

BEFORE THE ENERGY COMMISSION  
OF THE STATE OF CALIFORNIA

California Energy Commission <b>DOCKETED</b> 11-RPS-01
TN # 74548 FEB 17 2015

In the matter of: )  
 )  
Developing Regulations and Guidelines for the )  
33 Percent Renewables Portfolio Standard (RPS) )  
\_\_\_\_\_ )

Docket No. 11-RPS-01

RE: Guideline Revisions for  
RPS Implementation

**COMMENTS FROM THE LOS ANGELES DEPARTMENT OF WATER AND POWER (LADWP) TO THE CALIFORNIA ENERGY COMMISSION (CEC) NOTICE REQUESTING PUBLIC COMMENTS ON STAFF DRAFT RENEWABLES PORTFOLIO STANDARD ELIGIBILITY GUIDEBOOK, EIGHTH EDITION**

John R. Dennis  
Chief Compliance Officer – Power System  
Los Angeles Department of Water and Power  
111 North Hope Street, Suite 921  
Los Angeles, CA 90012  
Telephone: (213) 367 – 0881  
Email: [John.Dennis@ladwp.com](mailto:John.Dennis@ladwp.com)

Dated: February 17, 2015

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DRAFT RENEWABLES PORTFOLIO STANDARD ELIGIBILITY GUIDEBOOK, EIGHTH EDITION**

**INTRODUCTION**

The City of Los Angeles (City of LA) is a municipal corporation and charter city organized under the provisions set forth in the California Constitution. LADWP is a proprietary department of the City of LA, pursuant to the Los Angeles City Charter, whose governing structure includes a mayor, a fifteen-member City Council, a five-member Board of Water and Power Commissioners (Board). LADWP is the third largest electric utility in the state, one of five California Balancing Authorities, and the nation’s largest municipal utility, serving a population of over four million people. LADWP is a vertically integrated utility, both owning and operating the majority of its generation, transmission and distribution systems. LADWP has annual sales exceeding 23 million megawatt-hours (MWhs) and has a service territory that covers 465 square miles in the City of LA and most of the Owens Valley. The transmission system serving the territory totals more than 3,600 miles and transports power from the Pacific Northwest, Utah, Wyoming, Arizona, Nevada, and California to Los Angeles. LADWP appreciates the opportunity to comment on the California Energy Commission (CEC) Staff Draft Renewables Portfolio Standard Eligibility Guidebook, Eighth Edition. Please note that all page references in this document correspond to the marked-up version of the Draft Renewables Portfolio Standard Eligibility Guidebook.

## **THE FUTURE OF RENEWABLE ENERGY**

In his second inaugural address, Governor Jerry Brown outlined three bold goals to be accomplished within the next fifteen years: (1) increase from one-third to 50 percent of electricity derived from renewable sources; (2) reduce today's petroleum use in cars and trucks by up to 50 percent; (3) double the efficiency of existing buildings and make heating fuels cleaner. The Governor expanded on these goals, calling for "more distributed power [and] expanded rooftop solar." As the CEC considers changes to the RPS Eligibility Guidebook and the Enforcement Procedures for Renewables Portfolio Standard for Local Publicly Owned Electric Utilities, it must keep these long-term goals in mind.

In order to supply fifty percent of power with renewables, 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 purpose of meeting the RPS by being classified as portfolio content category (PCC) 3, it will be harder to achieve this fifty percent goal. Similarly, if the CEC's certification and audit requirements do not practically permit the participation of these resources, this will also stand in the way of the fifty percent goal. LADWP encourages the CEC to recognize the contractual and ownership structures under which distributed generation qualifies as PCC1. LADWP also encourages the CEC to 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.

