the first ten years of generation from their initial RPS contract(s).

Facility owners and operators that are awarded SEPs may not compete for a second SEP award once their initial contract with the retail seller expires, even if SEPs were awarded for a period of less than 10 years. If a power purchase contract with a retail seller is terminated for reasons beyond a facility owner or operator's control, the facility owner or operator may appeal this provision to the Energy Commission. The appeal process is outlined in the *Overall Program Guidebook*. The cumulative number of years of SEP payments cannot exceed 10 years under any circumstances.

Eligible Generation

The Energy Commission will only pay SEPs for eligible generation. A renewable energy facility may not receive SEPs if the electricity produced is any of the following:

- Sold under an existing long-term contract with an existing in-state retail seller entered into before January 1, 2002, if the contract includes fixed energy or capacity payments.

- Used on-site or sold to customers in a manner that excludes competitive transition charge payments or is otherwise excluded from competitive transition charge payments.
- Produced by a facility owned by a retail seller or a local publicly owned electric utility.

Award Determination

To allow the Energy Commission to determine the availability of public goods charge (PGC) funding, bidders in a retail seller's solicitation who wish to receive SEPs must include in their bids an estimate of the amount of generation to be produced by the facility and sold to the procuring retail seller over the term of the proposed funding period (up to a maximum of 10 years). This estimate, along with other data from the solicitation, will then be used to determine each bidder's total potential SEP award. The bidders' estimate of energy generation should include only generation that is eligible for SEPs.

For each solicitation, the Energy Commission will compare the requested SEPs with the available PGC funds to determine if PGC funds are adequate to cover SEPs for all the winning bidders. The Energy Commission may impose a cap on SEP awards as discussed below under "Payment Terms." If funding is available to cover only a portion of the SEPs for which a bidder might otherwise be eligible, the bidder may choose to take a partial award or decline the award entirely.

To make informed and timely decisions in evaluating SEP requests, the Energy Commission needs to review the full range of bids that the retail seller received in response to its RPS solicitation. The Energy Commission requires the retail seller to provide the following information for all bids received: levelized cent per KWh all-in bid price, the average annual generation by Time of Delivery (TOD) period, contract term, delivery start date, applicable levelized MPR, levelized bid price, and levelized above-market costs over the contract term. Additionally, the retail seller must indicate if a bid is on its "short list" and whether contract negotiations have commenced. The Energy Commission also requests aggregated data for bids below the MPR including: the total number of facilities, the weighted-average price of the bids, the amount of electricity bid, the percentage of the retail seller's APT represented by the bids, and the percentage of the generation bid that would require new transmission. The forms for submitting these data are appended to this Guidebook and titled, "Data on Bids Below the MPR" (CEC-SEP-1) and "Data on Bids Above the MPR" (CEC-SEP-2).

The Energy Commission has developed a worksheet to calculate the levelized MPR, levelized bid price and levelized above-market costs which the retail sellers are required to attach as documentation for the data provided in CEC-SEP-1 and CEC-SEP-2. The worksheet is available from the Energy Commission's Web site at www.energy.ca.gov/portfolio.

The retail seller must provide the Energy Commission with “Data on Bids Below the MPR” (CEC-SEP-1) and “Data on Bids Above the MPR” (CEC-SEP-2) within 30 days from the date that the MPR is adopted by the CPUC. The Energy Commission anticipates that it may need updated information to verify, or revise as needed, its estimate of the potential demand on SEP funds. Consequently, the Energy Commission reserves the right to request that retail sellers update their “Data on Bids Below the MPR” (CEC-SEP-1) and “Data on Bids Above the MPR” (CEC-SEP-2) as needed. Timely information is necessary for the Energy Commission to make informed decisions when allocating SEPs to individual applicants. Updates would be requested for bids that have been short-listed.

A winning bidder (Seller) may apply for SEPs from the Energy Commission only after it has executed a contract with a retail seller. The Seller (representing a renewable facility that is eligible for the RPS and SEPs) must submit a completed SEP Application (CEC-SEP-4) to the Energy Commission. The information required includes: the applicable market price referent, the bid price, the contract price, the amount of generation expected under contract, the levelized above-market costs over the contract term, and the amount of SEP funding requested. If the levelized bid and the contract prices are not the same, the applicant must attach documentation explaining the difference. An explanation is also needed if the requested SEP amount differs from the above-market costs. The Seller must also identify if it was awarded SB 90 funds.

The procuring retail seller must provide supporting documentation in the Utility Data to Supplement SEP Application (CEC-SEP-3) including: the un-redacted copy of the Advice Letter for the contract filed with the CPUC, the applicable MPR, the contract price, the delivery start and end dates, and the Seller’s disclosure to the retail seller regarding whether it had received SB 90 funding. The Seller and retail seller must attach a completed worksheet (CEC-SEP-worksheet) available from the Energy Commission’s Web site at <www.energy.ca.gov/portfolio> to calculate the levelized MPR, levelized bid price, and levelized above-market costs, as appropriate, for the SEP Application. To calculate the levelized MPR, the applicant must provide the amount of generation expected per TOD time period. For transparency, the Energy Commission will transmit the Seller’s completed SEP Application (CEC-SEP-4) to the retail seller and the retail seller’s Utility Data to Supplement the SEP Application (CEC-SEP-3) to the Seller. The Energy Commission will consider applications to hold data on the CEC-SEP-3 and CEC-SEP-4 forms confidential pursuant to its regulations on confidential designation, California Code of Regulations, Title 20, Section 2501 et seq.

As part of the SEP Application, the Seller must identify the anticipated dates for achieving major contract milestones, as applicable, including: demonstration of site control, execution of an Engineering, Procurement and Construction contract, execution of an interconnection agreement, receipt of environmental permits, and project online date. The Energy Commission may include timely completion of these milestones as a condition to its Funding Confirmation Letter or SEP Award Agreement. For more information, see the section of this Guidebook titled, “Basis for Termination of SEP Confirmation and Award.”

The Energy Commission will notify the CPUC, retail seller, and Sellers of the availability of SEP funds within 30 days of receiving all data needed to conduct this evaluation. The Energy Commission will not start the 30-day clock before the following forms are submitted by the contracting retail seller and the Seller: Data on Bids Below the MPR (CEC-SEP-1), Data on Bids Above the MPR (CEC-SEP-2), Data to Supplement SEP Application (CEC-SEP-3), SEP Application (CEC-SEP-4) and the supporting documentation for each form. Further, the Energy Commission will consider the application incomplete if the facility is not certified as RPS and SEP-eligible.

The Energy Commission will notify the Seller, retail seller, and CPUC of what portion of the requested SEPs can be met. If the Funding Confirmation Letter does not confirm the availability of SEPs to cover the full contract price, the retail seller and Seller have an opportunity to renegotiate the contract terms. If the contract is not yet approved by the CPUC before the Energy Commission issues a Funding Confirmation Letter, the Funding Confirmation Letter will be contingent upon CPUC approval of the contract. If the CPUC approves a contract price that is lower than the price included in the SEP Application, then the Energy Commission may issue an amended Funding Confirmation Letter with the funding amount reduced to reflect the lower contract price. After the Energy Commission issues a Funding Confirmation Letter, the Energy Commission will publish information on its Web site identifying the name of the Seller, the procuring retail seller, and the total anticipated SEP award amount.

The Energy Commission will approve SEP Award Agreements after the Seller has met all of its environmental review requirements. A sample SEP Award Agreement is shown in the Forms and Samples section of this guidebook. This agreement is provided as an example only and will be modified as necessary in the future prior to the Energy Commission's issuance and approval of any SEP Award Agreements. The SEP Award Agreement will be considered for adoption by the Energy Commission and will be made publicly available upon adoption.

SB 1038 states that "The Energy Commission may provide preference to facilities that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations." This preference will be evaluated on a case-by-case basis as facilities apply for SEPs, with specific protocols added to the program guidelines as needed as the program progresses.

Payment Terms

SEP Allocation

The issue of how the RPS will apply to Energy Service Providers (ESPs) or Community Choice Aggregators (CCAs) is still unresolved. The Energy Commission recognizes the eventual participation of these parties but at this time does not intend to set aside any portion of available PGC funds for non-utility entities.

Caps

SB 1038 allows the Energy Commission to establish payment caps on SEPs. This could include a cap on the cents per kilowatt-hour SEP, on the amount of funding per facility, or the total amount of PGC funds available for a given solicitation to achieve the most efficient management of PGC funds. At this time, the Energy Commission is not proposing to establish caps in advance but instead intends to evaluate the bids received in each solicitation and determine the need for caps at that time. Any caps would be established during the Energy Commission's 30-day evaluation period to determine the potential PGC award per winning bidder.

