

**STATE OF CALIFORNIA  
ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION**

Implementation of Renewables	)	Docket No. 03-RPS-1078
Portfolio Standard Legislation (Public	)	RPS Proceeding
Utilities Code Sections 381, 383.5,	)	
399.11 through 399.15, and 445;	)	
<u>[SB 1038, [SB 1078]</u>	)	

**COMMENTS OF VULCAN POWER COMPANY  
ON RPS IMPLEMENTATION: PHASE 2**

Respectfully Submitted By

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## Funding Eligibility

- Q1. *How should the CEC define “New” for the purpose of SEP eligibility? For example, should “New” be defined as coming online after a specific Date?*

The definition of ‘new’ is and should be simple and consistent with the intent of SB 1078. “New” facilities should be those that come on-line and in response to RFO (request for offers) by the utilities in satisfying their ‘ATP’. For ESP and community aggregators, the definition of ‘new’ will necessarily have to wait until that procurement process is defined.

2. *Repowered renewable generation facilities are eligible for SEPs “if the capital investment to repower the existing facility equals at least 80 percent of the value of the repowered facility.” Section 383.5 (d)(3) How should the CEC confirm that a repowered renewable generation facility meets this standard?*

This determination should also be straightforward. It should rely on the extensive history of the CEC on repowering facilities, of renewable and non-renewable technologies. Federal and State tax codes provide guidance for Commission and Staff to determine whether an expenditure is for maintenance, upgrade, replacement or expansion. It is suggested that the Commission rely on applicable tax codes.

3. *Are renewable generation facilities that began receiving or have had funds encumbered from the New Account before January 1, 2002 eligible for SEPs? If yes, what conditions if any, would apply to the award of SEPs for these facilities?*

Facilities that have already received or have encumbered funds are not eligible to receive SEP. However, as noted in the workshop of May 12, 2003, that does NOT mean that projects having received funds (either encumbered or as paid) are ineligible to satisfy the RPS. The clear intent of the Legislature has been to make ‘real’ projects that have previously received awards under the New Account, yet have not been able to sign Power Purchase Agreements and begin operation. This does not prioritize those past known projects “in front” of new projects. The differentiation of the two types of projects is a central purpose of LCBF bid process being overseen by the CPUC.

4. *To whom can SEPs be made: the facility owner/operator; the retail supplier; and/or potentially an intermediary that has taken possession of the renewable generation from the renewable generation facility and has the contract with the retail seller?*

The payment may be made to any of those identified parties, subject to PPA contract provisions between the purchaser and supplier. To the extent that the procurement process for ESP’s and Community Aggregators have not been defined and detailed, Vulcan reserves the right to comment on the appropriateness

of payment recipient (in those cases) once those procurement processes are made more clear.

## **SEP Payment**

5. *What are the performance standards for paying SEPs? Are there any circumstances where SEPs would be paid when generation has not occurred?*

Performance standards should be simple—a renewable provider should be paid for the actual generation provided. This is an issue to be dealt with under Contract Terms between the purchaser (e.g. utility) and the provider. Only under Acts of God or Force Majeure (as defined by purchase contract) should generation available but not delivered be paid for.

6. *On what frequency should SEPs be paid?*

SEP payments should be made on monthly basis, unless the contract between the utility and supplier provides other invoice term.

7. *Under what circumstances should SEPs be terminated for a facility? How would termination provisions in the CEC's SEP agreements affect the ability of new projects to secure financing, if at all?*

SEP payments should be terminated in the event of contract breach or termination for non-performance as defined in the PPA. Any other provision for termination of SEP will severely and negatively impact the ability of projects to obtain financing and consequently adverse to SB 1078 goals.

## **SEP Award and Allocation**

8. *SEPs are to be awarded only to facilities eligible for funding. At what point in the procurement process is funding eligibility established? At what point in the procurement process should funds be encumbered? How does the encumbering of funds, or the state's budget deficit, affect the ability of new projects to secure financing, if at all?*

Funding 'eligibility' should be established early and prior to bidding. However, we recognize that ultimate determination of eligibility to actually receive funds is dependent on the rank order (and subsequent selection to provide) of a particular bid and the availability of funds in the New Account. A 'pre-qualification' of projects would facilitate and accelerate the process of bringing new renewable resources on line for California.

9. *Under what conditions, if any, should the CEC facilitate or administer auctions for SEPs?*

There does not appear to be a reason for the CEC to administer a separate auction for SEPs since it will already have occurred efficiently via the procurement process of each retail service provider overseen by the CPUC. To the extent that ESP and Community Aggregators have a different procurement process, yet to be made clear, there may be a need for CEC to administer an auction for that aspect of the SEPs. It appears that issue should be deferred until those procurement processes are better defined.

10. *Under what conditions, if any, should the CEC apply targets, milestones, or other conditions as requirements for SEP payment?*

Targets and milestones should be established in the PPA between the provider and purchaser, subject to the CPUC process.

