



January 30, 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 our client, the **California Biomass Energy Alliance (CBEA)**, I would like to provide additional comments on the Staff Draft of the Existing Renewable Energy Program (EREP) Guidebook. An outstanding issue not previously addressed in our comments relates to the interpretation of the fuel restrictions in Public Resources Code (PRC) Section 25742 (d), which references PRC Section 25743 (f), and we specifically address the use of waste wood fuel from federal timberlands in California biomass power generating facilities.

As you know many of the State's biomass facilities have fuel supply issues, which are forcing them to reach further and further out to new suppliers for fuel. Many of these suppliers co-mingle wood chips from varying sources. The result that is that many if not most of the plants receives at least small amounts of wood from federal lands.

The Legislature, in drafting this language, is well aware of the issues that face this industry and understands this fact, which impacts most of the biomass facilities in California. The statute highlights fuel harvested pursuant to an approved timber harvest plan prepared in accordance with the **Z'berg-Nejedly Forest Practice Act**, but is silent on fuel harvested from federal lands. Since the legislation does not speak to federal timberland fuel, facilities that accept fuel from federal lands should remain eligible for funding from the EREP. The State does not control the federal government and that is likely the reason PRC 25472 (d) does not address the biomass removed from federal lands. May we suggest that, because of this, the statute does not apply to the use of biomass that originates from federal lands and hence is not a prohibition on the California Energy Commission for payment of renewable energy support funds to plants that use that biomass. The State does have authority over the biomass removed from non-federal timberlands, and therefore included a constraint of that biomass in the legislation.

We also suggest that the purpose of including the requirement that biomass from private land be harvested under a "Timber Harvesting Plan" was to ensure companies used material that is acquired in accordance with California laws that provide environmental protections. The federal statutes also provide for environmental protection. For California, the "Timber Harvesting Plan," through the Forest Practice Act, is subject to the standards of the California Environmental Quality Act (CEQA). Federal timber harvesting, in an exactly analogous manner, is subject to the National Environmental Policy Act (NEPA), which also requires that projects be conducted with protection of the environment as a key objective. These bodies of law do differ in matters of procedure, but both have the key objective of providing protection for our environment. We request that the Commission consider this in its deliberations on the meaning of PRC 25472 (d).

In further support of our position that the Commission is allowed to apply reasonable interpretation to the specific wording of Section 25472 (d) is that, on its face and literally read the Section disqualifies ALL biomass fuel from eligibility. This is because the wording says "Eligible solid-fuel biomass is limited to the following:" a statement that is followed by three mutually exclusive requirements. For example, biomass fuel that meets the requirements of "c" cannot also meet the requirements of "b." To allow literal reading and strict interpretation, the introductory sentence would have had to read: "Eligible solid-fuel biomass is limited to that biomass that complies with at least one of the following three criteria:"

Since the very basis of the Section must be reasonably and not literally interpreted, CBEA suggests that the interpretation described in the paragraphs above be adopted by the Commission.

Thank you again for considering our views. You may contact me at 916-441-0702 if you would like to discuss this further.

Sincerely,

A handwritten signature in black ink, appearing to read "Julee Malinowski-Ball". The signature is fluid and cursive.

Julee Malinowski-Ball
Public Policy Advocates