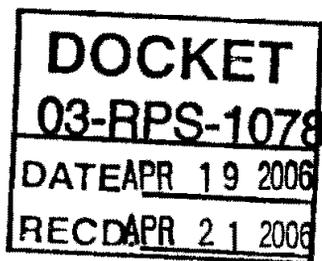




**Pacific Gas and
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April 19, 2006

VIA ELECTRONIC DELIVERY

California Energy Commission
Docket Office, MS-4
Docket No. 03-RPS-1078 and
Docket No. 02-REN-1038
1516 Ninth Street
Sacramento, CA 95814-5512

**Re: Pacific Gas and Electric Company's Post-Workshop Comments Concerning
Proposed Changes to the Renewables Portfolio Standard Guidebooks**

Pacific Gas and Electric Company (PG&E) respectfully submits the following comments on the CEC's workshop concerning proposed changes to the Renewables Portfolio Standard Guidebooks.

Thank you for considering our comments. Please feel free to call me at (415) 973-6463 if you have any questions about this matter.

Sincerely,

Les Guliasi

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Enclosure

BEFORE THE CALIFORNIA ENERGY COMMISSION

Implementation of Renewables Portfolio)	Docket No. 03-RPS-1078
Standard Legislation (Public Utilities Code)	RPS Proceeding
Sections 381, 383.5, 399.11 through 399.15,)	
and 445;[SB 1038], [SB 1078]))	
)	
and)	
)	
Implementation of Renewables Investment)	Docket No. 02-REN-1038
Plan Legislation (Public Utilities Code)	Renewable Energy Program
Sections 381, 383.5, and 445; [SB 1038]))	
)	

**POST-WORKSHOP COMMENTS
OF PACIFIC GAS AND ELECTRIC COMPANY**

I. INTRODUCTION

Pacific Gas and Electric Company (PG&E) appreciates the opportunity to submit its written comments following the workshop held on April 17, 2006 to receive public comment on the proposed changes to the Energy Commission's Renewables Portfolio Standard Eligibility Guidebook, the New Renewable Facilities Program Guidebook, and the Overall Program Guidebook for the Renewable Energy Program. While the revisions to these key documents are generally responsive to the evolution of the marketplace for renewable resource in California, certain provisions should be revised to address two important concerns.

PG&E's comments on the proposed revisions are guided by a desire to access the broadest potential market of eligible renewable resources possible, consistent with the state's RPS goals. However, the narrowly drawn delivery requirement precludes the counting of power from renewable energy sources located outside the California Independent System Operator (CAISO) control area. PG&E is also concerned that the proposed documentation for the award of Supplemental Energy Payments (SEPs) could

result in the premature public disclosure of the prices paid for renewable energy, so that due to the IOUs' predictable demand for renewable energy, the revealed prices become the floor for prices bid into the RPS solicitations and the solicitation for renewables fails to result in competitive prices. PG&E's comments are intended to refine the CEC's proposed changes to be consistent with market realities and practical considerations.

II. COMMENTS ON DRAFT RENEWABLES PORTFOLIO STANDARD ELIGIBILITY GUIDEBOOK, PUBLICATION # CEC-300-2006-007-D, POSTED; APRIL 7, 2006.

A. Eligibility of Out of State Facilities (p. 18 *et seq.*)

The CEC staff has revised this section to clarify the protocols for counting generation from an eligible renewable resource located outside the state and interconnecting with the transmission facilities of Western Electricity Coordinating Council members outside of California. PG&E concurs that deliveries from out of state renewable sources should be documented so that they can be counted toward the RPS program. Using the Transmission Information System (TIS) electronic tagging system (ETAG) implemented by the North America Electricity Reliability Council (NERC) to tag deliveries to California is an important step in this process. However, the Draft Eligibility Guidebook should be modified so that it does not inadvertently limit the delivery points in the CAISO area.

1. Delivery should be acceptable if made to the CAISO.

In order to be eligible for the RPS, electricity procured from a facility located out-of-state must "demonstrate delivery of its generation to an in-state market hub or in-state substation located within the CA ISO control area of the WECC transmission system." (Draft Eligibility Guidebook, p. 18, item 1.c.) There is no reason to limit acceptable

deliveries to the CAISO to either an in-state market hub or in-state substation. PG&E has taken delivery of power from existing renewable qualifying facilities at other locations within the CAISO. PG&E has proposed, and the CPUC has accepted, delivery of eligible renewable resources anywhere within the CAISO as part of its RPS deliveries. The restrictive language must be revised as follows because in its present form, it would prevent PG&E from executing its approved RPS plan:

