California Municipal Utilities Association

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California Energy Commission
Dockets Office, MS-4
Docket No. 11-RPS-01 and Docket No. 02-REN-1038
RPS Proceeding
1516 Ninth Street
Sacramento, CA 95814-5512

Re: CMUA Comments on the Proposed Revisions to the *Renewables Portfolio Standard Eligibility Guidebook*

The California Municipal Utilities Association (CMUA) would like to thank the California Energy Commission (CEC) for the opportunity to provide comments on the Draft Seventh Edition of the *Renewables Portfolio Standard Eligibility Guidebook* (Draft Eligibility Guidebook) released by the CEC on March 11, 2013. The following sections provide CMUA's comments on the Draft Eligibility Guidebook. In addition to CMUA's comments, several of CMUA's members intend to provide comments on the proposed changes to the guidebook as well.

Below CMUA first identifies general comments on the issues of RPS Eligibility, and then second, identifies specific issues in the Draft Eligibility Guidebook.

I. GENERAL COMMENTS

A. Bifurcation of Proceeding

To fully implement the broad new requirements of SB1X-2, CEC staff has proposed a substantial overhaul to the RPS Eligibility Guidebook. The numerous new proposals must be carefully reviewed and vetted because of the potentially severe and unintended consequences to California's ratepayers if renewable resources lose eligibility or are classified into an unintended portfolio content category (PCC). The current timeline[1] for review of the Draft Eligibility Guidebook is simply too short to adequately review the extensive new proposals set forth therein. Further compounding this challenge, is the fact that the draft forms to be appended to the Guidebook were not made available with the Draft Eligibility Guidebook itself, making it difficult to evaluate the type and extent of the various documents and data that a retail seller/POU must submit in order to meet the various eligibility requirements specified in the Guidebook. Absent the forms, it is difficult to determine the appropriate balance between providing the CEC with the

[1] The Draft Eligibility Guidebook was released on March 11, 2013. Pursuant to the "Notice of Staff Workshop on Proposed Changes to the Renewables Portfolio Standard Eligibility Guidebook," comments were originally due on March 20. An email sent on March 15, 2013, extended this comment deadline until March 25.

necessary information it needs while not imposing overly burdensome and unnecessary filing requirements on applicants.

More time is also needed to address the ongoing concerns regarding the lack of certainty about project eligibility and PCC categorization. Under the current proposal, it may be several years until there is certainty regarding a particular facility or contract's RPS eligibility and categorization. In light of the substantial investments that CMUA's members are making in renewable generation, this delay is simply unworkable. More work must be done to address these issues in the next edition of the Guidebook. As discussed below, CMUA has suggested to CEC staff that the CEC should develop a table or chart outlining specific renewable characteristics needed to meet individual PCC requirements.

Despite the clear need for additional time to review the Draft Eligibility Guidebook and address the issues of certainty, there is also a pressing need to provide clear resolution regarding the eligibility and categorization of existing biomethane contracts. The ongoing suspension of the eligibility of biomethane as an RPS-Eligible resource has caused delay with several biomethane projects. If this delay continues there is a significant concern that these projects may cease to be viable.

To resolve both of these issues, CMUA recommends that the CEC focus its initial efforts on the implementation of AB 2196. The CEC should adopt a resolution formally ending the suspension of the RPS Eligibility Guidelines related to biomethane, subject to the new restrictions of AB 2196 (Ch. 605, Stats 2012) and simultaneously adopt a new Guidebook that addresses biomethane issues. The CEC should then continue to work on the remaining issues and adopt an updated guidebook in conjunction with the adoption of RPS Enforcement Procedures for POUs.

B. Separation of RPS Eligibility Guidebook from the Enforcement Procedures for POUs

It is essential that a clear separation exist between the RPS Eligibility Guidebook and the Enforcement Procedures for the Renewables Portfolio Standard for Publicly Owned Electric Utilities (Proposed RPS Regulations) being addressed in Rulemaking 13-RPS-01. These two documents serve different functions and are subject to different procedural requirements for adoption. The outcome of the rulemaking process should not be prejudiced by interpretations addressed in the RPS Eligibility Guidebook, nor should a POU be in a position where the interpretation of a provision of the RPS Regulations is supplemented by the discussion in the RPS Eligibility Guidebook, for example, regarding the definition of a PCC1 resource. There is a clear opportunity for confusion and even conflicting language.

