

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 PACIFICORP ON DRAFT FOURTH EDITION OF THE
RENEWABLES PORTFOLIO STANDARD ELIGIBILITY GUIDEBOOK AND THE
OVERALL PROGRAM GUIDEBOOK FOR THE RENEWABLE ENERGY PROGRAM**

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PacifiCorp appreciates this opportunity to comment on the draft fourth edition of the *Renewables Portfolio Standard Eligibility Guidebook* (“RPS Eligibility Guidebook”) and the *Overall Program Guidebook for the Renewable Energy Program* (“Overall Guidebook”). The draft revisions to the RPS Eligibility Guidebook and the Overall Guidebook were prepared by California Energy Commission (“Commission”) staff and approved by the Renewables Committee. PacifiCorp also appreciates the opportunity to provide input on additional issues under consideration for future inclusion in the RPS Eligibility Guidebook. PacifiCorp raised several concerns and comments on the RPS Eligibility Guidebook at the August 30, 2010 staff workshop as well as a discussion with staff on September 2, 2010. Today’s comments formalize some of those concerns and raise several others.

PacifiCorp is a multi-jurisdictional utility that provides retail electric service to approximately 1.7 million retail customers within California, Idaho, Oregon, Utah, Washington

and Wyoming. In California, PacifiCorp serves approximately 46,500 customers in Del Norte, Modoc, Shasta and Siskiyou counties. As a multi-jurisdictional utility, PacifiCorp faces unique challenges that differ from those faced by most of California's other electric utilities. For example, PacifiCorp is the North American Electric Reliability Corporation ("NERC") balancing authority for its service territory and operates an integrated system across state lines. The fact that it operates an integrated system across state lines requires that system resources be allocated across the entire system, and not to individual states.

PacifiCorp's unique challenges warrant different treatment than that given to California-only utilities, as mandated by Section 399.17 of the California Public Utilities Code. PacifiCorp appreciates the efforts that the Commission and its staff have made to recognize PacifiCorp's unique challenges, both in the proposed revisions to the RPS Eligibility Guidebook and in past interactions with PacifiCorp. In furtherance of that, PacifiCorp respectfully provides the following comments on, and proposes certain modifications to, the draft RPS Eligibility Guidebook and Overall Guidebook.

I. Comments on and Proposed Modifications to the RPS Eligibility Guidebook

A. Certification Process

1. Eligibility Dates

PacifiCorp is concerned about language in the RPS Eligibility Guidebook providing that "[f]or generation that occurred after January 1, 2008, procurement may count toward a retail seller's RPS obligation if the generating facility was RPS certified at the time of procurement or applied for RPS certification or pre-certification at the time of procurement."¹ PacifiCorp is cognizant that the Commission is seeking to only allow generation following the date that the

¹RPS Eligibility Guidebook, p. 44.

certification or pre-certification application was received by the Commission to count for the RPS program, but recommends that the Commission provide flexibility in its approach.

Although all of PacifiCorp's facilities are RPS certified, several of PacifiCorp's facilities were not pre-certified or certified by their commercial operation date. It is contrary to the goals of the RPS program to disallow such generation simply because the facility was certified after the commercial operation date and was later determined to be RPS-eligible. All output from the facility, both before and after the application date, consists of the same renewable generation and provides the same benefits associated with renewable power. Accordingly, PacifiCorp recommends that the Commission revise its proposed firm cut-off date and allow certain generation occurring after January 1, 2008, to count for RPS purposes if the facility later submitted an application and the facility is determined to be RPS-eligible.

Specifically, PacifiCorp proposes that all generation occurring after January 1, 2008, be afforded the same treatment as is provided for prior generation. Therefore, all generation, occurring before *and* after January 1, 2008, would count toward a retail seller's RPS obligation if the generating facility was RPS certified at the time of procurement or if the Commission receives an application for certification before January 1, 2011.

