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Re: CMUA Comments on the Proposed Revisions to the *Renewables Portfolio Standard Eligibility Guidebook*

The California Municipal Utilities Association (CMUA) would like to thank the California Energy Commission (CEC) for the opportunity to provide comments on the Draft Eighth Edition of the *Renewables Portfolio Standard Eligibility Guidebook* (Draft Eligibility Guidebook) released by the CEC on January 15, 2015. The following sections provide CMUA's comments on the Draft Eligibility Guidebook. In addition to CMUA's comments, several of CMUA's members intend to provide comments on the proposed changes to the guidebook as well.

In his recent inaugural address, Governor Jerry Brown outlined a bold goal to be accomplished within the next fifteen years: increasing from one-third to 50 percent California's electricity derived from renewable sources. The Governor also called for "more distributed power [and] expanded rooftop solar." As the CEC considers changes to the RPS Eligibility Guidebook and the Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities (POU), it must keep the Governor's proposed long-term goals in mind while balancing the costs, burdens, and system benefits of implementing such a policy.

In order to identify issues and potential solutions to achieving a fifty percent renewables goal, the State is going to need to evaluate the manner in which it categorizes eligible renewable energy resources.¹ For example, it will likely be necessary for distributed generation, and rooftop solar in particular, to play a larger role. To the extent that rooftop solar is devalued for purposes of meeting the RPS by being classified as portfolio content category (PCC) 3, it will be harder to both accurately quantify and achieve this increased renewables goal. Similarly, if the CEC's certification and audit

¹ See, e.g., CEC, *Climate Commitment Fact Sheets* (accessed February 17, 2015), available at http://www.energy.ca.gov/commission/fact_sheets/climate_commitments_fact_sheets.html ("A 50 percent renewables target can be reached in several ways, including: A new procurement requirement to increase renewables beyond 33 percent, **including allowing for rooftop solar** and better coordination with Western states and Baja California to maximize renewable energy production and better balance production with demand.) (emphasis added).

requirements do not practically permit the participation of these resources, this will also stand in the way of the fifty percent goal. The CEC should recognize the contractual and ownership structures under which distributed generation qualifies as PCC1. The CEC should also consider further simplifications to the certification and WREGIS reporting requirements, such that all utility customers can reasonably qualify their generating systems for the RPS and receive the full value of their generation.

I. COMMENTS ON THE DRAFT ELIGIBILITY GUIDEBOOK

A. CMUA Generally Supports the Substantial Redrafting of the Guidebook

CEC Staff should be commended for the substantial effort that was necessary to almost completely redraft the RPS Eligibility Guidebook. In general, CMUA believes that the revisions eliminate unnecessary provisions, while at the same time add clarity. Additionally, many of the substantive changes proposed in the Draft Guidebook will improve and simplify the certification process. Specifically, CMUA supports the following proposed changes:

- **Modification of Eligibility Date:** CMUA strongly supports the change to the Guidebook that would allow for an earlier eligibility date as long as certain requirements are met. This added flexibility may reduce the need for some generators to obtain precertification, which would likely reduce the burden on CEC staff associated with processing applications for precertification.
- **Special Case for Aggregated Facilities Owned by a POU:** CMUA also supports the new provision applicable to POU-owned aggregated facilities that allows a POU to count towards the RPS generation occurring prior to the eligibility date in certain circumstances.
- **Clarification of Deadlines and Submission Dates:** CMUA supports the clarifications to the deemed submitted date for in-person, mailed, and electronic submissions. CMUA supports the suggested changes regarding postmarked date as recommended by member comments.

B. CMUA Appreciates the Recent Revisions to the Guidebook

CMUA supports the CEC's willingness to address and adopt targeted changes outside of a full update of the Guidebook. Specifically, CMUA was strongly in support of the CEC's adoption of the following changes that occurred in 2014: (1) the adoption of a process for extending the application deadline; (2) the extension of the ITS; and (3) the creation of a process to permit the retroactive creation of RECs in WREGIS. CMUA believes that these were all positive steps towards ensuring that the Guidebook addresses the concerns raised by stakeholders. However, because of the understandably short timeframe between receiving comments and adopting these proposals, it is appropriate at this time for the CEC to give further consideration to these

comments. As these changes are being formally incorporated into the upcoming edition of the Guidebook, CMUA encourages the CEC to reconsider these comments and make further appropriate changes.

