

**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) Renewables Committee) Hearing
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**COMMENTS OF THE
CALIFORNIA WIND ENERGY ASSOCIATION
ON THE DRAFT COMMITTEE REPORT
ON PHASE I RPS IMPLEMENTATION ISSUES**

The California Wind Energy Association (CalWEA) participated in the March 25, 2003, Staff Workshop on Eligibility Issues and, on March 28, 2003, submitted written comments on the Phase I topic issues.¹ In these comments, we respond to the April 25, 2003, Renewables Committee’s draft Decision on Phase I Implementation Issues.

CalWEA is largely supportive of this draft decision. In particular, we support the Committee’s decision to recommend that out-of-state renewable power be eligible for the RPS, provided that it meets the criteria contained in SB 1038. In response to the Committee’s call for comments regarding CalWEA’s recommendation to require that out-of-state power actually be delivered into the state, we incorporate by reference our March 28 comments, which set forth the reasoning behind our recommendation. We also note that the March 28 comments of APX, Inc., explain how, as the administrator of New England’s tracking system, APX ensures that renewable energy is delivered into New England before it allows the renewable attributes from that power to be counted under state RPS requirements. To adopt the in-state delivery requirement, which we believe is essential, it also will be essential for California to develop a power-and-attribute tracking system with the same capabilities as the New England system.

We also agree with the Committee’s interpretation of SB 1078 that energy from existing geothermal facilities is to be counted toward the baseline, except for energy that the Commission determines to be “incremental.” We also support the determination that “incremental” geothermal be limited to capital expenditures associated with new or replaced generation capacity or increased water injections, and that it exclude investments that would have been done in the normal course of business (which would certainly exclude the drilling of new wells). We do, however, wish to call the

¹ See “Comments Of The California Wind Energy Association For The March 25, 2003, Staff Workshop On RPS Eligibility Issues,” March 28, 2003.

Committee's attention to two concerns related to the determination of "incremental" geothermal.

1. Incremental generation should be recognized only if it results from capital expenditures completed after December 31, 2001.

The Committee chose September 26, 1996, as the date after which capital expenditures will be recognized for treatment as "incremental" production. Though no rationale for this date was explicitly provided, presumably the date was chosen because Public Utilities Code Sec. 399.12(a)(2) twice includes that date. We believe, however, that the Legislature referenced September 26, 1996, simply to identify the facilities that are subject to the provision, and did not intend to define "incremental" production as that occurring after that date. That the date serves to define the facilities subject to the provision, rather than to define "incremental," is clear from the text, as emphasized here:

A geothermal generation facility originally commencing operation prior to September 26, 1996, shall be eligible for purposes of adjusting a retail seller's baseline quantity of eligible renewable energy resources except for output certified as incremental geothermal production by the Energy Commission, provided that the incremental output was not sold to an electrical corporation under contract entered into prior to September 26, 1996. . . .

P.U. Code Sec. 399.12(a)(2). Further, the first clause of this provision relates to the adjustment of the utility's renewable energy baseline, which, under P.U. Code Sec. 399.15(a)(3), is based on renewable energy procurements in 2001. (The "provided that" clause simply excludes geothermal facilities under QF contract from the "incremental" provision.) To be consistent, then, the above-baseline "incremental" production should be that which occurs after 2001. Certainly, the provision does not direct the Commission to use 1996 as the baseline for determining incremental production. Rather, it leaves the certification of incremental production to the Commission.

Given the deference given to the Commission, the Commission should establish 2001 as the geothermal baseline year for several reasons. First, the provision for "incremental" geothermal was made as part of the Renewables Portfolio Standard (RPS) legislation, not the establishment of the PGC fund in AB 1890, which contains 1996 as the year separating "existing" from "new." Moreover, "incremental" is not equivalent to "new." If, in 2001, a retail seller purchased renewables considered to be "new" under AB 1890, those "new" renewables would be counted as part of the retail seller's baseline, not toward its incremental requirement.

Second, using January 1, 2002, as the date as of which capital expenditures can result in "incremental" generation is consistent with how "above-baseline" renewables of other types will be treated under the RPS. For example, over 200 MW of wind projects were repowered after 1996 and before 2001; the incremental output from these facilities will be counted in the utilities' baselines, not toward their annual 1% requirements.

Third, adopting the 1996 date would erode the amount of new generation that would otherwise be developed pursuant to the annual-increase requirement under the RPS. And, finally, using 1996 as the base year would simply provide a windfall to project owners who made capital investments without any expectation of benefiting under either the PGC programs or the RPS.

2. “Incremental” production should be stable.

The draft decision (p. 20) would allow “incremental production” if it results in a slower rate of steamfield decline. That begs the question: what is “renewable” production at a geothermal steamfield? If the resource is in decline, it is not being tapped at a sustainable level and is thus not “renewable,” at least not on a timescale of a decade or more. Therefore, it would seem appropriate to require that “incremental” production result in a stable level of production.

Thank you for considering our views.

Respectfully submitted,

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