



**BEFORE THE ENERGY RESOURCES CONSERVATION AND
DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA**

DOCKET

11-KGA-1

DATE FEB 10 2012

RECD. FEB 10 2012

IN THE MATTER OF:

BEFORE THE RENEWABLES COMMITTEE
KURT GROSSMAN APPEAL

DOCKET No. 11-KGA-1

**Staff Request for Clarification on the Committee Decision of April 25, 2011,
Concerning the RPS Pre-certification Application of the SPGCA-1 Facility**

The purpose of this filing is to report on the status of the RPS pre-certification application of the SPGCA-1 facility submitted by Kurt Grossman on behalf of SPGCA, LLC, and to seek clarification and guidance concerning the Renewable Committee's Decision of April 25, 2011, on the pre-certification of the SPGCA-1 facility. To date, the SPGCA-1 facility has not been pre-certified for the RPS, because Mr. Grossman has not submitted information needed to complete his application for pre-certification of the SPGCA-1 facility.

Background

On August 26, 2010, Mr. Grossman submitted an application to the Energy Commission for pre-certification for the Renewables Portfolio Standard (RPS) for the SPGCA-1 facility, a 20 megawatt (MW) marine-based generating facility to be located off the coast of California, at a to-be-determined site.

On October 18, 2010, Energy Commission staff sent a letter to Mr. Grossman denying eligibility for the RPS, because it was staff's determination that the SPGCA-1 facility, implementing the Genergy technology, did not meet the definition of "small hydroelectric" as defined in the *Overall Program Guidebook*¹, and further that the SPGCA-1 facility did not implement any other eligible renewable energy resource or fuel that qualified for the RPS under the *Renewables Portfolio Standard Eligibility*

¹ Overall Program Guidebook, Second Edition, California Energy Commission, January 2008, pp. 19, 24, available at <http://www.energy.ca.gov/2007publications/CEC-300-2007-003/CEC-300-2007-003-ED2-CMF.PDF> Referred to hereafter as "Overall Program Guidebook."

*Guidebook*² or former Public Utilities Code section 399.12(c) or Public Resources Code section 25741.

On November 18, 2010, Mr. Grossman petitioned the Renewables Committee (then comprised of Vice Chair James Boyd and Commissioner Robert Weisenmiller) for reconsideration of the denial of the application for RPS pre-certification.

On January 25, 2011, Mr. Grossman was notified that the Renewables Committee would provide him the opportunity to make a presentation in support of his application and would reconsider staff's denial of his application for pre-certification of the SPGCA-1 facility in light of that presentation. The Renewables Committee (then comprised of Vice Chair James Boyd and Commissioner Carla Peterman) conducted the hearing with the assistance of hearing officer Raoul Renaud at the Energy Commission on March 29, 2011.

On April 25, 2011, the Renewables Committee issued a Committee Decision ("Committee Decision") that reversed staff's previous determination that the SPGCA-1 facility did not meet the eligibility criteria as described in the *Renewables Portfolio Standard Eligibility Guidebook* and the *Overall Program Guidebook*. A copy of the Committee Decision is provided in Exhibit A.

The Committee Decision granted pre-certification to the SPGCA-1 facility based upon the existing pre-certification application for this facility and subject to the following requirements:

- 1) All incomplete portions of the existing application shall be completed and submitted to Commission staff for reviews.³
- 2) The required explanations for why certain specific information is not yet available, and the timing for obtaining that information, shall be provided in connection with the existing application.
- 3) Should Commission staff find any deficiencies in these submissions, then the deficiencies shall be communicated promptly to the Applicant and confirmed in writing.

On June 7, 2011, Mr. Grossman submitted corrections to the original application for pre-certification and provided additional information as required by the Committee Decision.

² Renewables Portfolio Standard Eligibility Guidebook, Third Edition, California Energy Commission, January 2008, available at <http://www.energy.ca.gov/2007publications/CEC-300-2007-006/CEC-300-2007-006-ED3-CMF.PDF> Referred to hereafter as "RPS Eligibility Guidebook."

³ The Committee Decision states the Applicant (Kurt Grossman) is excused from providing "instream or hydrological data pertaining to placement of the project in a stream, as the Applicant makes clear that the device will be placed offshore." [Committee Decision, p. 3.]

A copy of Mr. Grossman's June 7, 2011 submittal is provided in Exhibit B. However, the information provided by Mr. Grossman was insufficient and failed to fulfill the requirements of the *RPS Eligibility Guidebook*.

On June 17, 2011, staff sent Mr. Grossman a list of additional information required for the application to be complete. Despite staff's attempts over the last seven months to assist Mr. Grossman in completing the application, the application remains incomplete. A copy of Commission staff's June 17, 2011, request for additional information is provided in Exhibit C. The additional information staff requested is discussed below.

Additional Information and Clarification

Mr. Grossman's application for the SPGCA-1 facility is still missing supplemental information as required by Chapter III, Section C, of the *RPS Eligibility Guidebook*,⁴ and includes several inconsistencies that need to be clarified. These are as follows:

1. Source Water Description

Mr. Grossman has not provided a map, at a scale of 1:24,000, that identifies the location of the diversion point and all other facilities in the area, nor has a written description of the location of the diversion been provided. This information is required for surface water sources, and includes the Pacific Ocean as the surface water source for the SPGCA-1 facility.

Mr. Grossman previously submitted a NOAA Oceanographic Chart, which staff accepted as satisfying this requirement for the pre-certification application, because Mr. Grossman indicated that the required map should be available on September 30, 2011. Although Mr. Grossman indicates in a September 6, 2011 email that maps at the correct scale are now available to him, he has not submitted any such maps. A copy of Mr. Grossman's September 6, 2011 email is provided in Exhibit D. Since September 30, 2011 date has passed, Mr. Grossman should submit a map at the correct scale and with proper labeling.

2. Water Rights

The submission of information concerning water rights has been tentatively waived pending the discussion of related regulatory actions by the Bureau of Ocean Energy Management, Regulations, and Enforcement (BOEMRE), the Federal Energy Regulatory Commission, the Army Corps of Engineers, the California Coastal Commission, and other applicable state and federal agencies in the "other permits" section of the pre-certification application. No information is currently required for this section, but additional information may be required if

⁴ RPS Eligibility Guidebook, starting on p. 33.

relevant information is not discussed in the “other permits” section of the application.

3. Hydrologic Data

Although the Committee Decision excuses Mr. Grossman from providing “hydrological data pertaining to the placement of the project in a stream,”⁵ staff nevertheless believes that it is appropriate for Mr. Grossman to provide other pertinent hydrological data for the SPGCA-1 facility. Specifically, Mr. Grossman could provide hydrologic data related to ocean current, temperature, and wave height, which could be considered equivalent to “flow data” for streams as specified in the *RPS Eligibility Guidebook*.⁶ Staff requests clarification as to whether Mr. Grossman should submit this hydrological data, notwithstanding the Committee Decision excusing him from doing so.

4. Other Permits

Mr. Grossman has indicated that permits will be required from several governmental agencies, but has not provided information on the dates or timing for obtaining these permits. Staff has requested a more comprehensive list of the permitting agencies and expected dates for obtaining the needed permits. To help facilitate this process, staff provided Mr. Grossman a table listing state and federal agencies that may have regulatory authority over the SPGCA-1 facility. This table was included with staff’s September 1, 2011 request to Mr. Grossman for additional information, a copy of which is provided in Exhibit E.

5. Environmental Documentation

Mr. Grossman has indicated that an Environmental Impact Report will be completed, but has not provided an expected date or information on other environmental permits, agreements, or contracts that will be completed, as required by the *RPS Eligibility Guidebook*.⁷

6. Capacity

Mr. Grossman’s application for pre-certification of the SPGCA-1 facility indicates the facility will have a capacity of 25 MW, but his response to staff’s request for

⁵ Committee Decision, p. 3.

⁶ Refer to RPS Eligibility Guidebook, Chapter III, Section C., “Hydrologic Data,” p. 33.

⁷ The RPS Eligibility Guidebook states: “Applicants must indicate their desire to be pre-certified on their completed CEC-RPS-1B form and must submit all required supplemental information, as described below, to the extent that information is available. If the additional required information is not available at the time of pre-certification because of the facility’s stage of development, then the applicant must explain this in its application and identify the missing information and the date(s) when the information is expected to be available.” [RPS Eligibility Guidebook, p. 29 – 30. Emphasis added.]

additional information suggests the SPGCA-1 facility may be part of a larger 200 MW facility. Specifically, Mr. Grossman's July 6, 2011 response to Commission staff includes, as an attachment, a proposal for completing the environmental review of the project. That proposal describes the project as "eight 25 MW generators tethered to the seafloor with cables from each connecting to a main cable which will run to the shore connecting to electrical storage/transmission equipment."⁸ A copy of Mr. Grossman's July 6, 2011 email response is provided in Exhibit F. Mr. Grossman has explained that he is obtaining the environmental review of eight 25 MW facilities at once, but he has failed to adequately show that these are separate facilities.⁹ This showing is necessary, because the *RPS Eligibility Guidebook* limits the eligibility of hydroelectric facilities to 30 MW or less, with limited exceptions for eligible efficiency improvements, none of which apply to the SPGCA-1 facility.¹⁰

The *Overall Program Guidebook* defines "project" for the RPS program to ensure that the 30 MW capacity limit is maintained. Relevant portions of the definition are provided below:

"Project — for the Renewables Portfolio Standard Program, refers to a group of one or more pieces of generating equipment and ancillary equipment necessary to attach to the transmission grid that is unequivocally separable from any other generating equipment or components. Two or more sets of generating equipment that are contiguous or that share common control or maintenance facilities and schedules and are located within a one-mile radius of each other shall constitute a single project, except in the case of a conduit hydroelectric facility. A conduit hydroelectric facility may be considered a separate project even though the facility itself is part of a larger hydroelectric facility, provided that the larger hydroelectric facility commenced commercial operations prior to January 1, 2006, and the conduit hydroelectric facility commenced commercial operations on or after January 1, 2006, is separately metered to identify its generation, and is separately certified as RPS eligible by the Energy Commission."¹¹

⁸ Refer to Exhibit F, attachment entitled "Genenergy, Inc., Proposal for Permitting, Initial CEQA/NEPA Documentation and Support for a 200 MW Project for Pacific Gas & Electric," section II. Scope of Work, page 1 of attachment.

⁹ Refer to Mr. Grossman's August 8, 2011 email, as referenced in Exhibit E, in the section discussing project capacity and titled "8. Capacity."

¹⁰ The RPS Eligibility Guidebook states: "With exceptions for eligible efficiency improvements, an RPS-eligible small hydroelectric facility or conduit hydroelectric facility must not exceed 30 megawatts (MW)." [RPS Eligibility Guidebook, p. 12.]

¹¹ Overall Program Guidebook, p. 21.

Although Mr. Grossman has explained that the 200 MW facility is comprised of eight separate facilities in separate locations, the information he has provided to substantiate this claim is lacking given the definition of a “project” in the *Overall Program Guidebook*. Refer to map included with Mr. Grossman’s September 6, 2011 response to staff, which is provided in Exhibit G. Consequently, it is unclear whether the SPGCA-1 facility should be treated as an individual project, or part of a larger project that exceeds the 30 MW limit for RPS-eligible hydroelectric facilities.

7. Classification of the Facility as a single fuel facility.

Mr. Grossman has provided several different conceptual diagrams of the technology that will be implemented at the SPGCA-1 facility. Staff has requested that Mr. Grossman specify which of these conceptual diagrams best represents the technology that will be implemented at the SPGCA-1 facility.¹² The diagram included in Exhibit H was provided by Mr. Grossman in an email dated August 30, 2011, subsequent to the March 29, 2011 Committee hearing, and differs from the diagram of the technology provided during the hearing. A diagram of the technology provided during the hearing is provided in Exhibit I. The diagram in Exhibit H shows that the SPGCA-1 facility will contain linear generators.

A linear generator is generally described as a device that generates electricity as a result of the linear or inline movement of a magnet through a coil of wire. A linear generator uses a straight line force to move the magnet relative to the wire coil, whereas a typical electricity generator rotates a magnet and a wire coil relative to one another. In both cases the relative motion of the magnetic field, produced by the magnet, and the wire coil induces an electrical current in the coil. Based on staff’s understanding, the relative motion of the linear generators in the Genergy device would be caused by the buoyancy of the containers used in the generation process as they float up from the bottom of the enclosed space within the device to begin the generation cycle again.

In staff’s opinion these linear generators will not generate electricity by using falling water to turn a turbine generator, which was the basis for the Committee Decision. The Committee Decision relied on the definition of “hydroelectric” in the *Overall Program Guidebook*, which defines “hydroelectric” as follows:

¹² Refer to staff email of August 29, 2011, embedded in Mr. Grossman’s email of August 30, 2011, which is provided in Exhibit F.

"Hydroelectric — a technology that produces electricity by using falling water to turn a turbine generator, referred to as hydro. See also 'small hydro.'"¹³

Based on the information provided by Mr. Grossman during the Committee hearing, including the diagram in Exhibit G, the Committee concluded that the SPGCA-1 facility was a "hydroelectric" facility, because it would use a technology that "uses falling water to generate electricity."¹⁴ It does not appear that the Committee Decision considered the use of linear generators in the SPGCA-1 facility. Consequently, staff recommends that Mr. Grossman either: 1) clarify that the SPGCA-1 facility will not use linear generators, or 2) amend the application for the SPGCA-1 facility to reflect that it will use linear generators as a nonrenewable resource in the electrical generation process. The latter option will also require the submission of a proposed accounting method to accurately differentiate between generation from the linear generators and generation produced by falling water.¹⁵

8. Facility Name and Ownership.

Lastly, staff would like clarification regarding the correct name and ownership of the SPGCA-1 facility. The name of the facility in the application for pre-certification does not match the facility name in the supplemental information provided by Mr. Grossman. Likewise, the name of the facility owner in the application for pre-certification does not match the name of the facility owner in the information provided by Mr. Grossman in his August 6, 2011 response.¹⁶ A copy of Mr. Grossman's August 6, 2011 email response is provided as Exhibit J.

¹³ Overall Program Guidebook, p. 19.

¹⁴ Committee Decision, p. 2.

¹⁵ The RPS Eligibility Guidebook states: "The Energy Commission may allow multi-fuel facilities to be certified as RPS-eligible, but only the renewable portion of their generation will count as RPS eligible, and only when the Energy Commission approves a method to measure the renewable portion. An applicant for RPS pre-certification or certification of such a facility must submit with its application for RPS pre-certification or certification a proposal for an appropriate method to measure the renewable fraction of the facility's generation. The measurement should be based on the total annual energy input of the fuels. The Energy Commission will evaluate and consider the proposed method as part of the facility's application for pre-certification or certification." [RPS Eligibility Guidebook, p. 19.]

¹⁶ Refer to the CEC-RPS-1B application form included in Exhibit B, which identifies the name of the facility as "SPGCA-1" and the name of the owner as "SPGCA-1, LLC." Whereas, Mr. Grossman's August 6, 2011, email to staff, provided as Exhibit J, identifies the name of the facility as "SPGCA LLC (1—24)" and the name of the owner as "Genergy LLC."

Additional Concerns

Staff has identified several additional concerns related to the pre-certification of the SPGCA-1 facility, as follows.

Misinformation Concerning Pre-certification

Shortly after the release of the Committee Decision on April 25, 2011, Genergy, LLC, displayed information on its website representing the “Submerged Power Generator” (SPG) as being pre-certified with the California Energy Commission. A copy of the webpage is provided in Exhibit K.

The website information provides as follows:

“With in a matter of only two weeks the California Energy Commission overturned the initial denial and granted approval for pre-certification of the “SPG” with the California Energy Commission.”¹⁷

While this statement is followed by a link to the Committee Decision, the factual errors in this statement highlight a misunderstanding of the Committee Decision. The first point of concern is that the statement suggests that the SPGCA-1 facility was pre-certified, when in fact it was not and has not been pre-certified. The Committee Decision granted pre-certification to the SPGCA-1 facility upon the satisfaction of several requirements, as discussed earlier, and these requirements have not been met to date.

The second concern with this statement is that it suggests the Committee Decision granted pre-certification of the SPG, the device or technology to be used at the SPGCA-1 facility. The Energy Commission does not certify or pre-certify technologies for the RPS. It certifies and pre-certifies facilities that use eligible renewable energy resources to generate electricity.¹⁸

¹⁷ <http://www.qenergyllc.com/qenergy-llc-wins-california-energy>, viewed most recently on February 6, 2012.

¹⁸ RPS Guidebook consistently refers to the RPS eligibility of “facilities.” For example, in Chapter II, Eligibility Requirements, it states: “In general, a facility is eligible if it uses an eligible renewable resource or fuel, satisfies resource-specific criteria, and is either located within the state or satisfies applicable requirements for out-of-state facilities.” [RPS Eligibility Guidebook, p. 7.] In Chapter III, Certification Process, the RPS Eligibility Guidebook states: “Facilities seeking certification as eligible for the RPS consistent with the eligibility requirements ... must submit a completed application, along with any necessary supporting documentation, to the Energy Commission ...” [RPS Eligibility Guidebook, Chapter III, Section A., p. 29.] These provisions are consistent with former Public Utilities Code section 399.12 (c), which defined “eligible renewable energy resource” for purposes of the RPS to mean “an electric generation facility that meets the definition of ‘in-state renewable electricity generation facility’ in Section 25741 of the Public Resources Code...” [Former Public Utilities Code section 399.12 (c), effective through December 9, 2011. Emphasis added.] The term “eligible renewable energy resource” is currently defined in Public Utilities Code section 399.12 (e) to mean “an electric generation facility that meets the definition

Staff requests that the Committee Decision be augmented with a notice informing Mr. Grossman and Genergy, LLC, of the following:

- 1) The SPGCA-1 facility was not and is not pre-certified for the RPS;
- 2) The Submerged Power Generator technology was not and is not pre-certified for the RPS; and
- 3) The Energy Commission does not certify or pre-certify technologies for the RPS.

Additional Applications for RPS Pre-Certification

Mr. Grossman has attempted to submit additional applications for RPS pre-certification since the Committee Decision of April 25, 2011. In these applications, Mr. Grossman has sought to pre-certify facilities for the RPS based on the use of the same Genergy technology as the SPGCA-1 facility, and relied on footnote 1 of the Committee Decision to insist the facilities qualify as “hydroelectric,” because the facilities would use the same Genergy technology. Footnote 1 of the Committee Decision provides that:

“For the purposes of this matter only, the Committee orders that the definition of hydroelectric applicable at the time of the submission of the Application for Pre-Certification be used in considering any future application for certification that may be submitted for the device that is the subject of this proceeding.”¹⁹

Mr. Grossman misreads footnote 1 as applying to every facility that uses the Genergy technology. However, the scope of the Committee Decision is limited to the application of the SPGCA-1 facility and cannot be extended to other facilities. No other facilities were considered as part of the Committee hearing. Moreover, the Committee Decision cannot establish substantive RPS rules that deviate from the rules adopted by the Energy Commission, so footnote 1 can only be read as applying to the SPGCA-1 facility. As was explained in the Committee Decision, on the date the decision was issued the Energy Commission had already adopted revised RPS rules for the definition of “hydroelectric” that excluded marine uses. Reading footnote 1 as applying to all facilities that use the Genergy technology, including marine-based facilities, would conflict with the Energy Commission’s adopted RPS rules at the time.

of an a (sic) ‘renewable electrical generation facility’ in Section 25741 of the Public Resources Code” [Public Utilities Code section 399.12 (e), effective December 10, 2011.]

¹⁹ Committee Decision, p. 2.

Staff requests that the Committee Decision be augmented to clarify the following:

- 1) The scope of the Committee Decision, including footnote 1, is limited to the pre-certification application submitted by Mr. Grossman for the SPGCA-1 facility; and
- 2) The Commission Decision, including footnote 1, does not apply to any applications for RPS certification or pre-certification that were, could have been, or are submitted by Mr. Grossman or other individuals after the date of the Committee Decision.

Dated February 9, 2012, at Sacramento, California

Respectfully Submitted,



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List of Exhibits

Exhibit A - Committee Decision Dated April 25, 2011

Exhibit B - Kurt Grossman Submittal Dated June 7, 2011

Exhibit C - Staff Request for Additional Information Dated June 17, 2011

Exhibit D - Kurt Grossman Email of September 6, 2011

Exhibit E - State and Federal Agencies that may have Regulatory Authority Over
SPGCA-1 Facility

Exhibit F - Kurt Grossman Email of July 6, 2011

Exhibit G - Kurt Grossman Email of September 6, 2011 with Attached Map

Exhibit H - Kurt Grossman Email of August 30, 2011 with Attached Diagram of the
Genergy Technology

Exhibit I - Diagram of Genergy Technology Presented During Committee Hearing

Exhibit J - Kurt Grossman email of August 6, 2011

Exhibit K - Genergy, LLC, Webpage Regarding Pre-certification

Exhibit A

Committee Decision Dated April 25, 2011



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

IN THE MATTER OF:

BEFORE THE RENEWABLES COMMITTEE
KURT GROSSMAN APPEAL

Docket No. 11-KGA-1

DOCKET

11-KGA-1

DATE Apr 25 2011

RECD. Apr 25 2011

COMMITTEE DECISION

Background

On August 26, 2010, Kurt Grossman, on behalf of SPGCA, LLC of Newport Beach, California, submitted an Application for Pre-Certification to the Energy Commission's California Renewables Portfolio Standard Program. The Application sought pre-certification for Genergy, described in the Application as a 20 megawatt (MW) small hydroelectric generating system built under water.