Because the Energy Commission has the authority to revise guidelines upon approval at a Business Meeting with 10 days notice, any needed caps could be set and implemented in a timely manner without delaying the final results of a solicitation. The Energy Commission will not impose any additional caps once it enters into conditional funding awards with bidders.

Generation Requirements

The Seller's estimated annual generation by the facility over the term of the proposed funding period will be specified in the Seller's SEP Award Agreement. The Energy Commission will not pay SEPs for any generation above the "expected generation" the Seller specified in CEC-SEP-4. In other words, the Seller will not receive SEPs for any generation that exceeds the total expected generation over the term of the SEP Award Agreement as given in the Seller's SEP application. The "expected generation" from CEC-SEP-4 is incorporated as part of the Seller's award from the Energy Commission.

However, the Seller should not overestimate its annual generation when applying for SEPs. The Energy Commission will evaluate each facility's actual generation over the first three years of the funding period. If the actual generation during those first three years averages less than 85 percent of the estimated generation for that three-year period, the Energy Commission will contact the facility for an explanation for the undergeneration.

After evaluating the explanation provided by the facility, the Energy Commission may decide to reduce the facility's SEP award to reflect the amount of actual average annual generation. Generators may appeal any proposed award reduction under the *Overall Program Guidebook*. Funds removed from a facility award as a result of undergeneration will be returned to the Renewable Resource Trust Fund for subsequent distribution or reallocation.

Generation greater than a bidder's estimated annual generation as specified in the seller's SEP Award Agreement is not eligible for SEPs.

Invoicing Process

To receive SEPs, facilities that have commenced commercial operations must submit monthly invoices identifying the amount of eligible power generated by the facility. The SEP payment period will begin after the initial delivery date of the first kilowatt-hour of energy sold under a power purchase contract with an IOU approved by the CPUC resulting from a CPUC-approved RPS solicitation.

The monthly invoice form shall consist of a completed and properly executed CEC-SEP-5 form, a copy of which is included with this guidebook, or its replacement at the time, together with an attached invoice or written statement from the purchasing entity verifying the facility's eligible power generation for the billing month. Invoices are due 45 days after the end of the month in which the energy is generated; for generation during the month of January, invoices are due March 10, and checks are expected to be mailed April 1.

If the purchasing entity's statement is not received in time to submit it with a facility's invoice, facilities may submit an invoice with other evidence of the amount of eligible power generated during the billing month. A letter explaining why the purchasing entity's statement could not be submitted and describing the evidence submitted in its place must also be submitted with the invoice. Examples of alternative evidence that may be submitted when verification from the purchasing entity is not available include, but are not limited to, statements from the CA ISO or a scheduling coordinator. The Energy Commission will evaluate these invoices on a case-by-case basis and notify the submitting party whether the amount claimed in the invoice, or any part of it, will be accepted and paid upon. The Energy Commission may elect to pay only that portion of the amount invoiced that appears to be reasonable given the evidence submitted in support of the invoice, the prior months' generation, and other factors deemed pertinent at the time of evaluation.

Once the third party statement becomes available, it must be furnished to the Energy Commission so that payment adjustments will be made for any differences in the estimated eligible generation and actual eligible generation.

This procedure will be in effect only while the interim generation tracking system is in place. The Energy Commission will use settlement data to verify generation once the Energy Commission's electronic tracking system is operational.

Additionally, biomass facilities receiving SEPs must submit an annual report to the Energy Commission describing fuel use as follows: tons of biomass by type of biomass, the air district from which the biomass originated if the fuel may have been open-field burned had it not been used for electricity production, and an attestation from the fuel supplier(s) that the biomass fuel continues to meet the RPS eligibility standards. The report is due to the Energy Commission on February 15th of each year to report on the biomass supply consumed in the previous calendar year. This information is required

pursuant to Senate Bill 183 (Chapter 666, Statutes of 2003, Sher), as codified in Public Resources Code Section 25743 (f).

Invoices may be submitted to the Energy Commission at the following address:

California Energy Commission
New Renewable Facilities Program, MS-45
1516 Ninth Street
Sacramento, CA 95814

Invoices may be submitted by telefax to (916) 653-8251, but an original signed copy of the invoice must also be submitted before payment will be mailed to the facility.

To receive funding, facilities must also complete the State of California Vendor Record (STD-204) form shown in the “forms” section of this guidebook. The State of California requires that all parties entering into business transactions that may lead to payment(s) from the State provide their Taxpayer Identification Number (TIN) as required by the State Revenue and Taxation Code, Section 18646, and Federal Internal Revenue Code, Section 6109. This form must be on file with the Energy Commission before any payments can be made. If you have any questions about this form, please contact the California Franchise Tax Board at 1-800-852-5711.

Basis for Termination of Funding Confirmation Letter and SEP Award Agreement

The Energy Commission reserves the right to terminate any Funding Confirmation Letter or SEP Award Agreement for reasonable cause by providing 30 days notice to the Seller’s agent specified in the Funding Confirmation Letter or SEP Award Agreement. The termination may occur at any time after issuance of the Funding Confirmation Letter through the term of the SEP Award Agreement. The Energy Commission may not terminate Confirmation Letters or SEP Award Agreements if the circumstances are corrected to the Energy Commission’s satisfaction, or if all parties agree upon an alternative course of action. The Energy Commission does not intend to terminate Confirmation Letters or SEP Award Agreements without reasonable cause.

Examples of reasonable cause include but are not limited to:

- Seller failing to maintain eligibility for the RPS and SEPs, or knowingly providing false or misleading information about itself or the facility, as determined by the Energy Commission, in facility’s application for certification or pre-certification. As described in the RPS Eligibility Guidebook, the Seller must promptly notify the Energy Commission of any changes to the information included in the Seller’s application for certification or pre-certification. The Energy Commission will review any revisions to the Seller’s certification or pre-certification application to verify that the facility retains eligibility for the RPS and SEPs.

Entities holding a Funding Confirmation Letter or SEP Award Agreement must be certified by the Energy Commission as an eligible renewable resource(s) and must maintain that certification as specified in the *Renewables Portfolio Standard Eligibility Guidebook*. Failure to maintain certification or pre-certification or providing false or misleading information about the Seller or facility in the application for certification is cause for terminating the Funding Confirmation Letter or SEP Award Agreement.

- Seller's contract with the retail seller is terminated for any reason.

If the power purchase agreement that serves as the basis of the SEP award is terminated for non-performance or any other reason, the Energy Commission will terminate the Seller's Funding Confirmation Letter or SEP Award Agreement at the same time. However, if a Seller's power purchase agreement is terminated for reasons beyond the Seller's control, the Seller may petition the Energy Commission as described in the *Overall Program Guidebook* for permission to compete for a subsequent SEP award.

- The Seller does not meet project milestones.

The Energy Commission may include specific milestones in the Funding Confirmation Letter or SEP Award Agreement as identified by the Seller in its SEP application. As part of the SEP application, the Seller agrees to notify the Energy Commission in writing as soon as possible in the event of failure or potential failure to meet one of these milestones. Also, the Seller agrees to send the Energy Commission any notice regarding a potential or actual force majeure, contract default, or contract termination that it sends to the retail seller. If the project misses a milestone identified in its Funding Confirmation Letter or SEP Award Agreement, the Energy Commission may terminate the Funding Confirmation Letter or SEP Award Agreement through an award termination order. The Seller may petition the Energy Commission as described in the *Overall Program Guidebook* to retain its award if the Energy Commission exercises this discretion but the contract has not been cancelled.

- Seller's power purchase agreement is modified or renegotiated such that the total energy price being paid under that contract is below the applicable MPR.

If the power purchase agreement that serves as the basis of the SEP award is modified or renegotiated after a Funding Confirmation Letter or SEP Award Agreement is approved and the total energy price being paid under the power purchase agreement is now below the applicable MPR, the Energy Commission will terminate Seller's Funding Confirmation Letter or SEP Award Agreement.

- The funding needed to fund a SEP award is not available through the Renewable Resource Trust Fund.

Receipt of SEPs is contingent on availability of funds. The Energy Commission may terminate a SEP Funding Confirmation Letter or SEP Award Agreement if the Renewable Resource Trust Fund does not receive the funds expected, for example if state or federal laws alter the amount of money allocated to the NRFP or the structure of the program prior to the expected end of the SEP funding period.