### **SPECIFIC COMMENTS ON THE DRAFT RENEWABLES PORTFOLIO STANDARD ELIGIBILITY GUIDEBOOK**

#### **II.C. Biomethane (Energy Resource Eligibility Requirements)**

In section II.C.a.1. regarding "Adjustments to Existing Biomethane Procurement Contracts", the draft guidebook lists several types of contract "adjustments" that would cause additional biomethane procurement received from an existing procurement contract to be subjected to the new biomethane contract requirements. Some of these contract adjustments

include: (c) adding quantities of biomethane specified as optional to the buyer in an existing biomethane procurement contract, (d) adding new biomethane sources, and (e) receiving biomethane from a new source that was not producing biomethane on or before April 1, 2014 (p.17). If these “adjustments” are accommodated in the existing contract without modifications or amendments, the additional biomethane procurement should not be subjected to new contract requirements. The CEC should consider removing items (c), (d), and (e), or clarifying that the added biomethane procurement should only be subjected to the new contract requirements if the existing contract language is actually modified or amended.

In section II.C.3.b. entitled “Claiming GHG Reductions From Methane Reduction”, the draft guidebook states:

“A POU or intermediary party, including the electrical generator, to a biomethane procurement contract shall not make a marketing, regulatory, or retail claim that asserts that the biomethane procurement contract resulted, or will result, in GHG reductions related to the destruction of methane if the capture and destruction of methane are required by law. If the biomethane source is required by law to capture and destroy the methane produced by the biomethane source, the applicant for the designated generation facility must convey this information to the Energy Commission as part of the application for RPS certification.” (Draft Guidebook, p.28)

The language underlined above may conflict with the exemption from compliance obligations for biomethane under Section 95852.2 of the California Air Resources Board (CARB) *Regulation for the California Cap On Greenhouse Gas Emissions and Market-Based Compliance Mechanisms to Allow for the Use of Compliance Instruments Issues by Linked Jurisdictions*. Under the CARB’s Cap & Trade regulation, emissions from combustion of biomass-derived fuels, including biomethane, are not subject to the Cap & Trade program compliance obligation if they meet the eligibility and verification requirements in CARB’s Cap & Trade and mandatory reporting rules.

Use of biomethane instead of natural gas results in a reduction in GHG emissions because the biomethane (biomass-derived fuel) is displacing natural gas (fossil fuel) that would otherwise have been burned to produce electricity. Good public policy should encourage the beneficial use of biomethane, not discourage it.

Moreover, the language in sections entitled "Adjustments to Existing Biomethane Procurement Contract" and "Claiming GHG Reductions From Methane Destruction" (p.28), should only apply prospectively, not retroactively. The Legislature emphasized this important point by enacting the language "under the rules in place at the time the contract was executed, including the Fourth Edition of the Energy Commission's Renewables Portfolio Standard Eligibility Guidebook," Public Utility Code Section 399.12.6(a)(1). (emphasis added). Otherwise, it would interfere with contracts and impose additional constraints on existing contracts that did not already exist at the time they were negotiated and entered into by the parties.

#### **II.F. Hydroelectric (Energy Resource Eligibility Requirements)/ Glossary of Terms – Definition of "Project"**

The additions to the definition of "project" on p. 176 references small hydroelectric facilities as well as hydroelectric generating units. This causes confusion. The definition of a small hydroelectric facility is much different from the definition of a hydroelectric generating unit. These two terms are also partially defined within the guidebook on p.34. The CEC should consider adding "hydroelectric generating unit" to the glossary of terms and ensure that the glossary definitions of "small hydroelectric facility" and "hydroelectric generating unit" as well as all other references to these terms within the guidebook are consistent with the definitions contained in PUC code 399.12. Additionally, the CEC should consider removing the last sentence in section (2) referring to "hydroelectric facility" on p.176 and remove the following paragraph at the top of p.177 to improve clarity.

### III.A.1.a. Creation of Retroactive Renewable Energy Credits in WREGIS (Facility Requirements)

On p.54, the draft guidebook states “1) A request for creation of retroactive RECs shall be made by an authorized representative of the generating facility as reflected in the facility’s certificate of RPS certification issued by the Energy Commission.”

