

**BEFORE THE
ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
OF THE
STATE OF CALIFORNIA**

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 DOCKETED 11-RPS-01
TN # 70468 APR. 25 2013

**COMMENTS OF THE SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY ON
PROPOSED REVISIONS TO THE RENEWABLES PORTFOLIO STANDARD
ELIGIBILITY GUIDEBOOK, SEVENTH EDITION**

April 25, 2013

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Pursuant to the procedures established by the California Energy Commission (CEC, or Energy Commission) in the Notice of Business Meeting to Consider Adoption of Revisions to the Renewables Portfolio Standard Eligibility Guidebook (Eligibility Guidebook) and the Overall Program Guidebook (Overall Guidebook) for the Renewable Energy Program (Notice), the Southern California Public Power Authority (SCPPA) respectfully submits the following comments on the Commission staff's final draft of proposed changes to the Renewables Portfolio Standard (RPS) Eligibility Guidebook, 7th Edition.

I. INTRODUCTION

SCPPA is a joint powers authority consisting of eleven municipal utilities and one irrigation district. SCPPA members deliver electricity to approximately 2 million customers over an area of 7,000 square miles, with a total population of 4.8 million. SCPPAs members include the municipal utilities of the cities of Anaheim, Azusa,

Banning, Burbank, Cerritos, Colton, Glendale, Los Angeles, Pasadena, Riverside and Vernon, and the Imperial Irrigation District.

SCPPA was formed in 1980 to finance the acquisition of generation and transmission resources for its members. Over the past several years, SCPPA has increasingly become a primary means by which its members procure renewable energy resources. As such, it is important for SCPPA to ensure that its members' historical procurement decisions, and the value of such, are preserved, and that new renewable energy resources are both eligible for the RPS and fall into clear and well-defined Portfolio Content Categories (PCCs).

II. COMMENTS

Given the limited amount of time allotted for preparing these comments, SCPPA will focus on the following issues of major interest or concern to its members, and reserves the right to express its views on other matters (e.g. energy storage systems and grandfathering) when the occasion arises.

a. Changes Pertaining to Biomethane Should Have Priority

SCPPA understands that the CEC is engaged in an expedited process to approve this Guidebook, which "implements AB 2196 and concurrently lifts its March 28, 2012, suspension of eligibility for biomethane."¹ While SCPPA agrees that an expedited review is appropriate insofar as it will enable the CEC to end the suspension on biomethane sooner rather than later, it is concerned that expediting approval of the entire Guidebook, if done in haste, will jeopardize the success of this effort.

¹ Staff Final Renewables Portfolio Standard Eligibility Guidebook, Seventh Edition. California Energy Commission, Efficiency and Renewable Energy Division. Publication Number: CEC-300-2013-005-ED7-SF, Page 24.

SCPPA respectfully requests that the CEC delay adoption of this iteration of the Guidebook as it addresses far more than just the implementation of Assembly Bill (AB) 2196. The current draft of the Guidebook is inconsistent, has not been properly vetted by industry, and retroactively applies regulations to POUs. Further, this Guidebook erroneously assumes that the POU regulations have already been adopted.

As previously requested,² SCPPA suggests that the CEC divide its consideration of the proposed Guidebook changes into two phases. The first phase would address the biomethane changes made to implement AB 2196 on an expedited basis, while the second phase will allow the CEC to address inconsistencies between the Guidebook and the POU Regulations and time to address other outstanding issues once stakeholders are given an adequate time to comment. This request is not unusual: it is essentially what the CEC did with the 5th and 6th editions of the Guidebooks, where biomethane was not considered but other outstanding topics were addressed.

b. Overlap Between the Proposed Guidebook and POU Regulations should be Avoided

SCPPA has previously commented³ that there may be overlap between the RPS Eligibility Guidebook and the proposed RPS Enforcement Procedures for POUs (Regulations). As currently proposed, the Regulations solely deal with the

²Comments of the Southern California Public Power Authority on the California Energy Commission' Staff Workshop on Proposed Changes to the Renewables Portfolio Standard Eligibility Guidebook, 7th Edition. Southern California Public Power Authority. March 25, 2013. Available At: http://www.energy.ca.gov/portfolio/documents/2013-03-14_workshop/comments/SCPPAs_Comments_on_Staffs_Workshop_on_Proposed_Changes_to_the_RPS_Eligibility_Guidebook_Seventh_Edition_2013-03-25_TN-70139.pdf