Appendix A – Forms and Instructions

To download an electronic version of the forms or the supporting worksheet needed to calculate information requested in the forms, please see the Energy Commission's Web site at < www.energy.ca.gov/portfolio >

- CEC-SEP-Worksheet (to calculate levelized values requested in forms CEC-SEP-1, CEC-SEP-2, CEC-SEP-3, and CEC-SEP-4)
- CEC-SEP-1 Data on Bids Below the MPR
- CEC-SEP-2 Data on Bids Above the MPR
- CEC-SEP-3 Utility Data to Supplement SEP Application, Utility
- CEC-SEP-4 SEP Application, Seller
- CEC-SEP-5 Monthly Invoice for Supplemental Energy Payments New Renewable Facilities Program
- STD-204 Payee Data Record
- Sample Supplemental Energy Payment Award Agreement

INSTRUCTIONS PAGE



CALIFORNIA ENERGY COMMISSION

Instructions yet to be completed.

- Please fill out all yellow highlight cells in the INPUT BID DATA tab starting with the inputs at the top of the page first.
- When the contract term is entered, the tables below will automatically set up to accommodate a 10, 15, and 20-year contract.
- When Purchasing Utility is selected from the drop down menu, the number of TOD periods will automatically change to allow for 6 or 9 TOD periods.
- All information in the remaining Tabs is automatically transferred from the INPUT BID DATA tab and no additional inputs are required on other tabs.
- The Bid Data Request Transfer Sheet tab can be used to simplify the process of filling out forms CEC-SEP-1 and CEC-SEP-2. All necessary data to fill out these forms is transferred to this tab once the INPUT BID DATA tab is completely filled out.



CALIFORNIA ENERGY COMMISSION

DATA INPUT SHEET

Please enter all necessary information on this sheet.

Information submitted to the Energy Commission is subject to public disclosure unless designated confidential pursuant to the Energy Commission's confidentiality regulations, 20 California Code of Regulations section 2505.

Facility Name

Solicitation/MPR Year	<input type="text"/>
Contract Start Year	<input type="text"/>
Contract Term	<input type="text"/>
MPR for Contract Start Year (cents/kWh)	<input type="text"/>
WACC (Utility specific)	<input type="text"/>

Purchasing Utility

TOD FACTORS

Estimated Annual Sales by TOD Period (kWh)

Contract Year	Start Year								



**CALIFORNIA
ENERGY
COMMISSION**

DATA INPUT SHEET

Please enter all necessary information on this sheet.

Annual Contract Price by TOD Period (cents/kWh Nominal)

Contract Year	Start Year									

Annual Weighted Average Bid Price (cents/kWh Nominal)

Contract Year	Start Year	Avg. Bid Price



**CALIFORNIA
ENERGY
COMMISSION**

RESULTS PAGE

INPUTS (Transferred from Inputs Sheet)

Facility Name	
Solicitation/MPR Year	
Contract Start Year	
Contract Term	
MPR for Contract Start Year (cents/kWh)	
WACC (Utility specific)	
Purchasing Utility	

Information submitted to the Energy Commission is subject to public disclosure unless designated confidential pursuant to the Energy Commission's confidentiality regulations, 20 California Code of Regulations section 2505.

RESULTS

Form Number*

Levelized Bid Price (cents/kWh) over the term of the contract		7(a)
Levelized Contract Price (cents/kWh) over the term of the contract		7(b), (6 on Utility Form)
Levelized above market costs (cents/kWh) over the term of the contract		8(a)
Total Amount of above market costs (\$) over the Term of the Contract		8(b)
Levelized TOD-Adjusted MPR (cents/kWh) over the term of the contract		8(d), (4 on Utility Form)

All prices in dollars

*Corresponding form numbers on CEC-RPS-4 (Seller) Form unless otherwise noted (Utility Form is the CEC-SEP-3 (Utility) Form)

Note: The Energy Commission needs these data for its evaluation of total potential SEP demand, but SEP payments approved by the Energy Commission will not necessarily match these values.

Contract Year	Start Year	Estimated Annual Sales (kWh)
TOTAL		



**CALIFORNIA
ENERGY
COMMISSION**

**CEC-SEP-1
BID DATA REQUEST**

Bids **BELOW** the MPR

APRIL 2006
(page 1)

1. Utility and Date

Utility	
Date	

Information submitted to the Energy Commission is subject to public disclosure unless designated confidential pursuant to the Energy Commission's confidentiality regulations, 20 California Code of Regulations section 2505.

2. Solicitation Information

Solicitation/MPR Year	
WACC (Utility specific)	

This form must be sent electronically in Excel format to the California Energy Commission at: **RPSTrack@energy.state.ca.us**

3. Bid Information

Facility Name	Contract Start Year	Contract Term	MPR for Contract Start Year	Levelized Bid Price (cents/kWh) over contract term	Levelized Contract Price (cents/kWh) over contract term	Levelized Above Market Costs (cents/kWh) over contract term	Total Above Market Costs (\$) over contract term	Levelized TOD-Adjusted MPR (cents/kWh) over contract term	Is the Bid on the IOU's Short List? (Yes or No)	Have Negotiations begun? (Yes or No)

BELOW MPR



**CALIFORNIA
ENERGY
COMMISSION**

**CEC-SEP-1
BID DATA REQUEST**

Bids **BELOW** the MPR

APRIL 2006
(page 2)

4. Total number of facilities. If one facility submits multiple bids, count the bids collectively as one project.		%
5. What percentage of the utility's 2005 annual procurement target does the utility anticipate meeting as a result of the selected projects that require no SEPs?		%
6. Provide a single aggregate, weighted-average price for all bids below the MPR.		cents/KWh

Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)
Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11

BELOW MPR



**CALIFORNIA
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**CEC-SEP-1
BID DATA REQUEST**

Bids **BELOW** the MPR

APRIL 2006
(page 3)

Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)	Total Estimated Annual Sales
Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18	Year 19	Year 20	Years 1-20
									0
									0
									0
									0
									0
									0

BELOW MPR



**CALIFORNIA
ENERGY
COMMISSION**

**CEC-SEP-2
BID DATA REQUEST**

Bids **ABOVE** the MPR

APRIL 2006
(page 1)

Information submitted to the Energy Commission is subject to public disclosure unless designated confidential pursuant to the Energy Commission's confidentiality regulations, 20 California Code of Regulations Section 2505.

1. Utility and Date

Utility	
Date	

2. Solicitation Information

Solicitation/MPR Year WACC (Utility specific)	
--	--

This form must be sent electronically in Excel format to the California Energy Commission at: RPSTrack@energy.state.ca.us

3. Bid Information

Facility Name	Contract Start Year	Contract Term	MPR for Contract Start Year	Levelized Bid Price (cents/kWh) over contract term	Levelized Contract Price (cents/kWh) over contract term	Levelized Above Market Costs (cents/kWh) over contract term	Total Above Market Costs (\$) over contract term	Levelized TOD-Adjusted MPR (cents/kWh) over contract term	Is the Bid on the IOU's Short List? (Yes or No)	Have Negotiations begun? (Yes or No)

ABOVE MPR



**CALIFORNIA
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COMMISSION**

**CEC-SEP-2
BID DATA REQUEST**

Bids **ABOVE** the MPR

APRIL 2006

(page 2)

Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)
Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11

ABOVE MPR



**CALIFORNIA
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COMMISSION**

**CEC-SEP-2
BID DATA REQUEST**

Bids **ABOVE** the MPR

APRIL 2006

(page 3)

Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)	Estimated Annual Sales (kWh)	Total Estimated Annual Sales
Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18	Year 19	Year 20	Years 1-20
									0
									0
									0
									0
									0
									0
									0

ABOVE MPR

(TO BE COMPLETED BY UTILITY)
REPORT to the CALIFORNIA ENERGY COMMISSION
Report of Data from Bids Received as Result of RPS Solicitation
ATTESTATION FORM

I (print name and title) _____ declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1) I am an authorize agent of (print name of company) _____ and have authority to submit this report on the company's behalf.

2) The information and data provided in CEC-SEP-1 and CEC-SEP-2 are correct to the best of my knowledge.

Signed: _____

Dated: _____

Executed at: _____

CONTACT INFORMATION
(FOR PREPARER OF THIS REPORT)

Name _____

Title _____

Company Name _____

Address _____

City, State, Zip _____

Phone _____

Fax _____

E-mail _____



**California
Energy
Commission**

**CEC-SEP-3 (UTILITY)
Data Request for SEP Application**

April 2006

Information submitted to the Energy Commission is subject to public disclosure unless designated confidential pursuant to the Energy Commission's confidentiality regulations, 20 CCR Section 2505.

