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May 16, 2003

California Energy Commission
Docket No. 03-RPS-1078
Docket Unit, MS-4
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

Dear Commissioners:

RE: San Diego Gas and Electric Comments on Implementation of Renewables Portfolio Standard Proceeding

On behalf of San Diego Gas & Electric Company (SDG&E), we appreciate the ability to attend and comment on the California Energy Commission's (CEC) workshop on developing appropriate guidelines for implementing California's Renewables Portfolio Standard (RPS) Program.

Attached are SDG&E's comments and suggestions for the CEC to consider as you prepare the written Preliminary Proposed Decision on this matter. We look forward to commenting on the proposed written decision prior to or at the scheduled July 1, 2003 CEC Renewables Committee hearing.

Sincerely,

BERNIE OROZCO
Director, State Government Affairs

SDG&E Comments on CEC Phase II RPS Implementation Issues

I. Supplemental Energy Payment Guidelines

A. Eligibility of Renewable Energy Facilities That Began Receiving Or Have Had Funds Encumbered From The New Account Before January 1, 2002 for SEP.

A renewable energy facility that has had funds encumbered from the New Account before January 1, 2002 should be eligible for Supplemental Energy Payments ("SEP") if the facility decides not to receive payments from the prior award. These facilities should not be allowed to receive both the prior award and the SEP.

In order to be eligible for the SEP, the facility should be required to make an election between the prior award and the SEP before the facility submits a bid in response to the utility's solicitation. Requiring the facility to make the decision to forego the prior award and seek SEP prior to submitting its bid is necessary to ensure that the utility has the necessary information to evaluate the project's total cost in the least-cost/best-fit ("LCBF") evaluation process. The facility's election to forego a prior award should only become effective if the facility's bid results in a CPUC approved contract.

If a facility decides to receive its prior award and not seek SEP, the facility should be required to set forth in its bid the amount of such funds it will receive during the term of the contract with the utility. In order to accurately compare bids, the utility would then pro rate the amount of funds the facility would receive over the duration of the contract. For example, if a facility had five years of payments from the prior award and the term of the proposed contract was fifteen years, the utility would pro rate the five years of payments over the fifteen-year term during the LCBF evaluation process. Pro rating the payments from the prior award will allow the utility to accurately compare the bid on the same basis with other bids.

Facilities that are already receiving allocations from a prior award (for instance a project that has three of the initial five years of a prior award remaining) should be eligible to bid in the utility's solicitation process, if the energy being bid is not already under contract and the associated attributes are available

and included with the sale of energy. Such facilities, however, should not, be allowed to make an election for a new SEP award as the project is already receiving its allocation of SEP. The remaining allocation of SEP during the term being bid for such projects would be evaluated in LCBF as described above.

B. Termination of the SEP

The CEC's criteria for terminating SEP for a facility should be consistent with the standard termination provisions approved by the CPUC for renewables transactions. For example, SDG&E has proposed to the CPUC that such a provision should include the requirement that the facility retain its status as an eligible renewable resource as such is defined in existing law and determined by the CEC. If a facility's contract is terminated on this basis then the utility should notify the CEC of the contract termination, which would trigger the CEC's termination of SEP to the facility. If the CEC determines that a facility is no longer an eligible renewable resource, the CEC should also notify the utility and then terminate SEP. This same procedure should apply for other bases to terminate the contract. The important factor is consistency to ensure that the facility need not follow different criteria for contract performance and eligibility for SEP.

C. Coordination of CEC Process with Utility Solicitation Protocols

SDG&E and TURN have proposed a standard Request for Offer ("RFO") process to the CPUC. The TURN/SDG&E proposal appropriately integrates the roles of the CPUC and CEC as required by SB1078. SDG&E describes the proposed timing of CEC action below and sets forth a general timing guideline for the proposed RFO process in Exhibit B attached to SDG&E's Opening Brief Regarding Implementation of SB1078 filed in R.01-10-024.