11. *The CEC has authority to require a forfeitable bid bond or other financial guaranty from applicants competing for funding.*

*383.5 (d)(2)(E) The Energy Commission may require applicants competing for funding to post a forfeitable bid bond or other financial guaranty as an assurance of the applicant's intent to move forward expeditiously with the project proposed. The amount of any bid bond or financial guaranty may not exceed 10 percent of the total amount of the funding requested by the applicant.*

*Under what conditions should the CEC exercise this authority?  
Which form(s) of financial guaranty are appropriate for the CEC to accept?*

There should not be a requirement as a condition precedent for bidding to post a 'bid-bond'. Posting of such a bond, if any, should only occur, if at all, after selection by the purchaser and approved by the CPUC and only at an appropriate stage, depending on the nature of the project and the resource type. For example, a geothermal project may post a reasonable performance bond after third party steam field report. Any bonds should not drive up power prices nor discriminate against small business. The RPS is designed to encourage and support new renewables, not to inhibit them with undue costs.

12. *The CEC has authority to consider establishing caps on SEPs.*

*383.5 (d)(2)(A)(i) The Energy Commission may establish caps on supplemental energy payments. The caps shall be designed to provide for a viable energy market capable of achieving the goals of Article 16 (commencing with Section 399.11). The Energy Commission may waive application of the caps to accommodate a facility, if it is demonstrated to the satisfaction of the Energy Commission, that operation of the facility would provide substantial economic and environmental benefits to end use customers subject to the funding requirements of Section 381.*

- i. On what basis, if any, should SEPs be capped?*
  - a. Per unit production;*
  - b. By time period, such as a utility's procurement cycle;*
  - c. By retail seller or category of retail seller (e.g., UDC, ESP);*
  - d. Relative to the market price referent or the balance remaining in the New Account.*
  - e. Other?*

Predetermined caps, if any, will negatively impact SB 1078 objectives. We recognize that such caps may be necessary to avoid purchasing resources that are “too expensive”, but for the first bid rounds, the competitive nature of bidding, combined with the likely surplus of supply will obviate the need for caps. Under past caps in the New Renewables program, limited baseload projects have moved forward to PPA and generation. It is not possible to determine if this is due to lack of market or the impact of caps, but it is better to remove caps than to instill them again.

- ii. What methodology should the CEC adopt to confirm that the “substantial economic and environmental benefits” condition exists?*

We do not believe caps are appropriate at this time. However, if caps are put in place we believe “substantial economic and environmental benefits” should be determined on a State-wide basis and not consider welfare distribution nor local effects (which are considered both within LCBF and elsewhere.) To provide information for what is fundamentally a policy judgment call, we suggest project rate benefits be evaluated including externality and load support impacts.

- 13. The CEC has the responsibility to manage funds given multiple retail sellers and categories of retail sellers.*

*383.5 (d)(2)(A)(v) Funds shall be managed in an equitable manner in order for retail sellers to meet their obligation under Article 16 (commencing with Section 399.11).*

*Whether or not caps are established, should the CEC allocate available funding among retail sellers or retail seller categories?*

The Commission needs to remain diligent that ratepayers of one utility do not subsidize the ratepayers of another utility, nor that PCG funds somehow remain underutilized. On this issue, “soft caps” seem reasonable.

- 14. The CEC may provide funding preference based on the following:*

*383.5 (d)(2)(F) In awarding funding, the Energy Commission may provide preference to projects that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.*

*How should the CEC establish that such a condition exists?  
Under what conditions would such a preference be applied?*

Projects may provide tangible and demonstrable evidence of such factors. The Commission should apply that evidence in deciding whether to provide SEP only if there is a need to exceed a ‘cap’ (see Q12) or to break a tie between otherwise comparable projects.

15. *If funding demand exceeds supply, how should the CEC allocate funding among eligible facilities?*

The CEC should allocate based on the rank ordering of projects based upon benefits, up to the available funds.

16. *In the implementation of the New Renewables Resources Account from 1998 to 2002 under Senate Bill 90 (Chapter 854, Statutes of 1996), projects were limited to receive no more than 25 percent of the funds available from each auction. Should such a limit remain in place consistent with the prior program provisions?*

No. The prior limit is not applicable to the current situation.

17. *How will the awarding of SEPs interact with the CEQA requirements for project development?*

We believe that awards may be made contingent, as will be contracts and PPA, upon satisfactory compliance with CEQA.

## **Reporting and Verification**

18. *What entities are responsible for reporting the term of the contract for eligible generation (383.5 (d)(2)(A)(iii)) and the actual generation eligible for SEPs?*

*383.5 (d)(2)(A)(iii) Supplemental energy payments awarded to facilities selected by an electrical corporation pursuant to Article 16 (commencing with Section 399.11) shall be paid for the lesser of 10 years, or the duration of the contract with the electrical corporation.*

*383.5 (d)(2)(A)(iv) The Energy Commission shall reduce or terminate supplemental energy payments for projects that fail either to commence and maintain operations consistent with the contractual obligations to an electrical corporation, or that fail to meet eligibility requirements.*

No comment.

19. *What data sources should be acceptable for reporting eligible generation to claim SEPs?*

Contract settlement forms and documentation should be adequate.

20. *What standard of review by the CEC is appropriate for confirming data reporting SEP eligible generation?*

No comment.

21. *On what frequency is eligible generation reporting required for SEPs?*

On a schedule consistent with payment frequency (see Q6 above.)