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California Energy Commission
Docket Office, MS-4
1516 Ninth Street
Sacramento, CA 95814-5512

Re: *Docket Nos. 11-RPS-01 and 02-REN-1038: RPS Proceeding: Pre-Workshop Comments of AGLR Resources Inc. on the Staff Workshop on the Use of Biomethane Delivered via the Natural Gas Pipeline System for California's Renewables Portfolio Standard*

Dear Commissioners and Commission Staff:

AGL Resources Inc. ("AGLR") hereby respectfully submits the following Pre-Workshop Comments to the California Energy Commission ("CEC" or "Commission") in response to the request contained in the August 16, 2011 Notice of Staff Workshop on the Use of Biomethane Delivered via the Natural Gas Pipeline System for California's Renewables Portfolio Standard ("Notice of Workshop"). The stated purpose of the workshop is to gather stakeholder input and information regarding the biomethane industry, the natural gas pipeline system as it relates to biomethane delivery and to further determine the eligibility criteria for pipeline biomethane in California. The Notice of Workshop also held specific questions as Attachment A, Pipeline Biomethane Discussion Points, and Attachment B, Barriers to In-state Biomethane Injection into the Natural Gas Pipeline, which are further addressed herein.

I. Executive Summary

AGLR appreciates the opportunity to provide comments on the use of biomethane as a fuel source for RPS-eligible electric generating facilities. AGLR also appreciates the Commission's careful approach towards the development of its rules and regulations around the RPS program and its invitation for comments from all affected stakeholders. Comments and input from all affected parties are critical throughout the entire process and are important in assisting the Commission to craft responsible policy that will give a load-serving-entity ("LSE") in California access to the resources they need to satisfy the RPS procurement requirement at a reasonable cost to ratepayers.

AGLR's comments will provide the Commission with input from the perspective of a diverse energy services holding company, whose subsidiaries are involved in the production, marketing and transportation logistics of biomethane gas across the country. AGLR supports the development of alternative energy sources and promotes a diversity of supply sources within the alternative energy sector. Permitting the use of biomethane as a fuel source gives LSEs the opportunity to further diversify their renewable energy portfolio and provides access to a reasonably priced, abundant and reliable stream of renewable energy to meet the RPS mandates.

Specifically, AGLR respectfully presents the following recommendations to the Commission for consideration on the use of biomethane as a fuel source for RPS-eligible electric generating facilities in the RPS, which will be discussed in further detail as part of these comments below:

- The Commission should acknowledge the unique benefits of biomethane as a non-intermittent renewable fuel source and encourage use through prudent regulation and policymaking.
- The Commission should encourage development of biomethane production wherever produced, by removing the delivery requirements and enhancing the reporting requirements to prevent intentional duplicative sales of green attributes.
- The energy produced from biomethane should be treated on par with other renewable energy sources.
- To efficaciously serve the ratepayers in California, the Commission should refrain from adopting policies that will increase costs for renewable supply.
- The Commission should approve the certification applications of those facilities that have received pre-certification, have fully executed biomethane contracts and have commenced receipt of biomethane as fuel for renewable energy production.

II. Summary of AGLR and its Interests

A. AGLR

AGLR was founded in 1856 and employs approximately 2,500 individuals in 15 states. AGLR is a publically-traded company on the New York Stock Exchange under the ticker symbol "AGL." AGLR, through its subsidiaries, provides natural gas distribution, storage, marketing and asset management services to customers throughout the United States, and develops, owns and operates landfill gas facilities that engage in the production of biomethane gas for use in renewable programs across the country.

B. Biomethane Interests

AGLR's wholly-owned subsidiary AGL Renewables, LLC, through its partnership interest in Renewco, LLC ("Renewco"), is a developer, owner and operator

of landfill gas facilities that engage in the production of biomethane gas throughout the country.¹ AGLR is also the parent company of Sequent Energy Management, L.P. ("Sequent"). Sequent is in the business of purchasing and selling wholesale natural gas, and provides asset management, and other energy-related services, to customers throughout the United States, including California. Sequent markets approximately five billion cubic feet of natural gas daily on over eighty different pipelines and storage facilities, and is a provider of reliable gas and biomethane gas to LSEs in California.

III. The Unique Benefits of Biomethane as a Fuel Source

With the anticipated increase in use of natural gas and renewable energy, California should embrace policy that attracts biomethane as a renewable energy fuel source. The United States is shifting to cleaner fuel for energy production, and commuter (NGV) and commercial fleet vehicles (LNG), while at the same time shifting from more traditional energy sources to renewable energy sources. Biomethane is the only fuel that can meet both these needs and should be considered unique. Biomethane significantly reduces the emissions of greenhouse gases and criteria pollutants from landfills and landfill gas collection systems into the atmosphere. Investment in renewable energy sources will enable diversification of supply of reasonably priced renewable energy in California, providing security for the investments in natural gas-fired generation held by energy providers such as independently owned utilities, cities and other municipals.