On October 18, 2010, Energy Commission staff sent a letter to Mr. Grossman denying the Application. The bases for the denial, as set forth in the letter, were that Genergy did not meet the definition of small hydroelectric as defined in the Overall Program Guidebook and that Genergy did not implement any other renewable resource or fuel described in Public Resources Code section 25741(a)(1).

On November 18, 2010, Mr. Grossman petitioned the Renewables Committee (Commissioners Peterman and Vice Chair Boyd) for reconsideration of the denial of the Application. On January 25, 2011, Mr. Grossman was notified that the Renewables Committee would provide Mr. Grossman the opportunity to make a presentation in support of the Application and would reconsider the denial of the Application in light of that presentation. The Committee conducted that hearing on March 29, 2011 at Energy Commission headquarters in Sacramento.

Decision

In acting upon a petition for reconsideration, the Committee's task is to determine whether or not to change the determination that is the subject of the petition. In this case, that determination was to deny pre-certification for the following reason:

"Since the SPGCA-1 facility will not implement a hydroelectric resource, or any other eligible renewable resource, the Energy Commission staff concludes that the facility is ineligible for the RPS."

The subject of the Application for Pre-certification is a device referred to by the Applicant as a submerged power generator (letter from Kurt Grossman, dated August 23, 2010). The device is an enclosed air space submerged in a body of water, such as a lake or ocean, which uses the force of a falling container full of water to push a lever which in turn drives a generator. Once the container has done this work, the water is expelled using a pump, and the container, now buoyant, rises to the surface to be refilled. The container is filled with water by gravity.

The Application was submitted under the "Overall Program Guidebook, second edition" and the "Renewables Portfolio Standard Eligibility" Commission Guidebook, third edition. Both are dated January, 2008. Although these documents were superseded by new editions in January, 2011, it was agreed at the hearing, and fairness requires, that the Committee base its decision on the older versions, which were in use at the time of both the submission of the Application, and the decision of denial.

The definition of "Hydroelectric" in the Overall Program Guidebook is:

"a technology that produces electricity by using falling water to turn a turbine generator, referred to as hydro. See also 'small hydro'."

"Small Hydroelectric" is defined in relevant part as follows:

"a facility employing one or more hydroelectric turbine generators, the sum capacity of which does not exceed 30 megawatts, except in the case of efficiency improvements ...

...a new small hydroelectric facility is not an eligible renewable energy resource for purposes of the RPS if it will cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow."

We view the central question, then, as whether or not the device uses falling water to generate electricity. We find that it does. While it is true that the container used by the device could be filled with anything heavy and thereby fall due to gravity and push the lever, the fact is that the container is filled with water. Furthermore, the water gets into the container by force of gravity, i.e., it falls into the container. Given the broad nature of the definition applicable in this case, we are compelled to conclude that since water falls into the container, which, in turn, falls and pushes the lever, the device uses falling water to turn a generator. The device, therefore, meets the applicable¹ definition of "hydroelectric."

¹ The definition of hydroelectric applicable as of the date of this Decision excludes marine uses. The definition could change again. For purposes of this matter only, the Committee orders that the definition of hydroelectric applicable at the time of the submission of the Application for Pre-certification be used in considering any future application for certification that may be submitted for the device that is the subject of this proceeding.

The Energy Commission staff's October 18, 2010 denial letter included reference to the "small hydroelectric" definition as well, but did not specify how that definition was relevant to the determination to deny the Application. However, Commission staff clarified for us at the hearing that it reached the conclusion that because the statute stated that small hydroelectric was ineligible if it had an adverse impact on a stream, if the device in question was to be placed not in a stream, but offshore, it was not hydroelectric. The Committee disagrees with this interpretation. The definition of hydroelectric does not include a requirement that the device be in a stream. It only requires the use of falling water. In this case, the device is not to be placed in a stream and therefore cannot have an adverse impact on a stream.

Other deficiencies in the application were identified by Commission staff at the hearing, but had not been cited as grounds for denial of pre-certification in the October 18, 2010 letter. Those deficiencies were enumerated by Staff as items 5, 7, 9, 10, 16 and 17. We have reviewed those portions of the Application and find that items 5, 7 and 9 seek information which is not yet available to the Applicant due to the stage of development of the device. Applicant should thus state, in writing, why the information is not yet available, and when it will be available. Items 10, 16 and 17 apparently were not understood by the Applicant but, with the assistance of Staff, Applicant should be able to complete those sections.

Applicant is not required to provide instream or hydrological data pertaining to the placement of the project in a stream, as the Application makes it clear that the device will be placed offshore.

Accordingly, we grant pre-certification to the Applicant, based upon the existing Application, subject to the following requirements:

1. All incomplete portions of the existing Application shall be completed and submitted to Commission staff for review.
2. The required explanations for why certain specific information is not yet available, and the timing for obtaining that information, shall be provided in connection with the existing Application.
3. Should Commission staff find any deficiencies in these submissions, then the deficiencies shall be communicated promptly to the Applicant and confirmed in writing.

Dated April 25, 2011 at Sacramento, California.

Original Signed By:
CARLA PETERMAN
Commissioner and Presiding Member

Original Signed By:
JAMES D. BOYD
Vice Chair and Associate Member



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV**

IN THE MATTER OF:

FOR THE *KURT GROSSMAN APPEAL*

**Docket No. 11-KGA-1
PROOF OF SERVICE
(Est. 3/11/2011)**

APPELLANT

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DECLARATION OF SERVICE

I, Maggie Read, declare that on April 25, 2011, I served and filed copies of the attached COMMITTEE DECISION, dated April 25, 2011. The original document has been filed with the Docket Unit. A copy may be obtained from the Docket Unit by referring to Docket Number 11-KGA-1.

The documents have been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

FOR SERVICE TO ALL OTHER PARTIES:

- ☒ sent electronically to all email addresses on the Proof of Service list;
- ☐ by personal delivery;
- ☒ by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "email preferred."

AND

FOR FILING WITH THE ENERGY COMMISSION:

- ☒ sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (*preferred method*);

OR

- ☐ depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 11-KGA-1
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

Original Signed By:
Maggie Read
Hearing Adviser's Office

Exhibit B

Kurt Grossman Submittal Dated June 7, 2011

From: Tony Goncalves
To: Brian McCollough; Mark Kootstra
CC: Kate Zocchetti
Date: 6/7/2011 9:24 AM
Subject: Fwd: Docket No. 11-KGA-1
Attachments: Grossman Decision POS.pdf; Grossman Decision.pdf; SPGCA-1-LLC-CEC-RPS-1B.doc; spgca-1-llc-CEC-RPS-1B-S2-Hydro.doc

fyi

>>> Kurt Grossman <kurtg@genergyllc.com> 6/7/2011 9:19 AM >>>
TO: JAMES D. BOYD Vice Chair and Presiding Member Renewables Committee
jboyd@energy.state.ca.us

RE:

"Accordingly, we grant pre-certification to the Applicant, based upon the existing Application, subject to the following requirements:"

"1. All incomplete portions of the existing Application shall be completed and submitted to Commission staff for review."

"2. The required explanations for why certain specific information is not yet available, and the timing for obtaining that information, shall be provided in connection with the existing Application."

"3. Should Commission staff find any deficiencies in these submissions, then the deficiencies shall be communicated promptly to the Applicant and confirmed in writing."

Dear Commissioner Boyd,

Again, we would like to thank you for listening to our side of the argument and very much appreciate the decision.

In the decision there were certain omissions or deficiencies in our prepared "Precertification Application" for the "SPGCA-1, LLC" SITE.

We have attempted to cure those deficiencies.

The Precertification Application has been revised to include the Latitude and Longitude of the proposed site.

We hope that we have completed this Precertification Application correctly but would gladly correct any mistakes immediately to bring this issue to a speedy conclusion.

In a few days we will be emailing another 23 applications for sites connecting to the 3 IOU's accepting our bid responses.

Thank you very much!

Sincerely,

Kurt Grossman

cc; ENERGY COMMISSION

ROBERT B. WEISENMILLER Chair and Associate Member Renewables Committee

rweisenm@energy.state.ca.us

CARLA PETERMAN, Commissioner and Associate Member Renewables Committee

Raoul Renaud Hearing Officer rrenaud@energy.state.ca.us

Gabriel Herrera Staff Counsel gherrera@energy.state.ca.us

Tony Goncalves Renewable Energy Office Manager tgoncalv@energy.state.ca.us

Kate Zocchetti Renewables Standard Program kzocchet@energy.state.ca.us

Jennifer Jennings Public Adviser's Office E-mail Preferred publicadviser@energy.state.ca.us

Attachments:



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

IN THE MATTER OF:

BEFORE THE RENEWABLES COMMITTEE
KURT GROSSMAN APPEAL

Docket No. 11-KGA-1

COMMITTEE DECISION

Background

On August 26, 2010, Kurt Grossman, on behalf of SPGCA, LLC of Newport Beach, California, submitted an Application for Pre-Certification to the Energy Commission's California Renewables Portfolio Standard Program. The Application sought pre-certification for Genergy, described in the Application as a 20 megawatt (MW) small hydroelectric generating system built under water.

On October 18, 2010, Energy Commission staff sent a letter to Mr. Grossman denying the Application. The bases for the denial, as set forth in the letter, were that Genergy did not meet the definition of small hydroelectric as defined in the Overall Program Guidebook and that Genergy did not implement any other renewable resource or fuel described in Public Resources Code section 25741(a)(1).

On November 18, 2010, Mr. Grossman petitioned the Renewables Committee (Commissioners Peterman and Vice Chair Boyd) for reconsideration of the denial of the Application. On January 25, 2011, Mr. Grossman was notified that the Renewables Committee would provide Mr. Grossman the opportunity to make a presentation in support of the Application and would reconsider the denial of the Application in light of that presentation. The Committee conducted that hearing on March 29, 2011 at Energy Commission headquarters in Sacramento.

Decision

In acting upon a petition for reconsideration, the Committee's task is to determine whether or not to change the determination that is the subject of the petition. In this case, that determination was to deny pre-certification for the following reason:

"Since the SPGCA-1 facility will not implement a hydroelectric resource, or any other eligible renewable resource, the Energy Commission staff concludes that the facility is ineligible for the RPS."

The subject of the Application for Pre-certification is a device referred to by the Applicant as a submerged power generator (letter from Kurt Grossman, dated August 23, 2010). The device is an enclosed air space submerged in a body of water, such as a lake or ocean, which uses the force of a falling container full of water to push a lever which in turn drives a generator. Once the container has done this work, the water is expelled using a pump, and the container, now buoyant, rises to the surface to be refilled. The container is filled with water by gravity.

The Application was submitted under the "Overall Program Guidebook, second edition" and the "Renewables Portfolio Standard Eligibility" Commission Guidebook, third edition. Both are dated January, 2008. Although these documents were superseded by new editions in January, 2011, it was agreed at the hearing, and fairness requires, that the Committee base its decision on the older versions, which were in use at the time of both the submission of the Application, and the decision of denial.

The definition of "Hydroelectric" in the Overall Program Guidebook is:

"a technology that produces electricity by using falling water to turn a turbine generator, referred to as hydro. See also 'small hydro'."

"Small Hydroelectric" is defined in relevant part as follows:

"a facility employing one or more hydroelectric turbine generators, the sum capacity of which does not exceed 30 megawatts, except in the case of efficiency improvements ...

...a new small hydroelectric facility is not an eligible renewable energy resource for purposes of the RPS if it will cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow."

We view the central question, then, as whether or not the device uses falling water to generate electricity. We find that it does. While it is true that the container used by the device could be filled with anything heavy and thereby fall due to gravity and push the lever, the fact is that the container is filled with water. Furthermore, the water gets into the container by force of gravity, i.e., it falls into the container. Given the broad nature of the definition applicable in this case, we are compelled to conclude that since water falls into the container, which, in turn, falls and pushes the lever, the device uses falling water to turn a generator. The device, therefore, meets the applicable¹ definition of "hydroelectric."

¹ The definition of hydroelectric applicable as of the date of this Decision excludes marine uses. The definition could change again. For purposes of this matter only, the Committee orders that the definition of hydroelectric applicable at the time of the submission of the Application for Pre-certification be used in considering any future application for certification that may be submitted for the device that is the subject of this proceeding.

The Energy Commission staff's October 18, 2010 denial letter included reference to the "small hydroelectric" definition as well, but did not specify how that definition was relevant to the determination to deny the Application. However, Commission staff clarified for us at the hearing that it reached the conclusion that because the statute stated that small hydroelectric was ineligible if it had an adverse impact on a stream, if the device in question was to be placed not in a stream, but offshore, it was not hydroelectric. The Committee disagrees with this interpretation. The definition of hydroelectric does not include a requirement that the device be in a stream. It only requires the use of falling water. In this case, the device is not to be placed in a stream and therefore cannot have an adverse impact on a stream.

Other deficiencies in the application were identified by Commission staff at the hearing, but had not been cited as grounds for denial of pre-certification in the October 18, 2010 letter. Those deficiencies were enumerated by Staff as items 5, 7, 9, 10, 16 and 17. We have reviewed those portions of the Application and find that items 5, 7 and 9 seek information which is not yet available to the Applicant due to the stage of development of the device. Applicant should thus state, in writing, why the information is not yet available, and when it will be available. Items 10, 16 and 17 apparently were not understood by the Applicant but, with the assistance of Staff, Applicant should be able to complete those sections.

Applicant is not required to provide instream or hydrological data pertaining to the placement of the project in a stream, as the Application makes it clear that the device will be placed offshore.

Accordingly, we grant pre-certification to the Applicant, based upon the existing Application, subject to the following requirements:

1. All incomplete portions of the existing Application shall be completed and submitted to Commission staff for review.
2. The required explanations for why certain specific information is not yet available, and the timing for obtaining that information, shall be provided in connection with the existing Application.
3. Should Commission staff find any deficiencies in these submissions, then the deficiencies shall be communicated promptly to the Applicant and confirmed in writing.

Dated April 25, 2011 at Sacramento, California.

Original Signed By:
CARLA PETERMAN
Commissioner and Presiding Member

Original Signed By:
JAMES D. BOYD
Vice Chair and Associate Member



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

IN THE MATTER OF:

FOR THE *KURT GROSSMAN APPEAL*

Docket No. 11-KGA-1
PROOF OF SERVICE
(Est. 3/11/2011)

APPELLANT

Kurt Grossman
Genergy, Inc.
605 Mar Vista Drive
Newport Beach, CA 92660
info@gravitybuoyancy.com

ENERGY COMMISSION

JAMES D. BOYD
Vice Chair and Presiding Member
Renewables Committee
jboyd@energy.state.ca.us

ROBERT B. WEISENMILLER
Chair and Associate Member
Renewables Committee
rweisenm@energy.state.ca.us

Raoul Renaud
Hearing Officer
rrenaud@energy.state.ca.us

Gabriel Herrera
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tgoncalv@energy.state.ca.us

Kate Zocchetti
Renewables Standard Program
kzocchet@energy.state.ca.us

Jennifer Jennings
Public Adviser's Office
E-mail Preferred
publicadviser@energy.state.ca.us

DECLARATION OF SERVICE

I, Maggie Read, declare that on April 25, 2011, I served and filed copies of the attached COMMITTEE DECISION, dated April 25, 2011. The original document has been filed with the Docket Unit. A copy may be obtained from the Docket Unit by referring to Docket Number **11-KGA-1**.

The documents have been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

FOR SERVICE TO ALL OTHER PARTIES:

- ☒ sent electronically to all email addresses on the Proof of Service list;
- ☐ by personal delivery;
- ☒ by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "email preferred."

AND

FOR FILING WITH THE ENERGY COMMISSION:

- ☒ sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (*preferred method*);

OR

- ☐ depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 11-KGA-1
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

Original Signed By:

Maggie Read
Hearing Adviser's Office



RENEWABLE
ENERGY
PROGRAM

CALIFORNIA ENERGY COMMISSION

CEC-RPS-1B
Application for Pre-Certification
California Renewables Portfolio Standard Program

Please refer to the Instructions for completing this form and to the *RPS Eligibility Guidebook* and the *Overall Program Guidebook* for additional information.

—All information on this form and on any attachments is subject to public disclosure—

Section I: Type of Pre-Certification Requested

The information on this form will be subject to further verification once the pre-certified facility comes online. If the additional required information is not currently available, please attach an explanation and description of the material and when it will be available.

1. Choose **One**

☒ Pre-Certification ☐ Amended Pre-Certification* ☐ Renewal of Pre-Certification*

*If this is an amendment or renewal: Date of original pre-certification: _____

Original pre-certification number: _____

Note: Pre-certification is available for facilities that are not online or are under specific criteria. Please check the RPS Eligibility Guidebook for more details. Facilities that are pre-certified must submit a complete and updated certification application and be certified as RPS-eligible before any generation may be counted toward satisfying a retail seller's RPS procurement requirements. To apply for certification, use form CEC-RPS-1A.

Section II: Applicant Contact Information

2. Applicant Information

Name of Applicant: KURT GROSSMAN

Title: INVENTOR

Applicant Phone: 800-719-2730
kgrossman@gravitybuoyancy.com

Fax: 775-417-7154

E-Mail (for all correspondence):

Person Completing Form (if different from Applicant):

3. Company Information

Company Name: SPGCA -1, LLC

Company Address: 605 MAR VISTA DRIVE

City: NEWPORT BEACH

State/Province: CA Country: USA

ZIP: 92660

Section III: Facility Information

4. Facility Owner

Name of Owner: SPGCA - 1, LLC

Owner Address: 605 MAR VISTA DRIVE

Owner City: NEWPORT BEACH

State: CA

ZIP: 92660

Owner Phone: 800-719-2730

Fax: 775-417-7154

E-Mail: kgrossman@gravitybuoyancy.com

State or Province in which facility owner/company is incorporated and/or registered: CA

5. Facility Location

Name of Facility: SPGCA-1

Please specify any additional names this facility is or has been known by, including names the facility has used in the past, if known: _____

Facility Location (street address or provide a legal description of site): 35° 9'26.04"N - 120°58'28.08"W

(Facility Location continued)

City: _____ County: _____ State: CA

Facility Telephone: 949-307-5380
kgrossman@gravitybuoyancy.com

Fax: 775-417-7154

E-Mail: _____

Facility Operations

6. Provide nameplate capacity of facility (in megawatts): 25

7. Select Balancing Authority operator for facility: ☒ CA ISO ☐ Other (specify): _____

8. Is the facility's first point of interconnection to the WECC transmission system located within California?

☒ Yes. Facility is considered an in-state facility for purposes of RPS eligibility.

☐ No. Either facility is located out of state and is not subject to California Public Utilities Code Section 399.17, or the facility is subject to PUC Section 399.17 but its generation is intended to be counted towards another retail seller's California RPS obligations. (Complete CEC-RPS-1B.S3 and submit additional required information for Out-of-State Facilities).

► For out of state facilities, provide the WECC interconnection substation location: _____

☐ Other. Facility is located out of state BUT the generation exclusively serves retail end-use customers outside California and has 60,000 or fewer customer accounts in California under PUC Section 399.17. (Out-of-state delivery requirements do not apply to these facilities.)

9. Choose One

☐ Prior operating facility. Facility commenced commercial operations before January 1, 2005*
► Specify date: _____

☒ New facility. Facility commenced commercial operations on or after January 1, 2005.*
► Specify date: _____

☐ Repowered facility. Facility was repowered or re-entered commercial operations after January 1, 2005.* Specify date: _____
► Repowered facilities must provide documentation confirming the replacement of the facility's prime generating equipment and the capital investments made to repower the facility as well as the value of those investments as described in the "Instructions for Additional Required Information for Repowered Facilities" in the RPS Guidebook.

► Select method used to demonstrate compliance with the 80 percent threshold:

☐ Tax Records Methodology

☐ Replacement Value Methodology

* Exceptions for these online dates are small hydroelectric and small conduit hydroelectric facilities that began commercial operations or were repowered on or after January 1, 2006.

10. Choose One

☒ Facility is a central station facility.

☐ Facility is a distributed generation facility serving on-site load.
► Complete Section V

11. Facility Identification Numbers

California Energy Commission: Renewable Energy Program #

CEC-Other #

State of California: CA ISO #

(Facility Identification Numbers continued)

Federal: QF ID or Self-Certification Docket #

Energy Information Administration #

☐ The facility is on an existing EIA List

☐ The facility is on a proposed EIA list

Other (Please explain):

Section IV: Facility Fuel and Technology Type

12. Indicate energy source used by the facility. For multi-fuel facilities, indicate all energy sources used. For biodiesel facilities, please also select the fuel source (either biomass or MSW conversion) from which the biodiesel is derived, complete the specified form, and provide the additional required information as applicable.

<input type="checkbox"/> Biodiesel ▶ Complete CEC-RPS-1B:S1	<input type="checkbox"/> Geothermal	<input type="checkbox"/> Ocean Thermal
<input type="checkbox"/> Biogas injected into a natural gas pipeline ▶ Complete CEC-RPS-1B:S1	<input type="checkbox"/> Incremental Hydroelectric ▶ Complete CEC-RPS-1B:S2	<input type="checkbox"/> Photovoltaic
<input type="checkbox"/> Biomass ▶ Complete CEC-RPS-1B:S1	<input type="checkbox"/> Landfill Gas ▶ Complete CEC-RPS-1B:S1	<input checked="" type="checkbox"/> Small Hydroelectric ▶ Complete CEC-RPS-1B:S2
<input type="checkbox"/> Conduit Hydroelectric ▶ Complete CEC-RPS-1B:S2	<input type="checkbox"/> Municipal Solid Waste, combustion ▶ Complete CEC-RPS-1B:S1	<input type="checkbox"/> Solar Thermal Electric
<input type="checkbox"/> Digester Gas ▶ Complete CEC-RPS-1B:S1	<input type="checkbox"/> Municipal Solid Waste, conversion ▶ Complete CEC-RPS-1B:S1	<input type="checkbox"/> Tidal Current
<input type="checkbox"/> Fuel Cell Using Renewable Fuel	<input type="checkbox"/> Ocean Wave	<input type="checkbox"/> Wind

13. Does the facility use any fossil fuel? ☐ Yes* ☒ No

*If Yes, specify the type and the average amount of all fossil fuel used annually on a total energy input basis for the calendar year immediately prior to the date of application (if this is the first year of operation, estimate fossil fuel use):

▶ Type of fossil fuel: _____

▶ Average annual percentage for prior calendar year (or estimate): _____

14. Under a 2002-2003 Interim RPS Procurement solicitation approved by the CPUC under Decision 02-08-071 and Decision 02-10-062, was the facility developed and awarded a power purchase contract?