³Comments of the Southern California Public Power Authority on the California Energy Commission' Staff Workshop on Proposed Changes to the Renewables Portfolio Standard Eligibility Guidebook, 7th Edition. Southern California Public Power Authority. March 25, 2013. Available At: http://www.energy.ca.gov/portfolio/documents/2013-03-14_workshop/comments/SCPPAs_Comments_on_Staffs_Workshop_on_Proposed_Changes_to_the_RPS_Eligibility_Guidebook_Seventh_Edition_2013-03-25_TN-70139.pdf

implementation of the Public Utilities Code Section 399.30 (l) and are only applicable to the POUs. The Guidebook should exclusively address renewable energy resource certification and the administration of Renewable Energy Credits (RECs). At the March 14, 2013 workshop, the CEC stated that any references to the Regulations and California Public Utilities Commission (CPUC) decisions in the Guidebook are provided as background information only. These references, however, create confusion as to what the applicable rules are for POUs and Investor-Owned Utilities (IOUs).

As such, any section in the Guidebook that expands on or reiterates code sections that should be addressed in the POU Regulations or CPUC decisions should be removed. This would not only resolve the potential overlap or inconsistencies, but will also simplify the process for managing updates for each document if future changes through RPS legislation are enacted.

c. Consistent Definitions Between the Guidebook and Regulations

SCPPA is concerned that the CEC is not utilizing consistent definitions for both the proposed RPS Regulations and the Guidebooks. One example of inconsistency is the definition provided for the term “procure.” The proposed RPS Regulations states:

“Procure” means to acquire electricity products from eligible renewable energy resources, either directly from the eligible renewable energy resource or from a third party, through executed contracts or ownership agreements.⁴

However, the Guidebook defines the term as:

Procure – as defined in Public Utilities Code Section 399.12, Subdivision (f), means to acquire through ownership or contract.⁵

⁴ Gonzalez, Lorraine and Angela Gould. 2013. *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities*. California Energy Commission, Energy Efficiency and Renewable Energy Division. CEC-300-2013-002-SD. Page 3, Section 3201 (t)

⁵ Staff Final Renewables Portfolio Standard Eligibility Guidebook, Seventh Edition. California Energy Commission, Efficiency and Renewable Energy Division. Publication Number: CEC-300-2013-005-ED7-SF, Page 158

SCPPA recommends that the CEC ensure that definitions provided in the Guidebook are consistent with definitions provided in the proposed RPS Regulations, and vice versa. Further, unless absolutely necessary, SCPPA recommends that the CEC adhere to the definitions already provided in statute.

d. Duplicate Definitions

SCPPA recommends that the CEC delete duplicate definitions from the Guidebook. The term “Retire” appears twice on Page 162.

e. Provisions Relative to Applications for Previously-Certified Facilities Using Biomethane are Inconsistent.

SCPPA appreciates the CEC’s addition of the form CEC-RPS-2196 and the following language:

If the facility is already RPS certified, the PPA or ownership agreement and biomethane procurement contract(s) must be submitted with the submission of the existing biomethane supplemental information form, the CEC-RPs⁶-2196, within 90 days of the adoption of this seventh edition of the RPS Eligibility Guidebook for the facility to retain its RPS status.⁷

However, there is inconsistency in the current draft of the Eligibility Guidebook. Page 33 states that utilities are to:

“[s]ubmit a new application for certification or precertification, regardless of whether the facility is already certified, pre-certified, or pending certification, and provide all necessary documents within 90 days of the adoption of the seventh edition of this guidebook to maintain or establish its RPS status; a facility failing to do so will not be eligible for the RPS until the suspension is resolved. New applicants will not be accepted unless they are submitted in accordance with the RPS Eligibility Guidebook, Seventh Edition.⁸

⁶ This letter should be upper-case.

⁷ Staff Final Renewables Portfolio Standard Eligibility Guidebook, Seventh Edition. California Energy Commission, Efficiency and Renewable Energy Division. Publication Number: CEC-300-2013-005-ED7-SF, Page 33

⁸ Staff Final Renewables Portfolio Standard Eligibility Guidebook, Seventh Edition. California Energy Commission, Efficiency and Renewable Energy Division. Publication Number: CEC-300-2013-005-ED7-SF, Page 158

SCPPA recommends the CEC follow through on what appears to have been its intent; namely, that for resources which have already been certified or pre-certified, utilities are only required to submit supplemental information that has not previously been provided to the CEC. Any indication that a new application is required in such cases should be removed. Further, if such resources have already been previously certified, the CEC needs to explicitly state that the facility will not lose its certification status on this supplemental data submittal.

f. Grandfathering of Existing Projects

SCPPA is still very concerned with the CEC's current interpretation of the "rules in place" provision of SB X1-2, which retroactively applies Eligibility Guidebook requirements on POUs. The current Eligibility Guidebook states that:

The facility was eligible for the RPS under the rules in the RPS Guidebook in place when the contract was executed, or the first edition of the RPS Guidebook if the contract predates the adoption of the first edition.⁹

SCPPA again believes that the CEC is misinterpreting the "rules in place" language of SB X1-2. This interpretation is flawed as it retroactively applies previous Eligibility Guidebooks to utilities that were not subject to such Guidebooks before the effective date of SB X1-2 and even goes as far as retroactively applying such rules to procurements which predate the RPS.

