

BEFORE THE CALIFORNIA ENERGY COMMISSION

**In the matter of:
Implementation of Renewables
Portfolio Standard Legislation**

and

**Implementation of Renewables
Investment Plan Legislation**

Docket No. 11-RPS-01

Docket No. 02-REN-1038

California Energy Commission

DOCKETED

11-RPS-01

TN # 70122

MAR 26 2013

**COMMENTS OF THE NORTHERN CALIFORNIA POWER AGENCY
ON THE DRAFT RENEWABLES PORTFOLIO STANDARD ELIGIBILITY
GUIDEBOOK, SEVENTH EDITION**

The Northern California Power Agency¹ (NCPA) offers the following comments to the California Energy Commission (CEC or Commission) on the March 2013 *Draft Staff Guidebook – Renewable Portfolio Standard (RPS) Eligibility, Seventh Edition* (Draft RPS Guidebook) and the March 14, 2013 Staff Workshop.

NCPA appreciates the opportunity to provide feedback on the proposed revisions to the Draft RPS Guidebook and supports Staff’s intent to streamline the latest version of the Guidebook. However, the proposed schedule for approval of the Draft RPS Guidebook raises serious concerns with regard to the impacts that it will have on Rulemaking 13-RPS-01, the *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities*. NCPA is concerned that approval of the Draft RPS Guidebook in its current form and before the Commission has completed 13-RPS-01 rulemaking process, impedes the ability of stakeholders to fully and fairly deliberate on all of the issues raised in that proceeding.

¹ NCPA members include the cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, and Ukiah, as well as the Bay Area Rapid Transit District, Port of Oakland, and the Truckee Donner Public Utility District, and Associate Member Plumas-Sierra Rural Electric Cooperative.

To the greatest extent possible, the Guidebook should provide guidance on overall program matters, but details regarding specific subsets of the program, such as the eventual adoption of the regulations for enforcement of the RPS for publicly owned utilities (POUs) and the treatment of biomethane contract, should not be included in the Guidebook until such issues are formally resolved by Commission. In the case of the RPS enforcement rules, this means at the conclusion of the formal rulemaking process.

I. COMMENTS ON PROPOSED REVISIONS

A. The RPS Guidebook Should Not Presuppose the Outcome of the Rulemaking Proceeding 13-RPS-01

The Commission should not adopt the RPS Guidebook prior to concluding the rulemaking proceeding in 13-RPS-01 regarding *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities* (Proposed RPS Enforcement Regulation). The Draft RPS Guidebook contains several references to the Proposed RPS Enforcement Regulation, and indeed, includes explanations of several provisions that are only found in the Proposed RPS Enforcement Regulation.² As such, adoption of the RPS Guidebook prior to completing the rulemaking could prejudice the rulemaking in that it presupposes the outcome of that process. The Proposed RPS Enforcement Regulation and Notice of Proposed Action (NOPA) package were issued on March 1.³ Stakeholders had an opportunity to participate in one public meeting on the documents, and formal comments on all of the documents that comprise the NOPA package may be filed up until April 16. Without the benefit of reviewing all comments received from stakeholders, it is improper to conclude or assume that all of the provisions set forth in the Proposed RPS Enforcement Regulation will be approved in the rulemaking process without revisions. Adoption of the Draft RPS Guidebook in its current form – with the references to the specific provisions of the Proposed RPS Enforcement Regulation – presupposes that those provisions will be included in the final regulation. Such an

² Provisions of the Proposed RPS Enforcement Regulation that are addressed in the RPS Draft Guidebook include such topics as historic carryover, reporting to the CEC, the treatment of retirement of RECs, and the proposed definitions for the various portfolio content categories.

³ In addition to the proposed regulation, the NOPA package included the NOPA itself, the Initial Statement of Reasons, Supporting Material for the Economic and Fiscal Impact Statement and Assessment, and the POU Cost Analysis.

assumption undermines the ongoing public process for development of the regulation and gives the impression that the outcome of the rulemaking process has already been determined.

If the Draft RPS Guidebook is adopted before the Proposed RPS Enforcement Regulation, even with the inclusion of appropriate references to the draft nature of the Proposed RPS Enforcement Regulation discussed therein, the Commission would then be faced with the time-consuming process of having to revise the Guidebook should any changes to the current draft of the Proposed RPS Enforcement Regulation be made in the rulemaking process. Both of these undesirable scenarios can be avoided by bringing the RPS Guidebook to the full Commission for approval after the Rulemaking 13-RPS-01 process has been completed and the Proposed RPS Enforcement Regulation has been adopted by the Commission.