[1] Seller: _____ **Facility Name:** _____
CEC-RPS-ID#: _____

[2] Utility: _____ **Date Solicitation was Issued** _____
Title of Solicitation _____

[3] Utility Contact Name: _____ **Phone:** _____
Fax: _____ **e-mail:** _____

[4] Market Price Referent:
Please specify levelized MPR weighted for this contract using the utility's TOD factors (¢/kWh): _____

[5] SB 90 Funding Awards:
Did this bidder state that the facility had received a funding award from the Energy Commission's New Renewable Resources Account pursuant to SB 90? Yes No

[6] Contract Price:
Use the template spreadsheet to provide the contract price requested. Price should be expressed in the year's dollars that corresponds with both the contractual start date and the applicable MPR.
Identify the levelized contract price (¢/kWh) _____.

[7] Contract Term:
a) Expected start date of energy deliveries under contract: _____
b) Expected end date of energy deliveries under contract: _____

[8] Supplemental Information: Attach an unredacted copy of the utility's Advice Letter to the CPUC requesting approval for this contract.

[9] Attestation:
I, (name/ title) _____, declare under penalty of perjury that the information provided in this form and submitted herewith is true and correct to the best of my knowledge and that I, as an authorized agent of the utility referenced above, have authority to submit this information on the utility's behalf. I further declare under penalty of perjury that to the best of my knowledge the facility referenced above was selected through a competitive, RPS solicitation pursuant to CPUC Decision 04-07-029.

Dated this _____ day of _____, 20_____, at _____.
(day) (month) (year) (place of execution)

Signature: _____

*Please fill out completely, sign, and submit completed form and the supporting spreadsheet to:
California Energy Commission. Attn: RPS Program. 1516 Ninth Street, MS-45. Sacramento, CA 95814
Also, please e-mail a copy to: RPSTrack@energy.state.ca.us*

Data Request for SEP Application INSTRUCTIONS

[1] SELLER IDENTIFICATION: Provide the seller's name, the facility name, and the CEC-RPS-ID number for the facility under contract. The **CEC-RPS-ID** is the number issued by the Energy Commission to identify facilities that are eligible for the Renewables Portfolio Standard. To be eligible for Supplemental Energy Payments, a facility must be certified or pre-certified as an eligible renewable energy resource for purposes of California's Renewables Portfolio Standard. A list of certified facilities is available on the Energy Commission's Web site at: www.energy.ca.gov/portfolio/index.html.

[2] UTILITY IDENTIFICATION: Identify the utility name. Identify the date that the competitive RPS solicitation was issued for which this facility was selected for contract. Identify the title or identifying number of the solicitation.

[3] UTILITY CONTACT NAME: Identify the name, phone and fax numbers, and e-mail of the utility contact person the Energy Commission may contact with questions about the information submitted in this form.

[4] MARKET PRICE REFERENT: Provide the MPR that is used for this contract start date and adjusted using the utility's TOD factors for this solicitation year and the Seller's generation profile.

[5] SB 90 FUNDING AWARDS: Check the appropriate box to indicate if the Seller disclosed that the facility had received a funding award from the Energy Commission pursuant to SB 90.

A facility with a conditional funding award from the Energy Commission's New Renewable Resources Account under SB 90 can participate in an RPS solicitation to secure a power purchase contract but must relinquish its SB 90 award if it wishes to receive SEPs. Sellers with SB 90 awards whose facilities have not commenced commercial operations must state their intention to either (1) keep their SB 90 award and agree to be ineligible for SEPs or (2) relinquish the SB 90 award and compete for potential SEPs. Sellers with SB 90 awards whose facilities are already online must do the same, with the further condition that any funding awarded through SEPs will be reduced by the amount of SB 90 funding award payments already made to these facilities.

A Seller in an RPS solicitation that chooses to keep its SB 90 award can receive payments under the terms and conditions of the SB 90 award but cannot receive SEPs resulting from the RPS solicitation. A Seller that chooses to relinquish its SB 90 award and any payments already made under that award must do so once it executes a contract with a utility. This must be done even if the Seller does not ultimately qualify for SEPs because its bid was below the market price referent for that solicitation. If a Seller does not secure a contract under the RPS solicitation, however, the Seller will not be required to relinquish its SB 90 award.

[6] CONTRACT PRICE: Identify the levelized bid price ($\$/kWh$) and term of contract (years). To compute the levelized bid price ($\$/kWh$) divide the present value of total revenue for the facility over the contract period (\$ in each year of the contract) by the present value of utility purchases (kWh in each year of the contract). Use the utility's before-tax weighted average cost of capital (WACC) approved by the CPUC for the solicitation year being evaluated. Price should be expressed in the year's dollars that corresponds with both the contractual start date and the applicable MPR. See template spreadsheet for calculation details.

[7] CONTRACT TERM: Please identify the expected start and end dates of energy deliveries under the contract.

[8] SUPPLEMENTAL INFORMATION: Attach an unredacted copy of the utility's Advice Letter to the CPUC requesting approval for this contract.

[9] ATTESTATION: This form must be signed by an authorized representative of the utility, and the original signed copy must be sent to the Energy Commission. Also, please e-mail an electronic version of the completed form to the Energy Commission. The electronic version of the spreadsheet must be in Excel format and not in Portable Document Format (PDF).



[1] Seller: _____ Facility Name: _____

CEC-RPS-ID: _____

[2] Contracting Utility: _____ Date Solicitation was Issued _____

Title of Solicitation _____

3] Seller Contact Name: _____ Phone: _____

Fax: _____ e-mail: _____

4] Market Price Referent:

(a) Specify the contract term (# of years) _____ and start date (year) _____ for deliveries applicable to this contract.

(b) Specify the MPR adopted by the CPUC for the factors specified in 4(a) and for this solicitation as identified in question 2, without making adjustments for TOD factors (¢/kWh) _____.

[5] SB 90 Funding Awards: Has the facility ever received a funding award from the Energy Commission's New Renewable Resources Account? Yes – complete question 6 No – skip to question 7

[6] For Facilities with Energy Commission SB 90 Funding Awards:

Facility name: _____ CEC SB 90 Registration. ID #: _____

Funding Award Agreement number, if applicable: _____

Has facility agreed to relinquish its SB 90 award and notified the Energy Commission? Yes No

If "no," facility is not eligible to receive SEPs.

[7] Bid Price and Contract Price

Note: Use the template spreadsheet to provide the information requested in 7(a) and (b). Price should be expressed in the year's dollars that corresponds with both the contractual start date and the applicable MPR.

a) Identify the levelized bid price (¢/kWh) _____ and proposed contract term (years) _____.

b) Identify the levelized contract price (¢/kWh) _____ and contract term (years) _____.

c) If the levelized bid price (7a) differs from the contract price (7b), attach documentation to explain the difference.

[8] Supplemental Energy Payment:

Note: The Energy Commission needs these data for its evaluation of total potential SEP demand, but SEP payments approved by the Energy Commission will not necessarily match these values.

Use the template spreadsheet to provide the information requested in 8 (a), (b), and (d).

a) Identify the levelized above-market costs over the proposed contract period (¢/kWh): _____.

b) Identify the total amount of above-market costs over the proposed contract period (nominal dollars): _____.

c) Identify the levelized supplemental energy payment REQUESTED (¢/kWh): _____.

d) Specify the MPR in 4(b) weighted (to reflect sales per TOD and CPUC adopted TOD factors applicable to this solicitation) and levelized over the contract term using (¢/kWh) _____.

e) If the levelized above-market costs over the proposed contract period from part (a) differs from the levelized supplemental energy payment REQUESTED from part (c), please attach documentation explaining the difference.



**California
Energy
Commission**

**CEC-SEP-4 (SELLER)
SEP Application**

April 2006 (page 2)

Information submitted to the Energy Commission is subject to public disclosure unless designated confidential pursuant to the Energy Commission's confidentiality regulations, 20 CCR Section 2505.

[9] Annual Data: Estimated Maximum Sales (kWhs), Weighted Contract Price, Weighted MPR

To support your leveled values reported in parts 7(a), 7(b), 8(a), 8(b) and 8(d), provide: the annual sales eligible for SEPs per TOD period, TOD factors, Weighted Average Cost of Capital, and annual contract price by TOD period. Calculate the annual weighted MPR (the MPR shown should be weighted for any applicable TOD factors). Use the utility's before-tax weighted average cost of capital (WACC) approved by the CPUC for the solicitation year being evaluated. Use the MPR approved by the CPUC for the solicitation year being evaluated. Use template spreadsheet to provide this information and calculate the annual weighted MPR.

