

STATE OF CALIFORNIA

ENERGY RESOURCE CONSERVATION AND DEVELOPMENT COMMISSION

In the matter of:

Developing Regulations and Guidelines for the 33
Percent Renewables Portfolio Standard

And

Implementation of Renewables Investment Plan
Legislation

Docket No. 11-RPS-01

Docket No. 02-REN-1038

California Energy Commission

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**COMMENTS OF PACIFICORP ON THE DRAFT SEVENTH EDITION OF THE
RENEWABLES PORTFOLIO STANDARD ELIGIBILITY GUIDEBOOK**

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PacifiCorp appreciates this opportunity to comment on the California Energy Commission's (Commission's) draft seventh edition of the *Renewables Portfolio Standard Eligibility Guidebook* (RPS Guidebook) released on March 11, 2013. PacifiCorp raised several concerns and comments on the RPS Guidebook at the March 14, 2013 Commission staff workshop. PacifiCorp acknowledges staff's tremendous efforts in addressing changes in law pursuant to Senate Bill No. 2 of the California Legislature's 2011 First Extraordinary Session (SB X1-2) and Assembly Bill (AB) 2196 as well as changes to streamline and clarify the RPS Guidebook. PacifiCorp believes that additional clarifications and revisions can improve the RPS Guidebook and help achieve California's renewable goals.

California has increased its overall renewable energy goals in the amendments of SB X1-2, raising procurement to 33% and expanding compliance to publicly owned utilities (POUs). Despite this, many changes in the RPS Guidebook create the potential for an artificial scarcity in

resources eligible for California RPS compliance through an increasingly onerous certification process. Some of the proposed changes do not advance the use of renewable energy in California, but rather simply create the potential for decertification or not certifying otherwise eligible resources on the basis of technicalities; examples include: (a) a requirement for a new application if “all persons listed on the application form are no longer associated with the facility described in the application,”¹ thereby potentially leading to the decertification of the facility based solely on personnel changes or sales of facilities, therefore increasing the risk and decreasing the value of those resources; and (b) requiring utilities to obtain new information from their sellers on already-certified resources as a condition to continued certification which is outside of the control of the utility, possibly significantly increasing the costs of those resources to the utilities.

I. Comments on and Proposed Modifications to the RPS Guidebook

A. Facilities Exclusively Serving Multijurisdictional Utilities

The RPS Guidebook removes language that previously allowed facilities to avoid additional certification and submission requirements if they planned to provide renewable generation exclusively to multijurisdictional utilities (MJUs), such as PacifiCorp. PacifiCorp understands that the elimination of the “MJU-only” certification was made, in part, based on other revisions that have been made to the certification requirements for facilities with a first point of interconnection to a non-California balancing authority located outside of California (though it should be noted that PacifiCorp’s California service territory is not a California balancing authority). Additionally, based on follow-up discussions with staff, PacifiCorp

¹ RPS Guidebook, p. 109. All references to the RPS Guidebook are made to the redlined version of the RPS Guidebook issued on March 11, 2013.

understands that facilities that currently are certified as “MJU-only” will retain such certification and may continue to provide RPS-eligible generation to MJUs. This distinction is important for PacifiCorp, as PacifiCorp receives generation from multiple facilities that are certified as MJU-only. As such facilities will continue to provide renewable generation to PacifiCorp, such generation should continue to qualify for the RPS program and no additional certification should be required for such facilities, provided they only provide generation to MJUs. This is consistent with the RPS Guidebook, which provides that “the certificate will identify any limits on certification (or precertification). For example, a certificate issued for a multijurisdictional facility certified pursuant to Public Utilities Code Section 399.17 will indicate that the generation of the facility is only eligible to be claimed for RPS compliance by the multijurisdictional utility identified in the application.”²

B. Utility-Certified Facilities

As raised by multiple parties at the March 14th workshop, there are numerous difficulties associated with requiring all utility-certified facilities to apply for ongoing certification by December 31, 2013. This is especially the case when read in the context of what actually happens with applications for out of state resources and new proposed provisions added to the RPS Guidebook. Applications for out of state resources generally take a year or more from application to certification, including certifications of pre-certified resources. The RPS Guidebook will deem an application expired if it is “incomplete,” even if “completing” it later allows the application date to relate back.³ Combining these factors, a utility that has submitted completed applications for an out of state resource by December 31, 2013 faces the very real

² RPS Guidebook, p. 107.