The CEC should consider a request for creation of retroactive RECs made by an authorized representative of the generating facility, and not only by the authorized representative as reflected in the RPS certification issued by CEC. This practical clarification is needed because there may be staff changes at the generating facility that would not be reflected in the original issuance of the RPS certification.

Also on p.54 the guidebook states, “A request for creation of retroactive RECs shall be made only once for a generating facility. Multiple requests for the same generating facility are not permitted.”

The CEC should allow for the creation of multiple retroactive RECs for generating facilities that are certified on a unit-by-unit basis such as a 40 Megwatt (MW) Water Supply or Conveyance System for hydroelectric generating units. Further, WREGIS RECs are already produced on a unit-by-unit basis. As such, the CEC should consider aligning its proposal with those of WREGIS. Therefore, LADWP proposes these two sentences to read:

“A request for creation of retroactive RECs shall be made only once for **any single generating facility or unit in WREGIS**. Multiple requests for the same generating facility **or unit** are not permitted.”

On p.55, the guidebook states “Furthermore, if the request is approved by the Executive Director, the authorized representative of the generating facility shall submit an audit report to the Executive Director within 90 days of the date of the request.”

LADWP would like clarification regarding the 90 day deadline for the audit report. It is not clear if the 90 days begin on the day that the request is made or on the day that the Executive Director approves the request. LADWP suggests that the audit report deadline is extended to 120 days after the entity receives confirmation from the Executive Director that the request has been approved. Third-party audits can be a slow and costly process for some entities. Therefore, it is important to provide entities with adequate time to arrange for the resources and finances to satisfy this requirement.

Page 56 of the draft guidebook lists the detailed requirements that must be fulfilled by the third-party audit:

- “a. The auditor shall determine whether the RECs in question would have been eligible to satisfy any state regulatory or voluntary program. If so, the auditor must obtain either of the following:
1. A letter from the administrator of each state regulatory or voluntary program documenting that the RECs in question were not used to satisfy that program.
  2. A letter from the administrator of each state regulatory or voluntary program documenting that the RECs in question were tracked for that program, but have been retired without having been claimed to satisfy the requirements of that program.
- b. The auditor shall confirm that the RECs in question were not sold, traded, or otherwise transferred to any other individual or entity. The auditor shall satisfy this criterion by reviewing contracts, invoices, and other accounting documents prepared for, by, or on behalf of the generating facility, and confirming that the RECs in question were not sold, traded, or otherwise transferred to any other individual or entity, or used to satisfy any state regulatory or voluntary program.
- c. If the RECs in question have already been sold, traded, or otherwise transferred to other individuals or entities, the auditor shall identify the name and address of these other individuals and entities and the corresponding amounts, vintages, and transaction dates of the transferred RECs.

Retroactive RECs, if created by WREGIS, shall not be used to satisfy any RPS procurement requirement if the authorized representative of the generating facility fails to submit an audit report as specified above.”

The CEC began the development of WREGIS to ensure that an eligible renewable energy resource is counted only once for the purpose of meeting the RPS. This is needed to verify the retail product claims of the RECs for California and not the REC for any other state. WREGIS established a system in which renewable energy credits can only be generated once and retired once. In addition, the WREGIS Administrator is required to notify the program administrator (CEC) in writing and, if possible, via telephone of the proposed withdrawal from the Account Holder's Retirement Subaccount. Therefore, the CEC should consider simplifying the audit procedure by replacing it with the following:

“a. The auditor shall determine whether the renewable energy credits in question would have been eligible to satisfy any state regulatory or voluntary program not required to participate in WREGIS.”

WREGIS established a system in which renewable energy credits can only be generated once and retired once. Therefore, if WREGIS is the sole tracking system for renewable energy credit generation and retirement, additional audit investigations and reports are not necessary. The CEC should consider elimination of the audit report requirement.

