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PAUL
HASTINGS

1(415) 856-7010
peterweiner@paulhastings.com

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VIA HAND DELIVERY AND E-MAIL: DOCKET@ENERGY.STATE.CA.US; RPSTRACK@ENERGY.STATE.CA.US

California Energy Commission
Dockets Office, MS-4
RE: Docket No. 11-RPS-01 and Docket No. 02-REN-1038
RPS Proceeding
1516 Ninth Street
Sacramento, CA 95814-5512

Re: Comments of Mustang Renewable Power Ventures, LLC on proposed revisions to the California Energy Commission's Guidebook on RPS Eligibility, Docket Nos. 02-REN-1038 and 11-RPS-01, *RPS Proceedings*

To Whom It May Concern:

In setting forth eligibility standards for renewable energy technologies through the *Renewables Portfolio Standard Eligibility Guidebook* (*Guidebook*), the California Energy Commission (CEC) exercises significant discretion regarding what technologies will, and will not, qualify for the coveted renewable energy credits (RECs), which retail electricity suppliers must obtain as evidence that they will meet, and have met, the State's ambitious Renewables Portfolio Standard (RPS) goal. *See* SBX1-2 (2011) (requiring that retail sellers of electricity purchase 33% of their supplies from renewable generation facilities by 2020). Exercising the aforementioned discretion, the CEC has, in past versions of the *Guidebook*, offered an invaluable pre-certification process, which provides an initial determination regarding a project's RPS eligibility. Among the benefits offered through this process is the early establishment of an eligibility date, which establishes the point in time after which generation from a pre-certified facility will be considered RPS-eligible generation. Although pre-certification provides no guarantee that the CEC will eventually certify the project as RPS-eligible, at the very least it provides developers of new and untested technologies with at least some certainty regarding the nature of the product they are developing.

As noted in a recently released draft version of the *Guidebook* (*Draft Guidebook*),[1] the CEC "is seeking stakeholder input on the value of pre-certification for the RPS", with an intent to abandon the process. *See also* CEC, Questions Concerning Possible Changes to the Renewables Portfolio Standard Eligibility Guidebook, *available at* http://www.energy.ca.gov/portfolio/documents/2011-10-21_workshop/2011-10-21_Attachment_B.pdf. Our client, Mustang Renewable Power Ventures, LLC (Mustang Power), strongly opposes any movement away from the present process.

Mustang Power is an emerging developer of an innovative municipal solid waste (MSW) conversion technology that, in part, depends on the pre-certification option to secure project financing. As explained in more detail below, the CEC's proposed revisions to the *Guidebook* would likely be detrimental to the long term survival of innovative renewable energy technologies, like the one being pursued by Mustang

[1] Available at http://www.energy.ca.gov/2011publications/CEC-300-2011-008/CEC-300-2011-008-SD.pdf.

Power. We are therefore offering the following comments on the CEC staff's recently proposed changes to the *Guidebook* in hopes of persuading the staff to take a more reasonable approach.[2]

Mustang Power's technology

Mustang Power is the designer and developer behind proprietary waste-to-energy conversion technologies. These technologies operate cohesively to reduce MSW disposal loads at over-capacity landfills while producing diverse forms of renewable energy and reducing greenhouse gas emissions. Mustang Power's technologies provide a clean, renewable energy alternative to the combustion of fossil fuels. Pub. Util. Code § 25741(b)(1) (describing municipal solid waste, when converted, as a renewable fuel). Additionally, these technologies avoid the problems of intermittency posed by some other renewable energy technologies, as they produce energy year-round on a 24-hour basis.

Mustang Power's MSW conversion technologies include a thermal power gasification component, supported by a sophisticated materials recovery facility and an anaerobic digester. The materials recovery facility is designed to recover valuable recyclables such as glass, metal, paper, and plastic from the bulk MSW stream. Organic materials are then separated out and the anaerobic digester component processes such organic waste into compost and electricity. The thermal process gasification facility then converts the residual MSW into electricity.

Other technologies deployed by the MSW conversion industry include a wide array of thermal, biological, chemical, and mechanical technologies capable of converting MSW into energy such as steam and electricity, fuels such as hydrogen, natural gas, ethanol and biodiesel, and other useful products. Conversion technologies have been successfully deployed in Europe, Israel, Japan, and Canada, but are not yet deployed on a widespread basis in the United States. Various localities in California have investigated or initiated the use of waste-to-energy conversion technologies, including Los Angeles County, Santa Barbara County, and the Cities of Los Angeles, Salinas, San Diego, Sacramento, and Santa Barbara (including Buellton, Goleta, and Solvang), among others. Mustang Power was recently selected as the preferred developer for a MSW conversion technology project by Santa Barbara.

Certifying an MSW conversion facility as a renewable energy resource eligible for the RPS in California, however, presents significant hurdles. Given the constraints on MSW conversion facilities (*see* Pub. Res. Code § 25741(b)(3); *Draft Guidebook* at 38), only a narrow subset of projects can be developed commercially in California. To help meet California's ambitious goals for renewable energy production, the CEC should consider policies that will aid the nascent MSW conversion industry.