A more flexible approach, like the approach advocated by PacifiCorp, is particularly important for certain generation facilities. For example, certain out-of-state facilities are required to conduct additional environmental review and provide results from such review in the application for RPS certification or pre-certification. For such facilities, the application process is much more complex and time consuming. The generation from these facilities should not be disallowed due to additional time consuming administrative requirements. Similarly, other renewable facilities may have legitimate reasons for a delay in applying for RPS certification.

Not only have some of these renewable facilities been providing renewable energy to PacifiCorp's system, but the generation is being tracked in WREGIS. To disallow such generation to qualify for RPS purposes would potentially orphan these WREGIS Certificates, making them worthless for RPS compliance purposes. Therefore, PacifiCorp's proposal should be adopted.

Alternatively, if the Commission wishes to maintain the distinction between generation occurring before and after January 1, 2008, PacifiCorp proposes that if a retail seller can demonstrate that efforts were made to timely certify a facility, generation that occurred after January 1, 2008 should qualify as RPS-eligible and may be used towards a retail seller's RPS obligation. PacifiCorp does not propose specific demonstration requirements at this time, but would be happy to work further with staff to develop appropriate language if PacifiCorp's preferred approach, above, is not adopted.

2. Application Process

PacifiCorp appreciates efforts to make the application process more efficient and effective by revising the RPS Eligibility Guidebook to allow for the electronic submission of applications for RPS certification or pre-certification.² However, PacifiCorp believes it would be helpful if the RPS Eligibility Guidebook provided additional information regarding the specifics required to submit an application electronically. For example, it is not entirely clear whether the electronic application uses the same form as the hard copy or whether that form is available in the same location on the Commission's website. Furthermore, the RPS Eligibility Guidebook should be clarified to specify whether the electronic submission of an application constitutes firm receipt of an application and begins the review clock for that application.

² See RPS Eligibility Guidebook, p. 44.

3. Timing for Processing an Application

The RPS Eligibility Guidebook provides that the Commission will not start the review clock for an application for certification or pre-certification until the application is received *and* “the Executive Director makes a determination on any related applications for confidential designation.”³ PacifiCorp recommends that the Commission revise this qualification so that the review clock can begin upon receipt of an application. Relevant staff should be able to begin processing the application while the confidentiality application is pending. There is no need to delay the review process while the Executive Director separately evaluates the confidentiality application. This way, the review clock will have a more explicit start date and will provide transparency to the review process.

Alternatively, PacifiCorp recommends that the Commission make the qualification that the Executive Director has to make a determination on confidentiality applications before the review clock will begin more explicit, as it is such an important qualification. Clarifying that the review clock for an application will not begin until a decision from the Executive Director is made will provide applicants with a more realistic expectation about how long it will take to process an application.

4. Use of Form CEC-RPS-2

The RPS Eligibility Guidebook provides that the Commission “will no longer accept an application on the operator’s behalf using a CEC-RPS-2 form from retail sellers or publicly owned electric utilities.”⁴ PacifiCorp has no objection to this proposed change, but recommends that the Commission clarify that the change is made because the form itself, and not the

³ *Id.* at 46.

⁴ *Id.* at 48.

application process, will no longer be used.

5. Additional Reporting for Out-of-State Facilities

The RPS Eligibility Guidebook makes revisions to the additional reporting requirements for out-of-state facilities. For example, the RPS Eligibility Guidebook now provides:

Further requirements apply to facilities that commenced commercial operations before January 1, 2005, as described below, with the following exceptions:

- Exclusively serving retail sellers subject to Public Utilities Code Section 399.17⁵

Previously, the RPS Eligibility Guidebook clearly provided that the additional reporting requirements did not apply to *any* facilities exclusively serving retail sellers subject to Public Utilities Code Section 399.17. Although PacifiCorp appreciates the efforts to streamline the RPS Eligibility Guidebook, the new revisions to the RPS Eligibility Guidebook imply that the prior exception is now only applicable to facilities that commenced commercial operation before January 1, 2005. The current proposed language is contrary to Section 399.17. Therefore, PacifiCorp requests that the Commission amend the revised language to make clear that additional reporting or information requirements do not apply to any facilities exclusively serving retail sellers pursuant to Public Utilities Code Section 399.17.

