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VIA E-MAIL

Docket No. 02-REN-1038 and 03-RPS-1078
Docket Unit, MS-4
California Energy Commission
Docket Office
1516 Ninth Street
Sacramento, CA 95814-5504

Re: Pacific Gas and Electric Company's Comments – Guideline Revisions for the Renewable Energy Program and RPS Implementation

Dear Docket Clerk:

Pacific Gas and Electric Company (PG&E) respectfully submits the enclosed comments on the CEC's Staff Draft Guidebook for Renewables Portfolio Standard Eligibility – Third Edition (CEC 300-2007-006-ED3-SD.

1. Comments of Pacific Gas and Electric Company Re: Guideline Revisions for Renewable Energy Program and Renewables Portfolio Standard Implementation.

2. PG&E Redlined version of Staff Draft Guideline Revisions.

3. Powerpoint slides presented at September 24, 2007 CEC workshop, "Opportunities for Expanding Renewable Resource Deliveries to California"

4. Matrix summary of PG&E's key concerns presented at workshop: "PG&E Comments on September 2007 Staff Draft of Changes to Eligibility Guidebook"

Thank you for considering our comments. Please feel free to contact us if you have any questions about this matter.

Sincerely,

/s/
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/s/
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Enclosures

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

Docket No. 02-REN-1038
Renewable Energy Program

Docket No. 03-RPS-1078
Renewables Portfolio Standard

Comments of Pacific Gas and Electric Company Re: Guideline Revisions for Renewable Energy Program and Renewables Portfolio Standard Implementation

September 26, 2007

I. Introduction and Summary

The CEC is proposing to amend its RPS Eligibility Guidelines in response to the need for clarification and market developments that have surfaced since the current version was published in March of 2007 and has circulated the Staff Draft Guidebooks for comment. The eligibility requirements for banked and shaped deliveries in the draft Eligibility Guidebook reflect a deeper understanding of the market mechanisms that have evolved to enable the delivery of unit-specific intermittent generation into California, and this perspective is very much appreciated. PG&E believes that these changes will create greater opportunity for California to gain access to out-of-state renewable resources.

As the number of remaining uncommitted eligible renewable resources within California continues to shrink, California's load serving entities must look beyond the state's borders for the next major tranche of renewable resources. The CPUC has approved PG&E's proposal to study the feasibility of developing and delivering renewable resources in British Columbia to California, and pursuant to the CPUC's direction, PG&E has discussed the possibility of resource development with governmental and business leaders in British Columbia. However, potential out-of-country sellers have expressed reservations about the ability to address California's eligibility standard as expressed by the Guidebook. Potential out of state sellers have also informed PG&E that they find it difficult to comply with inconsistent certification requirements. One has encountered an arbitrary certification process that has inhibited its commitment to deliver renewable energy into the California renewables market.

The Commission should use its discretion to eliminate regulatory obstacles to eligibility whenever possible. The Guidebook's unnecessarily restrictive interpretation of statute and principles of law has already caused CEC staff to deem significant amounts of statutorily eligible renewable resource to be ineligible, and unless this problem is addressed, the prospects of achieving California's ambitious RPS goals will remain remote indeed. PG&E realizes that the CEC may not be aware of all of the commercial consequences of its Guidebook interpretations and has focused these comments on key provisions of the Guidebook that, in their present form, indiscriminately exclude eligible resources. PG&E's key recommendations are:

1. Statutory requirements should be interpreted in a manner that recognizes the resource as renewable whenever possible.

2. The requirements and process for certification should be unambiguous and consistently applied.

3. A certified or pre-certified eligible renewable resource that maintains compliance with the eligibility criteria in existence at the time of initial delivery shall not become ineligible due to a change in eligibility criteria that occurs during its fixed-term contract with a retail seller.

II. PG&E's suggestions will remove regulatory barriers to renewable resource development in previously untapped areas.

A. Banking and Shaping

The proposed description of the banking and shaping process is significantly more comprehensive than the current version, but requires one substantive change in light of commercial practices which may require a retail seller to procure renewable energy from an intermediary, instead of the "RPS –certified facility" as contemplated by the Staff Draft. Minor changes are recommended to improve the clarity of the text. These recommendations appear in the attached mark-up of the Staff Draft Guidebook on p. 31. Specific recommendations are listed below:

1. Banking and Shaping by Intermediaries

The owner of a renewable energy resource may prefer to sell or convey its power to a third party instead of contracting directly with a regulated retail seller. In that case, in order to procure renewable energy from that resource, a retail seller or procurement entity must contract with the third party or "intermediary." The Guidebook should state that delivery of out-of-state renewable power may be accomplished by a PPA between an intermediary, instead of the generator, as the other party to a PPA. PG&E recommends insertion of the following on p. 31 of the Staff Draft:

> The RPS-certified facility **or an intermediary (collectively, "Seller")**[1] must enter a power purchase agreement with the retail seller or procurement entity. The energy generated and associated RECs from the RPS-certified facility must be procured by a retail seller or procurement entity through a power purchase agreement. (Footnote: Intermediary means a business entity that has contracted with an Eligible Renewable Energy Resources for the rights to the electricity generated by that resource.)

2. Delivery Schedules, not Output Profiles.

The term "output profiles" should be replaced with "delivery schedule" because the problem being addressed is the product's delivery into California, not its output from the facility.

> "Banking and shaping to offer a firmed product refers to the process by which intermittent resources with variable ~~output profiles~~ **delivery schedules** may be backed up or supplemented with delivery from another source to meet customer load." (Draft Guidebook pp. 30-31.)

3. Contracting Structures Would Meet Delivery Requirements.

Three potential scenarios are described in a footnote to the text on p. 31 as "examples of contracting structures that could meet the RPS delivery requirements, but these examples are not exhaustive and other contracting structures could also qualify." The Guidebook should be clarified to state affirmatively that the three scenarios "**would** qualify" instead of "could qualify," so the examples of qualifying arrangements are truly useful. (Draft Guidebook p. 31.)

B. Delivery from Out of State Resources

A renewable generating facility located out of state may be eligible...

> "... so long as it will not cause or contribute to a violation of a California environmental standard or regulation. (Pub. Res. Code section 25741(b)(2)(B)(iv).

The Guidebook presently requires the applicant to

> "...provide a comprehensive list and description of all California environmental quality laws, ordinances, regulations, and standards (LORS) that may be directly or indirectly impacted by the facility's development or

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1 **Intermediary means a business entity that has contracted with an Eligible Renewable Energy Resources for the rights to the electricity generated by that resource.**

> operation and an assessment as to whether the facility's development or operation will cause or contribute to a violation of any of these LORS in California. (Staff Draft p. 46.)

The current Guidebook implements this condition by requiring an applicant for certification to list laws, ordinances, regulations, and standards (LORS) for each of 16 protected resources that "may be directly or indirectly impacted" by the renewable facility.

The requirement to list LORS is triggered if a California resource "may be indirectly impacted." Given the current scientific understanding of environmental processes, an indirect effect from an electric generating facility's development or operation may be measurable, yet there may be no evidence of negative impact associated with the detected effect. In that case, no purpose would be served by listing the LORS, but the debate over the potential impact may be so open-ended that developers may be compelled to list the LORS for every environmental resource for every out of state development in order to process its certification of eligibility.

PG&E's counterparties have stated that the out of state Guidelines are so vague that they fear they will be subject to arbitrary and burdensome interpretation and are discouraged from seeking California RPS eligibility. The CEC can remove this barrier to renewable resource supplies by adopting objective criteria for limiting the LORS task to resources reasonably at risk.

The model could include geographic areas from which development conclusively has no impact on protected California resources; areas in which there is a presumption of no impact on specific resources, but which may require non-impact showings in certain cases; and areas in which the developer must address each resource issue.

PG&E recommends that the CEC adopt a 3-step sequential analysis for tailoring the environmental showing to the potential impacts of a specific project:

Step (1): If the project is located within a geographic boundary, is located within an environmental zone (such as a watershed), or uses certain technologies, the Guideline should provide that a project within that category will have no reasonably foreseeable impact on a protected California environmental resource, as measured by California LORS, so no listing of LORS is required.

(a) There should be a conclusive presumption of no impact if the project is located in a state that is not contiguous to California.

(b) There should be a presumption of no impact from the following projects:

1. Projects at least 200 miles distant from the California border,

2. Hydroelectric generation that discharges into a watershed entirely outside of California.

(c) The following types of renewable resource projects should be presumed to have no impact on the listed environmental resources:

- Group 1 Technologies: Ocean wave, ocean thermal, and tidal current, photovoltaic, and solar thermal electric. Environmental Resources: Agriculture and Soil, Air Quality, Land Use, Paleontologic Resources, Public Health, and Waste Management.

- Group 2 Technology: Wind. Environmental Resources: Air Quality, Land Use, Paleontologic Resources, Public Health, Socioeconomics, Waste Management, Water Resources.

Step (2): If the project is not excluded or presumably excluded, the proponent must compile the LORS relating to California environmental resources that are potentially affected by the project.

Step (3): The proponent must demonstrate that the project's impact on the protected California environmental resource does not violate the applicable California LORS.

This three-step process will protect California's valuable environmental resources using the same LORS-based approach that the CEC uses with respect to siting thermal power plants. It differs from the current Guidebook only with respect to the level of certainty that it offers to prospective out-of-state project proponents. It offers up-front determinations of environmental impact that are consistent with any reasonable evaluation of project impact and thus limits the potential burden on development while protecting the CEC's identified environmental resources.

C. Certification Requirements for Out of Country Resources

To be eligible for the RPS, a renewable resource located outside the country must show that it will not cause or contribute to any violation of a California environmental quality standard or requirement and demonstrate that it is developed and operated in a manner that is as protective of the environment as a similar facility located in California. (Pub. Res. Code section 25741 (b)(2)(B)(v).)

Once the CEC finds that the applicable development and operational requirements of an out-of-country jurisdiction are as protective of the environment as California's, it should also find that a renewable resource that demonstrates compliance with those requirements is RPS-eligible.

However, the current Guidelines require a proponent of a renewable project located in a foreign country to demonstrate compliance with California law. The proponent's application for RPS certification must contain:

- A comprehensive list and description of all California environmental quality LORS (laws, ordinances, regulations and statutes) that would apply to the facility if it were located within California at a location designated by the applicant

- An assessment of whether operation of the facility would cause or contribute to a violation of any of the LORS, and

- An explanation how the facility's developer or operator will meet the LORS, including the use of mitigation measures.

The Guidelines require the CEC to decide whether the proposal complies with California's environmental protection standards, and makes the project's RPS eligibility contingent upon a finding of compliance. Since there is no guidance on the issue of how scientifically rigorous or legally enforceable the conditions of development must be, the broad discretion afforded the CEC could result in unanticipated outcomes and delay.

The CEC is aware that PG&E has been directed to study the feasibility of procuring renewable energy resources from British Columbia. (See, CPUC Decision 07-03-013.) In addition to the availability of natural resources, a key variable in resource potential is whether the renewable energy resource will be certified as RPS-eligible by the CEC. Initial discussions between PG&E and potential developers have revealed skepticism that any out-of-country development could meet the requirements imposed by the current California LORS-based guidelines. The current guideline appears to require compliance with California law, even if it conflicts with the law of the foreign jurisdiction.

PG&E recommends the CEC offer an alternative approach in addition to its existing LORS-based methodology. Proponents of out-of-country renewable facilities should be allowed to demonstrate that the permitting authorities with jurisdiction over the facility will conduct an environmental review process that is at least as thorough as the process used by the analogous permitting authorities in California. Upon a finding by the CEC that the foreign jurisdiction's environmental review process is as thorough as California's process, a renewable resource development approved by the out-of-country authorities would be deemed be as protective of the environment as a similar facility located in California. The proponent would provide the CEC the following information as the basis for its finding:

1. Identification of the permitting authorities for the facility, including a list of all permits required,

2. A description of the environmental areas addressed by each permit required and a description of the environmental review process for each permit required, including a description of opportunities for public participation.

3. A description of how each environmental resource area identified in Section 4(1) of these guidelines is addressed, and

4. A description of standard mitigation, if any, and

5. A description of enforcement of permit conditions during construction and operation of the facility.

The CEC will be apprised of the environmental protection standards, the regulatory

agencies responsible for implementation through the permitting process, opportunities for public oversight, and the means of enforcing the environmental protection scheme. This comprehensive showing would provide the basis for a demonstration that the conditions of development are as protective as those in California, and thus, entitled to RPS certification under the statutory standard.

Reliance upon the foreign jurisdiction's permitting process also avoids the problem of imposing California standards upon an activity that is subject to the jurisdiction of another sovereign nation. The CEC would certify the out of country project based on a demonstration that the jurisdiction's project review and permitting requirements had been met. This option should be offered along with the CEC's current guidelines, so that a proponent will have an opportunity to make a showing that best suits its project.

D. Small Hydro Eligibility

A hydroelectric generating facility of 30 MW or less that meets certain conditions is an eligible renewable energy resource. Effective January 1, 2007, the RPS eligibility criteria for hydroelectric generation are expected to change in the following respects:[2]

- "Conduit" small hydro facilities put in service before January 1, 2006 will no longer be disqualified.
- New conduit hydro and other new small hydroelectric generating facilities will be RPS-eligible so long as the new facility does not cause an adverse impact on in- stream beneficial uses or cause a change in the volume or timing of streamflow.
- The entire output of an eligible small hydro facility will remain RPS-eligible even if efficiency improvements cause it to exceed 30 MW so long as the above environmental standard and other conditions have been met.
- Incremental generation from efficiency improvements to existing hydroelectric facilities larger than 30 MW which meet the environmental standard and other conditions will be RPS-eligible.

The Eligibility Guidelines should be updated in advance of these changes to enable affected facilities to confirm that they comply with the law in effect on January 1, 2008. Changes must be made to the Guideline text, summary table of eligible resources, and certification / pre-certification forms. PG&E has marked the necessary changes to the Guidelines text and table. The certification and pre-certification forms are available only in PDF format so those documents cannot be annotated as needed to comply with the January 2008 changes.

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[2] New eligibility criteria will be enacted by Assembly Bill 809 (Blakeslee) unless the bill is vetoed on or before October 14, 2007.

PG&E recommends a substantial re-organization of the Guidelines regarding small hydroelectric facility eligibility because the 2008 legislation reverses the 2007 disqualification of conduit hydroelectric facilities – there is no reason to maintain a Byzantine "two-track" analysis of eligibility for conduit facilities. The reorganization should result in a more user-friendly Guidebook and forms.

E. Hybrid Fuel Resources.

> Any QF small power production facility in operation prior to 2002 pursuant to PURPA should be entitled to count all of its generation as RPS-eligible if it up to 25% of the energy input to its generation is fossil fuel.

The CEC staff's proposed guidebook revisions add a new restriction to the option for certain multi-fueled facilities to count 100 percent of the electricity generated towards RPS obligations. One such option previously allowed QF small power production facilities under the Public Utilities Regulatory Policies Act which became operational before 2002 to count 100 percent of the electricity generated towards the RPS as long as the percentage of fossil fuel used did not exceed 25 percent of the total energy input of the facility. This option has been modified to apply only to QF small power production facilities that were operational as a <u>renewable</u> QF before 2002.

The 5 perecent QF fossil fuel exemption should apply to any QF small power production facility in operation prior to 2002, not just a facility operational as a renewable QF. This new requirement creates an economic disincentive for existing QF small power production facilities burning waste fuels such as low Btu coal or petroleum coke to convert their fuel type to renewable fuels. These existing small power production facilities represent a prime opportunity for conversion to renewable fuels. However, given their existing low fuel costs, they have little incentive to convert to more expensive renewable fuels such as biomass. Denying RPS eligibility for their (up to 25 percent fossil fuel actually creates a disincentive to convert to a renewable resource, since the generation stream would lose its QF eligibility and could not be compensated with an RPS-based payment.

Allowing the continuation of the 25 percent fossil fuel exemption for this pool of resources may provide the economic boost these resources need to convert to renewable fuels for the benefit of California's citizens. PG&E recommends deleting the word "renewable" from paragraph 2 of the discussion of "Renewable Facilities Using Multiple Fuels", which appears on p. 24, as follows:

> 2. … The Energy Commission will provide the same treatment under the RPS for renewable facilities that commenced commercial operations before January 1, 2002, were certified and operational as a ~~renewable~~ Qualifying Small Power Production Facility (QF) under the federal Public Utility Regulatory Policies Act before January 1, 2002, and are currently certified as a renewable QF facility

F. Certification Effective for Full Period

A renewable resource is required to seek certification every two years, resulting in a certificate that is effective for two years. However, the CEC may require facilities to renew their certification based on changes in the law at any time. (See, B. "Renewing Certification and Pre-Certification", Staff Draft p. 39.)

This provision creates a risk that the renewable facility may not earn its expected cash flow for two consecutive years, because it ay be disqualified from receiving RPS-based payments. Based upon its commercial experience, PG&E believes this may create a perceived risk to developers and a risk premium that would be passed on to consumers. The law does not require a previously compliant generator to lose its compliant status and undergo recertification pursuant to a changed law unless, when enacting the change, the Legislature explicitly gave the law retroactive effect. The Guidelines should be revised to provide that certification will be valid for the two-year effecitve period regardless of change of law or policy, except where required by statute.

> The Guidelines should state, "The eligibility status of a certificated facility is not affected by a change in law that occurs during certificate period"

G. Grandfathered Eligibility

Under the current certification requirement, an eligible renewable resource is subject to losing its eligible status becoming ineligible every two years. The Independent Energy Producers Association (IEP) and PG&E jointly recommend that once a renewable resource under contract has been found to be eligible, that determination should not be disturbed based on a change in law.

The risk of decertification is not supported by statute; the statute does not require recertification in the first instance, let alone at any particular interval. Also, the presumption in statutory construction is against retrospective effect. The Legislature is aware of the basic rule against retrospective effect, and when it intends a statute to operate retroactively it ordinarily will use clear language to accomplish that purpose.

Retroactive application is especially inappropriate here, since a change in eligibility could impair an existing contract.[3] In addition, retroactive effect is subordinate to due process constitutional guarantees, and consideration must be given to the significance of the state interest served by the law, the importance of retroactive application to effectuation of that interest, the extent of reliance upon the former law, the legitimacy of that reliance, the extent of actions taken on the basis of such reliance, and the extent tow which retroactive application of the new law would disrupt those actions.[4] The RPS program is intended

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[3] PG&E cited the operation of SB 107, which disqualified existing conduit hydrofacilities that were eligible under PURPA, as an example of how the retroactive application of a change in law could impair contracts.

[4] "Validity of Retroactive Application" 58 Cal.Jur.3d, Sec.33, p.410.

to promote new development of renewable resources through long-term power purchase agreements. If developers are no longer eligible under the terms of their contracts and funding is denied, the project development, operation, or maintenance may all be jeopardized. These risks could not have been intended by the Legislature, and in fact, none of the changes in RPS eligibility criteria enacted since the passage of SB 1078 have been explicitly retroactive. There is no reason to apply a change in eligibility criteria on a retroactive basis.

Since long term contracts of 10 to 20 years are encouraged by statute, a renewable resource generator (Seller) is at risk of de-certification periodically during its power purchase agreement (PPA). This risk has serious consequences under the CPUC's non-modifiable definition of "eligibility". [5] The following term is required in every PPA for renewable power:

> "(Seller) represents and warrants throughout the term of the Delivery Term of each Transaction entered into under this Agreement that: (the Unit(s) qualifies and is certified by the CEC as an Eligible Renewable Energy Resource "ERR") as such term is defined..."

The Seller has a continuing obligation to comply with its representation and warranty that it is an eligible renewable resource throughout the entire term of the contract. The CEC's modification of eligibility requirements may force the Seller to incur an additional expense or risk the loss of eligibility and breach its contract with the Buyer. In anticipation of this risk, the Seller may hedge against the cost of compliance with changed eligibility requirements, but the cost of hedging would probably result in an increase in the Seller's costs. Increase costs of production will be passed onto consumers.

At least one major supplier has delayed negotiations with PG&E due to the risk of failing to qualify due to periodic reinterpretations of eligibility criteria by the CEC and the expense and burden of modifying the resource or its operations to conform with changed CEC requirements. Finally, the basic premise for the RPS PPA is that the power being purchased is from an eligible renewable energy resource. If the product is no longer certified as renewable by the CEC, there no longer exists a rationale for the contract price, and renegotiation of the PPA becomes a real possibility. This potential threat to the seller's long-term payment stream may pose an unacceptable risk to developers, and may further discourage developers from participating in California's RPS market.

The re-certification requirement, and in particular, the ability of the staff to require re-certification at any time proved disruptive in early 2007 when the eligibility criteria for conduit hydroelectric facilities were amended by SB 107. The facilities received certification that was valid through 2007. However, the change in law making conduit hydroelectric facilities ineligible became effective on January 1, 2007. The CEC staff required PG&E to recertify its hydroelectric facilities in mid-2007, even though their certificates were still effective. Ultimately, the eligibility of those facilities is being

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[5] The CPUC requires every contract for utility procurement of renewable energy to include a non-modifiable eligibility term. (See, D.04-06-015, and the Proposed Decision of ALJ Mattson in R.04-04-026, issued September 22, 2007.).

restored by AB 809, but one interpretation of the Guidelines would have allowed the staff to disqualify deliveries from the conduit facilities during 2007. This is an example of how an extreme interpretation of the current Guidelines could lead to an unfair result.

The CEC should enable renewable generators to perform under long-term contracts without the risk of cost increases, avoid passing unnecessary costs onto consumers, and prevent arbitrary outcomes by revising the Eligibility Guidelines to conform with the principle that statutes have prospective effect, and there is a presumption against the retroactive application of statutes. Statutes which change the law do not apply retroactively unless legislature has clearly indicated otherwise. (58 CalJur 3, Statutes, p. 403, Prospective and Retroactive Effect.)

The following change should be made to Section III. "Certification Process".

> ~~Certification and pre-certification must be renewed every two years to confirm that facilities certified as renewable energy resources remain eligible for the RPS. In addition,~~ Facilities may be required to ~~renew their certification based on changes in the law, after being notified by the Energy Commission~~ provide information to the Energy Commission, upon request, demonstrating that there has been no material change in the factual conditions supporting its original certification or pre-certification.

In addition, the following should be inserted:

> A certified or pre-certified eligible renewable resource that maintains compliance with the eligibility criteria in existence at the time of initial delivery shall not become ineligible due to a change in eligibility criteria that occurs during its fixed-term contract with a retail seller.

H. Pre-certification Deliveries

In some cases, an eligible renewable resource will have received only –pre-certification at the time it begins to deliver electricity pursuant to the terms of PPA. According to CEC staff, when this occurs the deliveries will become fully RPS-eligible when certification is completed. PG&E suggests the following modification to the language appearing on pages 33 and 34, " ", to eliminate any doubt over this procedure.

