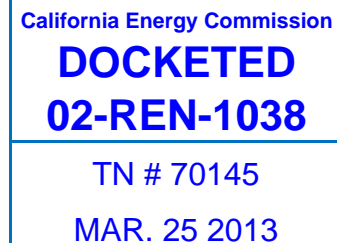


March 25, 2013

California Energy Commission
Dockets Office, MS-4
Re: Docket Nos. 11-RPS-01; 02-REN-1038
RPS Proceeding
1516 Ninth Street
Sacramento, CA 95814-5512



RE: Proposed Changes to the Renewable Portfolio Standard (RPS) Eligibility Guidebook

The Independent Energy Producers Association (IEP) appreciates the opportunity to comment on the Proposed Revisions to the Renewable Portfolio Standard Eligibility Guidebook (Seventh Edition, Staff Draft Guidebook). The proposed revisions were discussed at the CEC workshop March 14, 2013. IEP's comments are presented below.

[NOTE: Page citations provided below refer to the version of the Staff Draft Guidebook in which the "strikeout" is set-off in the right margin.]

1. **RPS Tracking Systems, Reporting, and Verification.**

As a general rule, the Staff Draft Guidebook requires all eligible renewable generators to adhere to the same tracking, reporting, and verification obligations if their power is contributing to a retail seller's RPS obligation. This proposal raises significant concerns. This provision would attempt to impose a new reporting obligation on a significant set of electric generators not currently reporting, tracking, verifying their sales agreements with the utilities (e.g. Qualified Facilities or QF) that have no contractual or legal obligation to report, track, and verify their power output above and beyond that required as a QF.

As an example of forcing a new obligation on generators that currently have no such obligation, *Section III: Facility Requirements* states "The requirements of Section III.A: Generation Tracking and Accounting apply to *all* facilities regardless of facility operations." (p. 42, emphasis added) This provision is proposed in spite of the fact that elsewhere in the Staff Draft Guidebook some generators are recognized as not positioned (nor required) to meet such obligations. For example, *Section V: RPS Tracking Systems, Reporting, and Verification*, regarding "Facilities with Special RPS Restriction" states "By RPS law, no RECs shall be created for electricity generated pursuant to any electricity purchase contract with a retail seller executed before January 1, 2005, unless the contract contains explicit terms and conditions specifying the ownership or disposition of those RECS. The law requires procurement under those contracts be tracked through WREGIS and counted toward the purchasing retail seller's RPS procurement requirement." (p. 93).

Thus, on the one hand, the Staff Draft Guidebook seems to impose tracking, reporting, and verification obligations on *all* generators in an equivalent manner, while recognizing that not

all the electric generators whose output is counted against a retail sellers RPS obligation are similarly situated. For example, QFs sell only energy and capacity to the investor-owned utilities. While the state has chosen to count QF output against the retail sellers RPS obligation, retail sellers who purchase QF output and count that output against their RPS obligation are required to report this energy to the CEC for their own compliance as retail sellers. At best, the Staff Draft Guidebook proposed provisions create a significant amount of confusion as to the reporting obligation. At worse, the Staff Draft Guidebook's proposed revisions would inappropriately and unjustly seek to impose a new reporting obligation on entities not selling environmental attributes in the market.

To remedy this problem, IEP recommends inserting separately at the beginning of *Section III: Facility Requirements* a provision clarifying that electric generators operating under contracts not conveying environmental attributes, yet whose generation is being counted for purposes of meeting a retail sellers RPS obligation, are excluded from the reporting obligations detailed in Section III (and elsewhere as appropriate). As is current practice, the reporting requirements for these facilities should be handled by the retail seller with the compliance, reporting, and verification obligations.

[NOTE: This same issue arises in the context of *Section IV. Certification*. The Staff Draft Guidebook states "Electricity generation from an electrical corporation facility cannot be counted toward meeting a retail seller or POU's RPS procurement requirement unless the facility is first certified by the Energy Commission as eligible for the RPS." (See p. 67). Accordingly, IEP recommends a similar solution for *Section IV. Certification* as proposed for Section III: Facility Requirements.]

2. Station Service.

The Staff Draft Guidebook states that "Electricity used by an electrical generation facility for station service is not eligible for the RPS and should not result in the creation of renewable energy credits (RECs) that are used for RPS compliance." [See *Section III: Facility Requirements*, at (A) (2), at p. 43] IEP agrees with this policy. On the other hand, the Staff Draft Guidebook goes on to state that "Station service is defined in the Glossary of Terms in this guidebook." In the Glossary of Terms, Station Service is defined as "the electric supply for the ancillary equipment used to operate a generating station or substation."