C. Precertification is Still Necessary

As stated above, CMUA strongly supports the change that allows an earlier eligibility date as long as certain requirements are met. In essence, this change allows an applicant to get the same eligibility date as it would have been able to get if the facility had been precertified. While this flexibility on the eligibility date was a key benefit of precertification, it was certainly not the only benefit. Precertification still plays a vital role for many developers in obtaining financing. Precertification also serves as an important indication that a developer is serious in its intent to see a project through to completion. Finally, there are some very complicated applications where the precertification process provides a means by which an applicant can get a formal indication from the CEC regarding the ultimate likelihood of success. While the guidebook clearly specifies that precertification does not serve as a guarantee that the final project will be certified, it is still beneficial to a developer that may be investing substantial resources in a project. This is particularly true where the RPS-eligibility is vital to the economic success of the project.

The Guidebook should provide for precertification, and should allow applicants to submit their final application under the requirements set forth in the Guidebook in place at the time that precertification was sought, within a specified time period. This was among the recommendations CMUA previously submitted to enhance the role of precertification. The CEC should permit an applicant to submit its application for certification pursuant to the same edition of the Guidebook that the application for precertification was submitted under. Obviously, there would need to be reasonable limitations on this option, such as a time limit between the submitting of the application for precertification and the application for certification, as well as a requirement that the applications have not changed substantially.

D. Net Surplus Energy WREGIS Requirements

As Pacific Gas and Electric Company (PG&E)² and other parties have noted on several occasions, the current WREGIS process does not reasonably permit a utility to identify

² Comments of Pacific Gas and Electric Company on the Staff Draft Renewables Portfolio Standard Eligibility Guidebook, 7th Edition, March 25, 2013 (“While this linkage between the RPS ID and WREGIS GU ID may work for a relatively static population of distributed generation facilities reporting their entire output, this is impractical for generators under the AB 920 program, which features minor amounts of excess generation from a large and quickly expanding number of customers. For perspective, PG&E’s AB 920 program currently has nearly 80,000 customers and is growing at a rate of 1,200 to 1,500 customers each month. About 8-10 percent of PG&E’s AB 920 customers have excess generation each year, although the specific customers with excess generation changes from one year to the next. PG&E has investigated the practicality of aggregating AB 920 customers under the Commission’s proposed method and determined that it would likely not be cost-effective for PG&E to register these aggregated resources in WREGIS given the small amounts of excess generation per customer. The alternative of AB 920

the generation that is associated with AB 920 net surplus generation. This is despite the fact that the Legislature clearly intended this generation to count towards a utility's RPS: "the net surplus electricity purchased by the electric utility **shall count toward the electric utility's renewables portfolio standard** annual procurement targets"³ If WREGIS is incapable of accommodating the tracking of this generation, then the CEC should consider alternative mechanisms, such as PG&E's proposal to use the utility customer billing system.

E. Biomethane

The Draft Guidebook substantially redrafted the sections dealing with biomethane. Several of CMUA's members will file extensive comments on issues relating to these changes. CMUA supports the comments of its members and asks that the CEC carefully consider their proposals.

F. Retroactive REC Creation

As stated above, CMUA strongly supports the CEC's recent adoption of a process for requesting the retroactive creation of RECs. However, as noted in the comments submitted by many stakeholders, the current requirement to obtain a letter from the administrator of each state regulatory or voluntary program is overly burdensome and unnecessary. The CEC should reconsider the various proposals to eliminate this requirement and replace it with an alternative that is targeted at providing the necessary assurances with minimal administrative burden.

Additionally, CMUA reiterates its supports for the comments of LADWP that recommend the retroactive REC creation requirements be amended to: (1) permit RECs to be created on a unit-by-unit basis; and (2) allow **any** authorized representative of the generating facility to initiate the request for retroactive creation of RECs.

G. Allow ITS to be Used for Aggregated Units

CMUA supports the extension of the ITS until December 31, 2013. However, the CEC's resolution adopting this extension expressly states that the ITS may not be used to report generation from aggregated generating facilities. As expressed by numerous stakeholders, this restriction serves no policy purpose and would unnecessarily restrict the ability of aggregated units to count toward the RPS. CMUA recommends that this restriction be eliminated.

customers registering themselves in WREGIS is also not cost effective due to the \$200 minimum annual fee per account, and the extremely small amount of net generation exports for most accounts. PG&E's net metered customers have not been, and likely will not be, able to take full advantage of the provisions of AB 920 designed to provide them compensation for their RECs because of the way the Commission has implemented the bill to date.").