A. Biomethane Should be Treated the Same as Other Renewable Energy Sources

The lack of parity of the treatment of biomethane compared to other renewable sources such as wind and solar is inequitable. Biomethane is unique in that it provides a realizable and steady renewable energy option to LSEs in California. Solar and wind are intermittent while biomethane can be delivered daily, regardless of weather and even stored for future use. Further, access to biomethane gives LSEs a more diverse portfolio and less exposure to supply shortages or spikes in prices.

B. Requiring Physical Transportation from the Landfill Project Receipt Point to the Delivery Point will Increase Costs to the Consumer.

Transportation costs related to commodities are generally passed through to the end-users embedded in the final sales price of the commodity. Any increase in delivery requirements will lead to increased costs for consumers in the same way that flexible and unencumbered delivery requirements will lead to savings for consumers. The Commission should not impose any additional restrictions on the transportation of the biomethane. For example, the Commission should permit delivery by backhaul and

¹ Renewco is a joint venture with Keystone Renewable Energy, a company which has over 30 years experience in solid waste management, landfill gas collection system design and optimization, including several high-BTU, pipeline-quality landfill gas projects.

under interruptible contracts under the current delivery requirements, and should permit the storage of biogas for conversion to renewable energy at a later date.

Alternatively, as further discussed below, the Commission should revisit its delivery requirements as part of this workshop process and consider other alternatives to delivery, such as delivery by displacement. Delivery by displacement would benefit the LSEs and ratepayers through cost reduction. If the Commission's concerns with allowing flexible delivery options center around market malfeasants and the duplicative sales of green attributes, then regulatory oversight, and not encumbered delivery requirements, would more appropriately safeguard the Commission's concerns. Such regulatory oversight would be better accomplished through a transparent reporting structure, coupled with the imposition of substantial penalties against parties that double sell renewable attributes.

C. Regulatory Certainty Encourages the Long-term Supply of Renewable Energy to California.

The Commission should make policy that will provide a stable market environment for energy infrastructure investments. California is a pioneer in renewable energy development. Over the last several years companies have invested substantial sums in bioenergy projects to serve the California market. In most cases, investment decisions are made 2-years prior to initial production of the renewable energy. A shift in policy away from these investors would only make the market hesitant to undertake further investment in the state.

Further, California, at a minimum, should grandfather existing agreements with energy providers in the state. Companies have made significant investments to meet the anticipated needs of the utilities in the state based on the current rules under the RPS program. All existing transactions that have received certification and pre-certification should be immediately grandfathered, regardless of any changes as a result of this process; particularly, the certification applications of those facilities that have received pre-certification, have fully executed contracts and have commenced receipt of the biomethane as fuel for renewable energy production.

D. The Commission Should Honor Existing Contracts and Expedite the Certification of Pre-Certified Contracts Without Delay.

AGLR respectfully requests that the Commission approve the certification applications of those facilities that have received pre-certification, have fully executed contracts and have commenced receipt of biomethane as fuel for renewable energy production. In anticipation of the availability of this renewable energy source, many generating facilities in California have entered into purchase agreements for biomethane, and have received pre-certification under the existing rules that would certify the renewable energy output as RPS-eligible and have commenced producing renewable energy. The Commission should certify these existing transaction agreements without

hesitation. These agreements were executed in order to enable energy providers in California to meet their RPS-mandate in the immediate.

AGLR understands that certain interest groups within the State of California are advocating the prohibition of out-of-state landfill gas for satisfaction of the "Bucket 1" Renewable Portfolio Standards. Notwithstanding the outcome of this debate, AGLR is concerned about any unnecessary delay of certification of pre-certified projects and the impact it would have on the marketplace as a whole. For example, many entities, including AGLR, have made material capital investments in the development of renewable energy projects, as well as the allocation of resources for the transportation of biomethane gas to the State of California, in reliance on prior CEC pre-certifications, the current Commission regulatory framework and the Guidebook.² The Commission's delay in certifying these pre-certified transactions creates an uncertainty and instability in the renewable energy marketplace because parties who invested substantial capital funds in renewable energy projects and followed the applicable rules for certification are now unreasonably held captive. Moreover, any unnecessary delay in certification calls into question the viability of certification of a pre-certified transaction, which would most certainly promote hesitancy among investors and developers in the marketplace and their decisions to develop renewable energy projects to serve the State of California.

Respectfully, AGLR requests that the Commission certify those transactions that have previously received precertification and that have met the current requirements, without delay; particularly, the certification applications of those transactions that have received pre-certification, have fully executed biomethane contracts and have commenced receipt of the biomethane as fuel for renewable energy production.