As CEC staff noted at the March 14 Staff Workshop on the Proposed Revisions to the RPS Eligibility Guidebook (Guidebook Workshop), the Guidebook's extensive description of the CEC's Proposed RPS Regulations is provided solely for background information and is not part of the actual rules to be adopted in the Guidebook by the

CEC. CMUA supports staff's comments that a preferred approach would be to remove this descriptive language from the RPS Guidebook prior to its adoption, and indeed, only by doing so can the potential for confusion and ambiguity be avoided.

This removal of descriptive language must be consistent throughout the Guidebook. For example, although the Proposed Guidebook's narrative description of the Proposed RPS Regulations[2] is clearly marked "for informational purposes only," a similar disclaimer does not exist for the proposed reporting requirements[3] that include numerous issues that have yet to be decided in the Proposed RPS Regulations. This includes such important issues as the "count-in-full" requirements and the definitions of the various PCCs. These issues clearly exceed the scope of the RPS Eligibility Guidebook, and should be marked as "proposed" and/or "provided for informational purposes only."

Another key remaining concern is that the technical feasibility and overall cost impact from the guidance document (or "quasi-rule development process") coupled with the uncertainty of some resources being eligible for a particular PCC must be evaluated by CEC staff. POUs that have already procured the needed renewables to meet the first two RPS compliance periods may incur an added financial impact based on vague guidebook language and potential conflicts with the RSP Regulation eventually adopted by the Commission, applied retroactively.

C. Precertification

The Draft Eligibility Guidebook identifies "precertification" as an outstanding issue. Precertification has been discussed for several years now, and it is time that the CEC took action. As CMUA and its members have articulated over the past several years, and as mentioned above, there is significant need for the precertification process to provide greater certainty regarding the ultimate certification of a pre-certified resource. In November of 2011, the Southern California Public Power Authority (SCPPA) submitted comments to the CEC recommending the retention of the precertification process with amendments for increased certainty. On February 16, 2012, CMUA submitted a letter to the CEC recommending several changes to the CEC's precertification process and supporting SCPPA's comments.

CMUA's and SCPPA's key recommendation is that the RPS-eligibility of a facility be determined based on the RPS Eligibility Guidebook in place at the time the facility is pre-certified, provided that the certification application is filed within a reasonable time after precertification (for example 36 months) and that there have been no significant changes to the project in the interim. The Draft Eligibility Guidebook retains the precertification process but has not adopted these suggested changes. CMUA believes that there has been sufficient discussion of these issues and urges the CEC to implement these changes in the Draft Eligibility Guidebook.

[2] Draft Eligibility Guidebook at 4-7.
[3] Draft Eligibility Guidebook at 127-141.

D. Verification Requirements

CMUA recommends that the CEC consider adopting a third party verification process similar to the process currently used by the California Air Resources Board (ARB) for the Mandatory Reporting Requirements for greenhouse gas emissions. Such a third party verification process would greatly simplify reporting to the CEC and accelerate the process for verifying resources at the CEC. CMUA recommends that the CEC explore the logistics of this option at a future workshop.

E. RPS Eligibility Status

At the Guidebook Workshop, CEC staff stated that the CEC's website would be updated to provide more detailed information regarding the current status of all generating facilities that have submitted applications for certification or precertification. CMUA urges the CEC to complete this update as soon as possible, so that applicants have an up-to-date and accurate understanding of the CEC's review of their applications. Further delay in this process unfairly burdens POUs with additional administrative costs and potentially impacts the cost of purchasing renewable resources.

F. PCC Checklist

A central concern for CMUA's members is the lack of certainty regarding the PCC of an electricity product. As the CEC is aware, there is a substantial price difference between a PCC1 electricity product and a PCC3 electricity product. The impact on California's ratepayers of unanticipated or inadvertent reductions in the PCC status of an electricity product could be substantial.

CMUA supports efforts to bring more certainty to the PCC status of an electricity product. At the Joint CPUC/CEC Staff Working Group Meeting on RPS Reporting and Verification, held on November 30, 2012, Iberdrola Renewables proposed that the CEC formally adopt a checklist for each PCC (and subcategory) that would include the essential elements necessary to qualify for that category. This checklist could then be incorporated into the contracting process, in order to provide the parties involved greater certainty regarding the PCC status of the associated electricity products.