The CEC should develop a process for pre-qualifying the eligibility of individual renewable projects for the Renewable Portfolio Standard ("RPS") program and SEP in that the facility and utility should know as early as possible whether a facility is eligible to enter into an RPS contract. The CEC, ideally, should certify the facility prior to the submission of bids in response to the utility's RFO or concurrently with establishment of a Market Price Referent ("MPR") by the CPUC. Such a deadline would allow the utility to conduct a LCBF evaluation process and contract negotiations with only eligible renewable energy resources. At the latest, the CEC should make this eligibility determination prior to the submission of contracts for approval to the CPUC. The utility must know whether a facility is eligible prior to finalizing a contract to allow it the best opportunity to comply with its annual procurement target ("APT"). The utility, otherwise, may enter into a contract with a facility and later learn that the facility is not eligible for the RPS resulting in the utility receiving no credit for the MWh received pursuant to the contract. Such a result would cause extended litigation between the utility and project developer and would not further the State's goal of achieving 20% and encouraging the development of renewable resources.

After the utility evaluates and ranks bids, and concludes negotiations with short list facilities, the utility should submit proposed contracts to the CPUC and provide relevant information to the CEC in order to allow the CEC to determine the availability of Public Goods Charge ("PGC") funds. The utility should provide the CEC with an estimate of the supplemental energy payments needed for the price of the bid that is in excess of the applicable MPR for each proposed contract. Such information will be provided under the appropriate confidentiality provisions. The CEC should then begin its process of determining whether sufficient funds are available for SEP for the proposed contracts.

Prior to CPUC action approving any contracts, the CEC should provide a preliminary determination regarding the availability of PGC funds for SEP for the proposed contracts. This preliminary determination would provide the CPUC with valuable information needed for contract approval.

Upon approval of the contracts, the Commission should inform the CEC and request the final allocation or encumbrance of any required SEP. No longer than 30 days after CPUC approval, the CEC should confirm the allocation of SEPs and encumber the applicable funds, if CEQA is not involved. If a project involves CEQA, the CEC should allocate the funds needed and then encumber the funds after the CEQA requirements are satisfied. Expeditious allocation of SEP awards will enable a winning bidder to determine whether it can proceed with the project and provide the utility with an initial indication as to whether the facility can proceed with the project to enable the utility to take other action as necessary in order to attempt to comply with its APT[1]. This timeline, therefore, is necessary to fulfill the intent of the RPS legislation of encouraging the development of renewable energy resources.

D. Caps on SEP

The CEC should not cap SEP. The award of SEP should be based on the results of the LCBF evaluation process and not arbitrary limitations such as a cap on the amount of SEP that one project can receive. For example, if the CPUC approved LCBF evaluation demonstrates that one large project is the least-cost to customers and the best-fit to the utility's portfolio, the facility should not be precluded from entering into a contract with the utility for a large portion of the utility's APT. Artificially limiting SEP allocations with a cap will prevent projects with the highest overall benefits based on the LCBF analysis from receiving sufficient SEP. Such a result would not result in maximizing benefits to customers subject to the funding requirements of Section 381.

E. Management of Funds Given Multiple Retail Sellers

[1] For instance the utility may attempt to renegotiate its contract with the subject bidder to determine whether the developer can proceed without PGC funds or it may contract with the next project on its ranking list, which may have a lower ranking in LCBF but may be able to proceed with its project without need for PGC

In regard to an allocation of PGC funds among the utilities, the CEC should recognize the intent of the RPS legislation to have all three utilities reach 20% by 2017 in determining whether the funds should be allocated and in developing any methodology for allocating the funds. As such, the CEC must not allow funds to be allocated in a manner, which would permanently link commitment of funds to individual contributions from any one customer group. Allocations should be made with the goal that each utility should have an opportunity to procure the renewable products necessary to meet individual APT requirements and achieve the overall legislative goal of 20% renewable supply. If after the conclusion of a utility's auction and CPUC approval process, a portion of allocated funds remains unused, those funds should be available for use in other utility auctions.[2]

F. Allocation of Funding If Demand Exceeds Supply

If demand exceeds supply, the allocation of funding among eligible facilities should be based on the CPUC approved results of the LCBF evaluation process conducted by each utility. The facilities that are ranked with the highest value should be awarded SEP in descending order until no funds remain. This methodology will allow the utility to enter into contracts with facilities that are the least-cost to customers and the best-fit to the utility's portfolio as specifically required by SB1078.