☐ Yes

(If Yes, facility may use up to 25% fossil fuel and count 100% of the electricity generated as RPS-eligible.)

☒ No

(If No, only renewable portion of generation may be RPS-eligible.)

15. Is the facility currently certified as a renewable Qualifying Small Power Production Facility (QF) under the federal Public Utilities Regulatory Policies Act of 1978 (PURPA)?

☐ Yes* ☒ No

*If Yes, provide the original certification date as a renewable QF. ▶ Original certification date:

(If Yes and facility was certified and had commenced commercial operations before January 1, 2002 and is still currently certified, facility may use up to 25% fossil fuel and count 100% of the electricity generated as RPS-eligible. If No, only the renewable portion of the electricity production can qualify for the RPS.)

The following section is only for applicants who indicated that the facility is a Distributed Generation Facility in #10.

Section V: Distributed Generation Information

16. Is/Was the entire electrical output generated at the facility sold (planned to be sold) to a retail seller or a local publicly owned electric utility under a power purchase agreement and is/was the energy purchased (planned to be purchased) from the counterparty to that agreement or from another party to serve the entire on-site demand of the facility?

☒ Yes ☐ No

► If planned, specify date: 2015-01-01

17. Is/Was the excess generation, or generation net of the facility's on-site demand sold (planned to be sold) under a power purchase agreement with a retail seller or local publicly owned electric utility?

☒ Yes ☐ No (If answers to both #16 and #17 are No, the facility is not RPS-eligible at this time)

► If Yes, attach a description of how the metering scenario (will) accurately measure(s) the facility's excess generation

18. Have benefits been received, are being received, or are planned to be received for the facility from the following ratepayer funded programs: (Check all that apply)

Energy Commission:

☐ Emerging Renewables Program

☐ New Solar Homes Partnership

☐ Pilot Performance-Based Initiative Program

☒ Existing Renewables Program under SB 90

CPUC:

☐ California Solar Initiative

☐ Self Generation Incentive Program

☐ Other. Please Specify: _____

☒ None (If None, skip to Section VI)

19. Has/Is the facility participated/ing in a net metering program or benefited/ing from net metering tariffs?

☐ Yes ☒ No (If No, skip to Section VI)

20. Is a plan in place to exit the net metering program or net metering tariffs if a power purchase agreement is secured as described in questions #16 or #17?

☒ Yes ☐ No (If No, facility is not RPS eligible at this time)

► If net metering program or tariffs were already exited or are planned to be exited, specify date: 2015-01-01

Section VI: General Information

The Energy Commission reserves the right to request additional information to confirm or clarify information provided in this application including any attachments. If a representative of a pre-certified facility does not respond to the Energy Commission's request for information update in a timely manner the facility is at risk of losing its pre-certification status.

The Energy Commission's Accounting Office or its authorized agents, in conjunction with Energy Commission technical staff, may audit any applicant to verify the accuracy of any information included as part of an application for RPS pre-certification, pursuant to the *Overall Program Guidebook for the Renewable Energy Program*. As part of an audit, an applicant may be required to provide the Accounting Office or its authorized agents with any and all information and records necessary to verify the accuracy of any information included in the awardee's applications.

invoices, or reports. An applicant may also be required to open its business records for on-site inspection and audit by the Accounting Office or its authorized agents for purposes of verifying the accuracy of any information included in the applicant's applications, invoices, and reports.

Representatives of pre-certified facilities must notify the Energy Commission promptly of any changes in information previously submitted to the Energy Commission. Failure to do so may result in revocation of pre-certification status. Any changes affecting the facility's pre-certification status should be reported on an amended CEC-RPS-1B form. If there are any changes to the status of a facility's pre-certification, the new information will be posted on the Energy Commission's website.

Section VII: Attestation

I am an authorized officer of the above-noted facility owner, an authorized agent of the facility owner, or a retail seller contracting with the above noted facility owner and with authority to submit this application on the facility owner's behalf, hereby submit this application on behalf of said facility owner for pre-certification of the facility as a renewable facility eligible for California's RPS or pre-certification as eligible for California's RPS. I have read the above information as well as the *Renewables Portfolio Standard Eligibility Guidebook*, the *Overall Program Guidebook for the Renewable Energy Program*, and the *New Renewable Facilities Program Guidebook* and understand the provisions of these guidebooks and my responsibilities. I acknowledge that the receipt of any pre-certification approval from the Energy Commission is conditioned on the acceptance and satisfaction of all program requirements as set forth in the *Renewables Portfolio Standard Eligibility Guidebook* and the *Overall Program Guidebook for the Renewable Energy Program*. I declare under penalty of perjury that the information provided in this application and any supplemental forms and attachments is true and correct to the best of my knowledge.

Applicant Name: KURT GROSSMAN

Applicant Title: INVENTOR

Signature: _____

Date signed: MAY 14, 2011

☒ The following are attached: A Map of the Proposed Facility Site & Proposed Connection to the Grid

REMINDER: Some facilities have further submission requirements outlined below; refer to the *RPS Program Eligibility Guidebook* for details.

Technology/Characteristic	Additional Required Information	Supplemental Form
Biodiesel, Biogas injected into the natural gas pipeline, Biomass, Digester Gas, Landfill Gas, MSW Conversion, and MSW Combustion	Yes	CEC-RPS-1B:S1
Hydroelectric	Yes	CEC-RPS-1B:S2
Out of State	Yes	CEC-RPS-1B:S3
Repowered	Yes	

SUBMIT: 1. Completed and signed CEC-RPS 1A/B form
2. Applicable supplemental forms
3. Applicable additional required information
4. Other, please specify:

TO: California Energy Commission
Attn: RPS Certification
1516 Ninth Street, MS-45
Sacramento, CA 95814



RENEWABLE
ENERGY
PROGRAM

CALIFORNIA ENERGY COMMISSION

CEC-RPS-1B:S2
Pre-Certification Supplement 2 – Hydroelectric
California Renewables Portfolio Standard Program

—All information on this form and on any attachments is subject to public disclosure—

Section I: Applicant Information

Name of Applicant: KURT GROSSMAN

Company Name: SPGCA-1, LLC

Person Completing Form (if different from Applicant):

Section II: Facility Information

Name of Facility: SPGCA-1

Location (provide street address of facility or attach legal description of site): 35° 9'26.04"N - 120°58'28.08"W

City:

County:

State: CA

CEC-RPS # _____ (ID# issued under the Renewables Portfolio Standard, if application is amendment or renewal)

Section III: Supplemental Questions for Hydroelectric Applicants

1. Does the facility use pumped storage for electricity generation? ☐ Yes* ☒ No
- ☐ *If Yes, applicant certifies that the facility meets **all** of the following requirements:
- ▶ The facility meets the RPS eligibility requirements for conduit hydroelectric, small hydroelectric, or incremental hydroelectric facilities as more fully described in the *Renewables Portfolio Standard Eligibility Guidebook*, and
 - ▶ The electricity used to pump the water qualifies as RPS-eligible. (The amount of energy that may qualify for the RPS is the amount of electricity dispatched from the system.)
- A facility certified as RPS-eligible may include an electricity storage device if it does not conflict with other RPS-eligibility criteria, but the storage unit itself will not be separately certified.*

2. Is the facility seeking certification of only the incremental increase in generation resulting from efficiency improvements initiated on or after January 1, 2008?
- ☐ Yes (Skip to #7) ☒ No

3. Is the facility a small conduit hydroelectric facility? ☐ Yes (If yes, skip to #5) ☒ No

4. RPS Eligibility for Small Hydroelectric Facilities

Choose **ONE**
and read #6

- ☐ If facility commenced commercial operations before January 1, 2006, applicant certifies that the facility meets **all** of the following criteria:
- ▶ Capacity is 30 MW or less, with an exception for eligible efficiency improvements made after January 1, 2008, as discussed below.
 - ▶ Located in-state or satisfies the out-of-state requirements.
 - ▶ Under contract to, or owned by a retail seller as of January 1, 2006.

	<p><i>Eligible Efficiency Improvements: A small hydroelectric facility shall not lose its RPS eligibility if efficiency improvements undertaken after January 1, 2008, cause it to exceed 30 MW and "the efficiency improvements do not result in an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow."</i>¹ The entire generating capacity of the facility shall be RPS-eligible.</p> <p><input checked="" type="checkbox"/> If facility commenced commercial operations or was repowered on or after January 1, 2006, applicant certifies that the facility meets all of the following requirements:</p> <ul style="list-style-type: none"> ▶ Capacity is 30 MW or less, with an exception for eligible energy efficiency improvements made after January 1, 2008, as discussed above. ▶ Located in-state or satisfies the out-of-state requirements. ▶ Does not result in an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.
<p>5. RPS Eligibility for Conduit Hydroelectric Facilities</p>	
<p>Choose ONE and read #6</p>	<p><input type="checkbox"/> If facility commenced commercial operations before January 1, 2006, applicant certifies that the facility meets all of the following requirements:</p> <ul style="list-style-type: none"> ▶ Capacity is 30 MW or less, with an exception for eligible energy efficiency improvements made after January 1, 2008, as discussed below. ▶ Located in-state or satisfies the out-of-state requirements.
	<p><i>Eligible Efficiency Improvements: A conduit hydroelectric facility shall not lose its RPS eligibility if efficiency improvements undertaken after January 1, 2008, cause it to exceed 30 MW and do not result in an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow. The entire generating capacity of the facility shall be RPS-eligible.</i></p>
	<p><input type="checkbox"/> If facility commenced commercial operations after January 1, 2006, applicant certifies that the facility meets all of the following requirements:</p> <ul style="list-style-type: none"> ▶ Capacity is 30 MW or less in, with an exception for eligible energy efficiency improvements made after January 1, 2008, as discussed above. ▶ Located in-state or satisfies the out-of-state requirements. <p>Does not result in an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow</p>
<p>6. Permits and Licenses for Small Hydroelectric and Small Conduit Hydroelectric Facilities</p>	
<p><i>Facility located within California</i></p>	<p><i>Facility located outside California</i></p>
<p>A new or repowered small hydroelectric facility, conduit hydroelectric facility or incremental generation from eligible efficiency improvements located within California, is not eligible for the RPS if it results in an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow. A facility may have an adverse impact on the instream beneficial uses if it causes a change in the volume, rate, timing, temperature, turbidity, or dissolved oxygen content of the stream water.</p>	<p>A new or repowered small hydroelectric facility, conduit hydroelectric facility, or incremental generation from eligible efficiency improvements to a hydroelectric facility located outside California may be eligible for the RPS if it can demonstrate that it may operate without adversely impacting the instream beneficial uses or causing a change in the volume or timing of streamflow. A facility may have an adverse impact on the instream beneficial uses if it causes a change in the volume, rate, timing, temperature, turbidity, or dissolved oxygen content of the stream water.</p>

¹ Public Utilities Code Section 399.12.5(a)

Note: If a new or repowered small hydroelectric facility, conduit hydroelectric facility, or incremental generation from eligible efficiency improvements to a hydroelectric facility, can demonstrate that it can operate without adversely impacting the instream beneficial uses or causing a change in the volume or timing of streamflow, it may be eligible for the RPS.

RPS Eligibility for Incremental Hydroelectric Generation

7. For RPS certification of incremental increase in generation that results from efficiency improvements to a hydroelectric facility, regardless of the electrical output of the facility, is eligible for the RPS if **all** of the following conditions are met:
- ▶ The facility was operational before January 1, 2007.
 - ▶ The efficiency improvements are initiated on or after January 1, 2008, are not the result of routine maintenance activities and were not included in any resource plan sponsored by the facility owner before January 1, 2008.
 - ▶ The facility has, within the immediately preceding 15 years from the date the efficiency improvements are initiated, received certification from the State Water Resources Control Board (SWRCB) pursuant to Section 401 of the Clean Water Act (33 U.S.C. Sec. 1341), or has received certification from a regional board to which the SWRCB has delegated authority to issue certification, unless the facility is exempt from certification because there is no potential discharge into waters of the United States.
 - ▶ The incremental increase is the result of efficiency improvements from a retrofit, and the efficiency improvements do not result in an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.
 - ▶ All of the incremental increase in electricity generation resulting from the efficiency improvements must be demonstrated to result from a long-term financial commitment by the retail seller.

☒ Applicant certifies that the incremental generation and facility comply with the above requirements as more fully described in the *Renewables Portfolio Standard Eligibility Guidebook*.

Applicant's signed attestation on Form CEC-RPS-1A applies to the information provided herein.

SUBMIT: 1. ***Completed and signed CEC-RPS 1A/B form***
2. ***Applicable supplemental forms***
3. ***Applicable additional required information***
4. ***Other, Please specify:***

TO: California Energy Commission
Attn: RPS Certification
1516 Ninth Street, MS-45
Sacramento, CA 95814

Exhibit C

Staff Request for Additional Information Dated June 17, 2011

From: Kate Zocchetti
To: Kurt Grossman
CC: Mark Kootstra; Tony Goncalves
Date: 6/17/2011 4:43 PM
Subject: Re: Precertification Applications

Dear Mr. Grossman,

Thank you for the June 7, 2011, email containing corrections to the pre-certification application for SPGCA-1 (61230C) submitted in August of 2010 under the Renewables Portfolio Standard Eligibility Guidebook, Third Edition, and the Overall Program Guidebook for the Renewable Energy Program, Second Edition, both published in January 2008. Many of the changes indicated in the revised application you attached to your email. However, there are still several pieces of information that need to be clarified or provided as required by the Committee Decision issued on April 25, 2011 under the Docket 11-KGA-1.

The following clarifications or corrections need to be made to the CEC-RPS-1B form:

1. Item 5: The physical location of the facility provided in your email dated June 7, 2011, 35° 9' 36.04" N, 120° 58' 28.08" W, is not located in the ocean as described in the supplemental information provided with the August 2010 submission. Can you please confirm that this is the correct physical location, and if so please provide a brief explanation as to why the location of the facility is now on land. Please also provide a statement that the new location is correct and references in the original submission placing the facility in the ocean are no longer valid for this facility. If the location provided in your email is incorrect, please specify the correct physical location or grant the Energy Commission permission to strike this information from the form and as indicated in the Committee Decision "state, in writing, why the information is not yet available, and when it will be available."

2. Item 9: The anticipated date the facility will commence commercial operations is not specified in the application. Per the Committee Decision item 9 need not be provided in the pre-certification application "due to the stage of development of the device. Applicant should thus state, in writing, why the information is not yet available, and when it will be available."

3. Item 10: Both the initial application and revised application list the facility as a central station facility and not a distributed generation facility. However, you completed the section on Distributed Generation as noted in #4 below. The Overall Program Guidebook does not define central station, but it does define distributed generation as:

"small-scale electricity generation facilities sited in or close to a load center or at a customer's site and used primarily to offset all or part of the customer's electrical load. Distributed generation may or may not be interconnected to the electrical distribution system. In contrast, central station generation is interconnected to the electrical transmission grid and is not used primarily to serve the on-site electrical load, but instead is used to serve the electrical needs of a large number of offsite customers."

According to this definition and the description of the SPGCA-1 facility provided in the application submission and described during the Committee Hearing, it would appear that the facility would be most accurately described as a central station facility. Please confirm that the facility is a central station facility.

4. Items 16-20: Following your response to question 3, "Section V: Distributed Generation Information" was completed suggesting the facility is a distributed generation facility. If the facility is correctly labeled as central station, the responses to items 16- 20 are incorrect and should be removed; please confirm that the facility did not receive funding from a ratepayer-funded incentive program or did not or does not plan to participate in a net metering tariff.

Alternatively, if you wish the facility to be considered as a distributed generation facility, please specify if the facility plans to sell the entire electrical output generated at the facility or if only the excess generation from the facility not serving the onsite load, load not associated with the generation process also known as station service or parasitic load. Further, the application indicates that the facility plans to receive funding from the Existing Renewables Program Under SB 90, but according to the Existing Renewable Facilities Program Guidebook, Sixth Edition, published in February 2009 (<http://www.energy.ca.gov/renewables/documents/index.html#existing>) the facility does not meet the eligibility requirements for this program. This response should be struck from the application. Please confirm that we should remove this response from your application. Can you also confirm that the facility did not and does not plan to participate in a net metering program, and may items 19 and 20 be revised as needed to reflect your answer?

5. At the end of the attestation in the revised application included in your mail, it is indicated that "A Map of the Proposed Facility Site & Proposed Connection to the Grid" is attached, but this information did not make it to the Renewable Energy Office or the RPS unit, please submit this information directly to the RPS unit.

6. The following clarification or correction needs to be made to the CEC-RPS-1B:S2 form:

Item 7: The August 2010 application and the revised application both provide a response to item 7 "RPS Eligibility for Incremental Hydroelectric Generation." Please confirm whether or not the facility is seeking the certification of incremental generation from the facility. If not, may the response to item 7 be removed?

7. As specified in the Renewables Portfolio Standard Eligibility Guidebook, Third Edition, on pages 32 through 35, there are specific additional eligibility requirements that must be met for new hydroelectric facilities and additional information that must be provided. As specified in the Committee Decision, the "Applicant is not required to provide instream or hydrological data pertaining to the placement of the project in a stream, as the Application makes it clear that the device will be placed offshore." However, much, if not all, of these requirements are still relevant for a facility built as described in your application. Please note that depending on your responses to the questions above, point 9 on page 34 of the guidebook may not need to be addressed.

In the future please restrict all inquires and responses to inquires about your application for pre-certification to Mark Kootstra, 916-549-4499 or mkootstr@energy.state.ca.us, as he is the Energy Commission contact for your application, and please copy me on all correspondence.

If you have any questions on the information provided above please contact Mr. Kootstra.

Best regards, Kate Zocchetti

Kate Zocchetti, Supervisor
Renewables Portfolio Standard Program
California Energy Commission
1516 9th St, MS-45
Sacramento, CA 95814
p: (916) 653-4710
f: (916) 653-8251
kzocchet@energy.state.ca.us

>>>

From: Kurt Grossman <kurtg@generqylc.com>
To: <kzocchet@energy.state.ca.us>
CC: <Jjenninq@energy.state.ca.us>, Ron Gaiser <ronq@generqylc.com>, SteveWright <stevew@generqylc.com>, <steven.lyga@generqylc.com>, Norm Weisinger <normw@generqylc.com>
Date: 6/13/11 00:39
Subject: Precertification Applications
Dear Kate,

We have sent the "fixed" Precertification Application in

Have you reviewed it yet?

did we fill it in correctly?

Will you please get back to us soon?

Thank you,

Kurt Grossman, CEO, Genenergy, LLC
800-719-2730

cc; Jennifer Jennings, Public Advisor

Exhibit D

Kurt Grossman Email of September 6, 2011

From: Kurt Grossman Corporate <kurtg@genergyllc.com>
To: Mark Kootstra <MKootstr@energy.state.ca.us>
CC: Norm Weisinger - Genergy LLC <normw@genergyllc.com>
Date: 9/6/2011 10:12 AM
Subject: Re: Precertification Applications SPGCA-1 (61230C) document attached
Attachments: 1-mile separation.jpg; kurtg.vcf

Hi Mark,

It is a recognized mapping format.

Google Earth uses it and so does my mapping software.

Here is a jpeg but suffice it to say that we have changed all the separation to be more than 1 mile
Apparently some of the facilities were too close before.

Also, we have the 24,000:1 scale maps now.

Will you please send me the reference describing "Surface Ground Water" in any of the Program Guides or Renewables Manuals?
I am trying to figure out why we would be considered "Surface Ground Water" instead of "Other"

Also, I would like to confirm that there are no other differences in the new definitions or guidebooks than the "Marine Water" exclusion.
Can you verify that no other substantive changes have been made to the Small Hydro definitions or forms that would preclude Pre-certification of new applications?

The main reason that I have been reluctant to move forward with the new forms is that we do not want any other issues coming up that require another hearing.

Thank you.

Sincerely,

Kurt Grossman
cc; Norm Weisinger

On 9/6/11 9:19 AM, Mark Kootstra wrote:

> Mr. Grossman,

>

> Thank you for the prompt reply. Unfortunately, I am unable to open the file titled "New 1 mile separation SPGCA LLC.kmz" as the file type is not recognized by our computers. Please resend this file in another format when you submit your response to the staff email sent on September 1, 2011.

