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California Energy Commission
Docket Unit
1516 Ninth Street
Sacramento, CA 95814-5504

RE: Docket No. 02-REN-1038 and
Docket No. 03-RPS-1078
Comments on Staff Draft Guidebook

Dear Sir or Madam:

TURN submits these comments concerning the recently-issued Staff Draft Guidebook on Renewable Portfolio Standards Eligibility (Third Edition, September 2007). TURN is concerned that the expanded interpretation of the delivery requirement in the Staff Draft Guidebook will provide an advantage to out-of-state renewables located anywhere in the WECC area as compared to in-state renewables or renewable energy that could deliver into the California ISO control area.

The Draft Guidebook adds a new paragraph in the section on "Delivery Requirements" which states:

Energy may be delivered into California at a different time than when the RPS-certified facility generated electricity, under Public Resources Code Section 25741, Subdivision (a). Further, the electricity delivered into California may be generated at a different location than that of the RPS-certified facility. In practical terms, out-of-state energy may be "banked and shaped" to allow for delivery of a "firmed" product into California. Banking and shaping to offer a firmed product refers to the process by which intermittent resources with variable output profiles may be backed

up or supplemented with delivery from another source to meet customer load.¹

The accompanying footnote provides the following examples "of contracting structures that could meet the RPS-delivery requirements":

1. The retail seller could enter a power-purchase agreement (PPA) with an RPS-eligible facility and, as part of the PPA, the facility would provide banking and shaping to deliver a firm product into California.
2. A third party may provide banking and shaping services. For example: a retail seller could buy energy and RECs from an RPS-eligible facility and execute a second PPA to re-sell the energy from the RPS-eligible facility, but not the RECs, to a third party that provides banking and shaping services. Then, the third party could provide the retail seller with a firm schedule for delivery into California.
3. The retail seller could buy energy and RECs from an RPS-eligible facility, sell back the energy to the facility, and re-bundle (or "match") the RECs with energy delivery into California from a second PPA and/or with imports under a pre-existing PPA.

The third example makes clear that the proposed change would allow any import power - new or old, coal or gas - to be delivered into California for RPS compliance purposes. The power would simply be "matched" with RECs from an RPS-eligible facility no matter the location of that facility.

Such "matching" of brown power with RECs by selling "back the energy to the facility" and then "rebundling" the REC with other energy represents the use of unbundled RECs for RPS compliance. The contractual arrangement of buying bundled "energy and RECs" and then reselling the energy to the RPS-certified facility is exactly the equivalent of buying an unbundled REC, despite the contractual purchase and sale.

The legislature allowed that the CPUC "by rule, may authorize the use of renewable energy credits to satisfy the requirements of the renewable portfolio standard."² The CPUC has not to date authorized the use of unbundled RECs for compliance. The CPUC has, however, expanded the "deliverability" requirements to allow any energy delivered into the CAISO control area to qualify for RPS compliance. This flexibility does allow an LSE to use out-of-state

¹ Draft Guidebook, p. 30-31 (footnotes omitted).

² Public Utilities Code 399.16 (a),

renewable power delivered at one point into the ISO control to "green" other power delivered at another location for actual consumption.

The CPUC definition allows the "greening" of imports with other renewable power, as long as that other renewable power is "delivered" to the ISO control area. The CPUC definition does not allow for the automatic contractual greening of brown power imports irrespective of where the "greening" renewable energy is ultimately delivered.

The relevant portion of the code defining deliverability from out-of-state resources states:

Subject to verification by the accounting system established by the commission pursuant to subdivision (b) of Section 399.13 of the Public Utilities Code, electricity shall be deemed delivered if it is either generated at a location within the state, or is scheduled for consumption by California end-use retail customers. Subject to criteria adopted by the commission, electricity generated by an eligible renewable energy resource may be considered "delivered" regardless of whether the electricity is generated at a different time from consumption by a California end-use customer.³

The definition of "deliverability" was designed to ensure the purchase of renewable energy for consumption in California, taking into account the practical reality of power flows. The exception for "electricity generated at a different time" allows for the possibility of using other power to "firm" intermittent renewable generation.

TURN understands that a problem arises uniquely for intermittent renewable imports due to the ISO requirement that imports be scheduled on a firm basis.

The change proposed in the Draft Guidebook goes beyond the notion of allowing a limited amount of brown power to "firm" intermittent renewable output. The change would allow any out of state import - whether renewable or gas or coal - to fully qualify for RPS compliance as long as the retail seller buys RECs from some other out-of state RPS-

³ Public Resources Code 25741 (a)

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eligible facility - no matter where that facility is located - and 'matches' them to the brown power. Brown power generated in-state cannot be 'greened' by use of unbundled RECs.

Rather than placing intermittent out-of-state renewables on an even par with in-state renewables, it advantages any out of state renewable power regardless of its location or its ability to serve California. Any out of state renewable within WECC could be used to make brown power RPS-eligible.

The technical difficulty of complying with ISO import restrictions presents a challenge for intermittent renewables. The CPUC has already taken steps to expand deliverability requirements for RPS compliance. The CPUC has also exempted unspecified import purchases used to firm intermittent renewables from meeting the restriction on unspecified purchases under the Emission Performance Standard rules adopted in Decision 07-01-039.

However, TURN suggests that the expansive definition of "delivery requirements" in the Staff Draft Guidebook represents a policy change which may frustrate the basic legislative intent of the RPS statute to promote *in-state* renewable energy development.

Sincerely,

Marcel Hawiger
Staff Attorney

Cc: John Geesman, Commissioner, CEC
Jackalyne Pfannenstiel, Commissioner, CEC
Kate Zocchetti, CEC
Sara Kamins, CPUC