³ See RPS Guidebook, p. 106.

prospect that its application will be “returned” to it in February 2014 with a letter indicating it was not timely made.

Additionally, it may not be possible for utilities to obtain the information necessary to complete the CEC-RPS-1 form and certain facilities may have no incentive to complete and submit the application themselves. They may seek to re-price the transaction as a condition to supplying the information, thus increasing the cost of the renewable energy to the utility and its customers with no discernible benefit. Many qualifying facilities (QFs) have been utility-certified, but due to the must-buy nature of their output based on their QF status, the QF has little reason to submit an application to the Commission. Similarly, contractual provisions with many of these QF facilities may not contemplate a new requirement that a new certification application would be needed. Accordingly, the utilities may have no legal means to obtain the information necessary to complete the new CEC-RPS-1 form and QFs may not fully cooperate or provide support in a timely manner in order to submit a new application.

For these reasons, the Commission should not require that all utility-certified facilities submit a new application by the end of the year. Instead, the Commission should maintain the requirement that utility-certified facilities will need to re-apply for certification using the new application form in the event of contract expiration, voluntary extension, or material renegotiation. By retaining RPS certification for utility-certified facilities with existing contracts, the Commission will preserve the RPS-value from generation from such facilities, thereby maximizing the value provided to utility customers.

To facilitate the Commission in understanding the extent of utility-certified facilities and the timeline for when such contracts would expire and require a new certification application, workshop participants discussed providing the Commission with contract expiration dates.

PacifiCorp would also be willing to provide the Commission with the contract expiration dates for its contracts with utility-certified facilities.

C. RPS Procurement Reporting

1. Additional Clarity is Needed

According to the RPS Guidebook, “[d]etails for RPS reporting are included in Appendix A.”⁴ However, at this time, Appendix A has not yet been provided. Until Appendix A is provided, retail sellers will not know if there are any changes to requirements for uploading procurement data into the Western Renewable Energy Generation Information System (WREGIS) or for reporting data to the Commission. Furthermore, it is unclear how complex or time consuming any of the reporting requirements will be until the specific requirements are provided. Accordingly, PacifiCorp asks that the Commission issue a draft Appendix A as soon as possible and ensure that adequate time is provided to retail sellers to satisfy any new requirements and address any questions that may arise with Commission staff.

Furthermore, PacifiCorp urges the Commission to work closely with the California Public Utilities Commission (CPUC) when implementing any retirement or reporting requirements. As the CPUC will determine the portfolio content categories of any procurement undertaken by retail sellers, it is important that any retirement and reporting requirements are harmonized between the two agencies to best provide accurate information and allow for procurement to count in accordance with the applicable rules. For example, while it is contemplated that the CEC will verify procurement volumes, the CPUC will verify portfolio content category (PCC) classification for retail sellers. The verification processes of each agency should be synchronized so that retail sellers can understand what volumes and PCC

⁴ RPS Guidebook, p. 119.

classifications of procurement they have undertaken to best optimize future planning and procurement efforts.

2. Annual Reporting Must Allow for Supplements

According to the RPS Guidebook, “LSEs should not expect to supplement procurement claims for a report submitted for a previous year.”⁵ Additionally, the RPS Guidebook requires “retail sellers and POUs to report on the monthly procurement that was retired for the RPS to be counted in the previous calendar year (reporting year)...on July 1...of each year for claims to be counted for the previous year.”⁶ This requirement is directly contrary to Public Utilities Code Section 399.21(a)(6) which allows renewable energy credits (RECs) to be retired “within 36 months from the initial date of generation of the associated electricity.” This 36 month “shelf life” for RECs has also been recognized by the Commission and the CPUC.⁷

Therefore, in order to allow RECs to be retired within their statutorily allowed shelf life, the Commission cannot require RECs to be retired annually. Avoiding annual REC retirement is consistent with other provisions in the RPS Guidebook that account for the multiyear RPS compliance periods and the fact that there are no enforceable annual procurement requirements.⁸ For example, if a retail seller procures generation in January of 2011, it would not need to retire RECs from that generation until 36 months later. Additionally, many retail sellers are likely to defer REC retirement to ensure that procurement target requirements, portfolio balance requirements, and procurement classifications are met before retiring those RECs. This is particularly true based on the difficulties associated with un-retiring RECs in WREGIS. For this

⁵ RPS Guidebook, p. 121.