>

> Sincerely,

>

> Mark Kootstra
> Renewables Portfolio Standard Program
> California Energy Commission
> 1516 9th Street, MS-45
> Sacramento, CA 95814
> phone: (916) 653-4487

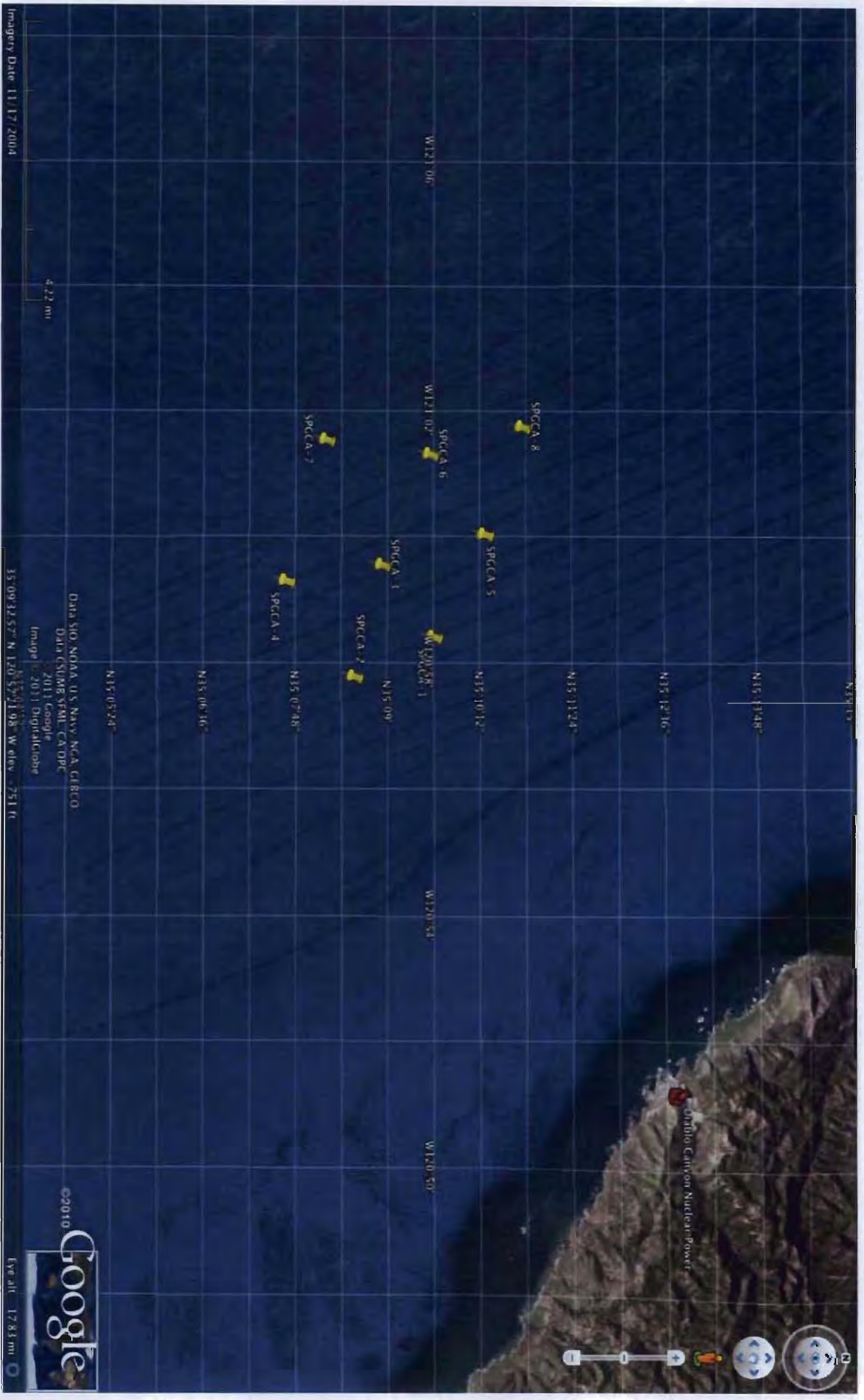
> mkootstr@energy.state.ca.us
>

Imagery Date: 11/17/2004

4.22 mi

Data SIO, NOAA, U.S. Navy, NGA, GEBCO
Data CSUMB, SFML, CAOPC
Image © 2011 DigitalGlobe
35° 09' 34.52" N 120° 52' 41.98" W elev. -751 ft

©2010 Google
Eye alt: 17.83 mi



Diablo Canyon Nuclear Power

W121-06

W121-02

W120-58

W120-54

W120-50

SPCCA-8

SPCCA-6

SPCCA-5

SPCCA-3

SPCCA-2

SPCCA-4

SPCCA-7

N35-05-24

N35-06-16

N35-07-48

N35-09

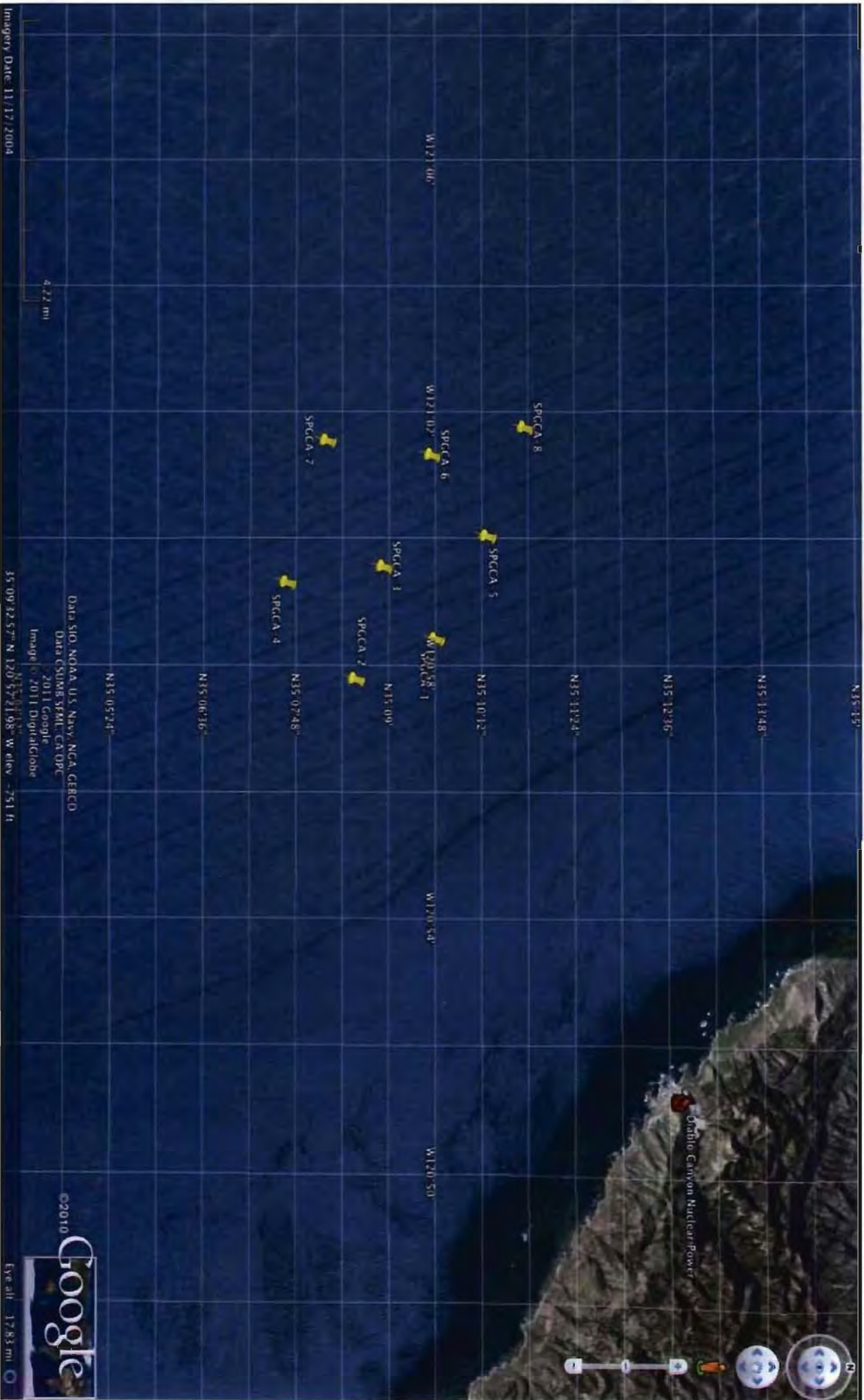
N35-10-12

N35-11-24

N35-12-36

N35-13-48

N35-14





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Exhibit E

State and Federal Agencies that may have Regulatory Authority
Over SPGCA-1 Facility

From: Mark Kootstra
To: Kurt Grossman
CC: Jennifer Jennings; Kate Zocchetti; Norm Weisinger; RonGaiser; Tony G...
Date: 9/1/2011 3:40 PM
Subject: RPS Pre-Certification Application for SPGCA-1, LLC (61230C)
Attachments: SPGCA-1, LLC Supplemental information v2 filled out by Grossman.docx; 2011.06.20 - Email 02-Attachment 04.pdf; 2011.06.20 - Email 03-Attachment 05.pdf ; RegframeworkOffshore Renewable Energy.pdf

Mr. Grossman,

I have made revisions to the supplemental information document, please address the remaining questions and make any corrections as needed.

In addition to the supplemental information document are two screen shots of the SPGCA 1, LLC facility that were provided to the Energy Commission in two separate emails on June 20, 2011. They are referenced in the supplemental information document.

Finally, the PDF document titled "RegframeworkOffshore Renewable Energy.pdf" which contains a table of all agencies with project authorization or review requirements for offshore renewable energy, their legal authority, and the type of permit or review they will issue or perform. Some information in this table may not be applicable to portions of the project, but it is meant as a reference to assist you in completing the supplemental information document.

If you have questions please feel free to contact me.

Sincerely,

Mark Kootstra
Renewables Portfolio Standard Program
California Energy Commission
1516 9th Street, MS-45
Sacramento, CA 95814
phone: (916) 653-4487
mkootstr@energy.state.ca.us

Mr. Grossman,

Below is an excerpt from the Renewables Portfolio Standard Eligibility Guidebook, Third Edition, from the section on additional information for hydroelectric facilities, beginning on page 33 of the third edition. In an effort to ensure that the information provided in correspondence on the SPGCA 1, LLC facility is properly presented in the file for review of the pre-certification application I have included a table of the required information that I would like you to complete.

Below each piece of information required by the guidebook are excerpts from the emails you have provided in response to staff inquiries in blue, your response on August 29, 2011 is included in red, staff notes on the information provided in Green, and a blank space for additional input. Please include all relevant information in response to each item required by the guidebook, even if you have already done so in a previous email unless otherwise noted. This will ensure the California Energy Commission's records on the SPGCA 1, LLC facility are complete, accurate, and easily referenced. Once you have completed this information staff will remove all old information and return the finished document for your review. After this process is complete the application should be ready to move on for final reviews.

Please provide your responses in orange.

Guidebook:	1. Name of the Facility
Previously Provided Information	Grossman Email 6/17/2011: "SPGCA-1" Grossman Email 8/6/2011: SPGCA LLC ("1 -- 24")
Information provided on August 29, 2011	SPGCA 1, LLC
Staff Notes	This requirement has been met for the purpose of this document.
Additional information if necessary	No additional information required
Guidebook:	2. Ownership of the Facility
Previously	Grossman Email 6/17/2011:

Provided Information	<p>"Genergy LLC"</p> <p>Grossman Email 8/6/2011:</p> <p>"Genergy LLC"</p>
Information provided on August 29, 2011	Genergy LLC
Staff Notes	This requirement has been met for the purpose of this document.
Additional information if necessary	No additional information required
Guidebook:	<p>3. Source Water Description</p> <p>The application must identify the source of the water for the hydroelectric project. The source must be characterized as surface, groundwater, or other (for example, recycled water). For surface water sources, a map at a scale of 1:24,000 must be provided. The map should also identify the location of the diversion point and all other facilities. In addition, a written description of the location of the diversion should be provided (county and nearest city) as well as the name of the body of water at the point of diversion. For groundwater, the location of the well(s) and conveyance facilities shall be identified on a map of 1:24,000 scale. The applicant must also specify how much water is used for each of the identified beneficial uses.</p>
Previously Provided Information	<p>Grossman Email 6/17/2011: "Pacific Ocean"</p> <p>Grossman Email 6/20/2011:</p> <p>"RESPONSE</p> <p>The maps that we sent are NOAA navigational charts. They are from a chart that is 1:100,000 but they have been zoomed in on so that they are less than that scale. As far as I know there are not charts available in 1:24,000 scale. That is the scale for US Topo Maps that are for land. Either we can scale the maps as close as possible or we will need a decision regarding navigational charts versus Topo maps."</p> <p>Grossman Email 8/6/2011:</p> <p>"September 30, 2011"</p>

	<p>Grossman Email 8/6/2011:</p> <p>“*Pacific Ocean*”</p> <p>“THE PACIFIC OCEAN IS NOT SURFACE, GROUNDWATER, OR OTHER.</p> <p>IT IS AN OCEAN.</p> <p>ANY MAP WILL NOT SHOW ANY DIVERSION.</p> <p>THERE IS NO DIVERSION.</p> <p>THE OCEAN WATER IS FILLED AND THEN EMPTIED AT THE BOTTOM OF THE HULL.</p> <p>THE WATER IS NOT TREATED; PASSED THROUGH TURBINES; OR DOES IT HAVE ANY SIGNIFICANT PROCESSING.</p> <p>WATER IS FILLED AT AN APPROXIMATE RATE OF 18,000 GALLONS PER HOUR AT A</p> <p>DEPTH OF APPROXIMATELY 100 FEET. WATER IS EMPTIED AT A APPROXIMATE RATE OF 18,000 GALLONS PER HOUR AT A DEPTH OF APPROXIMATELY 600 FEET</p> <p>Mark,</p> <p>Since there is no diversion; no well; it is not surface groundwater or any other land based water why would any of this apply?</p> <p>We are definitely not surface water.</p> <p>If the map requirement is for surface water sources; and we are not using surface water sources; why are you asking for a different scale map. We provided a map: more accurately a NOAA Oceanographic Chart. The chart we provided is the standard navigational chart for offshore navigation. The map shows depth in fathoms and many other important locations such as fisheries and protected or restricted areas.</p> <p>Would you please it as a reference instead of the 1:24,000 scale map that seems non-applicable anyway?”</p>
Information provided on	(No information provided)

August 29, 2011	
Staff Notes	<p>Unless otherwise directed staff will assume the correct response is</p> <p>"The NOAA Oceanographic Chart previously provided will be used, and the necessary 1:24,000 scale map will be available by September 30, 2011 or upon submission of the certification application, whichever is first."</p> <p>Please correct the information below if necessary.</p>
Additional information if necessary	The NOAA Oceanographic Chart previously provided will be used, and the necessary 1:24,000 scale map will be available by September 30, 2011 or upon submission of the certification application, whichever is first.
Guidebook:	<p>4. Water Rights</p> <p>Both in-state and out-of-state applicants must clearly establish their right to divert water by submitting all necessary information as well as all appropriate licenses or permits. Within California, this information must identify the permitted volume, rate, and timing of water diversions, the place of diversion, and beneficial uses. This may be achieved through submittal of the appropriate SWRCB appropriation permit or license, or the Statement of Water Diversion and Use filed with SWRCB. For diversions not subject to an appropriation permit or license, a copy of any Statement of Water Diversion and Use filed with SWRCB should be provided. Facilities located outside of California must provide similar documentation of an existing water right for the water diversion of the project.</p>
Previously Provided Information	<p>Grossman Email 7/6/2011:</p> <p>"NOT APPLICABLE"</p> <p>Grossman Email 8/6/2011:</p> <p>"WATER OR BETTER STATED SEAWATER IS OUTSIDE THE JURISDICTION OF THE STATE OF CALIFORNIA. THE WATER, OR BETTER STATED THE OCEAN, IS IN FEDERAL JURISDICTION. Applications for leases will be filed with BOEMRE. Leases will also be obtained from the State of California.</p> <p>But, to our knowledge, there are NO water rights issues associated with these leases. The issue is with the seafloor real estate. Up to 3 miles off the shore the State of California has jurisdiction.</p>

	<p>Past 3 miles out the US government has jurisdiction. The US Dept. of Interior created BOEMRE for the negotiation of mineral rights but also including emerging marine technology generating electricity offshore such as wave generators, ocean thermal current generators, and tidal and current generators."</p> <p>"No water is diverted.</p> <p>So even if there were any issues within California water rights we do not divert water.</p> <p>We simply fill a container and then empty it 3 minutes later."</p>
Information provided on August 29, 2011	<p>(Enter all necessary water rights information here, or reference attached materials here. If this information is not yet available please provide the data by when it will become available. Please also address how the facility does or does not divert water)</p> <ol style="list-style-type: none"> 1. There is no path or course for ocean water. The ocean current moves the water wherever it will before and after. A path or course in the context of hydroelectric has to do with the travel over and through certain geography; water property and usage rights; and more importantly a scarce resource. The loading of some water from a certain level into a container and then taking it on an elevator ride of less than 2 minutes and then discharging it into the Pacific Ocean is certainly not a diversion. The water at 100 feet is destined for the Pacific Ocean. The water leaving the facility at 600 feet ends up in the Pacific Ocean. The "path", "course", or "route" is not "diverted." 2. More importantly the purpose of the regulations are clearly to maintain the legal water rights of the correct owner and to eliminate misappropriation of water in streams or rivers that might be destined for natural habitat, drinking water of a certain area, irrigation, or some other important use. The intended use of the water was to let fish swim in it. Has that changed when it exits a few hundred feet lower? 3. 3,4, noun 1,2; There is not a path or a course; a specific designed route; or an intended purpose. Without an intended path, route,

or purpose there can be no diversion.

4. Dictionary Definition --- "wa-ter right"

noun

water rights, plural

- a. The right to make use of the water from a stream, lake, or irrigation canal
- b. The right to navigate on particular waters

Web definitions

- right of access to water

wordnetweb.princeton.edu/perl/webwn

- Water right in water law refers to the right of a user to use water from a water source, e.g., a river, stream, pond or source of groundwater. In areas with plentiful water and few users, such systems are generally not complicated or contentious. ...

en.wikipedia.org/wiki/Water_right

- (Water Rights) The right of a landowner to water adjoining or passing through property.

www.realestateexpress.com/general/glossary.asp

- (Water rights) A group of rights designed to protect the use and enjoyment of water that travels in streams, rivers, lakes, and ponds, gathers on the surface of the earth, or collects underground.

www.novelguide.com/a/discover/weal_13/weal_13_04928.html

- The right of an owner of land to use water adjacent to or below the surface of the land.

www.davehackett4title.com/default.aspx

- the right to use water diverted at a specific location on a water source, and putting it to recognized beneficial uses at set locations.

www.waterrights.utah.gov/wrinfo/glossary.htm

- a right to use, in accordance with its priority, a certain portion of the waters of the state for irrigation, power, domestic use or another similar use. See also Absolute Water Right, Conditional Water Right, Appropriation, and Priority.

www.westernresourceadvocates.org/water/waterqlossary.php

- A legally protected right to use surface or groundwater for a specified purpose (such as crop irrigation or water supply), in a given manner (such as diversion or storage), and usually within limits of a given period of time (such as June through August). ...

www.dnr.state.mn.us/watershed_tool/glossary.html

5. Even if we did divert, and we do NOT; ("clearly establish their

	<p>right to divert.”) I have never heard of any regulation from any agency or government in the world that covers moving <u>ocean</u> water. Can you site one regulation?</p>
Staff Notes	<p>While the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE) and the State Water Resources Control Board typically do not establish water rights in marine waters, California still has jurisdiction in federal waters as well as other federal agencies. While these other permits may not deal directly with water rights issues they do deal with “the right” to use marine water related resources.</p> <p>Submission of information concerning water rights will be tentatively waved pending the discussion of related regulatory actions of the BOEMRE, Federal Energy Regulatory Commission, the Army Corps of Engineers, the California Coastal Commission, and other applicable agencies in the “other permits” section.</p>
Additional information if necessary	No additional information required at this time
Guidebook and excerpt from the Committee Decision:	<p>5. Hydrologic Data</p> <p>The applicant must submit appropriation and/or diversion data for the last five years or for the period of operation if the project has been operating less than five years. Information contained in any legally required reports may be used to meet this requirement if sufficient information is included in the report. For other projects, the hydrologic data submitted must be accompanied by a description of how the data is collected. Flow data shall be provided at the frequency set forth in the applicable water appropriation permit; for example, if the permit specifies minimum and maximum flows on a monthly basis that is the level of information necessary to be submitted.</p> <p>Committee Decision 4/25/2011: “Applicant is not required to provide instream or hydrological data pertaining to the placement of the project in a stream, as the application makes it clear that the device will be placed offshore.”</p>

Previously Provided Information	<p>Grossman Email 7/6/2011: "NOT APPLICABLE *Applicant is not required to provide instream or hydrological data pertaining to the placement of the project in a stream, as the Application makes it clear that the device will be placed offshore.' COMMISSIONER'S DECISION**</p> <p>Grossman Email 8/6/2011: "Waived by the Commission because the data is not relevant to our site located in the Pacific Ocean."</p>	
Information provided on August 29, 2011	<p>There is no hydrological data available. Can you explain how you would get water "flow" from the Pacific Ocean?</p>	
Staff Notes	<p>It will be necessary to provide hydrologic data to obtain required permits. At a minimum the Energy Commission will need to see information on the ocean current, temperature, and wave height data for the location of the SPGCA 1, LLC facility at the time of certification. If this data is available please provide it below or reference an attached file containing this information. If the data is not yet available, please provide a list of information that will become available and the date you expect it to be available.</p> <p>Please Complete the table below, and provide copies of any completed documents.</p>	
Additional information if necessary	Documents expected to be developed	Completion date of document, or excepted completion date.