Further, there are clear conflicts in the retroactive application of the Guidebooks.

The April 2006 publication of the Guidebook states that:

By statute, the definition of a "retailer seller" excludes local publicly owned electric utilities. Consequently, ***an out-of-state facility selling its generation exclusively to a***

⁹ Staff Final Renewables Portfolio Standard Eligibility Guidebook, Seventh Edition. California Energy Commission, Efficiency and Renewable Energy Division. Publication Number: CEC-300-2013-005-ED7-SF, Page 102

local publicly owned electric utility is not RPS eligible and may not apply for RPS certification, but may apply for pre-certification.¹⁰

Taking a literal interpretation of the CEC's proposed rules, a POU that procured generation from an out-of-state facility that would otherwise count as RPS-eligible would not be able to apply for RPS certification due to this retroactive restriction.

PUC Section 399.30(c)(3), as enacted by SB X1-2, states that:

(3) A local publicly owned electric utility *shall adopt* procurement requirements consistent with Section 399.16.

This section provides POUs with the authority to adopt procurement requirements consistent with PUC Section 399.16 as that section exists, or existed, at the time of POU decision-making. This provision of statute does **not** give the CEC the authority to adopt requirements for Section 399.16 on behalf of the POUs. Had it been the intent of the Legislature, it could have used the term "guidebook" in place of the phrase 'rules in place,' but it chose not to. The Legislature's clear intent was not to abrogate or override historical procurement decisions made by POUs. This intent is evident in transcripts in the committee hearings of SB X1-2:

This bill grandfathers all contracts consummated by an IOU, ESP, or POU prior to June 1, 2010.¹¹

Under the bill, all existing renewable energy contracts signed by June 1, 2010 would be "grandfathered" into the program. Going forward, new renewable energy contracts must meet a "loading order" that categorizes renewable resources.¹²

¹⁰Renewables Portfolio Standard Eligibility Guidebook. California Energy Commission. Publication Number CEC-300-2006-007-F. Page 23

¹¹ Third Reading of Bill No. SB X1-2, Senate Rules Committee, Dated February 23, 2011. Available at: http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0001-0050/sbx1_2_cfa_20110223_155225_sen_floor.html

¹² Bill Analysis for SB X1 2, Senate Appropriations Committee Fiscal, dated February 23, 2011. Available at: http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0001-0050/sbx1_2_cfa_20110223_101343_sen_comm.html

This bill grandfathers all contracts consummated by an IOU, ESP, or POU prior to June 1, 2010.¹³

Note that these excerpts repeatedly refer to “all contracts,” not “some contracts” or “contracts subject to regulations that did not apply at the time.” Further, the CEC acknowledged the POU governing boards’ authority under the Fourth Edition RPS Eligibility Guidebook¹⁴:

“Each governing board of a local publicly owned electric utility (POU) shall be responsible for implementing and enforcing a renewables portfolio standard...”

Therefore, SCPPA again¹⁵ urges the CEC to reconsider its interpretation of ‘rules in place’ and acknowledge that the POU governing boards’ RPS Policies were the governing policies (or “rules in place”) for POU contracts executed prior to SB X1-2 and that resources procured prior to SB X1-2 are subject to POU RPS Policies, not the Guidebooks.

g. Metering Requirements

The currently-drafted metering requirement for facilities participating in the RPS requires that such installments be metered with revenue-quality meters with an accuracy of ± 2 percent:

¹³ Bill Analysis for SB X1 2, Senate Energy, Utilities and Communications Committee, dated February 15, 2011. Available at: http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0001-0050/sbx1_2_cfa_20110214_141136_sen_comm.html

¹⁴ Renewables Portfolio Standard Eligibility Guidebook, Fourth Edition. Section V, Publicly Owned Electric Utilities. California Energy Commission, Efficiency and Renewable Energy Division. Publication Number: CEC-300-2010-007-CMF