While the precise details of such a proposal still need further consideration, CMUA believes that the CEC should include such a checklist as part of the Seventh Edition of the RPS Eligibility Guidebook, helping to provide certainty to multiple project developers and the ultimate purchasers of the renewable electricity product.

II. COMMENTS ON THE DRAFT ELIGIBILITY GUIDEBOOK

A. Energy Storage

The implementation of a 33 percent RPS poses many challenges for California. Energy storage may serve as a key tool in addressing integration and other operational

challenges associated with adding large amounts of intermittent generation onto the grid. Additionally, the legislature has indicated its clear support for broad implementation of energy storage through the adoption of Assembly Bill (AB) 2514 (Ch. 469, stats 2010).

In light of the practical benefits of energy storage and the state policy encouraging the expansion of energy storage, the CEC should not narrowly restrict the types of energy storage and the structure of energy storage that may be incorporated into the RPS program.

1. More Discussion of Energy Storage Issues is Required

During the CEC's Guidebook Workshop, CEC staff posed three pertinent questions to the treatment of energy storage as it relates to the RPS. CMUA fully supports a robust discussion and consideration of these issues. However, there is simply not enough time to fully and adequately explore these issues by March 25. Consistent with CMUA's request to bifurcate the proceeding, CMUA requests that additional workshop discussions be devoted to the consideration of Energy Storage issues as it relates to the RPS.

2. Pumped Hydro

The Draft Eligibility Guidebook continues to apply the following restriction to pumped hydro: "Energy storage systems using pumped storage hydroelectric must meet the eligibility requirements for small hydroelectric facilities."[4] This restriction prohibits pumped storage facilities integrated with large hydro generation from the treatment available to other energy storage technology types. There is no statutory restriction that requires this limitation. In light of the significant integration barriers associated with large amounts of intermittent generation, the CEC should avoid the imposition of such arbitrary restrictions.

B. Biomethane

As CMUA described in Comments on the Concept Paper for the Implementation of Assembly Bill 2196 for the Renewables Portfolio Standard, filed on February 8, 2013, the clear legislative intent of AB 2196 (2012) was to preserve the eligibility of biomethane contracts executed prior to March 29, 2012. While there were limited additional restrictions imposed on these pre-March 29 contracts, the clear intent was not to undo or strip these contracts of their value. The extensive eligibility and verification obligations for these biomethane contracts set forth in the Guidebook impose a significant burden and create the opportunity for inadvertent errors to lead to a loss of eligibility. CMUA urges the CEC to strictly limit the eligibility and verification requirements to the language of the statute, with the legislative intent of preserving the eligibility of these contracts in mind. Consistent with the legislative intent, the exceptions to the pre-March 29, 2012 treatment that are found in Public Utilities Code

[4] Draft Eligibility Guidebook at 90.

section 399.12.6(a)(2) should be narrowly interpreted, such that these exceptions do not devalue and financially impact a POU's normal contracting activities.

1. Switching Facilities

As several parties described during oral comments at the CEC workshop, there are a variety of situations that may necessitate a utility designating a new generating facility to receive deliveries from a biomethane contract. Such flexibility is consistent with the intent of AB 2196. However, the Draft Eligibility Guidebook proposes to prohibit such flexibility:

> Biomethane under an existing biomethane procurement contract may only be used for RPS purposes at the designated electrical generation facility for which the biomethane procurement contract was originally reported to the Energy Commission prior to March 29, 2012, in connection with the RPS certification of the designated electrical generation facility. **Biomethane under an existing biomethane procurement contract may not be used for RPS purposes at a different electrical generation facility**.[5]

Such a restriction is not found in statute and would unnecessarily restrict existing biomethane contracts. If a generating facility is unable to utilize deliveries from a contracted biomethane source, the value of this resource will be lost, resulting in a significant cost burden on local ratepayers. CMUA supports the interpretation proposed by CEC staff in the Biomethane Concept Paper[6]:

> Staff also proposes that the Energy Commission allow an applicant of an RPS-certified electric generation facility that uses biomethane to substitute the designated facility, even if the new facility has not been previously RPS-certified or pre-certified. Because AB 2196 contemplates various eligibility criteria for procurement of biomethane delivered through a common carrier pipeline under a contract or contract amendments, it seems reasonable to allow a retail seller or POU to change the designation of the electric generation facility so long as the quantities of biomethane are not increased.

