

CALIFORNIA ENERGY COMMISSION

1516 Ninth Street
Sacramento, California 95814

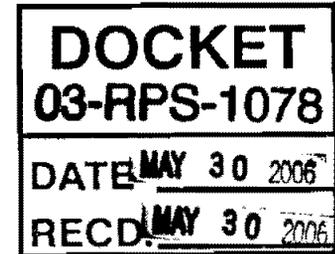
WEBSITES

Main website: www.energy.ca.gov
Children's website: www.energyquest.ca.gov
Consumer Information: www.ConsumerEnergyCenter.org

**02-REN-1038**

May 30, 2006

Jack McNamara
Manager
Esmeralda Truckhaven Geothermal, LLC
28327 Driver Ave.
Agoura Hills, CA 91301



Re: Comments on Draft Revisions to the RPS and NRFP Guidebooks,
Dockets 03-RPS-1078 and 02-REN-1038,
Applications for Juan Bautista de Anza Geothermal Project

Dear Mr. McNamara:

Thank you for commenting on the Energy Commission's draft revisions to the Renewable Portfolio Standard Eligibility Guidebook (*RPS Guidebook*) and New Renewable Facilities Program Guidebook (*NRFP Guidebook*). The Energy Commission encourages Esmeralda Truckhaven Geothermal, LLC (Esmeralda), to continue to participate in the Renewable Portfolio Standard Program and welcomes its comments on the adoption of related guidebooks. Unfortunately, your comments were submitted to the Energy Commission on April 27, 2006, the day after it formally adopted revisions to the *RPS Guidebook* and *NRFP Guidebook*. Below is information on the development of revisions to these Guidebooks as well as responses to your comments concerning Supplemental Energy Payments (SEPs) under the *NRFP Guidebook*.

Revisions to the *RPS Guidebook* and *NRFP Guidebook* were developed as part of a six-month public review and comment process, which was initiated in November 2005. At that time, Energy Commission staff proposed changes to the *RPS Guidebook*, the *NRFP Guidebook*, and the *Overall Program Guidebook* to reflect statutory, market, and regulatory developments and to respond to lessons learned through implementing the program. The Energy Commission requested comments on the November 2005 draft Guidebooks and held a Renewables Committee (Committee) workshop on December 7, 2005, to receive verbal and written comments from stakeholders and members of the public. After careful consideration of the comments received and additional technical and policy analysis, the Committee proposed revisions to the November 2005 draft Guidebooks and held a second public workshop on April 17, 2006 to publicly vet the proposed changes to the Guidebooks. After considering public comments, the Energy Commission adopted the three draft Guidebooks at its April 26, 2006, Business Meeting. These revisions were adopted pursuant to Public Resources Code Section 25747, which authorizes the Energy Commission to adopt substantive

changes to the Guidebooks upon providing 10 days public notice. The revisions took effect upon adoption by the Energy Commission.

Regarding your comments on Esmeralda's application for SEPs, the difficulty is that the application submitted was not complete. As cited in your comments, a draft SEP application was submitted to the Energy Commission on March 22, and the form had, "large block letters 'DRAFT' sometimes obscuring the spaces in which we [Esmeralda] were to fill certain data and even sign the document." Your comments also note that, "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 writing, more than 30 days from our CEC-RPS-5 filing as a seller."

Regrettably, the draft application form that Esmeralda used to request SEPs was an initial working draft and was never included in a published draft or adopted version of the *NRFP Guidebook*. We regret the inconvenience this has caused and have already offered assistance to you and San Diego Gas & Electric Company (SDG&E), the contracting utility, in completing the SEP application forms adopted by the Energy Commission on April 26, 2006 as part of the *NRFP Guidebook*.

Also, as you point out in your comments, Esmeralda's Juan Bautista de Anza Geothermal Project was not certified as RPS-eligible at the time Esmeralda submitted its draft SEP application. A facility must be certified or pre-certified as RPS-eligible and SEP-eligible before the Energy Commission can evaluate an SEP application. The Energy Commission received an application to certify the Juan Bautista de Anza Geothermal Project on April 13, 2006 and subsequently pre-certified the facility as RPS and SEP eligible on May 1, 2006. A copy of the Energy Commission's certification letter is attached.