¹⁵ Comments of the Southern California Public Power Authority on the California Energy Commission’ Staff Workshop on Proposed Changes to the Renewables Portfolio Standard Eligibility Guidebook, 7th Edition. Southern California Public Power Authority. March 25, 2013. Available At: http://www.energy.ca.gov/portfolio/documents/2013-03-14_workshop/comments/SCPPAs_Comments_on_Staffs_Workshop_on_Proposed_Changes_to_the_RPS_Eligibility_Guidebook_Seventh_Edition_2013-03-25_TN-70139.pdf

All electrical generation facilities participating in the RPS must use a meter with an independently verified rating of 2 percent of¹⁶ higher accuracy to report the generation output of the facility in WREGIS.¹⁷

However, several small scale solar distributed generating systems currently do not meet this requirement. These smaller installations contain performance meters with an accuracy of $\pm 5\%$. The WREGIS system does not exclusively require revenue-quality metering in order to report and generate RECs:

Recognition of generation for creation of WREGIS Certificates from renewable electricity generation resources that do not have metering that meets the ANSI C-12 or equivalent standard will only be at the direction of state or provincial regulators or voluntary program administrators. Program administrators must notify the WREGIS Administrator in writing of approved exceptions to the ANSI C-12 standard; upon receipt, WREGIS will make that information publicly available on its website.¹⁸

As SCPPA has previously recommended, the CEC should allow utilities (1) to utilize performance meters with an accuracy of $\pm 5\%$, (2) to report such data on a monthly or bi-monthly basis, and (3) to request an exception from WREGIS for such systems.

h. Biomethane Generation Should Count As Long As a Complete Precertification Or Certification Application Has Been Submitted

As the biomethane certification applications remain in limbo, SCPPA members continue to receive biomethane gas and are producing RPS-eligible generation on a daily basis. The CEC's current practice of "after-the-fact verification" is unsustainable and leaves utilities with an unacceptable financial risk. For example, a contract of 1000

¹⁶ This typo should be fixed.

¹⁷ Staff Final Renewables Portfolio Standard Eligibility Guidebook, Seventh Edition. California Energy Commission, Efficiency and Renewable Energy Division. Publication Number: CEC-300-2013-005-ED7-SF, Page 57

¹⁸ WECC WREGIS Operating Rules, dated December 2010. Section 9.3.3, Classes H-J. Available at: <http://www.wecc.biz/WREGIS/Documents/WREGIS%20Operating%20Rules.pdf>

DecaTherms per day has an exposure of \$2.2 million, which grows by \$180,000 per month after the 12 month delay in verification.

SCPPA's members have received certification and/or pre-certification for various biomethane projects and have provided the CEC with certification applications prior to the suspension. The CEC must ensure that these contracted quantities of biomethane gas qualify for the RPS, and the investment made in these resources by utility ratepayers is protected.

i. Restricting Biomethane Use to a Single Facility is Unnecessary

SCPPA remains concerned with the following restriction on the use of Biomethane in the proposed Guidebook:

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.¹⁹

First and foremost, this restriction should not apply to repowered generating units at an electrical generation facility. If quantities of biomethane and the source of that biomethane remain unchanged under the original biomethane procurement contract(s), then eligibility should still remain valid.

Second, this restriction overlooks one critical aspect of the procurement of biomethane resources. Several SCPPA members have entered into contracts that require them to accept a daily million British Thermal Units (MMBTU) minimum or fixed delivery requirement, which binds them to a “take and burn” obligation. If the designated

¹⁹ Staff Final Renewables Portfolio Standard Eligibility Guidebook, Seventh Edition. California Energy Commission, Efficiency and Renewable Energy Division. Publication Number: CEC-300-2013-005-ED7-SF, Page 28

facility is out of service due to scheduled maintenance or a forced outage, this restriction would hinder the generation of RECs. The redirection of biomethane fuel from one generating facility to another does not change the terms and conditions of the original biomethane procurement contract and is not prohibited by statute. Biomethane procured under approved contracts should be allowed to generate RPS eligible energy at any eligible facility that can generate electricity with biomethane.

SCPPA requests that this restriction be replaced with the following proposed language:

Biomethane under an existing biomethane procurement contract may 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~~²⁰ **by submitting a complete application** 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, if the generation facility is repowered or replaced with a different unit, **in which case, the new generation facility will be certified under the same RPS Eligibility Guidebook as the generating unit being retired was certified.**

j. Biomethane Quantities in Existing Contracts

SCPPA disagrees with the following provision in the proposed Guidebook that would make quantities of biomethane specified in existing contracts as “optional to the buyer” subject to the rules for new procurement contracts;

Electrical generation that is attributable to any quantities of biomethane delivered through a common carrier pipeline and associated with any of the following changes under the existing biomethane procurement contract will be considered RPS-eligible only if the biomethane procurement complies with requirements of Section II.C.2: New Biomethane Procurement Contracts...

