

STATE OF CALIFORNIA

ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

In the matter of:

Implementation of Renewables Portfolio Standard
Legislation

And

Implementation of Renewables Investment Plan
Legislation

Docket No. 03-RPS-1078

Docket No. 02-REN-1038

**COMMENTS OF FUELCELL ENERGY, INC. ON DRAFT FOURTH EDITION OF THE
RENEWABLES PORTFOLIO STANDARD ELIGIBILITY GUIDEBOOK AND THE
OVERALL PROGRAM GUIDEBOOK FOR THE RENEWABLE ENERGY PROGRAM**

Lynn Haug
Ellison, Schneider & Harris L.L.P.
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
Tel: (916) 447-2166
Fax: (916) 447-3512
Email: lmh@eslawfirm.com

September 10, 2010

DOCKET	
03-RPS-1078	
DATE	SEP 10 2010
RECD.	SEP 10 2010

STATE OF CALIFORNIA

ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

In the matter of:

Implementation of Renewables Portfolio Standard
Legislation

And

Implementation of Renewables Investment Plan
Legislation

Docket No. 03-RPS-1078

Docket No. 02-REN-1038

**COMMENTS OF FUELCELL ENERGY, INC. ON DRAFT FOURTH EDITION OF THE
RENEWABLES PORTFOLIO STANDARD ELIGIBILITY GUIDEBOOK AND THE
OVERALL PROGRAM GUIDEBOOK FOR THE RENEWABLE ENERGY PROGRAM**

FuelCell Energy, Inc. (FCE) appreciates this opportunity to comment in support of the Commission's stated intention to revisit the rules governing the eligibility of distributed generation (DG) resources for Renewables Portfolio Standard (RPS) certification. According to the Draft Staff Guidebook, this will occur soon after the California Public Utilities Commission (CPUC) issues a final decision authorizing tradable renewable energy certificates (RECs). FCE manufactures, distributes and provides related services for stationary fuel cell power plants that fall within the Commission's definition of DG resources. FCE and its customers have an immediate interest in the DG issues identified for future consideration in this proceeding.

The Commission's RPS eligibility requirements currently exclude all DG facilities from RPS certification, except for projects that fit within limited exceptions. The Draft Staff Guidebook indicates that it will "certify distributed generation facilities as RPS-eligible only if

and when the CPUC authorizes applying tradable RECs toward RPS obligations.”¹ FCE encourages the Commission to initiate this process as soon as possible following issuance of the CPUC’s final decision. The renewable attributes associated with renewable DG resources are a valuable asset. Many, if not all, of the issues that may have initially prevented the Commission from including DG within its certification program (e.g. metering, aggregation, WREGIS requirements) have been addressed or are in the process of being resolved. DG owners should be afforded the opportunity to obtain payment for the RECs created as a result of their investment in clean and efficient DG facilities.

On a related issue, the current RPS eligibility rules categorically exclude all DG facilities that receive, have received, or plan to receive “benefits from the CPUC-approved Self Generation Incentive Program or California Solar Initiative, the Energy Commission’s Emerging Renewables Program, New Solar Homes Partnership or Pilot Performance Based Incentive Program, or any other similar ratepayer-funded program.”² The rules also exclude facilities with net metering. The Draft Staff Guidebook acknowledges that the California Legislature has recently authorized creation of DG incentive programs that explicitly allow the resource to be counted toward RPS compliance, subject to conditions.³ As a result, the Commission will need to reexamine its rules barring participants in incentive programs from eligibility for RPS certification. FCE strongly encourages the Commission to approach the issue of RPS and ratepayer DG incentive programs generically in the next phase of this proceeding. Apart from the need to implement individual statutory program requirements, the current rule preventing a recipient of benefits from *any* ratepayer-funded program from obtaining REC certification should be re-examined from a policy standpoint. There is a growing body of evidence, including

¹ Draft Staff Guidebook at 8.

² Id. at 29.

³ Id. at 7, 29.

cost-benefit analyses and independent studies, documenting that the benefit of DG to ratepayers, utilities, and society as a whole may significantly exceed the ratepayers' investment in incentives. California's interest in encouraging future investment in DG is not served by rules that prevent customers from monetizing the value of that investment.

FCE looks forward to participating in future proceedings to address these important issues.

Respectfully submitted,



Lynn Haug
Ellison, Schneider & Harris L.L.P.
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
Tel: (916) 447-2166
Fax: (916) 447-3512
Email: lmh@eslawfirm.com

Attorneys for FuelCell Energy, Inc.

Dated: September 10, 2010