Please input the data in the template spreadsheet and submit it to the Energy Commission electronically. The file must be in Excel format and not in Portable Document Format (PDF).

[10] Benefits to Low Income or Minority Communities: Attach information submitted with bid describing the benefits.

[11] Contract Milestones: Identify the anticipated dates for achieving the following major contract milestones, as applicable, including (indicate "complete" if the milestone has already been achieved):

Demonstration of site control (month/year)_____

Execution of an Engineering Procurement and Construction contract (month/year)_____

Execution of an interconnection agreement (month/year)_____

Receipt of environmental permits (month/year)_____

Construction start date (month/year) _____

Project On-line (month/year)_____

Check this box if the seller agrees to the following:

- The seller agrees to promptly notify the Energy Commission in the event of failure or potential failure to meet a milestone.
- The seller agrees to send the Energy Commission any notice regarding a potential or actual force majeure, contract default or contract termination sent to the IOU.

[12] Acknowledgement:

I, (name and title) _____, hereby submit this SEP Application on behalf of the above-referenced Seller and with its authority, and understand that this SEP Application constitutes a request for SEP funding pursuant to the Energy Commission's *New Renewable Facilities Program Guidebook*. I understand that the Energy Commission will consider the information included as part of this SEP Application and the Data Request for SEP Application submitted by the above-referenced utility in deciding whether to issue a Funding Confirmation Letter and SEP Award Agreement. I further understand that the issuance of a Funding Confirmation Letter and SEP Award Agreement will be subject to the requirements and conditions, including termination, specified in the Energy Commission's *New Renewable Facilities Program Guidebook*, *Renewables Portfolio Standard Eligibility Guidebook*, and *Overall Program Guidebook*.



California Energy Commission

CEC-SEP-4 (SELLER) SEP Application

April 2006 (page 3)

Information submitted to the Energy Commission is subject to public disclosure unless designated confidential pursuant to the Energy Commission's confidentiality regulations, 20 CCR Section 2505.

[13] Attestation:

I, (name and title) _____, declare under penalty of perjury that the information provided in this form and submitted herewith is true and correct to the best of my knowledge and that I, as an authorized agent of the seller referenced above, have authority to submit this information on the seller's behalf. I further declare under penalty of perjury that to the best of my knowledge, the energy identified in box 9 above to be produced by the above-noted facility (a) will not receive any fixed energy or capacity payments under a contract with an electrical corporation entered into prior to January 1, 2002; (b) will not be used for on-site (self) generation; (c) is not excluded from any applicable competitive transition charge; and (d) will be delivered to the in-state zone or hub designated in the utility contract.

Dated this _____ day of _____, 20_____, at _____.

(day) (month) (year) (place of execution)

Signature: _____

Please fill out completely, sign, and submit completed form and the supporting spreadsheet to: California Energy Commission. Attn: RPS Program. 1516 Ninth Street, MS-45. Sacramento, CA 95814 Also, please e-mail a copy to: RPSTrack@energy.state.ca.us

SEP APPLICATION INSTRUCTIONS

[1] SELLER INFORMATION: Identify the name of the seller and the facility name. The **CEC-RPS-ID** is issued by the Energy Commission to identify facilities that are eligible for the Renewables Portfolio Standard (RPS). To be eligible for Supplemental Energy Payments, a facility must be certified or pre-certified as an eligible renewable energy resource for purposes of California's RPS.

[2] CONTRACTING UTILITY INFORMATION: Identify the name of the utility the seller is contracting with and the date and title of the competitive RPS solicitation under which this contract was selected.

[3] SELLER CONTACT INFORMATION: Identify the name, phone number, and e-mail of the seller contact person whom the Energy Commission may contact with questions about the information submitted in this form.

[4] MARKET PRICE REFERENT:

- a. Specify the contract term and start date for deliveries applicable to this contract.
- b. Specify the MPR (¢/kWh) adopted by the CPUC applicable to this contract term and start date as shown in 4a, before applying TOD factors.

[5] SB 90 FUNDING AWARDS: A facility with a conditional funding award from the Energy Commission's New Renewable Resources Account under SB 90 can participate in an RPS solicitation to secure a power purchase contract but must relinquish its SB 90 award if it wishes to receive SEPs. Sellers with SB 90 awards whose facilities have not commenced commercial operations must state their intention to either (1) keep their SB 90 award and agree to be ineligible for SEPs or (2) relinquish the SB 90 award and compete for potential SEPs. Sellers with SB 90 awards whose facilities are already online must do the same, with the further condition that any funding awarded through SEPs will be reduced by the amount of SB 90 funding award payments already made to these facilities.

A Seller in an RPS solicitation that chooses to keep its SB 90 award can receive payments under the terms and conditions of the SB 90 award but cannot receive SEPs resulting from the RPS solicitation. A Seller that chooses to relinquish its SB 90 award and any payments already made under that award must do so once it executes a contract with a utility. This must be done even if the Seller does not ultimately qualify for SEPs because its bid was below the market price referent for that solicitation. If a Seller does not secure a contract under the RPS solicitation, however, the Seller will not be required to relinquish its SB 90 award.

Sellers in an RPS solicitation that choose to keep their SB 90 awards must comply with the Energy Commission's RPS requirements, including the RPS tracking and verification requirements, to the same extent as Sellers who are awarded SEPs. A Seller's SB 90 funding award agreement will be amended as necessary to implement this requirement.

[6] FOR FACILITIES WITH SB 90 FUNDING AWARDS: Identify the facility name and registration number used for the facility under the Energy Commission's New Renewable Resources Account pursuant to SB 90. If a funding award agreement has been approved, identify the funding award agreement number assigned by the Energy Commission.

[7] BID PRICE AND CONTRACT PRICE:

a) Identify the levelized bid price ($\text{\$/kWh}$) and term of contract (years). To compute the levelized bid price ($\text{\$/kWh}$) divide the present value of total revenue for the project over the contract period ($\text{\$}$ in each year of the contract) by the present value of utility purchases (kWh in each year of the contract). Use the utility's before-tax weighted average cost of capital (WACC) approved by the CPUC for the solicitation year being evaluated. Price should be expressed in the year's dollars that corresponds with both the contractual start date and the applicable MPR. See template spreadsheet for calculation details.

b) Identify the levelized contract price ($\text{\$/kWh}$) and the utility contract term (years, this should be the same as the contract term shown in 4a).

The nominal weighted average contract price must be documented using the template spreadsheet. Input the contract price by TOD period and the annual generation by TOD period. The algorithms imbedded in the spreadsheet will calculate the annual nominal weighted average contract price for each year of expected delivery, expressed in the year's dollar for which delivery is expected to begin. The weighted average contract price should reflect both the contract price and expected deliveries during a given price period. For example, the calculation of the weighted average price for a product receiving an "X" peak price four hours a day, seven days a week, 365 days a year, and "Y" offpeak price for the remainder would be: $[(X \text{ peak price/hour}) * (\text{estimated generation to be delivered during the peak four hour period for the entire year}) / (\text{total estimated generation to be delivered for the entire year})] + [(Y \text{ offpeak price/hour}) * (\text{estimated generation to be delivered during the offpeak period for the entire year}) / (\text{total estimated generation to be delivered for the entire year})]$.

The levelized utility payment ($\text{\$/kWh}$) must be documented using the template spreadsheet. Input the following data: solicitation/MPR year, contract start year, contract term, levelized MPR including TOD factors, and the utility's before-tax weighted average cost of capital (WACC) approved by the CPUC for the solicitation year being evaluated. The levelized utility payment is calculated by dividing the present value of total utility payments over the contract period ($\text{\$}$ in each year of the contract) by the present value of utility purchases (kWh in each year of the contract). See template spreadsheet for calculation details.

c) If the levelized bid price from part (a) differs from the contract price from part (b), please attach documentation explaining the difference.

