

March 23, 2012

VIA E-MAIL
DOCKET@ENERGY.STATE.CA.US**02-REN-1038****DOCKET****11-RPS-01**DATE MAR 23 2012RECD. MAR 23 2012California Energy Commission
Dockets Office, MS-4
Re: Docket No. 11-RPS-01
And
Docket No. 02-REN-1038
1516 Ninth Street
Sacramento, CA 95814-5512Re: Developing Regulations & Guidelines for the 33% RPS and Implement of Renewables
Investment Plan Legislation/Biomethane: Comments of Pacific Gas and Electric
Company on Proposed Biomethane Suspension**I. INTRODUCTION**

Pacific Gas and Electric Company ("PG&E") appreciates the opportunity to provide comments on the proposed suspension of Renewable Portfolio Standard ("RPS") eligibility guidelines related to the injection of biomethane into natural gas pipelines.

PG&E supports the continued use of biomethane injected into the pipeline for generating RPS-eligible electricity subject to the current restrictions set forth in the California Energy Commission ("CEC") RPS Eligibility Guidebook. There should be no additional restrictions imposed on the source of the biomethane, and the proposal to suspend certifications of facilities using biomethane and consideration of additional restrictions on such use may only serve to harm the development of a liquid and robust biomethane market. Clear market rules are needed to provide certainty to both sellers and buyers of biomethane, and the proposed suspension, as currently drafted, does not provide sufficient clarity as to the rules that parties will be subject to, should the suspension be imposed. Accordingly, the proposed suspension should not be adopted as issued on March 16, 2012.

**II. THE PROPOSED SUSPENSION NOTICE ADDS UNNECESSARY AND
UNCLEAR RESTRICTIONS TO MARKET PARTICIPANTS AND SHOULD
NOT BE ADOPTED**

The proposed suspension notice should not be adopted because it lacks clarity with respect to applicability of the requirements and would create a significant commercial uncertainty.

First, the proposed suspension fails to make clear that it only applies to further certification of facilities using biogas delivered by pipeline injection, not to facilities that combust biogas at the source, although that appears to be the intent and focus of the notice. For example, the first sentence beginning on page 4 of the notice, under the heading “Conditions of Suspension,” could be read as more broadly applicable. Clarity in the rules regarding applicability of the suspension is critical to market participants.

Second, the proposed suspension notice confuses facility certification with contractual obligations. For example, it is clear that if a facility that has not submitted a complete certification application by 5pm on the date that any suspension is adopted will not be certified during the pendency of the suspension. However, the suspension does not adequately address the situation in which a facility is certified, but a contract for biogas supply deliveries has not yet been approved by the CPUC or another regulatory body (given the limited time to secure that approval prior to the suspension being imposed). Should the proposed suspension notice be construed to also suspend parties’ contracting rights for the underlying biogas supplies? This type of commercial interference will inhibit the marketplace and have an adverse impact on the development of biogas resources in California and, more broadly, unfairly take a valuable tool to reduce greenhouse gas emissions off the table.

Third, the applicable limitations specified on page 5 of the proposed suspension notice do not recognize the flexibility that may be allowed in various contracts and the history of contracting between specific counterparties. For example, Limitation #3 proposes “[t]o ensure that the amount and availability of biomethane...is not increased after the suspension takes effect.” How does this apply to an approved supply contract that specifies a contract maximum and allows for delivery of less than that maximum amount? Limitation #3 could be interpreted to prohibit delivery of the contractually allowed volumes if lesser amounts have been delivered historically, which would impair an existing contract. Contract impairment should not be a by-product of this suspension. Similarly, how should Limitation #3 be applied to a situation in which the CPUC has approved a maximum amount of deliveries, but historical deliveries under amended contracts are less? Any suspension order should clarify that deliveries may continue to occur at the greater of the amount allowed for under either the terms of a CPUC resolution approving a contract or the contract itself, including allowing for amendments to contracts to increase deliveries to that maximum amount during the term of the suspension.

