

January 22, 2007

02-REN-1038

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| DOCKET | |
| 03-RPS-1078 | |
| DATE | JAN 22 2007 |
| RECD. | JAN 22 2007 |

California Energy Commission
Re: **Docket No. 02-REN-1038**
and **Docket No. 03-RPS-1078**
Docket Unit, MS-4
1516 Ninth Street
Sacramento, CA 95814-5504

Dear Commissioners:

On behalf of the **California Biomass Energy Alliance (CBEA)**, which is comprised of 850 MWs of existing solid-fuel biomass and solar thermal generating facilities, I have the following comments to provide on the *Existing Renewable Energy Program Guidebook Staff Draft*.

As noted previously in a letter from CBEA to the Renewables Committee dated last October, CBEA is confident that there is nothing in the amended Public Resources Code (PRC) Section 25742 that would prohibit the CEC from continuing with the current program structure as outlined in the current Existing Renewable Facilities Program Guidebook. First, the changes in SB 1250, even without the very specific guidance as was previously directed in PRC 25742, in no way challenge or contravene the CEC's ability to continue setting one target price and cap for facilities, or categories thereof, making adjustments to it over the course of the program in response to changing market and economic conditions, and distributing incentives to facilities to maximize their renewable energy generation.

Second, although PRC 25742 was amended in SB 1250, the goals of the program have not changed. The changes to PRC 25742 reiterate that the one of the goals of the overall Renewable Energy Program (REP) (PRC Section 25740.5) is to achieve fully competitive and self sustaining in-state renewable electricity generation facilities, and then make reference to this goal specifically during the 2007-2011 investment cycles. The Amendments to *Section II: Purpose* of the Staff Draft should clarify that the overall REP program should continue to: 1) optimize public investment in the most cost-effective and efficient manner, 2) seek a fully competitive and self-sustaining renewable energy supply, and, 3) increase the quantity of in-state renewable energy. The additional goals of the Existing Renewables Energy Program (EREP) remain securing for the State the environmental, economic and reliability benefits of continued operation of existing facilities.

Finally, while it is not possible to state categorically that continuing the PGC-based support of the biomass and solar thermal plants will lead to competitive self-sufficiency during this next investment cycle -- numerous uncertainties still exist today pertaining to the industry's future such as: what will be the future methodology for the determination

of SRAC as set by the CPUC; will there be a tradable market in Renewable Energy Credits available to the existing plants; will the NP-15 and SP-15 Day-Ahead markets truly establish the market price for QFs, and if so, when will that occur and what will that market price be; will the implementation of AB 32 result in a market for greenhouse gas reductions, and what will the market prices be; and, many other unknowns -- the true effect of the continuation of PGC awards to the biomass industry will be to sustain the industry, which the Governor's Executive Order of April 25, 2006 and Bioenergy Action Plan of July 2006 call for, until such time as all or most of these uncertainties are resolved, and there really is a chance for competitive self-sufficiency.

It is important to note that the CEC's EREP clearly remain critical to the continued operation and enhanced efficiency of many of existing renewable energy projects. Since the current program structure has already been determined largely to meet the goals of the program (legislative reauthorization for the funding assumes that) CBEA supports the existing structure of the EREP with slight modifications and changes to the *Staff Draft* to ensure plants continue to avoid curtailment thus maximizing renewable generation in support of the State's renewable energy goals.

1. B. Eligibility Requirements, pages 3-4

The *Staff Draft* says that SB 1250 amended current law to no longer permit the use of fossil fuel for biomass facilities. This statement should be deleted. SB 1250 specifically states that there are limits to the types of biomass fuels to be used by the facilities, not all fuel. If the intent were more than that, the Legislature, which understands the absolute necessity of some small amounts of natural gas required for start-ups, maintenance and reliability functions of a facility, would have made that more clear and would have extended those fuel restrictions for all renewables since not just biomass uses small amounts of fossil fuel. Such an interpretation would exclude every existing biomass generating facility from this program. Additionally, since federal and state law allows all renewable facilities to use up to 25% fossil fuel annually on a total energy input basis, it is reasonable interpretation that the restrictions (noted in PRC 25742) would have referenced this law if it were focused on or limited to anything other than biomass specific fuels.

CBEA recommends making that correction on page 4 of the *Staff Draft*:

2. B. 5. Eligibility Requirements, page 4

In response to the first set of questions on page 5, CBEA believes staff has misinterpreted the eligibility issue of facilities with contracts entered into prior to September 24, 1996. First, since the Legislature funded an Existing Account and knows that all but four operating biomass and solar thermal plants have contracts signed before September 1996; their intention could not have been to disqualify them under this provision. Second, CBEA believes that since the language in the statute is passive, there is no hard requirement to disqualify these pre-existing contact facilities based on this language. Subdivision (e) clearly states "The Legislature **recommends** allocations among the following" and includes the pre-existing contracts as one of those recommendations. Finally, I have made contact with Senator Perata's staff, Assembly Member Levine's

staff, and Senate Energy staff on this issue. They all agree that the *Staff Draft* interpretation of 25740.5, subdivision (e), paragraph (1)(C) wasn't the intent of the language. One staff member went so far as to comment that the language was "squishy" and easily interpreted to apply only to "new" renewable facility funding.