The CEC should follow the position outlined in the Concept Paper, which is consistent with the statute and would allow a POU to change the designation of the electric generation facility.

2. Physical flow requirements

[5] Draft Eligibility Guidebook at 31 (emphasis added).
[6] Concept Paper for the Implementation of Assembly Bill 2196 for the Renewables Portfolio Standard-publication, CEC-300-2013-001, January 25, 2013.

Pursuant to the requirements of AB 2196, post-March 29, 2012 biomethane contracts must meet the following requirement:

> The source of biomethane injects the biomethane into a common carrier pipeline that physically flows within California or toward the generating facility for which the biomethane was procured under the original contract.[7]

The Draft Eligibility Guidebook implements this new requirement by proposing the following methodology:

> In determining whether the biomethane physically flows towards the electrical generating facility, the Energy Commission will review the amount of time, on an annual basis, the gas physically flows towards the electrical generating facility in each segment of the pipeline over the entire pipeline path. The biomethane will not be deemed to physically flow towards the electrical generating facility if the Energy Commission determines the biomethane flows towards the facility less than 50 percent of the time in each pipeline segment.[8]

Many parties have expressed concern with this proposal as drafted, because of issues of consistency with the actual functioning of the natural gas pipeline system. CMUA recommends that the CEC seek additional comments on this proposal, including holding a workshop devoted to consideration of these technical issues.

3. Application of Section 399.16(d) "Count-in-Full" Treatment

The Draft Eligibility Guidebook states that the CEC will look at both the execution date of the contract for biomethane as well the execution date of the associated power purchase agreement (PPA) or ownership agreement when determining whether Section 399.16(d) "count-in-full" treatment will apply. The Draft Eligibility Guidebook identifies three different execution date scenarios and the applicable treatment.[9] However, the wording of this section is confusing and leaves out the example that describes most POU contracts. The Guidebook should clearly spell-out a fourth scenario where the PPA or ownership agreement was executed prior to June 1, 2010, but **does not** specify that the procurement is attributable to biomethane, and the biomethane contract was executed after June 1, 2010. In this case, the contract would not receive the "count-in-full" treatment applicable pursuant Section 399.16(d).

4. Net Zero Emissions

AB 2196 imposes a new requirement on biomethane contracts that:

> For all electricity products generated using biomethane that are credited

[7] Cal. Pub. Util. Code § 399.12.6(b)(3)(A).
[8] Draft Eligibility Guidebook at 32.
[9] Draft Eligibility Guidebook at 35.

> toward the renewables portfolio standard procurement obligations established pursuant to this article, **sufficient renewable and environmental attributes of biomethane production and capture shall be transferred to the retail seller or local publicly owned electric utility that uses that biomethane to ensure that there are zero net emissions associated with the production of electricity from the generating facility using the biomethane.** The provisions of this subdivision shall be applied in a manner consistent with the definition of "green attributes" as specified by the commission in Decision 08-08-028, Decision on Definition and Attributes of Renewable Energy Credits for Compliance with the California Renewables Portfolio Standard (August 21, 2008), as may be modified by subsequent decision of the commission.[10]

The Draft Eligibility Guidebook proposes expansive new requirements implementing this provision.[11] These requirements should be applied very narrowly, considering that the contracts at issue were executed prior to the existence of this statutory requirement. Such a narrow application is consistent with the clear intent of Legislature to preserve the eligibility of existing contracts.

5. Alternative to Resubmitting Applications

The Draft Eligibility Guidebook would require new applications for all generating facilities using biomethane to be resubmitted.[12] Such a requirement will impose significant burdens both on the facility applicants and the CEC staff. The Guidebook should propose a limited and streamlined approach to ensuring that facilities that are already certified or that have already submitted applications for certification or precertification comply with AB 2196.

