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California Energy Commission
Dockets Office, MS-4
Re: Docket No. 11-RPS-01
1516 Ninth Street
Sacramento, CA 95814-5512

Via Email: docket@energy.ca.gov and
RPS33@energy.ca.gov

Re: Comments of Nevada Irrigation District on the Scope of the Future Edition of the Renewables Portfolio Standard Eligibility Guidebook – Revisions to Eligibility Date

Nevada Irrigation District (“NID”) provides the following comments on the scope of revisions to the next edition of the California Energy Commission’s (“CEC”) Renewables Portfolio Standard Eligibility Guidebook (“Guidebook”). NID’s comments are focused on the issue of revisions to eligibility dates for Renewables Portfolio Standard (“RPS”) certified facilities and deadlines in the Guidebook that may affect eligibility for certain facilities. Specifically, the Commission should modify the Guidebook to permit the CEC’s Executive Director, or his designee, to exercise discretion to waive or extend Guidebook deadlines for good cause to ensure that generation from eligible renewable facilities qualifies for the RPS program as intended. This modification should apply going forward, but should also apply to any applicants whose application deadlines passed prior to the issuance of the 8th Edition of the Guidebook. Section IV below sets forth both a proposed definition for “good cause” and specific language changes for the next edition of the Guidebook.

I. Introduction and Background

As noted in the Guidebook as well as in the presentation at the January 28, 2014 Lead Commissioner Workshop (“Workshop”), eligibility dates may be revised if certification applications are not submitted within a specified period of time.¹ These deadlines were added “to ensure quality of data and timely completion of the verification process.”²

¹ For example, “[f]ailure to submit a certification application within 90 days of commencing commercial operations for a precertified facility” can result in a change in the eligibility date. (Guidebook, p. 77.) Additionally, if a facility is utility certified, it must submit a new certification application “within 90 days of the contract termination date” for that facility. (Guidebook, p. 71.) *See also* Workshop Presentation, slide 19, available at

While NID appreciates the CEC's need for accurate and up-to-date information, as well as the need to complete the verification process in a timely manner, the CEC must allow Guidebook deadline flexibility to ensure the goals of the RPS program are advanced and to avoid unintended consequences.

II. Deadline Flexibility is Necessary to Ensure Renewable Generation Qualifies for the RPS Program, as Intended by Statute

As described above, it is important to provide timely and precise information to the CEC when determining the eligibility of renewable facilities. However, the CEC's interest in "timely completion of the verification process" must be weighed against the interest of ensuring that generation that satisfies the criteria for counting as RPS-eligible actually qualifies and counts for the RPS program. NID appreciates the CEC's need for timely and accurate information, and supports the inclusion of deadlines in the Guidebook. However, ensuring that eligible renewable generation qualifies for the RPS program is a clear statutory mandate that trumps the CEC's non-statutory interest in processing applications in a timely manner. Accordingly, in certain cases the CEC must make allowances for facilities that miss Guidebook deadlines for the submission of certification applications.

Public Utilities Code Section 399.25(a) provides that the CEC shall "[c]ertify eligible renewable energy resources that it determines meet the [eligibility] criteria described in subdivision (e) of Section 399.12."³ The clear meaning of this statutory language indicates that a facility that meets the statutory eligibility criteria *shall* be certified as an eligible facility for the RPS program. The current deadlines in the Guidebook can effectually deprive a facility that meets the renewable eligibility criteria of its renewable certification, therefore preventing generation from those facilities from qualifying for the RPS program. What this means is generation that should qualify for the RPS program is deemed ineligible. This result contradicts the clear statutory intent of the RPS program. For this reason, the Guidebook must be revised to provide flexibility for certification deadlines to ensure that renewable generation qualifies for the RPS program.

III. Deadline Flexibility is Necessary to Prevent Harm to Generators, Retail Sellers, and Californians

The CEC has recognized that deadlines to submit certification applications have resulted in "unanticipated negative consequences to facility owners."⁴ By determining that a facility is

http://www.energy.ca.gov/portfolio/documents/2014-01-28_workshop/presentations/2014-01-28_Scoping_Workshop.pdf

² Workshop Presentation, slide 21.

³ It is important to note that none of the eligibility criteria of Section 399.12(e) require that certification applications be submitted to the CEC within a specified timeframe.

⁴ Workshop Presentation, slide 21.

ineligible based on failing to submit a certification application within a certain amount of time, generation that otherwise satisfies the renewable eligibility criteria cannot be used for the RPS program. In some instances, this ineligible generation is generated by a facility that was certified prior to the period of ineligibility and subsequent to the period of ineligibility, with no changes in the facility before, during, or after the period of ineligibility whatsoever. Not only does this result contradict sound public policy, but it could prove to be potentially costly, as facilities may lose out on renewable payments or be subjected to contractual penalties for failing to retain certification.