The Staff Draft Guidebook also states that the proposal regarding Station Service "is consistent with the WREGIS Operating Rules, which do not provide for the creation of RECs for station service." The WREGIS Operating Rules state the following regarding station service:

9.6 On-Site Load, Station Service and Off-Grid Generation

As long as the Qualified Reporting Entity meets the requirements related to metering, communication and verification of dynamic data, WREGIS Certificates may be created for any renewable energy production *serving a load that would have been served by the grid if not for the generator (on-site load)*. [emphasis added]

In order for on-site load to contribute to Certificates, the Generating Unit must have sufficient metering in place to measure, either directly or through a process of netting, the on-site load. If a netting process is used, it must be designed to exclude Station Service. WREGIS Certificates will not be created for generation supplying Station Service. If on-

site load is metered directly, the Generating Unit must have two separate meters, one to meter the on-site load and one to meter generation that is supplied to the grid and each meter must be registered separately with WREGIS. If on-site load is measured through a netting process both the meter measuring generation supplied to the grid and one of the other meters involved in the netting process must be registered separately with WREGIS. The method of metering to be used as well as the netting process, if applicable, must be reviewed and approved by WREGIS staff prior to the on-site load being registered and reported in WREGIS.

On-site load must be adjusted for transformation losses to the high side of the transformer.

Off-grid generation is not eligible for creation of WREGIS Certificates at this time.

First, IEP recommends that the Commission not defer nor delegate to WREGIS the role of defining station service. WREGIS is an entity established to facilitate the reporting, tracking and verification of power so that individual states (et al) could have high levels of assurance that the power counted against their own RPS obligations was eligible power based on the states' definition(s) of need. At its origination, WREGIS was not envisioned as a policy setting body and, importantly, WREGIS is not a regulatory body in the formal sense. Accordingly, the CEC must be careful to not cede its regulatory function to a non-governmental entity such as WREGIS by adopting or deferring to the WREGIS protocol regarding station service as a matter of rulemaking.

Second, while the Staff Draft Guidebook defines station service as "the electric supply for the ancillary equipment used to operate a generating station or substation," IEP remains concerned that this definition is not consistent with the FERC definition of station service. FERC has defined "station power service" to be the following:

"electrical energy used for the heating, lighting, air-conditioning, and office equipment needs of the building on a generating facility's site, and for operating the electric equipment that is on the generating facility's site."¹

In addition, FERC has occasionally described what station power/ is (or, alternatively, is not) in the following manner:

"Further, we find that neither pumping energy nor compression energy falls within our definition of station power, as articulated in the recent PJM II order. In that order, we defined station power as "the electric energy used for the heating, lighting, air conditioning, and office equipment needs of the buildings on a generating facility's site, and for operating the electric equipment that is on the generating facility's site."²

¹ PJM Interconnection, LLC, 94 FERC 61,251 (2001)

² Norton Energy Storage, LLC, 95 FERC 61,476 (2001)(June Order, p. 9)

“In the April Order, the Commission recertified Ormesa’s facility as a 15.22 MW net capacity small power production facility. The Commission found that, consistent with the decision in *Geo East Mesa Limited Partnership*, the power for the extraction and transportation of geothermal brine is not a necessary and integral part of the production process and, therefore, not auxiliary load.”³

“However, as we explain later in this order, we find that the provision of station power is distinguishable from restoration or blackstart service, as discussed in Order No. 888 and subsequent cases. Therefore, we expressly exclude from the definition of "station power" the provision of any energy associated with restoration or blackstart service, as we have defined that service in Order No. 888 and subsequent cases.”⁴

IEP recommends that the CEC adopt the FERC definition of Station Service (and, then work to ensure that WREGIS does the same). Using the FERC definition will ensure regulatory consistency between the state and federal definitions of station power. Furthermore, applying the FERC Definition of Station Power will help ensure consistent treatment across all technologies in the creation of RECs, REC accounting, and REC verification. To do otherwise would be harmful to the overall RPS program statewide and regionally, and the harmful effects would outweigh the purported benefits (if any) of expanding the definition of station power so as to eliminate a portion of RECs that might otherwise be available.