Guidebook:	<p>6. Other Permits</p> <p>The applicant must submit all other applicable permits, including those permits and exemptions issued by the Federal Energy Regulatory Commission (FERC).</p>	
Previously Provided Information	<p>Grossman Email 7/6/2011: "APPLICATIONS TO FERC, BOEMRE, COASTAL COMMISSION, & OTHER STATE AGENCIES RESPONSIBLE FOR UNDERWATER LEASES ARE BEING PLANNED BUT WILL NOT BE APPLIED FOR UNTIL THE IOU RESPONSE TO OUR BIDDING OFFERS"</p> <p>Grossman Email 8/6/2011: "No water is diverted. There is no 'applicable water appropriation permit.'"</p>	
Information provided on August 29, 2011	<p>(List all applicable permits, and attach copies of the permits or reference their location if publically available. If this information is not yet available please list all applicable permits and provide the data by when it will become available)</p> <p>If permits are required they will be submitted once we have a formal commitment from a utility. We do not have firm dates and we do not know what permits will be needed yet. We will definitely need a lease from BOEMRE and the State of California for the ocean floor where the undersea cable will lie as it extends inland to the shore. At this time we are not aware of any permits that are required.</p>	
Staff Notes	<p>It is understandable give the current stage of development of the project that the final details for permitting have not yet been determined. However, staff cannot complete its review of the application without more information that you have provided up to this time.</p> <p>Please provide a more comprehensive list of state and federal agencies</p>	

	<p>that will require permits or authorizations for the project to be built or operated, including the specific permit or authorization that is expected and the date you believe they will be completed.</p> <p>Please Complete the table below, and provide copies of any completed documents.</p>	
Additional information if necessary	Documents expected to be developed	Completion date of document, or excepted completion date.
Guidebook:	<p>7. Environmental Documentation</p> <p>The applicant must submit copies of any permits, agreements, contracts, or other requirements affecting the operation of the facility, especially those that affect the volume, rate, timing, temperature, turbidity, and dissolved oxygen content of the stream water before and after the points of diversion.</p>	
Previously Provided Information	<p>Grossman Email 7/6/2011: "The environmental applications will be handled by Chambers Group. I am attaching a representative NOT APPLICABLE to the extent that Streams are involved."</p>	
Information provided on	<p>(Attach of any permits, agreements, contracts, or other requirements affecting the operation of the facility, especially those that affect the volume, rate, timing, temperature, turbidity, and dissolved oxygen</p>	

August 29, 2011	<p>content of the stream water before and after the points of diversion. If this information is not yet available please list all applicable permits and provide the data by when it will become available)</p> <p>Traditional hydroelectric runs water through pipes and over turbine blades. The oxygenation, turbidity, temperature, etc, are changed dramatically. That is not the case with our system. The amount of water that we use is an insignificant percentage of the ocean environment. Again these issues are not applicable. However, we will be providing an environmental assessment and may even be required to provide an Environmental Impact Report. In the past, the wave generation technologies that have been studied have all received good reviews from environmental engineers for leaving the environment mostly unchanged. Our system is dramatically less invasive.</p>	
Staff Notes	<p>While it is apparent that the amount of water that will be used by the SPGCA 1, LLC facility is a small percentage of the whole ocean environment, the significance of the volumes used compared to the total volume is irrelevant to this item. Additionally, the expected environmental performance, including expected environmental performance compared to other technologies, is similarly irrelevant to the discussion unless there is environmental documentation to support those claims.</p> <p>It is noted that you expect to provide an environmental assessment and possibly an Environmental Impact Report. Please provide a list of any and all permits, agreements, contracts, or other requirements affecting the operation of the facility that you expect to need to development the project. Along with this list please provide the date when you expect each item will be complete, or if it is already complete, please provide the document.</p> <p>Please Complete the table below, and provide copies of any completed documents.</p>	
Additional information if necessary	Documents expected to be developed	Completion date of document, or excepted completion date.

Guidebook:	<p>8. Capacity</p> <p>For small and conduit hydroelectric facilities, the applicant must demonstrate how the project will comply with the 30 MW size limitations under the RPS and not cause an adverse impact on instream beneficial uses or a change in the volume or timing of streamflow. For this purpose, a facility may have an adverse impact on the instream beneficial uses if it causes an adverse change in the chemical, physical, or biological characteristics of water.</p>	
Previously Provided Information	<p>Grossman Email 7/6/2011: "NOT APPLICABLE"</p> <p>Grossman Email 8/6/2011: "Mark, We have applied for a 25 MW power plant. But, we have also submitted a total of 8 separate locations for each utility. The total of all 8 is 200 MW. Chambers Group, will do an Environmental analysis for the perimeter of each group of 8 (25 MW) power plants. Each group of _8 power plants_ totals 200 MW."</p>	
Information provided on	(Enter the nameplate capacity of the facility and confirm that the facility is not required to be considered as part of a larger project)	

August 29, 2011	25 MW
Staff Notes	<p>Thank you for confirming the capacity of the SPGCA 1, LLC facility. Unfortunately, based on the location information you provided in the screen shot of the placement for the SPGCA 1, LLC in relation to SPGCA 2-8, one or more of the proposed facilities are within one mile of the SPGCA 1, LLC facility. It appears that the SPGCA 1, LLC, SPGCA 2, SPGCA 3, and possibly other SPGCA facilities as show in these screen shots would need to be treated as a single project or facility as defined in the Overall Program Guidebook, Second Edition. If this is the case the combined capacity of all these facilities must be taken into consideration for the certification of the SPGCA 1, LLC facility.</p> <p>Please address whether or not these eight units can be treated as separate projects of if they need to be certified as a single project per the definition in the Overall Program Guidebook, Second Edition.</p>
Additional information if necessary	
Guidebook:	<p>9. Efficiency Improvements</p> <p>Applicants seeking certification of small or conduit hydroelectric facilities that exceed 30 MW due to efficiency improvements are required to provide the following:</p> <ol style="list-style-type: none"> Documentation that shows when the existing small or conduit hydroelectric facility commenced commercial operations. Documentation that describes the efficiency improvements and when they were initiated and completed. Documentation that demonstrates that the efficiency improvements are not the result of routine maintenance. Documentation that demonstrates that the efficiency improvements did not result in an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow. For this purpose, an efficiency improvement could have an adverse impact on the instream beneficial uses if it causes an adverse change in the chemical, physical, or biological characteristics of water.
Previously Provided	N/A

Information	
Staff Notes	The SPGCA-1 application is not for efficiency improvements, this section is not applicable
Information on SPGCA 1, LLC	(leave blank)
Guidebook:	<p>10. Incremental Hydroelectric Generation</p> <p>Applicants seeking certification of incremental hydroelectric generation due to efficiency improvements regardless of facility output are required to provide the following:</p> <ol style="list-style-type: none"> Documentation that shows when the existing hydroelectric facility commenced commercial operations. Documentation that describes the efficiency improvements and when they were initiated and completed. Documentation that demonstrates that the efficiency improvements are not the result of routine maintenance. Documentation that demonstrates that the efficiency improvements were not included in any resource plan sponsored by the facility owner before January 1, 2008. An example of this documentation is submission of pertinent sections of such a resource plan. A copy of certification from the State Water Resources Control Board (SWRCB) pursuant to Section 401 of the Clean Water Act (33 U.S.C. Sec. 1341) or the certification from a regional board to which the SWRCB has delegated authority to issue certification, unless the facility is exempt from certification because there is no potential discharge into waters of the United States. The certification must have been received within the immediately preceding 15 years of when the improvements were initiated, or; <p>If the hydroelectric facility is located in a state in the United States other than California, the certification pursuant to Section 401 of the federal Clean Water Act (33 U.S.C. Sec. 1341) may be received from the applicable state board or agency or from a regional board to which the state board has delegated authority to issue the certification, or;</p> <ol style="list-style-type: none"> The facility meets the requirements of the Public Utilities Code 399.12.5(b)(2)(C). Documentation that demonstrates that the efficiency

	<p>improvements did not result in an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow¹. For this purpose, an efficiency improvement would have an adverse impact on the instream beneficial uses if it causes an adverse change in the chemical, physical, or biological characteristics of water.</p> <p>g. Documentation that demonstrates evidence that the efficiency improvements to the facility resulted from a long-term financial commitment by the retail seller.²</p> <p>h. A calculation of the historical average annual production of the existing hydroelectric facility, including verifiable generation data for the 20 years preceding the efficiency improvements, including supporting water flow data. If the facility has not been operating 20 years, then provide data for the years it has been operational.</p> <p>i. The actual or expected efficiency improvement and increase in production in MWh resulting from the efficiency improvement and a discussion of the method used to estimate increased energy production. The actual or expected efficiency improvement should be based on the same data that is used to calculate the historical average annual production of the existing hydroelectric facility. If production data are available for years following the efficiency improvement, please provide those data.</p>
Previously Provided Information	N/A
Staff Notes	The SPGCA-1 application is not for Incremental Hydroelectric Generation, this section is not applicable
Information on SPGCA 1, LLC	(leave blank)

¹ The eligibility of a hydroelectric generation facility, certified as of January 1, 2010, shall lose its eligibility if the facility causes a change in the volume or timing of streamflow required by license conditions approved pursuant to the Federal power Act (Chapter 12 (commencing with Section 791a) of Title 16 of the United States Code) on or after January 1, 2010.

² "Long-term financial commitment" means either new ownership investment in the facility by the retail seller or local publicly owned electric utility or a new or renewed contract with a term of 10 or more, which includes procurement of the incremental generation.



Display: Satellite/Normal/Power

©2010 Google

1000 ft 43108 ft



Data CSUMB SPM, CA DPC
Data SIO NOAA, US Navy, NGA, GEBCO
Image © 2011 DigitalGlobe

35° 10' 27.40" N 120° 55' 14.59" W 666 - 388 ft

Imagery Date: 11/17/2004

Offshore Renewable Energy: Agencies with Project Authorization or Review Requirements¹

Agency	Permit/Review	Legal Authority
FEDERAL		
Federal Energy Regulatory Commission	Hydroelectric License	18 CFR Part 5 Federal Power Act of 2005
Bureau of Ocean Energy Management, Enforcement and Regulation	Leases, Easements, Right-of-Way Grants	Outer Continental Shelf Lands Act Energy Policy Act of 2005
Bureau of Indian Affairs	Right-of-Way Grants	Title 25, United States Code sections 323-328
Fish and Wildlife Service	Biological Assessment Biological Opinion Jeopardy Opinion	Fish and Wildlife Coordination Act Endangered Species Act Federal Power Act of 2005 Migratory Bird Treaty Act
Army Corps of Engineers	404 Permit/Jurisdictional Determination	Clean Water Act
Coast Guard	Private Aids to Navigation	33 CFR Parts 62, 64, 66
NOAA Fisheries	Biological Assessment Biological Opinion Jeopardy Opinion Incidental Harassment Authorization Letter of Authorization Essential Fish Habitat Consultation	Endangered Species Act Federal Power Act of 2005 Marine Mammal Protection Act Magnuson-Stevens Fishery & Conservation Act
Environmental Protection Agency	Adequacy of NEPA review Prevention of Significant Determination National Pollutant Discharge Elimination System	Section 309, Clean Air Act Section 112, Clean Air Act Title IV, Clean Water Act
Department of Defense	Regulatory agency & project developer consultations	Energy Policy Act of 2005 National Environmental Policy Act
Department of Transportation	Transport of Hazardous Materials	Title 49, Code of Federal Regulations, 100-185
Federal Aviation Administration	Airspace Review	Title 14, Code of Federal Regulations, Part 77
Advisory Council on Historic Preservation	Historic Preservation Advisory Comments	National Historic Preservation Act of 1966, as amended

¹ Information is general and certain aspects may not be applicable to offshore or onshore portions of a project. Project developers are advised to consult with the applicable agencies for project specific permitting/authorization information.

Agency	Permit/Review	Legal Authority
		36 CFR Part 800
CALIFORNIA		
Public Utilities Commission	Certificate of Public Convenience and Necessity Permit to Construct	Public Utilities Act
State Lands Commission	State Tidelands Lease	Public Resources Code section 6000 et seq.
Department of Fish & Game	Approval Stream or Lake Alteration Permit Dredging Permit Endangered Species Take Permit	CA Endangered Species Act, Fish & Game Code section 2090 Fish and Game Code section 1600-7 5650-53.9, 11037
Department of Transportation	Encroachment Permit	Facilities that impact state highways
Coastal Commission, San Francisco Bay Conservation and Development Commission	Development Permit Consistency with Local Coastal Plan Consistency with federally approved Coastal Management Plan	CA Coastal Act 1976, Public Resources Code section 30000 et seq. McAteer-Petris Act, Public Resources Code section 66600 et seq. Suisun Marsh Preservation Act of 1977, Public Resources Code section 29000 et seq. Coastal Zone Management Act, 16 United States Code section 3501 et seq.
Cal-OSHA	Construction-related Requirements	29 CFR 910.0
State Historic Preservation Officer	Section 106 c consultation	National Historic Preservation Act of 1966, as amended 36 CFR Part 800
Department of Parks & Recreation	Right-of-Way Permit	Public Resources Code section 5012
State Water Resources Control Board	NPDES permit Section 401 Certification	Public Utilities Code section 2821 Water Code, Div. 1 & 2 Porter Cologne Water Quality Control Act Clean Water Act
OTHER AGENCIES		
Local Agencies	General Plan Compliance Specific Plan Compliance Zoning Code/Ordinance Compliance Coastal Development Permit (if in Coastal Zone) & Coastal Consistency Determination Local Coastal Plan/Program Compliance (if in Coastal Zone) Encroachment Permit	Varying and depending on jurisdiction

Agency	Permit/Review	Legal Authority
	Building Permit Subdivision Map Act Compliance Williamson Act Compliance Airport Land Use Plan Any other special plans or standards specific to a jurisdiction	
Air Districts	Permits to Construct/Operate	Clean Air Act
Regional Water Quality Control Boards	NPDES Permits 401 Certifications	Clean Water Act; Porter Cologne Water Quality Control Act; CA Water Code Section 13000
Municipal Utilities	Project Approval	Locally Elected Governing Boards
California ISO	LGIA/SGIA	FERC Order No. 2003-C

Source: California Energy Commission, 2011

Exhibit F

Kurt Grossman Email of July 6, 2011

From: Kurt Grossman Corporate <kurtg@genergyllc.com>
To: Mark Kootstra <MKootstr@energy.state.ca.us>
CC: Tony Goncalves <TGoncalv@energy.state.ca.us>, Kate Zocchetti <Kzocchet@e...
Date: 7/6/2011 3:46 PM
Subject: Re: Precertification Applications SPGCA-1 (61230C)
Attachments: Genergy Proposal June 2011 - CEC.doc

Mark,

I added our regular environmental documentation checklist because it was explained that 7. Environmental Documentation applies to not only stream issues but the regular environmental issues associated with any project. Chambers Group is a very reputable firm in California that we have hired as consultants to handle all facets of our environmental objectives.

Sincerely,

Kurt Grossman

On 7/6/11 12:06 PM, Kurt Grossman wrote:

> Mark,

>

> I put responses in line with your comments.

> I attached a Word version and a pdf version of our 5 page document

>

> The Commission Decision addressed certain deficiencies in the older form.

> Will you please send me the new form and explain which items will

> correspond?

>

>

> Sincerely,

>

> Kurt Grossman

>

> On Jun 22, 2011, at 3:01 PM, Mark Kootstra wrote:

>

>> Dear Mr. Grossman,

>>

>> The attachment was neglected in the original version of the email.

>>

>> Thank you for your responses to my questions, but there are still

>> several items that must be addressed before the application can proceed

>> past the initial review.

>>

>> A. Please confirm, or correct, the expected online date of the SPGCA-1 facility is January 1, 2016.

> THE ONLINE DATE WILL BE JANUARY 1, 2014 BUT MAY BE CHANGED IF AN IOU

> CONTRACT SPECIFIES AN ONLINE DATE LATER THAN JANUARY 1, 2014

>>

>> B. Your struggle in obtaining the map at a scale of 1:24,000 has been

>> noted, the explanation and the maps provided shall fulfill this

>> submission requirement for the pre-certification application once you

>> provide a date by when you expect to be able to provide the required

>> map. Please note that the required map at the specified scale must be

>> submitted with applying for certification, after the facility enters
>> commercial operations, before that submission will be considered
>> complete.
>
> THANK YOU
>>
>> C. No information has been provided for the following points listed
>> beginning on page 33 in the Renewables Portfolio Standard Eligibility
>> Guidebook, Third Edition, a copy of which is attached.
>>
>> *4. Water Rights NOT APPLICABLE
>
> NOT APPLICABLE
>>
>> Both in-state and out-of-state applicants must clearly establish their
>> right to divert water by submitting all necessary information as well as
>> all appropriate licenses or permits. Within California, this information
>> must identify the permitted volume, rate, and timing of water
>> diversions, the place of diversion, and beneficial uses. This may be
>> achieved through submittal of the appropriate SWRCB appropriation permit
>> or license, or the Statement of Water Diversion and Use filed with
>> SWRCB. For diversions not subject to an appropriation permit or license,
>> a copy of any Statement of Water Diversion and Use filed with SWRCB
>> should be provided. Out-of-state facilities must provide similar
>> documentation of an existing water right for the water diversion of the
>> project.
>>
>> 5. Hydrologic Data
>
> NOT APPLICABLE
> "Applicant is not required to provide instream or hydrological data
> pertaining to the placement of the project in a stream, as the
> Application makes it clear that the device will be placed offshore."
> COMMISSIONER'S DECISION"
>>
>> The applicant must submit appropriation and/or diversion data for the
>> last five years or for the period of operation if the project has been
>> operating less than five years. Information contained in any legally
>> required reports may be used to meet this requirement if sufficient
>> information is included in the report. For other projects, the
>> hydrologic data submitted must be accompanied by a description of how
>> the data is collected. Flow data shall be provided at the frequency set
>> forth in the applicable water appropriation permit; for example, if the
>> permit specifies minimum and maximum flows
>> on a monthly basis that is the level of information necessary to be
>> submitted.
>>
>> 6. Other Permits
>>
>> The applicant must submit all other applicable permits, including those
>> permits and exemptions issued by the Federal Energy Regulatory
>> Commission (FERC).
>>
> APPLICATIONS TO FEREC, BOEMRE, COASTAL COMMISSION, & OTHER STATE
> AGENCIES RESPONSIBLE FOR UNDERWATER LEASES ARE BEING PLANNED BUT WILL
> NOT BE APPLIED FOR UNTIL THE IOU RESPONSE TO OUR BIDDING OFFERS

>

>> 7. Environmental Documentation

>>

>> The applicant must submit copies of any permits, agreements, contracts,
>> or other requirements affecting the operation of the facility,
>> especially those that affect the volume, rate, timing, temperature,
>> turbidity, and dissolved oxygen content of the stream water before and
>> after the points of diversion.

>>

The environmental applications will be handled by Chambers Group.

I am attaching a representative

> NOT APPLICABLE to the extent that Streams are involved.

>

>> 8. Capacity

>>

>> For small and conduit hydroelectric facilities, the applicant must
>> demonstrate how the project will comply with the 30 MW size limitations
>> under the RPS and not cause an adverse impact on instream beneficial
>> uses or a change in the volume or timing of streamflow. For this
>> purpose, a facility may have an adverse impact on the instream
>> beneficial uses if it causes an adverse change in the chemical,
>> physical, or biological characteristics of water."

>

> NOT APPLICABLE

>>

>> As stated in the Committee Decision the "[a]pplicant is not required to
>> provide instream or hydrological data pertaining to the placement of the
>> project in a stream, as the Application makes it clear that the device
>> will be placed offshore." "However", all five of the above points require
>> the submission of relevant information that does not pertain to the
>> placement of the project in a stream. Until these points are addressed,
>> a detailed explanation as to why the individual points are not relevant,
>> or "explanations for why certain specific information is not yet
>> available, and the timing for obtaining that information, [has been]
>> provided in connection with the existing Application" the application
>> will continue to be incomplete.

>

> Dear Mark,

>

> Will you please explain how any of the points have anything to do with
> our project?

>> 4. Water Rights

>> 5. Hydrologic Data

>> 6. Other Permits

>> 7. Environmental Documentation

>> 8. Capacity

>

> I do not see any relevance at all.

