

**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
FINAL COMMITTEE DRAFT
RENEWABLES PORTFOLIO STANDARD:
DECISION ON PHASE 2 IMPLEMENTATION ISSUES**

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Date: September 29, 2003

**COMMENTS OF CHATEAU ENERGY, INC.
ON THE
FINAL COMMITTEE DRAFT
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DECISION ON PHASE 2 IMPLEMENTATION ISSUES**

Chateau Energy, Inc. (CEI) respectfully submits the following comments on the *Final Committee Draft, Renewables Portfolio Standard: Decision on Phase 2 Implementation Issues* (Report) released September 10, 2003. These comments are being submitted the same day as the September 29, 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 October 8, 2003 Business Meeting. The Committee will develop guidelines to implement the decisions following approval of the Report.

I. Repowered Facilities

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

A. Definition of Repowered

There may be other activities and processes at an existing facility that do not contribute to electrical generation. The definition of a “repowered facility” therefore, 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 in fact be multiple facilities on a single industrial site. The other structures and equipment at the site that are not devoted to the generation of electricity going to the grid should not be considered in the value of the repowered facility. Attempting to identify that process stream from tax records alone will be extremely difficult, if not impossible.

B. Environmental Control Equipment is an Element of Electrical Generation

The Report lists elements of repowering that would qualify as “capital investments” to meet the 80 percent requirement, including structures used for structural support of the

equipment and process control equipment. The Report specifically excludes, however, environmental control equipment such as air pollution control devices, because they do “*not contribute directly to the production of electricity.*” CEI requests that the Committee reconsider this position. Environmental control equipment within the process stream specific to electrical generation is as critical to the generation of electricity as the structures needed to support the prime generating equipment. In some cases, the environmental controls are integrated into the design of the primary equipment that is accepted as part of the process stream. The Committee has already stated that it believes the Legislature made repowered facilities eligible to enhance the efficiency of those existing facilities, such as improving electrical output, fuel efficiency and “*environmental characteristics.*” Excluding environmental control equipment from the capital investment to repower a facility is clearly contrary to the Legislature’s intent.

C. CEI Recommends Clarification of the Criteria Used to Qualify as “Repowered”

The Report proposes to use tax records to establish the value of a repowered facility. Although tax records do differentiate between capital assets and operation and maintenance expenses as stated in the Report, they do not identify the use or purpose of those assets. Tax records on their own provide insufficient data for evaluation and will not separate the actual value of that portion of the facility dedicated to the process stream from other assets listed. 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 is opposed to the use of tax records alone to establish a repowered facility’s value for the above reasons.

The Report also proposes a replacement cost approach as a reasonable alternative to tax records, in the event they are unavailable, and then acknowledges that “*the cost of replacing the retained equipment will almost always be higher than the adjusted tax basis of the equipment.*” Clearly, an alternative to any proposed method is not reasonable if it is not expected to produce similar results. In addition, proposing to use the cost to replace a piece of equipment that is not being replaced lacks logic and is certainly not consistent with anything that might be gleaned from tax records, the Committee’s preferred approach. The Report also indicates that the

replacement cost would be based on an “independent estimate”, but does not state who would be preparing this estimate or what their qualifications might be.

CEI again recommends that the definition and valuation of the process stream, as an element of an industrial facility, be determined by an engineering cost analysis (ECA) submitted for review by the generator. The ECA will take into account the effective age and economic life of the components comprising the process stream, 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, and establishes proper context of the current project limits relative to prior tax records.

An ECA stamped and signed by an Engineer registered to practice in the State of California constitutes an independent assessment of the value of the repowered facility (process stream), regardless of who is paying him or her. The professional and legal obligations of a California Registered Engineer are legislated by Chapter 7 of the Business and Professions Code. The Codes of Professional Conduct for Professional Engineering are codified in Title 16, California Code of Regulations section 400, et seq.

II. SEP Interaction with SB 90 Funds: No Double Jeopardy

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*”. The bidder is placed 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. The signed bid becomes part of the PPA.

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.

III. Multiple Awards Should Be Allowed

The Report states that one facility may enter into two or more separate contracts, with each contract eligible for SEPs for the first ten years of generation from the initial RPS contract(s). CEI agrees with this decision.

The Report then seemingly contradicts that decision by saying that a facility cannot compete for a second award after the initial contract expires, even if the contract was for less than ten years. The facility can apparently however, compete for multiple awards during the same solicitation.

The timing of bidding and contracting should not be a factor in the edibility for SEPs, except for the ten year limitation. If an acceptable renewable generator enters into a PPA for less than 10 years, that generator should be eligible for SEPs, consistent with SB 1038. If that same generator then is awarded a second (or more) PPA at any time during the initial ten years, regardless of whether the award is the result of another solicitation or the first contract has expired, the second PPA should also be eligible for SEPs. The payment of SEPs under both contracts would cease at the end of 10 years from the onset of the first contract.

IV. 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.

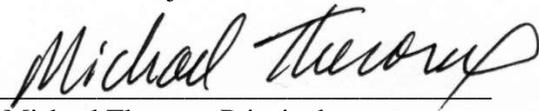
The bidder also needs protection, however, in the event that SEP funding is determined by the Energy Commission to not be available after the bidder has already entered into a PPA with the utility. CEI recommends that an exit clause be incorporated into the Standard Terms

and Conditions of the PPA that would allow the bidder to withdraw from the contract if SEP funding is not available.

This concludes the comments of Chateau Energy, Inc. and we stand ready to reply to the Energy Commission and the Committee, and to answer questions as needed on the above materials.

Respectfully submitted this 29th day of September, 2003 at Sacramento, CA.

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CERTIFICATE OF SERVICE

I, Michael Theroux, certify that I have on this 29th day of September 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 United States Postal Service delivery and electronic mail.

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

Executed this 29th day of September 2003 at Auburn, CA.

By: 
Michael Theroux, Principal