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March 23, 2012

Dockets Office, MS-4
Docket No. 11-RPS-01 and 02-REN-1038
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512
Also via email to docket@energy.state.ca.us

SUBJECT: Docket No. 11-RPS-01 and Docket No. 02-REN-1038, RPS Proceeding

We are pleased to have the opportunity to provide comments informing consideration of suspension of Eligibility Guidelines for the Renewable Portfolio Standard (RPS) related to biomethane. Specifically, our comments address possible suspension of the Guidebook for reconsideration of energy generated by power plants using biomethane to be certified as Renewable, therefore impacting the standing of such powerplants as "eligible renewable energy generation facilities", under the policy terms of the Guidebooks.

Our Understanding

Governor Brown signed Senate Bill X1-2 (Simitian) into law on April 12, 2011; it required that 33% of the state's electricity supply come from renewable sources by 2020. The law required the California Public Utilities Commission (CPUC) to establish a ranking or "loading" order for RPS projects, giving preference to in-state generation in each utility's RPS portfolio and limiting "disproportionate rate impacts" that might result from adherence to the new standards.

The California Energy Commission (CEC) and the California legislature are now confronted with an apparent inequity in determination of eligibility stemming from the current acceptance of landfill gas injected into natural gas pipelines transporting out-of-state fuels into California as "renewable". Certification of the use of this out-of-state biomethane by California power plants has been complicated by lack of a clear approval process incentivizing and promoting similar pipeline injection of biomethane in California to be accredited as renewable for purposes of RPS compliance.

It remains unclear whether the current RPS policy ensures in-state environmental benefits, including displacement of fossil fuels and reduced greenhouse gas (GHG) emissions in compliance with SB X1-2. The current Guidebook does not require proof that there is a direct relationship between power plant use of fuel gas containing biomethane, and either fossil fuel off-set or GHG reduction.

The CEC must now consider how the "greening" of national natural gas pipeline supplies by injection of to-specification biomethane impacts compliance with SB X1-2 and the RPS for provision and accounting of environmental benefits to California ratepayers. Since key elements of current Guidance do not meet this standard, the CEC believes the Guidance may need to be suspended until modified to meet those high standards.

General Comments

California has yet to resolve regulatory and utility roadblocks to in-state biomethane injection. Complex and often conflicting contractual inequities, policies, regulations, and laws that together, essentially prevent conversion and upgrading of the state's own organic wastes to non-fossil sourced fuel gas, as well as economical transmission of that to-specification fuel gas to the great diversity of end-users (not simply power plants seeking RPS credits). The glaring inequity of accepting out-of-state biomethane as "renewable" while disallowing in-state certification for inject and use may not be the stated reason for this potential suspension, but certainly lies as a strong motivating factor in Guidebook reconsideration.

We strongly urge both the CEC and the state legislature to take a very positive and proactive stance in this reconsideration, one that dramatically clears barriers to in-state biomethane production and use, while not attempting to dismantle the excellent progress that has been made in "greening" the fossil fuel supply with out-of-state bio-sourced fuel gas.

Interstate commerce laws impact this issue, yet have not been brought openly into the current consideration of Guidebook suspension. Displacing fossil fuel use with bio-sourced renewable fuel use is a national imperative, and the routes of commerce certainly include the energy conduit infrastructure of pipes and wires. We feel it is unconscionable for California to avoid this national "greening" imperative and the underlying Commerce Clause implication while attempting to selectively increase in-state socio-environmental benefits, especially when those same benefits might be better accrued and increased by strengthening our own capacity to quickly implement renewable biomethane projects, and by repairing the existing overtly repressive, internally conflicted energy oversight and delivery mechanism.

Specific Comments

We would ask that the CEC first observe the principle of "do no harm", to the struggling state and national economies or to the environment. In all consideration including whether to suspend the Eligibility Guidebook, the first consideration should be to not disrupt the fragile progress toward economic recovery.

It is not common practice to completely suspend a regulatory pathway to certification, and does not appear necessary to achieve the goal of compliance with SB X1-2 at this time. Rather than disrupt project timelines and quite possibly, the very bankability to those projects by Guidebook suspension, provisional emergency conditions might be created and issued by the CEC until formal changes to the Guidebooks can be developed according to the well-established formal Rulemaking procedures.

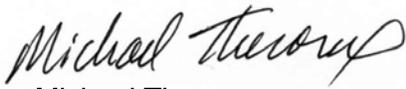
The Notice of Consideration indicates that application for RPS certification and pre-certification received prior to a formal suspension must comply with the existing Fourth Edition Guidebook policy, that application must be made *after* biomethane is being produced and injected, and shall not be granted for "future projects". Should CEC decide to suspend the Guidebook, any biomethane project development that has not reached the rather advanced stage of "production and injection" will lose assurance of RPS eligibility as a result of this very arbitrarily and unanticipated action, *after* that project has already developed pro forma depending on that certification for financing.

The need for agency reconsideration due to regulatory confusion must be tempered with the understanding that increasing uncertainty is *not* a benefit to meeting our 33% renewable goals.

Please contact me at mtheroux@jdmt.net or (530) 613-1712 if you have any questions.

Sincerely,

JDMT, Inc

A handwritten signature in black ink that reads "Michael Theroux". The signature is written in a cursive, flowing style.

Michael Theroux
Vice President

cc: Kate Zocchetti, RPS technical Director via email, kzochet@energy.state.ca.us