> "Procurement from a pre-certified facility will be counted toward a retail seller's RPS obligation even though the facility was not RPS- certified at the time of procurement, when the facility completes its RPS-certification. The electricity generated prior to certification will not be considered eligible, however, and will not be counted toward meeting an RPS obligation until the facility has been certified by the Energy Commission as an eligible renewable energy resource." (See, pp. 39 and 40.)

I. WREGIS Terms of Use

The Energy Commission has developed WREGIS, an electronic tracking system to meet its tracking requirements, including the tracking of renewable energy credits. In anticipation of WREGIS' full-scale operation, the Guidelines state, "Effective January 1, the Energy Commission requires certified facilities, retail sellers, and procurement entities to participate in the WREGIS as part of RPS compliance."

Several implementation issues are still under discussion, so it appears that full participation in WREGIS may not be possible by January 1, 2008. PG&E suggests that the mandatory language be modified as follows to reflect the more likely schedule of WREGIS adoption.

> "Effective January 1, 2008, or 60 days after the CEC concludes that WREGIS is fully functional for generation tracking purposes, the Energy Commission requires RPS and SEP certified facilities, retail sellers, and procurement entities to participate in the WREGIS as part of RPS compliance. A key criteria for determining full WREGIS functionality will be the completed registration of the California Independent System Operator (CAISO) as a qualified Reporting Entity (QRE) in WREGIS...." (See, p. 58)

J. Implementation Issues

1. Need for Consistency

Developer and utility satisfaction with the RPS program would be improved if the CEC made it a priority to provide adequate public notice and clear instructions on completing the certification and pre-certification process. A number of generators have mentioned that they need clear guidance on which forms to use and assurance that any published forms are complete and correct. Based upon these comments, the CEC should adopt clear, consistent guidelines on which forms to use and carefully review each form for consistency and accuracy before publication.

2. Buyer verification of California consumption – Where the eligibility of out-of-state generators depends upon the completion of deliveries into California.

The "Certification Supplement for Out of State Facilities" requires generator to certify facts beyond its control, e.g.., it can demonstrate delivery of its generation to a California market hub or California location, and that the purchaser's obligations under "delivery requirements" are being met. PG&E understands that purchasers do not wish to verify the existence of transactions over which they have no control. PG&E recommends that the RPS verification forms be amended as follows:

(1) Delete purchaser's delivery requirements from seller's certification supplement.

(2) Create a form on which purchaser will verify California delivery and consumption and require it to be submitted as an attachment to the "Certification Supplement for Out of State Facilities".

III. Conclusion

The CEC can play a significant role in attracting renewable investment for the California market by avoiding unnecessary burden on developers. Focusing the environmental analysis of out of state renewable facilities, recognizing that protection of environmental resources can be demonstrated by the foreign jurisdiction's process and standards, avoiding the risk of decertification due to change in law, and the timely implementation of clear and consistent administrative practices are all steps that developers have told PG&E would encourage their commitment to California.

The CEC should adopt all of PG&E's recommended revisions to the Staff Draft of the RPS Eligibility Guideline to encourage renewable energy resource development in all of the markets provided by the RPS statute. PG&E hopes the CEC will adopt its recommended changes by December 12, 2007, so that recertification can proceed smoothly in early 2008.

Dated: October 12, 2007

/s/

Les Guliasi
Director, State Agency Relations

/s/

Evelyn C. Lee
Attorney, PG&E Law Department

RENEWABLE ENERGY PROGRAM

CALIFORNIA ENERGY COMMISSION

RENEWABLES PORTFOLIO STANDARD ELIGIBILITY

THIRD EDITION

STAFF DRAFT GUIDEBOOK

SEPTEMBER 2007
CEC-300-2007-006-ED3-SD

Arnold Schwarzenegger, *Governor*

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DISCLAIMER

The **edits** to this guidebook were prepared by California Energy Commission staff. They do not necessarily represent the views of the Energy Commission, its employees, or the State of California. The Energy Commission, the State of California, its employees, contractors and subcontractors make no warrant, express or implied, and assume no legal liability for the **edits** to information in this report; nor does any party represent that the uses of this information will not infringe upon privately owned rights. The **edits** to this guidebook have not been approved or disapproved by the California Energy Commission nor has the California Energy Commission passed upon the accuracy or adequacy of the **edits** to the information in this report.

This guidebook was formally adopted by the Energy Commission on April 21, 2004, under Public Utilities Code Section (PUC) 383.5, Subdivision (h), and subsequently revised under this authority and Public Resources Code Section 25747, Subdivision (a), on May 19, 2004, August 11, 2004, May 21, 2005, April 26, 2006, and March 14, 2007.

The requirements in this guidebook are based on applicable law, the *Renewables Portfolio Standard Decision on Phase 1 Implementation Issues* (publication number 500-03-023F), the *Renewables Portfolio Standard Decision on Phase 2 Implementation Issues* (publication number 500-03-049F), staff analysis, advice from the Energy Commission's technical support contractor, and public input.

Abstract

The *Renewables Portfolio Standard Eligibility Guidebook* describes the eligibility requirements and process for certifying renewable resources as eligible for California's Renewables Portfolio Standard (RPS) and Supplemental Energy Payments (SEPs) and describes the Energy Commission's accounting system to verify compliance with the RPS. California's Renewable Portfolio Standard has a goal of obtaining 20 percent of the state's electricity from renewable resources by 2010. This *Guidebook* outlines eligibility and legal requirements, describes reporting requirements, and includes necessary forms and instructions for program participants. This *Guidebook* also describes the Energy Commission's system for tracking and verifying compliance with the RPS.

Keywords

biodiesel, biogas, biomass, certificates, certification, conduit hydroelectric, digester gas, eligibility, geothermal, landfill gas, multi-fuel, municipal solid waste, ocean wave, photovoltaic, power purchase agreement, renewable energy, renewables portfolio standard, repowered, retail sales, small hydroelectric, solar, thermal, supplemental energy payments, tradable renewable energy credits, wind, Western Renewable Energy Generation Information System, WREGIS

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I. Introduction

The California Energy Commission (Energy Commission) developed this *Guidebook* to implement and administer its responsibilities under California's Renewables Portfolio Standard (RPS) under Senate Bill 1038,[1] Senate Bill 1078,[2] Senate Bill 1250,[3] and Senate Bill 107.[4] These laws require retail sellers of electricity to increase the amount of renewable energy they procure each year by at least 1 percent until 20 percent of their retail sales are served with renewable energy by December 31, 2010. Under these laws, the Energy Commission is required to certify eligible renewable energy resources that may be used by retail sellers of electricity to satisfy their RPS procurement requirements, develop an accounting system to verify a retail seller's compliance with the RPS, and award supplemental energy payments (SEPs) to cover the above market cost of procuring eligible renewable energy resources.

This *Guidebook* describes the requirements and process for certifying eligible renewable energy resources for the RPS and SEPs. This *Guidebook* also describes how the Energy Commission will track and verify compliance with the RPS ~~using an interim generation tracking process~~.

This *Guidebook* establishes efficient and effective processes to encourage participation in California's RPS and assure program credibility to benefit stakeholders, regulators, and consumers. Although this *Guidebook* addresses the Energy Commission's role in implementing the RPS, the Energy Commission recognizes that the California Public Utilities Commission (CPUC) also has a key RPS implementation role.

The enabling legislation established specific roles for the Energy Commission and the CPUC and directs the two agencies to work together to implement the RPS. Although the law assigns lead roles for specific implementation efforts to each agency, the roles of the two agencies are interrelated. The Energy Commission is responsible for certifying eligible renewable resources and tracking the procurement of such resources to ensure compliance with the RPS. The CPUC is responsible for establishing targets for the amount of eligible renewable energy resources that retail sellers of electricity must procure to comply with the RPS and verifies compliance with the requirements. Retail sellers include investor-owned utilities (IOUs), electric service providers (ESPs), and community choice aggregators (CCAs).

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[1] SB 1038; Chapter 515, Statutes of 2002. The pertinent provisions of SB 1038 were formerly codified in Public Utilities Code Sections 383.5 and 445, but are now codified in Public Resources Code Sections 25740 through 25751 as a result of Senate Bill 183 (Chapter 666, Statutes of 2003).

[2] SB 1078; Chapter 516, Statutes of 2002. The pertinent provisions of SB 1078 are codified in Public Utilities Code Section 399.11 through 399.15. This law was subsequently amended to add Sections 399.16, 399.17, and 399.12.5 under Senate Bill 67 (Chapter 731, Statutes of 2003), Assembly Bill 200 (Chapter 5, Statutes of 2005), and Assembly Bill 2189 (Chapter 747, Statutes of 2006), respectively.

[3] SB 1250; Chapter 512, Statutes of 2006. SB 1250 amends pertinent provisions in Public Resources Code Sections 25740 through 25751.

[4] SB 107; Chapter 464, Statutes of 2006. SB 107 amends pertinent provisions in Public Resources Code Sections 25740 through 25751 and Public Utilities Code Sections 399.11 through 399.16.

In February 2003, the CPUC issued a ruling formalizing collaboration on RPS issues, and in March 2003, the Energy Commission adopted a reciprocal agreement. The Energy Commission subsequently developed this *Guidebook* collaboratively with the CPUC.

While this *Guidebook* reflects current requirements, the Energy Commission recognizes that it may need to periodically revise program guidelines to reflect market, regulatory, and legislative developments as well as incorporate the lessons learned from experience implementing the RPS.

A. Related Reports

This *Guidebook* is one of several guidebooks the Energy Commission has adopted to implement and administer the various program elements of its Renewable Energy Program. The Energy Commission's *Overall Program Guidebook for the Renewable Energy Program (Overall Program Guidebook)* describes how the Renewable Energy Program will be administered and includes information and requirements that apply overall to the Renewable Energy Program and the program elements. To qualify for certification as a renewable energy resource eligible for the RPS and SEPs, an applicant must satisfy the requirements specified in this *Renewables Portfolio Standard Eligibility Guidebook* and the *Overall Program Guidebook*.

To receive SEPs, applicants must also satisfy the requirements specified in the Energy Commission's *New Renewable Facilities Program Guidebook*. Parties interested in receiving SEPs may refer to the *New Renewable Facilities Program Guidebook* for information on how to apply for and receive SEPs. Please note that the Energy Commission also provides production incentive payments to eligible existing renewable resources that are not eligible for SEPs but may be eligible for the RPS. For more information, refer to the *Existing Renewable Facilities Program Guidebook*. For general information on the process of creating, appealing, and implementing RPS guidelines, please refer to the *Overall Program Guidebook*. Program guidebooks are available online at the Energy Commission's Web-site at <www.energy.ca.gov>.

B. Outstanding Issues

There are several outstanding ~~ongoing~~ issues that could affect these guidelines. The Energy Commission will continue to address these issues collaboratively with the CPUC:

- Renewable Energy Credits/Certificates (RECs) trading:

  RECs represent renewable and environmental attributes associated with energy production. Public Utilities Code Section 399.12, Subdivision (g)(1), defines a REC for California RPS purposes to mean a certificate of proof, issued through the

accounting system established by the Energy Commission under Public Utilities Code Section 399.13, that one unit of electricity was generated and delivered by an eligible renewable energy resource.

Section 399.12, Subdivision (g)(2), specifies that a REC includes all renewable and environmental attributes associated with the production of electricity from the eligible renewable energy resource, except for an emissions reduction credit issued under Section 40709 of the Health and Safety Code and any credits or payments associated with the reduction of solid waste and treatment benefits created by the utilization of biomass or biogas fuels.

In addition, Section 399.12, Subdivision (g)(3), specifies that no electricity generated by an eligible renewable energy resource attributable to the use of nonrenewable fuels, beyond a de minimus quantity as determined by the Energy Commission, shall result in the creation of a REC.

RECs and energy procured together as a "bundled" commodity are eligible for the California RPS. RECs sold separately from energy are termed "tradable" or "unbundled" in this *Guidebook* and are not currently eligible toward California RPS procurement requirements.

The law as amended by Senate Bill 107, however, authorizes the use of tradable RECs associated with energy produced from RPS-eligible resources to qualify towards RPS procurement requirements in the future, once certain conditions have been met. Tradable RECs may be allowed for RPS compliance after the CPUC and Energy Commission conclude that the ~~Western Renewable Energy Generation Information System (WREGIS)~~tracking system developed by the Energy Commission is operational, capable of independently verifying delivery of renewable energy to a retail seller, and can assure that RECs are not double counted by any seller within the Western Electricity Coordinating Council (WECC).

Also, the CPUC may limit the amount of tradable RECs that a retail seller may procure to satisfy its RPS requirements. The CPUC is addressing RECs and other RPS implementation issues in its Rulemaking 06-05-027 and Rulemaking 06-02-012 and subsequent RPS Rulemakings.

A preliminary discussion of eligibility requirements and tracking requirements for tradable RECs is provided in this *Guidebook* in anticipation of their possible use for purposes of California RPS compliance.

- Determining how customer-side renewable distributed generation resources fit into the RPS:

  The law includes solar energy as an eligible resource for the RPS. The CPUC Rulemaking 06-03-004 has been addressing if and how output from renewable distributed generation may be counted towards a retail seller's RPS obligations. The

CPUC issued a final decision (D.07-01-018) on January 11, 2007, that would allow distributed generation system owners to retain 100 percent of the RECs associated with the distributed generation energy produced. Similarly, the Energy Commission does not require participants of its New Solar Homes Program to relinquish their claims of renewable energy credits or to transfer ownership of any such credits to the Energy Commission or any other entity as a condition of receiving New Solar Homes Program funding. This *Guidebook* describes distributed generation issues in the section on eligibility requirements.

The Energy Commission will certify distributed generation facilities as RPS-eligible only if and when the CPUC authorizes applying tradable RECs toward RPS obligations.

However, the Energy Commission will certify facilities that might otherwise be considered distributed generation facilities if some or all of the energy produced is sold through a standard contract/tariff executed pursuant to Public Utilities Code 399.20, as implemented through the CPUC Decision 07-07-027 (R.06.05.027) or if the distributed generation facility is owned by electric utility or other retail seller.. Similarly, the Energy Commission may certify a facility if the energy generated is sold through a comparable standard contract/tariff approved by a local publicly owned electric utility.

- Defining fuel specific issues:

  The Energy Commission anticipates that new issues may arise that will need to be addressed as implementation continues. The Energy Commission recognizes that some parties may be interested in using hydrogen fuel to generate electricity but recommends deferring the development of implementation guidelines for such facilities. The Energy Commission recommends, however, that only eligible RPS fuel stock may be used to produce hydrogen for use at an RPS-eligible facility.

- ~~Hybrid~~ Multiple-fuel technologies:

  A ~~hybrid~~multiple-fuel facility that uses a mix of fuels that ~~including~~ includes renewable fuels or resources and fossil fuel may qualify for the RPS under the scenarios described in Section II (B) (6), with the exception of facilities that meet the criteria described in "Fossil Fuel Use at Qualifying Small Power Production Facilities."

  The Energy Commission may adopt tracking mechanisms to account for the renewable generation from ~~hybrid~~multi-fuel technologies as appropriate. For example, the Energy Commission has developed a methodology to account for the amount of RPS-eligible energy generated from a ~~hybrid~~multi-fuel technology that uses a mix of natural gas and biogas injected into a gas transportation pipeline. ~~Once WREGIS is operational,~~ T~~t~~he Energy Commission anticipates that ~~it~~ the tracking system developed by the Energy Commission to verify compliance with the

California RPS, called the Western Renewable Energy Generation Information System (WREGIS), will account for generation from biogas injected into the pipeline transportation system and for other ~~hybrid~~multi-fuel technologies.

C. Guidebook Organization

This *Guidebook* is organized as follows:

I. Introduction
II. Eligibility Requirements
III. Certification Process
IV. Generation Tracking System
V. Publicly Owned Utilities
Appendix A. Forms
Appendix B. List of Acronyms
Appendix C. Summary Table of Reporting Requirements

Section II covers eligibility requirements for generators interested in producing electricity that can be procured by retail sellers to comply with the RPS. For this *Guidebook*, "retail sellers" ~~refers to~~ is defined in the *Overall Program Guidebook* and includes California's three largest IOUs (Pacific Gas & Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E), multi-jurisdictional IOUs such as PacifiCorp and Sierra Pacific Power Company (electrical corporations with 60,000 or fewer customer accounts in California that also serve retail end-use customers outside California under Public Utilities Code 399.17), small IOUs such as Mountain Utilities and Golden State Water Company (doing business as Bear Valley Electric Service), and ~~to~~ ESPs and CCAs.

Section II also addresses eligibility requirements for generators interested in producing electricity that can be procured to comply with the RPS and eligible to receive SEPs.

Section III discusses the Energy Commission's certification process, including the following:

- Pre-certification application process for developers of renewable facilities that are, with some exceptions, not online but who are seeking a preliminary determination that their facility will be eligible for the RPS or SEPs.

- Certification application process for generators with renewable facilities that are online who are interested in serving energy to meet an RPS obligation or be eligible for SEPs.

- Application process to renew certification and pre-certification at least every two years.

- Process to amend certification or pre-certification.

Section IV discusses the data submission requirements for a generation tracking system that will be used to verify retail sellers' compliance with the RPS and to verify that generation is counted only once in California or any other state.

Section V addresses participation of local publicly-owned electric utilities in the RPS.

II. Eligibility Requirements

This section describes eligibility requirements for the RPS, for SEPs, and for out-of-state facilities that seek RPS or SEP eligibility. (t To be eligible for SEPs, a facility must meet applicable RPS and SEP eligibility requirements). In general, a facility is eligible if it uses an eligible renewable resource or fuel, satisfies resource-specific criteria, and is either located within the state or satisfies applicable requirements for out-of-state facilities.

The generation from facilities certified as eligible for SEPs may qualify for funding under the Energy Commission's New Renewable Facilities Program. To receive SEPs, eligible facilities must satisfy the requirements specified in the Energy Commission's *New Renewable Facilities Program Guidebook.*

A. Renewables Portfolio Standard Targets

The CPUC sets annual procurement targets (APTs) for the amount of RPS eligible energy each retail seller must procure. Public Utilities Code Section 399.15, Subdivision (b)(1), requires the retail sellers to annually increase their renewable procurement by at least 1 percent of retail sales per year so that 20 percent of their retail sales is procured from RPS-eligible resources not later than December 31, 2010. The CPUC sets an "incremental procurement target" (IPT) for this 1 percent or greater annual increase and sets the APT for total annual RPS-eligible procurement requirements. The first year in which PG&E, SCE, and SDG&E were subject to an APT and IPT was 2004.[5] The first year ESPs were subject to an APT was 2006.[6]

CPUC Decision 06-10-050 (Rulemaking 06-05-027) determined that "any RPS-eligible procurement may be used to satisfy any portion of the APT." Further, any RPS-eligible procurement may be used to satisfy the IPT.[7] When a retail seller procures energy and the associated RECs from a facility that is eligible for the RPS (or eligible for the RPS and SEPs), then the procurement may count towards the retail seller's APT, including its IPT, assuming the transaction meets applicable delivery requirements and other eligibility criteria.[8] The Energy Commission verifies RPS procurement, and the CPUC

[5] CPUC Decision 06-10-050, Rulemaking 06-05-027, *Opinion on Reporting and Compliance Methodology for Renewables Portfolio Standard Program*, October 19, 2006.

[6] Public Utilities Code Section 399.12, Subdivision (h)(3). The CPUC is setting procurement targets for ESPs, CCAs, and multi-jurisdictional utilities. The CPUC defined targets for these entities in the *Interim Opinion*, Decision 06-10-019, Rulemaking 06-02-012, October 5, 2006. On July 26, 2007, Decision 06-10-019 was modified by Decision 07-07-025, Rulemaking 06-02-012, which changed the formula for calculating the baseline amounts of renewable energy for ESPs to be consistent with the formula adopted in Decision 07-03-046 for IOUs. ~~, which may be further refined in Rulemaking 06-02-012 and Rulemaking 06-05-027 and subsequent CPUC rulemakings.~~

[7] The CPUC is refining its definitions and compliance rules through Rulemaking 06-02-012 and R.06-05-027.

[8] Under Public Utilities Code Section 399.16, Subdivision (a)(5) and (a)(6), RECs shall not be created for electricity generated under contract with a retail seller or a local publicly owned electric utility executed

determines whether a retail seller is in compliance with its procurement targets, consistent with CPUC rules for flexible compliance.[9]

The Energy Commission's RPS certification identifies if a facility is RPS eligible, or RPS and SEP-eligible. The methodology to account for and verify RPS-eligible procurement is discussed in this *Guidebook* under Section IV, Generation Tracking System.

B. Eligibility for the Renewables Portfolio Standard

The Energy Commission has determined that it is appropriate to define eligible renewable energy resources by renewable resource or fuel, rather than by the specific technology used. For certain eligible renewable energy resources, however, the law contains specific requirements, and the Energy Commission must consider both the resource or fuel and the technology to determine RPS eligibility.

To qualify as eligible for California's RPS, a generation facility must use one or more of the following renewable resources or fuels (see the *Overall Program Guidebook* for full definitions):

- Biodiesel
- Biomass
- Conduit hydroelectric
- Fuel cells using renewable fuels
- Digester gas
- Geothermal
- Efficiency Improvements to Hydroelectric
- Landfill gas
- Municipal solid waste
- Ocean wave, ocean thermal, and tidal current
- Photovoltaic
- Small hydroelectric (30 megawatts or less)
- Solar thermal electric
- Wind

Table 1 summarizes the requirements for a facility to qualify for the RPS and be eligible for SEPs. The table does not reflect any additional requirements that may apply to facilities located out-of-state.

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before January 1, 2005, unless the contract contains explicit terms and conditions specifying the ownership or disposition of those credits, and shall not be created for contracts with QFs under the federal Public Utility Regulatory Policies Act executed after January 1, 2005. Deliveries under those contracts shall be tracked through WREGIS and automatically retired as counting towards the retail seller's baseline. This is discussed in the section on "Eligibility of Tradable RECs."

[9] Public Utilities Code section 399.14 (a)(2)(C).

Facilities using biodiesel, biomass, hydroelectric, or municipal solid waste (MSW) resources are subject to the additional resource or fuel-specific requirements described below. Also addressed below are requirements for photovoltaic facilities, as well as those for ~~hybrid~~multi-fuel and other facilities that use a mix of fuels, including those that operate in part by using fossil fuels.

Please note that, in some cases, the criteria for RPS eligibility depend on the date that a facility begins commercial operations. If a facility shuts down and later recommences operations, it is subject to the eligibility requirements that apply to the original operation date. If a facility is repowered as provided in this *Guidebook*, its commercial operation date is considered its repowering date, and the facility may then qualify for SEPs as provided in the *New Renewable Facilities Program Guidebook*. Alternatively, a facility that began commercial operations before September 26, 1996, and later repowered as provided in this Guidebook, may opt to use the date the facility began commercial operations if the facility is seeking funding under the Energy Commission's Existing Renewable Facilities Program. Please see the *Existing Renewable Facilities Program Guidebook* for eligibility information.

