California Municipal Utilities Association

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

Re: CMUA Comments on the Proposed Revisions to the *Renewables Portfolio Standard Eligibility Guidebook*

The California Municipal Utilities Association (CMUA) would like to thank the California Energy Commission (CEC) for the opportunity to provide comments on the Lead Commissioner Draft Fifth Edition of the *Renewables Portfolio Standard Eligibility Guidebook* (Draft Eligibility Guidebook) released by the CEC on April 18, 2012. The following sections provide CMUA's comments on the Draft Eligibility Guidebook. In addition to CMUA's comments, individual CMUA members will provide comments on the proposed changes to the guidebook as well.

I. COMMENTS ON THE DRAFT ELIGIBILITY GUIDEBOOK

A. Limited Certification

1. The RPS Eligibility Guidebook Should Clearly Address the Treatment of Facilities Meeting Public Utilities Code Section 399.12(e)(1)(C).

The Draft Eligibility Guidebook proposes (on page 83) the creation of a new "limited certification" for facilities that do not meet the requirements of the current RPS Eligibility Guidebook, but that meet other specified requirements. As currently proposed, the limited certification categorization appears to be intended to allow facilities meeting the requirements of California Public Utilities Code (PUC) section 399.16(d), as interpreted by the CEC, to become RPS-certified. This section of the Draft Eligibility Guidebook should also address the certification of facilities that meet PUC section 399.12(e)(1)(C).

The RPS Eligibility Guidebook and the CEC's RPS Regulations must be consistent. RPS-certification is a key area where consistency between these two documents is essential. CMUA has been actively engaged in the development of the CEC's RPS Enforcement Regulations that will be applicable to POUs. In this process, there has been a substantial amount of confusion surrounding the issue of RPS-certification, particularly regarding pre-June 1, 2010 resources. The current version of the 33 Percent Renewables Portfolio Standard Pre-Rulemaking Draft Regulations (Draft RPS Regulations) provides, in Section 3202(a), that an electricity product must fall within one

of three categories in order for that electricity product to be used to meet an RPS procurement target. These three categories are:

> (1) The electricity product is procured pursuant to a contract or ownership agreement on or after June 1, 2010, and is associated with generation from **an RPS - certified facility**.
>
> (2) The electricity product was procured pursuant to a contract or ownership agreement before June 1, 2010, and meets the following criteria:
>
> > (A) The electricity product was approved by the governing board of a POU for procurement to satisfy renewable energy procurement obligations pursuant to former Public Utilities Code Section 387.
> >
> > (B) The electricity product is associated with generation from a facility that meets the definition of a "renewable electrical generation facility" and **is RPS - certified**.
>
> (3) The electricity products that were procured pursuant to a contract or ownership agreement before June 1, 2010, shall count in full towards procurement targets if they meet the following criteria:
>
> > (A) The electricity products are associated with generation from a facility that does not meet the definition of a "renewable electric generation facility" but does meet the Commission's RPS eligibility requirements that were in effect prior to June 1, 2010, when the original procurement contract or ownership agreement was executed by the POU, and the **facility is RPS - certified**.
> >
> > (B) Any contract modifications or amendments occurring after June 1, 2010, do not increase the nameplate capacity, expected quantities of annual generation from the facility, or substitute a different renewable energy resource for the facility. If contract amendments or modifications after June 1, 2010, increase nameplate capacity or expected quantities of annual generation, only the amounts agreed to prior to June 1, 2010, shall count in full toward procurement targets. The initial term of such procurement contract may be extended if the initial term of the contract specified a procurement commitment of 15 years or more.[1]

Under each of these options, the procurement must be from an "RPS-certified" facility in order for the associated electricity product to be used for an RPS procurement target. The second option, Section 3202(a)(2), is of particular importance for the discussion of the Draft Eligibility Guidebook. Section 3202(a)(2) corresponds with the statutory authority provided in PUC section 399.12(e)(1)(C):

[1] Draft RPS Regulations, Section 3202(a), at 7 (emphasis added).

> A facility approved by the governing board of a local publicly owned electric utility prior to June 1, 2010, for procurement to satisfy renewable energy procurement obligations adopted pursuant to former Section 387, **shall be certified as an eligible renewable energy resource by the Energy Commission pursuant to this article**, if the facility is a "renewable electrical generation facility" as defined in Section 25741 of the Public Resources Code.[2]

The Draft RPS Regulations require that all contracts or ownership agreements must be with RPS-certified facilities in order for the procurement to qualify for a POU's RPS. Additionally, PUC section 399.12(e)(1)(C) expressly directs the CEC to certify facilities meeting the requirements of that subdivision of the PUC. However, facilities meeting PUC section 399.12(e)(1)(C) are not included under the "Limited Certification" section of the Draft Eligibility Guidebook. Instead, these resources are apparently dealt with by the statement "Facilities under contract with or approved by a POU for its RPS before June 1, 2010, are encouraged to apply for certification by October 1, 2012, but are not required to do so."[3] This statement implies that not all resources meeting PUC section 399.12(e)(1)(C) will need to be certified. This is in direct conflict with the Draft RPS Regulations discussed above, which propose that, in order to be used for RPS compliance, an electricity product must be associated with an RPS-certified facility.