6. Marketing, Regulatory, or Retail Claim of GHG Reductions from Methane Destruction are limited to Biomethane Procurement contracts

Under the RPS legislation, "procure" is defined as "acquiring through ownership or contract."[13] Under AB 2196, the limitations upon making "marketing, regulatory, or retail claims of GHG Reductions from Methane Destruction" are limited solely to "biomethane procurement contracts." As the RPS legislation clearly distinguishes between procurement by ownership versus procurement by contract, it is clear that this requirement of AB 2196 only applies to "biomethane procurement contracts" and cannot apply to instances, such as for many POUs, where the biomethane is acquired through

[10] Cal. Pub. Util. Code § Section 399.12.6(c).
[11] Draft Eligibility Guidebook at 37-38.
[12] Draft Eligibility Guidebook at 36 ("To implement AB 2196, applicants of all electrical generation facilities using biomethane must submit a new application for certification or precertification, regardless of whether the facility is already certified, precertified, or pending certification, to maintain or establish its RPS status. New applications will not be accepted unless they are submitted in accordance with the RPS Eligibility Guidebook, Seventh Edition.").
[13] Cal. Pub. Util. Code § 399.12(f).

ownership, usually from on-site production and use. Accordingly, the last portion of this Section should be changed to read: "If the POU makes a marketing, regulatory, or retail claim of GHG reductions related to the destruction of methane **from a biomethane procurement contract,** the POU must . . . ."[14]

C. Distributed Generation Meter Requirements

The minimum meter requirements for RPS-eligible resources in the RPS Eligibility Guidebook have created a barrier for the certification of customer-generators participating in POU net energy metering programs. Due to a number of factors, including costs, many of these customer facilities are measured with performance meters (rating of ±5%) rather than revenue quality meters (rating of ±2%). Several POUs, including LADWP and SMUD, have proposed solutions to the meter accuracy issues associated with performance meters. Indeed, at the May 9, 2012, Business Meeting, then CEC Commissioner Peterman directed CEC staff to develop a proposal to create threshold size below which generating units could be measured with performance meters rather than revenue quality meters. Commissioner McAllister also commented that consideration should be given to grandfathering currently in-use meters. Unfortunately, no additional public actions were taken on this issue. CMUA strongly encourages the CEC follow through with this direction and present such a proposal.

D. Verification for PCC1 Scheduling Into a California Balancing Authority

As CMUA and its members stated in prior comments, the proposed verification requirements for a PCC1 electricity product that is scheduled into a California balancing authority without substituting electricity from another source far exceeds what is required by statute. In addition, the proposed "auditable package" requirement places an extreme administrative burden on these facilities. The CEC must reconsider these requirements with the goal of simplifying and reducing the verification requirement. At a minimum, these requirements should not apply to contracts or facilities under a certain size threshold.

As CMUA stated in prior comments, the CEC should hold a workshop devoted to verification requirements for this subcategory of PCC1. This workshop should address the following topics: (A) the administrative burdens of this requirement; (B) the likelihood for errors and disputes during documentation and verification; (C) the inconsistency between this proposed treatment of imported renewable energy and the operation of actual markets for electricity in the Western Electricity Coordinating Council service area; (D) the additional and unnecessary costs to California consumers; (E) the negative environmental consequences; (F) the negative impacts on reliability; and (G) the contractual and operational restrictions that limit the ability of purchasers to implement this option.

[14] Draft Eligibility Guidebook at 38.

E. Station Power

The Draft Eligibility Guidebook proposes to adopt a definition and treatment of "station service" that is consistent with the WREGIS Operating Rules. There are potentially significant implications associated with adopting this interpretation of station power. There simply has not been sufficient discussion of this issue, and the brief amount of time allowed in this process is inadequate. The CEC should hold an additional workshop to further consider these issues.

F. POU Sales to IOUs – CEC's Role

The Draft Eligibility Guidebook proposes to implement the requirements of section 399.31 and 399.25(d) through the following language:

> A retail seller may claim RECs it has procured that are associated with deliveries of electricity by an eligible renewable energy resource to a POU, for purposes of the RPS, **if the Energy Commission determines that both of the following conditions; are met**:
>
> 1) The POU has adopted and implemented a renewable energy resources procurement plan that complies with the RPS pursuant to Public Utilities Code Section 399.30; and
>
> 2) The POU is procuring sufficient eligible renewable energy resources to satisfy the target standard, and will not fail to satisfy the target standard in the event that the REC is sold to the retail seller.
>
> In making its determination, the Energy Commission will:
>
> 1) Verify that the POU has adopted and implemented an RPS procurement plan.
> 2) Verify that the electrical generation associated with the RECs is from an electrical generation facility that has been certified for the RPS by the Energy Commission.
> 3) Require the REC to be tracked in WREGIS.
> **4) Verify that the quantity of RECs procured by the retail seller will not impede the POU from meeting its target standard.**[15]

In a transaction for a sale of electricity products between two utilities, it is essential that there is certainty regarding the ultimate eligibility of those electricity products. The vagueness of the CEC's assertion that is will verify that the RECs will not "impede" the POU from meeting its target is too imprecise to provide such clarity and leaves too much discretion to the CEC. The CEC should provide a simple and clear mechanism

[15] Draft Eligibility Guidebook at 142.

for assessing this statutory requirement, as well as a definitive timeline for providing such a determination, when requested.