~~Facilities using biodiesel, biomass, hydroelectric, or municipal solid waste (MSW) resources are subject to the additional resource or fuel-specific requirements described below. Also addressed below are requirements for photovoltaic facilities, as well as those for hybrid and other facilities that use a mix of fuels, including those that operate in part by using fossil fuels.~~

Table 1: Renewables Portfolio Standard Eligibility Requirements for Renewable Electricity Facilities

Resource	RPS Eligibility	RPS and SEP Eligibility
Biodiesel	Yes, subject to RESTRICTION[1]	Yes, if New or Repowered
Biomass	Yes	Yes, if New or Repowered AND IF it meets fuel use specifications. See notes below. [2,3,4]
Digester Gas	Yes	Yes, if New or Repowered
Fuel Cells	Yes, if a renewable fuel is used.	Yes, if New or Repowered
Geothermal	Yes	Yes, if New or Repowered
Hydroelectric	Yes, RESTRICTED to facilities 30 MW or less (with exceptions for efficiency improvements). 30 MW or less facilities operational before January 1, 2006, are eligible if owned by or under contract to a retail seller as of December 31, 2005. Facilities that exceed 30 MW as a result of efficiency improvements made after January 1, 2008, may be eligible if the improvement does not cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow; the entire generating capacity of the of the facility shall be eligible. 30 MW or less facilities originally operational on or AFTER January 1, 2006, are eligible if they cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow. Facilities that exceed 30 MW as a result of efficiency improvements made after January 1, 2008, may be eligible if the improvements do not cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow; the entire generating capacity of the of the facility shall be eligible. Incremental increases in the amount of electricity generated at the facility as a result of efficiency improvements at the facility is electricity from and eligible renewable resource, without regard to the electrical output of the facility, if all the following conditions are met: (1) The incremental increase is the result of efficiency improvements from a retrofit that do not result in an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow. (2) The hydroelectric generation facility has, within the immediately	Yes, if facility is 30 MW or less, commences commercial operations or is repowered after January 1, 2006, AND IF it does NOT cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow . Facilities that exceed 30 MWs as a result of efficiency improvements made after the facility commences commercial operations may be eligible if the improvement does not cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow; the entire generating capacity of the of the facility shall be eligible. However, facility may only qualify for SEPs for 30 MW or less. No, efficiency improvements to hydroelectric facilities with an existing capacity greater than 30 MW are not SEP-eligible.~~Yes, if facility is 30 MW or less, commences commercial operations or is repowered after January 1, 2006, AND IF it does NOT require a new or increased appropriation or diversion of water under Water Code Section 1200 et seq. or any other provision of law authorizing an appropriation of water. Facilities that exceed 30 MWs as a result of efficiency improvements made after the facility commences commercial operations may be eligible if the improvement does not~~

Resource	RPS Eligibility	RPS and SEP Eligibility
	preceding 15 years, received certification from the state water resources control Board pursuant to Section 401 of the Clean Water Act … . (3) The hydroelectric generation facility was operational prior to January 1, 2007, the efficiency improvements are initiated on or after January 1, 2008, the efficiency improvements are not the result of routine maintenance activities… . (4) All of the incremental increase in electricity resulting from the efficiency improvements are demonstrated to result from a long-term financial commitment by the retail seller…. . [AB 809; Sec. 399.12.5] ~~Yes, RESTRICTED to facilities 30 MW or less (with exceptions for efficiency improvements).~~ ~~Facilities operational on or after before January 1, 2006, are eligible if owned by or under contract to a retail seller as of January 1, 2006. Facilities that exceed 30 MW as a result of efficiency improvements made after January 1, 2003, may be eligible if the improvement does not require a new or increased appropriation or diversion of water from a watercourse.~~ ~~Facilities originally operational on or AFTER January 1, 2006, are eligible if they will not require a new or increased appropriation or diversion of water from a watercourse.~~ ~~Facilities that exceed 30 MW as a result of efficiency improvements made after January 1, 2003, may be eligible if the improvement does not require a new or increased appropriation or diversion of water from a watercourse~~	~~require a new or increased appropriation or diversion of water from a watercourse. However, facility may only qualify for SEPs for 30 MW or less.~~
Hydroelectric - conduit	Yes, RESTRICTED to facilities 30 MW or less (with exceptions for efficiency improvements). A facility operational before January 1, 2006, is eligible. Facilities that exceed 30 MW as a result of efficiency improvements made after January 1, 2008, may be eligible if the improvement does cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow. A facility that commences operation after December 31, 2005, is eligible if it does not cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow. Facilities that exceed 30 MW as a result of efficiency improvements made	Yes, if 30 MW or less, commences commercial operations or is repowered on or after January 1, 2006, and does not cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow. Facilities that exceed 30 MWs as a result of efficiency improvements made after the facility commences commercial operations may be eligible if the improvement does not cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow. However, facility may only qualify for SEPs for 30 MW or less.

Resource	RPS Eligibility	RPS and SEP Eligibility
	January 1, 2008, may be eligible if the improvement does not cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow; the entire generating capacity of the of the facility shall be eligible. Incremental increases in the amount of electricity generated at the facility as a result of efficiency improvements at the facility is electricity from and eligible renewable resource, without regard to the electrical output of the facility, if all the following conditions are met: (5) The incremental increase is the result of efficiency improvements from a retrofit that do not result in an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow. (6) The hydroelectric generation facility has, within the immediately preceding 15 years, received certification from the state water resources control Board pursuant to Section 401 of the Clean Water Act … . (7) The hydroelectric generation facility was operational prior to January 1, 2007, the efficiency improvements are initiated on or after January 1, 2008, the efficiency improvements are not the result of routine maintenance activities… . (8) All of the incremental increase in electricity resulting from the efficiency improvements are demonstrated to result from a long-term financial commitment by the retail seller…. . [AB 809; Sec. 399.12.5] .~~Yes, RESTRICTED to facilities 30 MW or less (with exceptions for efficiency improvements).~~ ~~A facility operational before January 1, 2007, is eligible if not located on federal lands and uses for its generation only the hydroelectric potential a manmade conduit operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for electricity generation. A facility that exceeds 30 MW as a result of efficiency improvements made after commencement of commercial operationJanuary 1, 2003, may be eligible if the improvement does not require a new or increased appropriation or diversion of water from a watercourse.~~ ~~Yes, if facility operational on or after January 1, 2007. F~~A ~~facilityies operational on or after January 1, 2007, are~~ is ~~eligible if it is not located on federal lands and uses for its generation only the hydroelectric potential of a manmade conduit operated for the distribution of water for agricultural, municipal, or~~	No, efficiency improvements to hydroelectric facilities with an existing capacity greater than 30 MW are not SEP-eligible.~~Yes, if 30 MW or less, commences commercial operations or is repowered on or after January 1, 2007, and not located on federal lands and uses for its generation only the hydroelectric potential of a manmade conduit that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for electricity generation, AND IF it does NOT require a new or increased appropriation or diversion of water under Water Code Section 1200 et seq. or any other provision of law authorizing an appropriation of water. Facilities that exceed 30 MWs as a result of efficiency improvements made after the facility commences commercial operations may be eligible if the improvement does not require a new or increased appropriation or diversion of water from a watercourse. However, facility may only qualify for SEPs for 30 MW or less.~~

Resource	RPS Eligibility	RPS and SEP Eligibility
	~~industrial consumption and not primarily for electricity generation AND they will if it does not require a new or increased appropriation or diversion of water from a watercourse. Facilities that exceed 30 MW as a result of efficiency improvements made after January 1, 2003, commencement of commercial operations may be eligible if the improvement does not require a new or increased appropriation or diversion of water from a watercourse.~~	
Landfill Gas	Yes	Yes, if New or Repowered
MSW Combustion	Yes, but only eligible IF the electric generation facility is located wholly within Stanislaus County and began operating before September 26, 1996.	Combusted MSW is NOT SEP-eligible.
MSW Conversion	Yes, if it meets the definition of "solid waste conversion."[5]	Yes, if New or Repowered AND IF it meets the definition of "solid waste conversion."[5]
Photovoltaic	Yes [6]	Yes, if New or Repowered
Solar Thermal	Yes	Yes, if New or Repowered
Tidal Current	Yes	Yes, if New or Repowered
Ocean Wave	Yes	Yes, if New or Repowered
Ocean Thermal	Yes	Yes, if New or Repowered
Wind	Yes	Yes, if New or Repowered

Notes to Table 1

[1] **Biodiesel:** Electricity produced from biodiesel is eligible for the RPS IF the biodiesel is derived either from 1) a biomass feedstock such as "agricultural crops and agricultural wastes and residues" or as a result of an eligible "solid waste conversion" process (see Municipal Solid Waste Conversion) and 2) if it meets the requirements for ~~hybrid~~ multiple-fuel technologies.

[2] **New:** Resources that first begin commercial operation or are repowered on or after January 1, 2005, and meet the other eligibility requirements of Public Resources Code Section 25743, including Subdivision (f), are eligible for SEPs.

[3] **Repowered:** Repowered generators will 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 to "at least 80 percent of the value of the repowered facility," as required by Public Resources Code Section 25743, Subdivision (c). For generators with existing long-term contracts originally entered into before September 26, 1996, only generation above and beyond what is already under contract, as determined in accordance with Public Resources Code Section 25740.5, Subdivision (e), paragraph (1)(C), may compete to satisfy the RPS obligation of a retail seller and be eligible for SEPs.

[4] **Biomass:** Biomass facilities seeking SEP eligibility must certify to the satisfaction of the Energy Commission that their biomass fuel utilization is limited to the following under Public Resources Code Sections 25742, Subdivision (d), and 25743, Subdivision (f):

(A) Agricultural crops and agricultural wastes and residues.

(B) Solid waste materials including waste pallets, crates, dunnage, manufacturing, and construction wood wastes, landscape or right-of-way tree trimmings, mill residues that are directly the result of the milling of lumber, and rangeland maintenance residues.

(C) Wood and wood wastes that meet all of the following requirements:

(i) Have been harvested following an approved timber harvest plan prepared in accordance with the Z'berg-Nejedly Forest Practice Act of 1973, Chapter 8 (commencing with Section 4511 of Part 2 of Division 4 of the Public Resources Code).

(ii) Have been harvested for the purpose of forest fire fuel reduction or forest stand improvement.

(iii) Do not transport or cause the transportation of species known to harbor insect or disease nests outside zones of infestation or current quarantine zones, as identified by the Department of Food and Agriculture or the Department of Forestry and Fire Protection, unless approved by those agencies.

[5] **Municipal Solid Waste Conversion:** A facility is eligible for the RPS if 1) it uses a two-step process to create energy whereby in the first step (gasification conversion) a non-combustion thermal process that consumes no excess oxygen is used to convert MSW into a clean burning fuel, and then in the second step this clean burning fuel is used to generate electricity, 2) it is located in-state or satisfies the out-of-state requirements, and 3) it meets all of the following criteria:

(A) The technology does not use air or oxygen in the conversion process, except ambient air to maintain temperature control.

(B) The technology produces no discharges of air contaminants or emissions, including greenhouse gases as defined in Section 42801.1 of the Health and Safety Code.

(C) The technology produces no discharges to surface or groundwaters of the state.

(C) The technology produces no hazardous wastes.

(E) To the maximum extent feasible, the technology removes all recyclable materials and marketable green waste compostable materials from the solid waste stream before the conversion process, and the owner or operator of the facility certifies that those materials will be recycled or composted.

(F) The facility at which the technology is used complies with all applicable laws, regulations, and ordinances.

(G) The technology meets any other conditions established by the Energy Commission.

(H) The facility certifies that any local agency sending solid waste to the facility diverted at least 30 percent of all solid waste it collects through solid waste reduction, recycling and composting. To qualify for SEPs, the facility must certify that any local agency sending solid waste to the facility is in compliance with Division 30 of the Public Resources Code (commencing with Section 40000), and has reduced, recycled, or composted solid waste to the maximum extent feasible, and shall have been found by the California Integrated Waste Management Board to have diverted at least 30 percent of all solid waste through source reduction, recycling, and composting.

[6] **Photovoltaic:** The Energy Commission will certify distributed generation facilities, particularly solar photovoltaic, as RPS-eligible only if and when the CPUC authorizes applying tradable RECs toward RPS obligations, unless the facility is participating in an eligible standard contract/tariff, or is owned by an electric utility or other retail seller.

1. Biodiesel

The electricity produced from combusting biodiesel is eligible for the RPS and SEPs if the biodiesel is derived from the following fuel sources and complies with the requirements for these fuel sources and ~~hybrid~~multi-fuel technologies~~ systems~~:

1. A biomass feedstock such as "agricultural crops and agricultural wastes and residues," including but not limited to animal waste, remains and tallow, food waste, recycled cooking oil, and pure~~straight~~ vegetable oil, and consistent with the applicable requirements for ~~hybrid~~multi-fuel technologies (refer to the guidelines for biomass eligibility and for ~~hybrid~~multi-fuel technologies below), or

2. An eligible "solid waste conversion" process using MSW, and consistent with applicable requirements for ~~hybrid~~multi-fuel technologies (refer to the guidelines for MSW eligibility and for ~~hybrid~~multi-fuel technologies below).

~~In addition, t~~The generating facility must also be located in California or satisfy the out-of-state eligibility requirements discussed later in this *Guidebook*.

In addition to the certification or pre-certification application, applicants for biodiesel facilities must complete a supplemental application form and provide additional required information (see "Additional Required Information" section).

2. Biomass

RPS Eligibility

The generation from a biomass facility is eligible for the RPS provided the facility uses a "biomass" fuel as defined in the *Overall Program Guidebook*.

If the facility is seeking RPS eligibility and funding under the Existing Renewable Facilities Program ~~(ERFP)~~, its biomass fuel must be limited to the biomass fuels specified below for SEPs (refer to the *Existing Renewable Facilities Program Guidebook* for further information about eligibility for funding from the Existing Renewable Facilities Program). Additionally, ~~its annual~~facilities receiving funding from the Existing Renewable Facilities Program that use fossil fuel ~~use~~ must not exceed a *de minimus* amount annually in order for 100 percent of the generation to be eligible for funding from that program. For the Existing Renewable Facilities Program~~these facilities~~, *de minimus* is defined as 5 percent of all fuels used and measured on an annual total energy input basis. ~~(refer to the *ERFP Guidebook* for further information about eligibility for funding from the ERFP).~~

In addition to the certification or pre-certification application, applicants for biomass facilities must complete a supplemental application form and provide additional required information (see "Additional Required Information" section).

SEP Eligibility

If the facility operator is seeking funding eligibility from SEPs, ~~The generation from a biomass facility is eligible for SEPs if~~ the facility operator must certify~~ies~~ to the satisfaction of the Energy Commission that the biomass fuel used is limited to the following:

1. Agricultural waste: including agricultural crops and agricultural wastes and residues.

2. Solid waste materials: including waste pallets, crates, dunnage, manufacturing, and construction wood wastes, landscape or right-of-way tree trimmings, mill residues that are directly the result of the milling of lumber, and rangeland maintenance residues.

3. Wood and wood wastes that meet all of the following requirements:

   a. Have been harvested pursuant to an approved timber harvest plan prepared in accordance with the Z'berg-Nejedly Forest Practice Act of 1973 (Chapter 8 [commencing with Section 4511] of Part 2 of Division 4 of the Public Resources Code).

   b. Have been harvested for the purpose of forest fire fuel reduction or forest stand improvement.

   c. Do not transport or cause the transportation of species known to harbor insect or disease nests outside zones of infestation or current quarantine zones, as identified by the Department of Food and Agriculture or the Department of Forestry and Fire Protection, unless approved by these agencies.

~~In addition,~~ Additionally, for facilities seeking SEP eligibility, the facility operator must certify that the facility's use of all fossil fuels exceeds no more than 2 percent of the total energy input for the facility during a given calendar year for 100 percent of the generation to be eligible for SEPs. The total energy input of the facility shall be determined in a manner consistent with Section 292.204(b) of Title 18 of the Code of Federal Regulations. If the facility operator is seeking SEP eligibility and the facility uses more than 2 percent fossil fuel, refer to "Renewable Facilities Using Multiple Fuels."

When applying for SEP pre-certification or certification, biomass facility operators must state their intent in writing to (1) procure biomass fuel supplies that meet the applicable statutory requirements noted above, and (2) comply with annual reporting requirements.

After receiving certification and commencing commercial operations, facility operators that are awarded SEPs must report to the Energy Commission annually on the type and quantity of biomass fuel used as specified in the three categories listed above: (1) agricultural waste, (2) solid waste materials, and (3) wood waste. In addition, the facility

operator must report on the type and the amount of all fossil fuel used on a total energy input basis for the facility. The annual report shall include an attestation from the facility operator stating that the biomass fuel used meets the applicable statutory requirements. In addition, the report shall include an attestation from the facility's fuel supplier(s) stating that the biomass fuel delivered to the facility meets the applicable statutory requirements.

The annual report and attestation are due to the Energy Commission by January 31st of each year and should apply to fuel use for the previous calendar year. Biomass facility operators must also provide documentation upon request by the Energy Commission to verify ongoing compliance with these requirements between reporting dates.

3. Small Hydroelectric

The RPS and SEP eligibility of small hydroelectric facilities, including conduit hydroelectric facilities, depends in part on whether the facility was operational on or after January 1, 2006, and whether energy efficiency improvements were made after January 1, 2008. Eligibility of facilities that were in operation before January 1, 2006 is addressed Subsection (a), and eligibility of facilities that commence commercial operations on or after January 1, 2006 are addressed in Subsection (b). Subsection (c) describes the eligibility criteria for incremental increases in the amount of electricity generated as a result of efficiency improvements at other hydroelectric facilities.

With exceptions for eligible efficiency improvements, a RPS-eligible hydroelectric facility or conduit hydroelectric facility must not exceed 30 megawatts (MW). However, the law allows:

- A facility to retain its RPS eligibility if efficiency improvements cause the facility to exceed 30 MW. The Energy Commission interprets the 30 MW size limit such that if a 30 MW facility had an eligible 5 MW energy efficiency increase, the entire energy from the 35 MW capacity would be RPS-eligible.
- Subject to certain conditions (see Section C, "Incremental Increases to Other Hydroelectric Facilities (Without Regard to the Electrical Output of the Facility)"), the incremental increase in the amount of electricity generated as a result of efficiency improvements at the facility is RPS-eligible electricity, without regard to the electric output of the facility. The Energy Commission interprets the 30 MW size limit to apply to the size of the efficiency improvement itself, regardless of the size of the facility. For example the amount of increased electricity produced by a 5 MW efficiency improvement to a 50 MW facility would be RPS-eligible because it did not exceed the 30 MW limit, but the amount of electricity produced by the original 50 MW facility would not qualify for the RPS because the original size of the facility exceeded 30 MW.

The applicant is responsible for showing that its facility qualifies for the RPS or SEPs. Information required of applicants for small hydroelectric or conduit hydroelectric facilities is discussed in the section on certification. In addition to the certification or pre-certification application, applicants for small hydroelectric or small conduit facilities must complete a supplemental application form and provide additional required information (see "Additional Required Information" section).

a. Small Hydroelectric (including Conduit Hydroelectric) that Commenced Operation Before January 1, 2006

RPS Eligibility

- Generation from small hydroelectric and conduit hydroelectric facilities that commenced commercial operations before January 1, 2006, is eligible for the California RPS if the facility meets all of the following criteria:

  1. The facility is 30 MW or less, with an exception for eligible efficiency improvements as discussed below.

  2. The facility is located in-state or satisfies the out-of-state requirements.

  3. The facility was under contract to, or owned by, a retail seller as of January 1, 2006.

- Eligible Efficiency Improvements: A small hydroelectric or conduit hydroelectric facility shall not lose its RPS eligibility if efficiency improvements undertaken after January 1, 2008, cause it to exceed 30 MW and do not cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow. The entire generating capacity of the facility shall be RPS-eligible.

RPS and SEP Eligibility

- Generation from small hydroelectric and conduit hydroelectric facilities that commenced commercial operations before January 1, 2006, is NOT eligible for SEPs.

b. Small Hydroelectric (including Conduit Hydroelectric) that Commenced Operation On or After January 1, 2006

RPS Eligibility

- Generation from small hydroelectric and conduit hydroelectric facilities that commence commercial operations or are repowered on or after January 1, 2006, is eligible for the California RPS if the facility meets all of the following criteria:

  1. The facility is 30 MW or less, with an exception for eligible efficiency improvements, as discussed below.

  2. The facility is located in-state or satisfies the out-of-state requirements.

  3. The facility does not cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.

- Eligible Efficiency Improvements: A small hydroelectric or conduit hydroelectric facility shall not lose its RPS eligibility if efficiency improvements undertaken after January 1, 2008, cause it to exceed 30 MW and do not cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow. The entire generating capacity of the facility shall be RPS-eligible.

RPS and SEP Eligibility

- Generation from small hydroelectric and conduit hydroelectric facilities that commence commercial operations or is repowered on or after January 1, 2006, is eligible for RPS and SEPs if the facility meets all of the following criteria:

  1. The facility is 30 MW or less, with an exception for eligible efficiency improvements, as discussed below.

  2. The facility is located in-state or satisfies the out-of-state requirements.

  3. The facility does not cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.

- Eligible Efficiency Improvements: A small hydroelectric or conduit hydroelectric facility shall not lose its RPS eligibility if efficiency improvements undertaken after January 1, 2008, cause it to exceed 30 MW and do not cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow. The generation resulting from the efficiency improvements shall be RPS and SEP eligible, and the entire generating capacity of the facility shall be RPS-eligible.

c. Incremental Increases To Other Hydroelectric Facilities (Without Regard to the Electrical Output of the Facility)

RPS Eligibility

- Incremental increases in the amount of electricity generated at the facility as a result of efficiency improvements at the facility is electricity from and eligible renewable resource (RPS-eligible), without regard to the electrical output of the facility, if all the following conditions are met:

  1. The incremental increase is the result of efficiency improvements from a retrofit that do not result in an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.
  2. The hydroelectric generation facility has, within the immediately preceding 15 years, received certification from the state water resources control Board pursuant to Section 401 of the Clean Water Act (33 U.S.C. Sec. 1341), or has received certification from a regional board to which the state board has delegated authority to issue certification, unless the facility is exempt from certification because there is no potential for discharge into waters of the United States.
  3. The hydroelectric generation facility was operational prior to January 1, 2007, the efficiency improvements are initiated on or after January 1, 2008, the efficiency improvements are not the result of routine maintenance activities, as determined by the Energy Commission, and the efficiency improvements were not included in any resource plan sponsored by the facility owner prior to January 1, 2008.
  4. All of the incremental increases in electricity resulting from the efficiency improvements are demonstrated to result from a long-term financial commitment by the retail seller. For purposes of this paragraph, "long-term financial commitment" means either new ownership investment in the facility by the retail seller or a new or renewed contract with a term of 10 or more years, which includes procurement of the incremental increase.