³ Cal. Pub. Util. Code § 2827(h)(6)(B) (emphasis added).

H. INCREMENTAL HYDROELECTRIC

1. The CEC Should Advance State Policy to Promote Incremental Hydroelectric Development

California currently meets 14% of its energy needs with zero-GHG hydroelectric generation. To encourage the development of this resource, the State Legislature added Section 399.12.5 to the Public Utilities Code (PUC) to allow incremental upgrades to hydroelectric systems to be RPS-eligible. To cost-effectively meet California's new proposed 2030 goals, this technology should be encouraged.

However, the CEC's current processes are not meeting the objectives of section 399.12.5. Instead, to date there have been only three applications by all of California utilities to seek RPS-eligibility for their incremental hydroelectric generation⁴ and the only one to be approved (PG&E's Rock Creek Powerhouse) was specifically identified as RPS-eligible in the implementing legislation.⁵ Several CMUA members, in reviewing the CEC's application process, found the benefits not worth the effort and uncertainty involved in filing an application.

To promote this technology, and to meet the statutory goal of PUC 399.12.5, the CEC should identify as part of its Guidebook revisions how it can simplify the application process and improve its certainty. The following are some initial suggestions to achieve this goal as well as to conform the proposed Guidebook to the CEC's statutory requirements.

2. The Process for Determining Incremental Hydroelectric Generation in the Guidebook is Internally Inconsistent and Contrary to State Law

Section II.F.4 "Incremental Hydroelectric Facilities" of the Draft Guidebook⁶ recognizes that facilities seeking RPS-certification for incremental hydroelectric generation could be either RPS-eligible (e.g., small or conduit hydroelectric facility) or not RPS-eligible at the time of application (e.g., existing facility above 30 MW). Section II.F.4(g) then directs that the amount of RPS-eligible "incremental generation" for these facilities is to be "determined consistent with the requirements in Section III.E: Incremental Generation."⁷ However, the introduction to Section III.E. states that: "An applicant may seek RPS certification for only the incremental output of a facility that is otherwise ineligible for the RPS certification."

As written, the proposed Guidebook directs that an RPS-eligible facility seeking certification of its incremental generation use a section of the Guidebook that states it is

⁴ CEC List of RPS-Eligible Facilities (accessed Feb. 17, 2015).

⁵ Cal. Pub. Util. Code § 399.12.5(b)(4).

⁶ CEC, *Staff Draft Renewables Portfolio Standard Eligibility Guidebook, Eighth Edition, Strikethrough Version*, (Draft Guidebook) at 40.

⁷ *Id.* at 42.

only available for “a facility that is otherwise ineligible for RPS certification.” Therefore, to conform proposed Section III.E of the Guidebook with Section II.F.4, the introduction to Section III E should be changed to read as follows:

An applicant may seek RPS certification for only the incremental output of a facility *if it meets the requirements of this section.* ~~that is otherwise ineligible for the RPS certification.~~⁸

In addition to being inconsistent with Section II.F.4 of the Draft Guidebook, the proposed language in Section III.E is also inconsistent with state law. As the Draft Guidebook notes: “To qualify for RPS-certification [a] facility must use one or more eligible renewable energy resources.”⁹ The Draft Guidebook in turn separately identifies four different types of eligible hydroelectric facilities (small, conduit, water supply and conveyance, and incremental hydro)¹⁰ each of which has separate eligibility requirements¹¹ and which in turn are authorized under three different sections of state law.¹²

It is possible that a portion of the output of a hydroelectric facility would qualify under one category of RPS-eligibility, while the incremental output of the facility would qualify not only under a different category of RPS-eligibility but also a different section of state law. As Public Utilities Code section 399.12.5 states, in defining what constitutes incremental hydroelectric generation:

Notwithstanding subdivision (c) of Section 399.12,¹³ the incremental increase in the amount of electricity generated from a hydroelectric generation facility as a result of efficiency improvements at the facility, is electricity from an eligible renewable energy resource, without regard to the electrical output of the facility...¹⁴

Under state law it is only the “incremental increase” that is RPS-eligible under section 399.12.5 “notwithstanding” the RPS-eligibility status of the existing generation at the facility which may¹⁵ or may not be RPS-eligible. As the law states, the incremental hydroelectric generation is RPS-eligible “without regard to the electrical output of the facility” and the Guidebook must be revised to properly acknowledge this.¹⁶

⁸ *Id.* at 81.