Your comments indicate that Esmeralda experienced difficulties filing its application for RPS certification electronically and that SDG&E also experience difficulty doing the same. Applications for RPS certification have been submitted electronically to the Energy Commission since the initial adoption of *RPS Guidebook* in 2004, so it is unclear what caused your difficulty, although it could have been an isolated incident related to the Energy Commission's server. The current version of the *RPS Guidebook* directs applicants to submit hard copies of their application and to also "submit forms electronically via e-mail to: RPSTrack@energy.state.ca.us, subject line 'RPS Certification'."

Regarding SDG&E's filing of an Advice Letter with the California Public Utilities Commission (CPUC), there appears to be a misunderstanding of the process and whether SDG&E is permitted to file its Advice Letter prior to receiving notification from the Energy Commission on SEP requests. Nothing precludes SDG&E from submitting its Advice Letter with the CPUC in advance of an SEP determination by the Energy Commission. In fact, this is contemplated in CPUC Decision D.05-12-042, issued on

December 15, 2005. Appendix B of this decision provides a timeline for conducting RPS solicitations and identifies the following pertinent procedural steps:

- Utilities submit contract advice letters for CPUC approval
- CPUC reviews advice letters submitting contracts
- Contracts are approved by adoption of Commission [CPUC] resolution
- Sellers confirm PGC [SEP] funding with utilities within 10 days after receiving notice of SEP determination from Energy Commission
- If necessary, utilities submit amended advice letters with revised proposed contracts, reflecting results of SEP determinations, to CPUC for review and approval by resolution

(D.05-12-042, Appendix B, pgs. 1, 2.)

The Energy Commission provides flexibility on this point and allows SEP determinations to be made before or after the CPUC's approval of a utility advice letter and the underlying contract. Specifically, the *NRFP Guidebook* states "If the contract is not yet approved by the CPUC before the Energy Commission issues a [SEP] Funding Confirmation Letter, the Funding Confirmation Letter will be contingent upon the 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." (*NRFP Guidebook*, pg 11.)

Regarding the renewal of RPS certification, the Energy Commission requires periodic recertification to ensure certified facilities remain eligible for the RPS. This requirement has been in place since April 2004, when the *RPS Guidebook* was initially adopted by the Energy Commission. Like the current Guidebook, the initial Guidebook required recertification every two years to confirm a certified facility's eligibility. The Energy Commission's policy report on RPS implementation, *Renewables Portfolio Standard: Decision on Phase 2 Implementation Issues* (Pub. No. 500-03-049F, October 2003), recommended recertification every year "to capture any facility changes" and to confirm facilities "remain eligible for the RPS," but this recommendation was relaxed based on stakeholder input when the *RPS Guidebook* was initially adopted. (*Renewables Portfolio Standard: Decision on Phase 2 Implementation Issues*, pg. 27)

Although the Energy Commission does not expect the applicable RPS eligibility requirements to change, these requirements are based on existing law, which may be amended by the Legislature. If existing law is amended in the future, the Energy Commission will need to evaluate the amendments and determine their retroactive effect and the degree to which the amendments will apply, if at all, to facilities that had already obtained RPS certification from the Energy Commission. For the reasons noted in your comments (i.e. contract law and the issuance of SEP funding), it seems unlikely

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that the Legislature would amend the law in a way that would affect the continued RPS eligibility of facilities that had been issued SEP awards.

Lastly, regarding the Energy Commission's termination provisions for SEP awards, these provisions were put in place to ensure that the limited SEP funds are used efficiently and remain committed only for projects that retain the utility contracts upon which the SEP awards are based. Missing a contract milestone may result in the termination or renegotiation of a utility contract, and thereby reduce the need for SEP funding. Under these circumstances the Energy Commission must retain discretion to terminate or reduce SEP awards accordingly. These provisions are consistent with the Energy Commission's authority as set forth in Public Resources Code section 25743 (b)(1)(D), which provides that the "commission [Energy Commission] shall reduce or terminate supplemental energy payments for projects that fail either to commence and maintain operations consistent with the contractual obligations to an electrical corporation, or fail to meet eligibility requirements."

In addition, the termination provisions protect the Energy Commission in the event the Legislature uses or borrows SEP funds from the Energy Commission's Renewable Resource Trust Fund and as a result there are insufficient funds to adequately support SEP awards. Funds in the Renewable Resource Trust Fund are deposited in the State Treasury and maintained by the State Treasurer. The Energy Commission has no control over these funds and can not limit the Legislature's access to the funds. Consequently, it is possible that these funds could be used for other public purposes, particularly in time of fiscal crisis. To guard against this possibility the Energy Commission adopted termination provisions to account for insufficient SEP funds.

