



WASTE MANAGEMENT

Public Affairs

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March 25, 2013

California Energy Commission
Dockets Office, MS-4
Re: Docket Nos. 11-RPS-01; 02-REN-1038
RPS Proceeding
1516 Ninth Street
Sacramento, CA 95814-5512

Via Email: docket@energy.ca.gov and RPS33@energy.ca.gov

California Energy Commission

DOCKETED
02-REN-1038

TN # 70155

MAR. 26 2013

RE: Proposed Changes to the Renewable Portfolio Standard (RPS) Eligibility Guidebook

Dear Energy Commission:

Waste Management (WM) appreciates the opportunity to comment on the Proposed Revisions to the Renewable Portfolio Standard Eligibility Guidebook, Seventh Edition ("Staff Draft Guidebook"). The proposed revisions to the Staff Draft Guidebook were released March 11, 2013, and discussed at the California Energy Commission (CEC) workshop March 14, 2013.

WM is involved in a number of renewable energy projects in California including the following:

- We operate several landfill-gas-to-electricity projects at WM landfills in California. These projects typically involve the generation of electricity by internal combustion engines that generate renewable electricity that is sold to the public and/or investor owned utilities (IOU).
- Our Wheelabrator subsidiary operates a biomass-to-energy facility in Shasta County, California. This facility accepts forest, agricultural and urban wood fuel and generates renewable electricity that is sold to an IOU.
- WM has contracts with the publicly owned utilities (POU) of Burbank and Pasadena to generate electricity from renewable natural gas provided by a WM landfill in Ohio. The renewable natural gas is delivered through common carrier pipelines to gas turbines owned by those utilities.

WM's comments are provided below.

Recertification

The Staff Draft Guidebook defines Biomethane as “landfill gas or digester gas.” (See Glossary, p. 119). *Section II: Energy Resource Eligibility Requirements* of the Staff Draft Guidebook states:

“To implement AB 2196, applicants of *all* electrical generation facilities using biomethane must submit a new application for certification or recertification, regardless of whether the facility is already certified, precertified, or pending certification, to maintain or establish its RPS status.” (See subsection 4, p. 22, emphasis added)

“To ensure the use of biomethane by RPS-certified electrical generation facilities meets the requirements set forth in this guidebook, applicants for all RPS-certified electrical generation facilities using biomethane must report certain information to the Energy Commission annually.” (See subsection 6, p. 24).

As noted above, WM operates a number of electrical generating facilities that use landfill gas to generate electricity on-site in California that is sold to POUs and IOUs. Our facilities will continue to operate under existing, primarily PURPA-based contracts as prescribed by the agreements. Notably, the facilities have had no obligation to certify their status other than meeting the requirements of a Qualifying Facility (QF) in accordance with Federal Energy Regulatory Commission definition. Traditionally, these units have been treated as utility-certified facilities. Additional language should be inserted in the Staff Draft Guidebook clarifying that these units are not subject to the certification or recertification requirements, conditions, and other proscriptions prescribed in Section II cited above.

In an effort to ease the administrative burden of reporting, we suggest exempting from the certification requirement existing biomethane facilities with dedicated pipelines, either on-site or directly from the landfill to an off-site facility. In these relatively few cases in which no change to facility operations have occurred and there is no intention or expectation of using common carrier pipeline systems to transfer the landfill gas and/or biogas, the imposition of a mandatory requirement to re-certify is unnecessary and burdensome.

Recertification for Common Carrier Pipeline Projects

WM believes that the CEC's proposed recertification process is directed at projects that import biomethane to California through common carrier pipelines. WM has two such projects. WM's two contracts with Burbank and Pasadena were fully certified in 2011 by the CEC. Both contracts were executed in August, 2011, and the delivery of gas through common carrier pipelines began on or about October 1, 2011. These contract deliveries are clearly consistent with the language of AB 2196 (Chesbro) that provides that both projects would be eligible for inclusion in Procurement Content Category 1 (PCC 1, otherwise referred to as “Bucket 1”). Rather than require a lengthy and redundant recertification of these projects that results in uncertainty with regard to the PCC, the CEC should immediately establish a “PCC Ruling Process” based on the CEC's existing prior certification of these

projects. The following section of this comment letter provides a description of an efficient and effective “PCC Ruling Process” based on the “Private Letter Ruling” concept as suggested by the Independent Energy Producers (IEP), of which WM and Wheelabrator are members.

If the CEC insists on implementing a recertification process for common carrier pipeline projects, it must be accompanied by a commitment by the CEC to expeditiously issue “PCC Rulings” to each utility regarding CEC determinations of Procurement Content Categories for the renewable electricity that meet the requirements of AB 2196, subject to further verification.

CEC Should Implement “PCC Rulings” for RPS Eligible Transactions in a manner similar to the IRS’ “Private Letter Ruling” Model as Suggested by IEP

WM endorses the “Private Letter Ruling” model suggested by the IEP in their separate comment letter on the Staff Draft Guidebook.