IV. Comments on the Notice of Staff Workshop

A. Delivery of Biomethane Directly to the Gas Pipeline System or the Electricity Generation Facility Should not be Required by the Commission.

In response to Attachment A, Question No. 1, AGLR believes that the requirement of delivery of the biomethane to the gas pipeline system or delivery directly to the electricity generation facility is an unnecessary financial and regulatory requirement. Requiring physical delivery increases the cost of delivery for the California rate payer without the benefit of assuring against duplicative sales. For example, if the biomethane supplier is required to physically deliver the gas to California, then the biomethane supplier will incur pipeline transportation charges along the entire transportation path, including fuel, reservation, and other charges. These charges are eventually passed on as additional costs in the sales price and ultimately, to the end consumer. Such requirement is also problematic for suppliers in entering into long-term

² AGLR respectfully believes that the form and substance of a pre-certification application and certification application are materially the same and questions why, assuming all facts remain the same regarding the applicant, the Commission would or legally could delay or prohibit the certification of a project that has previously been pre-certified.

fixed price supply agreements, as pipeline transportation charges often increase unpredictably over time.

Further, requiring physical delivery of the gas does not accomplish the significant goal of preventing duplicative sales of green attributes. Instead, a transparent and robust reporting and posting system of biomethane purchases from specific facilities would allow the marketplace to easily discern and avoid purchasing green attributes that had already been sold. Buyers of environmental attributes in the marketplace typically require contractual attestations that green attributes have not been previously sold; a transparent posting of such prior sale would enable the marketplace to discern any prior sale and help preclude purchases of previously sold attributes. In conjunction with a transparent reporting system, substantial penalties and disincentives should be enacted against suppliers that intentionally sell duplicative green attributes.

In summary, requiring the physical delivery of biomethane from the landfill's receipt point to the delivery point only adds additional costs for the rate payer. Additionally, a transparent reporting structure, coupled with the real threat of substantial penalties, is a more efficient mechanism to ensure that green attributes are not double-sold in the marketplace.

B. Location Requirements for Biomethane Sources Would be Prohibitive to the Further Development of Alternative Energy Source Options for California.

In response to Attachment A, Question No. 2, to restrict the location from which sources of Biomethane can be procured would further limit renewable supply options for entities in meeting their state-mandated compliance requirements, and eventually lead to increased cost for the rate payer due to high demand and a lack of sufficient supply. The Commission should encourage the development of biogas as a renewable fuel source in order to give energy providers in the state options to further diversify their mandated renewable energy portfolio and access to a reasonably priced, abundant and reliable stream of renewable energy.

Moreover, the physical location of the source of the biomethane fuel production facility is irrelevant to its characteristics as a renewable energy source. The Commission should refrain from imposing any additional requirements as they may be prohibitive to the development of biomethane sources.

C. Increased Delivery Requirements Add to Costs for Consumers and Would be Prohibitive to the Further Development of Alternative Renewable Energy Options for California LSEs

In response to Attachment A, Question No. 3, AGLR believes that the Commission should allow, but not require the current transportation agreements, which include forward and backward haul, and firm and interruptible transportation. If the ultimate goal of the Commission is to encourage the development of renewable energy

projects such as landfill gas production, then requiring physical transportation of the biomethane gas molecules is unnecessary, as described in the comments in response to Question 1 herein.

D. Permitting Fuel to be Consumed at a Date Other Than it was Delivered, Provides Increased Reliability and Additional Renewable Fuel Supply Options for LSEs

In response to Attachment A, Question No. 4, AGLR believes that allowing a delay in the consumption of biomethane at the electric generating facility once it has been delivered to California or the electricity generating facility is beneficial for the market. Allowing the delay in delivery and consumption enables the buyer and seller to negotiate flexible contract terms providing for over or under delivery without assessing penalties. Additionally, today's industry technology supports a delay between consumption and deliverability. For example, the parties can store, or "bank" excess biomethane deliveries in a month of overproduction for manageable use in a month when the landfill under-produces.

E. Biomethane Imbalances Should be Treated the Same as Imbalances Resulting from LDC, Municipals, Industrial, Power Generation, or Other Commercial Activities on the Pipeline.

In response to Attachment A, Question No. 5, there will almost always be both daily and monthly differences between actual biomethane gas measured into the pipeline in Dekatherms ("Dths") and the amount scheduled away from that point of receipt in Dths. Biomethane gas is similar to wellhead gas in that exact production cannot be determined in advance; however, effort is made by the biomethane producer and the biomethane buyer to estimate what that amount will be and to schedule it into the pipeline. All scheduling must be done in advance of the gas day and measurement of actual production is not finalized until well after the gas day ends (and on most pipes it is not final in an accounting sense until the seventh workday of the next month). All pipelines measure production first in terms of thousands of cubic feet of gas (MCFs) that they receive and then they must convert these amounts to Dths using gas chromatographs and other measurement equipment installed at the receipt point. Unlike wellhead gas, biomethane gas has more variability in both its rate of production and its heat rate (its BTU rate is one of the determinants of how MCF's are converted into Dths). Such imbalances between actual production on a daily and monthly basis and scheduled quantities on a daily and monthly basis will always occur, are a normal part of the gas pipeline industry, and should be allowed.