6. Additional Requirement for RPS Certification of Out-of-State Resources

PacifiCorp recommends that the Commission revise section c) on page 56 of the RPS Eligibility Guidebook. Section c) provides that documentation for out-of-state facilities substantiating the requirement of whether the facility would cause or contribute to a violation of California environmental quality laws, ordinances, regulations, and standards (collectively, “LORS”) “could include environmental studies, permits, and similar materials that demonstrate

⁵ *Id.* at pp. 55-56.

that the facility’s development or operation will not cause or contribute to a violation of a California environmental standard or regulation.” However, this statement seeks more than is currently required. An out-of-state facility must demonstrate that it will not cause or contribute to a violation of a California environmental standard or regulation *in* California. For example, a facility fifty miles outside of California must demonstrate, among other things, that it does not emit an effluent into a river flowing into California that would violate California LORS when the effluent flows into California, that its construction will not disturb traffic flows in the California county most likely affected by the facility, and that it will not create threats to public health in such county in violation of the LORS applicable to such county. Additionally, current practice is for staff to require facilities to provide all available environmental information apprising the staff of all environmental impacts. Accordingly, section c) should be revised to clarify that any documentation provided need only demonstrate that the facility does not cause or contribute to a violation of a California environmental standard or regulation *in* California, and be revised to read: “Documentation that substantiates the applicant’s assessment as required in b) above, to include all available environmental studies, permits and similar materials concerning the facility’s environmental impacts.”

B. Eligibility Requirements

1. Qualifying Facilities

PacifiCorp seeks clarification over the treatment of qualifying facilities (“QFs”) and how energy from QFs will be accounted for under WREGIS as it applies to the California RPS program and for the sale of energy from QFs located outside of California to meet California RPS requirements. The RPS Eligibility Guidebook provides:

Deliveries of energy under these [QF] contracts will be tracked through WREGIS and will automatically be retired as counting

toward a retail seller's RPS procurement requirement.⁶

However, because PacifiCorp operates an integrated system across multiple states, PacifiCorp does not allocate the entire output from a QF to California if that QF has been procured on behalf of PacifiCorp's system. Accordingly, PacifiCorp asserts that only the QF output that is allocated to California should be retired as it would be the portion of generation from that facility that would be claimed for PacifiCorp's California customers. For the portion of generation from a QF that is not allocated to California, PacifiCorp should be allowed to retire or use the renewable energy credits ("RECs") consistent with the regulations or regulatory commission orders of its other states, and sell, bank or retire RECs on behalf of those states as provided by those states.

Additionally, PacifiCorp seeks clarification on the automatic retirement process for QFs. It would be helpful if the RPS Eligibility Guidebook more clearly described the process for tracking, allocating, and retiring WREGIS Certificates, particularly for resources that are system resources where output is allocated across multiple states and not entirely allocated to California. Such clarifications will allow PacifiCorp to track QF generation in WREGIS and ensure that appropriate quantities are retired in the proper retirement accounts. PacifiCorp requests that the retirement of WREGIS Certificates associated with QFs be aligned with the timing of the filing of Commission reports; for example, the WREGIS Certificates for compliance year 2011 would be retired by June 1, 2012.

Finally, PacifiCorp seeks clarification as to whether generation from QF resources located outside of California can be used to meet California RPS requirements or if the language in the RPS Eligibility Guidebook precludes the use of QF generation outside of the state to meet

⁶ *Id.* at 40.

RPS requirements.