⁶ RPS Guidebook, p. 114.

⁷ See RPS Guidebook, p. 120; see also CPUC Decision 12-06-038, pp. 48-51 and Ordering Paragraph 23.

⁸ See RPS Guidebook, pp. 111, 113, 121.

reason, an annual report may help to show some of the generation that is retired in the prior year, but it is unlikely to reflect all of the RECs procured and intended to be applied to that year.

Accordingly, the RPS Guidebook must be revised to specify that any annual reports will show only those RECs that have been retired to date, and that the volumes reported are likely to change based on additional retirements that occur after the reporting deadline. The RPS Guidebook does not currently contemplate supplemental reports, so it must be revised to clarify how additional REC retirements will be reported to and verified by the Commission.

D. Suspended RPS-Eligibility Status

The RPS Guidebook provides:

Generation from facilities with a suspended status may not be used to meet the RPS obligations of any entity until the issues are resolved, which may require the submission of an amended application form. Once the issues are resolved the suspension will be lifted and generation from that facility, including generation occurring during the period of suspension, may be used to meet RPS obligations.⁹

The Commission should ensure that any WREGIS Certificates generated by a facility during the time that its certification is suspended will be able to qualify for the RPS program once the suspension has been lifted. At the March 14th workshop, Commission staff indicated that any WREGIS Certificates generated during the period of suspension would not include a marker indicating that the Certificate could be used for the California RPS program. Upon the suspension lifting, Commission staff would then work with WREGIS to amend those Certificates to ensure that the proper markers were included and the Certificates would qualify for California's RPS program. PacifiCorp believes that additional clarification should be included in

⁹ RPS Guidebook, p. 108.

the Guidebook to describe this process to avoid any complications upon adoption of the RPS Guidebook.

However, it is preferable to avoid this process altogether. It currently takes staff upwards of a year to certify out of state resources, even if the resource has been pre-certified; it is therefore reasonable to expect staff to take longer than a year to both “resolve” any suspension and “work with” WREGIS to restore the compliance marker on WREGIS Certificates. Under these circumstances, it is highly likely that “suspensions” will not be cured to permit the use of WREGIS Certificates until after a compliance period has passed, thereby impeding a retail seller’s ability to use the applicable WREGIS Certificates and requiring that retail seller to acquire a replacement for the “suspended” resource’s WREGIS Certificate. Accordingly, no suspensions whatsoever should take place until after notice and an opportunity to be heard by the applicant has been provided.

Likewise, “revocation” upon “the inability to provide proof of registration in WREGIS upon request” must be qualified by additional due process.¹⁰ The request cannot be made to an incorrect email address or otherwise not actually demonstrated as received by the entity to whom the request is made, such as by registered mail. A reasonable period of time should be allowed for the registrant to provide the information. There should be a description of what constitutes proof of registration in WREGIS. Finally, there should be a fair process of reinstatement without loss of interim RECs that are metered in WREGIS if the WREGIS suspension is, for example, due to technical reasons, a mistake, or a good faith dispute with WREGIS.

¹⁰ See RPS Guidebook, p. 58.

E. Application Process

PacifiCorp supports adding a definition of a “complete” application. In recent history, applications have been returned as not “complete” because one or two blanks in a multi-page application are not filled in. This onerous process could be streamlined with the adoption of a standard providing that if the applicant and resource are readily identifiable and the applicant has made a clear good faith effort at completing the application, the application will be deemed “complete.”

F. Facility Certification Should Not Be Affected by Sale of the Resource or by Personnel Changes

New proposed language provides that if “persons listed on the application form are no longer association with the facility in the application, an amended application must be submitted and the new applicant must ... indicat[e] the legitimacy of the changes. The Energy Commission will review the amended application and notify the applicant of any modifications to its certification status.”¹¹

We are challenged to understand the value of this provision, other than to provide a “gotcha” to revoke certification if an employee changes jobs. This is especially true in the case of units certified by compliance entities, as the Commission knows how to otherwise reach the compliance entity. Nothing in the application indicates the role that an individual plays in the continued viability of the project as eligible once it is certified as such. The RPS program makes resources eligible, not the individuals who work for the companies that own or operate those resources.