The Staff Draft Guidebook recognizes the role and commercial value of precertification of RPS eligible renewable facilities (see p. 23). Precertification of facilities assists the buyers and sellers in RPS transactions by providing a signal from the regulator that a particular facility will be deemed an eligible renewable energy facility if it is developed and operated as proposed consistent with the eligibility rules and standards. In this respect, precertification of the facility provides very valuable guidance to developers, lenders, as well as buyers and sellers.

This same approach should be employed for the commercial transactions between buyers and sellers to meet the Procurement Content Categories (i.e. the “Buckets”). Formal verification of RPS compliance by the CEC can only be realized after the transaction has been reported and verified. However, the CEC can and should provide up-front guidance regarding which of the Procurement Content Categories specific commercial transactions would fall if consummated *exactly* in the matter presented to the CEC for pre-review. Unfortunately, because of a lack of clarity at this time as to whether and how specific transactions will be treated in the formal verification process, uncertainty continues to exist between buyers and sellers until such time as such a PCC Ruling is rendered by the CEC.

For example, WM entered into long term contracts to deliver biomethane to the Burbank and Pasadena public utilities in August of 2011. Gas deliveries were initiated on or about October 1, 2011, and continue to this day. The delivered gas is being used by these public utilities to produce renewable energy in gas turbines that they own and operate. The use of the biomethane in these units to generate renewable energy was both pre-certified and finally certified by the CEC. Unfortunately, due to the uncertainty in the PCC category that has resulted from the controversy pertaining to imported biomethane by common carrier pipelines, uncertainty regarding the proper PCC category remains. Both the utilities and WM expect these projects to be verified to be PCC 1 eligible.

Until the CEC makes a "PCC ruling" as suggested by WM and IEP, WM is unable to recognize the full value of these contracts. The utilities are willing to compensate WM for the biomethane that, we believe, should make the power generated from this gas to be PCC 1 (i.e., "Bucket 1") eligible pursuant to AB 2196. But this cannot happen until the CEC renders a PCC determination. WM has been delivering biomethane to Burbank and Pasadena since about October 1, 2011 but has not received full payment for this biomethane as a PCC 1 fuel. This situation has lasted for 1.5 years due to the controversy surrounding pipeline biomethane that we believe has been resolved with the passage of AB 2196. WM strongly requests that such a PCC Ruling be immediately rendered for the projects to which WM is providing renewable biomethane based on the existing renewable precertification and final certification that have already been issued by the CEC for these projects. This ruling can be conditional upon final verification that the projects are operating as pre-certified and certified.

Power Purchase Agreements or Ownership Agreements

WM requests that the language on the bottom-half of page 20 be further clarified. The paragraph that begins "For POU's, the Energy Commission will consider . . ." discusses:

- "... the dates of execution of the biomethane procurement contract, and
- power purchase agreement (PPA) or ownership agreement (emphasis added)
- in determine whether the electricity procurement qualifies as either PCC procurement or count-in-full procurement provided all other requirements are satisfied."

Unfortunately, the following examples only apply to PPAs, not ownership agreements. In the case WM's projects in Burbank and Pasadena, the power generating facilities are owned by both the utilities for which there are no PPAs. These power-generating facilities have been constructed and operating for many years. For these situations, the date of the ownership agreement is irrelevant. Only the date of the biomethane procurement contract is relevant for such situations. WM recommends that the CEC add an additional example "d" at the bottom of page 21 as follows:

- d. For situations involving generating units owned by a utility (i.e., ownership agreement), only the date of the biomethane procurement contract is relevant. For contracts prior to June 1, 2010, the procurement may only qualify for count-in-full. For contracts on or after June 1, 2010 the procurement shall qualify as PCC procurement.

Pipeline Pathways for Biomethane Procurement Contracts

WM is concerned that the Staff Draft Guidebook implies that the pipeline pathway for biomethane coming to California cannot change. During the March 14th workshop, the CEC staff clarified that is not the Commission's intent. WM requests that flexibility be allowed in

pipeline pathways for bringing biomethane to California that meet the requirements of AB 2196. Pathways may change overtime due to a variety of reasons including capacity, maintenance and construction of new pipeline facilities.

Changes in Electrical Generating Units Using Biomethane

Similarly, WM understands that there may be language in the Staff Draft Guidebook that implies that a utility procuring biomethane cannot change the electrical generating units that can use the biomethane. WM requests that the CEC provide clarification that the unit using the contracted biomethane may change provided the unit is still within the ownership of the contracting utility. This is necessary to accommodate improvements in electrical generating technology that may require a change of generating units that may utilize the biomethane for which the utility has contracted.

WM thanks the CEC for the opportunity to comment on the Draft Renewable Portfolio Standard Eligibility Guidebook, Seventh Edition.

Sincerely,

A handwritten signature in blue ink, appearing to read "Charles A. White", is displayed within a rectangular box.

Charles A. White, P.E.
Director of Regulatory Affairs/West

cc: Kate Zocchetti, CEC, kate.zocchetti@energy.ca.gov