G. 25% Limitation Per Project Pursuant to SB90

As discussed above, the CEC should not institute any per project cap on SEP and therefore the 25% limit pursuant to SB90 should not remain in place.

H. Award of SEP Interaction with CEQA Requirements for Project Development

The satisfaction of CEQA requirements for a facility should be included in the standard milestone provisions to be approved by the CPUC. If the facility fails to meet the CEQA milestone and the contract is terminated, the utility should notify the CEC and the encumbrance of funds should not occur.

II. Certification Process For Eligible Energy Resources

As set forth above, the utility and the facility will need to know as early as possible whether the facility is certified an eligible energy renewable resource. The CEC, ideally, should establish a procedure that

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funding.

[2] Availability of excess PGC funds should be consistent with the flexible compliance rules to be established by the CPUC in its Phase 1 RPS proceeding.

would allow the facilities to be certified prior to submission of bids but in no event should the certification occur after the utility submits contracts to the CPUC for approval.

A voluntary certification by a facility is not a substitute for a determination by the CEC that the facility is eligible. The utility must have a final assessment from the CEC as to whether the facility is eligible to ensure that it takes actions that will satisfy its APT. The utility, otherwise, would be required to rely upon a voluntary certification by a facility that if wrong would require the utility to seek redress against the facility. Such a process would not encourage the development of renewable resources in that it would allow facilities that may not be eligible to participate in the RPS. This issue, therefore, should be addressed by timely certification of eligibility by the CEC prior to the submission of contracts for approval to the CPUC.

The CEC, eventually, should also develop a system that verifies that a facility remains eligible during the term of its participation in the RPS. The CEC, however, should first establish the process for timely initial certification, which is an essential component of a successful RPS program.

III. Accounting and Verification System

The interim accounting and verification system could be a contract-path system that is based on metered data scaled down from the scheduling coordinators, ISO and the utilities. Such a system should accomplish the necessary accounting in the short-term on a rudimentary basis. The final long-term system, however, should be an electronic system that can more effectively track compliance and prevent double counting issues while accommodating the future implementation of a renewable energy credit ("REC") trading system and other enhancements.

The final system for accounting and verification, therefore, should be an electronic (certificate based) system with an open architecture that can accommodate future design and expansion. The electronic system should accommodate future enhancements such as a REC trading system, the tracking of out-of-state eligible renewable resources and the ability to interface with other systems in the WECC in that it would be more efficient to initially design such a system rather than redesign a system that does not accommodate such enhancements. The State has demonstrated a commitment to the RPS program and therefore, the best and most efficient system for tracking compliance with the RPS should be implemented.

Pursuant to SB1078, the CEC is directed to "design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers to ensure that renewable energy output is counted only once for the purpose of meeting the renewables portfolio standard of this state or any other state, and for verifying retail product claims in this state or any other state" (Section 399.13(b).) The best method for achieving these goals is to establish an electronic accounting system.

An electronic based accounting mechanism offers a superior system to a contract path approach for preventing double counting. An electronic system would provide the ability to easily and independently verify a certification that a renewable MWh had only been sold once. A contract path system, however, would rely primarily on buyer and seller certifications and as a result, it would prove difficult to independently investigate whether either the buyer or seller had sold the renewable attributes more than once. For example, an electronic based accounting system that interfaced with other systems in the Western region would prevent double counting in that it would allow a buyer from Germany to determine whether the renewable attributes or RECs it purchased from a seller in Montana had already been accounted for in the system as sold. Such a system would also allow a utility in California to check the system to verify that the renewable attributes it had purchased had not previously been sold. A buyer or an agency charged with tracking compliance would find it much more difficult and labor intensive to verify this information if a contract path system was employed.

An electronic based system could also accommodate the enhancements discussed above, which could not easily be accommodated through a contract-path system. A contract-path system would also be more labor intensive to implement on an ongoing basis. Although an electronic system might require more resources to design and initiate, it would be more efficient on an ongoing basis and would have the benefits discussed above. The final system, therefore, should be an electronic accounting system.

For both the interim and the final system, the information available to the public should be consistent with the confidentiality rules being developed by the CPUC in R.01-10-024. The CEC and CPUC should not have inconsistent confidentiality protections for the same information.