

April 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 Final Guidebook, i.e. the “Staff Proposal”). Previously, in response to the Staff Draft Guidebook, IEP provided comments related to RPS Tracking, Reporting, and Verification; Station Service; Incremental Generation; Energy Storage; Biomethane Treatment; and, we proposed a model for the CEC to apply to provide guidance to RPS Buyers and/or Sellers re Commercial Transactions and Procurement Content Categories, i.e. a model based on the IRS “private letter ruling” mechanism. To the extent appropriate, we include those comments here by reference.

For purposes of these comments, IEP addresses the important issue of station service and its proposed treatment under the Staff Proposal. Essentially, the Staff Proposal states the following:

1. “With the adoption of the Seventh Edition of the RPS Guidebook, the Energy Division clarifies that the electricity used to meet an electric generation facility’s station service load is not eligible for the RPS. At this time, the WREGIS definition of station service remains in effect: the Energy Commission plans to consider the definition of station service with the adoption of a future RPS Eligibility Guidebook.” (p. 5).
2. “Station service, also called parasitic load, generally refers to the electricity consumed by an electrical generation facility for facility operations. 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.” (p. 58)

To be clear, IEP can agree 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) *with* the proviso that the definition of station service be consistent with the FERC Definition. The FERC Definition, guided by multiple decisions regarding what constitutes station service, provides the most practical and appropriate definition for use in the context of implementing the California RPS. Accordingly, deference to the FERC Definition (rather than the WREGIS Definition as proposed by the staff) provides a valuable and necessary

measure of regulatory certainty and stability to owner/operators of existing renewable facilities as well as developers of new eligible renewable resources.

1. Deference to FERC Definition of Station Service Promotes Regulatory Certainty/Consistency

As IEP noted in its prior comments, the FERC and appellate court rulings have established a public record and a measure of regulatory consistency that helps guide renewable operations and development. Applying the FERC definition helps ensure a measure of regulatory consistency between the state and federal arenas. It will help ensure consistent treatment across all eligible renewable technologies in the context of REC creation, accounting, and verification.

The FERC Definition provides a clear, acceptable standard that facilitates the investment in and development of eligible renewable resources. Specifically, FERC defines station power to be 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.”¹ While the FERC Definition applies primarily in the context of distinguishing between wholesale and resale transactions, the common definition used throughout the country also helps in the context of developing resources as it provides certainty and consistency as to the treatment of the power generated from the resource irrespective of its geographical location.

2. The Commission Should Not Defer to WREGIS on Policy Setting Matters

WREGIS should not be a policy-setting body with regards to the creation and/or counting of RECs. At its inception, WREGIS was designed to be an accounting/tracking entity available to support the states within the WECC (and potentially beyond) with essentially administrative functions related to tracking and verification. In this regard, stakeholders generally recognized that the value of WREGIS lay in creating an instrument (i.e. a WREGIS Certificate) that would contain sufficient information to enable each and every state to rely on the information contained within the WREGIS Certificate to determine whether a MWh of production from a generating facility could/would count against that state’s own renewable energy compliance obligation.

What was not contemplated was that WREGIS would establish itself as the policy-setting body operating in the stead of the individual states. IEP believes that WREGIS acted in this manner when it developed and applied a definition/standard for station service that differs from the FERC Definition commonly applied throughout the country. By prohibiting the creation of a WREGIS Certificate in certain circumstances, e.g. by expanding the definition of station service and then essentially netting station service power against metered output, WREGIS acted in a manner that precludes a state from making its own determination as to the eligibility of that power for purposes of its own renewable energy compliance obligation.

On the other hand, IEP recognizes that to the extent that certain types of energy production, e.g. in the context of “mixed fuel use,” are determined by an individual state to not comply with its own renewable energy obligation, then that state retains the rights to not count those MWhs/WREGIS Certificates. However, WREGIS should not be empowered with the

¹ PJM Interconnection, LLC, 94 FERC 61,251 (2001), at p. 21

authority to not create the certificate in the first place because doing so empowers WREGIS to act in the stead of the state as the policy-making body.

The precedent created by (a) moving away from the FERC Definition of station power; and (b) deferring to WREGIS as the policy making body regarding what types of power create a certificate in the first instance is troubling. As noted elsewhere, WREGIS ought not to step into the role of the state regulatory bodies assigned to address eligibility, verification, and counting. Rather, WREGIS's role is to support those efforts and responsibilities.

Enabling WREGIS to serve this role raises a number of concerns. First, WREGIS is not subject to common rules of transparency, ordered decision-making, that govern state regulatory agencies. Equally important, deference to the WREGIS definition of station power raises the specter of arbitrary, yet unequal treatment across renewable technologies based on their operational configuration(s) and fuel demands. Finally, deference to WREGIS definition of station service raises concerns regarding the potential for arbitrary and capricious treatment of existing Qualifying Facilities (QF) once their existing standard offer QF contracts are terminated. Existing QF contracts, unless otherwise amended, do not convey environmental attributes, and as a result they are not required to participate in WREGIS; yet, their production is counted in full against a utilities RPS obligation in California. Once these existing contracts terminate, assuming application of the current WREGIS definition of station power, then these resources may see a significant decline in their ability to produce WREGIS certificates due to their operational configuration rather than any change in their operational behavior.

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

Respectfully submitted,

A handwritten signature in black ink that reads "Steven Kelly". The signature is written in a cursive style with a large, sweeping flourish at the end of the name.

Steven Kelly
Policy Director