



Bernie Orozco  
Director  
State Governmental Affairs

Ph. (916) 492-4244  
Fax (916) 443-2994  
borozco@sempra.com

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California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814-5512

03-RPS-1078

<b>DOCKET</b>	
<b>02-REN-1038</b>	
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Dear Commissioners:

**RE: Docket No. 03-RPS-1078; Docket No. 02-REN-1038 (RPS Proceeding)**

San Diego Gas & Electric Company ("SDG&E") appreciates this opportunity to offer its comments concerning the draft third edition of the of the *Renewables Portfolio Standard Eligibility Guidebook* (the "Eligibility Guidebook") prepared by the Renewables Committee (the "Committee") of the California Energy Commission (the "Commission"). As is discussed in more detail below, SDG&E proposes certain modifications to the draft Eligibility Guidebook designed to improve administration of the Renewable Portfolio Standard ("RPS") program.

First, SDG&E notes that 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," and further that "facilities may be required to renew their certification based on changes in the law . . ."<sup>1/</sup> SDG&E supports the Commission's aim of ensuring the continued eligibility of certified renewable energy resources, but notes that it is equally important to protect the stability of the RPS program. The success of the RPS program depends on the consistent application of program requirements. Renewable energy developers must be able to anticipate the conditions of RPS participation, otherwise uncertainty and the inability to predict risk will paralyze their efforts to develop a successful business plan and to obtain necessary financing. Accordingly, SDG&E recommends that the provisions referenced above be revised to clarify that in the biennial recertification process, certified renewable energy resources will be held to the same standard of certification as was in place when they originally received certification.<sup>2/</sup> This clarification is critical to renewable energy developers' ability to comprehend and ensure ongoing compliance with certification requirements. The failure to include this clarification could ultimately result in the de-certification of renewable energy resources relied upon by the utilities and a corresponding undermining of the utilities' efforts to achieve the 20% by 2010 RPS goal.

Second, SDG&E shares the concern articulated by PacifiCorp in its October 1, 2007 comments regarding the Commission's apparent intent to impose California's environmental quality laws,

<sup>1/</sup> Draft Eligibility Guidebook, p. 39.

<sup>2/</sup> See, also Comments of PacifiCorp filed October 1, 2007, p. 39.

ordinances, regulations and standards (together, “LORS”) on facilities located outside of California. Developers located out-of-state build their facilities in accordance with the environmental quality laws and regulations in effect in the jurisdiction in which they are located. Requiring such developers to also satisfy California law would impose a significant burden that could create a disincentive to

participation in California’s RPS program. As the 2010 deadline for RPS compliance approaches, it is critical that the Commission undertake all action possible to ensure the existence of an adequate supply of renewable resources. Creating barriers to California market entry for out-of-state renewable generators will serve merely to undermine the goals of the RPS and will threaten the ultimate success of the program. Moreover, the attempt to subject out-of-state entities to California’s environmental quality law and regulations may run afoul of the Commerce Clause. Accordingly, the Commission should modify the draft Eligibility Guidebook to make clear that it does not seek to apply California environmental quality laws to renewable generation facilities located outside of California.

Third, SDG&E urges the Commission to support elimination of the requirement that in order to be counted for RPS purposes, energy must be generated at a location within the state or be delivered into California.<sup>3/</sup> While this requirement is currently set forth in SB 107,<sup>4/</sup> deletion of the requirement is necessary in order to permit development of a robust market for tradable renewable energy credits (“RECs”).<sup>5/</sup> If a system of tradable RECs is adopted, it is likely to cover the entire western region. Thus, in many instances available RECs will involve generation delivered to other western states. Limiting RPS participation by tying eligibility to generation delivered in-state would severely limit the availability of RECs and would undermine the development of a western region REC market. Further, tying RPS eligibility to in-state delivery would also hamper conventional/renewable power swaps, another potential means of RPS compliance. This Commission has already adopted temporal flexibility in scheduling and accounting of renewable resources delivered across ties; that flexibility has proved useful to SDG&E when executing contracts outside California. SDG&E’s suggestion of elimination of the in-state delivery requirement would create locational flexibility for RPS that would increase opportunities by helping to eliminate issues associated with scheduling power across interties. SDG&E urges the Commission to support modification of the relevant legislation in order to remove this obstacle to use of the tools available for RPS compliance.

Finally, the draft Eligibility Guidebook provides that “[e]ffective January 1, 2008, the Energy Commission requires RPS and SEP certified facilities, retail sellers, and procurement entities to participate in the WREGIS as part of RPS compliance.”<sup>6/</sup> SDG&E notes, however, that discussions between the investor-owned utilities (the “IOUs”) and the Western Electricity Coordinating Council (“WECC”) regarding the Terms of Use (“TOU”) applicable to participation in WREGIS have not yet concluded and resolution has not been reached. Until the TOU document has been finalized, the IOUs cannot register to participate in WREGIS. Thus, SDG&E recommends that the draft Eligibility

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<sup>3/</sup> See Draft Eligibility Guidebook, p. 30.

<sup>4/</sup> Senate Bill (SB) 107, Sec. 3, §§ 25741 (a) and (b) (Stats. 2006, Ch. 464).

<sup>5/</sup> The California Public Utilities commission is currently considering development of a system of tradable RECs in Rulemaking 06-02-012.

<sup>6/</sup> See Draft Eligibility Guidebook, p. 30.

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Guidebook be modified to reflect January 1, 2008 as a target (rather than firm) registration date, with flexibility to alter the registration deadline as needed to accommodate negotiation of the TOU.

For the reasons set forth herein, SDG&E urges the Committee to revise the draft Eligibility Guidebook in accordance with the recommendations set forth above.

Sincerely,

*Bernie Orozco*