[8] SUPPLEMENTAL ENERGY PAYMENT REQUEST

Note: The Energy Commission needs these data for its evaluation of SEPs, but SEP payments approved by the Energy Commission will not necessarily match these values.

a) Identify the levelized above-market cost over the proposed contract period ($\text{\$/kWh}$). To compute the requested SEP award ($\text{\$/kWh}$), divide the present value of the requested SEP payments over the contract period ($\text{\$}$ in each year of the contract) by the present value of utility purchases (kWh in each year of the contract). Use the utility's before-tax weighted average cost of capital (WACC) approved by the CPUC for the solicitation year being evaluated. See template spreadsheet for calculation details.

b) Identify the total amount of above-market costs over the proposed contract period (nominal dollars).

c) Identify the levelized supplemental energy payment REQUESTED ($\text{\$/kWh}$).

d) Specify the MPR in 4(b) weighted (to reflect sales per TOD and CPUC adopted TOD factors applicable to this solicitation) and levelized over the contract term using (¢/kWh). To compute the levelized, weighted MPR (¢/kWh), divide the present value of total utility payments over the contract period ($\text{\$}$ in each year of the contract) by the present value of utility purchases (kWh in each year of the contract). Use the utility's before-tax weighted average cost of capital (WACC) approved by the CPUC for the solicitation year being evaluated. See template spreadsheet for calculation details.

e) If the levelized above-market cost over the proposed contract period from part (a) differs from the levelized supplemental energy payment REQUESTED from part (c), please attach documentation explaining the difference.

[9] ANNUAL DATA: ESTIMATED MAXIMUM SALES (kWh), WEIGHTED CONTRACT PRICE, WEIGHTED MPR

To support your levelized values reported in parts 7(a), 7(b), 8(a) and 8(c), provide: the annual sales eligible for SEPs per TOD period, TOD factors, Weighted Average Cost of Capital, and annual contract price by TOD period. Calculate the annual weighted MPR (the MPR shown should be weighted for any applicable TOD factors). Use the utility's before-tax weighted average cost of capital (WACC) approved by the CPUC for the solicitation year being evaluated. Use the MPR approved by the CPUC for the solicitation year being evaluated. Use template spreadsheet to provide this information and calculate the annual weighted MPR. Please input the data in the template spreadsheet and submit it to the Energy Commission electronically. The file must be in Excel format and not in Portable Document Format (PDF).

Please note that the importance of accurately estimating the annual sales of renewable energy eligible for SEPs.

- If the seller **UNDER-estimates** the annual generation: The Energy Commission will not pay SEPs for any generation above the maximum generation specified in the contract between seller and utility, consistent with the Energy Commission's program guidelines (*New Renewable Facilities Program Guidebook*, available at: [www.energy.ca.gov/portfolio/document]). In other words, the seller will not receive SEPs for any deliveries made pursuant to this contract that exceeds the amount shown on this form and incorporated as part of the seller's award from the Energy Commission.
- If the seller **OVER-estimates** the annual generation: Facilities receiving SEPs must meet minimum generation requirements or face a penalty. The Energy Commission will evaluate the actual generation of each facility receiving SEPs during the first three years of the funding period against the estimated generation contained in the facility's funding award agreement. If the actual generation during those first three years averages less than 85 percent of the estimated generation for that three-year period, the Energy Commission will contact the facility for an explanation for the undergeneration and may decide to reduce the facility's SEP award to reflect the amount of actual average annual generation. Please see "Generation Requirements" in the program guidelines.

[10] BENEFITS TO MINORITY OR LOW-INCOME COMMUNITIES: Attach any information submitted with the facility's bid to the utility describing the facility's benefit to minority or low-income communities. Pursuant to the program guidelines, the Energy Commission may provide preference to facilities that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations as evaluated on a case-by-case basis when facilities apply for SEPs.

CEC-SEP-4

[11] CONTRACT MILESTONES: Identify the anticipated dates for achieving the applicable major contract milestones. If a milestone is not applicable (e.g. the project is already operational), please attach documentation explaining why it is not applicable.

The seller agrees to: (1) promptly notify the Energy Commission in the event of failure or potential failure to meet a milestone, and (2) send the Energy Commission any notice regarding a potential or actual force majeure, contract default or contract termination sent to the utility.

[12] ACKNOWLEDGEMENT: Identify the name and title of the authorized representative of the Seller.

[13] ATTESTATION: This form must be signed by an authorized representative of the seller and the original signed copy must be sent to the Energy Commission. Also, please e-mail an electronic version to the Energy Commission. The electronic version of the spreadsheet must be in Excel format and not in Portable Document Format (PDF).

MONTHLY INVOICE FOR SUPPLEMENTAL ENERGY PAYMENTS NEW RENEWABLE FACILITIES PROGRAM

Note: All data submitted on this form is subject to public disclosure.



*RENEWABLE
ENERGY
PROGRAM*

CALIFORNIA ENERGY COMMISSION

Please submit invoice to:

**California Energy Commission
New Renewable Facilities Program, MS-45
1516 Ninth Street, Sacramento, CA 95814-5512
Telefax: (916) 653-8251**

**Instructions for completing this form are in the Guidebook for
the New Renewable Facilities Program**

Please print or type

Company Name:									
Generation Period:						Date Submitted:			
CEC RPS ID #:									
Eligible Production (in kWhs)								Please check one:	
			,				,		
								<input type="checkbox"/> Estimated Generation (attach explanation letter)	
								<input type="checkbox"/> Based upon attached third-party statement	

DECLARATION

I, (print name) _____, declare under penalty of perjury that the information provided in this invoice is true and correct to the best of my knowledge and that I, as an authorized agent of the above named company, have authority to submit this invoice on the company's behalf. I further declare under penalty of perjury that I have reviewed the electricity production data included in the attached statement(s) and that, to the best of my knowledge, it does not overstate the amount of electricity production supplied to the transmission grid or distribution system by the above-named company. I further declare under penalty of perjury that prevailing wages were paid for work activities on the facility that were subject to the prevailing wage law and covered by the period of this invoice and that above-named company and all contractors and subcontractors complied with the prevailing wage law.

Dated _____ at _____
 (month/day/year) (place of execution)

Signature: _____ Title: _____

Instructions for Completing Monthly Invoice Report for New Renewable Facilities Program

1. **Company Name** – Current full name of the generating facility. Include name of business or company that owns facility, if different than facility name.
2. **Generation Period** – The month and year for which generation is being submitted.
3. **Date Submitted** – Date invoice submitted to the Energy Commission.
4. **CEC RPS ID** – Certified Renewable Supplier identification number assigned to the facility by the Energy Commission under the certification process described in the *Renewables Portfolio Standard Eligibility Guidebook*.
5. **Eligible Production (in kWhs)** – Number of kWhs of generation eligible for funding during the generation period, based on the statement of an independent third party. If eligible generation is sold to more than one entity in a given month, attach a separate statement itemizing the amount of eligible generation sold to each entity. Third-party verification is only required while the Energy Commission's interim tracking system is in place; once the final electronic tracking system is in operation, the third-party verification is no longer necessary.
6. **Declaration** – The declaration must be completed by an officer of the company such as the Chief Executive Officer, Chief Financial Officer, or a similar officer with authority to bind the company.

Note: For administrative convenience, the format of the CEC-SEP-5 form, as well as the information requested, may be modified in the future. [Such modifications will not be deemed substantive in nature.]

PAYEE DATA RECORD

STD. 204 (Rev. 6-2003) (REVERSE)