G. Grace Period for POU Facilities

The current version of the RPS Eligibility Guidebook requires POUs to submit applications to certify existing resources by October 1, 2012, in order for generation starting as of January 1, 2011, to count toward the POU's RPS requirements. The Draft Eligibility Guidebook extends this requirement, proposing that a contract approved by POUs prior to June 1, 2010, must submit an application for certification by December 31, 2013:

> For generation occurring on or after January 1, 2011, to count toward a POU's RPS procurement obligations from a facility that was not certified by the Energy Commission as RPS-eligible at the time of generation, the Energy Commission must receive an application for RPS certification before October 1, 2012, and subsequently certify the facility as RPS-eligible.[124]
>
> Footnote 124: A facility must be RPS- certified by the Energy Commission before a POU or retail seller may report procurement of its generation toward the POU's or retail seller's RPS procurement requirements. Facilities under contract with or approved by a POU for its RPS before June 1, 2010, are encouraged to apply for certification by October 1, 2012, and must apply by December 31, 2013.[16]

The October 1, 2012, deadline is mentioned throughout the Guidebook, however, the December 31, 2013, extension is not consistently referenced. The Guidebook should ensure that all sections discussing the deadlines for submitting applications for RPS Eligibility are consistent. The December 31, 2013, deadline should be more clearly and extensively discussed in the Guidebook. Additionally, given the delay in certifying RPS-eligible facilities, it is possible that some POUs may still need to rely on their Interim Tracking Systems in order to prepare their compliance reports.

H. Eligibility Date

The Draft Eligibility Guidebook proposes to include a new section specifying reasons why a facility's eligibility date may be revised:

> The eligibility date for a facility may be revised for several reasons; including an individual facility that is part of an aggregated unit. These reasons include:
>
> - Denial of an application.

[16] Draft Eligibility Guidebook at 104-105.

- Failure to submit a certification application within 90 days of commencing commercial operations for a precertified facility.
- Substantial changes in the operations of the facility from the precertification application.
- Moving a facility from one aggregated unit to another, affects only the moved facility.
- Withdrawing the certification or precertification of a facility or removing a facility from an aggregated unit.
- Failure to submit an amended certification within 90 days of the change requiring an amendment.
- Revoking the certification of a facility.[17]

In light of the importance of a facility's eligibility date, such a revision should only occur in rare circumstances. These requirements should be precise, clear, and judiciously applied. The Guidebook should provide a description of how this option will be exercised.

I. RECs Counting as of Procurement Date

The Draft Eligibility Guidebook proposes the following limitation on the procurement of RECs:

> RECs cannot be claimed for RPS compliance before the contract execution and or ownership agreement date. Specifically, LSEs cannot retire RECs for a reporting year prior to when the RECs were procured and, moreover, cannot meet one compliance period's portfolio quantity requirements with procurement dating from a later compliance period.[18]

The only relevant statutory limitation on the eligibility of RECs is found in section 399.21(a)(6) requires:

> A renewable energy credit shall not be eligible for compliance with a renewables portfolio standard procurement requirement unless it is **retired** in the tracking system established pursuant to subdivision (c) of Section 399.25 by the retail seller or local publicly owned electric utility **within 36 months from the initial date of generation of the associated electricity.**[19]

There is no statutory limitation, including in section 399.21(a)(6), that would prevent a utility from procuring a REC that had been generated in a previous compliance period and retiring that REC in a WREGIS subaccount for that prior compliance period. For example, if a REC was generated in December 2013 and a utility purchased that REC in March 2014, there is no statutory prohibition on that utility retiring that REC in a 2013

[17] Draft Eligibility Guidebook at 103.
[18] Draft Eligibility Guidebook at 121.
[19] Emphasis added.

compliance subaccount. Prohibiting this type of transaction would unnecessarily diminish the value and flexibility associated with unbundled RECs, and is not consistent with SBX1-2.