Several stakeholders have encouraged the Energy Commission to deposit funds for SEP awards into third party escrow accounts to protect these funds from future use by the Legislature. However, the Energy Commission has no express or implied authority to do so.

If you have any questions concerning this matter, please contact me at (916) 654-5141.

Sincerely,

A handwritten signature in black ink, appearing to read "Gabriel Herrera", with a long horizontal flourish extending to the right.

Gabriel Herrera
Senior Staff Counsel

Enclosures

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

May 1, 2006

Jack McNamara
Manager
Esmeralda Truckhaven Geothermal, LLC
28327 Driver Ave.
Agoura Hills, CA 91301

RE: APPROVAL OF APPLICATION FOR CALIFORNIA'S RENEWABLES
PORTFOLIO STANDARD

Dear Applicant:

Your application on behalf of Juan Bautista de Anza Geothermal Project has been approved for:

- Pre-certification
 - Eligible for Renewables Portfolio Standard
 - Eligible for Supplemental Energy Payments
- Certification
 - Eligible for Renewables Portfolio Standard
 - Eligible for Supplemental Energy Payments

Please note that for pre-certified facilities, the information submitted on the application will be subject to further verification once the pre-certified facility has been completed.

A certificate confirming your eligibility is enclosed. The certificate also contains your identification number for purposes of the RPS, which is: **60494D**. Please use this number in all future correspondence with the Energy Commission regarding this facility's certification under the RPS.

To maintain your certification, you must comply with all applicable requirements for certified facilities contained in the *Renewables Portfolio Standard Eligibility Guidebook* (publication number 300-2006-007-F) and the *New Renewable Facilities Program Guidebook* (publication number 300-2006-006-F). You must also notify the Energy Commission immediately if there are any material changes in the information submitted in your application (CEC-RPS-1) or face disqualification.

By applying for certification, you have also agreed to participate in the Energy Commission's generation tracking system. For more information about the tracking system, please refer to the section of in the *Renewables Portfolio Standard Eligibility Guidebook* entitled, "Generation Tracking System."

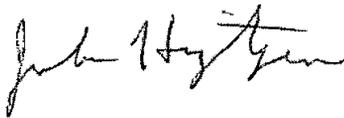
Your certification is valid until **January 1, 2009**. Certification must be renewed once every two years to confirm that all certified renewable energy resources remain eligible for the RPS. If you do not respond to the Energy Commission's request for an information update in a timely manner, you risk losing your certification status.

The Energy Commission will list certified facilities on its website. Any changes in a facility's certification status will also be posted on the Energy Commission's website.

The Energy Commission may conduct periodic or random reviews to verify records submitted for certification or pre-certification. The Energy Commission may also conduct on-site audits and facility inspections to verify compliance with the requirements for certification or pre-certification, and may request additional information as necessary to monitor compliance with the certification requirements specified in the *Renewables Portfolio Standard Eligibility Guidebook*.

If you have any questions about your certification, please do not hesitate to contact me by phone at (916) 651-9106 or by e-mail at <jhingtge@energy.state.ca.us>.

Sincerely,



John Hingtgen
Renewable Energy Program

Enclosure

**Pre-Certified Eligible for California's
Renewable Portfolio Standard
and for Supplemental Energy Payments**

This is to certify that

Juan Bautista de Anza Geothermal Project

Located in: Salton City area of Imperial County, CA

Owned by: Esmeralda Truckhaven Geothermal LLC

Fuel Type: Geothermal

Size: 25 MW

*Has been pre-certified by the California Energy Commission as eligible for California's Renewable Portfolio Standard and for Supplemental Energy Payments under the criteria established in the **Renewables Portfolio Standard Eligibility Guidebook**, publication number 300-2006-007-F, adopted April 2006, and the **New Renewable Facilities Guidebook**, publication number 300-2006-006-F, adopted April 2006, and assigned CEC-ID number:*

60494D

INFORMATION SUBMITTED FOR PRECERTIFICATION SUBJECT TO FURTHER VERIFICATION
WHEN PROJECT IS COMPLETED AND BEGINS COMMERCIAL OPERATIONS.



Authorized Signature

May 1, 2006

Date Issued

CERTIFICATION VALID UNTIL JANUARY 1, 2009