RPS and SEP Eligibility

- The incremental increase in the amount of electricity generated from a hydroelectric generation facility as a result of efficiency improvements at the facility is NOT eligible for SEPs.

~~The RPS and SEP eligibility of small hydroelectric facilities and conduit hydroelectric facilities are addressed separately in Subsections (a) and (b), respectively. Subsection (c) describes the eligibility criteria for new and repowered small hydroelectric facilities and conduit hydroelectric facilities.~~

~~With exceptions for eligible efficiency improvements, an RPS-eligible hydroelectric facility or conduit hydroelectric facility must not exceed 30 megawatts (MW). However, the law allows a facility to retain its RPS eligibility if efficiency improvements cause the~~

~~facility to exceed 30 MW. The Energy Commission interprets the 30 MW size limit such that if a 30 MW facility had an eligible 5 MW energy efficiency increase, energy from the 35 MW capacity would be RPS-eligible. However, a 5 MW energy efficiency increase to a 50 MW facility would not qualify for the RPS because the original size of the facility exceeded 30 MW.~~

~~In addition to the certification or pre-certification application, applicants for small hydroelectric or small conduit facilities must complete a supplemental application form and provide additional required information (see "Additional Required Information" section).~~

~~a. Small Hydroelectric (not conduit)~~

~~The RPS eligibility of small hydroelectric facilities depends in part on whether the facility was operational on or after January 1, 2006, and whether energy efficiency improvements were made after January 1, 2003.~~

~~RPS Eligibility~~

1. ~~January 1, 2006: Generation from a small hydroelectric facility that commenced commercial operations before January 1, 2006, is eligible for the California RPS if the facility meets all of the following criteria:~~

   4. ~~The facility is 30 MW or less, with an exception for eligible efficiency improvements as discussed below.~~

   5. ~~The facility is located in-state or satisfies the out-of-state requirements.~~

   6. ~~The facility was under contract to, or owned by, a retail seller as of January 1, 2006.~~

   ~~Eligible Efficiency Improvements: A small hydroelectric facility shall not lose its RPS eligibility if efficiency improvements undertaken after January 1, 2003, cause it to exceed 30 MW and do not require a new or increased appropriation or diversion of water from a watercourse. The entire generating capacity of the facility shall be RPS-eligible.~~

2. ~~Post-January 1, 2006: Generation from a small hydroelectric facility that commences commercial operations or is repowered on or after January 1, 2006, is eligible for the California RPS if the facility meets all of the following criteria:~~

   1. ~~The facility is 30 MW or less, with an exception for eligible efficiency improvements, as discussed below.~~

   1. ~~The facility is located in-state or satisfies the out-of-state requirements.~~

~~2.The facility does not require a new or increased appropriation or diversion of water from a watercourse.~~

~~Eligible Efficiency Improvements: A small hydroelectric facility shall not lose its RPS eligibility if efficiency improvements undertaken after the facility commences commercial operations cause it to exceed 30 MW and do not require a new or increased appropriation or diversion of water from a watercourse. The entire generating capacity of the facility shall be RPS-eligible.~~

~~RPS and SEP Eligibility~~

~~3.Post-January 1, 2006: Generation from a small hydroelectric facility that commences commercial operations or is repowered on or after January 31, 2006, is eligible for SEPs if the facility meets all of the following criteria:~~

~~1. The facility is 30 MW or less, with an exception for eligible efficiency improvements, as discussed below.~~

~~2. The facility is located in-state or satisfies the out-of-state requirements.~~

~~3. The facility does not require a new or increased appropriation or diversion of water under Water Code Section 1200 et seq. or any other provision of law authorizing an appropriation of water.~~

~~Eligible Efficiency Improvements: A small hydroelectric facility shall not lose its RPS or SEP eligibility if efficiency improvements undertaken after January 1, 2003, the facility commences commercial operations cause it to exceed 30 MW and do not require a new or increased appropriation or diversion of water from a watercourse. The entire generating capacity of the facility shall be RPS-eligible. However, the facility may only qualify for SEPs for capacity of 30 MW or less.~~

~~b. Conduit Hydroelectric~~

~~The RPS eligibility of a conduit hydroelectric facility depends in part on whether the facility was operational on or after January 1, 2007.~~

~~RPS Eligibility~~

~~4.January 1, 2007: Generation from a conduit hydroelectric facility that commenced commercial operations before January 1, 2007, is eligible for the RPS if the facility meets all of the following criteria:~~

~~1.The facility is 30 MW or less, with the exception of eligible efficiency improvements, as discussed below.~~

~~2.The facility is not located on federal lands and uses for its generation only the hydroelectric potential of a manmade conduit, which is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity as specified in Section 823a of Title 16 of the United States Code.~~

~~3.The facility is located in-state or satisfies the out-of-state requirements.~~

~~Eligible Efficiency Improvements: A conduit hydroelectric facility shall not lose its RPS eligibility if efficiency improvements undertaken after the facility commences commercial operations cause it to exceed 30 MW and do not require a new or increased appropriation or diversion of water from a watercourse. The entire generating capacity of the facility shall be RPS-eligible.~~

~~5.Post-January 1, 2007: Generation from a conduit hydroelectric facility that commences commercial operations or is repowered on or after January 1, 2007, is eligible for the California RPS if the facility meets all of the following criteria:~~

~~1.The facility is 30 MW or less, with the exception of eligible efficiency improvements, as discussed below.~~

~~2.The facility is not located on federal lands and uses for its generation only the hydroelectric potential of a manmade conduit, which is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity as specified in Section 823a of Title 16 of the United States Code.~~

~~3.The facility is located in-state or satisfies the out-of-state requirements.~~

~~4.The facility does not require a new or increased appropriation or diversion of water from a watercourse.~~

~~Eligible Efficiency Improvements: A conduit hydroelectric facility shall not lose its RPS eligibility if efficiency improvements undertaken after the facility commences commercial operations cause it to exceed 30 MW and do not require a new or increased appropriation or diversion of water from a watercourse. The entire generating capacity of the facility shall be RPS-eligible.~~

~~RPS and SEP Eligibility~~

~~6.Post-January 1, 2007: Generation from a conduit hydroelectric facility that commences commercial operations or is repowered on or after January 1, 2007, is eligible for RPS and SEPs if the facility meets all of the following criteria:~~

~~1.The facility is 30 MW or less, with the exception of eligible efficiency improvements, as discussed below.~~

~~2.The facility is not located on federal lands and uses for its generation only the hydroelectric potential of a manmade conduit, which is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity as specified in Section 823a of Title 16 of the United States Code.~~

~~3.The facility is located in-state or satisfies the out-of-state requirements.~~

~~4.The facility does not require a new or increased appropriation or diversion of water under Water Code Section 1200 et seq. or any other provision of law authorizing an appropriation of water.~~

~~Eligible Efficiency Improvements: A conduit hydroelectric facility shall not lose its RPS or SEP eligibility if efficiency improvements undertaken after the facility commences commercial operations cause it to exceed 30 MW and do not require a new or increased appropriation or diversion of water from a watercourse. The entire generating capacity of the facility shall be RPS-eligible. However, the facility may only qualify for SEPs for capacity of 30 MW or less.~~

~~c. New and Repowered Small Hydroelectric and Conduit Hydroelectric~~

~~This subsection describes the eligibility criteria for new and repowered small hydroelectric facilities and conduit hydroelectric facilities. The on-line dates that define new and repowered small hydroelectric facilities and conduit hydroelectric facilities are given above in subsections (a) and (b), respectively.~~

~~For purposes of new or repowered small hydroelectric and conduit hydroelectric facilities, and efficiency improvements to these facilities, the terms "appropriation" and "diversion" shall be defined as follows:~~

~~"Appropriation" shall be defined in a manner consistent with Water Code Section 1201 to mean the right to use a specified quantity of water from any surface streams or other surface bodies of water or from any subterranean streams flowing through known and definite channels.~~

~~"Diversion" shall be defined in a manner consistent with Water Code Section 5100(b) to mean the taking of water by gravity or pumping from a surface stream or subterranean stream flowing through a known and definite channel, or other body of surface water, into a canal, pipeline, or other conduit, and includes impoundment of water in a reservoir.~~

~~Hydroelectric Facilities Located within California~~

~~A new or repowered small hydroelectric facility or conduit hydroelectric facility located within California is NOT eligible for the RPS or SEPs if it requires any of the following:~~

~~1.A new permit from the State Water Resources Control Board (SWRCB) for a new appropriation of water.~~

~~2.A new permit or license from the SWRCB for a new diversion of water.~~

~~3.An increase in the volume or rate of water diverted if the increase would require a new permit or approval of a time extension petition from the SWRCB.~~

~~4.An increase in the volume or rate of water diverted under an existing right, even if such an increase would not require a water right permit or license from the SWRCB.~~

~~If a new or repowered small hydroelectric facility or conduit hydroelectric facility can demonstrate that it may operate without a new or increased appropriation or diversion of water, it may be eligible for the RPS and SEPs. For example, a small hydroelectric facility that can operate by simply adding hydroelectric power generation as an authorized purpose of use to its existing SWRCB permit or license may be eligible for the RPS and SEPs if this change in use does not require a new appropriation and does not increase the volume or rate of water diverted beyond that which otherwise would be diverted under that permit or license.~~

~~Hydroelectric Facilities Located Outside California~~

~~A new or repowered small hydroelectric facility or conduit hydroelectric located outside California is NOT eligible for the RPS or SEPs if it requires any of the following:~~

~~1.A new permit or license from any government body for a new appropriation of water.~~

~~2.A new permit or license from any government body for a new diversion of water.~~

~~3.An increase in the volume or rate of water diverted under an existing right, even if such an increase would not require a new permit or license from any government body.~~

~~If a new or repowered small hydroelectric facility or conduit hydroelectric facility located outside California can demonstrate that it may operate without a new or increased appropriation or diversion of water, it may be eligible for the RPS and SEPs. For example, a small hydroelectric non-conduit or conduit facility that can operate by simply adding hydroelectric power generation as an authorized purpose of use to its existing government permit or license may be eligible for the RPS and SEPs if this change in use does not require a new appropriation or increased diversion and does not change the volume or rate of water withdrawn or released under that permit or license.~~

~~The applicant is responsible for showing that its facility qualifies for the RPS or SEPs. Information required of applicants for small hydroelectric or conduit hydroelectric facilities is discussed in the section on certification.~~

4. Municipal Solid Waste

RPS Eligibility

Applicants representing facilities using municipal solid waste (MSW) fall into two categories:

~~a.~~1. Solid Waste Combustion Facilities: A facility that directly combusts MSW to produce electricity is only eligible for the RPS if it is located in Stanislaus County and was operational before September 26, 1996. Applicants for combustion facilities must submit documentation to the Energy Commission demonstrating that the facilities meet these requirements. Generation from these facilities does not qualify for SEPs.

~~b.~~2. Solid Waste Conversion Facilities: A facility is eligible for the RPS if 1) it uses a two-step process to create energy whereby in the first step (gasification conversion) a non-combustion thermal process that consumes no excess oxygen is used to convert MSW into a clean burning fuel, and then in the second step this clean burning fuel is used to generate electricity, 2) it is located in-state or satisfies the out-of-state requirements, and 3) it meets all of the following criteria in accordance with Public Resources Code Section 25741, Subdivision (b)(3):

a. The technology does not use air or oxygen in the conversion process, except ambient air to maintain temperature control.

b. The technology produces no discharges of air contaminants or emissions, including greenhouse gases as defined in Section 42801.1 of the Health and Safety Code.

c. The technology produces no discharges to surface or groundwaters of the state.

d. The technology produces no hazardous wastes.

e. To the maximum extent feasible, the technology removes all recyclable materials and marketable green waste compostable materials from the solid waste stream before the conversion process, and the owner or operator of the facility certifies that those materials will be recycled or composted.

f. The facility at which the technology is used complies with all applicable laws, regulations, and ordinances.

g. The technology meets any other conditions established by the State Energy Resources Conservation and Development Commission (formal name of the Energy Commission).

h. The facility certifies that any local agency sending solid waste to the facility diverted at least 30 percent of all solid waste it collects through solid waste reduction, recycling, and composting.

In addition to the certification or pre-certification application, applicants for MSW facilities must complete a supplemental application form and provide additional required information (see "Additional Required Information" section).

SEP Eligibility

To qualify for SEPs, the facility must meet the criteria above for RPS eligibility and certify that any local agency sending solid waste to the facility complies with Division 30 of the Public Resources Code (commencing with Section 40000); has reduced, recycled, or composted solid waste to the maximum extent feasible; and has been found by the California Integrated Waste Management Board to have diverted at least 30 percent of all solid waste through source reduction, recycling, and composting.

5. Solar Energy and Distributed Generation

Generation from facilities using solar energy is eligible for the RPS. ~~B~~Although both central station and distributed generation facilities are technically RPS-eligible, the

CPUC and the Energy Commission have~~s~~ not yet determined how to include distributed generation for RPS compliance. ~~or these guidelines.~~

Solar thermal electric central station facilities delivering electricity to the grid are relatively straightforward to integrate into RPS implementation because the generation can be readily measured and procured toward meeting RPS requirements. It is possible that a photovoltaic (PV) central station facility could also produce electricity that is eligible for the RPS with standard metering employed for central station facilities.

~~Distributed~~ As noted above, consumer-owned distributed generation PV facilities and other distributed renewable energy technologies~~, however,~~ have qualities that make them more difficult than utility-owned distributed generation facilities or central station facilities to integrate into RPS implementation. For example, consumer-owneddistributed PV facilities are typically small-scale applications designed to meet a consumer's on-site energy demands. In addition, generation from consumer-owned distributed generation PV may be metered differently than utility-owned distributed generation facilities or central station facilities or not metered at all. Also, as described in the *New Renewable Facilities Program Guidebook*, on-site generation is not eligible for SEPs.

Both the Energy Commission and the CPUC have roles in determining RPS implementation for distributed generation. ~~However, t~~The Energy Commission is deferring any decisions on how to integrate distributed generation PV and other forms of customer-sited renewable energy into the RPS until the CPUC has further addressed RPS implementation issues for distributed generation, with the exception noted below. Consequently, ~~T~~the Energy Commission will certify distributed generation facilities as RPS-eligible only after the CPUC decides how to treat the output from renewable distributed generation toward utility RPS obligations. Facilities that receive funding under the Energy Commission's New Solar Homes Partnership program, ~~or~~ Emerging Renewables Program, or Pilot Performance-Based Incentive Program, ~~or~~ under the CPUC-approved Self Generation Incentive Program or California Solar Initiative, or any similar ratepayer-funded program, and facilities that benefit from net metering programs or tariffs approved by the CPUC or any local publicly owned electric utility (POU), are considered distributed generation and may not be certified as RPS-eligible at this time.

The Energy Commission will, however, certify facilities that would have been considered distributed generation facilities except that they are participating in a standard contract/tariff executed pursuant to Public Utilities Code 399.20, as implemented through the CPUC Decision 07-07-027 (R.06.05.027), or executed pursuant to a comparable standard contract/tariff approved by a POU, or if the facility is owned by an electric utility,, to become certified as RPS-eligible. If the energy is sold under contract to a retail seller (or POU that may have a similar standard contract/tariff structure), then the energy sold may be RPS-eligible. To qualify as RPS-eligible, the facility must not receive (or have received or be planning to receive) benefits from the CPUC-approved Self Generation Incentive Program or California Solar Initiative, the Energy Commission's Emerging Renewables Program, New Solar Homes Partnership, or Pilot

Performance Based Incentive Program, or any other similar ratepayer-funded program. Similarly, the facility must not receive or plan to receive benefit from net metering programs or net metering tariffs approved by the CPUC or any POU. If the facility is currently receiving benefits through net metering, it may apply for pre-certification and subsequently apply for certification once it has exited any net metering agreements.

6. Renewable Facilities Using Multiple Fuels

The Energy Commission will allow options for RPS-eligibility of renewable facilities that use multiple fuels or resources to generate electricity, such as co-fired fuels or a mix of fuels that includes fossil fuels. To count 100 percent of the electricity generated toward RPS obligations from such a multi-fuel facility, one of the following three conditions must be met.

1. If the annual fossil fuel use at the facility does NOT exceed a *de minimus* amount, then 100 percent of the electricity production from the facility may count as RPS-eligible. *De minimus* for purposes of facilities seeking RPS or RPS and SEP eligibility is 2 percent of all fuels used and measured on an annual total energy input basis. Note that *de minimus* for purposes of facilities seeking RPS eligibility and funding under the Energy Commission's Existing Renewable Facilities Program is 5 percent of all fuels used and measured on an annual energy input basis.

2. In the past, the Energy Commission's Renewable Energy Program provided that renewable facilities using fossil fuels were eligible for funding as long as the percentage of fossil fuel used did not exceed 25 percent of the total energy input of the facility during a given calendar year. The Energy Commission will provide the same treatment under the RPS for renewable facilities that commenced commercial operations before January 1, 2002, were certified and operational as a ~~renewable~~ Qualifying Small Power Production Facility (QF) under the federal Public Utility Regulatory Policies Act before January 1, 2002, and are currently certified as a renewable QF facility.

3. Any facility that is developed and awarded a power purchase contract as a result of a 2002/2003 Interim RPS procurement solicitation approved by the CPUC under Decision 02-08-071 and Decision 02-10-062 may use up to 25 percent fossil fuel, measured on an annual total energy input basis, in its facility and count 100 percent of the electricity generated as RPS-eligible.

The Energy Commission may allow multi-fuel facilities that do not meet one of the above criteria to be certified as RPS-eligible, but only the renewable portion of their generation will count as RPS eligible, and only when the Energy Commission approves a methodology to measure the renewable portion. An applicant for RPS pre-certification or certification of such a facility must submit with its application for RPS pre-certification or certification a proposal for an appropriate methodology to measure the renewable

fraction of the facility's generation. As an example of a proposed methodology, a measurement could be based on the total energy input of the fuel. The Energy Commission will evaluate and consider the proposed methodology as part of the facility's application for pre-certification or certification.

If a facility meets the above criteria, the Energy Commission will certify or pre-certify the facility as the fuel type of the renewable fuel used. For example, if a solar thermal electric facility is co-fired with natural gas (fossil fuel use must meet the criteria of the Public Utility Regulatory Policies Act [PURPA] including not to exceed 25 percent of the fuel use), then the facility will be certified as "solar thermal electric." To participate in the RPS, the multi-fuel facility must be registered in the WREGIS accounting system and comply with WREGIS' requirements, including those for metering, and for reporting and updating the renewable portion of the fuel mix.

~~6. Hybrid Systems~~

~~The Energy Commission will allow two options for eligibility of facilities that operate on co-fired fuels or a mix of fuels that includes fossil fuel:~~

~~1.If the annual fossil fuel use at the facility does NOT exceed a *de minimus* amount, then 100 percent of the electricity production from the facility may count as RPS-eligible provided the facility otherwise satisfies the applicable California RPS standards. *De minimus* for purposes of facilities seeking RPS or SEP eligibility is 2 percent of all fuels used and measured on an annual energy input basis. *De minimus* for purposes of existing facilities seeking RPS eligibility and funding under the Energy Commission's Existing Renewable Facilities Program is 5 percent of all fuels used and measured on an annual energy input basis.~~

~~2.If the annual fossil fuel use at the facility exceeds a *de minimus* amount, then only the renewable portion of the electricity production can qualify for the RPS, and only oncean appropriate tracking system for such electricity production is developed.~~

~~The Energy Commission will need to develop a methodology as part of the tracking system to measure the renewable fraction of generation before such a hybrid facility may be certified as RPS-eligible. This methodology could be based on the total energy input of the fuel, for example. As part of their application for certification from the Energy Commission, parties interested in certifying such facilities are invited to propose an appropriate tracking methodology for their facility.~~

- **Pumped storage**

Pumped storage hydro may qualify for the RPS to the extent that~~:~~ ~~1) the facility meets the eligibility requirements for small hydro, and 2)~~ the electricity used to pump the water qualifies as RPS eligible. The amount of energy that may qualify for the RPS is the amount of electricity dispatched from the system.

The Energy Commission clarifies that pumped storage facilities qualify for the RPS on the basis of the renewable electricity used for pumping, and that electricity storage facilities will not be certified for the RPS as distinct or separate renewable facilities. A facility certified as RPS-eligible may include an electricity storage device if it does not conflict with other RPS-eligibility criteria, but the storage unit itself will not be separately certified.

- **Biogas Injected into a Natural Gas Pipeline**

RPS-eligible biogas (gas derived from RPS-eligible biomass or digester gas) injected into a natural gas transportation pipeline system and delivered into California for use in an RPS-certified ~~hybrid~~ multi-fuel facility may result in the generation of RPS-eligible electricity. The biogas must meet strict heat content and quality requirements within a narrow band of tolerance to qualify as pipeline-grade gas. Quantifying RPS-eligible energy production requires accurate metering of the volume of biogas injected into the transportation pipeline system and the measured heat content of the injected gas. Although blending the biogas into the transportation pipeline system mixes the biogas with other pipeline gas, natural gas regulations require gas entering the system to be "nominated" for use at a specific power plant or to a pipeline system owned by a publicly owned utility or other load-serving entity (LSE). Consequently, the amount and energy content of the biogas or other RPS-eligible gas produced can be measured and either nominated for use at a specific power plant or nominated to a pipeline system owned by an LSE. If the biogas is nominated to a pipeline system, the owner of the system must designate the facility in which the biogas will be used.

The operator of a facility to which biogas is nominated (or designated) must certify its facility as RPS-eligible, recognizing that the facility will use a blend of RPS-eligible and ineligible fuel.

The amount of RPS-eligible electricity produced shall be calculated by multiplying the generation of the facility (MWh) by the ratio of the biogas used and the total gas (biogas and natural gas) used by the facility. The electricity generated and gas use must be measured over an equal period (such as MWh produced per month and gas used per month).

Any production or acquisition of gas that is directly supplied to the gas transportation pipeline system and used to produce electricity may generate RPS-eligible electricity as follows:

~~e~~1. The gas must be produced from an RPS-eligible resource, such as biomass or digester gas.

~~e~~2. The gas must be injected into a natural gas pipeline system that is either within the WECC region or interconnected to a natural gas pipeline system in the WECC region that delivers gas into California.

~~e~~3. The energy content produced and supplied to the transportation pipeline system must be measured and reported annually, disaggregated by month. Reporting shall be in units of energy (e.g. MMBtu) based on metering of gas volume and adjustment for measured heat content per volume. In addition, the total amount of gas used at the RPS-eligible facility must be reported in the same units measured over the same period and the electricity production must be reported in MWh.

~~e~~4. The gas must be used at a facility that has been certified as RPS-eligible. As part of the application for certification, the applicant must attest that the RPS-eligible gas will be nominated to that facility or nominated to the LSE-owned pipeline serving the designated facility.

~~e~~5. In its annual verification report, the Energy Commission will calculate the RPS-eligible energy produced using the same methodology discussed above.