J. Over Procurement

The Draft Eligibility Guidebook provides the following statement:

> LSEs are encouraged to take a prudent approach to retirement and achievement of the RPS requirements by retiring enough RECs to meet their RPS requirements and, perhaps, retiring more to cover unexpected situations or to qualify as excess procurement.[20]

This statement far exceeds the statutory role of the CEC and the purpose of the RPS Eligibility Guidebook. Such over-procurement actions fall within the scope of decisions made by a utility's governing authority. For POUs, this is a decision solely within the discretion of the POU governing boards. This discussion should be deleted from the guidebook.

K. January 1, 2011 Eligibility for RPS-eligible AB920 and Water Conveyance Units

CMUA supports the CEC's conclusion that energy resources that became newly RPS-eligible under SBX1-2 should be eligible as of January 1, 2011. This ensures symmetry between a POU's compliance obligation under SBX1-2 and its RPS-eligible resources available to meet this obligation. At the Guidebook Workshop, staff stated that the January 1, 2011, eligibility date would also be available for all previously-filed RPS-certification applications. However, the corresponding text of the draft regulation inadvertently does not match this statement. As currently written, a resource is eligible "If an application for certification was received by the Energy Commission within 90 days of the adoption of the 7th edition of the RPS Eligibility Guidebook."[21]

To conform to staff's intentions and the statutory requirements of SBX1-2, the above phrase should be rewritten as: "If an application for certification was received by the Energy Commission **prior to** ~~within~~ 90 days **after** ~~of~~ the adoption of the 7th edition of the RPS Eligibility Guidebook."

L. Calculation of De Minimis Fuel Use

The calculation of de minimis fuel use[22] appears inconsistent between the text and Footnote 88. The RPS-Eligibility Guidebook states, "All facilities using nonrenewable

[20] Draft Eligibility Guidebook at 121-122.
[21] Draft Eligibility Guidebook at 104.
[22] Draft Eligibility Guidebook at 67.

fuels in the generation process may use a de minimis quantity of nonrenewable fuel of 2 percent annually."[23] Footnote 88 provides:

> RECs representing eligible generation that occurred before the month during which the nonrenewable fuel use exceeded the annual allowable de minimis quantity will be labeled California RPS–eligible if they remain in the original WREGIS subaccount. The nonrenewable RECs representing generation for the month during which the limit was exceeded beyond the fraction that are eligible, and the nonrenewable RECS generated during the remainder of that year, will not be labeled as California RPS–eligible.

Because the measurement is based on the annual percentage of nonrenewable fuel used, a number that may either increase or decrease each month through the 12 month period, the rolling calculation described in Footnote 88 does not reflect the rule in place.

Footnote 88 seems to be inconsistent with the RPS-Eligibility Guidebook's rule on de minimis fuel use and should be removed to eliminate the inconsistency. Footnote 88 may intend to express that RECs representing eligible generation will be labeled California RPS-eligible beginning with the earliest nonrenewable RECs generated in the year, up to the quantity that equals 2 percent of annual generation. If this is the Commission's intent, Footnote 88 should be edited so that it clearly expresses the intended meaning.

M. Definition of "Water Supply or Conveyance System"

Under the Sixth Edition of the RPS Eligibility Guidebook, the CEC adopted the SB X1-2 language that added existing hydroelectric generation units not exceeding 40 MW and operated as part of a water supply or conveyance system as eligible renewable resources,[24] if certain criteria were met:

1. The generation unit has a nameplate capacity of 40 MW or less.
2. Generation from the facility was under contract to or owned by, a retail seller or local publicly owned utility as of December 31, 2005.
3. The unit is operated as part of a "water supply or conveyance system," as defined in the *Overall Program Guidebook*[25].

The *Overall Program Guidebook Fifth Edition* Glossary of Terms defines "water supply or conveyance system" as:

[23] Draft Eligibility Guidebook at 63.
[24] *Renewables Portfolio Standard Eligibility Guidebook, Sixth Edition.* California Energy Commission, Efficiency and Renewable Energy Division. Publication Number: CEC-300-2012-006-CMF, 22, n. 40 (2012).
[25] *Renewable Energy Program Overall Program Guidebook, Fifth Edition,* California Energy Commission, Efficiency and Renewable Energy Division. Publication Number: CC 300-2012-00-ED5-CMF 29 (2012).