B. The Legislature Made Local Governing Boards an Integral Part of the SBX1-2 Implementation Process

The Draft RPS Guidebook recognizes that Senate Bill (SB) X1-2 (Statutes of 2011) establishes specific roles for various agencies, including this Commission, the California Public Utilities Commission (CPUC), and the California Air Resources Board (CARB).⁴ This list, however, is incomplete without also acknowledging the fact that the local governing boards of the POUs also have important roles and responsibilities in implementing the 33% RPS. Indeed, the role of the local governing boards for POUs is directly analogous to the role of the CPUC for retail sellers. For example, Public Utilities Code⁵ 399.15(a) provides, in pertinent part, that the:

“[CPUC] shall establish a renewables portfolio standard requiring all retail sellers to procure a minimum quantity of electricity products from eligible renewable energy resources as a specified percentage of total kilowatthours [sic] sold to their retail end-use customers each compliance period.” (emphasis added)

Section 399.30(a), which addressees the RPS requirements for POUs, provides that:

“each local publicly owned electric utility shall adopt and implement a renewable energy resources procurement plan that requires the utility to procure a minimum quantity of electricity products from eligible renewable energy resources, including

⁴ RPS Guidebook, p. 1, see also footnote 7.

⁵ Unless otherwise noted, all Code sections shall be to the California Public Utilities Code.

renewable energy credits, as a specified percentage of total kilowatthours [sic] sold to the utility's retail end-use customers. . . ." (emphasis added)

Likewise, Section 399.15(b) notes that "the [CPUC] shall implement renewable portfolio standard procurement requirements only as follows . . .", while Section 399.30(b) provides that "the governing board shall implement procurement targets for a local publicly owned electric utility . . ." (emphasis added) In each instance, there is a clear correlation between the oversight and governing role of the CPUC and the local governing board. This issue is especially relevant in the context of some of the statutory interpretations that are addressed in the Draft RPS Guidebook.⁶ For example, Section I.B provides that "the CPUC has defined the product content categories for retail sellers in D.11-12-052, and the Energy Commission has done so for POUs in its regulation for POU enforcement procedures, as adopted."⁷ As explained above, the legislation expressly granted the CPUC the role of defining the retail sellers' RPS programs, including product content categories (PCC). The legislation does not make such an express delegation to this Commission vis-à-vis the POUs, but rather grants that authority to the local governing boards of the POUs.

It is important for the final Guidelines to accurately depict the various entities' roles as set forth in the legislation itself. Some references in the Draft RPS Guidebook allude to the fact that the requirements for the POUs should be the same as those provisions have been interpreted by the CPUC for application to retail sellers. That is simply not supported by the statutory language. As the Draft RPS Guidebook properly notes, Section 399.30(c)(3) provides that "the local publicly owned electric utility shall adopt procurement requirements consistent with Section 399.16."⁸ This requirement, however, does not mean that the CPUC's decisions must apply to POU matters. Rather, a clear and unambiguous reading of 399.30(c)(3) means that the *local governing board's* procurement requirements must be *consistent with the provisions set forth in the legislation*, and not with any additional interpretations or requirements that may be

⁶ This same issue arises in the context of various provisions of the Proposed RPS Enforcement Regulation, as well.

⁷ Draft RPS Guidebook, p. 5.

⁸ Draft RPS Guidebook, p. 7.

imposed on the retail sellers pursuant to the CPUC's express authority to implement the RPS requirements for retail sellers.

Because the legislation itself gives the local governing board of the POU such an integral role in the 33% RPS, and because this role plays such a crucial part in the overall implementation of the rules and responsibilities that govern the POU, it is imperative that the RPS Guidebook also recognize the role of the POU governing boards, along with the distinct responsibilities designated to this Commission, the CPUC, and the CARB.

C. Power Source Disclosure Reporting Should be Consolidated with RPS Reporting

The RPS Guidebook includes a reference to the Power Source Disclosure Program (PSDP) and the requirements of 20 CCR § 1390-1394. Since the information currently provided to the Commission and to consumers under the PSDP is not completely aligned with the information that is contained in the various RPS reports, there is the potential to create confusion amongst customers and interested stakeholders. To the greatest extent possible, the reporting of information to consumers should be streamlined and consolidated to avoid this kind of confusion. It is in the best interest of the Commission, load serving entities (LSEs), and the public to have all information regarding renewable programs and renewable procurement provided in a single report or submission. NCPA urges the Commission to work towards a single, consolidated, reporting metric and implement such a program as soon as possible. To the extent this may not seem possible as a first order, due consideration should be given to the need to reform the PSDP.