Recommendation No. 1: The CEC should not finalize this Guidebook until it has reconsidered the MSW eligibility requirements.

As an initial mater, the *Draft Guidebook* states that "[t]he final draft RPS Guidebook may contain revisions to the requirements" applicable to the certification and pre-certification of MSW conversion facilities. (*Draft Guidebook*, at 37.) Before issuing any new standards, the CEC must issue a draft of any Guidebook that might implement these changes to permit affected industries to review the precise

[2] These comments have been submitted via hand delivery and email (docket@energy.state.ca.us, rpstrack@energy.state.ca.us) in accordance with the staff's comment notice and instructions given at the October 21, 2011 workshop to discuss the proposed revisions.

language proposed. To the extent that changes are made, the CEC should continue its policy of applying "the RPS Eligibility Guidebook that is in place when a facility (including a pre-certified facility) applies for certification." CEC Staff, Presentation on Proposed Revisions to the Renewables Portfolio Standard Eligibility Guidebook and the Overall Program Guidebook 60 (Oct. 21, 2011).[3]

Recommendation No. 2: The CEC should retain the pre-certification process.

The MSW conversion industry needs clear direction and regulatory certainty from the CEC. Continuing to apply the currently applicable pre-certification provisions is one way the CEC can provide this certainty.

As noted above, even though a pre-certification does not provide a guarantee of RPS certification in the future, it does establish an eligibility date. If the facility is subsequently certified as RPS-eligible, all generation from the month of the eligibility date forward will be considered RPS-eligible generation. This bit of certainty in an otherwise evolving industry is extremely valuable. Given that MSW technologies are subject to heightened verification requirements, establishing an earlier date permits MSW facilities to reap the full benefits of the clean, renewable energy they have produced. Otherwise, delays in obtaining final certification could result in significant quantities of renewable energy being produced without receiving the benefits of being RPS-eligible. This would upend the level playing field between the types of renewable energies and could hurt any industry subject to these heightened requirements. Accordingly, the CEC should retain the pre-certification process and its function of establishing the earliest date of RPS eligibility.

In light of the immaturity of the industry, the pre-certification process also provides a necessary mark demonstrating compliance with CEC benchmarks. The MSW conversion industry has limited penetration in capital markets, enjoys no preferential access to federal loan guarantees, and relies on sophisticated technologies just reaching market capacities. Obtaining a pre-certification, although clearly provisional and subject to further CEC verification, provides an indicator to the financial markets of the viability of MSW conversion as a non-fossil fuel replacement that may earn RPS-eligibility. Indeed, facilities using MSW as the feedstock for their energy production are subject to additional requirements that must be met for RPS eligibility. *See* Pub. Res. Code § 40117. Not only does pre-certification aid MSW conversion facilities, it also provides increased certainty to utilities and municipalities, and allows improved planning as the utilities sign PPAs with sources seeking RPS eligibility.

Recommendation No. 3: Timing issues within the certification process.

If the CEC maintains the pre-certification as it should, CEC Staff has requested that we suggest a reasonable amount of time after a pre-certification is submitted that the facility should apply for full certification, after which the pre-certification would expire. In the experience of Mustang Power, if any period is imposed, that period should be in the range of three (3) to seven (7) years. Projects in the MSW conversion industry take several years to obtain the necessary approvals and become fully operational.

CEC Staff also has requested applicants to identify milestones that should be met by a facility before an application for pre-certification will be accepted. Mustang Power believes that facilities should have a

[3] Available at http://www.energy.ca.gov/portfolio/documents/2011-10-21_workshop/presentations/Staff_Presentation_on_Proposed_Revisions_to_the_Renewables_Portfolio_Standard_Eligibility_Guidebook_and_the_Overall_Program_Guidebook_2011-10-21.pdf.

reasonable belief that their facility could provide renewable energy that is RPS-eligible before an application for pre-certification should be accepted. One way to demonstrate such a reasonable belief would be to show that the project proponent has applied for permits or has submitted a project proposal. Pre-certification should not require that all land use approvals or other permits have been obtained because these approvals may occur just prior to initiation of construction activities. Delaying pre-certification until this late date will prevent MSW conversion facilities from utilizing the pre-certification to help raise financial support. Such a delay would have extremely negative effects on the financial viability of the nascent MSW conversion technology. Accordingly, if CEC modifies its pre-certification process to require some milestones to be met, the milestones should be set early in the project development phase, far in anticipation of construction activities or other final land use approvals.

On behalf of Mustang Power, we appreciate your diligent work to help California meet its ambitious goal of procuring 33% of the state's retail energy from renewable sources by 2020. Please contact me if you have any comments or questions about the comments above.

Sincerely,

Peter H. Weiner/DMM

Peter H. Weiner
of PAUL HASTINGS LLP

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