On most pipelines, absent an operational flow directive to the contrary, daily and monthly imbalances are expected and allowed. Pipelines have historically allowed producers and shippers significant latitude to manage their imbalances to as close to zero as possible by the end of the production month. An imbalance created on one day can usually be worked off on a later day during the same month. Operational flow directives may limit the ability to work off these imbalances or even penalize producers and/or

shippers for failure to manage their imbalances within specific pipeline defined limits during these events. Operational flow events are not common and impact most pipes during either Force Majeure situations or during extreme weather situations. The Commission should not develop or enforce any stricter limits than those imposed by the pipe because such limits would not comport with FERC approved pipeline tariffs, pipeline operations or shippers contracted rights on the pipelines.

Absent a physical upset at the biomethane plant, imbalances on a daily and monthly basis tend to run within the expected tolerances established by the pipelines. In the gas business there is frequent reference to a plus or minus 2% tolerance. This is particularly true on a monthly basis as many pipelines structure their imbalance cash out process with 2% as the no harm no foul safe harbor for producers and shippers. Typically shippers and producers are incented not to have imbalances substantially outside 2% as their cash out processes provide for increasing penalty pricing outside the 2% tolerance. The magnitude of biomethane imbalances on a percentage basis is a fairly negligible aspect of the pipeline business and should be treated no differently than imbalances resulting from LDC, Municipal, industrial, power generation or other commercial activities on the pipeline.

F. AGLR Supports Reporting and Auditing to Ensure Renewable Attributes Are Not Claimed by Multiple Entities

In response to Attachment A, Question 6, AGLR encourages and supports robust reporting requirements to ensure all market participants abide by the regulations prohibiting the duplicative sale of environmental attributes. In addition to the current attestations required, AGLR supports the development of a reporting database, categorized by renewable energy projects, which requires the reporting of the annual environmental attributes sold and the associated purchaser(s) of the environmental attributes.

G. The Commission Should Craft Rules that Encourage Renewable Gas Production from any Eligible Source

In response to the issues raised in Attachment B, AGLR supports the certification eligibility of biomethane gas as renewable energy produced from any source, in general.

On September 13, 2011, The American Gas Association ("AGA") released an assessment which illustrates the role of biomethane in enhancing America's energy security and environmental quality.³ The Study, entitled The Potential for Renewable Gas: Biogas Derived from Biomass Feedstocks and Upgraded to Pipeline Quality, suggest that "*policy makers and other stakeholders should further explore ways to enhance the production, distribution and use of this vital, domestic renewable resource.*"

³ The American Gas Association represents 201 local energy companies that deliver natural gas throughout the United States. More than 65 million customers of the 70 million residential, commercial and industrial natural gas customers in the U.S. receive their gas from AGA members. The Study is available on the AGA website at <http://www.aga.org/OUR-ISSUES/RENEWABLE-GAS>

The Study goes on further to demonstrate the benefits of biomethane in such areas as the reduction of greenhouse gas emissions, increased domestic energy production, improved waste management and job creation. Clearly, California is at the forefront of renewable energy, and should not develop policy in regress.

Specifically, all pipeline companies have gas quality specifications in their tariffs which are approved and regulated by the Federal Energy Regulatory Commission or jurisdictional state commission. Any gas meeting those standards should be permitted regardless of location. California should carefully study the basis for the earlier prohibition on in-state landfill gas and set reasonable standards to allow in-state landfill gas. Most other states have no similar prohibition and have proven that landfill gas can be safely transported provided it meets the gas quality tariff specification of the pipeline.

V. Conclusion and Recommendations

Consistent with the foregoing, AGLR respectfully submits the following recommendations on the use of biomethane as a fuel source for RPS-eligible electric generating facilities in the RPS, and respectfully requests for the Commission to:

- Acknowledge the unique benefits of biomethane as a fuel source and encourage use through prudent regulation and policymaking.
- Encourage development of biomethane production by removing the delivery requirements and enhancing the reporting requirements.
- Treat the energy produced from biomethane on par with other renewable energy sources.
- Enact robust reporting requirements and attesting certifications to sufficiently provide the necessary assurance of the California buyer receiving all green attributes from the landfill gas project.
- Not adopt a policy that will increase costs for renewable supply.
- Expedite the issuance of certification of those facilities that have received pre-certification, have fully executed biomethane contracts and have commenced receipt of biomethane as fuel for renewable energy production.

Respectfully Submitted,



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and Regulatory Affairs