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Solargenix Energy, Inc.
Comments on the Proposed Changes to
the Renewable Portfolio Standard Guidelines

RPS Proceeding
Docket Nos. 03-RPS-1078 and 02-RPS-1038
April 19, 2006

Introduction

Solargenix Energy, Inc. is pleased to submit these comments and suggestions to the CEC Commissioners and Staff regarding the above subject. In general, we applaud the efforts of the CEC to implement and run the RPS program; the guidebooks issued by the CEC provide clear and concise information regarding rules and certification procedures of renewable generation and represent a significant milestone for development of California's RPS program. Launching a multi $Billion dollar program to provide 20% of the state's energy with renewable power will be, and is, a complex undertaking with many stakeholders having specific and diverse needs. While we appreciate the need for specificity and detail to help ensure that all projects are treated equally by the state, we also believe that the RPS program is increasingly becoming "bogged down" and, overall, the program's effectiveness could be imperiled due to a lack of understanding of real world project development and concerns.

Specifically, Solargenix has two areas of comments that should be addressed by the CEC to help ensure timely response by the renewable developers to meet the state's 20% renewable energy quota.

SEP Payment

As currently configured, it highly doubtful that many, if any, developer can achieve project debt financing if their bid and accepted offer is above the Market Price Referent (MPR). The CEC should be cognizant that, with the exception of wind and photovoltaic technologies, few of the renewable developers are large companies that can underwrite and backstop the needed debt for project development. Consequently, since the winning renewable energy developer rarely has the financial wherewithal to guarantee payment, the lenders rely heavily on the balance sheets of the buyer. The debt is financed by a lender based not only on the buyer's current ability to pay but also on the long term commitment to pay. When the long term commitment is perceived to be at risk, there is hesitancy on the part of the lender to fund the loan.

In particular, Solargenix has first hand experience of trying to finance a project when the utility has questionable balance sheets to fully fund the PPA. Our 65 MW solar plant in Boulder, Nevada experienced significant delays when the lender was hesitant to loan on a Power Purchase Agreement (PPA) from Nevada Power. The debt was secured and the

project launched only after a special escrow account was enabled that promised payment even if Nevada's Power's balance sheet fell below investment grade.

The SEP payment method, at this time, has no specific guarantee of payment by the state. Since any contract above the MPR pricing requires two contracts to fully pay the PPA, one from the IOU and one from the state (CEC), from a lenders' perspective both payors must demonstrate not only an ability to pay but also a willingness to pay. The lender must feel comfortable that both payors' commitments will last as long as the PPA; otherwise, the lender perceives risk and will not fund the loan.

The Guidebook is detailed on when the SEP payment is allowed, when it can be terminated and how the payment is made, however, there is little on the security of the payment. The security of the SEP payment must be addressed by the CEC in an expeditious manner to ensure contracts that are over the MPR are funded. Solargenix also notes that SDG&E at the Monday (4/17/2006) meeting on this matter also commented on and supported Solargenix's SEP security concern as did TURN. Both these entities acknowledged that SEP security for project debt financing needs to be addressed.

Solargenix notes that Commissioner Geesman also appeared to recognize the seriousness of the SEP security deficiency and discussed methods to mitigate. Solargenix is appreciative that the Commissioner is willing to address this issue; however, the Commissioner's suggestion that the staff should wait until a formal application is submitted to physically demonstrate the problem is somewhat of a "Catch 22". It is highly improbably that any application would be filed if no debt financing is secured. Certainly, the IOU will request documentation of the project's financial solvency and would be remiss (and held accountable) if they signed a project agreement that cannot demonstrate sound financing.

In summary, Solargenix respectfully requests that the CEC implement immediate changes to the SEP payment method that addresses the lack of payment security and take steps to ensure that the security offered by the CEC is sufficient to permit project debt financing.

Confidentiality

The "Renewables Portfolio Standard Eligibility Guidebook" represents a detailed request of the renewables projects and offerings. While it is understandable that much of the requested data (Appendix A) is needed to ensure a fair implementation of certification and SEP payment, much of the information does not appear to be needed if the project pricing is below the MPR. When the offer and contract pricing is below the MPR, it is only necessary to request that information relative to plant performance; information regarding plant pricing and financing would appear to be superfluous and not relevant. While Solargenix is a strong proponent of "transparency" regarding the implementation of the RPS program, pricing information regarding bids under the MPR should be kept

confidential. Solargenix sees little value and much risk through the arbitrary disclosure of bid pricing. The renewable energy business is keenly competitive and developers want, to the extent possible, protect their technology and pricing through confidentiality agreements with the IOU. Such data and information should be released carefully and only as needed.

Summary

In summary, we strongly advocate a form of guarantee or security of the SEP by the CEC to ensure that the debt financing of a project is doable. The current situation will preclude many projects from securing funding and these projects will simply wither and die. In addition, Solargenix recommends that, to the extent possible, bid pricing and terms be kept confidential when no public money is used for subsidy and, in general, when disclosure serves no financial or public purpose.

Respectfully Submitted,

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for Solargenix Energy, Inc.
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