In addition to potentially significant financial harm to facility owners, a change in a facility's eligibility date that results in a period of generation that is ineligible for the RPS program can result in other unintended consequences. These unintended consequences could include, among other things, (1) depriving California ratepayers of renewable value from facilities that meet the statutory and CEC renewable eligibility requirements,⁵ (2) failing to meet California's RPS procurement goals, and (3) discouraging investment in renewable facilities in California. All of these potential unintended consequences are disastrous and should be avoided where possible. Fortunately, the CEC has the ability to avoid negative unintended consequences by revising the Guidebook to clearly allow flexibility in meeting Guidebook deadlines.

IV. The CEC Should Adopt a “Good Cause” Standard for Waiving or Extending Guidebook Deadlines

NID is not suggesting that deadlines in the Guidebook should never be enforced. Instead, the CEC should adopt a flexible approach to deadlines when good cause exists. Though it is impossible to foresee every potential situation which may cause a facility to miss a Guidebook deadline, NID believes that adopting a “good cause” standard confirming the Executive Director's discretion to extend eligibility dates is reasonable and sound.

NID recommends that the CEC adopt a “good cause” approach that considers three factors:

- (1) Does the energy generated by the facility otherwise meet the eligibility criteria of the CEC's Guidebook?
- (2) Will the facility or the purchaser of the facility's energy benefit from qualifying the generation as RPS-eligible?
- (3) Could the facility or the purchaser of the facility's energy incur a penalty if the generation does not qualify as RPS-eligible?

Assuming the answer to all these questions is “yes”, the Executive Director should exercise his discretion and find that good cause exists to extend a Guidebook deadline.

⁵ Only the Guidebook deadline would not be satisfied, which, it is important to note, is not a statutory requirement.

Further, as it is impossible to anticipate all situations which may result in a facility missing a Guidebook deadline, NID does not believe this list should be considered exhaustive. The Executive Director should also exercise discretion to evaluate each request to extend or waive a deadline on a case-by-case basis where the Executive Director finds that “An extension will otherwise promote the statutory and RPS program goals.”

A. Revisions to Future Guidebook

NID believes that the Guidebook could be revised simply to provide that the Executive Director has discretion to extend or waive Guidebook deadlines for good cause to ensure that eligible renewable generation qualifies for the RPS program. However, NID provides the following language as a specific potential revision to the Guidebook to effectuate what it considers good cause:

Upon a showing of good cause, the Executive Director, or his designee, has plenary discretion to grant an extension of time to submit a certification application within 90 days after the original application due date. This discretion shall also allow extensions of time for applications submitted prior to the issuance of the 8th Edition of the Guidebook. Among the factors to be considered by the Executive Director are the following: (1) Does the energy generated by the facility otherwise meet the eligibility criteria of the CEC’s Guidebook?; (2) Will the facility or the purchaser of the facility’s energy benefit from qualifying the generation as RPS-eligible?; and (3) Could the facility or the purchaser of the facility’s energy incur a penalty if the generation does not qualify as RPS-eligible? Good cause shall be found upon the applicant’s attestation to the following:

- 1) Apart from the deadlines to submit certification applications, otherwise RPS-eligible renewable energy was generated by either:
 - a. The precertified facility, [*facility name*], through the date the certification application was submitted.
 - b. The previously utility-certified facility, [*facility name*], from and after the date the facility’s contract with the retail seller [*expired / was voluntarily extended / was otherwise renegotiated*] through the date the certification application was submitted.
- 2) One or more of the parties to the renewable contract or related transactions will benefit from the renewable generation being eligible for the RPS program; and

- 3) Denial of the certification for the period of ineligibility could result in a financial penalty to the facility owner or the purchasing retail seller with no attendant environmental or administrative benefits.

The above list is not intended to be the exclusive criteria for a finding of good cause, and the Executive Director may also exercise discretion in determining that good cause exists on a case-by-case basis upon finding that an extension will otherwise promote the statutory and RPS program goals.

Accordingly, the Guidebook should be revised to recognize that upon receipt of an attestation including the factors above, the Executive Director will extend a Guidebook deadline to certify a facility as RPS-eligible. This revision will help promote California's renewable goals and ensure that renewable generation qualifies for the RPS program as intended.

V. Conclusion

NID appreciates the efforts of the CEC to revise its Guidebook and looks forward to working with the CEC in the future.

Respectfully submitted,



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