>

> Sincerely,

>

> Kurt Grossman

>

>

>

>

>

>> D. Unfortunately, the five page brief you referred to in item 3 did not
>> send properly, please resend the brief.
>>
>> If you have any questions or concerns please feel free to contact me.
>>
>> Sincerely,
>>
>>
>> Mark Kootstra
>> Renewables Portfolio Standard Program
>> California Energy Commission
>> 1516 9th Street, MS-45
>> Sacramento, CA 95814
>> phone: (916) 653-4487
>> mkootstr@energy.state.ca.us <mailto:mkootstr@energy.state.ca.us>
>>
>>
>>>>> Kurt Grossman <kurtg@genergyllc.com <mailto:kurtg@genergyllc.com>>
>>>>> 6/20/2011 8:53 PM >>>
>>
>> On Jun 20, 2011, at 3:20 PM, Mark Kootstra wrote:
>>
>>> Dear Mr. Grossman,
>>>
>>> Thank you for your response included below, including the
>> attachments.
>>> We have made the changes you indicated, but before the review can
>>> continue further clarification on a few points is necessary.
>>>
>>> 1. In item 2 below you indicate that facility will be unable to
>>> deliver electricity to a utility until 2016, but you "could" provide
>>> electricity as soon as January 5, 2013. May the application be

>> edited
>>> to list January 1, 2016 as the expected online date, January 5, 2013
>> as
>>> the expected online date, or do you wish to state "In writing, why
>> the
>>> Information is not yet available, and when it will be available."
>>
>> RESPONSE
>> The 3 IOU's have indicated that they have adequate capacity of
>> renewable energy and do not wish to begin contracts before 2016.
>> We have offered the IOU's better terms if they will commence earlier
>> start dates but that is NOT up to us.
>> We have estimated that the permit process and construction can be
>> finished by June 2013.
>>>
>>> 2. The information provided in relation to item 7 is insufficient.
>>> Points four through eight on page 33-34 of the RPS guidebook were
>> not
>>> addressed and "a map at a scale of 1:24,000 must be provided" to
>>> complete point 3. If the information for these points is not yet
>>> available please state, in writing, why the information is not yet
>>> available, and when it will be available. If you believe that any of
>>> these points are not relevant please explain, in writing, why these
>>> points are not relevant.
>>
>> RESPONSE
>> The maps that we sent are NOAA navigational charts. They are from a
>> chart that is 1:100,000 but they have been zoomed in on so that they are
>> less than that scale.
>> As far as I know there are not charts available in 1:24,000 scale.
>> That is the scale for US Topo Maps that are for land.
>> Either we can scale the maps as close as possible or we will need a
>> decision regarding navigational charts versus Topo maps.
>>>
>>> 3. Finally, through the course of the application process several
>>> different generator types have been provided associated with the
>>> application for SPGCA-1. For clarity of the Energy Commission
>> records
>>> and to reduce confusion in the future please provide the most
>> accurate
>>> pictorial representation of the technology to be implemented at the
>>> facility. I apologize for requesting information you have already
>>> submitted, but I feel this is the best and quickest way to ensure
>> the
>>> clarity of the application concerning the technology being
>> implemented
>>> in the SPGCA-1 facility and to ease the application process for
>>> facilities using the same technology in the future.
>>
>> The SPG "Submerged Power Generator" has a main distinction of using a
>> lever. Otherwise, the Offshore Power Generator and the Submerged Power
>> Generator are both "hydro"
>> We are planning on using the SPG that was illustrated in the hearing.
>> Attached you will find a 5pg Brief.
>>
>>>

>>> I would also like to let you know we resolved the confusion over the
 >>> location you provided, 35° 9' 26.04" by -120° 58' 28.08," it is in
 >> fact
 >>> located in the ocean as you indicated. The program we used to
 >> confirm
 >>> the location does cannot located ocean coordinates so it improperly
 >>> located the coordinates on land.

>>

>> RESPONSE

>> Many times you must put the "Units" to the proper settings.
 >> There are many different formats that can throw your location off.

>>

>> I am attaching a sample of the different formats that are used.

>>

>>>

>

>

> *B**EFORE THE **E**ERGY **R**ESOURCES **C**ONSERVATION AND
 > **D**EVELOPMENT **C**OMMISSION OF THE **S**TATE OF **C**ALIFORNIA*
 > *1516 N**INTH **S**TREET**, S**ACRAMENTO**, CA 95814 1-800-822-6228 --
 > **WWW**.**ENERGY**.**CA**.**GOV**
 > *I**N THE **M**ATTER OF*: B**EFORE THE **R**ENEWABLES
 > **C**OMMITTEE**Docket No. 11-KGA-1*
 > */K**/URT /**/G**/ROSSMAN /**/A**/PPEAL/*

> *Background*

> *C**OMMITTEE **D**ECISION*

> On August 26, 2010, Kurt Grossman, on behalf of SPGCA, LLC of Newport
 > Beach, California, submitted an Application for Pre-Certification to
 > the Energy Commission's California Renewables Portfolio Standard Program.
 > The Application sought pre- certification for Genergy, described in
 > the Application as a 20 megawatt (MW) small hydroelectric generating
 > system built under water.

> On October 18, 2010, Energy Commission staff sent a letter to Mr.
 > Grossman denying the Application. The bases for the denial, as set
 > forth in the letter, were that Genergy did not meet the definition of
 > small hydroelectric as defined in the Overall Program Guidebook and
 > that Genergy did not implement any other renewable resource or fuel
 > described in Public Resources Code section 25741(a)(1).
 > On November 18, 2010, Mr. Grossman petitioned the Renewables Committee
 > (Commissioners Peterman and Vice Chair Boyd) for reconsideration of
 > the denial of the Application. On January 25, 2011, Mr. Grossman was
 > notified that the Renewables Committee would provide Mr. Grossman the
 > opportunity to make a presentation in support of the Application and
 > would reconsider the denial of the Application in light of that
 > presentation. The Committee conducted that hearing on March 29, 2011
 > at Energy Commission headquarters in Sacramento.

>

> *Decision*

> In acting upon a petition for reconsideration, the Committee's task is
 > to determine whether or not to change the determination that is the
 > subject of the petition. In this case, that determination was to deny
 > pre-certification for the following reason:
 > "Since the SPGCA-1 facility will not implement a hydroelectric
 > resource, or any other eligible renewable resource, the Energy
 > Commission staff concludes that the facility is ineligible for the RPS."
 > The subject of the Application for Pre-certification is a device

- > referred to by the Applicant as a submerged power generator (letter
- > from Kurt Grossman, dated August 23, 2010). The device is an enclosed
- > air space submerged in a body of water, such as a lake or ocean, which
- > uses the force of a falling container full of water to push a lever
- > which in turn drives a generator. Once the container has done this
- > work, the water is expelled using a pump, and the container, now
- > buoyant, rises to the surface to be refilled. The container is filled
- > with water by gravity.
- > The Application was submitted under the "Overall Program Guidebook,
- > second edition" and the "Renewables Portfolio Standard Eligibility"
- > Commission Guidebook, third edition. Both are dated January, 2008.
- > Although these documents were superseded by new editions in January,
- > 2011, it was agreed at the hearing, and fairness requires, that the
- > Committee base its decision on the older versions, which were in use
- > at the time of both the submission of the Application, and the
- > decision of denial.
- > The definition of "Hydroelectric" in the Overall Program Guidebook is:
- > "a technology that produces electricity by using falling water to turn
- > a turbine generator, referred to as hydro. See also 'small hydro'."
- > "Small Hydroelectric" is defined in relevant part as follows:
- > "a facility employing one or more hydroelectric turbine generators,
- > the sum capacity of which does not exceed 30 megawatts, except in the
- > case of efficiency improvements
- > a new small hydroelectric facility is not an eligible renewable energy
- > resource for purposes of the RPS if it will cause an adverse impact on
- > instream beneficial uses or cause a change in the volume or timing of
- > streamflow."
- > We view the central question, then, as whether or not the device uses
- > falling water to generate electricity. We find that it does. While it
- > is true that the container used by the device could be filled with
- > anything heavy and thereby fall due to gravity and push the lever, the
- > fact is that the container is filled with water. Furthermore, the
- > water gets into the container by force of gravity, i.e., it falls into
- > the container. Given the broad nature of the definition applicable in
- > this case, we are compelled to conclude that since water falls into
- > the container, which, in turn, falls and pushes the lever, the device
- > uses falling water to turn a generator. The device, therefore, meets
- > the applicable¹ definition of "hydroelectric."
- >
- > 1 The definition of hydroelectric applicable as of the date of this
- > Decision excludes marine uses. The definition could change again. For
- > purposes of this matter only, the Committee orders that the definition
- > of hydroelectric applicable at the time of the submission of the
- > Application for Pre-certification be used in considering any future
- > application for certification that may be submitted for the device
- > that is the subject of this proceeding.
- >
- > 2
- > The Energy Commission staff's October 18, 2010 denial letter included
- > reference to the "small hydroelectric" definition as well, but did not
- > specify how that definition was relevant to the determination to deny
- > the Application. However, Commission staff clarified for us at the
- > hearing that it reached the conclusion that because the statute stated
- > that small hydroelectric was ineligible if it had an adverse impact on
- > a stream, if the device in question was to be placed not in a stream,
- > but offshore, it was not hydroelectric. The Committee disagrees with

- > this interpretation. The definition of hydroelectric does not include
- > a requirement that the device be in a stream. It only requires the use
- > of falling water. In this case, the device is not to be placed in a
- > stream and therefore cannot have an adverse impact on a stream.
- >
- > Other deficiencies in the application were identified by Commission
- > staff at the hearing, but had not been cited as grounds for denial of
- > pre-certification in the October 18, 2010 letter. Those deficiencies
- > were enumerated by Staff as items 5, 7, 9, 10, 16 and 17. We have
- > reviewed those portions of the Application and find that items 5, 7
- > and 9 seek information which is not yet available to the Applicant due
- > to the stage of development of the device. Applicant should thus
- > state, in writing, why the information is not yet available, and when
- > it will be available. Items 10, 16 and 17 apparently were not
- > understood by the Applicant but, with the assistance of Staff,
- > Applicant should be able to complete those sections.
- >
- > *Applicant is not required to provide instream or hydrological data
- > pertaining to the placement of the project in a stream, as the
- > Application makes it clear that the device will be placed offshore.*
- > *
- > *
- > Accordingly, we grant pre-certification to the Applicant, based upon
- > the existing Application, subject to the following requirements:
- > 1. All incomplete portions of the *existing Application* shall be
- > completed and submitted to Commission staff for review.
- > 2. The required explanations for why certain specific information is
- > not yet available, and the timing for obtaining that information,
- > shall be provided in connection with the existing Application.
- > *3. *Should Commission staff find any deficiencies in these
- > submissions, then the deficiencies shall be communicated promptly to
- > the Applicant and confirmed in writing.
- >
- > Dated April 25, 2011 at Sacramento, California.
- > /Original Signed By:
- >
- > Original Signed By: /
- > CARLA PETERMAN Commissioner and Presiding Member
- > JAMES D. BOYD Vice Chair and Associate Member
- > 3
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GENERGY, INC.**Proposal for Permitting, Initial CEQA/NEPA Documentation and Support for a 200MW Project for Pacific Gas & Electric****I. Introduction**

Chambers Group, Inc., (Chambers Group) is pleased to provide this scope of work (SOW) and proposal for environmental consulting services to Genergy, Inc. (GENERGY) for permitting, initial environmental documentation, development of information needed for an EIR/EIS and support for the CEQA/NEPA process for a Pacific Gas & Electric 200 MW Project (Project) greater than 3 miles off the coast near the location of the Diablo Canyon Nuclear power plant.

II. Scope of Work

The following sections detail the various tasks included in this scope of work. Chambers Group proposes to prepare the permits and environmental document for the Project, technical information needed for an EIR/EIS, and support for any public relations and/or technical environmental consulting. Cost estimates are based on the tasks identified. For the purpose of identifying tasks within this SOW, Chambers Group assumes the Project consists of eight 25MW generators tethered to the seafloor with cables from each connecting to a main cable which will run to the shore connecting to electrical storage/transmission equipment.

Task A. Permitting and Initial Environmental Document Preparation

Chambers Group proposes to prepare the permits and the necessary environmental document for the proposed Project. Based on the preliminary conceptual design of the Project, Chambers Group assumes that the environmental document will either be a negative declaration or mitigated negative declaration and required regulatory permits would involve abbreviated applications.

Task A.1 Develop Project Description, Purpose and Need

Chambers Group will participate in a meeting with GENERGY to discuss the project description and alternatives for the Project. Chambers Group will assist GENERGY to prepare a detailed project description of the conceptual design. Chambers Group will work with GENERGY to define project objectives and need. The project description will include a narrative and graphical presentation of the proposed project and would include location and boundaries, regional and vicinity maps, and a statement of the project goals and objectives. The Draft Project Description shall be provided to GENERGY for review. Chambers Group shall incorporate comments into a Final Project Description and provided to GENERGY.

Deliverables: List of Project Objectives and Need, Copy each of the Draft and Final Project Descriptions to be included in the environmental document and permit applications.

Schedule: Seven (7) weeks total: One day for Project Initiation/Kick-off Meeting within one week of Notice to Proceed, one week from Project Initiation Meeting to distribute and review all available and necessary existing data regarding the Project, two weeks from Project Initiation Meeting to work with GENERGY to develop Draft Project Description, one week from submittal of Draft Project Description for GENERGY review of Draft Project Description, one week from receipt of GENERGY comments to revise and submit Final Project Description.

Task A.2 Preparation of Initial Study (IS)

Chambers Group will prepare an IS checklist to focus the environmental document on the potentially significant effects, in accordance with CEQA Guidelines; the IS will be structured in the format of the Environmental Checklist Form suggested in Appendix G of the CEQA Guidelines. The CEQA Guidelines Section 20063 state, "An initial study may rely upon expert opinion supported by facts, technical studies, or other substantial evidence to document its findings." An Initial Study (IS) is not intended nor required to include the level of detail required in a final environmental document. The IS will determine if a Negative Determination, Mitigated Negative Determination, or Environmental Impact Statement will be required. It is a useful tool for identifying the required scope of the environmental document and focuses the analysis by screening out impacts that are neither significant nor potentially significant.

In compliance with CEQA Section 20063, the IS would contain the following, in brief form:

- A description of the project, including the location of the project;
- An identification of the environmental setting (describing the existing physical condition at the time of the Notice of Preparation is published and as agreed to by GENERGY);
- An identification of environmental effects by use of a checklist, matrix, or other method, with some evidence to support the entries;
- A discussion of the ways to mitigate the significant effects identified, if any;
- An examination of whether the project would be consistent with existing zoning, plans, and other applicable land use controls; and
- The name of the person or persons who prepared or participated in the Initial Study.

Chambers Group will submit the Screencheck IS for the proposed project within three weeks after the project description has been finalized. GENERGY will review the Screencheck IS and provide comments. Chambers Group will incorporate GENERGY comments into the IS checklist within one week of receiving of comments.

Deliverables: Screencheck IS, Final IS Checklist

Schedule: Two (2) months from date of Project Kick-off meeting (coinciding with finalization of Project Description).

Task A.3 Initial Permit Scoping and Agency Pre-Application Meeting

Chambers Group will meet with GENERGY to develop a reasonable schedule to prepare the necessary permits identified during the Project Kick-off Meeting for the Project. Chambers Group will prepare the applications for the environmental permits and will coordinate with the resource agencies on behalf of GENERGY. In addition, most permit applications each must be accompanied by an application or filing fee, provided by GENERGY, based on the total project cost, project type, and/or project area and will be determined by Chambers Group during the application preparation period. Necessary environmental permits include a Section 404 permit from the U.S. Army Corps of Engineers (USACE), a Section 401 Water Quality Certification from the Los Angeles Regional Water Quality Control Board, and a Coastal Development Permit from the local Coastal Commission office (with the opportunity to appeal by the California Coastal Commission). The key to successful permitting is early coordination with the relevant agencies.

A pre-application meeting will be held with the agencies early in the process to introduce them to the project. The USACE will be contacted to determine what type of Section 404 permit is required (Individual Permit or Nationwide Permit) and the agencies will be contacted regarding specific information required of the agency to process its permits. Any required studies would be identified early in the process. Other work will include an analysis of impacts to Essential Fish Habitat for National Marine Fisheries Service and coordination with the California Department of Fish and Game (CDFG) and the U.S. Fish and Wildlife Service (USFWS).

In order to submit complete permit applications, a completed, certified CEQA document would be required to accompany the applications. The schedule for the applications will be dependent upon the schedule of the CEQA document. Chambers Group assumes the CEQA document and permitting applications for the Project will be prepared concurrently. Chambers Group assumes that all technical documents not prepared by Chambers Group and provided by GENERGY (e.g., engineering design, ocean floor characteristics) will be sufficient and complete to satisfy requirements for resource agencies to process the applications. For estimating costs and schedule, Chambers Group also assumes that the permits prepared for Project would not require additional surveys by the regulatory agencies.

Deliverables: Meeting notes from pre-application meeting, schedule for permits.

Schedule: One day for pre-application meeting within 2 weeks of Notice to Proceed, one week from Notice to Proceed to initiate permit scoping.

Task A.4 Application for Federal Energy Regulatory Commission Permit

The Federal Energy Regulatory Commission (FERC) provides a streamlined process for licensing hydrokinetic pilot projects that test new technology while minimizing the risk of adverse environmental effects. The processing time is expected to be as few as six (6) months after application filing. Chambers Group will assist GENERGY in preparing 1) a Preliminary Permit for the project site (also known as "guaranteed first-to-file status") so that no other applicant may file for the same project site and 2) a Hydrokinetic Pilot Project License. Although it is not necessary to apply for a Preliminary Permit in order to obtain a license, it is recommended.

As explained in the guidance for Licensing Hydrokinetic Pilot Projects by FERC in April 2008, hydrokinetic projects generate electricity from the motion of waves or the un-impounded flow of tides, ocean currents, or inland waterways. As defined by FERC, pilot projects are intended to test technologies, sites, or both. Projects that are subject to the pilot project license are 1) small; 2) short term; 3) not located in sensitive areas based on the Commission's review of the record; 4) removable and able to be shut down on short notice; 5) removed, with the site restored, before the end of the license term (unless a new license is granted); and 6) initiated by a draft application in a form sufficient to support environmental analysis. Licenses for pilot projects would 1) have an emphasis on post-license monitoring; 2) have a license condition requiring project modification, shutdown, or removal in the event that monitoring reveals an

unacceptable level of risk to the public or environmental harm; and 3) have a license condition requiring project removal and site restoration before license expiration if a new license is not obtained.

Review of a project proposal would be carried out under FERC's existing authority and regulations and FERC would incorporate input from federal, state, and local resource agencies, Indian tribes, non-governmental organizations, and members of the public. When granted, a license would allow GENERGY to realize a revenue stream from generating while testing and would provide for FERC enforcement of license conditions.

Chambers Group will prepare the pre-filing materials, which include 1) a notice of intent (NOI) to file an application; 2) a draft application (including a description of the existing environment, details of the project proposal, potential effects of the proposal, proposed plans for monitoring, safeguarding the public and environmental resources, and assuring financing to remove the project and restore the site, and consultation record); 3) a request for the waivers necessary to pursue expedited processing of a pilot project license application (including a process plan/schedule and justification statement); and 4) requests for designation as non-federal representative for Endangered Species Act (ESA) and National Historic Preservation Act (NHPA) consultation. The justification statement will demonstrate that the project meets the pilot project criteria. On GENERGY's behalf, Chambers Group will (1) distribute its pre-filing materials to the potentially interested state, federal, and local resource agencies, Indian tribes, non-governmental organizations, and members of the public; (2) notice the availability of the materials in local newspapers; and (3) file the materials with FERC.

Deliverables: Complete permit application package for FERC.

Schedule: Within 1 month from completion of project description. Typical processing estimated at a minimum of 6 months from submittal.

Task A.5 Application for USACE Section 404 Nationwide Permit

The USACE 2007 Nationwide Permit (NWP) Program provides a streamlined permit process for project activities that result in minimal individual and cumulative adverse effects on the aquatic environment/jurisdictional waters. Processing a NWP generally takes 1 to 2 months compared to an individual permit (IP), which generally takes from 6 to 9 months, from the time of Agency submittal. Based upon a preliminary review of the Project, a NWP 17 (hydropower projects) may be applicable. A pre-construction notification (PCN) would be required, which generally includes:

1. Detailed description of the proposed project, including grading plans provided by the Applicant;
2. Detailed description of the jurisdictional areas to be impacted by the proposed project. (This is generally accomplished by submittal of the delineation report.);
3. Discussion of approvals and certifications being obtained from other federal, state, or local agencies;
4. The request to the RWQCB for water quality certification;
5. The request to the State Historical Preservation Office for information regarding the potential presence of historical properties and the cultural resource report submitted to the Applicant in response; and
6. The request to the USFWS for a list of all sensitive species potentially present in the project site and the special-status species survey report submitted to the Applicant in response.

Deliverables: Pre-Construction Notification for Nationwide Permit.

Schedule: Within one month from completion of project description. Typical processing estimated at 45 days from submittal.

Task A.6 Application for RWQCB Section 401 Water Quality Certification

Chambers Group will prepare and submit an application for Water Quality Certification pursuant to Section 401 of the Clean Water Act to the Santa Ana Regional Water Quality Control Board (RWQCB).

A water quality certification, or waiver of certification, is required from the RWQCB for any activity that requires a Federal license or permit (such as a Section 404 Nationwide Permit) and that may result in a discharge to jurisdictional waters. Chambers Group will prepare and submit the necessary documentation to the RWQCB for its review of the project pursuant to water quality certification or waiver.

The application package will contain copies of the permit applications for the 404 Individual Permit. The deliverables summary below provides details for the permit application package.

Deliverables: 401 permit application package for RWQCB.

Schedule: Within one month from completion of project description. Typical processing estimated at 60 days from submittal.

Task A.7 Coastal Commission Permit/Permission

Chambers Group will meet with the California Coastal Commission (CCC) to determine the necessary permit required for the project. Chambers Group will prepare information required for the decided permit, such as the Consistency Determination or Coastal Development Permit (CDP) application. Chambers Group will provide responses to questions and post-application requests for additional information. Chambers Group also will attend the Coastal Commission hearing. It is assumed the Coastal Commission hearing will take no more than two (2) days. The deliverables generated from this task include the CDP and presentation materials for the Coastal Commission hearing, including supporting graphics, text, and matrices, as needed.

The application package will contain copies of the permit applications for the 404 Individual Permit and 401 Water Quality Certification. The deliverables summary below provides details for the permit application package.

Deliverables: Application package determined appropriate for the Project by Coastal Commission.

Schedule: Within one month from completion of project description. Processing time will vary based on the application required.

Task B. Development of information needed for EIR/EIS

Chambers Group proposes to prepare the information and studies needed to provide an application and the information and studies need for an analysis for a CEQA/NEPA document. for the Project . The analysis will provide the In addition to identifying potential "fatal flaws", the constraints analysis will identify all environmental permits that may be required to construct the project, the information that would be needed to provide complete applications, and the information/studies needed to provide an environmental analysis in compliance with CEQA and NEPA.

Deliverables: Draft Constraints Analysis Document, Final Constraints Analysis Document.

Schedule: Three months from Notice to Proceed.

