



Robert Oglesby  
Executive Director  
California Energy Commission  
1516 9th Street, MS-39  
Sacramento, CA 95814-5512

California Energy Commission

**DOCKETED**

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TN # 74GCE

DEC 3F 2014

December 4, 2014

**Re: Request for a Time Extension for Submission of a Properly Executed RPS Certification for the Vinam 9011 Solar Project (CEC-RPS-ID: 61795A)**

Dear Mr. Oglesby:

Capital Dynamics respectfully requests your approval to extend the deadline for submitting an application for RPS certification for the Vinam 9011 solar project (CEC-RPS-ID: 61795A) ("Vinam 9011"). As detailed below, a complete application had been submitted for the Vinam 9011 project, and the California State Energy Resources Conservation and Development Commission ("CEC") issued a full certification appropriately reflecting an eligibility date based on the date on which the precertification request was filed. However, due to issues that had been rectified prior to the CEC's issuance of the original certification (regarding the submission of copied rather than original signatures, and an additional signature provided in the wrong portion of the form), CEC staff recently retroactively changed the RPS eligibility date. This change in the eligibility date could cause significant harm to the Applicant, as well as undermine the regulatory certainty critical to the long-term success of the certification program.

#### Background for the Request

The Applicant filed a complete application for the Vinam 9011 project, containing all required information, prior to the deadline. After the deadline had passed, CEC Staff rejected the application, and informed the Applicant that the reason for the rejection was the use of a copied rather than an original signature. After the Applicant resubmitted the application with the original signature, CEC staff again rejected the application, this time for the stated reason that it included signatures in both the spaces for precertification and certification (rather than only the space for certification; note that the original submission had also included signatures in the same two spots, but this inadvertent error was not noted by CEC staff nor identified by the Applicant before the second rejection). The Applicant again resubmitted the application, and the CEC issued an RPS certification in which the facility's correct eligibility date, December 19, 2011, was provided. However, the CEC staff recently revised the eligibility date to the date of the second resubmission, November 18, 2013. The retroactively revised eligibility date threatens significant harm and disruption to established economic expectations based on CEC's initial certification, which Capital Dynamics reasonably relied upon, as there is now a gap between the commercial operation date, July 30, 2013, and the revised RPS eligibility date, November 18, 2013. This request is intended to rectify this inconsistency and return the state of the facility's eligibility to that first established by the CEC.

The format of this letter is consistent with that prescribed in CEC Resolution No. 14-0422-11.

#### **A) Applicant and Generator Information**

##### **Applicant**

Capital Dynamics, Inc.

2550 Sand Hill Road, Suite 150  
Menlo Park, CA 94025

Phone +1 650 388 7000  
Fax +1 650 388 7099

info@capdyn.com

Name: Bob McClenachan  
Title: Managing Director  
Company: Capital Dynamics  
Address: 2550 Sand Hill Road, Suite #150, Menlo Park, CA 94025

**Generating Facility Information:**

Name: Vinam 9011  
Also known as: Becca Solar, LLC  
Type: Solar photovoltaic  
Capacity: 1.5 MW  
Location: GPS coordinates are 38°34'28.47"N 121°29'51.88"W; 34° 40'7.73" N 118° 3'40.39"W  
Address: 43252 40th St. East, Lancaster, CA 93535  
Precertification #: 61795C  
Certification #: 61795A  
WREGIS GU ID: W3786

**B) Amount of Time Requested to Submit an Application for Certification**

Vinam 9011 has already been certified by CEC as eligible for California's RPS. However, the facility's assigned RPS eligibility date is currently November 18, 2013, which is 111 days after the Commercial Operation Date of July 30, 2013. Capital Dynamics requests a time extension of 21 days past the 90 day filing deadline and further ask that this extension be applied *retroactively* so as to incorporate the date on which the fully corrected application was resubmitted (the "file by" date would therefore be November 18, 2013). Conversations with Kevin Chou, an employee of the CEC, have confirmed this could be possible with your approval.

**C) Explanation of the Request**

The Vinam 9011 solar project is the first of the projects for which Capital Dynamics sought a final certification, after having been granted a pre-certification. While Capital Dynamics provided all of the required information to the CEC by the deadline for submission of the application for certification, unfortunately, two non-substantive, administrative errors were made with respect to execution of the application.

Capital Dynamics first submitted the application for certification on October 24, 2013, and the CEC received it the following day, prior to the deadline of October 28, 2013. In preparing the application, Capital Dynamics overlooked the need for an original signature, rather than a copy of the original. Although there were no substantive errors in the application, the CEC sent a letter dated Friday, October 25, indicating that it would not accept the application because the signatures were not originals. *See Attachment A.* Capital Dynamics subsequently resubmitted the application with an original signature on October 31.

After Capital Dynamics submitted a revised version of the application with original signatures replacing the former copied signatures, exactly as first submitted, the CEC sent a second letter indicating that Capital Dynamics had erred by providing two original signatures, one in the space for precertification, and one in the space for certification, since only the signature space for certification should have been used. *See Attachment B.* In response, Capital Dynamics sent a third version of the application for certification with



only the single original signature for certification in the appropriate place on the application; this revised version was received by the CEC on November 18, 2013.