⁹ *Id.* at 8. See also *id.* at 58 (“renewable facilities must use one or more RPS-eligible renewable energy resources and may use one or more non-renewable energy resources to generate electricity.”).

¹⁰ Table 1 of Draft Guidebook at 10.

¹¹ As the Draft Guidebook states at p. 34: “The RPS requirements for each of these [four] types of hydroelectric facilities are addressed separately in [Sections] II.F through II.F.4 below.”

¹² Small hydro is eligible under Public Resources Code Section 25741, conduit and water supply and conveyance hydro are eligible under Public Utilities Code Section 399.12, and incremental hydro is eligible under Public Utilities Code Section 399.12.5.

¹³ This has since been renumbered to its current location as Section 399.12(e). The current Section 399.12(c) provides a definition of “balancing authority.”

¹⁴ Cal. Pub. Util. Code § 399.12.5(b) (emphasis added).

¹⁵ *E.g.*, Cal. Pub. Util. Code § 399.12(e).

¹⁶ Cal. Pub. Util. Code § 399.12.5(b)

3. The RPS Guidebook Imposes Additional Requirements Upon Incremental Hydroelectric Facilities That Are Not Supported By State Law.

Section 399.12.5 establishes and specifies the criteria that the CEC shall review in order to determine if incremental generation from hydroelectric facilities is RPS-eligible. In Section 11.F.4(a) of the Draft Guidebook,¹⁷ all but one of these criteria is carried over from the 7th Edition of the Guidebook to the current proposed RPS Guidebook. Notably absent, and struck-out in the Draft Guidebook is the requirement that:

The incremental increase is the result of efficiency improvements from a retrofit, and the efficiency improvements do not result in an adverse impact on instream beneficial uses **or cause a change in the volume or timing of streamflow**¹⁸

This requirement has now been moved to Section II.F.5 “Additional Information and Requirements for Select Hydroelectric Facilities,” which applies to facilities “incrementally increasing the generation of the facility” as allowed under section 399.12.5.¹⁹ As currently proposed, the RPS Guidebook has deleted the latter half of Section 399.12.5. The Draft Guidebook proposes the following:

An applicant for these facilities must demonstrate that the facility does not cause an adverse impact on the instream beneficial uses.²⁰

The second half of the statutory requirement is missing from the current language in the Draft Guidebook. This language allows an applicant to demonstrate that there is no “change in the volume or timing of the streamflow” as a result of the improvements.

A preferred approach would be for the CEC to bifurcate the incremental hydro application process, establishing one set of informational requirements for applicants that are only replacing/upgrading equipment, and a second, more comprehensive set of requirements for applicants proposing to improve efficiency by altering the water flow of their facilities.

4. The RPS Eligibility Guidebook Should Broadly Construe “Efficiency Improvement”

The purpose of section 399.12.5’s treatment of incremental hydro generation as RPS-eligible is to encourage the owners of **all** hydro facilities to pursue upgrades that will maximize the electricity output from these existing facilities. Increasing this generation without causing any adverse impacts on the environment is fully consistent with the goals of the RPS. To ensure that the owners of hydro facilities can consider the full range of potential upgrades, the RPS Eligibility Guidebook should clarify that for

¹⁷ Draft Guidebook at 40-41 (emphasis added).

¹⁸ This is the struck-out Section II.F.4(a)(e) on page 41 of the Draft Guidebook (emphasis added).

¹⁹ *Id.* at 43.

²⁰ *Id.* at 43.

purposes of determining if an upgrade qualifies as an “efficiency improvement,” the CEC will look at the long-term output of the facility. This is because certain type of upgrades may result in limited increases, or even decreases, in the moment-to-moment generation of the facility, but over multiple years actually result in significantly greater total output.