1	<p><u>Requirement to Complete Payee Data Record, STD. 204</u></p> <p>A completed Payee Data Record, STD. 204, is required for payments to all non-governmental entities and will be kept on file at each State agency. Since each State agency with which you do business must have a separate STD. 204 on file, it is possible for a payee to receive this form from various State agencies.</p> <p>Payees who do not wish to complete the STD. 204 may elect to not do business with the State. If the payee does not complete the STD. 204 and the required payee data is not otherwise provided, payment may be reduced for federal backup withholding and nonresident State income tax withholding. Amounts reported on Information Returns (1099) are in accordance with the Internal Revenue Code and the California Revenue and Taxation Code.</p>								
2	<p>Enter the payee's legal business name. Sole proprietorships must also include the owner's full name. An individual must list his/her full name. The mailing address should be the address at which the payee chooses to receive correspondence. Do not enter payment address or lock box information here.</p>								
3	<p>Check the box that corresponds to the payee business type. Check only one box. Corporations must check the box that identifies the type of corporation. The State of California requires that all parties entering into business transactions that may lead to payment(s) from the State provide their Taxpayer Identification Number (TIN). The TIN is required by the California Revenue and Taxation Code Section 18646 to facilitate tax compliance enforcement activities and the preparation of Form 1099 and other information returns as required by the Internal Revenue Code Section 6109(a).</p> <p>The TIN for individuals and sole proprietorships is the Social Security Number (SSN). Only partnerships, estates, trusts, and corporations will enter their Federal Employer Identification Number (FEIN).</p>								
4	<p><u>Are you a California resident or nonresident?</u></p> <p>A corporation will be defined as a "resident" if it has a permanent place of business in California or is qualified through the Secretary of State to do business in California.</p> <p>A partnership is considered a resident partnership if it has a permanent place of business in California. An estate is a resident if the decedent was a California resident at time of death. A trust is a resident if at least one trustee is a California resident.</p> <p>For individuals and sole proprietors, the term "resident" includes every individual who is in California for other than a temporary or transitory purpose and any individual domiciled in California who is absent for a temporary or transitory purpose. Generally, an individual who comes to California for a purpose that will extend over a long or indefinite period will be considered a resident. However, an individual who comes to perform a particular contract of short duration will be considered a nonresident.</p> <p>Payments to all nonresidents may be subject to withholding. Nonresident payees performing services in California or receiving rent, lease, or royalty payments from property (real or personal) located in California will have 7% of their total payments withheld for State income taxes. However, no withholding is required if total payments to the payee are \$1,500 or less for the calendar year.</p> <p>For information on Nonresident Withholding, contact the Franchise Tax Board at the numbers listed below:</p> <table data-bbox="159 1373 1409 1430"> <tr> <td>Withholding Services and Compliance Section:</td> <td>1-888-792-4900</td> <td>E-mail address:</td> <td>wscs.gen@ftb.ca.gov</td> </tr> <tr> <td>For hearing impaired with TDD, call:</td> <td>1-800-822-6268</td> <td>Website:</td> <td>www.ftb.ca.gov</td> </tr> </table>	Withholding Services and Compliance Section:	1-888-792-4900	E-mail address:	wscs.gen@ftb.ca.gov	For hearing impaired with TDD, call:	1-800-822-6268	Website:	www.ftb.ca.gov
Withholding Services and Compliance Section:	1-888-792-4900	E-mail address:	wscs.gen@ftb.ca.gov						
For hearing impaired with TDD, call:	1-800-822-6268	Website:	www.ftb.ca.gov						
5	<p>Provide the name, title, signature, and telephone number of the individual completing this form. Provide the date the form was completed.</p>								
6	<p>This section must be completed by the State agency requesting the STD. 204.</p>								
	<p><u>Privacy Statement</u></p> <p>Section 7(b) of the Privacy Act of 1974 (Public Law 93-579) requires that any federal, State, or local governmental agency, which requests an individual to disclose their social security account number, shall inform that individual whether that disclosure is mandatory or voluntary, by which statutory or other authority such number is solicited, and what uses will be made of it.</p> <p>It is mandatory to furnish the information requested. Federal law requires that payment for which the requested information is not provided is subject to federal backup withholding and State law imposes noncompliance penalties of up to \$20,000.</p> <p>You have the right to access records containing your personal information, such as your SSN. To exercise that right, please contact the business services unit or the accounts payable unit of the State agency(ies) with which you transact that business.</p> <p>All questions should be referred to the requesting State agency listed on the bottom front of this form.</p>								

**DRAFT SAMPLE SUPPLEMENTAL ENERGY PAYMENT (SEP)
AWARD AGREEMENT**

This agreement is provided as an example only and will be modified.

1. **Purpose.** This Award Agreement (“Agreement”) is entered into between _____ (“Grantee”) and the California Energy Commission (“Energy Commission”) for the purpose of creating a funding award to provide Supplemental Energy Payments (“SEPs”) pursuant to the Energy Commission’s *New Renewable Facilities Program Guidebook, Renewables Portfolio Standard Eligibility Guidebook, and Overall Program Guidebook*, (collectively referred to as “Guidelines”). Grantee was selected as a winning bidder in _____ (title of solicitation) dated _____ (date the utility released the solicitation) and awarded a power purchase contract with _____ to supply electricity from its _____ facility (“Facility”), as described in Exhibit A. This Agreement commits funding to pay SEPs for Grantee’s Facility subject to the Guidelines and the terms and conditions specified herein. Grantee must comply with the terms and conditions of the Guidelines, this Agreement, and power purchase contract _____ with _____ to remain eligible to receive funding under this Agreement.

2. **Incorporation by Reference.** Neither the Energy Commission’s Guidelines nor Grantee’s SEP Application dated _____ are attached hereto but are incorporated by reference and made a part of this Agreement.

3. **SEP Award Amount.** The total amount of Grantee’s SEP award under this Agreement is _____ and is based on the difference between the Grantee's contract price of ___ cents/kWh and the applicable market price referent of _____ for solicitation _____, subject to any Energy Commission imposed caps and the following estimated annual levels of eligible electrical power generation, as identified in Grantee's SEP Application dated _____.

Year 1 Generation	_____	kWhs
Year 2 Generation	_____	kWhs
Year 3 Generation	_____	kWhs
Year 4 Generation	_____	kWhs
Year 5 Generation	_____	kWhs
Year 6 Generation	_____	kWhs
Year 7 Generation	_____	kWhs
Year 8 Generation	_____	kWhs
Year 9 Generation	_____	kWhs
Year 10 Generation	_____	kWhs
Total	_____	kWhs

4. **Contingent Funding.** Funding for this Agreement is contingent on the availability of adequate funding from the Energy Commission's Renewable Resource Trust Fund.
5. **Term.** The term of this Agreement shall be from the date of execution by both Grantee and the Energy Commission to _____ years after the Facility's online date unless terminated earlier by the Energy Commission pursuant to the Guidelines. Notwithstanding the term of this Agreement, Grantee may submit final invoices for payment of eligible electrical power generated during the term of this Agreement for a period of three months after the term ends.
6. **Non-Transferability of SEP award.** The SEP award created by this Agreement is specific to Grantee and the _____ Facility. This SEP award is not transferable or assignable to another facility and may not be assigned to another entity without the Energy Commission's prior written permission.
7. **Assignment.** Grantee shall not assign its rights nor delegate its duties under this Agreement without the Energy Commission's advance written approval.
8. **Indemnification.** Grantee agrees to indemnify, defend, and save harmless the Energy Commission, its officers, agents, and employees from any and all claims and losses accruing and resulting to any and all contractors, subcontractors, material men, laborers, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with Grantee's Facility or this Award Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Grantee or Grantee's officers, agents, employees, contractors, subcontractors, material men, laborer, or any other person, firm, or corporation in connection with the performance of work to develop, construct, or operate Grantee's Facility or receive funding under this Agreement.
9. **Review and Disclaimer.** Review by the Energy Commission of the design, operation, or maintenance of Grantee's Facility or related interconnection or generation facilities shall not constitute any representation as to the economic or technical feasibility, operational capacity, or reliability of such facilities. Grantee shall not in any way represent to any third party that the Energy Commission's review of Grantee's Facility is a representation by the Energy Commission as to the Facility's economic or technical feasibility, operational capability, or reliability. Grantee is solely responsible for its Facility's economic and technical feasibility, operational capability, and reliability.
10. **Certification.** Grantee has provided evidence of facility certification as an eligible renewable resource and must maintain that certification as outlined in the Energy Commission's *Renewables Portfolio Standard Eligibility Guidebook*. Failure to do so may result in Grantee's SEP Award Agreement being terminated as specified in the Guidelines.

11. **SEP Award Termination.** Grantee acknowledges that this Agreement and SEP payments under this Agreement may be terminated for reasonable cause pursuant to the Guidelines by providing 30-day written notice to the Grantee contact specified in paragraph 11. Consistent with the Guidelines, reasonable cause includes the following:

- Grantee's failure to maintain certification as an eligible renewable resource or knowingly providing false or misleading information about itself or the facility, as determined by the Energy Commission, in facility's application for certification.
- Termination of the power purchase contract referenced in paragraph 1 of this Agreement for any reason.
- The power purchase contract referenced in paragraph 1 of this Agreement is modified or renegotiated such that the total energy price paid under the power purchase contract is below the applicable market price referent.
- Insufficient funds in the Energy Commission's Renewable Resource Trust Fund to adequately fund this Agreement.

12. **Supplemental Energy Payments.** Grantee acknowledges that its eligibility to receive SEPs under this Agreement shall be contingent upon its satisfaction of all terms and conditions set forth in the Guidelines and this Agreement.

13. **Invoicing.** Grantee shall invoice for payments under this Agreement in accordance with the procedures specified in the applicable Guidelines.