Any quantities of biomethane procurement from sources identified in the existing biomethane procurement contract, as originally executed and reported to the Energy

²⁰ The “In connection language is ambiguous and does not add value to this section. It is more beneficial to replace this language with “by submitting a complete application.” This recommendation is requested for all sections of the guidebook.

Commission before March 29, 2012, that are specified as optional to the buyer in the contract, as determined by the Energy Commission. Quantities will be deemed optional if the buyer, through his or her initiation or election, can decide whether to accept the additional quantities of biomethane.²¹

As a standard industry practice, it is common that a contract with a biomethane producer allows the addition of new sources in order to meet contractual supply requirements or to makeup unforeseen shortfalls from old sources. The additional quantities acquired under a contract to meet the MMBTU delivery requirements and injected into the pipeline prior to April 1, 2014 should not be subject to the new requirements of PUC § 399.12.16(b), because these sources do not produce additional generation. Additional sources already listed in the contract that will inject biomethane before April 1, 2014 to makeup delivery shortfalls should be subject to the prior rules, as these sources may be needed to makeup shortfalls in the delivery obligations.

SCPPA requests that the CEC modify this section to clarify that optional quantities of biomethane utilized to makeup shortfalls in the delivery obligations are subject to the prior rules, not the new eligibility criteria.

k. Sellers Must Deliver Gas at SoCalGas-Citygate

Under the proposed forms, the generator presumably would only have to report that segment of the path from the city gate to the generator meter. In order to protect their ratepayers from gas transportation risk, many SCPPA members are taking both title and delivery at the SoCal City Gate, not at the source of the biomethane. As a result, SCPPA members rely on the seller to deliver to the City Gate: the member has no control of or visibility into the transportation to that point. In this connection, it is also

²¹ Staff Final Renewables Portfolio Standard Eligibility Guidebook, Seventh Edition. California Energy Commission, Efficiency and Renewable Energy Division. Publication Number: CEC-300-2013-005-ED7-SF, Page 27-28

important to note that delivery paths can and do change hour-to-hour and day-to-day, resulting in a massive (and not contracted for) reporting burden on the seller and the member, as well as a massive analysis burden on the CEC.

Realistically, POUs can report data where they take delivery and title. The reporting requested by the CEC therefore places an unnecessary and unrealistic burden on the buyer/seller, not to mention the CEC itself. Attestation by the seller is what was required under the 4th edition, an attestation is what was contracted for, and an attestation is the only realistic way to provide the CEC the comfort that it desires.

III. Portfolio Content Categories

SCPPA has previously commented that its members remain concerned with the lack of certainty regarding the PCC designation of an electricity product. There remains an enormous need to develop a process to provide PCC certainty due to the large price differences between PCC 1 and a PCC 3 RECs, and the potential cost impact to POU ratepayers inherent in after-the-fact PCC determinations.

On September 21, 2012, CEC staff held a workshop on 2008-2010 RPS Procurement Verification and SB X1-2 RPS procurement verification. During the workshop, Iberdrola proposed that the CEC develop a checklist to help utilities determine if their energy resources fall within PCC1, PCC2 or PCC3, and several POUs submitted comments supporting the idea of a checklist.

At the March 14, 2013 workshop, it was further discussed whether the CEC could provide a PCC verification process that would assign each project to the appropriate PCC. This verification process would also provide the standard caveats to PCC REC

classification, such as the limitations on resale, if any, and PCC re-classification if such RECs are unbundled.

SCPPA again recommends that the CEC develop both a PCC checklist as part of the Guidebook and provide for a PCC verification process that provide greater certainty as to the PCC designation of RPS eligible generating facilities.

IV. CONCLUSION

SCPPA would again like to emphasize that it does not believe that this iteration of the Guidebook is ready for adoption and should not be adopted by the Commission on April 30, 2013. In general, the current draft of the Guidebook is inconsistent, has not been vetted properly, retroactively applies regulations to POUs, and assumes the POU regulations have already been adopted. Parties were only allowed a limited amount of time to comment on Guidebook, and there are still several areas of conflict that need to be resolved.

SCPPA looks forward to working with the CEC in resolving the important issues raised in this proceeding.

Dated: April 25, 2013

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