The Draft Eligibility Guidebook and Draft RPS Regulations are currently in conflict with one another. One must be amended to address this conflict. One option would be to clarify that facilities meeting PUC section 399.12(e)(1)(C) qualify for limited certification in the same manner as facilities meeting the CEC's interpretation of PUC section 399.16(d).

2. The CEC May Not Limit the RPS-Eligibility of Facilities Meeting Public Utilities Code Section 399.16(d) to the Original Duration of the Contract or Ownership Agreement.

The Draft Eligibility Guidebook proposes that facilities applying for limited certification, pursuant to PUC section 399.16(d), will be limited as follows: "A facility receiving a limited certification will be eligible for the RPS only for the duration of the contract or ownership agreement originally executed prior to June 1, 2010."[4] Such a limitation on the applicability of PUC section 399.16(d) is not found in statute and is clearly contrary to the statutory language that provides: "The duration of the contract may be extended if the original contract specified a procurement commitment of 15 or more years."[5] If the duration of the contract or ownership agreement may be extended in certain cases, then the CEC is clearly statutorily prohibited from limiting the eligibility of these resources.

CMUA recommends that this requirement be stricken as follows:

> <u>A facility meeting the above requirements, but failing to meet the eligibility requirements of the current RPS guidebook, may apply for a limited</u>

[2] Emphasis added.
[3] Draft Eligibility Guidebook at 79, Footnote 125.
[4] Draft Eligibility Guidebook at 83.
[5] Cal. Pub. Util. Code § 399.16(d)(3).

certification on the CEC - RPS - 1 form. ~~A facility receiving a limited certification will be eligible for the RPS only for the duration of the contract or ownership agreement originally executed prior to June 1, 2010; 129 this provision applies to only the generation procured under the contract or ownership agreement.~~ These facilities will be assigned a unique RPS certification number with an "L" suffix signifying limited certification applications.

B. Grace Period for POUs

The Draft Eligibility Guidebook provides (on page 79) a grace period for the certification of facilities that are under contract with or operated by a POU. However, the Draft Eligibility Guidebook imposes the following limitation on generation occurring before the adoption of the fifth edition of the RPS Eligibility Guidebook:

> If the generation occurred before adoption of the *Renewables Portfolio Standard Eligibility Guidebook, Fifth Edition*, the Energy Commission must determine that the facility met the eligibility requirements of the *Renewables Portfolio Standard Eligibility Guidebook, Fourth Edition*, at the time the generation occurred for the generation to count toward the POU's RPS.[6]

CMUA notes that the fifth edition of the RPS Eligibility Guidebook has faced substantial delay in adoption. The CEC should not punish facilities that would have otherwise been RPS-eligible (as meeting one of the new categories for RPS eligibility established in SB X1 2 that were not included in the fourth edition of the RPS Eligibility Guidebook) but for the delay in the adoption of the fifth edition of this guidebook. Generation from facilities that fall within these categories should qualify for the RPS from the effective date of SB X1-2, even if the generation occurred before the adoption of the fifth edition of the guidebook and was not eligible under the fourth edition. Denying this generation RPS-eligibility will be contrary to SB X1-2 and will impose unnecessary additional costs with no conceivable benefit. In light of the extreme challenge posed by the new RPS requirements, the CEC should not impose any additional unnecessary costs.

C. Certification of Aggregated Facilities

The Draft Eligibility Guidebook provides (on pages 80-81) a new process for certifying aggregated facilities. CMUA supports this process and believes that smaller distributed generation will play an important role in meeting the 33 percent RPS goal. However, the Draft Eligibility Guidebook includes the following restriction:

> An application for an aggregated unit will not be approved unless all facilities in the unit are eligible. If the Energy Commission determined that one facility in an approved unit is not RPS-eligible, the entire unit will lose its certification until an amended application is submitted that removes the ineligible facility from the list.[7]

[6] Draft Eligibility Guidebook at 79.
[7] Draft Eligibility Guidebook at 81.

CMUA understands the CEC's desire to for an administratively simple method for processing these types of applications. However, CMUA believes that there should be a clear and defined way for an applicant to fix minor problems with individual units within an aggregated application for RPS certification before the entire submission is rejected.