> the distribution of water through a tunnel, canal, pipeline, aqueduct, flume, ditch, and/or similarly constructed water conveyance that was built for such distribution and is operated primarily for agricultural, municipal, or industrial consumption, and **not primarily for the generation of electricity**.[26]

These clarifications were consistent with the language in SB 1X-2. The Draft Eligibility Guidebook deletes the reference to the above definition[27] contained in the Overall Program Guidebook, and substitutes a new, far more restrictive definition:

> the distribution of water through a tunnel, canal, pipeline, aqueduct, flume, ditch, and/or similarly constructed water conveyance system that was **initially** built **solely f**or *the* distribution *of water* for agricultural, municipal, or industrial consumption, and **operated primarily for this purpose**, and not primarily for the generation of electricity.

The addition of the word "solely" is not appropriate nor in accordance with the limiting language in SBX1-2. Under SBX1-2 existing forms of small hydroelectricity were limited by size and date of operation, **not** by the purpose for which they were constructed. The terms "water supply system" and "water conveyance system" appear in the state's Water and Health & Safety Codes, and neither contains such a restrictive limitation. It is to be assumed that in drafting legislation, the Legislature was aware of how it had used the same terms in other sections of state law.

Since 1929, the California Constitution has required that all beneficial uses be considered at the time the water conveyances were constructed and would have required joint use if possible.[28] In addition to this section of the Constitution being self-enforcing, the Legislature, over the past eighty years this Constitutional provision has been in effect, has adopted numerous pieces of legislation encouraging or mandating beneficial use where possible. Acceptance of the CEC's proposed definition of water supply or conveyance system would require that the Legislature, having spent the last eighty years encouraging beneficial use wherever possible, would now adopt legislation limiting its applicability "solely" to a single use.

To be consistent with California law and good business practice, any municipal bond prospectus would have been required to list all possible "beneficial uses" the water systems could be used for, including the possibility that they could be used to create electricity. The added benefit of reducing the risk on the bonds by providing some revenue would have been disclosed to investors and might now run afoul of the proposed language. Therefore, it is likely that many of the otherwise qualified small hydroelectric projects that would/should qualify under the SB X1-2 definition of eligible

[26] *Overall Program Guidebook*, Fifth Edition at 29.
[27] *Overall Program Guidebook*, Fifth Edition at 32.
[28] "[B]ecause of the conditions prevailing in this State the general welfare requires that the water resources of the State *be put to beneficial use to the fullest extent of which they are capable*…" CA CONST. art X, § 2 (emphasis added*).*

renewable generation, would be unreasonably and inappropriately precluded from qualifying if the word "solely" is added to the definition of "water supply and conveyance system." The additional burden on POU and CEC staff to review the "purpose" of decades old water conveyance facilities is unwarranted.

The previous definition that required water supply or conveyance systems be operated "primarily for agricultural, municipal, or industrial consumption, and not primarily for the generation of electricity,"[29] sufficiently balances the desire of the CEC to limit applicability of this section and to exclude projects that were built primarily for electric generation and not water delivery. There is no justification under SBX1-2 to further restrict the eligibility of long established POU small hydro facilities from qualifying as eligible renewable resources. CMUA recommends that the proposed changes to the definition of water supply or conveyance system not be adopted, and the existing definition found in the Overall Program Guidebook Fifth Edition be retained.

N. Retirement of RECs in WREGIS

There is continuing confusion on the process and limitations involved in: (1) retiring RECs into a compliance period account; (2) designating RECs for compliance in a specific compliance period; and (3) applying RECs to a particular compliance period. The Guidebook should include an example of how this would apply for a utility. To provide additional clarity, CMUA recommends that the CEC include an example with the Guidebook that would include completed reporting forms based on a generic utility. This example could be accompanied by a narrative description of the relevant requirements.

III. CONCLUSION

CMUA appreciates this opportunity to provide these comments to the CEC on the Draft Eligibility Guidebook. CMUA believes that it is essential that the RPS Eligibility Guidebook work in harmony with the CEC's RPS Regulations and not impose any unnecessary cost or burden on achieving the RPS goals. The Guidance should also be adopted in tandem with the RPS Enforcement rule. CMUA asks that the CEC consider CMUA's recommendations.

Sincerely;

Tony Andreoni, P.E.
Director of Regulatory Affairs

[29] *Overall Program Guidebook*, Fifth Edition at 29.