¹¹ RPS Guidebook, p. 109.

Additionally, this provision will inhibit the sale of renewable resources. Any sold resource must go through a “new” application process, which is now more risky than ever before due to the increased hyper-technicality of the application process. This will diminish the value of all certified renewable resources, with no identifiable benefit. The person signing the application certifies what he or she signs; he or she is not providing a continuing representation, and therefore he or she only has continuing relevance to the resource on paperwork that he or she later signs. Furthermore, a continuing representation is not required as the RPS Guidebook requires that the Commission must be notified of any changes that would impact the eligibility of the resource.¹²

G. Station Service.

PacifiCorp concurs with the text referring to Station Service in Section III.A.2.

H. Precertification

The RPS Guidebook retains Section I.C.1., “Precertification”, as the sole outstanding issue. Based on feedback from staff at the March 14th workshop, it does not appear likely at this time that the Commission will alter or eliminate the option for facilities to apply for and receive precertification as RPS eligible. However, PacifiCorp wishes to emphasize the importance of precertification and urges the Commission not to eliminate the ability of a facility to obtain precertification. Precertification is vital for the development of renewable facilities as obtaining precertification is often a prerequisite to securing project financing or a condition precedent to the utility’s purchase obligation in a long-term power purchase agreement. Additionally, there are potential timing issues that may result if precertification is eliminated. For example, without precertification, test energy generated prior to the commercial on-line date (COD) of a facility

¹² RPS Guidebook, pp. 108-109.

could be treated as ineligible. Although WREGIS currently allows for test energy to be tracked and uploaded in WREGIS, the RPS Guidebook provides that “[a]n electrical generation facility must be registered in the WREGIS system before the applicant may apply for the RPS certification of that facility.”¹³ As WREGIS requires a facility to have commenced commercial operations prior to registering in WREGIS, an application could not be submitted to the Commission until after COD, thus potentially stranding any test energy or generation uploaded after WREGIS registration approval but prior to receipt of the application to the Commission. For these reasons, PacifiCorp continues to urge the Commission to retain the precertification option for renewable facilities.

I. “RPS eligible” Versus “RPS certified”

As raised by PacifiCorp at the March 14th workshop, there is a difference between a facility that is “RPS eligible” and a facility that is “RPS certified”. As used in the California renewable energy market, a facility that is called “RPS eligible” generally means a facility that, were it to apply for certification, would meet the conditions. A facility that is called “RPS certified” is a facility that is currently certified by the Commission. Accordingly, the Commission should modify the language on page 19 of the RPS Guidebook as follows (proposed additions are underlined, proposed deletions are struck through):

A facility that is “RPS eligible” may apply to the Energy Commission to receive RPS certification. These “RPS eligible” facilities are generally “Eligible renewable energy resources”, as defined in Public Utilities Code Section 399.12(e). Facilities that are certified by the Energy Commission for the RPS are generally referred to as “RPS eligible” or “RPS certified.”

This modification will avoid confusing “RPS eligible” with “RPS certified” facilities.

¹³ RPS Guidebook, p. 58.

J. Biomethane

1. Contracts Executed Prior to March 29, 2012 Should Not be Subjected to Additional Requirements

AB 2196 authorizes biomethane to be used for RPS purposes in two cases: (1) by facilities that enter into contracts on or after March 29, 2012, and (2) by facilities that entered into contracts prior to March 29, 2012. The clear intention of the Legislature was to “grandfather” existing contracts as RPS-eligible, provided such contracts satisfied the rules in place at the time of contract execution.¹⁴ However, the RPS Guidebook imposes additional obligations on all facilities using biomethane, regardless of whether such facilities are subject to an existing contract, by requiring all biomethane facilities to submit new applications for certification as RPS eligible and imposing accounting and reporting obligations upon such facilities. This was not the intention of the Legislature when it provided for grandfathered contracts and the RPS Guidebook must be revised to reflect this grandfathered treatment.