Fortunately, in the development of its Staff Draft Guidebook, the CEC anticipated the contingency in which the CEC protocol differs from the WREGIS protocol. Specifically, the Staff Draft Guidebook includes a section related to the reconciliation of reporting when using WREGIS. *Section V. RPS Tracking Systems, Reporting, and Verification*, (B) (4) contemplates such reconciliation:

“To reconcile differences that occur in WREGIS and verified data, additional documentation may need to be provided by the reporting entities, RPS-certified facilities, WREGIS staff, and/or others involved to substantiate the reason(s) why WREGIS Certificate amounts may ultimately differ from the amounts reported in the RPS Verification Report. The process for reconciling differences with the WREGIS data and what is ultimately verified as allowable for the RPS is explained below in Section V.C.5: Accounting for WREGIS Prior Period Adjustments.” (p. 89)

The CEC should employ the reconciliation process already contemplated to address discrepancies between the CEC and WREGIS to the extent discrepancies arise related to station service and REC creation.

3. Incremental Generation.

The Staff Draft Guidebook states that “The Energy Commission may certify incremental generation from the expansion or repowering of a facility or as a result of efficiency improvements at hydroelectric facilities.” In addition, “Only the incremental portion of the

³ Ormesa LLC, 108FERC 61,200 [Docket No. QF86-681-006], Order Denying Rehearing (September 2004)

⁴ PJM Interconnection LLC, 94FERC61,251 [Docket No. ER00-3513-000], Order on Petition (March 2001)

facility output will be considered RPS eligible. The incremental portion of the facility output will be determined either by direct measurement of the facility expansion or by comparison of the facility output to the historical baseline of the facility.” (*Section III: Facility Requirements, E. Incremental Generation*, at p. 62).

IEP recommends adding language to clarify that the incremental portion will only count to the extent that the incremental portion falls within the definition of an eligible renewable resource. Clarification is particularly important for hydro resources because the eligibility of this resource is subject to size limitations, i.e. less than 30 MWs if associated with a traditional hydro-electric facility and less than 40 MWs total if a component of conduit hydroelectric and/or a water supply conveyance. Absent the clarification, the Staff Draft Guidebook may be construed as allowing an unlimited amount of incremental hydro generation which clearly was not contemplated in the legislation.

4. Energy Storage.

IEP generally is supportive of the proposed approach regarding energy storage. As noted in the Staff Draft Guidebook, many forms of storage exist, yet only some storage facilities are directly tied to the energy production from an eligible renewable generating facility(s). In order to protect against double-counting, the RPS is designed to identify, measure, and assign a REC to the individual eligible renewable generator producing the actual energy (MWh). Hence, ownership of the REC attaches to the generator at the point of origin and not to an intermediary (e.g. brokers, storage facilities, etc.) unless the generator transfers the REC to such entity. This same model should apply in the context of storage or else the accounting will get problematic and the potential risk of double-counting will increase.

In *Section III: Facility Requirements, G-Energy Storage*, the Staff Draft Guidebook states “However, energy storage technologies can be used to store energy from a renewable energy resource to produce electricity at a later time. *In such cases, the resulting electricity may be eligible to produce RECs.*” (p., 65, emphasis added.) This is problematic at best and incorrect at worse. As noted by the Federal Energy Regulatory Commission (FERC):

“We emphasize that a pumped storage project is *not a source of new energy*. Pumped storage is an energy *storage* device which takes unused off-peak energy, and stores it for peak energy use.”⁵

Since the storage facility by definition is storing energy already produced, it is not creating any new energy. Rather, the storage facility is simply shifting the time of use of the energy stored. The critical issue is whether the storage facility is actually storing energy produced from an eligible renewable energy resource.

If the storage facility is taking power directly from an eligible renewable facility (either behind the meter or beyond the meter), it still remains true that the eligible renewable generation resource creates the power, creates the REC, and retains the REC as the initial point of

⁵ Power Authority of the State of New York, Opinion No. 192, 25 FERC ¶ 61,084 at 61,264-65, order on reh'g, Opinion No. 192-A, 25 FERC ¶ 61,380 (1983), clarified, Opinion No. 192-B, 26 FERC ¶ 61,314 (1984) (“PASNY”) (emphasis in original).

ownership. If the generation facility chooses to sell, transfer, or exchange the REC to a storage entity, then mechanisms such as WREGIS can facilitate the accounting and automatic transfer of the REC from one account holder to the next. However, it is wrong to imply that the storage entity is “producing” the REC.