2. Third Party Participation in WREGIS

On page 35 of the RPS Eligibility Guidebook, the sixth criterion for out-of-state facilities to qualify for the RPS is proposed to be changed to require that “[f]acility, retail seller and third parties participate in [Western Renewable Energy Generation Information System] WREGIS.” However, third parties will not always be involved in out-of-state energy sales. Accordingly, PacifiCorp recommends that the language be revised to read: “Facility and retail seller”, as it is unclear who the applicable third parties that would need to participate in WREGIS would be and what the participation by that third party could mean. Presumably, those entities that need to use WREGIS for their own compliance or other purposes will do so for their purposes; it need not be a requirement on the facility itself, and the facility should not be responsible for any use that third parties, such as subsequent purchasers of WREGIS Certificates from the facility, might make respecting the facility that is not related to any activity of the facility. For example, the facility should bear any and all responsibility for any and all double selling in which it might improperly engage, but the facility should not be responsible for any double counting by purchasers (e.g., use across multiple compliance programs that each mandate retirement) after the facility has parted with its WREGIS Certificates.

3. Energy Delivery Requirements

PacifiCorp seeks clarification regarding the treatment of out-of-state energy that has been firmed or shaped. According to the RPS Eligibility Guidebook, in “practical terms, out-of-state energy may be ‘firmed’ or ‘shaped’ within the calendar year.”⁷ PacifiCorp and other retail sellers have relied on the plain meaning of the provisions for firming and shaping as written.

⁷ *Id.* at 36.

Therefore, contracts for firming and shaping services are allowed to deliver renewable energy that has been generated prior to the execution of the contract with the renewable facility, provided that the firmed and shaped energy be delivered with a matched incremental import that occurs after contracts are executed, so long as the energy that is firmed and shaped was generated in the same calendar year. The intermittent renewable energy is generated and shaped (stored for no more than the maximum permitted period under the RPS Eligibility Guidebook) outside of California and subsequently delivered into California as an incremental import. PacifiCorp believes the RPS Eligibility Guidebook should explicitly state that firming and shaping services cover out-of-state electricity generated prior to, but delivered by an incremental import after the execution of the contract with the renewable facility, as long as such contract provides for firming and shaping. As the Commission “will compare the amount of RPS-eligible electricity generated by the RPS-eligible facility per calendar year with the amount of electricity delivered into California for the same calendar year,”⁸ the clarification sought by PacifiCorp is consistent with Commission practice.

The new language at the top of page 38 of the RPS Eligibility Guidebook provides that “the third party and all parties to the transaction are registered as account holders of WREGIS and use WREGIS as directed by the Energy Commission as part of RPS Compliance.” It may be more appropriate to use “required” rather than “directed”, since the Commission will establish rules that are to be followed, which could differ for each of the entities, as opposed to providing facility-by-facility, or party-by-party, direction on the use of WREGIS. Accordingly, PacifiCorp recommends that the language be revised to read: “the third party and all parties to the transaction are registered as account holders of WREGIS and use WREGIS as ~~directed~~ required

⁸ *Id.* at 37.

by the Energy Commission as part of RPS Compliance.”

C. RPS Tracking, Reporting and Verification

PacifiCorp appreciates efforts to ensure that renewable generation is accurately tracked and reported. However, PacifiCorp is concerned that for multi-jurisdictional utilities, certain verification requirements (and it is unclear what the additional verification requirements are or may be implemented) will be overly burdensome while providing little to no benefits.

According to the RPS Eligibility Guidebook:

The Energy Commission will collaborate with other state agencies to determine if generation from each facility is claimed in more than one of the states’ regulatory programs. Additionally, the Energy Commission will monitor renewable energy claims on the voluntary market, where possible. For example, Green-e Energy and the Energy Commission are collaborating to help ensure against double-counting of the same renewable energy claims.⁹

If the purpose of verification is to ensure against double-counting, instead of requiring additional verification for multi-jurisdictional utilities, PacifiCorp recommends that the Commission allow verification of utilization of WREGIS Certificates through WREGIS and not imposing the requirement on WREGIS to track NERC E-Tags.