CBEA therefore recommends deleting paragraph B.5. on page 5.

3. F. Determination of Market Price, p. 10

Unrelated to SB 1250, the *Staff Draft* is changing the eligibility of the electrical generation of a facility by requiring the calculation of both the monthly energy and capacity payments when determining the target price and facility need (also noted on 7.c. on page 6). Since the inception of the program, the CEC has only based the target price on the energy payments received by a facility. Such a change to include capacity payments in the equation does not gain the EREP anything but an extremely complicated, labor intensive process that provides no additional information of any value in determining an award.

While it may be appropriate to consider the total payments received by an owner/developer of a *new* renewable energy facility which receives a combined energy and capacity rate, since the question is whether the total income stream will be sufficient to lead to project development, a very different analysis should be applied for existing facilities. The capacity payment, which compensates the facility for the cost of constructing, major maintenance, and making available the physical plant, bears little to no relation to maximizing electricity production. For existing facilities the relevant inquiry is whether the energy payments received by a facility are sufficient to encourage the maximum renewable energy production, especially during periods of lower energy payments (e.g. "off-peak" and shoulder periods). A plant's decision to run is based on its marginal costs. Including capacity payments outside of the required facility specific evaluation may create the false picture that a plant is receiving a sufficient revenue stream due to the consideration of the capacity payment and will continue to operate at maximum electricity production levels. A focus on the capacity payment ignores the fact that it is the level of the energy payment that determines whether or not a facility will have an economic incentive to operate at maximum levels, particularly when that production is not required under the PPA. At present, renewable facilities receiving very low energy payments and surviving based on their capacity payments have a disincentive to produce electricity at maximum levels since such production is not compensated and only serves to increase maintenance costs and to increase the risk of plant outages.

Since maximum electricity production assures that the State receives the most value possible from existing generation resources, the most beneficial role the EREP can play and has played in the past is to provide production and enhancement incentives to existing facilities with minimal energy prices. Since the dynamics of the facilities and their contracts have not changed, there is no justification to consider the additional information of capacity payments.

CBEA recommends all reference to collecting capacity payment information other than for the facility specific evaluation should be deleted.

4. C. Facility Specific Funding, page 7

CBEA disagrees with the *Staff Draft* in its interpretation that the facility specific evaluation required by 25742(e) must be used to determine “facility specific target prices and production incentives caps that reflect each facility’s funding needs.” The statute is clear that the evaluation is designed to determine “the value of an award to the public relative to other renewable energy investment alternatives.” The law does not say the CEC must evaluate these factors to determine the facility’s financial needs. The CEC, however, is not precluded from using that determination to determine the amount of an award, but we believe there is no requirement to do that as stated on page 7 of the *Staff Draft*. There is also nothing in SB 1250 that precludes the CEC from continuing to set a target price and cap and apply it to all facilities as it always has, or choosing to set a different target price for different categories of plants/contract types.

CBEA recommends that Section C be renamed: *Facility Specific Evaluation*, the last sentence in the first paragraph deleted along with the last two paragraphs and replaced with language on how the CEC intends to use this evaluation to determine the value of an award to the public relative to other renewable energy investment alternatives. The determination of an award would then be handled in *E. Determination of Facility Funding, Target Prices and Caps*.

CBEA additionally recommends that the facility specific evaluation also include in the list of items the public benefits provided by its operation of a facility, including its carbon negative emissions, and air quality and waste disposal benefits. This information is not required in statute but without it, the CEC would be making a lopsided evaluation.

5. E. Determination of Facility Funding, Target Prices and Caps, page 8

- a. As noted in item #4 above, the information requested in the Staff Draft in this section is not required to determine facility funding, target prices and caps. The evaluation in PRC 25472(e) is required to determine “the value of an award to the public relative to other renewable energy investment alternatives,” not for the determination of specific target price and cap levels. Little of this information is of any value in making a funding need determination. Awards should be based on utility territory, type of contract, and energy payments, and not on an individual plant basis.

CBEA recommends deleting the first paragraph and the data request, which is already outlined in Section C, and making the following changes to the remainder of the Section:

The Energy Commission will review this information and establish an annual target price and cap for each facility based on the facility funding needs. The target price assigned will be in effect for one calendar year. For the 2007 calendar year, this information must be submitted within 30 days

of the adoption of this ERFP Guidebook. Applicants, however, are encouraged to submit all required documentation as soon as possible after the publication of the adopted guidebook. For the 2008 calendar year and beyond, the applicants must submit the aforementioned information by January 30th of each year to be evaluated for funding for that calendar year.