~~“1.c) Demonstrates delivery of its generation to an in-state market hub or in-state substation located within the CA ISO.-control area of the WECC transmission system.~~

2. **To enable out of state intermittent resources to meet RPS eligibility requirements, another out of area entity should be able to create a “shaped product” for transmission to the CAISO.**

PG&E seeks to develop the broadest base of available renewable resources possible. The potential of intermittent out of state resources was recently illustrated by Portland General Electric’s April 11, 2006 announcement that it had acquired the development rights to the 25,000 acre Biglow Canyon Wind Farm from Orion Energy LLC, along with the prospect of 350-450 MW of wind-generated electricity, in Sherman County, Oregon.

To facilitate CAISO’s ability to receive electricity from other areas, PG&E proposes a banking system that will enable deliveries from renewables to be shaped and delivered to the California load serving entity. This may require the generation from the renewable facility to be accepted by a “wholesaler” for delivery to California at a later time. A “wholesale entity” is defined here as an entity with sufficient physical resources to absorb the energy when generated and to deliver it to the load serving entity in California when scheduled out. In this context, we define banking to be the process by

which a wholesaler is able to receive energy from a renewable facility at one time and generate and return a similar amount at another time. Shaping is defined as the process by which a wholesaler receives the energy in one shape (*e.g.* intermittent) and returns a similar amount of energy in a different shape (*e.g.* base load 7x24). We will describe how banking and shaping will take place, how tagging the power to the load serving entity may occur in two segments and why some tags cannot identify a unique generator. Even though the tag for delivery to the CAISO is not always unit specific, PG&E's proposed tracking process will demonstrate that the power received was actually generated by a renewable generator and ultimately delivered to a California load serving entity for use by California consumers. .

- **Banking**

To enable out of state developers of intermittent resources to deliver their electricity to California, PG&E believes that deliveries to the load serving entity need not be simultaneous with the actual generation. Consistent with the ISO PIRP program, PG&E recommends that generation be allowed to be banked, shaped and then delivered at a different time; periodically generation and deliveries will be trued-up. The longer the interval, the more beneficial it will be to the California ratepayers. This concept is an optimal solution to the following problems:

1. Intertie availability – intertie capacity for deliveries into California varies dramatically with the seasons and within the day.
2. The inability of the CAISO to accept deliveries, for example, during spring offpeak, when minimum load conditions prevail in California (*i.e.*, excess baseload generation).

3. The output of renewables is not easily predictable, and thus, impossible to schedule and deliver on an interchange. Most interchanges into California are scheduled hourly and not dynamically, and therefore, are not suitable for delivery of the majority of renewable resources which are intermittent in nature.

4. Some renewable resources have relatively low capacity factors and therefore require a large amount of MW intertie line space relative to the total amount of energy generated. In view of issue 1. above, increasing the capacity factor of renewable resources by shaping has the additional benefit of maximizing the value of the available line space.

Therefore, out of state generators of renewable resources should be able to bank their generation into physical wholesale systems outside of California. These wholesalers can then shape the renewable power they received for delivery to California. Shaped energy would consist of predictable/schedulable blocks of energy, instead of the varying energy levels over unspecified hours that particularly characterize real-time generation from intermittent resources.

- **Shaping**

To create the shaped product, generation from the intermittent resource would be received by the wholesaler and “banked” to the generator’s account. The wholesaler would then schedule the facility’s banked electricity in the form of the shaped product purchased by the load serving entity in California. The timeframe and amount of MW scheduled to be delivered to California in each hour would be based on the forecasted amount of generation from the renewable resource and the availability and cost of the transmission into California. For example, assuming a contract with a wind farm in the

northwest and intertie availability during the hours from 7 am to 7 pm each day, January through June, and October through December (but not during summer peak), the annual amount of forecasted energy would be spread over the period of intertie availability in such a way that the total scheduled deliveries receipts would equal the annual forecasted amount.

- **Tracking**

The deliveries will be appropriately tracked so they can be received and counted by the load serving entity, through a combination of NERC ETAGs and generating facility meter data.

The draft delivery requirements state,

1. ...In accordance with the policies of the NERC, the interchange transaction must be tagged as what is commonly referred to as a “NERC tag”, which requires, among other things, that information be provided identifying the Generation Providing Entity, the “source or “Point of Injection”, ...
2. The owner of the eligible facility shall register the facility as a unique source with NERC. This source shall be used on NERC transaction tags for all eligible energy deliveries.

PG&E agrees with the fact that the owner of the facility will register the facility as a unique source with NERC.