D. The Suspension on Biomethane Transactions Should be Lifted; This Does Not Have to be Linked to the Guidebook Revisions

The Draft RPS Guidebook would implement the provisions of Assembly Bill (AB) 2196 (2012) and lift the suspension of RPS eligibility for biomethane.⁹ NCPA fully supports the implementation of AB 2196 as expeditiously as possible, but does not believe that implementation of the statute, nor lifting of the suspension, need to be directly linked to the

⁹ Draft RPS Guidebook, p. 27.

updated Guidebook. Rather, the Commission should issue a Ruling that incorporates the specific provisions implementing AB 2196, and lifting the biomethane stay separate and apart from the Guidebook. This would allow the Commission to move forward with AB 2196 implementation independent of working out the other remaining issues addressed in the Draft RPS Guidebook, without either delaying the commencement of biomethane contract review or needlessly expediting the adoption of the Guidebook prior to completion of the 13-RPS-01 rulemaking process.

E. Wind Resources Should Not be Constrained in their RPS Eligibility

Section II.L properly calls out the RPS eligibility of wind resources.¹⁰ In order to ensure that the proposed definition does not constrain new or emerging technologies, NCPA recommends that the definition be revised to ensure that the provision is not interpreted to only allow for the vertical and horizontal wind turbines that are currently employed. The definition should be revised to add the words “but not limited to”, so that the section would read:

The electrical generation produced by a facility that uses a wind resource may be RPS-eligible. Facilities using wind resources can use any method of turbine, including, but not limited to, vertical and horizontal wind turbines, to capture the naturally occurring wind resource to generate electricity.

F. The Eligibility Date for POU Resources Should be Clarified to Reflect December 31, 2013 in All Instances

Previously, the Guidebook had directed that all POU facilities apply for RPS certification by no later than October 1, 2012. Section IV.B.3 of the Draft RPS Guidebook sets forth new information regarding eligibility dates associated with applications for certification or precertification for facilities. In this section there are references to the October 1, 2012 deadline, and a newly inserted section that provides that the CEC “must receive an application for RPS certification before October 1, 2012.” Referencing the October 1, 2012 deadline in the present tense causes undue confusion, as does footnote 124 that states facilities “are encouraged to apply

¹⁰ Draft RPS Guidebook, p. 56.

for certification by October 1, 2012, and must apply by December 31, 2013.”¹¹ In order to avoid confusion, all references to the previous October 1, 2012 deadline should be revised to reflect the proposed December 31, 2013 deadline instead.

G. The Guidebook Should Include Greater Certainty Regarding Application Review Times

While Section IV.B includes more detailed information regarding the RPS application process for certification of eligible facilities, there is little certainty regarding the timelines for review and approval of a requested certification. Several facilities have had applications for certification pending for some time. While no two applications will be identical, the review process and turnaround times for requests for additional information and approval/disapproval will likely not vary that greatly between similar types of resources. Project developers and entities interested in purchasing resources from the various facilities must have some certainty regarding the timelines associated with the certification processes. NCPA urges the Commission to include such certainty in the Guidebook.

H. Reporting Under the RPS Should be Consolidated and Coordinated with Other Reports and Submissions to the Commission

Since the passage of SBX1-2, both the Commission Staff and stakeholders have agreed that reporting to the agency should be as streamlined as possible. NCPA is appreciative of all of the effort that staff has put into developing reporting requirements and templates that address the very real cost implications associated with burdensome and duplicative reporting. However, as proposed (both in the Draft RPS Guideline and the Proposed RPS Enforcement Regulation), the objective of reducing or consolidating reporting obligations is not being met. The amount of information that must be submitted annually, even for multi-year compliance periods, is not insignificant. The administrative burden associated with providing these reports is multiplied when considered in conjunction with other renewable-energy related reports that must be submitted. NCPA urges the Commission to review the amount and type of information

¹¹ Draft RPS Guidebook, pp. 104-105.

requested to ensure that the program calls for the least amount of reporting possible to meet the verification requirements set forth in the enabling legislation.

I. REC Retirement Requirements Should Not Constrain the Ability of Load Serving Entities to Surrender RECs for Compliance with the RPS

LSEs spend – and will continue to spend – a large portion of their energy procurement budgets on renewable energy resources that qualify for the various PCCs needed to meet the RPS mandates. These costs will necessarily be borne by California’s retail customers – both residential and business. In order to ensure that the costs of renewable resource procurement are not stranded or diminished, the Commission should not apply a constrained interpretation of the rules of REC retirement and surrender for compliance purposes.

The Draft RPS Regulation notes that a REC generated in 2012 and procured by a compliance entity in 2014 may only be used for the compliance period beginning in 2014.¹² This restriction would needlessly constrain the ability of LSEs to acquire RECs that may be needed to meet their compliance obligations. This requirement also reduces the value of RECs and would penalize entities that were long at the end of one compliance period, as well as those that were short yet still able to utilize RECs to meet their balancing requirements. If the REC was not generated until after the beginning of the compliance period, then the restriction makes sense. However, since the REC was generated within the compliance period for which it is being retired, there is no sound policy or statutory reason to place such a restriction on its use to meet a compliance obligation.