Task B.1 Literature Review

Chambers Group will compile background information and conduct a literature review to determine if there are any existing records of listed and/or sensitive plant and wildlife species occurring on or in the vicinity of the project site. This task will include a review of existing databases, such as the California Natural Diversity Database (CNDDB), California Department of Fish and Game (CDFG), United States Fish and Wildlife Service (USFWS), United States Bureau of Land Management (BLM), and any other relevant databases. As part of this review, Chambers Group will confirm the required local biological resource requirements. Our GIS staff will then download and map areas of designated critical habitat and

applicable conservation plan boundaries. If the project site is within a Habitat Conservation Plan (HCP) area, Sensitive Ecological Area (SEA), or any other special habitat area, Chambers Group will review all applicable regulations.

Chambers Group also will conduct a records search of the on-shore storage/transmission site (if it is undeveloped) to determine if cultural resource sites have been identified at the project site. This includes contacting the Native American Heritage Commission (NAHC) and requesting a search of their Sacred Lands Inventory to determine if any recorded sacred lands are within or near the project. Additionally, NAHC will provide a list of tribes affiliated with the project area. Chambers Group will notify the tribes of the proposed undertaking and invite their comments and questions. Chambers Group also will review archived reports and site records at the South Central Coastal Information Center (SCCIC) at California State University, Fullerton to determine if 1) the (terrestrial) project area has ever been surveyed for historic resources, and 2) if any historic or prehistoric resources are recorded on or near the (terrestrial) project area. Chambers Group also will contact the Los Angeles County Museum of Natural History (LACM) and request a search of their paleontological records and maps to determine if 1) the project area is known to contain fossiliferous rock units and 2) the project area has ever been inspected for the presence of fossils or fossil-bearing strata.

Chambers Group also will perform an abbreviated underwater archaeological survey consisting of an initial desk top literature review of existing published and unpublished literature and manuscript or archive information for a 3 to 10 mile radius of the proposed project. This variable radius reflects the relative inaccuracy of shipwreck location information on file with the California State Lands Commission, US Coast Guard, Merchant Vessel Registries, and the Department of the Interior Minerals Management Service. An assessment of potential constraints will be based on this data as well as other prehistoric or historic archive data on file at the Regional Federal Archive and Records Center at Laguna Niguel, the California Archaeological Survey South Central Coast Information Center at California State University, Fullerton, Los Angeles or San Francisco Maritime Museums, and other pertinent local museums and libraries. Also to the extent possible, potential resources will be evaluated in terms of previous man-made disturbances in the Catalina Island area related to development (e.g., anchorage activities, breakwater construction, landfill projects, and dredging of navigation channels) or other pertinent environmental information currently on file with the California State Land Commission, Homeland Security-Coast Guard, Department of the Interior Mineral Management Service, Los Angeles District Corps of Engineers, and County of Los Angeles. As a result of the desk top survey, a report inventorying project area maritime sites (historic shipwrecks, anchorages, landings, wharves/underwater prehistoric sites) and potential impacts or other constraints will be provided detailing the result of the desk top survey.

In addition, Chambers Group will review the Local Coastal Plan and General Plan to identify land use and other issues; contact by phone or in person key staff from the Santa Catalina Island Conservancy, CDFG, USFWS, RWQCB (Los Angeles Region), BLM, CCC, and the National Marine Fisheries Service to identify key environmental issues and concerns; and discuss the project with local public interest groups to identify public concerns.

Task B.2 Site Visit

After conducting the literature search, key personnel will conduct a project site visit. During this visit, plant communities and general habitat on the project site will be identified and noted. This effort is to gain an understanding of the required biological surveys and permitting needed for project implementation. A qualitative description, including the type of vegetation communities and approximate extent of these communities, also will be provided for all areas of the project site, access roads and potential construction staging areas. This reconnaissance level field survey will focus primarily on determining the presence or potential presence of federal- or state-listed or otherwise sensitive plant and wildlife species and sensitive habitats.

The results of the reconnaissance-level survey, including species of plants and animals observed, will be recorded on standardized data sheets. Photographs will be taken to document the current conditions of the project site and immediate vicinity. The biologist also will determine if any potential wetlands/waters of

the United States subject to the jurisdiction of the U.S. Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act (CWA) or any lakes or streambeds subject to the CDFG jurisdiction under Section 1600 et seq. of the California Fish and Game Code have the potential to occur on the site.

Task B.3 Identification of Potential Environmental Issues and Impacts

Based on the information gathered in the literature review and site visit, the key environmental issues of the proposed Full-Scale Build-Out Project will be identified. This would be a preliminary list of issues that would be required to be addressed in the CEQA/NEPA document; potential environmental issues will be categorized as either major, minor, or not an issue. An EIR is anticipated for CEQA compliance. NEPA compliance will be required because of the federal action involved through FERC and USACE. During early coordination with the federal agencies, the document preparation in compliance with NEPA will be determined. If an EIS is necessary, GENERGY may opt to prepare a joint EIR/EIS.

Chambers Group will describe potential project impacts and will identify specialty studies that would need to be performed to analyze the impacts of the proposed Full-Scale Build-Out Project. Chambers Group will complete the CEQA IS checklist for the Full-Scale Project. Because the IS checklist must be completed as part of the CEQA process, this checklist provides a dual role in also identifying environmental issues. This will serve as an early stage analysis to determine if a site is a good candidate for project implementation and Chambers Group will set up a timeline for actions required for project activities. In addition, a constraints map will identify any potential wetlands or waters of the US or state, designated critical habitat, or known sensitive biological resources. Chambers Group also will include a project schedule that outlines seasonal restrictions and timelines for sensitive species surveys and anticipated schedule for consultations, environmental document preparation, and necessary permits. Permits that require additional approvals will be identified because these required approvals make up a critical path for the permitting process. For example, the California Coastal Commission generally requires a certified CEQA document before issuing a Coastal Development Permit.

Chambers Group will provide services requiring marine and terrestrial biologists, environmental planners, permitting specialists, cultural resource specialists, and noise and air quality experts. As appropriate, Chambers Group will identify specialized consultants, such as underwater archeologists, to complete any other required analyses for the Full-Scale Build-Out Project.

Task C. Support for CEQA/NEPA Process

Chambers Group will provide GENERGY with any required environmental support during any phase of the Project. These efforts may include involvement with technical issues or public relations, such as public meetings, conferences, review of pertinent related reports, or preparation of a white paper or media report.

Task C.1 Client and Public Meetings

Chambers Group will be available for coordination meetings with GENERGY, the resource and regulatory agencies, the general public, and federal, state, and local entities on biological and other environmental related issues. For example, meetings may provide updated status on project progress, early identification or continued coordination on environmental issues, possible mitigation required to offset project related impacts, or assistance in resolving any issues raised by the resource and regulatory agencies. Chambers Group anticipates meeting types to include, at a minimum, environmental/technical advisory meetings with GENERGY, public meetings in front of the general public, public meetings in front of the Coastal Commission, agency coordination meetings with all interested agencies present, and stakeholders meetings with local agencies and local interest groups. For cost estimating purposes, Chambers Group includes an estimate for ten (10) meetings anticipated to occur during the course of Tasks A and B of this SOW.

Deliverables: Meeting notes for each meeting attended.

Schedule: As required.

Task C.2 Preparation of Information for NEPA/CEQA Document(s) for Full-Scale Build-Out Project

Chambers Group will assist GENERGY in the preparation of the application to the appropriate Lead Agencies for the Project. This effort will be based on the results of the information gathered in Task B.

Deliverables: As identified in the Task B.

Schedule: To be detailed after completion of the Task B.

Task C.3 Project Management

Chambers Group is firmly committed to developing and maintaining close working relationships with GENERGY and the resource agencies. Emphasis on communication, as well as involvement by Chambers Group in all aspects of the project, results in performance that satisfies project objectives, government requirements, and client needs. Regular communication between Chambers Group and the project team, including GENERGY, engineers, and other consultants, is key to ensuring that project plans are based upon the expertise provided by all disciplines. Chambers Group will provide consistent communication to GENERGY throughout the project process. These communications are assumed to be a part of good project management and the project work effort as a whole. For cost estimating purposes, Chambers Group provides an estimate for project management activities anticipated to occur during the course of Tasks A and B of this SOW.

III. Schedule of Tasks

Project tasks identified in this SOW have a schedule provided for either each subtask or for the general task description. These schedules are estimates based on typical time frames for similar type projects of a similar magnitude. Because the proposed project is an innovative technology to utilize renewable ocean resources, actual requirements may be project specific. Chambers Group experience will assist GENERGY in anticipating any requirements that would be atypical during the process of project application and implementation.

IV. Estimated Costs

The following table summarizes the estimated costs for the tasks detailed above. If any tasks identified in this SOW require additional coordination and/or preparation, Chambers Group will notify GENERGY and discuss modifications to consulting costs.

V. Authorization

This proposal was prepared by Chambers Group solely for GENERGY internal use. Chambers Group considers the pricing and other business information the property of Chambers Group. This proposal and

the information contained herein will not be used for any purpose other than as specifically stated in this proposal and will not be disclosed to any other party without Chambers Group's written consent.

This scope of work will be performed under the Chambers Group standard Commercial Terms and General Conditions attached to this proposal. If this scope of work and cost meet with your satisfaction, please execute one copy of this letter and return it to Chambers Group as our authorization to begin work.

Respectfully,

CHAMBERS GROUP, INC.

Authorized By:

GENERGY, INC.

Noel Davis, Ph.D.
Project Manager

Kurt Grossman

Date

Exhibit G

Kurt Grossman Email of September 6, 2011 with Attached Map

From: Kurt Grossman Corporate <kurtg@genergyllc.com>
To: Mark Kootstra <MKootstr@energy.state.ca.us>
CC: Norm Weisinger - Genergy LLC <normw@genergyllc.com>
Date: 9/6/2011 10:12 AM
Subject: Re: Precertification Applications SPGCA-1 (61230C) document attached
Attachments: 1-mile separation.jpg; kurtg.vcf

Hi Mark,

It is a recognized mapping format.

Google Earth uses it and so does my mapping software.

Here is a jpeg but suffice it to say that we have changed all the separation to be more than 1 mile
Apparently some of the facilities were too close before.

Also, we have the 24,000:1 scale maps now.

Will you please send me the reference describing "Surface Ground Water" in any of the Program Guides or Renewables Manuals?
I am trying to figure out why we would be considered "Surface Ground Water" instead of "Other"

Also, I would like to confirm that there are no other differences in the new definitions or guidebooks than the "Marine Water" exclusion.
Can you verify that no other substantive changes have been made to the Small Hydro definitions or forms that would preclude Pre-certification of new applications?

The main reason that I have been reluctant to move forward with the new forms is that we do not want any other issues coming up that require another hearing.

Thank you.

Sincerely,

Kurt Grossman
cc; Norm Weisinger

On 9/6/11 9:19 AM, Mark Kootstra wrote:

> Mr. Grossman,

>

> Thank you for the prompt reply. Unfortunately, I am unable to open the file titled "New 1 mile separation SPGCA LLC.kmz" as the file type is not recognized by our computers. Please resend this file in another format when you submit your response to the staff email sent on September 1, 2011.

>

> Sincerely,

>

> Mark Kootstra
> Renewables Portfolio Standard Program
> California Energy Commission
> 1516 9th Street, MS-45
> Sacramento, CA 95814
> phone: (916) 653-4487

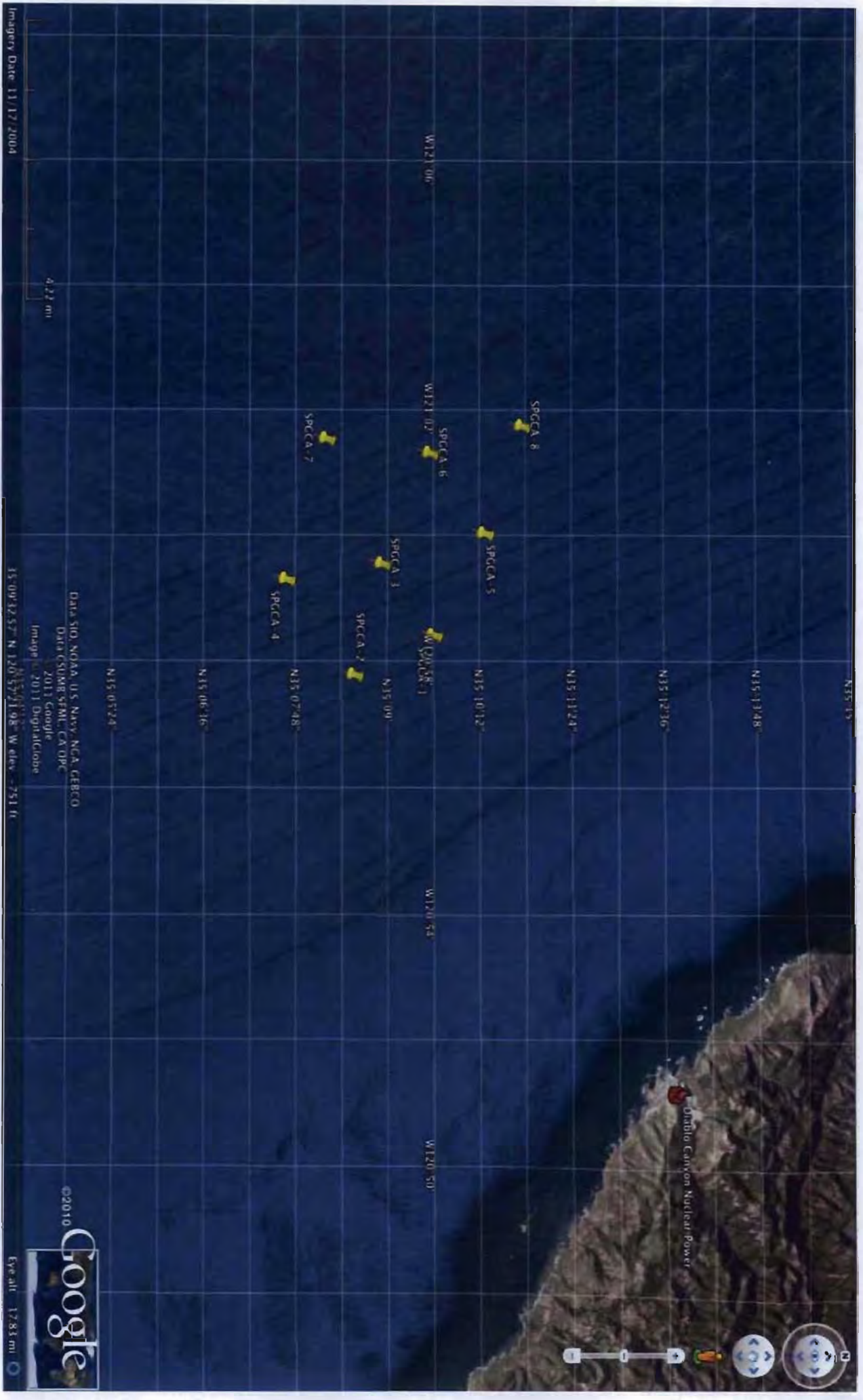
> mkootstr@energy.state.ca.us
>

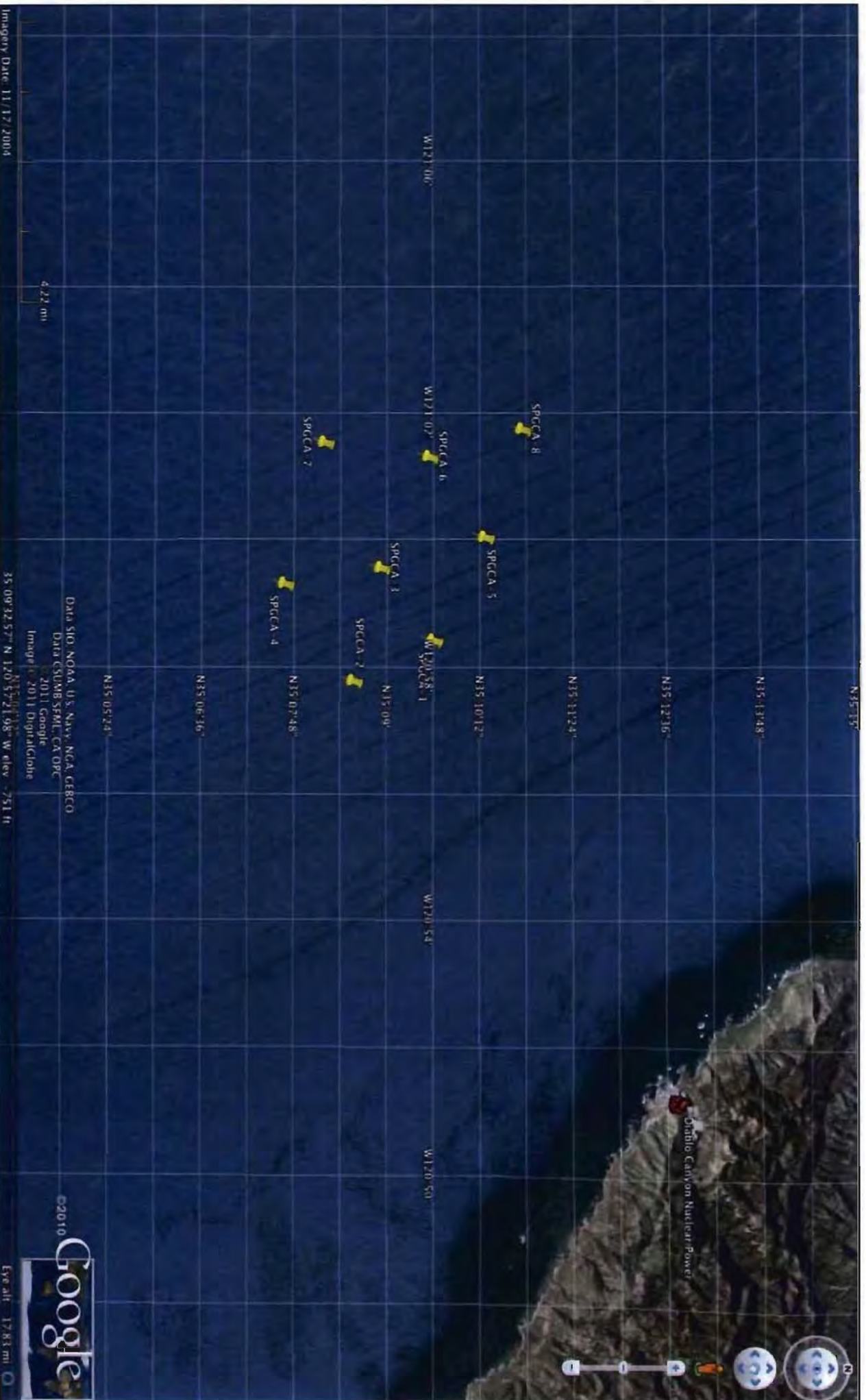
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4.22 mi

Data SIO, NOAA, U.S. Navy, NGA, GEBCO
Data CSUMB, SFML, CAOPC
2013 Google
Imagery © 2013 DigitalGlobe
35°09'42.57" N 120°57'21.98" W elev: -751.0

©2010 Google
Eye alt: 1783 m







energy solutions for a changing world

enel

Exhibit H

Kurt Grossman Email of August 30, 2011
With Attached Diagram of the Genergy Technology

From: Kurt Grossman Corporate <kurtg@genergyllc.com>
To: Mark Kootstra <MKootstr@energy.state.ca.us>
CC: Jennifer Jennings <JJenning@energy.state.ca.us>, Kate Zocchetti <Kzocche...>
Date: 8/30/2011 4:54 PM
Subject: Re: Precertification Applications SPGCA-1 (61230C) document attached
Attachments: SPGCA-1 Details for Mark.jpg; kurtg.vcf

Mark,

I highlighted the portion of the "attached design" that says "Linear Generator."

It is rather bright and easy to miss.

thanks,

Kurt

On 8/30/11 4:27 PM, Mark Kootstra wrote:

> Mr. Grossman,

>

> Several concepts for the Genergy device were presented at the Committee Hearing, including the attached design. Other designs presented did not include linear generators.

>

> Please confirm whether or not the planned facility will use linear generators to produce electricity at any stage in the process.

>

> Sincerely,

>

> Mark Kootstra

> Renewables Portfolio Standard Program

> California Energy Commission

> 1516 9th Street, MS-45

> Sacramento, CA 95814

> phone: (916) 653-4487

> mkootstr@energy.state.ca.us

>

>

>>>> Kurt Grossman<kurtg@genergyllc.com> 8/30/2011 1:29 PM>>>

> Mark,

>

> The design in the original presentation is the SPG and is basically the same.

>

> The SPGCA-1 LLC will be the same basic design that we presented at the Hearing.

>

> It is the same.

>

> thanks,

>

> Kurt

>

> On Aug 30, 2011, at 1:12 PM, Mark Kootstra wrote:

>

>> Mr. Grossman,

>>

>> Thank you for the quick response. I hope to complete my review of the document you attached and send you a version for your approval or additional questions, as needed, in the near future.

>>

>> There was one question in the email I sent you on August 26, 2011, that does not appear to have been answered. I apologize if it was included and I missed it. Several variations of the facility have been presented to the Energy Commission throughout the application and appeal process, in an effort to clarify any potential confusion for those viewing the application in the future, can you please confirm that the SPGCA-1 facility will be designed to operate similar to the diagram shown in the attached PDF file "SPGCA-1 Details.pdf" or provide a diagram of the correct planned operations.

>>

>> If you have any questions or concerns please feel free to contact me.

>>

>> Sincerely,

>>

>> Mark Kootstra

>> Renewables Portfolio Standard Program

>> California Energy Commission

>> 1516 9th Street, MS-45

>> Sacramento, CA 95814

>> phone: (916) 653-4487

>> mkootstr@energy.state.ca.us

>>

>>

>>>> Kurt Grossman Corporate<kurtg@genergyllc.com> 8/29/2011 9:09 AM>>>

>> On 8/29/11 8:03 AM, Mark Kootstra wrote:

>>> Mr. Grossman,

>>>

>>> Thank you for the quick response, unfortunately, no attachment was included in your response. Please resend the document containing your response.