D. Prospective Application of Revised Requirements

PacifiCorp supports the Commission in its efforts to comply with legal requirements and address the needs and concerns of parties by revising the RPS Eligibility Guidebook. However, any modifications or revisions to the RPS Eligibility Guidebook that are more restrictive or create greater compliance requirements should apply prospectively only, and should not be applied retrospectively. The RPS Eligibility Guidebook provides:

RPS Eligibility Certificates issued will not include an expiration date and will remain in effect for the life of the facility unless the

⁹ *Id.* at 74.

law applicable to that particular facility or renewable resource is changed to impose new requirements and these requirements are applied retrospectively.¹⁰

PacifiCorp supports this language, for the most part, but maintains that any changes to the RPS Eligibility Guidebook that impair the ability of retail sellers to meet RPS obligations would be an unconstitutional taking. Adding requirements to apply retrospectively prevents retail sellers from relying on current rules to procure RPS-eligible generation. Such changes would disrupt commercial arrangements and may potentially subject retail sellers to large penalties for failing to comply with RPS obligations. Additionally, new changes that restrict eligibility or delivery requirements may strip away prior renewable procurement, making the additional costs of the previously renewable generation unnecessary and burdensome. Accordingly, the Commission should clarify that any changes to the RPS Eligibility Guidebook that are more restrictive or increase compliance requirements would only apply on a prospective basis. To that effect, the references to “renewal” applications on page 17 and page 21 of the RPS Eligibility Guidebook should be deleted.¹¹

II. Comments on and Proposed Modifications to the Overall Guidebook

PacifiCorp does not have any specific comments about the proposed revisions to the Overall Guidebook. However, PacifiCorp recommends that the Overall Guidebook be amended to include a definition of multi-jurisdictional utility in the Glossary of Terms, as follows:

Multi-jurisdictional Utility – a multi-jurisdictional utility is a Retail Seller with 60,000 or fewer customer accounts in California that also serves retail end-use customers outside California.

III. Comments on Additional Issues

¹⁰ *Id.* at 46.

¹¹ RPS eligibility was previously subject to biannual review, but that is no longer the case.

In addition to comments on the proposed changes to the RPS Eligibility Guidebook and the Overall Guidebook, PacifiCorp submits comments on issues under consideration for inclusion in the RPS Eligibility Guidebook related to the use of retroactive RECs in WREGIS.

A. Should the Energy Commission consider allowing generation from facilities already online but not previously registered in WREGIS to upload retroactive RECs for generation prior to the previous 75-day reporting period to count for RPS compliance? If no, should retroactive RECs be limited to test energy? Why or why not?

PacifiCorp supports allowing retroactive RECs to count for RPS compliance. The RPS program is designed to promote the development of renewable facilities and the use of renewable generation and its associated benefits. The mere fact that an RPS-eligible facility was late in registering in WREGIS does nothing to diminish the benefits of renewable generation that came from that facility prior to its registration. Therefore, prior generation from a renewable facility should be allowed to count for RPS compliance if retroactive RECs can be generated for that energy. Provided that double counting of renewable generation does not occur, and the data requirements of WREGIS are met, there is no good reason to prevent the use of retroactive RECs. Moreover, if the Commission deems that the facility is an eligible RPS facility, then the test energy RECs should be allowed to be eligible from the first period the test energy was generated.

B. Should there be a time limit (besides the limitation of two years for a Prior Period Adjustment that is hard coded in the WREGIS system) for generation prior to the upload date, and what should the limit be?

PacifiCorp does not advocate for a time limit for the creation of retroactive RECs. As described above, the benefits from the renewable generation are not diminished because of the timing of when a facility registered with WREGIS or was otherwise able to meet WREGIS requirements, such as WREGIS-required metering. Accordingly, as long as the retroactive RECs

protect against double counting of renewable generation, there should not be a time limit for how far back renewable generation may be counted. As stated above, if the Commission deems that the facility is an eligible RPS facility, then the test energy RECs should be allowed to be eligible from the first period the test energy was generated, which would generally not be a long period.

IV. Conclusion

PacifiCorp applauds the Commission and Commission staff for the time taken to work with parties and the efforts made in revising the RPS Eligibility Guidebook and the Overall Guidebook. PacifiCorp appreciates the opportunity to provide these comments, and for the reasons set forth herein, urges the Commission to revise the draft RPS Eligibility Guidebook and the Overall Guidebook in accordance with the recommendations set forth above.

Respectfully submitted,



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