

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

**Implementation of Renewable 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

**COMMENTS OF CHATEAU ENERGY, INC.
ON THE
PRELIMINARY COMMITTEE DRAFT
RENEWABLES PORTFOLIO STANDARD:
DECISION ON PHASE 2 IMPLEMENTATION ISSUES**

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Date: July 17, 2003

**COMMENTS OF CHATEAU ENERGY, INC.
ON THE
PRELIMINARY COMMITTEE DRAFT
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Chateau Energy, Inc. (CEI) respectfully submits comments on the *Preliminary Committee Draft, Renewables Portfolio Standard: Decision on Phase 2 Implementation Issues* (Report) released April 25, 2003. These comments are provided to the Energy Resources Conservation and Development Commission (Energy Commission) as input following the July 14, 2003 Hearing (Hearing) on the proposed decisions contained in the Report. CEI understands that the Renewables Committee (Committee) will develop a final report based on all input, for submission to the Energy Commission for consideration and possible approval at the September 17, 2003 Business Meeting. Once approved, the Committee will develop guidelines to implement the decisions.

CEI wishes to thank the Energy Commission and the Committee for their thoughtfulness and diligence in preparing this report. CEI's comments to the proposed decisions are divided into the three implementation issues for Phase 2, as they are the Report:

- distributing supplemental energy payments (SEPs)
- certifying renewable electricity generation facilities, and
- developing the accounting system for the Renewables Portfolio Standard (RPS)

I. Distributing Supplemental Energy Payments

A. Definition of "New"

CEI supports the Committee's decision that resources that begin operation on or after January 1, 2002 will be considered "new" and eligible for SEPs if eligibility requirements are met. "New" would expire at the same time as the eligibility for SEPs.

CEI also agrees with the Committee's rationale and the Independent Energy Producers Association's (IEP) comments at the Hearing that the date should be fixed and not moved forward with each solicitation.

B. CEI Proposes Clarification of “Repowered”

The Committee recommends that “*repowered generators should be eligible for SEPs if they replace their prime generating equipment and use tax records to demonstrate that the capital investments they make [are] equal [to] “at least 80 percent of the value of the repowered facility,” as required by SB 1038.*”

Upgrading and retrofitting existing facilities clearly have the potential to vary widely in what is needed to achieve compliance with the RPS. Using CEI’s Mesquite Lake Facility as an example, the core technology for waste conversion must be replaced as well as the “*prime generating equipment*”, in order to meet the RPS requirements for gasification. The definition of the facility in this context must be considered to be that portion of the industrial complex dedicated to the process stream specific to electrical generation (feed, conversion, generation). There may be other structures and equipment at an existing site that are not devoted to the generation of electricity, and those elements should not be considered in the value of the repowered facility. CEI agrees with the Committee’s determination that the land value would not be included.

There was considerable discussion during the Hearing regarding the Committee’s decision to use tax records as the basis for valuation, and potential problems with availability of those records in circumstances such as change of ownership of the facility or under a sale/lease structure. These are valid concerns. Tax records of parties other than the generators seeking eligibility under the RPS will in all likelihood not be available for review by the Energy Commission.

In addition, tax records on their own will provide insufficient data for evaluation and could misrepresent the actual value of that portion of the facility dedicated to the process stream. Equipment and structures at an existing facility may have already been completely depreciated and no longer appear on the tax schedules. They may, however, still have salvage value that should be included in the valuation. A change of ownership could result in a new depreciation schedule for tax purposes but the numbers would most likely be invalid for this type of cost assessment.

CEI recommends that the value of the repowered facility be determined by an engineering cost analysis submitted for review by the generator that takes into account the

effective age and economic life of the components comprising the process stream (depreciation), thereby establishing the present value of the existing components. The value of the capital investment would be the documented cost of construction (labor, materials, and equipment) to upgrade and repower the facility, the same value that is then used as the original tax basis declared to the Internal Revenue Service to calculate depreciation. This also allows the amount of the capital investment to be established at completion of construction, instead of waiting until the next tax return is submitted.

C. SEP Interaction with SB 90 Funds

CEI agrees with the Committee's decision that a project holding a conditional funding award from the Energy Commission's New Renewable Resources Account (SB 90) is eligible to participate in the RPS, but cannot receive SEPs in addition to the SB 90 award.

CEI does not agree, however, that a winning bidder should be required to relinquish its SB 90 award upon execution of a power purchase agreement (PPA) with a utility, "*regardless of whether or not the bidder ultimately qualifies for SEPs*". CEI understands that the Energy Commission cannot enter into an agreement for SEPs with the winning bidder until after the PPA is in place. Relinquishment of the SB 90 award should occur as part of the agreement for SEPs between the Energy Commission and the bidder, and not before.

