



STATE OF CALIFORNIA  
ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of: ) Docket 03-RPS-1078  
CEC's Proposed Changes to the ) Docket 02-REN-1038 (RPS  
Renewables Portfolio Standard Guidelines ) Proceeding)

**COMMENTS BY ESMERALDA TRUCKHAVEN GEOTHERMAL LLC ON DRAFT  
GUIDEBOOKS: RENEWABLES PORTFOLIO STANDARD ELIGIBILITY  
GUIDEBOOK AND NEW RENEWABLE FACILITIES PROGRAM**

Esmeralda Truckhaven Geothermal LLC ("Esmeralda Truckhaven") wishes to express its appreciation to the Commission for allowing it to offer its comments concerning the draft revised versions of, in particular, the *Renewables Portfolio Standard Eligibility Guidebook* ("Eligibility Guidebook") and the *New Renewable Facilities Program Guidebook* ("New Facilities Guidebook") prepared by the Renewables Committee ("Committee") of the Commission ("Commission"). We have certain serious concerns regarding changes to certain of the proposed measures contained in the draft revised Guidebooks, as set forth below.

**DRAFT RENEWABLES PORTFOLIO STANDARD ELIGIBILITY GUIDEBOOK:**

At the threshold, we are concerned that SDG&E apparently cannot file the long-term Renewable PPA which we have executed with SDG&E, as we had expected, by Advice Letter with the California Public Utilities Commission ("CPUC") until DRAFT SEP applications are deemed "full and complete" by the Commission. These SEP applications were filed with the Commission by, respectively, SDG&E on March 17, 2006 as Retail Seller and by Esmeralda Truckhaven on March 22, 2006 (CEC-RPS-5 (SELLER)). Esmeralda Truckhaven's filing was both electronically and by FedEx on that date, received by the Commission on March 23, 2006. We believe these applications provided you with all of the information that the Commission required to deem the application "full and complete" according to the Commission's standards that were in effect at the time. We have not received, at Esmeralda Truckhaven at least, any confirmation by the Commission that, in our case, March 22, 2006 triggered the 30-day clock. This situation persists as of this writing, more than 30 days from our CEC-RPS-5 filing as Seller.

It concerns us that there does not seem to be any substantive or procedural guidelines limiting in any way the discretion of the Commission to make such a "full and complete" determination on either our application or that of SDG&E. Nor has Esmeralda Truckhaven yet received any feedback from the Commission on its application for certification (Pre-certification) (CEC-RPS-1) which we sent by USPS Express Mail on April 11, 2006, Return Receipt Requested (with that return dated April 12, 2006 and signed by a David A. Lopez). We would also note that the Commission's application for

certification form filed by Esmeralda Truckhaven had in large block letters “DRAFT” sometimes obscuring the spaces in which we were to fill certain data and even sign the document. This is of some concern to us as well since we are hoping that the Commission’s otherwise laudable goal of rethinking its approach to the RPS over the last several years, not be used, even inadvertently, to prevent SDG&E’s Advice Letter filing of our Renewable PPA with them with the CPUC.

Although CEC-RPS-1 certification application stated on its face that it could be filed electronically, we were unable to do so, and understand SDG&E found a similar procedural blockade when they tried to file electronically.

As to substance, the Draft Eligibility Guidebook provides that “[c]ertification and pre-certification must be renewed once every two years to confirm that all certified renewable energy resources remain eligible for the RPS” (at page 24). This laudable oversight process will, hopefully, not be conducted under “rolling/draft/revised” guidelines. Esmeralda Truckhaven strongly believes that, based on contract law and the contractual status of the SEP Award which we will hopefully be entering into with the Commission, that the same standards for certification in place when our original Certification Application was filed should consistently apply throughout the life of the SEP Award. To do otherwise would be to inject an element, not just of uncertainty but of real risk, into the financing efforts of applicants such as ourselves bringing on new, “greenfield” renewable projects such as our proposed “Juan Bautista de Anza Geothermal Project” at Truckhaven in NW Imperial County. Predictability of standards and requirements in this recertification process is critical.

## **DRAFT NEW RENEWABLE FACILITIES PROGRAM GUIDEBOOK**

This Draft Guidebook, particularly at pages 14, 15, and 16, causes us grave concern with its provision for post-Award termination by the Commission of any further SEP funding for any reason other than “reasonable cause.” We do not believe that the operating statute allows for what we believe is the arbitrary and capricious terminations proposed therein. More to the point, we think that even if some ambiguity may be believed by the Commission to exist in SB1038/SB1078, that it would be an abuse of Commission discretion to terminate SEP funding for either the “missed Milestones” or non-availability of SEP funds.

As to the former (missed Milestone-based termination), we think this is simply beyond the purview, and for that matter the expertise, of the Commission. The Esmeralda Truckhaven PPA with SDG&E contains Milestones which were negotiated at great length and with a great deal of thought and discussion by SDG&E and Esmeralda Truckhaven. There are provisions for quarterly compliance reports, monitoring, etc., required by SDG&E with which we have absolutely no problem. Moreover, we have no problem with the termination of the SEP payments, if SDG&E terminates the PPA pursuant to its terms. Frankly, the interactive feedback loop between SDG&E and Esmeralda Truckhaven will be operating on a much more frequent basis as we go

forwards towards our common goal of bringing new renewable geothermal megawatts on line with an eye towards their RPS goals.

As to any termination for “Non-Availability of SEP Funds,” this concept seems, from a project financing standpoint, an absolute non-starter. Quite frankly, we believe it is a deal breaker with regard to any potential financing whatsoever of our Juan Bautista de Anza Geothermal Project at Truckhaven since the SEP funds will be a critical component of project cash flow to any lender. Moreover, we think that, once the larger renewable community, regardless of specific renewable resource it utilizes, becomes aware of this, it will, if this recommendation is ever enacted by the Commission, significantly reduce any participation whatsoever by renewable developers in the Commission’s SEP Award program, at least any participation by those other than the most cynical/frivolous types. No renewable project developer seriously intent on obtaining project financing, particularly for a new/greenfield renewable project, would want to participate in a “now you have it, now you don’t” SEP Award program.

We urge the Commission to delete these termination provisions and limit its termination language to those which are clearly for reasonable and justifiable cause. If a SEP Award project either never came on line in the first place, or is grossly in arrears with respect to its proposed generation targets, or has somehow violated permits with respect to environmental or other matters, then the utility (in this case SDG&E) will undoubtedly have already taken appropriate measures. This Commission can then “supplement” SDG&E’s actions with downgrading, reduction, or even, if appropriate, and following upon the actions of SDG&E, engage in the draconian action of termination. For the Commission to seek the power to do so unilaterally is at odds with the needed certainty of payment stream required to finance these new, greenfield geothermal and other renewable resource projects.

We reserve the right to file further comments as we continue to review the Guidebooks.

Respectfully submitted, this 27<sup>th</sup> day of April 2006.

Jack McNamara  
Manager  
Esmeralda Truckhaven Geothermal LLC