

February 14, 2014

E-FILING DOCKET NO. 11-RPS-01

Commissioner David Hochschild
Lead Commissioner, Renewables
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Re: RPS Eligibility Guidebook Workshop, Docket No. 11-RPS-01

Dear Commissioner Hochschild:

The following comments address the question of whether the California Energy Commission (“Commission”) should continue to precertify facilities as capable of producing renewable portfolio standard (RPS) eligible energy. The Notice of Lead Commissioner Workshop to Scope a Future Edition of Renewables Portfolio Standard Eligibility Guidebook (the “Workshop Notice”) expressed concerns about the amount of Commission Staff time required to precertify facilities, the number of precertified facilities that do not become operational and the potential unjustified reliance upon precertification. While we understand the significant commitment of Commission Staff resources used to precertify facilities, we believe in certain circumstances the effort to complete the pre-certification process is warranted. We recommend the precertification process be preserved when a facility needs additional review by Commission Staff to determine whether the facility meets the guidebook requirements. In doing so, we understand precertification is not a guarantee the facility will ultimately be certified by the Commission. We understand guidebooks can and will change over time and that all RPS eligible facilities must meet the guidebook standards in place at the time the facility applies for certification.

While we understand that in-state wind and photovoltaic (PV) only facilities may not benefit from pre-certification because their qualification is easily ascertained, other facilities can benefit from the early Commission Staff review. Obtaining a preliminary review provides an initial check on the facility when environmental impacts or detailed questions must be addressed by Commission Staff. And, this initial check can be performed prior to the facility being constructed let alone going to commercial operation. Furthermore, the precertification review for the facilities that are not straight-forward supports the financing for these facilities.

Typically, when facilities move from the initial investment and permitting effort to construction the facilities obtain financing. Prior to investing in facilities the finance community conducts

due diligence to confirm the facility's economics, engineering design, and to ensure the facility has all entitlements and land rights. Since the real value of the facility lies in its power purchase agreement, satisfying the conditions within those agreements are paramount to obtaining financing and allowing the facilities to move forward. Any renewable power purchase agreement will require the facility be certified by the Commission such that energy from the facility is RPS eligible. Since construction financing occurs prior to operation, the facility cannot complete the certification process prior to obtaining construction financing. A California located and connected wind or PV facility can be handled during the due diligence review fairly easily. Facilities that must make an environmental demonstration of compliance to qualify as RPS eligible can be much more difficult to assess. At that point the financing must rely on the opinion of experts or lawyers that must be qualified because neither has the ability to make the determination.

Projects that do not connect to a California balancing authority must show the facility "does not cause or contribute to any violation of a California environmental quality standard or requirement within California." In addition, if a facility is located outside the United States, the facility must demonstrate it "is developed and operated in a manner that is as protective of the environment as a similar facility would be if it were located in California." These questions can involve environmental analysis and/or submission of environmental review documentation. For a wind facility, does it have an avian and bat protection plan? If take is possible, could take in another area impact the species population in California? If the facility is close to California, can the facility be seen from California? Does the facility include consideration of these impacts and mitigation, if needed? An initial analysis from Commission Staff on these questions helps to serve as a check on the facility's ability to ultimately qualify to produce RPS eligible energy.

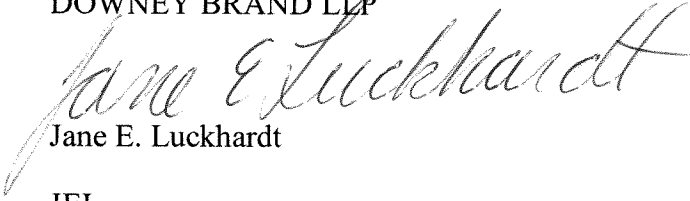
Furthermore, questions about biomethane source and delivery paths could benefit from an early Commission Staff review to catch or flag potential areas of concern. And, any new source injecting into a common carrier pipeline must demonstrate environmental benefits to California. This demonstration requires submission of emissions data and a demonstration of avoidance of emissions in California. An early Commission Staff review of the data or agreement on how the benefit can be demonstrated would be valuable.

Since these determinations are a relatively new addition to the RPS program, we do not have a series of detailed analyses to refer to for guidance. Thus, a precertification review that takes a look at the facility with the guidelines existing at the time of the precertification application can at least identify basic issues and potentially glaring flaws.

We believe there is value in precertification review for these more complex facilities, and we request the precertification option remain in place for these situations. We do not believe precertification is needed for in-state wind and PV.

Very truly yours,

DOWNEY BRAND LLP



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