>>>

>>> Thank you,

>>>

>>> Mark Kootstra

>>> Renewables Portfolio Standard Program

>>> California Energy Commission

>>> 1516 9th Street, MS-45

>>> Sacramento, CA 95814

>>> phone: (916) 653-4487

>>> mkootstr@energy.state.ca.us

>>>

>>>

>>>>> Kurt Grossman Corporate<kurtg@genergyllc.com> 8/26/2011 11:38 PM>>>>

>>> RE: Response to Word Document

>>>

>>> The answers to the requested information have been provided in *RED*.

>>>

>>> Kurt Grossman

>>> 800-719-2730 Ext. 1

>>> On 8/26/11 4:15 PM, Mark Kootstra wrote:

>>>> Mr. Grossman,

>>>>

>>>> Unfortunately, the pre-certification application for the SPGCA-1 (61230C) has not yet been approved for pre-certification, there are still several more items that need to be clarified.

>>>>

>>>> In an effort to ensure that the SPGCA-1 facility is not misrepresented in the information provided to Kate Zocchetti, the RPS lead, for her review of the application I have attached a Word document containing most of the final questions and providing room for your responses. Additional instructions are included in the Word file.

>>>>

>>>> The only question that is not contained in the Word file concerns the technology used at the facility. Several variations of the facility have been presented to the Energy Commission throughout the process, in an effort to clarify any confusion those viewing the application in the future can you please confirm that the SPGCA-1 facility will be designed to operate similar to the diagram shown in the attached PDF file "SPGCA-1 Details.pdf" or provide a diagram of the correct planned operations.

>>>>

>>>> Concerning the future applications for SPGCA-2 through 24, these application must be made under the guidebook in effect at the time of submission. I am not aware of any additional barrier to the pre-certification of SPGCA-2 through 24 that the application for SPGCA-1 faced aside from the change in definition of hydroelectric. Given you situation it may wise to sign up for the Renewables list server on the right hand side of the following website: <http://www.energy.ca.gov/portfolio/index.html>.

>>>>

>>>> Staff is currently working to revise the Renewables Portfolio Standard Eligibility Guidebook and the Overall Program Guidebook for the Renewable Energy Office. Staff expects to release a notice for a public workshop and a draft version of the two guidebooks in the near future. You will have an opportunity to provide public comments either verbally at the workshop or in writing leading up to and directly following the workshop.

>>>>

>>>> After reading this information, if you would still like to schedule a phone call I have availability on Tuesday August 30, 2011 at 3 pm, or Wednesday August 31, 2011 at 2 pm. If either of these times do not work for you please suggest a later day and time that does work for you.

>>>>

>>>> Sincerely,

>>>>

>>>>

>>>> Mark Kootstra

>>>> Renewables Portfolio Standard Program

>>>> California Energy Commission

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>> <SPGCA-1 Details.pdf>

>



Conceptual Drawing
 Sporkels Provide Ventilation
 FILTER

FRONT VIEW

180.0m
 140.0m
 100.0m
 60.0m
 40.0m
 20.0m

ENTRY STAGING GEN. ROOM

ENTRY STAGING GEN. ROOM

Linear Generator
 Containers Plant VTR

Linear Generator
 Makes Electricity Right

Electricity

Compressed Air

Hydraulic Power

Energy Legend

Rotational Generator

[illegible]

Exhibit I

Diagram of Genergy Technology Presented During Committee Hearing

Diagram of Technology Presented During Hearing

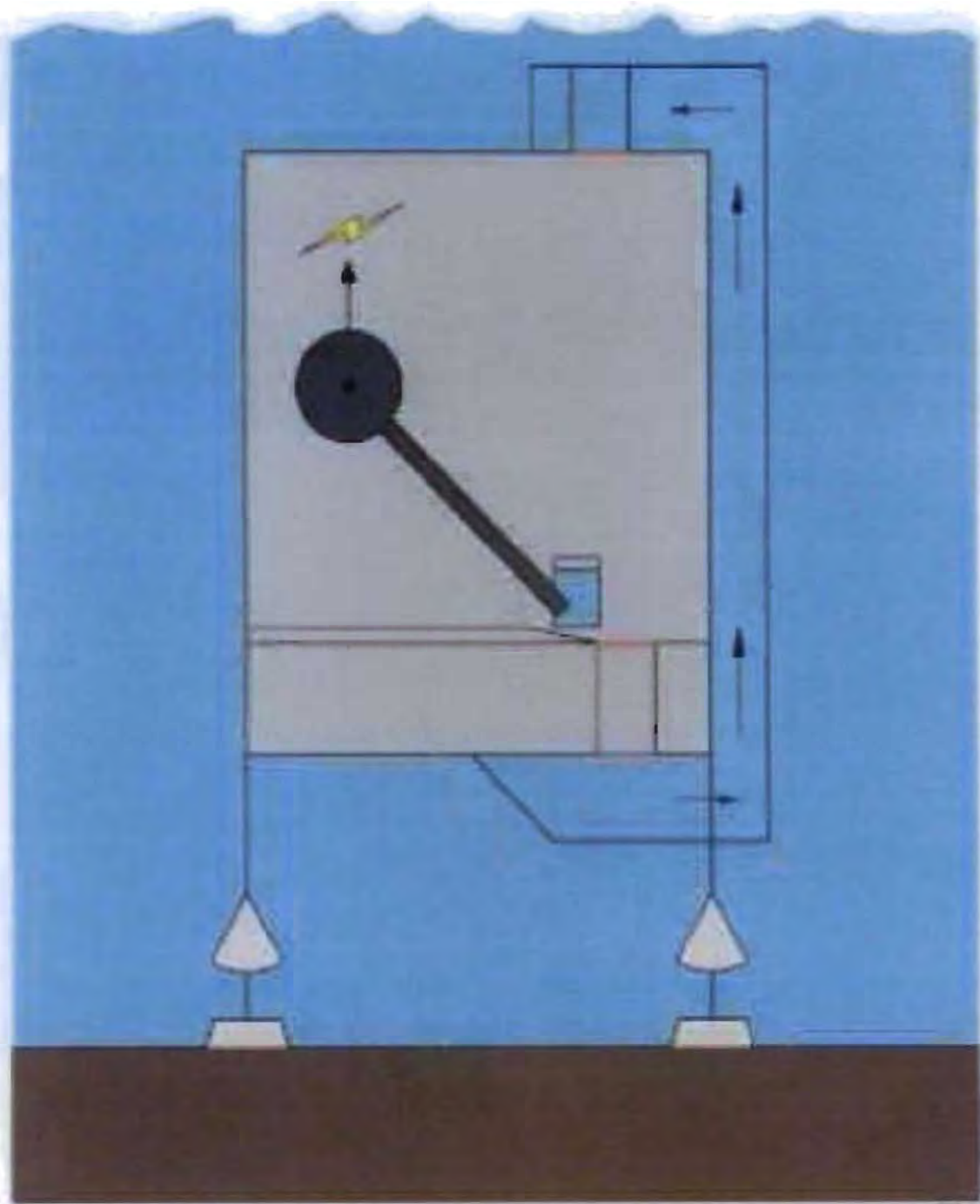


Exhibit J

Kurt Grossman email of August 6, 2011

From: Kurt Grossman Corporate <kurtg@genergyllc.com>
To: Mark Kootstra <MKootstr@energy.state.ca.us>
CC: Jennifer Jennings <JJenning@energy.state.ca.us>, Kate Zocchetti <Kzocche...>
Date: 8/6/2011 7:20 PM
Subject: Re: Precertification Applications SPGCA-1 (61230C)
Attachments: Fact file 4 pole turbine web.pdf; kurtg.vcf

Mark,

We have answered your questions in line.
We attached a file showing the type of generator we will most likely use.

Are you saying that the applications for pre-certification need to be redone on new forms and if they are then we must qualify under new guidelines?

We see some potential problems if the answer to both of our questions is "yes"

Perhaps we need to schedule another hearing to clarify what the commissioner's decision means regarding future applications.
Will you please let us know this week how we should proceed?

Thank you.

Sincerely,

Kurt Grossman

On 7/8/11 1:01 PM, Mark Kootstra wrote:

> Dear Mr. Grossman,

>

> Thank you for your response, I added the online date information to the application. However, the responses to item B and C are insufficient.

>

> 1. For item B, a date by when you expect to be able to provide the required map at a scale of 1:24,000 must be provided if you do not provide the required map at the appropriate scale.

September 30, 2011

> 2. For item C, this information is required for all hydroelectric applications, per the Renewables Portfolio Standard Eligibility Guidebook, Third Edition. The Committee Decision issued April 25, 2011, based on the third edition of the RPS guidebook, did not exempt the applicant from providing any of these requirements, except the "Applicant is not required to provide instream or hydrological data pertaining to the placement of the project in a stream, as the Application makes it clear that the device will be placed offshore."

>

> As such a complete response to all items listed on page 33 of the RPS guidebook, third edition, must be submitted. If any of the information is unavailable at this time due to the development of the facility you may indicate the information or permits that will become available and the specific date when the information is expected to be available.

>

> If you believe that any of the items are not relevant to the facility application, it is your responsibility as the applicant to provide sufficient reasoning explaining why that information is not relevant. In the specific case of the hydrologic data, only the data pertaining to the placement of the project in a stream has been deemed unnecessary, any and all other relevant hydrologic data must still be submitted.

Additional required water-use data and documentation described below must be attached to a completed CEC-RPS-1A (for certification) or CEC-RPS-1B (for pre- certification) form.

These requirements apply to facilities located within California as well as those located out-of-state.

Applicants possessing a permit or license from the State Water Resources Control Board (SWRCB) – or from another governing body, if located out-of-state – must submit a copy of the permit or license as well as the application for the permit or license.

AN APPLICATION TO THE STATE WATER RESOURCES CONTROL BOARD IS NOT NECESSARY
ALL WATER USED BY THE SPGCA TECHNOLOGY IS NOT DIVERTED AND IS IN FEDERAL JURISDICTION

THE SUBMARINE CABLES ARE THE ONLY CONNECTION TO THE STATE OF CALIFORNIA
THERE IS NO PERMIT OR LICENSE REQUIRED

Name of the Facility

SPGCA LLC ("1 -- 24")

Ownership of the Facility

Genergy LLC

Source Water Description

Pacific Ocean

Water Rights

WATER OR BETTER STATED SEAWATER IS OUTSIDE THE JURISDICTION OF THE STATE OF CALIFORNIA.

THE WATER, OR BETTER STATED THE OCEAN, IS IN FEDERAL JURISDICTION.

Applications for leases will be filed with BOEMRE. Leases will also be obtained from the State of California.

But, to our knowledge, there are NO water rights issues associated with these leases. The issue is with the seafloor real estate. Up to 3 miles off the shore the State of California has jurisdiction.

Past 3 miles out the US government has jurisdiction. The US Dept. of Interior created BOEMRE for the negotiation of mineral rights but also including emerging marine technology generating electricity offshore such as wave generators, ocean thermal current generators, and tidal and current generators.

The application must identify the source of the water for the hydroelectric project.

The source must be characterized as surface, groundwater, or other (for example, recycled water).

For surface water sources, a map at a scale of 1:24,000 must be provided.

The map should also identify the location of the diversion point and all other facilities.

In addition, a written description of the location of the diversion should be provided (county and nearest city) as well as the name of the body of water at the point of diversion.

For groundwater, the location of the well(s) and conveyance facilities shall be identified on a map of 1:24,000 scale.

The applicant must also specify how much water is used for each of the identified beneficial uses.

THE PACIFIC OCEAN IS NOT SURFACE, GROUNDWATER, OR OTHER.
IT IS AN OCEAN.

ANY MAP WILL NOT SHOW ANY DIVERSION.

THERE IS NO DIVERSION.

THE OCEAN WATER IS FILLED AND THEN EMPTIED AT THE BOTTOM OF THE HULL.
THE WATER IS NOT TREATED; PASSED THROUGH TURBINES; OR DOES IT HAVE ANY
SIGNIFICANT PROCESSING.

WATER IS FILLED AT AN APPROXIMATE RATE OF 18,000 GALLONS PER HOUR AT A
DEPTH OF APPROXIMATELY 100 FEET.

WATER IS EMPTIED AT A APPROXIMATE RATE OF 18,000 GALLONS PER HOUR AT A
DEPTH OF APPROXIMATELY 600 FEET

Mark,

Since there is no diversion; no well; it is not surface groundwater or any other land based water why would any of this apply?

We are definitely not surface water.

If the map requirement is for surface water sources; and we are not using surface water sources; why are you asking for a different scale map.

We provided a map: more accurately a NOAA Oceanographic Chart.

The chart we provided is the standard navigational chart for offshore navigation.

The map shows depth in fathoms and many other important locations such as fisheries and protected or restricted areas.

Would you please it as a reference instead of the 1:24,000 scale map that seems non-applicable anyway?

4. Water Rights To our knowledge there are NO water rights issues.

Both in-state and out-of-state applicants must clearly establish their right to divert water by submitting all necessary information as well as all appropriate licenses or permits.

Within California, this information must identify the permitted volume, rate, and timing of water diversions, the place of diversion, and beneficial uses.

This may be achieved through submittal of the appropriate SWRCB appropriation permit or license, or the Statement of Water Diversion and Use filed with SWRCB. For diversions not subject to an appropriation permit or license, a copy of any Statement of Water Diversion and Use filed with SWRCB should be provided. Out-of-state facilities must provide similar documentation of an existing water right for the water diversion of the project.

No water is diverted.

So even if there were any issues within California water rights we do not divert water.

We simply fill a container and then empty it 3 minutes later.

5. Hydrologic Data Waived by the Commission because the data is not relevant to our site located in the Pacific Ocean.

The applicant must submit appropriation and/or diversion data for the last five years or for the period of operation if the project has been operating less than five years.

Information contained in any legally required reports may be used to meet this requirement if sufficient information is included in the report.

For other projects, the hydrologic data submitted must be accompanied by a description of how the data is collected.

Flow data shall be provided at the frequency set forth in the applicable water appropriation permit;

for example, if the permit specifies minimum and maximum flows on a monthly basis that is the level of information necessary to be submitted.

No water is diverted.

There is no "applicable water appropriation permit."

> 3. Additionally, no information was attached providing a description of the technology being implemented at the facility. Please provide a diagram of the generator used at the facility for clarity in our records.

Mark,

A leaflet is attached.

"4-pole turbine generators for large power

More turbine manufacturers, packagers, engineering companies and end users are choosing

ABB's 4-pole generator concept for steam and gas turbine packages as the power requested has been continuously rising.

As the market leader for large 4-pole generators ABB has responded to customer demands by developing the generator line into an even higher range of power.

As a result 4-pole generators with an output of up to 65MW can now be offered using the same proven design.

ABB has experience of delivering generators to places all over the world, which requires that the generators are designed to meet different standards and grid codes.

IEC, NEMA or API designs are available as well as certification from DNV, Lloyd's, ABS, GOST and others.

Due to the flexibility of ABB's generator design, they can easily comply with most country specific grid codes."

> 4. The attached information from the Chambers Group, Inc. lists the facility as a 200 MW facility.

> Can you confirm that the SPGCA-1 will have a capacity of 200 MW, if not please explain the discrepancy between this document and the submitted application.

Mark,

We have applied for a 25 MW power plant.

But, we have also submitted a total of 8 separate locations for each utility.

The total of all 8 is 200 MW.

Chambers Group, will do an Environmental analysis for the perimeter of each group of 8 (25 MW) power plants.

Each group of _8 power plants_ totals 200 MW.

Finally, the version of the RPS pre-certification forms associated with the fourth edition of the RPS guidebook can be found online at:
<http://www.energy.ca.gov/renewables/documents/index.html#rps>.

> Any application for a facility other than the SPGCA-1 facility must use these forms, be submitted in the proper manner, and will be evaluated based on the eligibility rules described in the Renewables Portfolio Standard Eligibility Guidebook, Fourth Edition, and the Overall Program Guidebook, Third Edition.

>

> I must stress there are no deficiencies in either the current version of the forms or the version associated with the third edition of the guidebook. The Committee Decision only identified three items required by the forms which may be left blank in the application submission for the SPGCA-1 facility if the deficiency in the application submission was explained and a date when that information will be made available.

> With the submission of your attached emails the application for the SPGCA-1 facility is no longer deficient in any of those three areas.

>

Further, the Committee Decision only relates to the application for the SPGCA-1 facility and its treatment under the Renewables Portfolio Standard Eligibility Guidebook,

Third Edition, and Overall Program Guidebook, Second Edition.

If this application is resubmitted on forms associated with the fourth edition of the RPS guidebook the application will need to be evaluated using the eligibility

rules published in the Renewables Portfolio Standard Eligibility Guidebook, Fourth Edition, and the Overall Program Guidebook, Third Edition.

Did we submit our other applications for Pre-certification on "NEW" forms?

Doesn't the Commissioner's Decision say that for "any future application" for our device use the old definition?

"*1 The definition of hydroelectric applicable as of the date of this Decision excludes marine uses. The definition could change again. For purposes of this matter only,

the Committee orders that the definition of hydroelectric applicable at the time of the submission of the Application for Pre-certification be used in considering **_any future application_**

for certification that may be submitted for the device that is the subject of this proceeding.*" Grossman Decision

If you have any questions, concerns, or need clarification on any of the

above information or the eligibility requirements please contact me.
Sincerely, Mark Kootstra Renewables Portfolio Standard Program
California Energy Commission 1516 9th Street, MS-45 Sacramento, CA 95814
phone: (916) 653-4487 mkootstr@energy.state.ca.us

Sincerely,
Kurt Grossman

Exhibit K

Genergy, LLC, Webpage Regarding Pre-certification

PROVIDING SAFE, CLEAN, RENEWABLE,
AFFORDABLE ELECTRICITY TO THE
WORLD!



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PROVIDING THE WORLD SAFE, CLEAN, RENEWABLE AND
AFFORDABLE ELECTRICITY!

Genergy, LLC Wins Approval from California Energy Commission



GENERGY, LLC WINS APPROVAL FROM THE CALIFORNIA ENERGY COMMISSION IN SACRAMENTO FOR THEIR INNOVATIVE “SUBMERGED POWER GENERATOR”, (SPG).

March 29, 2011, The Genergy, LLC Team consisting of Kurt Grossman, Inventor / Chief Technology Officer, Ron Gaiser / Executive Vice President / Communications & Marketing and Glenn Nuttal / Patent Attorney, attended a (CEC) hearing at the capital in Sacramento today to have the commissioner's reconsider their application that was previously denied by staff clerks due to mis-interpretation of the program guidelines.

“The presentation given at the hearing was well received”, stated Mr. Gaiser after spending the morning with Commissioner’s Boyd and Peterman. “I think they really understand what our “SPG” is now and that it definitely complies with all the guidelines.” Mr. Grossman, the inventor, made the point well when he said, “the SPG is definitely an innovative hydroelectric device worthy of their approval and should be used by all the utility companies, not just in California but in the entire United States.”

With in a matter of only two weeks the California Energy Commission overturned the initial denial and granted approval for pre-certification of the “SPG” with the California Energy Commission.

(Click, Letter of Approval)

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The Genergy, LLC team attended the 2011 “Offshore Technology Conference”, (OTC) in Houston, Texas to do some preliminary research.

22 May, 2011



Genergy, LLC Wins Approval from California Energy Commission

27 Apr, 2011

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Events

Genergy LLC team attended the 2011 "Offshore Conference", (OTC) in Houston, Texas to do industry research. - [22 May, 2011](#)

Genergy Wins Approval from California Energy Commission - [7 Apr, 2011](#)

Contact

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**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV**

IN THE MATTER OF:

**BEFORE THE RENEWABLES COMMITTEE
*KURT GROSSMAN APPEAL***

**DOCKET No. 11-KGA-1
PROOF OF SERVICE
(EST. 2/10/2012)**

APPELLANT

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DECLARATION OF SERVICE

I, Pamela Fredieu, declare that on, February 10, 2012, I served and filed copies of the attached *Staff Request for Clarification on the Committee Decision of April 25, 2011, Concerning the RPS Pre-certification Application of the SPGCA-1 Facility* dated February 9, 2012. The original document, filed with the Docket Unit or the Chief Counsel, as required by the applicable regulation, is accompanied by a copy of the most recent Proof of Service list.

The document has been sent to the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit or Chief Counsel, as appropriate, in the following manner:

(Check all that Apply)

For service to all other parties:

- ☒ Served electronically to all e-mail addresses on the Proof of Service list;
- ☒ Served by delivering on this date, either personally, or for mailing with the U.S. Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "e-mail service preferred."

AND

For filing with the Docket Unit at the Energy Commission:

- ☒ by sending one electronic copy, to the address below (preferred method); **OR**
- ☐ by depositing an original and 12 paper copies in the mail with the U.S. Postal Service with first class postage thereon fully prepaid, as follows:

CALIFORNIA ENERGY COMMISSION – DOCKET UNIT

Attn: Docket No. 11-KGA-1
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

OR, if filing a Petition for Reconsideration of Decision or Order pursuant to Title 20, § 1720:

- ☐ Served by delivering on this date one electronic copy by e-mail, and an original paper copy to the Chief Counsel at the following address, either personally, or for mailing with the U.S. Postal Service with first class postage thereon fully prepaid:

California Energy Commission
Michael J. Levy, Chief Counsel
1516 Ninth Street MS-14
Sacramento, CA 95814
mlevy@energy.state.ca.us

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

Original signed by
Pamela Fredieu
Legal Secretary/Office of Chief Counsel of CEC