5. Pro Rata Counting Methodology Should Not Be Limited to FERC Approved Formula

The Draft Guidebook adopts PG&E’s proposal to allow a pro rata counting methodology for incremental hydro facilities. A pro rata formula is a reasonable method for measuring the increased output resulting from efficiency improvements. Such a methodology may be superior to the historical baseline methodology due to the increasing frequency and duration of droughts in California. However, as currently proposed in the Draft Guidebook, the pro rata methodology can only be used if the methodology has already been “approved by FERC under the FERC Renewable Energy Production Tax Credit, pursuant to the Energy Policy Act (2005).”²¹ This limitation is overly restrictive because some types of entities that own hydro facilities may not be eligible for this tax credit. The pro rata methodology should be available for all incremental hydro facilities.

The Draft Guidebook also contains no criteria as to how the CEC will evaluate whether the pro rate methodology is “superior” to other methods and “is the most appropriate method for the specific facility.”²² Since there is no guidance as to what criteria the CEC will use to evaluate applications, applicants will likely have to gather information under both methods, even those applicants that have already calculated the pro rate methodology in order to receive the applicable tax credits. A better approach, consistent with the goal of section 399.12.5 to promote incremental hydroelectric generation, is to allow the applicant to decide which approach to use.

I. Energy Storage Should Not Be Limited

The RPS Eligibility Guidebook should support the broadest possible uses of energy storage. CMUA reiterates its prior proposal that energy storage should be eligible for the RPS subject to certain reasonable restrictions, including a requirement that an RPS-certified storage facility have a separate WREGIS ID and be tracked separately in WREGIS. In support of this, the CEC should: (1) develop a methodology to determine the storage efficiency for a certified energy storage facility; and (2) develop a process where a bundled product (energy and RECs) can be transferred to the energy storage facility and then that facility can subsequently transfer a bundled product (energy and RECs) to a third party, subject to adjustment based on the storage efficiency.

²¹ Draft Guidebook at 40.

²² *Id.* at 62.

J. Update Appropriate Agency

The water supply permit that was previously issued by the California Department of Public Health is now issued by the State Water Resources Control Board. Accordingly, Section II.F.3.a) should be amended as follows:

The current water supply permit issued by the ~~California Department of Public Health~~State Water Resources Control Board, if applicable, or its equivalent from another state or local government agency.

K. Facility Inspections

The Draft Guidebook adds the following new language to the audit provision: “Furthermore, the Energy Commission may conduct facility inspections to verify compliance with the RPS requirements.”²³ CMUA recognizes the need for the CEC to ensure that RPS certifications are accurate. However, there are a number of state and federal restrictions that limit access to certain generating facilities. If the CEC wishes to conduct a facility inspection, they must coordinate with the facility owner to ensure that all applicable requirements are met.

L. Clarification of Simple Amendment Provisions

The Draft Eligibility Guidebook adds the following amendment:

Revisions to the authorized individuals, or authorized officer or agent for a utility-certified or POU-certified facility may be made by sending a letter on the utility or POU’s letterhead, verifying the changes.²⁴

As currently drafted, this provision could be interpreted as being limited to facilities where the type of certification is “utility certified.” Such a restriction would greatly limit the availability of a very reasonable proposal. CMUA recommends the following revision:

Revisions to the authorized individuals, or authorized officer or agent for a ~~utility-certified or POU-certified~~ facility that is owned by a retail seller or local publicly owned electric utility may be made by sending a letter on the utility or POU’s letterhead, verifying the changes.

M. Limit on Revocation of RPS Certification

As California’s utilities progress toward meeting the 33 percent RPS goals, there will be an increasing need for regulatory certainty regarding the eligibility status of certified facilities. The current version of the Eligibility Guidebook permits the Executive Director

²³ Draft Guidebook at 161.

²⁴ *Id.* at 95.

to revoke the RPS certification of a facility simply because “it is determined that the RPS-certified facility no longer satisfies the requisite eligibility requirements.” Broadly interpreted, this provision could mean that the certification of a facility could be revoked simply because the internal CEC interpretation of a particular issue has shifted. The Guidebook should clarify that once certified, the Executive Director may only revoke an RPS certification due to: (1) a substantial change to the facility; (2) a change in law that is expressly retroactive; or (3) inaccurate facts or claims in the original application. Furthermore, it should be clearly noted that the revocation of certification will render all future generation ineligible for the RPS program, but will not retroactively invalidate RECs created prior to the date of revocation.

II. CONCLUSION

CMUA appreciates this opportunity to provide these comments to the CEC on the Draft Eligibility Guidebook and looks forward to working with the CEC to implement our suggested recommendations.

Sincerely,



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