Capital Dynamics received a letter from CEC dated November 25, 2013, which enclosed a certificate of eligibility for the project. *See* Attachment C. The certificate of eligibility provides that the facility's eligibility began on December 19, 2011, the date the application for pre-certification was received.

On October 16, 2014, almost a year after issuing the certificate, the CEC advised Capital Dynamics via email that it believed an error had been made in issuing the certification with an eligibility date of December 19, 2011. While Capital Dynamics has not received a letter or any other written communication from CEC explaining its view or its changed position, the RPS eligibility list posted on CEC's website now reflects a revised eligibility date for the project, November 18, 2013, the date that the final revised application was received by the CEC.

Until Capital Dynamics received the October 16 email, it was under the impression, based on its receipt of the certification on November 25, 2013, that the CEC considered the application timely filed and the facility fully certified as of the date of the facility's application for precertification. This apparent change in position by the CEC on the eligibility date, after Capital Dynamics and its counterparty have relied on the CEC's initial certification, could cause significant harm to the parties involved in the facility and the purchase of its renewable energy. This action could also cause harm to other CEC program participants, who *would* question whether they could rely on CEC certifications when they could be retroactively changed, and to the program itself, as retroactive changes for factors known by CEC at the time the original certification was issued would undermine regulatory certainty and reliance on CEC issuances.

Representatives of Capital Dynamics have discussed how to proceed with CEC staff, and are submitting this request to you following their recommendations.

#### **D) Financial Consequences**

Southern California Edison ("SCE") has contracted for the power and environmental attributes from these facilities under the California Renewable Energy Small Tariff ("CREST") program approved by the California Public Utilities Commission ("CPUC"). Appendix C of the CREST PPA requires that the seller provide proof of RPS eligibility. *See* Attachment D. The CEC staff's apparent decision to change its mind regarding the eligibility date of December 19, 2011, for certification, and its change of the eligibility date on the website with no procedural safeguards whatsoever save a single email to the facility, could be extremely detrimental to the established expectations of both Capital Dynamics and SCE, and could cost thousands of dollars of harm to the parties. It could also cause incalculable harm to the CEC program, due to the inability of parties to rely on CEC certifications.

#### **E) Explanation of Good Cause**

Capital Dynamics believes there is good cause to grant the deadline waiver request. Capital Dynamics has been diligent in its efforts to comply with the CEC Guidelines and directions from CEC staff. Significantly, Capital Dynamics provided all of the information required on the CEC RPS certification form by the deadline. The only errors Capital Dynamics made were administrative and completely non-substantive; *i.e.*, the sole problems were providing a copied, rather than an original, signature, and providing one too many signatures.

It is not clear to Capital Dynamics why, almost a year after issuing the certificate, the CEC staff first changed the date of eligibility retroactively, and now believes it is necessary to seek confirmation of its initial decision to issue the certificate with the correct eligibility date of December 19, 2011, by having Capital Dynamics file this request for waiver.

Capital Dynamics believes that in 2013 the CEC staff acted appropriately in issuing the certificate with the correct eligibility date of December 19, 2011. It may be that when the Commission passed Resolution Number 14-0422-11 on April 8, 2014, staff believed that the Commission limited the ability to address minor errors such as those affecting this certification to the Executor Director. The Commission did not make the resolution apply retroactively, so even if it were the case that a waiver of the deadline were required to correct these administrative errors, Res. 14-0422-11 could not affect CEC staff's ability to provide such a waiver at the time that the application was processed. Thus, Capital Dynamics believes that the decision the CEC staff made in 2013 to issue a certificate with the correct eligibility date of December 19, 2011, should be upheld by agreeing to waive the filing deadline. Capital Dynamics and SCE have relied upon the certificate issued by CEC staff in 2013.

If the original eligibility date is not restored, severe financial hardship could result to Capital Dynamics and SCE, and we believe CEC's program would be severely damaged as well.

#### **F) Documentation**

Attached to this request are:

Attachment A: Letter from CEC to Bob McClenachan, Managing Director, Capital Dynamics, dated October 25, 2013 - concerns need for original signature.

Attachment B: Letter from CEC to Bob McClenachan, Managing Director, Capital Dynamics, dated November 1, 2013 - concerns need to sign form in only one place.

Attachment C: Letter from CEC to Bob McClenachan, Managing Director, Capital Dynamics, dated November 25, 2013 - conveys certificate of RPS eligibility with eligibility date of December 19, 2011.

Attachment D: CREST PPA, Appendix C - concerns warranty of RPS eligibility.

If you have questions concerning this request or would like further information, please contact Chris Linn at (707) 200-4192.

Sincerely,



Robert McClenachan  
Managing Director



Karl Olsoni  
Managing Director

c.c. Kevin Chou, CEC