STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

Implementation of Renewables Portfolio Standard Legislation (Public Utilities Code Sections 381, 383.5, 399.11 through 399.15, and 445; [SB 1038], [SB 1078])	))))	**Docket No. 03-RPS-1078** **RPS Proceeding**
	and	
Implementation of Renewables Investment Plan Legislation (Public Utilities Code sections 381, 383.5, and 445 [SB 1038])	))))	**Docket No. 02-REN-1038** **Renewable Energy Program**

JOINT COMMENTS OF THE CALIFORNIA WIND ENERGY ASSOCIATION AND THE UTILITY REFORM NETWORK ON THE FINAL DRAFT RENEWABLES PORTFOLIO STANDARD ELIGIBILITY GUIDEBOOK

FOR CONSIDERATION AT THE APRIL 21, 2004, COMMISSION BUSINESS MEETING

These comments are submitted jointly on behalf of the California Wind Energy Association ("CalWEA") and The Utility Reform Network ("TURN"). CalWEA and TURN appreciate the opportunity to provide these comments on the draft Eligibility Guidebooks, and to call attention to a few areas in which we believe that the RPS Eligibility Guidebook does not adequately carry out the statutory requirements having to do with out-of-state generators, deliverability, and repowered facilities. We also wish to comment on two sections that were modified since the last version of the guidebook: the eligibility of hybrid systems and of pumped storage facilities.

Except for these issues, we support the Guidebooks and appreciate the Commission's thoughtful and timely implementation of its responsibilities under the various RPS-related statutes.

A. COMMENTS RELATING TO OUT-OF-STATE FACILITIES

1. The Guidebook Must Be Revised to Require Out-of-State Facilities To Be Developed with Guaranteed Contracts to Sell Power to Customers of California's Investor Owned Utilities

On page 17 of the RPS Eligibility Guidebook, a "third category" of eligibility for out-of-state facilities is specified for facilities that are eligible for RPS only (not SEPs). This category fails to include the requirement that the facility be "developed with guaranteed contracts" to sell its power to end-users subject to the funding requirements of P.U. Code section 381 (i.e., end use customers of California IOUs). The statutory language contained in both SB 1078 and SB 67 clearly demand such a requirement.[1] We are perplexed as to why the Committee included this requirement in the second category for RPS and SEP eligibility (also on p. 17), while omitting it in this third category.

The practical effect of not making this change would be dramatic: <u>it would make eligible for the RPS all existing renewable resources outside the state of California.</u> The result could be the supplanting of new renewables development with existing, out-of-state resources. Failure to enforce this provision would allow existing out-of-state renewable capacity previously developed to supply other buyers in the WECC to redirect historical levels of output to serve California retail sellers. This practice could result in no net increase in the total amount of renewable energy produced throughout the region since the bulk of WECC states have not adopted RPS policies that would require in-state retailers to maintain their existing levels of renewable energy.

Having been closely involved in the development of the legislative language, TURN and CalWEA can attest to the fact that the intent of sections permitting out-of-state resources to qualify was to prevent such an outcome. The legislature did not intend for the RPS to encourage or allow a rearrangement of deliveries from existing renewable resources throughout the WECC. The objective of the RPS program is to promote the development of new renewable generation in order to promote environmental objectives, lessen the use of fossil fuels, and reduce energy price volatility. The CEC must therefore include the requirement contained in §399.16 in the RPS eligibility criteria.

Failure to address this issue will only create uncertainty and invite future legal challenges to the eligibility of out-of-state resources that do not satisfy the statutory criteria. TURN plans to raise such legal challenges in the event that any California retail seller proposes to use a non-conforming out-of-state resource for compliance purposes. The Commission should eliminate this litigation risk by incorporating the statutory requirements in these guidebooks.

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[1] SB 1078, P.U. Code section 399.12 (a)(1) defines an eligible renewable resource as a facility that meets the definition in section 383.5. Section 383.5 (d)(2)(B)(ii) requires out-of-state facilities to be "developed with guaranteed contracts to sell…" SB 67, section 399.16, reiterates this requirement.

2. The Guidebook Should Specify the Meaning of "Developed with Guaranteed Contracts to Sell . . ."

The RPS-SEP eligibility requirements for out-of-state generators listed on page 17 (which should also pertain to the requirements in the third RPS-only eligibility category) include the condition that a project be "developed with guaranteed contracts to sell its power to end-users subject to the funding requirements of Public Utilities Code section 381". However, there is no explanation as to how this requirement applies in practice. The Commission should clarify that this requirement means that an out-of-state facility must have been initially constructed as a direct result of a new contract to sell output to end-use customers of a California IOU, a California Electric Service Provider (ESP) or a California Community Aggregator. This meaning is clear from a reading of the plain language of the statutes and is consistent with the fact that out-of-state eligibility is set forth under the section of the law pertaining to <u>new</u> renewables facilities (P.U. Code section 383.5(d), now Public Resources Code 25743(a)).

B. COMMENTS ON THE IN-STATE DELIVERY REQUIREMENT

We are pleased that the Guidelines now include a more specific in-state delivery requirement, albeit one that serves only as a "starting point." This requirement will ensure that Californians get in-state air quality benefits from out-of-state facilities because those facilities will displace in-state fossil fuel generation with imported energy.

We do, however, urge the Commission to make three modifications: set forth two additional components of the deliverability requirement and ensure that they are implemented by WREGIS; allow the transmission rights to be those of the procuring IOU; and apply the deliverability requirement more explicitly to in-state generators.