D. Retirement of RECs and Release of Sixth Edition of the Guidebook

The Draft Eligibility Guidebook repeatedly states that POUs should not retire RECs or report procurement until the sixth edition of the RPS Eligibility Guidebook is adopted.[8] The Draft Eligibility Guidebook includes a caveat that RECs may be retired if it is necessary. Beyond the 36-month limitation on the retirement of RECs, there are many administrative reasons why this direction may be burdensome if the sixth edition of the RPS Eligibility Guidebook is not adopted until late in 2013. In light of the significant delays with the release of recent versions of the RPS Eligibility Guidebook, CMUA recommends that the CEC provide a firm target date for the adoption of the sixth edition of the guidebook. CMUA recommends that February 1, 2013 serve as this target date.

Additionally, staff of the California Air Resources Board (ARB) have recently stated (in teleconferences on April 26 and May 1, 2012) that they require utilities claiming an RPS Adjustment under the Cap and Trade Regulation[9] to retire the RECs associated with the renewable energy counted in that adjustment in the same year in which the renewable energy was generated. CMUA opposes this position, as it significantly restricts the freedom provided by the 36-month window to retire RECs in SB X1-2, as well as being potentially inconsistent with the CEC's directive in the Draft Eligibility Guidebook not to retire RECs until the sixth edition of the guidebook is released. CMUA requests the CEC to confer with the ARB regarding this restriction and the resulting conflict.

E. Reporting Requirements

As noted above, the Draft Eligibility Guidebook states that retail sellers and POUs should postpone reporting of 2011 RPS procurement until the sixth edition of the RPS Eligibility Guidebook is adopted. At that point detailed reporting instructions related to SB X1-2 procurement requirements will have been established. However, the annual SB 1305 power source disclosure report is due to the CEC by June 1, 2012. CMUA requests that the CEC clarify the difference (if any) between the SB 1305 report and the report required for SB X1-2. Furthermore, the CEC must clarify whether the POUs are required to file any reports this year or delay all energy reporting until the sixth edition of the RPS Eligibility Guidebook is adopted.

F. Repowering for Grandfathered Resources

The Draft Eligibility Guidebook requires (on pages 54-57) that repowered facilities adhere to a strict set of standards and reporting requirements. CMUA requests that the CEC clarify the extent to which these requirements apply to repowered facilities that are grandfathered under PUC section 399.16(d) (these are facilities that would apply for limited certification). PUC section 399.16(d)(3) states that these resources can continue

[8] Draft Eligibility Guidebook at 107, 109, 110, 113, and Appendix A at 1.

[9] The RPS Adjustment is set out in section 95852(b)(4) of the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms, Title 17 of the California Code of Regulations.

to count in full towards the RPS procurement requirements if "any contract amendments or modifications occurring after June 1, 2010, do not increase the nameplate capacity or expected quantities of annual generation . . . ." Repowering may fall under this description. To avoid conflicting with statute, the repowering requirements in the Draft Eligibility Guidebook should clarify that grandfathered facilities that are repowered will remain RPS-eligible, after receiving limited certification, even if they do not meet the repowering requirements on pages 54-57.

II. PRECERTIFICATION SHOULD BE RECONSIDERED IN THE SIXTH EDITION OF THE RPS ELIGIBILITY GUIDEBOOK

On November 2, 2011, the Southern California Public Power Authority (SCPPA) submitted comments to the CEC recommending the retention of the pre-certification process with amendments for increased certainty. On February 16, 2012, CMUA submitted a letter to the CEC recommending several changes to the CEC's precertification process and supporting SCPPA's comments. CMUA's and SCPPA's key recommendation is that the RPS-eligibility of a facility be determined based on the RPS Eligibility Guidebook in place at the time the facility is pre-certified, provided that the certification application is filed within a reasonable time after pre-certification (for example 36 months) and that there have been no significant changes to the project in the interim. The Draft Eligibility Guidebook retains the pre-certification process but has not adopted these suggested changes. CMUA reiterates the concerns expressed in the earlier comments, and requests the CEC to consider and implement these suggested changes in the Sixth Edition of the RPS Eligibility Guidebook.

III. CONCLUSION

CMUA appreciates this opportunity to provide these comments to the CEC on the Draft Eligibility Guidebook. CMUA believes that it is essential that the RPS Eligibility Guidebook work in harmony with CEC's Draft RPS Enforcement Regulations and not impose any unnecessary cost or burden on achieving the RPS goals. CMUA asks that the CEC consider our recommendations.

Sincerely,

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Director of Regulatory Affairs