

STATE OF CALIFORNIA

ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

In the matter of:

Developing Regulations and Guidelines for the 33
Percent Renewables Portfolio Standard

and

Implementation of Renewables Investment Plan
Legislation

Docket No. 11-RPS-01

Docket No. 02-REN-1038

DOCKET

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**COMMENTS OF CALPINE CORPORATION
ON THE NOTICE TO CONSIDER SUSPENSION
OF THE RPS ELIGIBILITY GUIDELINES RELATED TO BIOMETHANE**

Rosemary Antonopoulos
Calpine Corporation
4160 Dublin Boulevard
Dublin, CA 94568
Tel: (925) 557-2224
Fax: (847) 484-7799
Email: rosemary.antonopoulos@calpine.com

Greggory L. Wheatland
Chase B. Kappel
Ellison, Schneider & Harris L.L.P.
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
Tel: (916) 447-2166
Fax: (916) 447-3512
Email: glw@eslawfirm.com

Attorneys for Calpine Corporation

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Calpine Corporation (“Calpine”) hereby comments on the California Energy Commission’s (“Commission”) Notice to Consider Suspension of the RPS Eligibility Guidelines Related to Biomethane, issued March 16, 2012 (“Notice”). While Calpine takes no position on the necessity or desirability of suspending the Renewables Portfolio Standard (“RPS”) eligibility for new biomethane facilities, Calpine appreciates the Commission’s intent to preserve the RPS eligibility of facilities already certified under the *Renewables Portfolio Standard Eligibility Guidebook* and to preserve the validity of existing contracts that serve California facilities. These comments are focused on ensuring that the specific terms and conditions of the proposed suspension are consistent with the Commission’s stated intent, to ensure that the terms of the suspension are consistent with current commercial practices, and to minimize uncertainty regarding implementation of the proposed suspension.

I. Comments on the Proposed Suspension

A. Consistent with current commercial practice, the conditions of suspension should recognize that biomethane supplies under a biomethane supply contract may be allocated among one or more facilities.

The conditions of the proposed suspension appear to assume that each biomethane supply contract will be associated with a single facility. This assumption would be incorrect.

In some instances, parties have certified as RPS-eligible multiple facilities, or a “fleet” of facilities, for which they may designate biomethane supplied under a single contract. An important benefit of this fleet arrangement is that it allows biomethane supplied under a contract to be designated to an alternate certified facility in the fleet where the facility originally designated for the biomethane is generating less due to maintenance or other circumstances, thereby resulting in an inability to apply the full amount of biomethane supplied to that facility’s generation.

The conditions of suspension, as proposed, may inadvertently prohibit this currently permissible commercial arrangement. To avoid this unintended interpretation, the conditions of suspension should expressly provide “Where a contract permits delivery to more than one facility, such supplies may continue to any certified facility in the fleet provided that the supply to the fleet does not exceed the maximum amount in the contract.”

In certain cases, the fleet for which supply has been contracted may contain power plants that are still pre-certified prior to the effective date of the suspension and which, due to the limited notice of the suspension, are unable to obtain certification by the effective date of the suspension. If pre-certified facilities are among the facilities served by an existing contract and cannot be certified prior to the effective date of the suspension, the supply contract (and the

benefits of the fleet arrangement) could be impaired. Therefore, Calpine respectfully requests that the Commission allow the certification of any facility which is pre-certified prior to the effective date of the suspension, provided that the supply of biomethane will not be increased or extended under the terms of an existing biomethane supply contract.

B. Consistent with the Commission’s intent not to impair existing biomethane supply contracts, use of biomethane by certified facilities during the suspension should be limited to quantities established by contracts effective as of the date of suspension.

The conditions of the proposed extension state that any increase in biomass supply or other change in the supply contract that increases the amount or availability of biomethane supplied to the RPS-certified power plant will require an amendment to the power plant’s RPS certification. However, the conditions do not define what constitutes an increase in “supply”, “amount” or “availability.”

The best way to limit increases in supply during the period of suspension would be to prohibit increases in supply above the quantity stated in the supply contract. Not only is this approach the simplest and the easiest to verify, it does not limit or impair existing contracts.