1. Two additional components should be set forth in the deliverability requirements and implemented by WREGIS

In addition to having a NERC tag, which confirms that the generator has scheduled its output and secured transmission for export of the power, the energy must be settled within the importing entity's account, and the generator's output must be matched on an hourly basis with the NERC tags. The tracking administrator (WREGIS) must be able to compare when the contract flowed as demonstrated by the NERC tag and when the generator actually produced MWhs as demonstrated by a report from the generator and/or distribution company. If the contract flowed in hours where the unit was not producing (i.e., system power was flowing), RPS-eligible certificates should not be produced. Only in hours where both the contract flows and the unit produces should RPS-eligible certificates be issued.

These steps were described to the Renewables Committee in the March 28, 2003, comments of APX, the administrator of the NEPOOL GIS system. The Commission should ensure that these deliverability tracking responsibilities are fully developed in the rules now being devised for the WREGIS.

2. The transmission rights may be those of the procuring IOU

On page 18, the third requirement should state "The facility and/or procuring IOU must have transmission rights over transmission ties to the market hub or substation in the CA ISO control area . . ." The deliverability requirement should allow the contracting parties to use either the transmission rights of the IOU or rights procured by the facility.

3. The delivery requirements should be applied clearly to in-state generators

On p. 17, in the section on out-of-state eligibility requirements, the Guidebook states that in-state facilities, like out of state facilities, must deliver their power to an in-state market hub or substation. This requirement should be stated in the Eligibility Requirements section on pp. 4-5. The Commission should ensure that this requirement is included among the responsibilities being established for implementation by the WREGIS.

C. THE REQUIREMENTS FOR REPOWER ELIGIBILITY, USING THE TAX RECORDS METHODOLOGY, SETS AN INSUFFICIENT STANDARD

We continue to believe that the "Tax Records Methodology" sets an insufficiently low standard for meeting SB 1038's requirement that "the capital investment to repower the existing facility equals at least 80 percent of the value of the repowered facility." This outcome results from the combined effect of (a) establishing the value of the existing equipment in the repowered facility as its tax basis adjusted for tax depreciation, and (b) defining "prime generating equipment" for each technology so as to cover only a fraction of the entire facility (as a practical matter in the case of a wind repower, however, virtually 100% of the facility would be replaced).[2] We believe that this result is inconsistent with the intent of SB 1038.

Most used property (i.e., any facility old enough to be repowered) will have zero tax-depreciated value, while having substantial market value. Therefore, once a facility satisfies the "prime generating equipment" standard, it is almost certain to meet the tax value test.[3] That is, the tax test becomes superfluous. Indeed, a relatively inexpensive piece of "prime generating equipment" could easily constitute more than 80 percent of

[2] Though the guidelines do not include the turbine tower, pad, and electrical collection equipment in the definition of wind's "prime generating equipment," these components of the project are always replaced along with the turbine and blades.

[3] Consider, for example, a facility owner that spends $100 million to repower under these guidelines. If his facility is 6 years old, the value of the portions of the plant that were not replaced will have no tax value. It is not hard to meet the 80% test: $100m / [$100m+0] = 1 = 100%.

the “repowered” facility’s total new value. While the requirements for replacing “prime generating equipment” will ensure that a major capital investment is made, that investment may be insufficient to justify classifying the facility’s entire output as eligible for Supplemental Energy Payments.

To justify SEPs, repowers should be “primarily new facilities,” to use the words of the Commission in the Phase II report. To put all technologies on equal footing, one remedy would be to establish the value of the existing equipment in the repowered facility as the original tax basis declared to the IRS as adjusted by 30-year straight line depreciation. In other words, the value of existing facilities should be calculated as the original tax basis minus 1/30th of that basis for every year that the plant has been in service. This depreciation method is consistent with the approach used for utility-owned plant and corrects for the artificial distortions in value created by the allowances for accelerated depreciation under the tax code. Depreciation adjustments should be based on the actual usable life of the facility, which TURN/CalWEA submit is typically 30 years.

This remedy would create a consistent standard among the different technologies since some technologies are permitted to receive tax depreciation much faster than other technologies, and since the repowering of different technologies inherently requires replacing different fractions of the entire facility.

D. COMMENTS ON OTHER ISSUES

Finally, we comment on two sections of the RPS Guidebook that were modified since the last version of the guidebook.

Eligibility of Hybrid Systems – TURN and CalWEA support the Committee’s recommendation that, for new facilities, only the portion of a hybrid renewable/non-renewable facility that is fueled by renewable energy be considered eligible under the RPS.

Eligibility of Pumped Storage – TURN and CalWEA support making RPS-eligible the generation from pumped storage facilities. However, if the pumped storage facility does not divert water from a surface stream or other natural body of water, the small hydro requirements should not be applied to it (thus there should be no size restriction on the facility). In addition, it should be possible to pump water from both RPS-eligible and RPS-ineligible sources of energy, counting only the output attributable to the RPS-eligible source.

The Commission may wish to make more clear, however, that the generation from the RPS-eligible facility that is used to pump the water is ineligible for the RPS, as it is effectively being counted as output from the pumped storage facility (less losses). Since the quantity of renewable kilowatt hours procured for pumping will exceed the amount of kilowatt hours delivered by the pumped storage facility, the Commission must ensure that the difference between these two amounts is not tradable or counted for any other purpose. To effectuate this requirement, the pumped storage facility should be required to retire (without reselling) any RECs in excess of the number of kilowatt hours delivered to a retail seller associated with the hydro generation. This issue may require further deliberation.

Thank you for considering our views. Please contact us if we can provide further information on any of our comments.

Respectfully submitted,

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