While the statutory language added by AB 2196 only addresses existing contracts for biomethane delivered through a common carrier pipeline in the grandfathered treatment section (Section 399.12.6(a)(1)), the only other reference in the new statutory provision to either biomethane “used by an onsite generating facility” or “delivered to the generating facility through a dedicated pipeline” occurs in Public Utilities Code Section 399.12.6(b), which applies only to contracts or contract amendments executed “on or after March 29, 2012.” Accordingly, it stands to reason that the Legislature intended all contracts executed prior to March 29, 2012 to be fully eligible for the RPS program, provided the contract and facility satisfied the rules in place at the time of contract execution. The RPS Guidebook must be revised to reflect this intent

¹⁴ See Pub. Util. Code § 399.12.6(a)(1).

and to ensure that all procurement from contracts executed prior to March 29, 2012 will count towards the RPS program, without requiring the submission of supplemental information or new applications for RPS eligibility certification to the Commission.

Although the Commission appears to have interpreted the language in Public Utilities Code Sections 399.12.6(c) and 399.12.6(d) as requiring additional affirmative obligations for all biomethane facilities, this interpretation contradicts the statutory language for grandfathered biomethane contracts. Pre-March 29, 2012 biomethane contracts “shall count toward the procurement requirements established in this article, *under the rules in place at the time the contract was executed...*”¹⁵ Accordingly, the only requirement applicable to facilities subject to pre-March 29, 2012 contracts is that they must meet the rules in place at the time of contract execution and satisfy the other requirements in subsection (a)(1). Therefore, for facilities that had previously been certified as RPS eligible by the Commission, no additional reporting, accounting, or other supplemental materials should be submitted to the Commission.

Should the Commission reject this recommendation, PacifiCorp asks for clarity that all previously procured RECs from RPS certified biomethane facilities will be eligible for the RPS program. Currently, the RPS Guidebook provides:

An electrical generation facility that is RPS certified or precertified under Section 1: Existing Biomethane Procurement Contracts, will be certified on a limited basis and will receive an RPS ID number with a “F” suffix indicating that the facility will not remain RPS certified after it has used the quantities of biomethane specified in the existing biomethane procurement contract, as determined by the Energy Commission. If the facility amends the contract term, quantities of biomethane, or biomethane sources, the facility must submit an amended application to the Energy Commission within

¹⁵ Pub. Util. Code § 399.12.6(a)(1), emphasis added.

90 days of the change. A facility failing to do so will risk losing its RPS certification status.¹⁶

This seems to indicate that all RECs from a certified facility under an existing contract will be eligible for the RPS program, but PacifiCorp believes this should be clarified in the RPS Guidebook, as it is currently unclear whether RECs from such a facility would be at risk of being suspended.

2. Annual Accounting and Reporting Requirements

The RPS Guidebook currently contemplates detailed and specific accounting and reporting requirements for all biomethane facilities but does not account for the different types of biomethane facilities. Many of the proposed requirements are inapplicable to certain facilities that use biomethane onsite. For example, an onsite generating facility is unlikely to have pipeline data to address many of the elements included in the Delivery Path Summary Spreadsheet, the Fuel Use Summary Spreadsheet, or information required to be included for the annual accounting of generation attributable to biomethane. It must also be noted that at this time, the Commission has not yet provided Appendix B to the RPS Guidebook, which will include additional criteria for biomethane facilities.¹⁷ The proposed requirements currently require the submission of information relating to the point of receipt, point of delivery, pipeline meter data, pipeline contracting information, pipeline volume limitations, pipeline storage information, and other information that is inapplicable to onsite generating facilities. The RPS Guidebook's proposed accounting and reporting requirements should specifically account for the unique situation where a facility uses biomethane onsite and avoid inapplicable, unnecessary, and burdensome accounting and reporting requirements.

¹⁶ RPS Guidebook, p. 37.

¹⁷ RPS Guidebook, pp. 40 and 42.

II. Conclusion

PacifiCorp commends the Commission and Commission staff for the time and effort taken to incorporate suggestions and comments from parties in revising the RPS Guidebook. PacifiCorp appreciates the opportunity to provide these comments, and for the reasons set forth herein, urges the Commission to revise the draft RPS Guidebook in accordance with the recommendations set forth above.

Respectfully submitted,



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