This facility will schedule and deliver its energy to the wholesaler and such delivery may or may not require a NERC tag, depending on whether or not the generating facility and the wholesaler are located in the same control area. Then, when the power is scheduled to be delivered to California, the wholesaler will tag this power as scheduled to the load serving entity. Instead of indicating a unique generating facility as the source, the source of this shaped product would be a “source control area”, rather than the

generating facility *per se*. For example, NERC protocol already allows schedules to identify the control area (*e.g.*, BC Hydro or BPA), not the specific generation unit, as the source in order to allow system-backed (firmed) schedules.

- **True-Up**

The load serving entity will obtain monthly meter data from the renewable facility. At the end of the year, the total delivered energy will be compared with the generation meter data. If deliveries are less than the metered data, then the load serving entity would only get RPS credit for the delivered amount of renewable energy. If deliveries are in excess of the metered data, then the difference would be deemed to be non-renewable power.

To carry out this proposal, the “verification of delivery” discussion on p. 37 of the Eligibility Guidebook should be revised accordingly.

- **Third party sellers**

California load serving entities should be allowed to contract either directly with the generator or a third party who has contracted with the generator. The “generation providing entity” which is the first purchasing selling entity (PSE) involved in the transaction would not be defined as the generating facility but would likely be “an entity that has rights to sell energy from a generation source” under NERC protocol.

This will also make the Guidebook’s text internally consistent with the terms of the first two paragraphs of page 37.

3. Conclusion: This accomplishes the verification desired by the CEC.

PG&E's proposal will provide verification that delivery requirements were met, verification of RPS eligibility, verification that the procurement was counted only once, and will reconcile procurement and generation to verify that the procurement does not exceed generation as described on page 37 of the Eligibility Guidebook.

III. COMMENTS ON DRAFT NEW RENEWABLES FACILITIES GUIDEBOOK, PUBLICATION # CEC-300-2006-006-D, POSTED; APRIL 7, 2006.

The New Renewable Facilities program draft guidebook would require each IOU to disclose to the CEC specific commercial information about all the bids it has received in response to an RPS solicitation. Information contained in seller's bids and any resultant power purchase agreements with PG&E are commercially sensitive information and are entitled to protection from public access.

Generally, information in the possession of a public agency is subject to public disclosure under the Public Records Act, but, "Nothing in (the Public Records Act) shall be construed to require the disclosure of records that are any of the following: corporate financial records, corporate proprietary information including trade secrets,..." (California Govt. Code sec. 6254). The CEC's regulations protect from disclosure that which is protected by the Public Records Act. The Act states that "...trade secrets are not public records under this section; 'Trade secrets', as used in this section, may include, ... compilation of information which is known only to certain individuals within a commercial concern who are using it to produce... an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know how to use it." (Govt. Code sec. 6254.7). The terms

and conditions of PG&E's RPS procurement contracts and its procurement practices are entitled to protection from public disclosure because they fall within the definition of a trade secret. The CEC's regulations allow, but do not presumptively provide this commercial information protection from disclosure. PG&E suggests revisions to the New Renewables Guidebook to provide more certainty in this area.

1. Consistent Notice of the Availability of Confidential Designation

The Guidebook notes that protection from disclosure may be requested for data including the price and expected deliveries for each bid received, etc. "for each bid received" (p.4), and for data on the CEC-SEP-3 and CEC-SEP-4 forms, pursuant to its regulations on confidential designation, California Code of Regulations, Title 20, Section 2501 et seq." (p.10). However, no explicit protection is offered for the data provided in response to CEC-SEP-1 and CEC-SEP-2 (see p. 9). PG&E is under the impression that the information sought by those two data requests falls within the definition of data for each bid received, and that the CEC would be required by its own regulations to consider requests for confidential treatment of the information. However, to maintain consistency within the Guidebook, the CEC should explicitly provide the option for CEC-SEP-1 and

CEC-SEP-2 in the same paragraph that describes the retail seller's obligation to respond to those data requests.

2. **The CEC should find that certain information is confidential, subject only to the provider's application, at the time information is produced, for a CEC determination of the terms of confidentiality.**

PG&E, other retail sellers, and the consumer interest group, TURN, have expressed concern in previous SEP-related correspondence and at the April 17 workshop that the disclosure of the price paid for renewable generation may ultimately lead to higher costs of renewables. In the context of the RPS program, IOUs seek to obtain electricity at the most favorable terms through competitive solicitation. RPS contract terms, especially the price, should not be disclosed as they would impair the competitiveness of the renewables solicitation.