The Energy Commission intends to determine funding eligibility and establish ~~facility-specific~~ target prices and caps within 30 days of receiving a complete application, which must include any necessary supporting documentation. Applicants will be informed in writing of their eligibility status and funding need determinations. Eligible applicants that are determined to have a funding need will be sent a Funding Award Notice, which identifies the following information:

- Pertinent information about the applicant, the facility, and the facility's power purchase agreement.
- The ~~facility-specific~~ target price and production incentive cap for that calendar year.
- The terms and conditions under which the ERFP funding will be provided, including any funding restrictions and prevailing wage requirements.

A sample Funding Award Notice is included in Section IX of this Guidebook.

CBEA understands the need to delete specific mention of actual targets prices and payment caps, as noted in the deletions made on page 10, as this is expected to be revisited and changed annually. Having to change the Guidebook every time there is a change in the target price, as long as the methodology has not changed, is an inefficient use of staff time. CBEA, however, provides its initial (2007) target price and cap payment recommendations below in item #6.

b. In response to staff's second set of questions on **page 9**, for the facility specific evaluation in Section C, CBEA believes the best and simplest method to determine and document the market value of a facility is the already determined value of a facility for property tax purposes. This is publicly available information, but each facility can provide a copy of its county tax bill for documentation.

c. Regarding confidential information question on **page 9**, there are a small handful of plants (Madera, Dinuba, Sierra Power, Delano, and Sunray Energy) that have confidential contract terms, including energy and capacity prices. For the facility specific evaluation in Section C, these facilities would need confidentiality agreement with the CEC and information should not be included in any public documents.

For biomass facilities in general, confidential information is more of an issue related to fuel costs, suppliers, and sources which is adequately addressed in *VI: Annual Reporting Requirements for Biomass Facilities*.

6. F. Determination of Market Price, page 10

a. As noted in item # 3 above, CBEA recommends deleting any reference to the capacity payments in this Section and otherwise accepts the changes made in the first part of this Section.

b. Unrelated to SB 1250, the *Staff Draft* on **page 12** is proposing to delete the option of distributing funding to facilities based on a time-of-use basis. The deletion of the TOU option in the *Staff Draft* is unjustified. The goals of the program have not changed. Previous statute and current statute both state that the CEC should optimize public investment in the most co-effective and efficient manner, increase renewables and ensure fully competitive and self sustaining renewable energy supplies (previous statute PUC Code 399.5; current statute 25740.5) The option of the TOU is good because the TOU application to the average monthly energy rate received allowed the support of facilities during “off-peak” periods of the day, week, and month during which the plants might otherwise curtail or shut down, raising the energy rate to a value close or equal to the cost of generation. As noted in our Workshop comments, there are several good public policy reasons for supporting continuous operation of the biomass and solar thermal plants and this option should be retained.

CBEA recommends restoring all the language in Section F relating to TOU payment options.

c. In response to staff’s question on **page 12**, CBEA recommends that when collecting the facility specific data on capacity payments in Section C, it do so on a dollar/kW-year basis. The capacity payment remains constant for each plant from year-to-year over the life of its contract, having been established at the time of execution of the contract based on the term of the contract and the year of initial operation. On the contrary, if the Commission attempts to use units of cents/kWh for the capacity payment, it will find that the value will change every year for every plant, as the amount of generation varies. Utilizing a cents/kWh also unfairly penalizes peaking facilities as they have a lower capacity factor resulting in a higher cents/kWh capacity payment versus baseload facilities. The solar thermal and biomass facilities agree that the market price should be based upon the facility’s energy payment, and that including the capacity payment on a cents/kWh basis will be unwieldy without affording any benefit toward reaching the Commission’s objectives.

7. Target Price and Cap

Whether or not the CEC includes specific target price and payment caps in the *Guidebook*, CBEA has the following recommendations, each with a 1.5 cents/kWh (one

and a half cents per kiloWatt-hour) cap and the option to choose between time-period weighted average or time-of-use:

- For all plants with PG&E contracts, regardless of contract structure, the target price value should be the average monthly energy price set based on the agreed energy prices between PG&E and the QFs that accepted the "6.45-cent deal."
- For facilities with SCE contracts, the target price value should be based on the hourly time of use energy prices set and maintained by SCE based on the agreed energy price between SCE and its QFs that accepted the "6.15-cent deal."
- For facilities in other utility territories, the target price should be based on the average monthly energy price set by the contracts between SDG&E and the QF.

8. A. Program Funding

As you know the Investment Plan recommended the account for Existing Renewables be cut in half from its previous levels. When the Legislature agreed, we were given assurances that if there proved to be a greater need and shortfall in the Existing account, the allocation issue would be revisited. I am asking you today that you support revisiting these allocations, or otherwise obtaining the authority to move funds among renewable accounts without restriction if the appropriate structure for this program requires additional funds in a particular account to achieve the stated goals.

Thank you for considering the views of the California Biomass Energy Alliance. Please contact me at (916) 441-0702 if you have any questions.

Sincerely,



Julee Malinowski-Ball
Public Policy Advocates