14. **Records Retention.** Unless stated otherwise in the applicable Guidelines, Grantee shall:

- keep all records relating to and verifying the accuracy of information stated in an invoice for payment submitted pursuant to this Agreement for a period not less than three years after the end of the calendar year in which payment for the invoice is made;
- keep all records relating to and verifying the accuracy of information stated in a report submitted to the Energy Commission pursuant to the Guidelines for a period not less than three years after the end of the calendar year in which the report is submitted; and
- keep all records relating to and verifying the overall usage, on a total energy input basis, of all fossil fuels and non-fossil fuels used to generate electricity in a given calendar year for a period not less than four years after the end of that calendar year.

15. **Grantee Contact.** Grantee's contact under this Agreement shall be _____ . Any notice to Grantee under this Agreement shall be forwarded to the Grantee contact at the following address:

16. **Energy Commission Contact.** The Energy Commission’s contact under this Agreement shall be _____. Any notice to the Energy Commission under this Agreement shall be forwarded to the Energy Commission contact at the following address:

California Energy Commission
1516 Ninth Street, MS-____
Sacramento, California 95814
Attn: _____

17. **CEQA Review.** The Energy Commission has reviewed the _____ Facility and finds that:

- the Facility has complied with California Environmental Quality Act (“CEQA”) and/or National Environmental Policy Act (“NEPA”), or
- the Facility is exempt from CEQA and/or NEPA under _____

18. **Prevailing Wage.** For purposes of this paragraph, “public works” means construction, alteration, demolition, installation, and repair work over \$1,000 but does not include maintenance work; and “Contractor” means all contractors and subcontractors that perform public works activities for the Facility.

A. Grantee/General Requirements

a) Grantee shall comply with state prevailing wage law, Chapter 1 of Part 7 of Division 2 of the Labor Code, commencing with Section 1720; and Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000, for any public works activities performed on the Facility funded by this Agreement. For purposes of compliance with the prevailing wage law, Grantee shall comply with the provisions applicable to recipients of public funds AND the provisions applicable to an awarding body. As such, compliance with the state prevailing wage law includes without limitation:

- 1) Determining public works activities and trades subject to the prevailing wage law;
- 2) Ascertaining applicable prevailing wage rate for each covered worker performing work activities subject to the prevailing wage law on the Facility;
- 3) Specifying in calls for bids, bid specifications, and construction contracts the applicable prevailing wage;
- 4) Ensuring all contracts for public works activities for the Facility include appropriate flowdown provisions;
- 5) Posting the applicable prevailing wage information at each job site of the Facility;
- 6) Paying the prevailing wage, as applicable;

- 7) Complying with overtime and working hour requirements;
- 8) Complying with apprenticeship obligations;
- 9) Complying with payroll recordkeeping requirements;
- 10) Withholding payments from contractors as necessary to satisfy wage and penalty assessments issued by the Labor Commissioner; and
- 11) Complying with other obligations as required by law.

b) Grantee shall submit to the Energy Commission within 90 days of completing the Facility's construction a certification signed by Grantee and all contractors performing public works activities on the Facility certifying that prevailing wages were paid as required by law. The certification shall be as provided in Exhibit B.

c) Grantee shall submit to the Energy Commission, as part of any payment request or invoice, a certification stating i) that prevailing wages were paid for public works activities performed for the Facility during the period covered by the invoice, and ii) that Grantee and all contractors complied with the prevailing wage law.

B. Flowdown Requirements

Grantee shall ensure that all agreements with contractors for public works activities for the Facility contain the following provisions:

a) Contractor shall comply with state prevailing wage law, Chapter 1 of Part 7 of Division 2 of the Labor Code, commencing with Section 1720; and Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000, for all construction, alteration, demolition, installation, or repair work over \$1,000 performed under the contract. Contractor's obligations under prevailing wage laws include without limitation:

- 1) Payment of not less than the applicable prevailing wage for public works activities performed for the Facility;
- 2) Compliance with overtime and working hour requirements;
- 3) Compliance with apprenticeship obligations;
- 4) Compliance with payroll recordkeeping requirements; and
- 5) Compliance with other obligations as required by law.

b) Contractor shall ensure that the above requirements are included in all subcontracts for public works activities for the Facility.

19. Understanding of Guidelines. Grantee warrants that it has read and understands the Energy Commission's Guidelines and acknowledges that these Guidelines govern the payment of any funds under this Agreement and authorize the Energy Commission to terminate the Agreement or any SEP payments under the Agreement for reasonable cause, to conduct random audits of Grantee's invoices for SEP payments, to conduct inspections of Grantee's Facility and books as part of these audits, to initiate enforcement actions to recover any SEP payments the Grantee was not otherwise entitled to receive, to initiate investigations of Grantee to verify fraud or

misrepresentation in connection with Grantee's application for or receipt of this Agreement or any payments of SEP, or to take action as authorized by the Guidelines to properly administer the New Renewables Facilities Program. Grantee further understands that the Energy Commission Guidelines are subject to change pursuant to Public Resources Code Section 25747 and that any changes made to the Guidelines shall apply to Grantee and the payment of SEP under this Agreement.

20. **Law Governing.** This Agreement shall be interpreted, governed, and construed under the laws of the State of California.

Signature of Facility Representative
Title

Signature of CEC Representative
Title

**DRAFT SAMPLE SUPPLEMENTAL ENERGY PAYMENT (SEP)
AWARD AGREEMENT**

**EXHIBIT A
FACILITY DESCRIPTION**

**DRAFT SAMPLE SUPPLEMENTAL ENERGY PAYMENT (SEP)
AWARD AGREEMENT**

**EXHIBIT B
PREVAILING WAGE COMPLIANCE CERTIFICATION**

This certificate is to be completed by Grantee, signed by Grantee and all construction contractors and subcontractors, and submitted to Energy Commission within 90 days of completing the Facility's construction.

Grantee: _____

Energy Commission SEP Award Agreement Number:

Facility: _____

Date Facility Construction Completed: _____

Grantee hereby certifies as follows:

1. All construction contracts and subcontracts to perform work activities subject to the state prevailing wage law for the above referenced Facility contained requirements that the construction contractors and subcontractors comply with prevailing wage law and pay prevailing wages in accordance with the requirements of the California Labor Code.
2. Prevailing wages have been paid as required by law.
3. All construction contractors and subcontractors have maintained labor records as required by the Labor Code and such records shall be made available to the Energy Commission upon request.
4. The undersigned Grantee acknowledges that disbursement of any payments of SEP under the above noted Agreement by the Energy Commission is expressly made in reliance upon the representations made in this certification.

Grantee:

Signature: _____

Printed/Typed Name: _____

Title: _____

Date: _____

Each contractor and subcontractor performing work activities subject to the prevailing wage law for the above referenced Facility must sign below. Include additional pages if necessary.

Construction Contractor and Subcontractors hereby certifies as follows:

1. The contract with Grantee to perform work activities subject to the prevailing wage law for the above referenced Facility contained requirements that the construction contractor and all its subcontractors comply with prevailing wage law and pay prevailing wages in accordance with the requirements of the Labor Code.
2. Prevailing wages have been paid as required by law.
3. Construction contractor and all its subcontractors have maintained labor records as required by the Labor Code and such records shall be made available to the Energy Commission upon request.
4. The undersigned construction Contractor acknowledges that disbursement of any payments of SEP under the above noted Agreement by the Energy Commission is expressly made in reliance upon the representations made in this certification.

Construction Contractor

Signature: _____

Printed/Typed Name: _____

Title: _____

Date: _____

Construction Contractor

Signature: _____

Printed/Typed Name: _____

Title: _____

Date: _____

Appendix B - Acronyms

AB	—	Assembly Bill
CCA	—	community choice aggregator
CEQA	—	California Environmental Quality Act
CPUC	—	California Public Utilities Commission
CTC	—	competitive transition charge
DIR	—	Department of Industrial Relations
ESP	—	electric service provider
IOU	—	investor-owned utility
ISO	—	Independent System Operator
kWh	—	kilowatt-hour
LFG	—	landfill gas
MSW	—	municipal solid waste
MW	—	megawatt
MWh	—	megawatt-hour
NEPA	—	National Energy Policy Act
NRFP	—	New Renewable Facilities Program
PGC	—	Public Goods Charge
PG&E	—	Pacific Gas and Electric Company
PPA	—	power purchase agreement
PUC	—	Public Utilities Code
PV	—	photovoltaic
REP	—	Renewable Energy Program
RPS	—	Renewable Portfolio Standard
SB	—	Senate Bill
SCE	—	Southern California Edison Company
SDG&E	—	San Diego Gas and Electric Company
SEP	—	supplemental energy payment
TIN	—	taxpayer identification number
TOD	—	Time of Delivery
WECC	—	Western Electricity Coordinating Council