The conditions of the proposed suspension, however, suggest that any increase above the level of past *deliveries* could be barred, even if the previously delivered quantities are less than the contractual limit. Condition #3 would require power plant operators to provide adequate documentation (adequate is not defined) of the biomethane “supplied to the power plant prior to the effective date of the suspension.” Calpine respectfully suggests that if the cap on increases is the amount specified in the contract, then historical documentation of past amounts supplied is not needed. For example, a biomethane transaction may allow a supplier to provide up to a certain quantity of MMBTUs per month, but the actual supply of biomethane to a power plant may fluctuate, up to the contractual limit during the term of the contract. As long as the levels of

supply do not exceed the contract limit during the period of suspension, such supplies should be allowed.

On the other hand, if the conditions of suspension were to limit deliveries to historical levels that may be less than the contract amount, then the Commission may be inadvertently causing an impairment of lawful contracts.¹ For this reason, Calpine recommends that the Commission delete the provision in condition 3 requiring plant operators to “provide the Energy Commission adequate documentation of the biomethane supplied to the power plant *prior to* the effective date of the suspension.”

In summary, use of biomethane by certified facilities during the suspension should be limited to quantities established by contracts effective as of the date of suspension, as reflected in the following revision to condition number 4:

4. Any extension of a biomethane contract term, increase in biomethane supply above the limits specified in the contract or other change in the supply contract that increases the amount of biomethane specified in the contract and supplied to the RPS-certified power plant(s) will require an amendment to the power plant’s RPS certification. No such amendments will be considered by the Energy Commission during the suspension, and will be subject to the requirements in place when the Energy Commission lifts the suspension.

C. Certified facilities should not be limited to the biomethane sources specifically identified in the approved application, because some applications may not have specifically identified such sources.

Condition #2 of the proposed suspension provides that a “power plant’s use of biomethane is limited to the biomethane procured under contract(s) with sources that were

¹ Moreover, these limitations could inadvertently result in inconsistent treatment among certified plants grandfathered during the suspension. A facility that is certified immediately prior to suspension will have no history of biomethane deliveries, whereas the Notice could be read as limiting the biomethane use of a grandfathered facility with a history of fluctuating biomethane use prior to the effective date of the suspension to an amount under a contracted quantity.

specifically identified in the power plants application for RPS certification.” While Calpine agrees that the use of biomethane can be limited to the quantity of biomethane procured under contract(s) in effect prior to the effective date of the suspension, not all approved applications for RPS certification contain sources that were specifically identified, and some contracts for biomethane supplies allow for a maximum supply to be delivered from multiple sources. Under current commercial practice, where a supplier will deliver biomethane from a source not identified in the original application materials, then a new supplemental form (CEC-RPS-1A/B:S5) will be filed with the Commission to demonstrate and attest to the RPS eligibility of that source. In other words, the current commercial practice as approved by the Commission, allows the substitution of a new source to meet the contractual obligations under an existing contract.

Accordingly, Calpine requests that the conditions of suspension clearly authorize current practice as follows:

~~2. The A power plant’s use of biomethane is limited to the quantity of biomethane procured under contract(s) in effect prior to the effective date of the suspension with sources that were specifically identified in the power plant’s approved application for RPS certification;~~

D. The effective date of the suspension should be no earlier than the date on which the Commission has adopted, docketed and made available to the public the suspension order.

It has been the practice of the Commission to make its decisions effective no sooner than the date that a decision or order is adopted, docketed and made available to the public. In this case, the Notice proposes that the suspension will take effect at 5:00 p.m. PDT on the date of adoption. We recommend that the suspension, if adopted, become effective fourteen (14) days

after the Commission order is signed and made available to the public, so that all parties have a reasonable opportunity to take any actions necessary to comply with the terms of the order.

In addition, the Notice also proposes a requirement that “plant operators shall provide the Energy Commission adequate documentation of the biomethane supplied to the power plant *prior to* the effective date of the suspension.” This condition may be interpreted as compelling compliance with the terms of an order prior to the date it has been adopted. As we explain above, we do not believe that this data collection process is necessary. However, if the Commission is to require the submission of any additional data, the Commission should allow at least fourteen (14) days after the order is adopted in which to collect, assemble and submit this data.

II. Conclusion

Calpine appreciates the opportunity to provide these comments, and for the reasons set forth herein, urges the Commission to revise the conditions of the proposed suspension in accordance with the recommendations discussed above.

Respectfully submitted,

_____/s/_____

Greggory L. Wheatland
Chase B. Kappel
Ellison, Schneider & Harris L.L.P.
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
Tel: (916) 447-2166
Fax: (916) 447-3512
Email: glw@eslawfirm.com

Attorneys for Calpine Corporation