Finally, the CEC fails to provide an adequate policy or legal foundation to issue the proposed suspension. The notice itself acknowledges that SBX1-2, the 33% RPS legislation, did not “change the law with respect to the RPS eligibility of biomass, digester gas, or landfill gas, or specify how these renewable fuels should be used by, or delivered to, a power plant for generating electricity.” (Pg. 3). The notice therefore relies on general statutory goals and findings to support the suspension, along with other post-hoc and non-statutory rationalizations. Simply put, if the legislature had intended to restrict the existing use of biomethane, which was well established at the time that the legislature was debating and enacting SBX1-2, it could have easily inserted revisions or new provisions to effect that change. It did not do so, thereby implying that the existing laws and regulations with respect to biomethane are consistent with the

goals and legislative intent of the RPS. The CEC's reliance on non-statutory grounds, such as the lack of a national tracking system to verify biomethane sales, are even less persuasive. When the RPS program was first created, no regional (or national) tracking system for renewable energy credits existed. However, parties were subject to numerous audit requirements to ensure that RPS credits were not counted twice. The CEC should not suspend the biomethane program because tracking mechanisms are not available when other alternatives, including existing contractual and regulatory oversight provisions, appropriately address the concerns.

III. USING BIOMETHANE, REGARDLESS OF THE SOURCE, CREATES ENVIRONMENTAL BENEFITS

Allowing use of the gas pipelines to move biomethane, regardless of where it is captured, to the most efficient power plants for combustion has many benefits. First, it displaces other non-renewable fossil fuels that would have otherwise been purchased, transported in the pipeline, and combusted in the same power plants. Second, the use of biomethane at existing combined cycle gas turbine ("CCGT") generating facilities reduces the environmental impacts that would have occurred otherwise from constructing additional generating facilities that would otherwise combust the gas, or new transmission and distribution lines to get the energy generated from the facility to load centers. The current rules allow parties to efficiently use the existing pipeline infrastructure and markets to value and transport the gas, thereby reducing costs to customers. Finally, burning biomethane, regardless of the source, as a fuel source at existing CCGTs increases the availability of flexible, dispatchable renewable resources. Such capability does not usually exist with other forms of renewable resources. Electricity generated at a CCGT using biomethane does not increase the integration costs for renewables and helps enhance electric system reliability.

Thus, energy generated using biomethane – regardless of the location of the source – is and should continue to be eligible for RPS compliance. Limiting the source of inputs of renewable energy production will only serve to drive customer costs higher and impair the state's ability to achieve its aggressive energy and greenhouse gas emission reduction goals.

IV. IN-STATE BIOMETHANE DEVELOPMENT IS BEST SUPPORTED THROUGH DEVELOPMENT OF LIQUID, ROBUST, AND TRANSPARENT MARKETS

Development of a liquid and robust market for biogas, both in California and other areas, is dependent on regulatory certainty. The proposed, open-ended suspension provides just the opposite: regulatory uncertainty to parties that have reasonably relied upon the existing RPS laws to invest significant capital in developing new biogas extraction facilities over the last few years. The suspension would deprive these investments of the critical market for their products, which can help reduce greenhouse gas emissions, with just a few days' notice and with no clear time horizon for when the suspension may be lifted. This sort of regulatory uncertainty is very disruptive to the marketplace and may dissuade parties from investing in biogas facilities, to the detriment of overall market development and the achievement of the state's RPS goals.

Furthermore, California benefits from knowledge gained wherever a new biomethane facility is developed. In bringing biogas facilities to operation in any part of the United States, developers gain technical knowledge and expertise that can be leveraged to develop additional facilities at lower cost in California. Driving down the costs of development is the key to delivering RPS-eligible electricity at lower costs to California customers. Implicit in the proposed suspension is the suggestion that the Commission needs to reconsider whether out-of-state biomethane production should be eligible for the California RPS. PG&E opposes creating artificial and discriminatory geographic barriers to biomethane injection since these barriers will only increase costs to customers.

Finally, efforts to limit imports of pipeline biogas from outside of the state of California, while allowing in-state injection of biogas, could violate the Commerce Clause of the United States Constitution by placing a discriminatory burden on interstate commerce. Under the Commerce Clause, States may not unjustifiably discriminate against or burden the interstate flow of articles of commerce through economic protectionism: that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors. Recent efforts to limit the use of low carbon fuels from outside of the state of California, and the subsequent legal rulings, should be considered in determining whether it is appropriate to suspend the eligibility of pipeline biogas injection.¹

V. CONCLUSION

PG&E supports a vibrant biomethane market and continued use of biomethane, regardless of the location of its source, to produce RPS-eligible energy at in-state RPS-certified electric generating facilities. The proposed suspension notice should not be adopted.

Sincerely,


Valerie J. Winn

cc: K. Zocchetti by email (kzocchet@energy.state.ca.us)

¹ See the December 29, 2011 orders and preliminary injunction issued by the U.S. District Court for the Eastern District of California enjoining ARB from enforcing the Low Carbon Fuel Standard ("LCFS") holding that the LCFS violates the Commerce Clause of the U.S. Constitution.