The CEC should allow for the creation of retroactive RECs due to a delay in the CEC staff's ability to certify resources timely, especially when the certification is delayed beyond a compliance period. As a governmental agency, LADWP understands when there is a lack of resources and lack of staffing coupled with new requirements and applications to implement a new program, such as the demands the California Renewable Energy Resources Act (SBX1-2) has placed on the CEC. However, a POU should not suffer because, with the passage of SBX1-2, the Legislature has not commensurately provided adequate resources to the CEC to administer its programs. A POU is neither afforded a process directly by the CEC's identified administrative



process, nor directly under Title 20, Sections 1231 or 1237 of the California Code of Regulations to allow it to apply RECs retroactively once it has received certification; though, after the compliance period has ended. Therefore, the creation of retroactive RECs should be allowed for resources applied for certification, but due to the delay in time it took for the CEC staff to review and respond to the application, the certification was not received until after the end of a compliance period.

Commensurately with this same concept:

- The CEC should allow a POU to revise its compliance reports to include the RECs retroactively created and
- The CEC should allow a procedure to retire and unretire RECs to then include retroactive RECs with the compliance reports. These additional processes would allow a POU to adequately and fairly account for its RECs from all of its certified resources.

### **III.A.1.b. Extension of Deadline for POU's to Use the Interim Tracking System**

On p.56, the draft guidebook states:

“The deadline for POU's to use the interim tracking system (ITS) to report procurement of generation for the RPS is extended from October 1, 2012, to December 31, 2013, subject to the following requirements:

- 1) A POU shall report procurement data not tracked in WREGIS by submitting a completed CEC-RPS-Track form to the Energy Commission no later than November 6, 2014 – 30 calendar days after the Energy Commission adopted Resolution No. 14-1007-10 extending the ITS deadline pursuant to III.A.1.b: Extension of Deadline for POU's to Use the Interim Tracking System.
- 2) To report eTag data not available in WREGIS, a POU reporting through the ITS shall submit a completed CEC-RPS-eTag Summary Report with the CEC-RPS-Track form.
- 3) When the ITS is used for reporting procurement, the generating facility (or POU, if the generating facility is owned by the POU) shall report monthly generation data to

the Energy Commission on the CEC-RPS-GEN form for the entire previous calendar year for which any WREGIS data are unavailable.”

All forms identified in items 1, 2, and 3 are already submitted to the CEC as part of the compliance forms required under the Enforcement Procedures for the RPS for POUs. CEC should consider removing this requirement because the information is already being submitted as part of the compliance forms.

On p.57, the draft guidebook states:

“5) The ITS shall not be used to report generation or procurement data from aggregated generating facilities. Generation and procurement data for aggregated generating facilities shall be reported using WREGIS.”

The CEC should consider eliminating this restriction and continue to allow reporting of generation and procurement data for aggregated generating facilities using ITS forms. This supports the solar distributed generation investments made by utilities to meet the RPS requirement. In addition, the current registration process for distributed generation is burdensome as noted by WREGIS in Appendix F of its Operating Rules, therefore continued use of ITS would ensure the environmental attributes (or RECs) count towards RPS.

### **III.A.3. Station Service (Facility Requirements)**

The draft guidebook defines “station service” in such a manner that makes it ineligible to count towards California’s RPS. The proposed definition also encourages the use of brown power which impacts GHG emissions. This is contrary to the Governor’s climate change goals and the legislative findings and declaration in PUC 399.11. LADWP proposes to eliminate this section.

### **III.E. Incremental Generation (Facility Requirements)**

LADWP supports the addition of a third approach to verify and calculate RPS eligibility for incremental generation. However, overall clarification is needed on this pro rata approach. The following are LADWP's suggestions to improve the clarity and completeness of the pro rata approach.

The language in section III.E should be revised to allow for this approach to be used for hydroelectric facilities as well as hydroelectric generating units.

