

BEFORE THE CALIFORNIA ENERGY COMMISSION

California Energy Commission

DOCKETED

11-RPS-01

TN 72928

APR 17 2014

**In the matter of:
Developing Regulations and Guidelines
for the 33 Percent Renewables Portfolio
Standard**

Docket No. 11-RPS-01

**NORTHERN CALIFORNIA POWER AGENCY COMMENTS ON
PROPOSED PROCESS TO EXTEND AND WAIVE DEADLINES FOR
RENEWABLES PORTFOLIO STANDARD CERTIFICATION**

The Northern California Power Agency (NCPA)¹ appreciates the California Energy Commission's (CEC or Commission) consideration of a *Process to Extend and Waive Deadlines for Renewables Portfolio Standards Certification*.² NCPA supports adopting a process for extending and waiving the deadlines set forth in the Renewables Portfolio Standard Eligibility Guidebook, Seventh Edition (RPS Guidebook), and appreciates the opportunity to provide these supporting comments to the Commission.³

The staff proposal addresses an oversight in the current RPS Guidebook that does not give the Commission the discretion to extend or waive any of the deadlines set forth therein, regardless of the reason. Adopting staff's proposed process would ensure that all generation from renewable facilities that meet the statutory requirements is properly counted toward the State's renewable energy mandate. The staff proposal would give the Commission's Executive Director the authority to extend and waive application deadlines for RPS certification based on certain criteria. This process is necessary to ensure that all of the state's RPS eligible facilities are properly included in the program, and further ensure that facility operators, owners, or those with procurement contracts are not adversely impacted by circumstances beyond their control.

¹ NCPA is a not-for-profit Joint Powers Agency, whose members include the cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, and Ukiah, as well as the Bay Area Rapid Transit District, Port of Oakland, and the Truckee Donner Public Utility District, and whose Associate Member is the Plumas-Sierra Rural Electric Cooperative.

² The process was set forth in the *Notice to Consider Process to Extend and Waive Deadlines for Renewables Portfolio Standards Certification*, dated April 8, 2014 (Notice).

³ NCPA further recommends that this process be incorporated, as soon as practicable, into future revisions of the RPS Guidebook.

NCPA urges the Commission to adopt a waiver process. However, in order to provide clarity and avoid confusion, NCPA recommends that the process be revised to address the clarifications set forth herein.

Comments on Staff Proposal

The Purpose of the Proposal Should be Further Clarified

Recognizing that the financial consequences to facility operators, owners, or those with procurement contracts could be significant if a facilities' generation prior to the determined eligibility date is deemed ineligible for the RPS, CEC staff proposes that a process be adopted that allows the CEC's Executive Director to extend or waive certain application deadlines. This would allow the Commission to certify a facility that missed the application deadline with a retroactive eligibility date. NCPA appreciates staff's responsiveness to stakeholder concerns regarding the need for such discretionary authority, and supports the adoption of a process. In order to ensure that the process is available to facilities that have already been certified, but which certification resulted in renewable energy generated prior to the certification date being excluded from the RPS program eligibility, the stated purpose of the process (found on page 3 of the Notice) should be modified to read:

“To address this issue, staff is proposing a process that would allow the Energy Commission's Executive Director to extend or waive application deadlines or set an eligibility effective date based on the submittal date of an earlier application for RPS certification based on certain criteria, including a demonstration of good cause.”

Factors Considered Should be Objective

The Notice states that the process would allow the CEC's Executive Director “to extend and waive application deadlines for RPS certification based on certain criteria, including a demonstration of good cause.” The Notice goes on to state that the “Energy Commission staff recommend the following criteria and procedures be used for the extension process,” and sets forth a list of information that must be included in the application for an extension. (Section 3 (a) – (f)) The process allows the Executive Director to grant an extension upon a demonstration of good cause, and lists several factors that may be considered in determining whether good cause exists. (Section 5)

While NCPA believes that it is reasonable for the applicant to include all of the information proposed in Section 3, the listed information does not reflect “criteria” upon which a determination of good cause can be objectively made. Rather, as set forth in proposed Section 5, the determination will hinge upon subjective review of certain undefined factors, including the extent of the financial consequences. This factor alone could present a bias against smaller facilities, as the definition of the financial harm is likely to vary greatly depending on the facility operator’s size and resources. The process should be revised to strike the references to “criteria,” and ensure that the factors considered by the Commission are not prejudicial to small facilities, nor so subjective in nature that an applicant will have no degree of certainty regarding the potential for success.

Eligible Applicants Should Include Facilities Currently Certified

As addressed above, there is a demonstrated need for this process that allows the Executive Director to grant an extension of time to submit a complete application for RPS certification. Likewise, there is a need to apply the process to renewable resources that are already certified, but where a delay in the prior certification resulted in renewable electric generation that is not currently eligible to be counted toward the RPS program because a retirement instrument has not been created. Addressing this issue is accomplished by adding the following language to the end of Section 1:

“Facilities that have been certified may request an earlier effective date for their certification by providing the same information required of applicants seeking an extension of time to submit a complete application for certification.”

Treatment of Generation During Pendency of Waiver Should be Addressed

The staff proposal sets out the process for seeking the extension and notes the conditions under which a waiver shall not be granted. It also notes that approval of an extension may be subject to various conditions. However, the staff proposal does not provide clear instruction on how the Commission will treat renewable energy that is generated during the period between the original deadline for certification and the time in which the waiver and extension is granted. To the extent that the failure to have the facility timely certified results in the generation of renewable energy for which a renewable energy credit (REC) could not be created, the process to extend and waive the deadline should explicitly address how a REC will be created, and how

such energy is to be counted toward RPS compliance. This should also include clarification regarding the proper compliance period for which such energy would be counted. Providing this clarification in the process itself is critical to afford facility operators (and those purchasing renewable energy from the impacted facilities) with certainty regarding application of the waiver.

Conclusion

NCPA fully supports the adoption of a process to extend and waive deadlines for renewables portfolio standard certification, and appreciates staff's responsiveness to stakeholder concerns raised in this regard. The Commission should adopt the process without reference to undefined criteria, and clarify the treatment of renewable energy and RECs generated during the "waiver" period. The process should also clarify its applicability to previously certified facilities that have renewable electric generation that is excluded from the RPS program. Please do not hesitate to contact the undersigned or Scott Tomashefsky at 916-781-4291 or scott.tomashefsky@ncpa.com with any questions.

Dated this 17th day of April, 2014.

Respectfully submitted,



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