When applying for RPS and SEP pre-certification, certification, or renewal, the application must include the following: (1) an attestation from the ~~hybrid~~multi-fuel facility operator of its intent to procure biogas fuel that meets RPS eligibility criteria, and (2) an attestation from the fuel supplier that the fuel meets eligibility requirements.

~~Two other options for eligibility of facilities that operate on co-fired fuels or a mix of fuels that includes fossil fuel are discussed in Section 7.~~

~~7. Other Renewable Facilities Using Fossil Fuel~~

~~In the past, the Energy Commission's Renewable Energy Program (REP) provided that renewable facilities using fossil fuels were eligible for funding as long as the percentage of fossil fuel used did not exceed 25 percent of the total energy input of the facility during a given calendar year. As long as a facility did not use more than 25 percent fossil fuel for its total generation, including the portion produced with fossil fuels, it was considered eligible for funding by the Energy Commission. The Energy Commission will provide the same treatment under the RPS for existing facilities that originally commenced commercial operations prior to January 1, 2002.~~

~~Further, any facility that is developed and awarded a power purchase contract as a result of an Interim RPS procurement solicitation approved by the CPUC under Decision 02-08-071 and Decision 02-10-062 may use up to 25 percent fossil fuel in its facility and count 100 percent of the electricity generated as RPS-eligible (assuming the electricity meets all other eligibility requirements).~~

~~In addition to hybrid technologies using a *de minimus* amount of fossil fuel, 100 percent of the electricity generated from a facility that operates on a mix of fuels that includes fossil fuel may be RPS-eligible if the facility satisfies either 1 or 2 below:~~

~~1)a.) Is certified as Qualifying Small Power Production Facility (QF) under the federal Public Utility Regulatory Policies Act, and b.) Became operational before 2002,~~

~~—or—~~

~~2)Was or will be developed and awarded a power purchase contract as result of an Interim RPS solicitation approved by the CPUC under Decision 02-08-071 and Decision 02-10-062.~~

~~If a facility meets the above criteria, the Energy Commission will certify the facility as the fuel type of the renewable fuel used. For example, if a solar thermal electric facility is co-fired with natural gas (fossil fuel use must meet the criteria of the Public Utility Regulatory Policies Act [PURPA] including not to exceed 25 percent of the fuel use), then the facility will be certified as "solar thermal electric."~~

C. Eligibility for Supplemental Energy Payments

A facility that is eligible for the RPS may also be eligible for SEPs. A facility is not eligible for SEPs for generation that is used on-site, sold to customers in a manner that excludes competitive transition ~~change~~charge payments, or sold to customers that are not subject to the renewable energy public goods charge. Further, no SEPs will be awarded for tradable renewable energy credits.

To qualify as eligible for SEPs, a facility must meet the RPS eligibility requirements above, as well as the additional requirements below.

1. The facility is either:

    a. "New," meaning the facility first commences commercial operations on or after January 1, 2005, with the commercial operation date used to designate a facility as "new" to be periodically updated by the Energy Commission, or

    b. "Repowered," such that the prime generating equipment of the facility is replaced and the applicant demonstrates that the capital investments equal "at least 80 percent of the value of the repowered facility," as required by Public Resources Code Section 25743, Subdivision (c). A facility qualifies as "repowered" only if it re-enters commercial operations on or after the commercial operations date that distinguishes "new" facilities. Only investments made in the two years prior to re-entering commercial operations qualify toward the 80 percent investment threshold. More information about the requirements to qualify as a repowered facility is provided in the section on certification.

2. A small hydroelectric ~~facility~~ facility (including conduit hydroelectric) may qualify for SEPs if it commences commercial operations or is repowered on or after January 1, 2006.

3. A conduit hydroelectric facility may qualify for SEPs if it commences commercial operations or is repowered on or after January 1, 2007.

4. If a facility has an existing long-term contract with a retail seller that includes fixed energy or capacity payments, then generation sold under the contract does not qualify for SEPs, except as provided in criterion 5 below.

5. If a facility has an existing long-term contract with a retail seller originally entered into before September 24, 1996, then only incremental new or repowered generation that is above and beyond what is already under contract, as determined in accordance with Public Resources Code Section 25740.5, Subdivision (e)(1)(C), may qualify for SEPs.

For information about applying for and receiving SEPs, please refer to the *New Renewables Facilities Program Guidebook*.

D. Eligibility of Out-of-State Facilities

This section applies to renewable facilities that are located out-of-state and have their first point of interconnection to the WECC transmission system outside the state, as defined in the *Overall Program Guidebook*. Facilities that have their first point of interconnection to the WECC transmission system within the state are considered to be in-state facilities and are not subject to the requirements of this section for purposes of RPS or SEP eligibility. Out-of-state facilities that are not or will not be interconnected to the WECC transmission system are not eligible for the RPS.

Note that the delivery requirements described here for out-of-state facilities do not apply to electric corporations that serve retail end-use customers outside California and have 60,000 or fewer customer accounts in California under Public Utilities Code Section 399.17. Section 399.17 modifies the definition of an eligible renewable energy resource to include out-of-state facilities for ~~certain~~ multi-jurisdictional electric corporations, such as PacifiCorp and Sierra Pacific Power Company, which serve customers both in and outside California. This exception only applies to situations wherein these multi-jurisdictional utilities procure energy to meet their own RPS obligations. In the event that these facilities are located out-of-state and their generation is procured to meet the RPS targets of another obligated utility, the multi-jurisdictional facility would be subject to all out-of-state eligibility requirements, including delivery requirements.

Generation from renewable facilities located out-of-state is potentially eligible for both the RPS and SEPs. To qualify for the RPS or SEPs generation from an out-of-state facility must meet the RPS eligibility requirements described above and must satisfy all of the following criteria.

a) Is located so that it is or will be connected to the WECC transmission system.

b) Commences initial commercial operations on or after January 1, 2005, ~~(except in the case of small hydroelectric and conduit hydroelectric facilities, which must commence initial commercial operations on or after January 1, 2006, and January 1, 2007, respectively, to qualify for SEP eligibility)~~.

c) Demonstrates delivery of its generation to an in-state market hub or in-state location, as specified in the delivery requirements below.

d) Does not cause or contribute to any violation of a California environmental quality standard or requirement within California.

e) If located outside the United States, it is developed and operated in a manner that is as protective of the environment as a similar facility located in California.

f) Participates in an RPS tracking and verification system approved by the Energy Commission.

g) Satisfies the "Delivery Requirements" set forth below.

If the facility meets all of the above criteria except it commenced commercial operations before January 1, 2005 (criterion "b" above), then it may be RPS-eligible (but not SEP-eligible) if it meets one of the following two criteria:

~~a~~a) The electricity is from incremental generation resulting from project expansion or repowering of the facility, or

~~a~~b) The facility is part of a retail seller's existing baseline procurement portfolio as identified by the CPUC.

~~For~~ Procurement by retail sellers that serve end-use customers outside California and have 60,000 or fewer customer accounts in California under Public Utilities Code Section 399.17, such as PacifiCorp and Sierra Pacific Power Company, ~~electricity procured from a facility located out-of-state~~ that is counted towards meeting the RPS target of the purchasing utility (and subject to Public Utilities Code Section 399.17) is not subject to the above delivery requirements. ~~must, i~~In lieu of the ~~foregoing~~ above criteria, the energy procured must meet the following criteria to be eligible for the RPS:

a) The generation must be procured by the retail seller subject to Public Utilities Code Section 399.17 on behalf of its California customers and is not used to fulfill its renewable energy procurement requirements in other states or any other renewable energy retail claim.

b) The facility is connected to the WECC.

c) The facility and retail seller must participate in an RPS tracking and verification system approved by the Energy Commission.

Generation procured by retail sellers under Public Utilities Code Section 399.17 is not eligible for SEPs.

In addition to the certification or pre-certification application, applicants for out-of-state facilities must complete a supplemental application form and provide additional required information (see "Additional Required Information" section).

E. Delivery Requirements

For purposes of RPS compliance, electricity is deemed delivered if it is either generated at a location within the state or is scheduled for consumption by California end-use retail customers as specified in Public Resources Code Section 25741, Subdivision (a). Consequently, electricity generated by facilities located in-state or having their first point of interconnection to the WECC transmission system in-state satisfies California RPS delivery requirements.

Energy may be delivered into California at a different time than when the RPS-certified facility generated electricity, under Public Resources Code Section 25741, Subdivision (a). Further, the electricity delivered into California may be generated at a different location than that of the RPS-certified facility. In practical terms, out-of-state energy may be "banked and/or shaped" to allow for delivery into California. Banking and shaping generally means taking receipt of energy at one point in time and re-delivering an equal volume of energy at a later time. Shaping generally means changing the energy delivery profile; for example, from one that is consistent in each hour to one that is more weighted to on-peak hours. Thus, banking and shaping services are often performed together for resources with variable generation profiles, with generation profiles that vary from the buyer's energy needs, or with out-of-state resources that lack firm dedicated transmission service into California.[10] [11]

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[10] For further information refer to the CPUC staff white paper, "Renewable Energy Certificates and the California Renewables Portfolio Standard Program," April 20, 2006, http://www.cpuc.ca.gov/word_pdf/REPORT/55606.doc

[11] Below are examples of contract structures that would meet the RPS-delivery requirements, but these examples are not exhaustive and other contracting structures could also qualify. The common element of each of these eligible structures is that the energy and RECs generated by a RPS-eligible facility can be sold separately (i.e., temporarily unbundled), *provided* that the RECs are rebundled or "matched" with other energy imported into California during the same calendar year.

1. Banking and/or shaping by the RPS-eligible facility – An RPS-eligible facility ("Seller") could enter a power-purchase agreement (PPA) with a retail seller, procurement entity, or intermediary ("Buyer"), and, as part of the PPA, the Seller would provide banking and/or shaping to deliver energy into California. Under this structure, the Seller could sell the energy generated by the RPS-

~~To count generation from out-of-state facilities for purposes of RPS compliance,Banked and shaped generation from out-of-state generation will be RPS-eligible if it is delivered pursuant to the following arrangements:~~ ~~T~~the RPS-certified facility ("Seller") must enter a power purchase agreement with the retail seller or procurement entity or an intermediary [12] ("Buyer"). An equal or greater ~~. The energy generated and associated RECs from the RPS-certified facility must be procured by a retail seller or procurement entity through a power purchase agreement.~~ and ~~a~~A matching quantity of electricity must be delivered to an in-state market hub (also referred to as "zone") or in-state point of delivery (also referred to as "node") located within California. ~~The retail seller or procurement entity~~Buyer ~~and Seller may negotiate which party is responsible for securing transmission,~~ as necessary, ~~at any point along the delivery path as long as the energy is delivered into California.~~ The ~~retail seller or procurement entity~~Buyer may document delivery of electricity from any~~a~~ control area operator (also referred to as "balancing authority") in the WECC transmission system outside California. ~~,~~This delivery may occur from any delivery point into California, including ~~originate~~ from a control area different from that in which the RPS-certifi~~c~~ed facility is located and ~~occur~~ through typical delivery arrangements, such as ~~including w~~wheeling energy across multiple control areas. The delivery of electricity to an in-state market hub or ~~in-state~~ point of delivery located within California must be made consistent with North American Electric Reliability Corporation (NERC) rules and documented with a NERC E-tag as described below.~~, and the delivered electricity may be from a different control area than that in which the RPS-certified facility is located~~.

The Energy Commission will compare the amount of RPS-eligible energy generated by the RPS-eligible facility per calendar year with the amount of energy delivered into California for the same calendar year and the lesser of the two amounts may be counted as RPS-eligible procurement (for more discussion see "verification of delivery"). ~~The energy generated and associated RECs generation from the RPS-certified facility~~

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eligible facility, but not the associated RECs, and generate or buy an equivalent volume of other energy to rebundle with the RECs for sale to the Buyer for delivery into California.

2. Banking and/or shaping by a third party – A retail seller, procurement entity, or intermediary ("Buyer") could buy energy and RECs from an RPS-eligible facility ("Seller") and execute a second PPA to re-sell the energy from the RPS-eligible facility, but not the associated RECs, to a third party that provides banking and/or shaping services. Then, the same or different third party could provide the Buyer with an equivalent volume of energy for rebundling with the RECs for delivery into California. Alternatively, the Seller could (a) enter into a banking and/or shaping services agreement with a third party wherein it sells the energy generated by the facility, but not the associated RECs, and then re-purchases or receives back an equivalent volume of energy from the same or different third party, and (b) enter into a power purchase agreement (PPA) with the Buyer to sell that banked and/or shaped energy to rebundle with the RECs for delivery into California.

3. Banking and/or shaping by Buyer - The retail seller, procurement entity, or intermediary ("Buyer") could buy energy and RECs from an RPS-eligible facility ("Seller"), then sell the energy back to the Seller or to any third party. Separately, the Buyer could rebundle (or "match") the RECs with other energy delivered into California that is procured from a second PPA, imports under a pre-existing PPA, or any other source in the WECC that is outside California

[12] "Intermediary" means a business entity that has contracted with an Eligible Renewable Energy Resource for the rights to the electricity generated by that resource.

~~must be under a procured throughgoverned byprocured through a power purchase agreement between the RPS-certified facility and with the retail seller, or procurement entity or intermediary.~~ If the retail seller has entered into a power purchase agreement with the RPS-certified facility, ~~T~~the energy from the RPS-eligible facility may be remarketed consistent with any ~~applicable~~ CPUC rules on remarketing that are applicable to ~~for~~ retail sellers ~~on remarketing~~. Otherwise, there is no restriction on how, when or where the energy from the RPS-eligible facility may be sold or delivered. ~~so long as a quantity of energy is delivered into California that matches the amount originally procured from the out-of-state RPS-eligible facility. The delivery of electricity to an in-state market hub or in-state point of delivery located within California must be made consistent with North American Electric Reliability Corporation (NERC) rules and documented with a NERC E-tag as described below.~~

The following deliverability requirements were developed in consultation with the California ISO. These requirements must be satisfied for an out-of-state facility to qualify for the RPS or SEPs (with the exception noted above for retail sellers subject to Public Utilities Code Section 399.17). The delivery requirements do not apply to facilities located outside of California whose first point of interconnection to the WECC transmission system is located in California.

1. The retail seller, procurement entity, intermediary, or facility representative must either (a) arrange for an interchange transaction with the California ISO to deliver the out-of-state facility's energy (or a matching amount of energy from another out-of-state source located within the WECC) to a point of delivery in California, or (b) arrange for an interchange transaction with another balancing authority outside California to deliver energy to the point of delivery in California. In accordance with the policies of the NERC, the interchange transaction must be scheduled with ~~tagged as~~ what is commonly referred to as a "NERC E-Tag." ~~"NERC tag," which requires, among other things, that information be provided identifying the Generation Providing Entity, the "Source" or "Point of Receipt," the physical transmission path for delivery showing intermediary "Points of Delivery," the contract or market path the final Point of Delivery or load center known as the "sink," and the Load Serving Entity responsible for the consumption of electricity delivered.~~

~~1.~~2. The Source identified on the NERC E-T~~t~~ag may be a specific RPS-eligible facility registered as a unique source or may be any balancing authority located in the WECC outside California.

3. The RPS certification number of the facility or facilities (or RPS pre-certification number, in the case of local publicly-owned electric utilities) that is/are engaged in a power purchase agreement with a retail ~~seller~~ seller, ~~or~~ procurement entity, or intermediary (or for a local publicly-owned electric utility implementing these delivery requirements as part of compliance with its RPS) must be shown on the comment field of the NERC E-T~~t~~ag.

4. The facility must provide the Energy Commission with its NERC identification (Source point name)[13] if it registers as a unique source, or the Source point name of the~~its~~ balancing authority in which it is located when it applies for RPS certification. (Providing this information ~~does~~will not ~~restrict the eligibility of usingpreclude the use~~restrict the eligibility -of using other balancing authorities outside California to deliver banked~~,~~ and/or shaped~~,~~ or other ~~banked and shaped~~ energy delivered into California.)

5. The facility representative, retail seller, or procurement entity (or local publicly-owned electric utility implementing these delivery requirements as part of compliance with its RPS) must request and receive acceptance of a NERC E-T~~t~~ag between a balancing authority in California and any~~a~~ balancing authority located in the WECC outside of California.

6. On May 1 of each year (or the next business day), the retail seller or procurement entity must submit an annual report documenting compliance with this NERC E-Tag requirement for the previous calendar year to the Energy Commission. The annual report to verify deliver~~delivery~~ies from out-of-state ~~renewable energy resources~~RPS-eligible facilities must include the following NERC E-Tag information: ~~Additionally, The applicable parties (the Generation Providing Entity and Load Service Entities) must agree to make available upon request documentation of the NERC E-Ttag to the Energy Commission. On May 1 of each year (or the next business day), the retail seller or procurement entity must submit an annual report documenting compliance with this NERC tag requirement for the previous calendar year to the Energy Commission.~~

   a) The "Source" or "Point of Receipt" located outside of California and within the WECC;

   b) The final "Point of Delivery" or load center in California known as the "sink," and the Load Serving Entity responsible for the consumption of electricity delivered;

   c) The California RPS-certification number of the facility or facilities with which the delivered energy is being "matched" or "bundled." The California RPS-certification number must be shown on the comment field of the NERC E-Tag; and

   d) The amount of energy delivered per ~~month~~year.

Additionally, the applicable parties (the Generation Providing Entity and Load Service Entities) must agree to make available upon request documentation of the NERC E-Tags to the Energy Commission.

[13] The NERC identification is the Source point name, an alpha-numeric code the generator uses to identify itself when it registers with the Transmission Services Information Network (TSIN). Registration with TSIN is mandatory for participation in the NERC tagging system.

7. The facility must submit verification of its generation to the Energy Commission annually. Please refer to the section on the "Generation Tracking System." ~~The Energy Commission will use these data to verify the actual generation of power that was scheduled for delivery via NERC E-Ttags.~~

8. If a facility has obtained a SEP award, the Energy Commission will verify that SEPs were granted only for generation that satisfies these delivery requirements. For more information, please refer to the *New Renewable Facilities Program Guidebook.*

F. Verification of Delivery

As part of the RPS Verification Report, the Energy Commission will also verify compliance with delivery requirements for out-of-state facilities. The Energy Commission will annually verify that the delivery requirements were satisfied for the previous calendar year.

To verify deliveries from out-of-state facilities, the Energy Commission will compare for each calendar year the annual amounts of generation procured from an RPS-eligible facility with the NERC E-Tag data for imported energy delivered into California. Generation of RPS-certified facilities under power purchase agreements with a retail seller, procurement entity or intermediary and NERC E-Tag documentation of delivery must be reported annually to show generation and delivery for the entire calendar year. The NERC E-Tag must reference the RPS certification number of the facility or facilities for which deliveries are being matched with generation. The Energy Commission will compare the total amount generated in the previous calendar year with the total amount delivered in the previous calendar year, and the lesser of the two may be accounted for as RPS-eligible. For example, if the annual energy delivery shown on the NERC E-Tag exceeds the annual amount of energy generated, then the Energy Commission will count the amount generated as RPS eligible. Conversely, if the amount generated exceeds the annual amount that was delivered as demonstrated by the NERC E-Tags, the Energy Commission will only count as RPS-eligible the amount of procurement supported by the NERC E-Tag data.

On May 1 of each year (or the next business day), the retail seller or procurement entity must submit an annual report documenting compliance with this NERC E-Tag requirement for the previous calendar year to the Energy Commission. The report should include all of the following:

1. The NERC E-Tag data as follows:
   a) The "Source" or "Point of Receipt" located outside of California and within the WECC;

   b) The final "Point of Delivery" or load center in California known as the "sink," and the Load Serving Entity responsible for the consumption of electricity delivered;

c) The California RPS-certification number of the facility or facilities with which the delivered energy is being "matched" or "bundled." The California RPS-certification number must be shown on the comment field of the NERC E-Tag; and

d) The amount of energy delivered.

2. The corresponding generation (or WREGIS certificate numbers for generation in 2008 and thereafter) for the facility or facilities identified by California RPS-certification number in the comment field of the NERC E-Tag for the corresponding previous calendar year.

For each LSE, the annual volume of energy delivered into California as documented by NERC E-Tag data for each facility or facilities will be compared to the annual volume of generation procured from an RPS-eligible facility or facilities, with the lesser of the two considered to be eligible California RPS procurement.

~~F~~G. Eligibility of Tradable Renewable Energy Credits

As noted in the section on "Outstanding Issues," RECs traded separately from energy (tradable or unbundled RECs) do not qualify for the California RPS at this time. The law, however, authorizes the use of RECs for RPS procurement requirements once (1) the CPUC establishes rules for REC procurement and (2) the CPUC and Energy Commission conclude that the ~~WREGIS~~ tracking system is operational, capable of independently verifying delivery of renewable energy to a retail seller, and can assure that RECs are not double counted by any seller within the WECC.

Tradable RECs that in the future may be counted toward California's RPS requirements may be created for electricity delivered from RPS-eligible resources to local publicly owned utilities, the California Independent System Operator, or a retail seller. RECs associated with energy delivered to publicly owned utilities may be certified by the Energy Commission as RPS-eligible if the Energy Commission determines that the publicly owned utility has satisfied certain conditions. For more information, see the section on "Publicly Owned Utilities" in this *Guidebook*.

No tradable RECs shall be created for electricity generated pursuant to any electricity purchase contract with a retail seller or a publicly owned utility executed before January 1, 2005, unless the contract contains explicit terms and conditions specifying the ownership or disposition of those RECs. Deliveries under those contracts will be tracked through WREGIS and automatically retired as counting towards the retail seller's baseline.

Similarly, no tradable RECs shall be created for contracts with QFs under the federal Public Utility Regulatory Policies Act executed after January 1, 2005. Deliveries of energy under these contracts will be tracked through WREGIS and will automatically be retired as counting towards a retail seller's RPS procurement requirement.

The Energy Commission will not allow electricity beyond a *de minimus* quantity of fossil fuel to result in the creation of a tradable REC. The energy input of an RPS-eligible facility may use fossil fuel for no more than 2 percent of its total annual fuel input (on a BTU basis) and the Energy Commission's tracking system will issue RECs for the facility's entire energy output. This provision will not go into effect before WREGIS is operational. As described above, however, the 2 percent *de minimus* provision will not apply to RPS eligible generation from the following since tradable RECs will not be issued for:

- Facilities under contract with a retail seller or a local publicly owned utility if the contract was executed before January 1, 2005, unless the contract specifies the ownership or disposition of those RECs, and

- QFs under contracts executed on or after January 1, 2005.

A REC shall be counted only once for compliance with the California RPS and may not be also used to count towards the regulatory requirements of any other state or to satisfy any other retail product claims. RPS-eligible facilities, publicly owned utilities, and retail sellers who enter tradable REC transactions for RPS compliance purposes must participate in the RPS tracking and verification system approved by the Energy Commission.