Section III.E.3.a. on p.84 identifies generator output as the only characteristic to determine improved facility or unit efficiency. The CEC should consider modifying this language to include generator pumping efficiency improvements. If hydroelectric generators demonstrate efficiency in generation mode as well as pumping mode, both types of efficiencies should be RPS eligible. This would be consistent with section II.F.4.b. on p.40 that identifies the RPS eligibility criteria for incremental hydroelectric facilities or generating units as "improvements that make more efficient use of the existing water resource and improve the efficiency of equipment".

The CEC should consider removing section III.E.3.b. that requires the proposed pro rata approach to be "approved by FERC under the FERC Renewable Energy Production Tax Credit, pursuant to the Energy Policy Act (2005)." (p.85) This requirement limits the applicability of the pro rata approach for hydroelectric facilities and generating units that do not satisfy this method as well as prevents entities from using this approach if they are not eligible for the FERC tax credit.

The CEC should consider removing the words "superior" and "most" in section III.E.3.c. at the top of p.84. It is an acceptable requirement to prove that a proposed pro rata approach is a more appropriate test for a given facility or generating unit compared to the other methods already mentioned in this section. However, using the terms "superior" and "most" allows for

too much subjectivity in the analysis of the approach. LADWP proposes section III.E.3.c. be rewritten as follows:

“The proposed pro rata approach is a more appropriate method for evaluating the specific hydroelectric facility or generating unit compared to the methods previously explained above.”

The CEC should consider including additional information in section III.E.3. to specifically address how the REC will be calculated for hydroelectric facilities and generating units that are approved for RPS eligibility via the pro rata approach. In the other two approaches, a historical baseline of performance is established and any performance above that baseline is identified as RPS eligible. A historical baseline method is not appropriate for the pro rata approach. LADWP suggests that a percentage calculation be used to determine the amount of generation from the hydroelectric facility or generating unit that is eligible for REC creation. The RPS eligible percentage should be calculated from the analysis of before and after testing of the facility or generating unit over the entire load range in pumping mode and generating mode. Then the RPS eligible percentage should be multiplied by the total generation output of the facility or generating unit to calculate the amount of eligible megawatts for Renewable Energy Credits (REC).

#### **V.B. Common Carrier Pipeline Biomethane (Annual Facility Reports)**

In this section of the guidebook, there is an extensive list of reporting requirements that need to be met in order to maintain RPS eligibility for common carrier pipeline biomethane. Some of these requirements need more clarification while other requirements are impossible to fulfill.

Reporting requirement 3 on p.120 references “storage site(s) along the delivery path” of the biomethane. “Storage site” is also referenced in the “Biomethane Delivery Requirements” section II.C.b.2 (p.18). The definition of “storage site” is not clear. LADWP requests removal or clarification of this term.

Reporting requirement 5 on p.121 identifies the requirement of “monthly meter data showing the total use of all biomethane and nonrenewable energy resources at the generating facility”. This requirement may not be feasible. Most generating facilities only have one meter to measure the amount of gas entering the generator on a monthly basis. However, this meter does not have the ability to differentiate between the total amount of biomethane used and the total amount of natural gas or other nonrenewable energy resources. Clarification is required to identify if one combined meter reading is sufficient or this requirement should be eliminated.

Reporting requirements 6 and 7 on p.121 need more clarification. Reporting requirement 6 requests documentation regarding “storage sites”. As mentioned above, the definition of this term is not clear. Reporting Requirement 7 is vague and open to interpretation. It is not clear what “additional documentation” the CEC is requesting to satisfy this requirement. LADWP requests removal of this term.

#### **VII.B. Records and Audits (p.160-162)**

The CEC should clarify that the audit provisions do not apply to POUs. The *Enforcement Procedures for the Renewables Portfolio Standard for Publicly Owned Electrical Utilities* contain the exclusive procedure available relating the verification or auditing of data submitted by POUs. Public Utilities Code Section 399.25 requires the CEC to develop an accounting system for SBX 1-2.