J. The Draft RPS Guidebook Improperly Encourages Over-procurement

Some load serving entities may plan to exceed the annual RPS target as part of their overall generation procurement strategies. These plans, however, are limited by the considerable costs associated with procuring renewable resources and prudent utility practices that discourage over-procurement of unnecessary resources. Accordingly, while the Commission clearly wants all LSEs to meet their compliance obligation, it is inappropriate for the Guidebook to

¹² Draft RPS Guidebook, pp. 120-121.

“encourage” retiring more RECs than would be necessary to meet the compliance obligation, even though this would be done “to cover unexpected situations or to qualify as excess procurement.”¹³

One reason such a reference is improper is because unexpected or unplanned instances that may preclude an LSE from meeting its RPS obligation are the very reasons that the Legislature authorized the use of the alternate compliance options addressed in Sections 399.30(d), 399.13, 399.15(b), and 399.15(c). Furthermore, depending on the LSE’s specific situation, not all over-procurement may qualify as excess procurement which the LSE can credit to future compliance periods. Accordingly, while the intent is laudable, this specific direction is improperly included in the Guidebook.

K. Definitions Should be Reconciled Between the Guidebook and the Proposed RPS Enforcement Regulation

In order to avoid confusion, terms that are defined in both the Guidebook and the Proposed RPS Enforcement Regulation should have the same definitions. The definition, for example, of a California Balancing Authority found on page 150 of the Draft RPS Guidebook is not the same as the definition set forth in Section 3201(f) of the Proposed RPS Enforcement Regulation.

L. The Provisions Regarding POU REC Sales to Retail Sellers Should be Reviewed and Revised

New section VII implements the provisions of Sections 399.25(d) and 399.31.¹⁴ While the Draft RPS Guidebook sets forth the requirements for a retail seller’s purchase of RECs from a POU and reiterates the requirements set forth in the statute, it does not provide any information on how the Commission proposes to make the determination specified therein. The Guidebook should provide some indication of what criteria will be applied to make this determination.

Under the provisions of the Proposed RPS Enforcement Regulation, POUs are being required to submit a substantial amount of information to the CEC each year. However, aside

¹³ Draft RPS Guidebook, p. 121.

¹⁴ Draft RPS Guidebook, p. 142.

from compliance period submissions, the annual filings are primarily intended to be informational in nature. If the Commission is going to use the information submitted in those filings to make a determination regarding the POU's ability to meet its "target," the POU needs to know exactly what information will be used. In the alternative, if the Commission proposes reviewing different information to make this determination, the Guidebook needs to indicate what information will be required and/or reviewed, and how that information will be evaluated. This determination should also be subject to defined timelines, in order to provide both the POU and retail seller with the certainty needed to complete the market transactions.

M. Broader Use of Energy Storage for RPS Compliance Should be Encouraged

The Draft RPS Guidebook properly recognizes the importance of energy storage as part of a comprehensive RPS program by noting that "energy storage technologies can be used to store energy from a renewable energy resource to produce electricity at a later time," and therefore may be eligible to generate renewable energy credits (RECs).¹⁵ NCPA appreciates Staff's desire to further address issues associated with energy storage, and encourages staff to look beyond the limited scope of RPS eligibility currently contemplated in the Draft RSP Regulation,¹⁶ and rather incorporate the broadest possible use of energy storage to support and maximize the benefits of renewable energy resources.

III. CONCLUSION

NCPA remains concerned that approval of the Draft RPS Guidebook as proposed, and before the Commission has completed the 13-RPS-01 rulemaking process, interferes with the rulemaking process and inhibits the ability of stakeholders to fully and fairly deliberate on all of the issues raised in that proceeding. The Commission should revise the RPS Eligibility Guidebook as addressed herein, and approve the document after the adoption of the Proposed RPS Enforcement Regulation. NCPA appreciates the opportunity to provide these comments to the Commission regarding the proposed revisions to the Draft RPS Guidebook, and welcomes

¹⁵ Draft RPS Guidebook, p. 89.

¹⁶ NCPA supports the more comprehensive comments of the City of Redding – a member of NCPA – on the specific issue of expanded recognition of energy storage for RPS purposes.

the opportunity to discuss any of the issued addressed herein directly with the CEC. Please do not hesitate to contact the undersigned or Scott Tomashefsky at 916-781-4291 or scott.tomashefsky@ncpa.com with any questions.

Dated this 25th day of March, 2013.

Respectfully submitted,

A handwritten signature in blue ink that reads "C. Susie Berlin". The signature is written in a cursive, flowing style.

C. Susie Berlin, Esq.
McCARTHY & BERLIN, LLP

100 W. San Fernando Street, Suite 501
San Jose, CA 95113
Phone: 408-288-2080
Fax: 408-288-2085
E-mail: sberlin@mccarthylaw.com

Attorneys for the:
**NORTHERN CALIFORNIA POWER
AGENCY**