RECs will only be certified for generation from an RPS certified facility that is also eligible to generate tradable RECs. If the facility loses it RPS certification status, any RECs produced will not be RPS certified, effective upon the date the facility becomes ineligible for the RPS.

III. Certification Process

This section covers pre-certification and certification of renewable facilities eligible only for the RPS, and eligible for both the RPS and SEPs. This section also describes additional required ~~supplemental~~ information for renewable facilities using technologies that must meet special eligibility requirements. Although retail sellers are required to meet their annual procurement requirements with generation from RPS-certified facilities, the Energy Commission also certifies facilities as RPS-eligible if they serve a local publicly-owned electric utility, and encourages publicly owned utilities to meet their RPS obligations with certified facilities. Also, the Energy Commission will pre-certify small hydroelectric facilities that intend to sell to a local publicly-owned electric utility that would be otherwise eligible for certification except that the facility was owned by or under contract to a publicly-owned electric utility.

Electricity generation from a facility cannot be counted toward meeting a retail seller's RPS procurement requirement until the Energy Commission certifies the facility as a Renewable Supplier Eligible for the RPS or as a Renewable Supplier Eligible for the RPS and SEPs. Any facility operator interested in entering into a contract to generate electricity that will count toward a retail seller's RPS obligation must certify the facility with the Energy Commission.

Procurement from a pre-certified facility ~~may count~~will be counted~~-~~ toward a retail seller's RPS obligation even though the facility was ~~facilities were~~ not RPS~~-~~ certified at the time of procurement, when the facility completes its RPS-certification. ~~. Once the facility becomes RPS certified, the facility's electricity procured by a retail seller, including electricity procured prior to RP certification by after any modifications necessary fro RP certification have been made (such as test electricity prior to commercial operation), will be counted toward the retail seller's RPS obligation.~~ The electricity generated prior to certification will not be considered eligible, however, and will not be counted toward meeting an RPS obligation until the facility has been~~is~~ certified by the Energy Commission as an eligible renewable energy resource. ~~This applies~~These eligibility rules apply to all facilities regardless of whether they previously registered with the Energy Commission's Renewable Energy Program.

A certified or pre-certified eligible renewable resource that maintains compliance with the eligibility criteria in existence at the time of initial delivery shall not become ineligible due to a change in eligibility criteria that occurs during its fixed-term contract with a retail seller.

In applying for certification, the facility operator, or the IOU on the operator's behalf, agrees to participate in the Energy Commission's generation tracking system. For more information about the tracking system, please refer to the section of this *Guidebook* titled "Generation Tracking System."

~~The generation from facilities certified as eligible for SEPs may qualify for funding under the Energy Commission's New Renewable Facilities Program. To receive SEPs, eligible facilities must satisfy the requirements specified in the Energy Commission's *New Renewable Facilities Program Guidebook*.~~

A. Applying for Certification and Pre-Certification

Facilities seeking certification as eligible for the RPS or SEPs consistent with the eligibility requirements noted above must submit a completed application, along with any necessary supporting documentation, to the Energy Commission at the address shown on the form. An application may be submitted for a facility by the facility operator or its agent on the facility's behalf (CEC-RPS-1A) or by the procuring retail seller on the operator's behalf (CEC-RPS-2) for facilities under contract with the retail seller prior to April 21, 2004, the initial adoption date of this *Guidebook*. A publicly-owned electric utility, for purposes of its RPS program, may certify a facility on the operator's behalf using form CEC-RPS-2 for facilities under contract with the publicly-owned electric utility and subject to the requirements applicable to retail sellers.

Except for CPUC-ordered extensions to existing QF power purchase contracts, retail seller certification on the operator's behalf becomes void in the event that the facility's contract with the retail seller expires, or is voluntarily extended, or is otherwise renegotiated by the retail seller and the facility operator. Once the contract expires or is voluntarily renegotiated, the facility operator must apply for certification from the Energy Commission on its own behalf~~,~~ or authorize~~and~~ the retail seller to ~~may not~~ recertify the facility on the operator's behalf; the retail seller may not do so otherwise.. For CPUC-ordered extensions, retail seller certification may continue until the extension expires.

The Energy Commission will review the application to determine eligibility as a Renewable Supplier Eligible for the RPS or as a Renewable Supplier Eligible for the RPS and SEPs and will notify applicants once a determination of eligibility is made. The term of certification and expiration date will be specified on each certificate. Certification is effective for the entire term except as provided in these Guidelines. Re-certification will not be required due to a change in eligibility requirements ~~edu~~uring the certificate period.

Facilities certified by a retail seller will only be granted certification for the generation procured under contract by that retail seller. The facility operator must separately certify any facility capacity that is not subject to the retail seller's procurement contract but is procured to satisfy the RPS targets of another retail seller. If a facility operator seeks certification on its own behalf, however, the facility operator need submit only one application per facility regardless of whether generation from the facility is sold to one or multiple retail sellers.

When a retail seller applies on a facility's behalf, the retail seller must furnish all additional required ~~supplemental~~ information.

Provisional or "pre" certification as an eligible renewable resource is available for applicants whose facilities are not yet online. Applicants seeking pre-certification must complete CEC-RPS-1B. The information submitted by these applicants will be subject to further verification once the pre-certified facility comes online. Applicants must indicate their desire to be pre-certified on their completed CEC-RPS-1B form and must submit all required supplemental information, as described below, to the extent available. If the additional required ~~supplemental~~ information is not available at the time of pre-certification because of the facility's stage of development, then the applicant must explain this in its application and identify the missing information and the date(s) when the information is expected to be available. Facilities that are pre-certified must submit a complete and updated certification application (CEC-RPS-1A) with all additional required ~~supplemental~~ information and be certified as RPS- or SEP-eligible before any of its generation may be counted toward satisfying a retail seller's RPS procurement requirements.

The Energy Commission will make every effort to notify applicants if their facility is eligible for the RPS as soon as possible. For facilities that are not required to submit ~~supplemental~~ additional information as described below, the Energy Commission expects to review and process applications for certification and pre-certification within 10 business days of their receipt, unless questions or concerns arise regarding the applications. If questions arise, the applicant will be contacted and may be asked to submit additional information. If the applicant does not respond within 60 days to a request for clarification or additional information regarding the application, the application will expire without approval and be returned. The applicant must submit a new application with complete information to reinstate the certification request. The Energy Commission recognizes that it may receive a large volume of applications at the onset of this program or when renewals are due (discussed later in this section) and that the 10-day goal may not be met.

The Energy Commission will notify applicants in writing of its determination on the application for certification. If the application for certification or pre-certification is approved, the Energy Commission will issue a certificate stating that the facility is certified or pre-certified as eligible for the RPS or SEPs, as appropriate. The certificate will list the Energy Commission-issued certification number for the facility as well as the size, fuel type and percentage of annual fossil fuel usage (if any), name, location, and owner/operator of the facility. The certificate will also indicate whether the facility was certified by the facility owner/operator or a retail seller on the owner/operator's behalf.

In addition, the certificate will identify any limits on certification or pre-certification. For example, a certificate issued for a facility that has been certified by a retail seller will indicate certification by the retail seller, rather than the facility operator, and will limit certification to the generation procured under contract by the retail seller. The certificate will also include an expiration date.

The Energy Commission encourages local publicly owned electric utilities to meet their RPS obligations through procurement from RPS-certified (or pre-certified) facilities. However, for a small hydro facility to become RPS-certified, it is eligible only if a retail seller owned or procured electricity from the facility as of January 1, 2006. By statute, the definition of a "retailer seller" excludes local publicly owned electric utilities. Consequently, a small hydro facility that is owned by or is selling its generation exclusively to a local publicly owned electric utility as of January 1, 2006, is not RPS eligible and may not apply for RPS certification but may apply for pre-certification.

Similarly, if an out-of-state facility commenced commercial operations after January 1, 2005 and the energy from the facility is not incremental generation resulting from project expansion or repowering AND was not part of a retail seller's baseline because the energy was sold to (or the facility was owned by) a local publicly owned electric utility,[14] then the facility representative may apply for pre-certification. If the Energy Commission determines that the facility is eligible for pre-certification and is otherwise eligible for certification except that it was owned by or under contract to a publicly owned utility, then the Energy Commission will note this determination in the pre-certification notification upon request by the applicant.

For applicants that must submit ~~supplemental~~ additional required information, such as biomass, small hydroelectric, conduit hydroelectric, MSW/solid waste conversion, out-of-state, or repowered facilities, the Energy Commission must conduct an extensive review of the ~~supplemental~~ additional data. Review of these applications will require a minimum of 30 days from when the Energy Commission receives a complete application. The 30-day clock starts on the date a complete application is date-stamped by the Energy Commission as received and the Executive Director makes a determination on any related applications for confidential designation. After completing its review, the Energy Commission will either notify the applicant of its proposed determination, or will request additional information from the applicant.

If the applicant disagrees with the Energy Commission's determination on a certification or pre-certification application, the applicant may petition the Renewables Committee and the Energy Commission for reconsideration as described in the *Overall Program Guidebook.*

The Energy Commission will post information on its website listing those facilities that are certified or pre-certified as eligible for the RPS or for SEPs. Any changes in a facility's certification status will also be posted on the Energy Commission's website.

Consistent with the *Overall Program Guidebook,* the Energy Commission may conduct periodic or random reviews to verify records submitted for certification or pre-certification as a renewable supplier eligible for the RPS or SEPs. Further, the Energy Commission may conduct on-site audits and facility inspections to verify compliance with the requirements for certification or pre-certification. The Energy Commission may

[14] Public Resources Code 25741(b)2(C). For further information on eligibility requirements refer to the section of this Guidebook titled, "Eligibility of Out-of-State Facilities."

request additional information it deems necessary to monitor compliance with the certification requirements specified in this *Guidebook*.

To the extent that the facility's agent or a retail seller applies for certification on a facility's behalf, the agent or retail seller must secure and have available for inspection records to verify the application for certification or pre-certification. In addition, the agent or retail seller must possess documents to verify a facility's compliance with the requirements of certification and pre-certification. These documents must be available to the Energy Commission upon request for auditing purposes.

B. Verifying ~~Renewing~~ Certification and Pre-Certification

~~Certification and pre-certification must be renewed~~ verified ~~at least every two years to confirm that facilities certified as renewable energy resources remain eligible for the RPS.~~ Facilities may be required to provide information to the Energy Commission, upon request, demonstrating that there has been no material change in the factual conditions supporting its original certification or pre-certification.

~~In addition,~~ A ~~facilities~~ facility currently delivering energy under a renewable energy power purchase agreement (PPA) may be required to ~~renew their~~re-apply for certification due to ~~based on~~ a change in law only if the terms of the statutory amendment provide for its retroactive application to ~~changes~~ a ~~in the law~~~~eligibility requirements~~ ~~that explicitly apply to~~ currently ~~existing~~ eligible ~~certified~~ facility~~ies~~

~~after being notified in writing by the Energy Commission.~~ These verification and ~~renewal~~ re-application requirements also apply to facilities certified by a retail seller. All facilities certified in 2004 will be subject to ~~re-certification~~verification in January 2007, with facilities certified in 2005 ~~re-certifying~~verifying in January 2008, and so on. Applications to renew certification are due October 15 (or the next business day) each year, as applicable. In addition, if a representative of a certified or pre-certified facility does not respond to the Energy Commission's request for an informational update in a timely manner, it risks losing its certification status.

C. Updating~~Amending~~ Certification and Pre-Certification

Representatives of certified and pre-certified facilities must notify the Energy Commission promptly of any changes in information previously submitted in an application for certification or pre-certification. A facility failing to do so risks losing its

certification status. Any changes to a certification or pre-certification application should be reported on an amended CEC-RPS-1 form (CEC-RPS-1A to amend certification and CEC-RPS-1B to amend pre-certification). For example, if a facility's annual fossil fuel use changes from the percentage identified in its previous application for certification, the facility must submit an amended application. The Energy Commission will review the amended application in accordance with current eligibility criteria and notify the applicant of any modifications to their certification status.

A facility that was exempt from the requirement to re-apply for certification during the term of its renewable PPA must update its certification to comply with current law upon the termination of the PPA.

Also, any changes to the status of a facility's certification will be posted on the Energy Commission's website and any affected retail seller contracting with that facility will be promptly notified.

D. ~~Supplemental~~ Additional Required Information for Biomass, Hydroelectric, (including Conduit Hydroelectric and incremental increases to Other Hydroelectric), MSW, Repowered, and Out-of-State Facilities

The following ~~supplemental~~ instructions apply to applications for biomass, small hydroelectric (including conduit hydroelectric, and incremental increases at other hydroelectric), and MSW/solid waste conversion facilities. ~~Supplemental i~~Instructions are also included for applicants seeking certification or pre-certification of repowered facilities and facilities located outside California. The additional required information described below must be submitted as an attachment to the applicant's completed CEC-RPS-1A or CEC-RPS-1B form, along with the appropriate supplement form, if applicable.

1. ~~Supplemental~~ Instructions for Additional Required Information for Biomass Facilities

Applicants for certification or pre-certification of biomass facilities must submit an attestation attached to the applicant's completed CEC-RPS-1A or CEC-RPS-1B that they comply or will comply, in the case of pre-certification, with the biomass fuel requirements described above.

Additionally, Public Resources Code Section 25748 requires the Energy Commission to identify the types and quantities of biomass fuels used by facilities receiving funds under (Public Resources Code) Sections 25742 or 25743 and their impacts on improving air quality. To meet this requirement, biomass facility operators receiving SEPs or production incentives from the Energy Commission's Existing Renewable Facilities

Program must submit an annual report to the Energy Commission describing their biomass fuel use as follows: tons of biomass by type of biomass, the air district from which the biomass originated if the fuel may have been open-field burned had it not been used for electricity production, and an attestation from the fuel supplier(s) that the biomass fuel continues to meet the RPS eligibility standards. In addition, the operators must report on the amount of all fossil fuel used on a total energy input basis for the facility. The total energy input of the facility shall be determined in a manner consistent with Section 292.204(b) of Title 18 of the Code of Federal Regulations. The report is due to the Energy Commission on February 15th of each year to report on the biomass supply consumed in the previous calendar year.

2. ~~Supplemental~~ Instructions for Additional Required Information for Small Hydroelectric, including ~~and~~ Conduit Hydroelectric and Incremental Increases to Other Hydroelectric Facilities

An applicant must provide additional information to substantiate its self-certification that a small hydroelectric facility including ~~or~~ conduit hydroelectric and incremental increases to other hydroelectric ~~f~~facilities~~y~~ is eligible for the RPS or SEPs if the facility:

- Commenced commercial operations or was repowered on or after January 1, 2006, for small hydro facilities and after January 1, 2007, for conduit hydroelectric facilities.
- Was subject to efficiency improvements undertaken after January 1, 2008 that caused an eligible facility (30 MW or less capacity) it to exceed 30 MW.
- Was subject to incremental increase in the amount of electricity generated as a result of efficiency improvements at the facility, without regard to the electric output of the facility, undertaken after January 1, 2008.
- ~~Was added to an existing water conduit.~~
- ~~Was subject to efficiency improvements undertaken after January 1, 2003 that caused it to exceed 30 MW.~~

~~Supplemental~~ Additional required water-use data and documentation described below must be attached to a completed CEC-RPS-1A (for certification) or CEC-RPS-1B (for pre-certification) form. These requirements apply to facilities located within California as well as those located out-of-state. Applicants possessing a permit or license from the State Water Resources Control Board (SWRCB) – or from another governing body, if located out-of-state – must submit a copy of the permit or license as well as the application for the permit or license.

1. Name of the Facility

2. Ownership of the Facility

3. Source Water Description

   The application must identify the source of the water for the small hydro project. The source must be characterized as surface, groundwater, or other (for example,

recycled water). For surface water sources, a map at a scale of 1:24,000 must be provided. The map should also identify the location of the diversion point and all other facilities. In addition, a written description of the location of the diversion should be provided (county and nearest city) as well as the name of the body of water at the point of diversion. For groundwater, the location of the well(s) and conveyance facilities shall be identified on a map of 1:24,000 scale. The applicant must also specify how much water is used for each of the identified beneficial uses.

4. Water Rights

   Both in-state and out-of-state applicants must clearly establish their right to divert water by submitting all necessary information as well as all appropriate licenses or permits. Within California, this information must establish the applicant's legal right to appropriate or divert water and identify the permitted volume and rate of water diversions, the place of diversion, and beneficial uses. This may be achieved through submittal of the appropriate SWRCB appropriation permit or license, or the Statement of Water Diversion and Use filed with SWRCB. Out-of-state facilities must provide similar documentation of an existing water right for the water diversion of the project.

5. Hydrologic Data

   The applicant must submit appropriation and/or diversion data for the last five years, or for the period of operation if the project has been operating less than five years. Information contained in any legally required reports may be used to meet this requirement if sufficient information is included in the report. For other projects, the hydrologic data submitted must be accompanied by a description of how the data is collected. Flow data shall be provided at the frequency set forth in the applicable water appropriation permit; for example, if the permit specifies minimum and maximum flows on a monthly basis that is the level of information necessary to be submitted.

6. Other Permits

   The applicant must submit all other applicable permits, including those permits and exemptions issued by the Federal Energy Regulatory Commission (FERC).

7. Environmental Documentation

   The applicant must submit copies of any permits, agreements, contracts, or other requirements affecting the operation of the facility, especially those that affect the volume and rate of flows.

8. Capacity

The applicant must demonstrate how the project will comply with the size limitations under the RPS. For repowering projects, the applicant must describe how capacity will be increased without an increase in the appropriation and/or diversion of water or a change in the volume or rate of flows.

9. Efficiency Improvements

Applicants seeking certification of hydro facilities that exceed 30 MW due to efficiency improvements are required to provide the following:

a) Verifiable generation data for the 10 years preceding efficiency improvements (if the facility has not been operating 10 years, then provide data for the years it has been operational).

b) The actual or expected efficiency improvement and increase in production in MWh resulting from the efficiency improvement and a discussion of the methodology used to estimate increased energy production. If production data are available for years following the efficiency improvement, provide those data.

c) Evidence that the efficiency improvement from the facility resulted (or will result if the applicant is seeking pre-certification) from a capital expenditure in the project. The capital investment must exclude monies that would have been spent on operation and maintenance in the normal course of doing business. The applicant must provide a brief description of each capital investment made for project efficiency, including a discussion of the nature of the capital investments and how they resulted in efficiency improvements. In substantiating an application, the burden of proof will be on the applicant to submit compelling evidence to demonstrate the effect of the capital investments on improving facility efficiency.

10. Conduit Hydroelectric Facilities

Applicants seeking pre-certification of prospective conduit hydroelectric facilities must submit documentation showing the facility has applied to the FERC for a license as a conduit hydroelectric facility under Section 823a of Title 16 of the United States Code or been issued one of the following by FERC:

a. A Preliminary Permit;

b. A Conduit Exemption as provided under Section 4.31(b)(2) of Title 18 of the Code of Federal Regulations;

c. A license as a conduit hydroelectric facility under Section 823a of Title 16 of the United States Code.

Applicants seeking certification of conduit hydroelectric facilities must submit documentation showing the facility has been issued one of the following:

a. A Conduit Exemption from FERC as provided under Section 4.31(b)(2) of Title 18 the Code of Federal Regulations.

b. A license by FERC as a conduit hydroelectric facility under Section 823a of Title 16 of the United States Code.

3. ~~Supplemental~~ Instructions for Additional Required Information for Municipal Solid Waste Conversion Facilities

Applicants for certification of solid waste conversion facilities must provide copies of permits issued by the California Integrated Waste Management Board (CIWMB) attached to the completed CEC-RPS-1A or CEC-RPS-1B form to verify compliance with the requirements specified above. Applicants seeking pre-certification must attach copies of their application to CIWMB for a permit. The Energy Commission will verify compliance in consultation with the CIWMB and based on CIWMB's proposed or adopted regulations for solid waste conversion technologies as set forth in Title 14, California Code of Regulations, Division 7, Chapter 3, Article 6.0, commencing with Section 17400. CIWMB is considering regulations for this purpose under Assembly Bill 2770 (Mathews, Chapter 704, Statutes of 2002), which establishes requirements for solid waste conversion technologies that mirror the requirements for these technologies found in Public Resources Code Section 25741, Subdivision (b)(3). The regulations being considered are part of CIWMB's Transfer/Processing Operations and Facilities Regulatory Requirements and will require facilities using solid waste conversion technologies to obtain a Conversion Technology Facility Permit. Pending the adoption of these regulations, the CIWMB may permit facilities using solid waste conversion technologies on a case-by-case basis following its existing regulations for the Transfer/Processing Operations and Facilities Regulatory Requirements.

To become certified as a renewable energy resource eligible for RPS (and SEPs), an applicant for a solid waste conversion facility must submit to the Energy Commission a copy of its Conversion Technology Facility Permit approved by the CIWMB. In the event that CIWMB's regulations for solid waste conversion technologies are not adopted at the time the facility seeks RPS certification, the facility must request and obtain from CIWMB a Solid Waste Facility Permit under CIWMB's existing regulations for the Transfer/Processing Operations and Facilities Regulatory Requirements. The Energy Commission will confirm that the permit is approved, active, and applicable to the facility seeking RPS certification. These permits must demonstrate the following:

1. The facility is using only a "gasification" conversion technology, as defined in Public Resources Code Section 40117.

2. The facility accepts and processes "solid waste" as defined in Public Resources Code Section 40191 and is not limited to receiving and processing "source

separated" waste as defined in Title 14, California Code of Regulations, Section 17402.5(b)(4).

3. The facility processes solid waste from which, to the maximum extent feasible, all recyclable materials and marketable green waste compostable materials have been removed prior to the solid waste conversion process.

In addition, an applicant must certify to the Energy Commission the following:

1. All recyclable materials and marketable green waste compostable materials that have been removed from solid waste delivered to the facility are recycled or composted.

2. Any local agency sending solid waste to the facility diverted at least 30 percent of all solid waste it collects through solid waste reduction, recycling, and composting. For purposes of this certification, "local agency" means any city, county, or special district, or Subdivision thereof, that is authorized to provide solid waste handling services.

To become pre-certified as RPS- or SEP- eligible, the applicant must submit to the Energy Commission the information required to receive a Conversion Technology Facility Permit from CIWMB. In the event CIWMB's regulations for solid waste conversion technologies have not been adopted at that time, then the applicant must submit to the Energy Commission the information required to receive a Solid Waste Facility Permit. This information is identified in Title 14, California Code of Regulations, Sections 18221.5 and 18221.6. The Energy Commission will review this information in consultation with the CIWMB to determine if the information is complete and satisfies the requirements specified in Public Resources Code Section 25741(a)(3).

If a pre-certified applicant does not obtain a Conversion Technology Facility Permit from CIWMB by the time the project commences commercial operation, or if it is denied approval for a permit, the Energy Commission will revoke the applicant's pre-certification.