Anything else places the bidder in double jeopardy if he must relinquish the award he already has with no guarantee of SEP funding. The Committee has indicated in the report that the bidder must state his intention to either keep the SB 90 award or relinquish it in favor of SEPs upon submission of a bid. This requirement is also included as Item 6 under "First Ranking" in the discussion of "Least Cost Best Fit" in the CPUC's Decision 03-06-071. Therefore, the bidder has already committed to forfeiting the SB 90 award if awarded SEPs when his signed bid was submitted.

D. Entities That May Receive SEPs and Payment Terms

The Committee recommends that SEPs be paid "*to the entity with which an electrical corporation or other obligated entity holds a long-term contract (ten years or longer) for renewable energy resources.*"¹ The Committee further states that, "*in accordance with SB*

¹ Report, page 13

1038, the CPUC may authorize shorter-term contracts but contracts for less than ten years are not eligible for SEPs.”²

SB 1038 clearly states that SEPs can only be “paid for **the lesser of 10 years, or the duration of the contract with the electrical corporation**”³ (emphasis added). Although the electrical corporations must offer contracts of no less than 10 years, the California Public Utilities Commission (CPUC) has the authority to approve shorter duration contracts.⁴ If an acceptable renewable generator receives a PPA for less than 10 years that has been approved by the CPUC, that generator should be eligible for SEPs, consistent with SB 1038. If that same generator then receives a second PPA for 10 years or more, the payment of SEPs under both contracts would cease at the end of 10 years from the onset of the first one.

E. Financial and Performance Guarantees and SEP Termination

CEI agrees with the Committee’s decision that SEPs would be terminated if the PPA that is the basis for the award is terminated, and that financial and performance issues be addressed in the PPA between the bidder and utility.

The bidder also needs protection, however, in the event that SEP funding is determined by the Energy Commission to not be available after the bidder has already entered into a PPA with the utility. CEI recommends that an exit clause be incorporated into the Standard Terms and Conditions of the PPA that would allow the bidder to withdraw from the contract if SEP funding is not available.

F. Deferred Issues

1. Establishing Caps on SEPs. As implementation of the RPS proceeds, we can expect that certain very desirable but costly opportunities will present themselves. Early stage procurement can “cherry pick” among backed-up projects, but compliance with procurement targets and with the statutory non-electric goals of the RPS may well require careful, selective support in future years that could be above any arbitrary cap established now. It is unnecessary to set such a ceiling now, as CPUC and the Energy Commission are fully empowered to not select projects considered too costly; it may actually be counter-productive to have such a limit

² Report, page 16

³ PUC § 383.5(d)(2)(A)(iii)

⁴ PUC § 399.14(a)(4)

pre-set, if in the future there are specific, excellent yet costly options the agencies agree should be implemented.

2. Low-Income/Minority Preference. As a specifically-stated area of focus of the RPS, this aspect of Environmental Justice must be seen as an overriding priority. The CPUC decision leaves broader RPS target compliance to the procuring entity with the caveat that agency choice can alter utility contract preferences if deemed appropriate. This agency review of utility-proposed contracting should include specific assessment for compliance with all Environmental Justice issues, and exercise the option to show greater preference where appropriate.

3. ESP and CCA Compliance with RPS. CEI agrees with the Committee's recommendation to defer any decision on funding allocations between providers or classes of providers until the CPUC's proceedings are complete.

II. Certification

CEI agrees with the Committee's decision that projects can receive provisional or pre-certification in advance of completion of the project, to provide some assurance to both the generator and the utilities that the project is eligible for the RPS. CEI also supports the process developed by the Committee for verification of the accuracy of the self-certification claims.

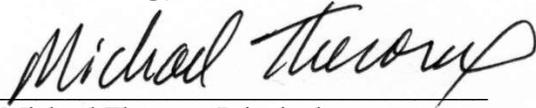
III. Accounting System

CEI agrees with the Committee's decision to use an interim contract-path accounting system to verify RPS compliance for 2003 and 2004, and to develop a long-term electronic path accounting system in coordination with the Western Governors' Association beginning in 2005. CEI also supports a long-term system that would be designed to facilitate Renewable Energy Credit trading at some time in future.

Chateau Energy, Inc. stands ready to reply to the Energy Commission, and to the Committee, and to answer questions as needed on the above materials.

Respectfully submitted this 17th day of July, 2003 at Sacramento, CA.

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CERTIFICATE OF SERVICE

I, Michael Theroux, certify that I have on this 17th day of July 2003 caused the foregoing **COMMENTS OF CHATEAU ENERGY, INC.** on the Energy Commission Docket No. 03-RPS-1078, to be served on the California Energy Commission, Dockets Office, 1516 Ninth Street, Sacramento, CA, by delivery and electronic mail.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17th day of July 2003 at Auburn, CA.

By: 
Michael Theroux, Principal