The CEC should understand that PG&E does not object to providing information about the results of its RPS solicitation to the CEC and its staff. PG&E is concerned that the policy of the CEC Renewables Committee in favor of broad public disclosure may override the competing concern that public knowledge of winning bid prices and the IOUs' RPS procurement requirements will effectively establish a floor for subsequent bids. Unlike the former industry structure, in which electricity was generated by utility-owned generation, electricity is now generated by third parties. While sunshine into the cost of procurement previously could expose imprudent costs, sunshine into RPS bid prices will only allow competitors to avoid cost cutting and instead assume reported purchase prices as a bid floor.

There are certain commercial terms that are *prima facie* sensitive information, when the buyer seeks the lowest purchase price for a limited supply. In the case of renewable energy, the most sensitive term is the price, but other important commercial

terms are embedded in the contract between the parties. In 2004, representatives of IEP, CEERT, TURN, SDG&E and PG&E negotiated standard contract terms which afford confidentiality to ALL contract terms except for five specific terms: Parties' names, resource type, delivery term, project location, and project capacity. This term was adopted by the CPUC. At the seller's option, even these terms may be made confidential for up to six months following CPUC approval of the contract. (D.04-06-014, Appendix A.) The confidentiality of the contract enables the parties to negotiate and realize the benefit of the bargain more directly than would otherwise be possible. The CEC should find, in principle, that the terms of the power purchase agreement, including the contractual document itself and discussions about the agreement are confidential *per se*, unless the term has been previously disclosed to the public. The likelihood of that contingency is slim, however, because the CPUC-approved RPS solicitation protocols require both parties to treat such information as confidential and that is the standard practice in all commercial negotiations.

PG&E's proposal addresses the concern that commercially sensitive contract information is not protected until a determination has been made under Title 20 Section 2501. Confidentiality would be assured from the time the information is provided to the CEC, but when the data is submitted, the data provider must nonetheless follow the CEC's procedure under CCR Title 20 Section 2501 to establish the terms of confidential treatment. For example, the draft Guidebook suggests that bid data from bids below the MPR may be aggregated and submitted to the CEC. The CEC should require the retail seller or Seller to specify the degree of aggregation needed to mask sensitive information,

to propose the period of time during which the data is protected from disclosure, or demonstrate the need for absolute confidentiality.

3. Unnecessary Workpapers Should Not Be Required

The Energy Commission requests aggregated data for bids below the MPR (p.9). This information would be provided on sheet one of CEC-SEP-2. However, the data request also indicates that the background bid-specific information must also be sent electronically to the CEC. PG&E observes that it is not necessary to supplement the aggregated data with workpapers, particularly since the Guidebook already requires the retail seller to update their "Data on Bids Below the MPR" (p.10). The final Guidebook should clarify that only Sheet 1 of CEC-SEP-1 is required.

4. Prospective Application of Changes to New Facilities Guidebook

PG&E is aware that there may be pending SEP applications from the 2004 RPS Solicitation. Any revisions to the New Facilities Guidebook should be limited to the 2005 Solicitations and following years, because a change in procedure would most likely disrupt and delay the award of SEP funds to pending projects.

5. Funding Eligibility Should Be Coordinated with Power Purchase Milestones.

The New Facilities Guidebook makes continued SEP eligibility contingent upon the development's achievement of contract milestones. It is important to avoid injecting any uncertainty into the project's financing status. The power purchase agreement with the utility already includes "Construction Start Date" and commercial operation date as milestones for the continued effectiveness of the contract; substantial penalties may apply if either of these milestones is missed. The PPA also includes the opportunity to cure defective performance so that the development is not unreasonably terminated. PG&E

recommends that the CEC rely on these well-defined events as its milestone for potential withdrawal of SEP support.

Conclusion

PG&E appreciates the hard work undertaken by the Renewables Committee to incorporate developments in the renewables marketplace into the three key CEC RPS Guidebooks. PG&E offers its comments on the eligibility of out of state deliveries to open another avenue for the procurement of renewable energy resources and hopes that for all the reasons given, the CEC will include PG&E's shaped product proposal in its final Eligibility Guidebook. PG&E has also suggested that the CEC determine that RPS purchase price and other contractual terms, be deemed prima facie confidential, so there is no risk of premature disclosure of those terms when commercially sensitive material is provided to support a SEP request. Case-by-case determination of the terms of confidential protection can be made based upon the producing party's individual showing of the need for confidentiality. This procedure should facilitate the SEP application process while preserving the CEC's discretion to act in the public interest.