4. ~~Supplemental~~ Instructions for Additional Required Information for Out-of-State Facilities

All out-of-state facilities must provide additional required information when applying for certification as RPS-eligible. Further reporting requirements apply to facilities that commenced commercial operations before January 1, 2005, as described below.

~~T~~However, the ~~supplemental~~ additional reporting requirements for out-of-state facilities do not apply, ~~however,~~ to a facility that is either:

1) Exclusively serving retail sellers subject to Public Utilities Code Section 399.17, or

2) Seeking pre-certification and is not yet on-line.

Representatives of all other out-of-state facilities seeking certification as RPS- or SEP-eligible must submit the following additional information with a completed CEC-RPS-1A form.

1. Impact on California Environmental ~~Quality Standards~~Resources:~~:~~

The applicant must identify the environmental resources located in California that are impacted by the development or operation of the proposed facility (i.e.,"project"),

~~provide a) a comprehensive list and description of all California environmental quality laws, ordinances, regulations, and standards (collectively referred to as "LORS") that may be directly or indirectly impacted by the facility's development or operation, and b) an assessment as to whether the facility's development or operation will cause or contribute to a violation of any of these LORS in California.~~

~~At a minimum,~~T ~~the~~ ~~LORS described shall address the~~ following environmental resources ~~areas values~~ in California will be protected by ensuring that an out of state project will not violate the California environmental quality laws, ordinances, regulations, and standards (collectively referred to as "LORS") relative to these environmental resources, consistent with Appendix B, Section (g), of the Energy Commission's regulations for power plant certification, Title 20, California Code of Regulations, Sections 1701, et seq:

- Cultural Resources
- Land Use
- Traffic and Transportation
- Visual Resources
- Socioeconomics
- Air Quality
- Public Health
- Hazardous Materials Handling
- Workers' Safety
- Waste Management
- Biological Resources
- Water Resources
- Agriculture and Soil
- Paleontologic Resources
- Geological Hazards and Resources
- Transmission System Safety and Nuisance

2. Identification of California Protection Standards:

If a listed environmental resource may be adversely affected by the project, the applicant must provide a) a comprehensive list and description of all LORS that

protect the environmental resource and b) an assessment of whether the project will cause or contribute to a violation of any of these LORS.

3. Evaluation of Potential Impact of Project.

A project's location will determine its potential impact on California environmental resources and the need to identify LORS.

a. Facilities located in a- state that does not share a border with California cannot reasonably impact a protected environmental resource, so no listing of LORS or evaluation is needed.

b. Facilities proposed in the following locations are presumed to have no impact on California environmental resources, but the CEC may require a showing if circumstances so require:

   - Located in an adjacent state 200 miles or more from the California border

   - Hydroelectric generation that discharges into a watershed entirely outside of California
   -

following categories projects will not foreseably impact the following environmental values in California so proponents need not list the LORS for these environmental values:

Renewable Resource Technology	Non-Impacted Environmental Values
Ocean wave, ocean thermal, and tidal current Photovoltaic Solar thermal Electric	o Agriculture and Soil o Air Quality o Land Use o Paleontologic Resources o Public Health o Socioeconomics o Waste Management o
Wind	• Air Quality • Land Use • Paleontologic Resources • Public Health • Socioeconomics • Waste management • Water Resources

~~applicable LORS for a given facility will vary depending on the facility's location, since the LORS across California vary. For example, the air quality standards in Southern California may differ from the air quality standards in Northern California.~~

As noted above, further reporting requirements apply to facilities that commenced commercial operations before January 1, 2005. If an out-of-state facility commenced commercial operations before January 1, 2005, the applicant may qualify for RPS certification if either: 1) the facility was part of a retail seller's baseline, or 2) the facility produces incremental generation due to project expansion or repowering. The ~~supplemental~~additional required information needed for each case is described below.

1. Baseline: If an out-of-state facility commenced commercial operations before January 1, 2005, the applicant must identify the retail seller that procured electricity from the facility, the baseline year, and the amount sold to the retail seller.

2. Incremental generation: The Energy Commission may certify incremental generation from out-of-state facilities as RPS-eligible if it finds that the incremental generation exceeds the project's historical production. The methodology for quantifying incremental generation is described in the "Generation Tracking System" section of this *Guidebook*. The applicant must provide the following information:

~~α)~~• For small hydro facilities, the applicant must provide verifiable generation data for the 10 years preceding project expansion or repowering. If the project has not been operational for 10 years, then provide generation data on all previous years to date. The applicant must also provide the information described in "~~Supplemental~~Additional Required Instructions for Small Hydropower Facilities."

~~β)~~• For all RPS-eligible technologies except small hydro, the applicant must provide data on annual generation for the 36 months preceding the project expansion or repowering (for example, if the project expansion comes on-line January 1, 2007, then generation data must be provided from January 1, 2004 through 2006). If the project has not been operational for 36 months, then provide generation data for all previous months to date.

~~γ)~~• All applicants seeking certification of incremental generation must provide evidence that the incremental generation from the facility resulted (or will result if the applicant is seeking pre-certification) from a capital expenditure in the project. This information is needed to verify that the incremental production is not a result of weather fluctuations or some other recurring or random event. The capital investment must exclude monies that would have been spent on operation and maintenance in the normal course of doing business. The applicant must provide a brief description of each capital investment made for project expansion or repowering, including a discussion of the nature of the capital investments and how they resulted in the incremental generation. In substantiating an application to certify incremental

production, the burden of proof will be on the applicant to submit compelling evidence to demonstrate the effect that capital expenditures had on production.

All data submitted are expected to be public. However, the Energy Commission is interested only in data with a direct bearing on the application. For example, although information on capital investments and the resulting production increases is expected to be submitted publicly, the Energy Commission has no interest in any proprietary underlying economic analyses that may have led to the decision to make such an investment.

c. Out-of-Country Facilities: In addition to the above information, an applicant for a facility located outside the United States must either

a. Pprovide all of the following:

- A comprehensive list and description of all California environmental quality LORS that would apply to the facility if the facility were located within California at a site designated by the applicant.

- An assessment as to whether the facility's development or operation will cause or contribute to a violation of any of these LORS.

- An explanation as to how the facility's developer and/or operator will meet these LORS in developing or operating the facility, including whether the developer and/or operator will secure and put in place mitigation measures to ensure that these LORS are complied with, or.

b. Demonstrate that the permitting authorities with jurisdiction over the facility will conduct an environmental review process that is at least as thorough as the process used by the analogous permitting authorities in California.

Upon a finding by the CEC that the foreign jurisdiction's environmental review process is as thorough as California's process, a renewable resource development approved by the out-of-country authorities shall be deemed be as protective of the environment as a similar facility located in California. At a minimum, the applicant shall provide the following information:

- Identification of the permitting authorities for the facility, including a list of all permits required,

- A description of the environmental areas addressed by each permit required and a description of the environmental review process for each permit required, including a description of opportunities for public participation.

- A description of how each environmental resource areas identified in Section 4(1) of these guidelines is addressed.

  A description of standard mitigation if any, and enforcement of permit conditions during construction and operation of the facility.

5. ~~Supplemental~~ Instructions for Additional Required Information for Repowered Facilities

To apply for certification or pre-certification as a repowered facility, an applicant must submit a completed CEC-RPS-1A or CEC-RPS-1B form, along with documentation confirming the replacement of the facility's prime generating equipment and the capital investments made to repower the facility as well as the value of those investments.

1. Prime Generating Equipment: The applicant must document that the facility's prime generating equipment is new and that the repowered facility re-entered commercial operations on or after January 1, 2005. Applicants for repowered small hydroelectric facilities and conduit hydroelectric facilities must document the facilities re-entered commercial operations on or after January 1, 2006, and January 1, 2007, respectively.

   a. The "prime generating equipment" for each renewable resource is defined as follows:

      ~~b)~~• Wind: the entire wind turbine, including the generator, gearbox (if any), nacelle, and blades.

      ~~c)~~• Biomass: the entire boiler. Stoker boilers may be replaced with boilers using improved stoker technology or fluidized bed technology.

      ~~d)~~• Geothermal: the entire steam generator, including the turbine rotors, shaft, stationary blades, and any gear assemblies.

      ~~e)~~• Small hydroelectric: the entire turbine and structures supporting the turbine.

      ~~f)~~• Solid waste conversion: the entire gasifier (gasifying equipment) and combustion turbine.

      ~~g)~~• Landfill gas: the entire internal combustion engine or combustion turbine as applicable.

      ~~h)~~• Digester gas: the entire digester unit and internal combustion engine or combustion turbine as applicable.

      ~~i)~~• Solar thermal: the entire steam turbine.

b. All prime generating equipment at the facility must be replaced with new equipment for the facility to qualify as a repowered facility. For example, a 25 MW wind facility consisting of 50 separate wind turbines must at a minimum replace each of the 50 wind turbines with new turbines of like or greater capacity for the entire 25 MW facility to qualify as a repowered facility. The Energy Commission recognizes that a wind facility owner may want or need to repower only a portion of the turbines owned at a site and does not exclude that option. In the event that a generator is interested in repowering a portion of a site, then it will need to re-certify the remaining portion of the site that is not being repowered.

2. Capital Investments: The applicant must document that the value of the capital investment made to repower the facility equals at least 80 percent of the total value of the repowered facility. In addition, the applicant must document that capital investments were made not more than two years prior to the date that the facility re-entered commercial operations. Capital investments may only be considered for purposes of meeting the 80 percent threshold if they were made for that portion of the facility that contributes directly to the production of electricity. This includes the prime generating equipment as well as the electricity generators and related equipment, fuel processing, enhancing, and delivery equipment, control equipment, and structures used to structurally support the aforementioned equipment. As discussed below, the electrical generators, fuel processing, enhancing and delivery equipment, control equipment, and related structures do not need to be replaced for the facility to qualify as a repower. However, if this equipment is replaced, the capital investment to do so may be considered for purposes of meeting the 80 percent threshold.

   - Electrical Generators and/or Fuel Processing, Enhancing, and Delivery Equipment: It is generally not necessary for a facility to replace its existing electrical generators or fuel processing, enhancing, and delivery equipment because replacing this equipment may produce little or no improvement to the facility's efficiency and, therefore, does not warrant the additional expense. Exceptions are cases in which the electrical generator is an integral part of the prime generating equipment, such as for wind facilities, or where the fuel processing, enhancing, and delivery equipment is an integral part of the prime generating equipment via the fuel conversion process, such as for solid waste conversion facilities and digester gas facilities. The facility's environmental control equipment, such air pollution control equipment, would not be considered for purposes of meeting the 80 percent threshold, because such equipment does not contribute directly to the production of electricity.

   - Any associated process control equipment and structures used for structural support of the prime generating equipment, electrical generators, fuel processing, enhancing, and delivery equipment, and associated process control equipment, as appropriate, would also fall into this category and are generally not necessary to replace.

The applicant must provide documentation, such as invoice receipts, verifying the replacement of the old equipment, as well as other components of the technology relevant to the repowering application. The Energy Commission will confirm that the equipment listed is appropriate for certification as a repowered facility.

The applicant must document the value of the capital investments made to the facility and the total value of the repowered facility. The value of the capital investments must equal at least 80 percent of the total value of the repowered facility.

The "repowered facility" is defined as all of the new and/or existing prime generating equipment, electrical generators, fuel processing, enhancing, and delivery equipment, and any associated process control equipment and structures at the facility. The land on which the facility sits will not be considered part of the repowered facility for purposes of determining the 80 percent threshold. Similarly, intangibles such as the value of a facility's power purchase contract or its goodwill will not be considered part of the repowered facility.

The applicant may show that it has met the 80 percent threshold by submitting either tax records or an assessment of the "replacement value" of the facility along with documentation of the cost of the new equipment. The applicant must notify the Energy Commission which method it is using and provide the appropriate information as described below.

a. Tax Records Methodology:

   The applicant must submit to the Energy Commission all relevant tax records needed to demonstrate that the capital investments made to repower the facility are equal to at least 80 percent of the value of the repowered facility.

   - The applicant must document the value of the capital investments and the year the investments were made. In this case, the value of capital investments is the original tax "basis" declared to the Internal Revenue Service to calculate depreciation. The tax basis should reflect the value of the equipment the applicant has attested to purchasing. The tax basis is generally what a business pays for an item to be depreciated.

   - The applicant must document the value of the repowered facility. In this case, the value of the repowered facility is based on the sum of the tax basis declared for all of the equipment and structures in the repowered facility as of the year the facility is repowered. For new equipment and structures, the value of the repowered facility is the original tax basis; for existing equipment and structures, the value of the repowered facility is the tax basis as adjusted for depreciation. For facilities financed using a sale/lease-back or similar structure, the original tax

basis of the equipment and structures for both the lessor and lessee will be considered.

- The applicant must divide the total value of capital investments by the total value of the repowered facility. This calculation must show that the investment is equal to or greater than 80 percent of the total value of the facility for it to qualify as repowered.

b. Replacement Value Methodology:

This alternative approach may make it more difficult for a facility to meet the 80 percent repowering threshold but it is a reasonable alternative for parties who are unable or unwilling to secure the necessary tax records to use the adjusted tax basis approach.

- The applicant must document the value of the equipment replaced in the facility. The replacement cost of new equipment is based on the equipment's purchase price and, consequently, is the same value when compared to the adjusted tax basis approach.

- The applicant must submit an independent evaluation of the replacement cost of existing, unreplaced equipment ("retained equipment"). The evaluation should be an estimate of the capital costs that would have to be incurred to replace the retained equipment. This estimate must be provided by an accountant in good standing with the American Institute of Certified Public Accountants or a member in good standing and certified as an Internal Auditor with the Institute of Internal Audits.

- The applicant must divide the total value of capital investments by the sum of the replacement cost of the new equipment and the independent estimate of the replacement cost of the retained equipment. This calculation must show that the investment is equal to or greater than 80 percent of the total value of the facility for it to qualify as repowered.

IV. Generation Tracking System

The Energy Commission is responsible for developing a tracking system to verify compliance with the RPS. The Energy Commission is required to:

> Design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers, to ensure that electricity generated by an eligible renewable energy resource ~~output~~ is counted only once for the purpose of meeting the renewables portfolio standard of this state or any other state, to certify renewable energy credits produced by eligible renewable energy resources, and ~~for~~ to verify~~ing~~ retail product claims in this state or any other state. In establishing the guidelines governing this accounting system, the Energy Commission shall collect data from electricity market participants that it deems necessary to verify compliance of retail sellers, in accordance with the requirements of this article and the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code). In seeking data from electrical corporations, the Energy Commission shall request data from the [California Public Utilities] commission.~~CPUC~~.[15]

~~Similarly, the Energy Commission is required to design and implement an accounting system to track RECs that are certified as produced by RPS-eligible resources.~~ The tracking system will be used to verify compliance with the RPS program.

The CPUC may authorize the use of RECs to satisfy the requirements of the RPS, and may limit the quantity that may be procured unbundled from the underlying electricity generation by any retail seller to satisfy its RPS requirements. RECs may not be used to satisfy RPS procurement requirements, however, until such rules are established and not until the Energy Commission and the CPUC conclude that the Energy Commission's tracking system is ~~operational.~~ "...operational, is capable of independently verifying the electricity generated by an eligible renewable energy resource and delivered to the retail seller, and can ensure that renewable energy credits shall not be double counted by any seller of electricity within the service territory of the Western Electricity Coordinating Council (WECC)."[16]

The Energy Commission ~~is developing~~ developed WREGIS, an electronic tracking system to meet its tracking requirements, including the tracking of RECs, which was launched in June 2007. ~~Once the long-term, electronic tracking system, WREGIS, is in place and operational, the Energy Commission will require RPS and SEP certified facilities, retail sellers, and procurement entities to participate in the WREGIS as part of RPS compliance.~~ WREGIS ~~will~~ issues a REC, termed a WREGIS Certificate, for each

[15] Public Utilities Code, Section 399.13, Subdivision (b)
[16] Public Utilities Code, Section 399.16, Subdivision (a)(1).

reported megawatt-hour of eligible generation. WREGIS Certificates document the amount of energy generated by facilities certified as RPS-eligible (or SEP eligible) by the Energy Commission.

The Energy Commission will use an interim generation tracking system to verify RPS procurement through 2007. ~~until the electronic system is operational. In the~~The interim tracking system~~,~~ the Energy Commission uses is based on data collected ~~staff culls data~~ from various self-reported sources to verify procurement.

Effective January 1, 2008, or 60 days after the CEC concludes that WREGIS is fully functional for generation tracking purposes, the Energy Commission requires RPS and SEP certified facilities, retail sellers, and procurement entities to participate in the WREGIS as part of RPS compliance. A key criteria for determining full WREGIS functionality will be the completed registration of the California Independent System Operator (CAISO) as a qualified Reporting Entity (QRE) in WREGIS. Consequently, 2008 is the first calendar year that data from the WREGIS will be reported to the Energy Commission to verify RPS procurement. The WREGIS data for procurement in calendar year 2008 will be reported to the Energy Commission on May 1, 2009.

A. Reports to the Energy Commission

Retail sellers must report annually to the Energy Commission on the amount of RPS eligible electricity they procure per facility, called a "specific purchase." Using the CEC-RPS-Track form, retail sellers must report the amount of energy they procured per month from each RPS eligible facility (or the amount generated if the facility is owned by the retail seller and the retail seller intends to apply the generation towards its RPS obligations), and provide various identification numbers for each facility. The CEC-RPS-Track form must be executed by an authorized agent of the retail seller who can attest that the specific purchases reported on the form were sold once and only once to retail consumers.

The CEC-RPS-Track form is due to the Energy Commission on May 1 (or the next business day) of each year until ~~WREGIS is operational~~2009~~. Once~~, when WREGIS ~~is~~ will have been operational for a full calendar year.~~,~~ By 2009, the CEC-RPS-Track form reporting requirement is expected to be satisfied with reports generated through WREGIS, assuming all RPS procurement data is reported to WREGIS. The CEC-RPS-Track form and instructions are provided in Appendix A.

Although PG&E, SCE, and SDG&E began reporting their procurement to the Energy Commission in 2005, the first year that other retail sellers are required to submit procurement data is 2007. ESPs, CCAs, and multi-jurisdictional utilities subject to Public Utilities Code Section 399.17 were required to~~must~~ submit the CEC-RPS-Track form for

years 2005 and 2006 by May 1, 2007.[17] On July 26, 2007, the CPUC adopted Decision 07-07-025 (Rulemaking 06-02-012), which modified the formula for calculating the baseline amounts of renewable energy for ESPs to be consistent with the formula adopted in Decision 07-03-046 for IOUs. Consequently, the Energy Commission also requires the ESPs, CCAs, and multi-jurisdictional utilities subject to Public Utilities Code Section 399.17 to submit procurement data for years 2001 through 2004. In subsequent years, all retail sellers and multi-jurisdictional utilities subject to Public Utilities Code Section 399.17 will report their 2007 procurement in 2008, their 2008 procurement in 2009, and so on.

A facility that certifies as RPS or SEP eligible with the Energy Commission must annually submit data on its monthly generation, including any generation sold to an entity that does not qualify as a retail seller under Public Utilities Code Section 399.12, Subdivision (c). These data must be reported on the CEC-RPS-GEN form by May 1 (or the next business day) ~~of each year~~ until the reports from WREGIS are available in 2009 for 2008 calendar year generation. To verify generation, the facility must submit monthly payment statements from the retail seller as an attachment to the form showing the amount of energy procured from the facility. If the facility is serving an entity that does not qualify as a retail seller under Public Utilities Code Section 399.12, Subdivision (c), and is participating in the Energy Commission's RPS tracking system, then the verification may be from that entity. The Energy Commission intends to simplify program implementation by using the retail seller's payment statement to serve as the verification rather than allowing alternate sources of data. The facility should strike out any price or other data on the statement that it does not want to make publicly available. ~~Once WREGIS is operational~~Beginning May 1, 2009, this reporting requirement is expected to be satisfied with reports generated through WREGIS. The CEC-RPS-GEN form and instructions are provided in Appendix A.

For cases in which the retail seller certifies a facility on the facility's behalf, the retail seller is responsible for reporting the generation data for the facilities it certifies. This reporting requirement will be satisfied through the CEC-RPS-Track form ~~until WREGIS is operational~~for generation that occurred through December 31, 2007, and retail sellers do not need to file separate CEC-RPS-GEN forms for the facilities they certify. Also, since the retail seller is providing the data, the retail seller does not need to separately provide third party verification of the generation.

In addition, a facility, or a retail seller on the facility's behalf, must submit documentation verifying compliance with the NERC E-T~~t~~ag requirements (described under "Delivery Requirements" in the "Eligibility of Out-of-State Facilities" section). This documentation is required annually beginning in 2005, and is due to the Energy Commission by May 1 (or the next business day) each year. The Energy Commission intends to work with

[17] SB 107 revised Public Utilities Code Section 399.12, Subdivision (h)(3) to establish January 1, 2006 as the first year of RPS obligations for ESPs. CPUC Decision 06-10-019, Rulemaking 06-02-012 sets 2005 as the baseline year and 2006 as the first year with an IPT for ESPs. For CCAs, the IPT and APT shall be determined based on the CCA's retail sales in its first year of operation and shall apply to the CCA's second year of operation.

industry to establish a standardized, annual summary report and a standardized format for supporting documentation.

If necessary, the Energy Commission will request that the CPUC direct the retail sellers to submit the CEC-RPS-Track form data and documentation showing compliance with the NERC E-Ttag requirement if the Energy Commission does not receive these data promptly.

B. Accounting for Out-of-State, Incremental Generation

The incremental generation resulting from the expansion or repowering of an out-of-state facility that commences commercial operations before January 1, 2005, is eligible for the RPS. To determine the amount of energy from a facility that qualifies as incremental, the Energy Commission will first determine the historical baseline of the facility. For hydro-power facilities, the baseline is the annual average generation calculated from 10 years prior to project expansion or repowering. For all other technologies, the baseline is the average annual generation calculated from the 36 months prior to project expansion or repowering. If the project has not been operational for the specified time period (e.g. 10 years for hydro facilities), then the project must provide the annual average generation for its operation to date.

The Energy Commission will certify the facility's annual production net of the baseline calculated for that facility. For example, if the facility produces 250 MWh in 2008 and its baseline is 150 MWh, then 100 MWh generated from the facility are RPS-eligible.

C. Energy Commission RPS Verification Report

The Energy Commission intends to prepare an annual RPS Verification Report specifying the quantity of RPS-eligible energy each retail seller procured in the previous calendar year. This report will be transmitted to the CPUC and is intended to help the CPUC determine RPS procurement targets and evaluate retail sellers' RPS compliance. The Energy Commission will account for procurement consistent with the requirements of this *Guidebook* and applicable CPUC decisions. The Energy Commission anticipates adopting the Verification Report for 2006 procurement and subsequent reports by the end of each calendar year.[18]

The Verification Report will be based on the results of the interim tracking system for procurement through 2007. Beginning January 1, 2008, the WREGIS data will replace the interim tracking system for procurement of RPS-eligible energy generated in 2008. The Verification Report that evaluates procurement in 2008 will be developed in 2009.