While the audit provisions do not apply to POUs, it should also be noted that there is no guidance in this section regarding the timeliness of a CEC audit. The CEC should complete an audit within a certain time period. While the Record Retention section requires records to be kept for “no fewer than 5 years,” (p. 161) there is no equivalent time period for the CEC to begin or complete an audit.

It would provide POUs much needed certainty to be able to plan for additional resources while knowing the existing resources have met the compliance targets as reported. Also, it would provide the CEC with needed certainty to be able to plan for and direct its limited human resources towards the cases that are most critical.

Page 166 of the draft guidebook states, “The Executive Director may, if good cause exists, extend a due date for the submission of a report required under this guidebook or an RPS certification. The due date for the submission of a report shall not be extended more than **30 days.**”

Due date extensions should be left to the discretion of the Executive Director because good cause may exist where an extension past 30 days is warranted. LADWP requests that the last sentence in this section be removed.

#### **VII.D.1. Revocation of RPS Certification (p.164)**

The Executive Director is provided with broad authority and discretion to revoke RPS certification. In this section, the draft guidebook states that the Executive Director can revoke the RPS certification of a facility “if it is determined that the RPS-certified facility no longer satisfies the requisite eligibility requirements” (p.164). This implies that the RPS certifications for all facilities are constantly in jeopardy as the RPS Eligibility Guidebook is revised.

It is not reasonable to evaluate facilities based on new eligibility standards that were not in effect during the facility’s certification process. Facilities should only be evaluated based on the edition of Eligibility Guidebook that was in effect during the certification process for that facility. If Guidebook requirements change in the future, these facilities should be protected as long as they continue to satisfy all requirements set forth by the appropriate Eligibility Guidebook edition that was in effect during the time of its certification.

In addition, the ability to revoke a certification within 15 days is simply untenable. The building of RPS-eligible facilities takes years of planning, environmental permitting, and many more months of financing and construction. The facilities built and certified should remain so, absent of fraud or misrepresentations.

The CEC should clarify that the new revocation procedures do not apply to POUs for which the *Enforcement Procedures for the Renewables Portfolio Standard for Publicly Owned Electrical Utilities* contain the exclusive procedure relating to revocation.

#### **VII.D.2. Fraud and Misrepresentation (p.164)**

Draft Guidebook text provides:

“The Executive Director may initiate an investigation of any awardee or LSE that the Executive Director has reason to believe may have misstated, falsified, or misrepresented information in applying for RPS certification or reporting any information required by the RPS Guidebook. Based on the results of the investigation, the Executive Director may take any action deemed appropriate, including, but not limited to, cancellation of RPS certification, and, with the concurrence of the Energy Commission, recommending the Attorney General initiate an investigation and prosecution as appropriate under applicable law.”

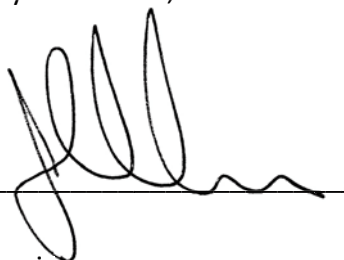
Based on basic principles of due process, there should be concrete findings of intentional misdeeds before revoking an RPS certification.

## CONCLUSION

In closing, LADWP appreciates the opportunity to participate in the rulemaking process regarding the Draft Renewables Portfolio Standard Eligibility Guidebook. We look forward to continue working with the California Energy Commission to help shape the creating of good legislation that will benefit the health, safety, and security of all California residents.

Dated: February 17, 2015

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'John R. Dennis', is written over a horizontal line. The signature is stylized with several loops and a long horizontal stroke at the end.

By: John R. Dennis  
Chief Compliance Officer – Power System  
Los Angeles Department of Water and Power  
111 North Hope Street, Suite 921  
Los Angeles, CA 90012  
Telephone: (213) 367 – 0881  
Email: [John.Dennis@ladwp.com](mailto:John.Dennis@ladwp.com)