Similarly, if the storage facility is asserting that it is storing energy generated by an eligible renewable resource, then mechanisms should be in place to enable the storage facility to “specify” the source of the eligible renewable resource. On the other hand, if the storage facility cannot specify (and subsequently verify) that the power being stored is from a specified eligible renewable resource, then the CEC must presume that the power being stored is unspecified, bulk system power. This approach helps maintain the integrity of the REC-based accounting system, and helps prevent the risk of double-counting for purposes of RPS compliance.

IEP is particularly concerned about comments from some stakeholders at the staff workshop (March 14, 2013) alluding to “virtual net metering” and other techniques seemingly to disassociate the metering/counting requirements from the generation in order to accommodate the expansion of storage. California’s RPS is established on the principle of accurate metering and transparency as an invaluable necessity to ensure public confidence in the RPS program. Diminishing this critical relationship by moving away from direct metering, and the precision associated thereto, will serve to undermine public confidence and support for the program. We urge the CEC to be vigilant in metering, tracking/counting, and verification of RECs, and ensure that program integrity, performance, and transparency is not undermined by weakening the metering, accounting, and verification protocols.

5. Biomethane Treatment.

The Staff Draft Guidebook defines Biomethane as “Landfill gas or digester gas.” (See Glossary, p. 119). At *Section II: Energy Resource Eligibility Requirements* regarding “Annual Accounting and Reporting Requirements,” the Staff Draft Guidebook states:

“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.” (See subsection 4, p. 23, emphasis added)

“To ensure the use of biomethane by RPS-certified electrical generation facilities meet the requirements set forth in this guidebook, applicants for all RPS-certified electrical generation facilities using biomethane must report certain information to the Energy Commission annually.” (See subsection 6, p. 25).

As noted in IEP’s comments above, a number of existing, primarily PURPA-based electric generators use landfill gas or digester gas. They will continue to operate under these contracts as prescribed. Notably, these resources typically have no obligation to certify their status other than that they are QFs. Traditionally, these units have been treated as utility-certified facilities. Additional language should be inserted in this section clarifying that these units are not subject to the certification requirements, conditions, etc., prescribed in this section.

In addition, an effort to ease the administrative burden of reporting, we suggest exempting from the certification requirement existing biomethane facilities with dedicated pipelines, either on-site or directly from the landfill to an off-site facility. In these relatively few cases, in which no change to the plant operations have occurred and there is no intention/expectation of using common carrier pipeline systems to transfer the landfill gas and/or biogas, imposing a mandatory requirement to re-certify seems unnecessary and burdensome.

6. CEC Should Apply IRS “Private Letter Ruling” Model To Provide Guidance re RPS Commercial Transactions and Procurement Content Categories

The Staff Draft Guidebook recognizes the role and commercial value of pre-certification of RPS eligible renewable facilities (e.g. p. 23, p. 31, p. 42, p. 67). Pre-certification of facilities provides a signal from the regulator that a particular facility will be deemed an eligible renewable energy facility if it is developed and operated as proposed consistent with the eligibility rules and standards. In this respect, pre-certification of the facility provides very valuable guidance to developers and lenders.

This same approach should be employed for the commercial transactions between Buyers and Sellers to meet the Procurement Content Categories (i.e. the “Buckets”). A model for this type of approach is employed by the Internal Revenue Service (“IRS”). Upon request, the IRS will render a Private Letter Ruling related to a specific taxable event. In the context of the RPS, the CEC can and should provide up-front guidance, upon request, as to the likely treatment of specific commercial transactions *if consummated exactly* in the matter presented to the CEC for pre-review. Similar to the pre-certification available for generation facilities, this “pre-review” could be accomplished without formally certifying in advance the transaction.

IEP recommends that the CEC consider instituting on a trial basis a procedure similar to the IRS’s Private Letter Ruling. Following timely review, CEC staff would indicate to the applicant how it would characterize the proposed commercial transaction (i.e. Bucket #1, Bucket #2, or Bucket #3), if the transaction were consummated exactly as presented in the Pre-review Request Form. This approach would greatly assist Buyers and Sellers as California moves forward to meet the 33% RPS mandate.

IEP thanks the CEC for the opportunity to comment on the Draft Renewable Portfolio Standard Eligibility Guidebook, Seventh Edition.

Respectfully submitted,



Steven Kelly
Policy Director