[18] The first Verification Report is publicly available: California Energy Commission, February 2006, *Renewables Portfolio Standard Procurement Verification Report*, Commission Report, CEC-300-2006-002-CMF.

Thus, 2009 is the first year that the Energy Commission intends to publish a Verification Report based on data from the WREGIS.

1. Verification of Delivery

As part of the RPS Verification Report, the Energy Commission will also verify compliance with delivery requirements for out-of-state facilities. The Energy Commission will annually verify that the delivery requirements were satisfied for the previous calendar year.

To verify deliveries from out-of-state facilities, the Energy Commission ~~intends to~~ will compare for each calendar year the annual volumes of generation procured from an RPS~~-~~ eligible facility with the ~~monthly~~ NERC E-T~~t~~ag data for imported energy delivered into California~~annually~~. Generation of RPS~~-~~ certified facilities under power purchase agreements with a retail seller, procurement entity or intermediary and NERC E-T~~t~~ag documentation of delivery must be reported annually to show generation and delivery ~~per month~~ for the entire calendar year. The NERC E-T~~t~~ag must reference the RPS certification number of the facility or facilities for which deliveries are being matched with generation. The Energy Commission will compare the total amount generated in the previous calendar year with the total amount delivered in the previous calendar year and the lesser of the two may be accounted for as RPS-eligible. For example, if the annual energy delivery shown on the NERC E-T~~t~~ag exceeds the annual amount of energy generated, then the Energy Commission will count the amount generated as RPS eligible. Conversely, if the amount generated exceeds the annual amount that was delivered as demonstrated by the NERC E-T~~t~~ags, the Energy Commission ~~will assume some of the generation was delivered elsewhere and~~ will only count as RPS eligible the amount of procurement supported by the NERC E-T~~t~~ag data.

On May 1 of each year (or the next business day), the retail seller or procurement entity must submit an annual report documenting compliance with this NERC E-Tag requirement for the previous calendar year to the Energy Commission. The report should include all of the following:

3. The NERC E-Tag data as follows:
   e) The "Source" or "Point of Receipt" located outside of California and within the WECC;

   f) The final "Point of Delivery" or load center in California known as the "sink,"~~ and the Load Serving Entity responsible for the consumption of electricity delivered~~;

   g) The California RPS-certification number of the facility or facilities with which the delivered energy is being "matched" or "bundled." The California RPS-certification number must be shown on the comment field of the NERC E-Tag; and

h) The amount of energy delivered during the calendar year~~per month~~.

4. The corresponding generation (or WREGIS certificate numbers for generation in 2008 and thereafter) for the facility or facilities identified by California RPS-certification number in the comment field of the NERC E-Tag for the ~~corresponding months of the~~ previous calendar year.

For each LSE, ~~T~~the ~~monthly information~~ annual volume of energy delivered into California as documented by ~~on~~ NERC E-Tag data for each facility or facilities will be compared to the ~~monthly~~ annual volume of generation procured from an RPS-eligible facility or facilities~~per LSE~~, with the lesser of the two considered to be eligible California RPS procurement.

2. Verification Methodology using the Interim Tracking System

As discussed above, the Energy Commission has developed an interim accounting system for use until WREGIS is operational. The Energy Commission will verify that the RPS procurement reported in the CEC-RPS-Track form is certified as RPS eligible. Also, to the extent possible, the Energy Commission will ensure that RPS eligible energy procured by retail sellers is counted only once in California or any other state. In the interim until January 1, 2008, or 60 days after the CEC concludes that WREGIS is fully functional for generation tracking purposes, ~~WREGIS is operational~~~~required to track renewable generation~~,the Energy Commission will conduct this verification by cross-checking RPS procurement with retail claims reported under the Energy Commission's Power Source Disclosure Program and other similar data sources.

The Energy Commission will apply statutory provisions and CPUC rules to report on the amount of RPS-eligible procurement. The Energy Commission will verify the energy generation to the extent possible, and will verify that the amount of RPS eligible procurement as reported in the CEC-RPS-Track form did not exceed the facility's total generation. As part of the interim tracking system, the Energy Commission will check that if two or more retail sellers procured energy from the same facility, the cumulative amount of energy procured does not exceed the facility's total generation. If procurement exceeds generation, the Energy Commission will report the discrepancies.

D. Accounting for Tradable Renewable Energy Credits

When ~~WREGIS~~ the accounting system is determined to be operational and if the CPUC allows the procurement of tradable RECs for RPS compliance purposes, the Energy Commission will track tradable RECs. The electronic accounting system, WREGIS, ~~is currently being~~has been developed to satisfy current RPS tracking requirements and to be~~will be~~ capable of tracking tradable RECs. Review the section, "Eligibility of Tradable Renewable Energy Credits," for a more detailed discussion about tradable RECs.

Any RECs procured to satisfy an RPS obligation must be "retired" such that the RECs may not be resold or used to meet any other regulatory requirement or any other market claim.

V. Publicly Owned Utilities

Publicly owned utilities serve over 25 percent of the state's electricity load, and as such they have an important role in California's efforts to meet its statewide RPS goals.

Public Utilities Code Section 387, Subdivision (a) states:

> Each governing body of a local publicly owned electric utility, as defined in Section 9604, shall be responsible for implementing and enforcing a renewables portfolio standard that recognizes the intent of the Legislature to encourage renewable resources, while taking into consideration the effect of the standard on rates, reliability, and financial resources and the goal of environmental improvement.

As noted in a previous section of this *Guidebook*, the Energy Commission encourages local POUs to meet their RPS obligations through procurement from RPS-certified (or pre-certified) facilities, and may certify facilities (with the exception of small hydroelectric and out-of-state facilities that commenced commercial operations before January 1, 2005) as RPS-eligible if they serve a local publicly-owned electric utility. The Energy Commission will pre-certify small hydroelectric and applicable out-of-state facilities that intend to sell to a local publicly-owned electric utility that would be otherwise eligible for certification except that the facility was owned by or under contract to a local publicly-owned electric utility. Please see the section, "Applying for Certification and Pre-Certification," for additional discussion on the certification process for these utilities.

The law as amended by SB 107 requires publicly owned utilities to report the following information to their customers and to the Energy Commission:

1. Expenditures of public goods funds for eligible renewable energy resource development (program descriptions, expenditures, and expected or actual results);
2. Resource mix used to serve customers by fuel type, including the contribution of each type of renewable energy resource, with separate categories for those fuels that are eligible renewable energy resources as defined in Public Utilities Code Section 399.12 and those fuels that would be eligible renewable energy resources as defined in Section 399.12, except that the electricity is delivered to the publicly owned utility and not a retail seller; and
3. Its status in implementing a renewables portfolio standard.

The Energy Commission encourages publicly owned utilities to send this information by May 1 of each year (or the following business day). Receipt of the data by this date will allow for a full accounting of the publicly owned electric utilities' contributions towards meeting the statewide RPS goals and overall state progress. The Energy Commission requests that publicly owned utilities use the reporting format provided in Appendix A.

The law also establishes new provisions for publicly owned utilities that take effect if: 1) tradable REC sales are approved for retail sellers to use towards their RPS compliance, and 2) a publicly owned utility seeks to sell RECs for a retail seller to use towards RPS compliance. The law requires the Energy Commission to certify, for purposes of compliance with the RPS by a retail seller, the eligibility of tradable RECs that are created from electricity delivered to a publicly owned utility. The Energy Commission may certify as RPS-eligible tradable RECs associated with electricity delivered to a publicly owned utility only if the Energy Commission determines that the publicly owned utility:

- Is in compliance with the requirements of Section 387 of the Public Utilities Code.
- Has established annual procurement targets comparable to an electric corporation, is procuring sufficient RPS-eligible resources to satisfy the targets, and will not fail to meet its targets in the event that the RECs are sold to another retail seller.
- Seeks certification of RECs associated with energy produced from facilities the Energy Commission has certified as eligible for the California RPS.

In making its determination to certify RECs from electricity delivered to a publicly owned utility, the Energy Commission will:

1. Verify that the publicly owned utility is in compliance with its RPS program and is satisfying its RPS targets as reported to the Energy Commission.
2. Verify that energy generation associated with the RECs is from an RPS-eligible facility,
3. Require that RECs be tracked through WREGIS. Any RECs procured by retail sellers must be RPS-eligible, tracked through WREGIS, and retired for RPS compliance. Consequently, any RECs sold by a publicly owned utility to retail sellers must also satisfy these criteria.
4. The quantity of RECs certified will not impede the publicly owned utility from meeting its RPS targets.

If a publicly owned utility anticipates seeking RPS certification of tradable RECs, the utility must provide data to inform the Energy Commission's determination. The Energy Commission requests that such data be provided using the template provided in Appendix A. The Energy Commission will evaluate the quantity of tradable RECs associated with RPS-eligible delivery to the publicly owned utility that it does NOT need to maintain compliance with its own RPS target. The Energy Commission will only certify tradable RECs for a quantity over and above any amount that may be needed to satisfy the publicly owned utility's own RPS targets.

Note that RECs will only be certified for generation from an RPS certified facility that is also eligible to produce tradable RECs as described in the section, "Eligibility of Tradable RECs." If the facility loses its RPS certification status, any RECs produced after the facility becomes ineligible will not be RPS certified. After evaluating the application to certify RECs, the Energy Commission may proceed to certify RECs under the process discussed in this *Guidebook*.

Appendix A–Forms

Note: Current versions of these forms (downloadable) are available online at: www.energy.ca.gov/portfolio/documents/index.html

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- CEC-RPS-Track, Interim Data Collection from retail sellers
- CEC-RPS-GEN, Interim Data Collection from RPS-eligible facilities
- CEC-RPS-1A, Application for Certification, California Renewables Portfolio Standard Program
- CEC-RPS-1A-S1, Certification Supplement 1 – Biodiesel
- CEC-RPS-1A-S2, Certification Supplement 2 – Biomass
- CEC-RPS-1A-S3, Certification Supplement 3 – Small Hydroelectric
- CEC-RPS-1A-S4, Certification Supplement 4 – Municipal Solid Waste
- CEC-RPS-1A-S5, Certification Supplement 5 – Repowered Facilities
- CEC-RPS-1A-S6, Certification Supplement 6 – Out-of-State Facilities
- CEC-RPS-1B, Application for Pre-Certification, California Renewables Portfolio Standard Program
- CEC-RPS-1B-S1, Pre-Certification Supplement 1 – Biodiesel
- CEC-RPS-1B-S2, Pre-Certification Supplement 2 – Biomass
- CEC-RPS-1B-S3, Pre-Certification Supplement 3 – Small Hydroelectric
- CEC-RPS-1B-S4, Pre-Certification Supplement 4 – Municipal Solid Waste
- CEC-RPS-1B-S5, Pre-Certification Supplement 5 – Repowered Facilities
- CEC-RPS-1B-S6, Pre-Certification Supplement 6 – Out-of-State Facilities
- CEC-RPS-2, Utility Application for Certification of Renewable Facility, California Renewables Portfolio Standard Program
- CEC-RPS-POU, Reports by Publicly-Owned Utilities

NOTE: This page is a placeholder for Appendix A. RPS Application Forms.

Appendix B - Acronyms

APT	—	annual procurement target
CA ISO	—	California Independent System Operator
CCA	—	community choice aggregator
CIWMB	—	California Integrated Waste Management Board
CPUC	—	California Public Utilities Commission
DG	—	distributed generation
ESP	—	electric service provider
FERC	—	Federal Energy Regulatory Commission
IOU	—	investor owned utility
IPT	—	interim procurement target
kWh	—	kilowatt-hour
LFG	—	landfill gas
LORS	—	laws, ordinances, regulations, and standards
LSE	—	load-serving entity
Btu	—	British Thermal Unit
MSW	—	municipal solid waste
MW	—	Megawatt
MWh	—	megawatt-hour
NERC	—	North American Electric Reliability Corporation
NRFP	—	New Renewable Facilities Program
PGC	—	Public Goods Charge
PG&E	—	Pacific Gas and Electric Company
PURPA	—	Public Utilities Regulatory Policies Act
PV	—	photovoltaic
QF	—	Qualifying Small Power Production Facility
REC	—	Renewable Energy Credit/Certificate
REP	—	Renewable Energy Program
RPS	—	Renewable Portfolio Standard
SB	—	Senate Bill
SCE	—	Southern California Edison Company
SDG&E	—	San Diego Gas and Electric Company
SEP	—	supplemental energy payments
SWRCB	—	State Water Resources Control Board
WECC	—	Western Electricity Coordinating Council
WREGIS	—	Western Renewable Energy Generation Information System

Appendix C - Summary of RPS Reporting Requirements

Reporting Party	Reporting Requirement	Due Date
Facility	Certification/ Pre-certification, CEC-RPS-1A or CEC-RPS-1B and Supplement Forms as appropriate	Anytime
Out-of-State Facility	Compliance documentation of the NERC tag requirement	May 1, 2005, and annually thereafter
Biomass Facility (or Biodiesel facility using biomass)	Annual attestation from fuel supplier(s) verifying ongoing compliance with fuel requirements	~~February 15, 2005~~ January 31, 2008, and annually thereafter
Facility or retail seller	Renewal of Certification/Pre-certification	Once every two years, due October 15. Facilities certified in 2004 must renew in January 2007. Facilities certified in 2005 must renew in January 2008 and so forth.
Facility or retail seller	Amendment of Certification/ Pre-certification	As needed
Facility or retail seller	Retail seller monthly payment statement showing the amount of energy procured reported annually to the Energy Commission	May 1, 2005, and annually thereafter until data are reported through WREGIS
Retail seller	Report on Procurement, CEC-RPS-Track	May 1, 2005, and annually thereafter until data are reported through WREGIS
Retail seller	Utility Certification for Pre-Existing Contracts, CEC-RPS-2	Anytime until contract expires or is voluntarily re-negotiated
Publicly owned utility	Annual report	Requested May 1, 2007, and annually thereafter

Opportunities for Expanding Renewable Resource Deliveries to California

PG&E's Recommended Revisions To RPS Eligibility Guidelines

September 24, 2007

Key Objectives of Revision Process

- The Revisions should be drafted with the goal of promoting renewables development.
- Eligibility criteria should be no stricter than required by statute.
- CEC should exercise its discretion in favor of broadening the renewables market.
- Certification process should be clear, reliable, and streamlined to avoid discouraging developer interest in California.

The Revisions Should Address Real-World Problems

- Retroactive application of eligibility criteria creates costly uncertainty and deters development.
- Current out-of-state and out-of-country certification requirements have deterred prospective sellers.
  - Guidebook revisions to implement legislation should be correct, clear, complete, and timely.
  - Requirements should not create the impression that out-of-country resources are ineligible.
- QF eligibility criteria should create an incentive to go green.

PG&E Comments on September 2007 Staff Draft of Changes to Eligibility Guidebook

Issue	Statutory Requirement	Need for Change	Recommended Change
Banking and Shaping	Electricity is "deemed delivered if it is either generated at a location within the state or is scheduled for consumption by CA end-use retail customers."	Power generators sometimes find it commercially advantageous to sell their power to an intermediary instead of directly to a load serving entity (LSE). LSEs may need to purchase renewable power from an intermediary, not the generator. Current guidebook language is not clear that purchase from an intermediary is RPS-eligible.	The Guidebook should explicitly clarify that a LSE can achieve delivery of out-of state renewable power by purchasing it from an intermediary, instead of the generator.
Out of State Deliveries	A renewable generating facility located out of state may be eligible… "… so long as it will not cause or contribute to a violation of a California environmental standard or regulation".	The requirement to list LORS for 16 resource areas that "may be directly or indirectly impacted" is an overly strict interpretation of law, is so vague that it invites arbitrary interpretation, and has discouraged developers. The showing required to gain certification should be clearly limited to the development's potential impact on California's resources.	The required catalogue of California LORS should be simplified and limited to projects that have any potential impact on California protected resources based on a 3-step sequential analysis: (1) The CEC should identify a geographic boundary or resource zone (such as a watershed) such that a generating facility located in that area will have no reasonably foreseeable impact on a protected California resource, as measured by California LORS. (2) If the resource is not in the above-described area, the list of LORS should be required only for potentially impacted California resources. (e.g., hydrological, air),

Issue	Statutory Requirement	Need for Change	Recommended Change
			(3) The developer must show that the generating facility's impact on the protected California resource complies with the applicable California LORS
Out of Country	Renewable resource located outside the country must demonstrate that "...it is developed and operated in a manner that is as protective of the environment as a similar facility located in California."	As written, the guideline requires the development to comply with California's LORs, even if the CA LORS conflict with the laws of the foreign jurisdiction, and is an unnecessarily strict interpretation of the statute. This discourages the development of out-of-country resources	Once the CEC finds that the applicable development and operational requirements of an out-of-country jurisdiction are as protective of the environment as California's, it should also find that a jurisdictional renewable resource which demonstrates compliance with those requirements is RPS-eligible.
Small Hydro	AB 809 changes eligibility requirements for conduit facilities, as defined, (amended effective 1/1/07 and again on 1/1/08); adds a new eligibility standard based on environmental impact for new small hydro, new conduit, and efficiency improvements; and grants new eligibility for incremental efficiency on non-small hydro facilities.	Eligibility Guidelines must be updated to enable facilities to certify compliance with law in effect on January 1, 2008.	Update all small hydroelectric sections, tables and forms per AB 809; update definition of eligible conduit hydroelectric facilities and eliminate requirement to identify conduit hydro for resources built before January 1, 2006; recognize new small hydro and efficiency improvements at RPS-eligible facilities and incremental generation increases at other hydroelectric facilities; and identify the commercial operating date(s) criteria that determine whether a facility is existing or new.
Hybrid Fuel (SPP)	(No statutory mandate – CEC discretion) Revision denies non-	This new requirement creates an economic disincentive for existing	Revise Guidebook to allow 100% of deliveries to be RPS eligible

Issue	Statutory Requirement	Need for Change	Recommended Change
	renewable small power producers that commenced operations before 2002 the option of counting 100 percent of the electricity generated towards the RPS so long as fossil fuel did not exceed 25% of total energy input.	QF small power production facilities burning fossil fuels such as low Btu coal or petroleum coke to convert their fuel type to renewable fuels, and creates inequities between existing and repowered facilities	based on 25% fossil fuel allowance for small power producers under PURPA. p. 24, line 5, delete "renewable".
Pre-Certification Deliveries	The Energy Commission will certify eligible renewable energy resources.	In many cases, eligible renewable resources cannot meet all the requirements for certification at the time the facilities commence generation. (e.g., consultation with other agencies is required before CEC approval).	Explicitly state that deliveries by pre-certified generator will be retroactively deemed RPS-eligible once it has met the conditions for certification and is certified. pp. 33 and 34
Certification Not Effective for Full Period	A change in law does not operate retroactively, i.e., make a previously RPS-eligible generator ineligible, unless the Legislature explicitly gave the law retroactive effect.	The CEC's requirement to recertify within the certificate's two-year effective period, whenever notified by staff is overly strict interpretation of law and has created uncertainty and confusion among sellers and administrative burden for all	RPS eligibility is not affected by changes in law occurring during certificate period.
Change in Law - Eligibility Grandfathered	A change in law does not operate retroactively, i.e., make a previously RPS-eligible generator ineligible, unless the Legislature explicitly gave the law retroactive effect.	Eligible renewable resource certification is limited to two years, at the most, and the CEC may require facilities to renew their certification even more frequently based on changes in the law at any time. This requirement creates generator risk (that additional investment will be required) and	A certified or pre-certified eligible renewable resource that maintains compliance with the eligibility criteria in existence at the time of initial certification should not become ineligible due to a subsequent change in eligibility criteria that occurs during its contract with a retail seller, unless

Issue	Statutory Requirement	Need for Change	Recommended Change
		potential consumer cost (cost to replace ineligible deliveries) and has discouraged some potential sellers from executing long term contracts with retail sellers.	the Legislature explicitly gave the law retroactive effect.

Issue	Description of Problem	Recommended Change	Revision to Staff Draft
Process	Applications for certification and pre-certification change without adequate public notice or sufficient guidance on which forms to use for which projects.	Generators need clear guidance on which forms to use and assurance that any published forms are complete and correct.	Adopt clear, consistent guidelines on which forms to use and proof any form revisions before publication.
Out of state facilities	The "Certification Supplement for Out of State Facilities" requires generator to certify facts beyond its control, e.g.., it can demonstrate delivery of its generation to a California market hub or California location, and that the purchaser's obligations under "delivery requirements" are being met.	Delete purchaser's delivery requirements from seller's certification supplement.	Create a form on which purchaser will verify California delivery and consumption and require it to be submitted as an attachment to the "Certification Supplement for Out of State Facilities".
Date for Mandatory	There are still many novel issues relating to data transfer that still	Allow CEC to establish mandatory participation date based on CEC's	Add highlighted text: Effective January 1, 2008, **or 60**

Issue	Description of Problem	Recommended Change	Revision to Staff Draft
WREGIS Participation	need to be addressed before the January 1, 2008 mandatory WREGIS participation date. See, IV. Generation Tracking System, p. 54, paragraph immediately preceding heading, "A. Reports to the Energy Commission,	certification that WREGIS is fully functional.	**days after the CEC concludes that WREGIS is fully functional for generation tracking purposes,** the Energy Commission requires RPS and SEP certified facilities, retail sellers, and procurement entities to participate in the WREGIS as part of RPS compliance.

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Date: 10/12/2007 4:58 PM
Subject: Electronic Filing - Docket Nos. 02-REN-1038 and 03-RPS-1078
Attachments: lee.pdf; comments.pdf; red-line.pdf; slides.pdf; matrix.pdf

CC: "Lee, Evelyn C (Law)" <ECL8@pge.com>, "Guliasi, Les" <LGG2@pge.com>, <mp...
Pacific Gas and Electric Company (PG&E) respectfully submits the enclosed comments on the CEC's Staff Draft Guidebook for Renewables Portfolio Standard Eligibility - Third Edition (CEC 300-2007-006-ED3-SD).

1. Comments of Pacific Gas and Electric Company Re: Guideline Revisions for Renewable Energy Program and Renewables Portfolio Standard Implementation.

2. PG&E Redlined version of Staff Draft Guideline Revisions.

3. Powerpoint slides presented at September 24, 2007 CEC workshop, "Opportunities for Expanding Renewable Resource Deliveries to California"

4. Matrix summary of PG&E's key concerns presented at workshop: "PG&E Comments on September 2007 Staff Draft of Changes to Eligibility Guidebook"

The original will follow in the mail.
If you have any questions about this matter and/or the attachments, please feel free to call Evelyn Lee at (415) 973-2786.

Stephanie Louie (415) 973-7956
Submitted on behalf of Evelyn Lee and Les Guliasi

<<lee.pdf>> <<comments.pdf>> <<red-line.pdf>> <<slides.pdf>> <<matrix.pdf>>