STATE OF CALIFORNIA
BEFORE THE CALIFORNIA ENERGY COMMISSION

In the matter of:	)	Docket No. 11-RPS-01
	)	
Developing Regulations and Guidelines for the 33 Percent Renewables Portfolio Standard	)	Comments On: *RPS Guidebook* Scoping Workshop
	)	
	)	February 18, 2014

Comments of the Sacramento Municipal Utility District (SMUD) Pursuant To The *RPS Guidebook* Scoping Workshop

Thank you for the opportunity to provide comments on the topic of potential changes to the Renewable Portfolio Standard Eligibility Guidebook *(RPS Guidebook).* A variety of important issues were discussed at the January 28th, 2014 Scoping Workshop, and SMUD supports changes to the RPS Guidebook to address most of the issues discussed.

SMUD believes that the Scoping Workshop formulation is highly valuable, allowing a public, transparent, market and stakeholder check of how the *RPS Guidebook* is working governing eligibility for the 33% RPS. It is important for RPS stakeholders to have an early indication of potential changes the RPS staff is contemplating, to be able to weigh in on those changes, and to raise additional areas where *RPS Guidebook* changes should be considered. SMUD supports continuation of a regular scoping process for developing changes to the RPS structure.

In particular, SMUD continues to

SMUD provides answers to the CEC staff "Attachment A" issues below, as well as discussion of the other topics raised at the Scoping Workshop.

A. The definition of prime generating equipment for repowering

Per Assembly Bill 2196, the Energy Commission defines all digester gas, landfill gas, and any other biogas as a biomethane resource. However, this changed classification was not addressed in the repowering section of the RPS Guidebook, Seventh Edition, specifically the definition of the prime generating equipment for facilities that use biomethane. The Energy Commission has defined the prime generating equipment for a digester gas facility as:

> "Digester gas: the entire digester unit and internal combustion engine or combustion turbine as applicable." (RPS Guidebook, Seventh Edition, page 58)

While for landfill gas facilities the prime generating equipment is defined as:

> "Landfill gas: the entire internal combustion engine or combustion turbine as applicable." (RPS Guidebook, Seventh Edition, page 58)

The Energy Commission is seeking stakeholder response to the following questions.

1. What is the appropriate definition of the prime generating equipment for a facility using biomethane from digester gas? From landfill gas? Should the definitions be the same? Explain.

SMUD Response: There is no reason for the CEC to alter the current definition of "prime generating equipment" for a facility using biomethane from landfill or digester gas. The key concept for a repowering is that the main turbine or engine electrical generating equipment is substantially replaced, and this should not be expanded to include equipment ancillary to electricity generation, such as the gas collection or process equipment for used in landfills and digester gas facilities.

The current definitions in place for landfill gas and digester gas facilities are entirely consistent with similar definitions for other renewable resources, such as biomass and geothermal facilities, and the change in definition in AB 2196 to bring these sources under the general term "biomethane" (which was a mistake, as the AB 2196 definition of biomethane is inconsistent with other definitions and inappropriately implies that the raw output of these on-site sources could be injected into a natural gas pipeline) does not change the basic concept of prime generating equipment for these sources.

The repowering concept in the RPS Guidebook is significant only for "out-of-state" eligible renewable facilities that were in operation prior to January 1, 2005, ***and*** that were not already procured by a retail seller or publicly-owned utility prior to January 1, 2010. These facilities would be ineligible for California's RPS without a repowering. Hence, the applicability of the concept is fairly limited, and is more of a "leftover" from the early days of the RPS, when there was significant concern about existing "out-of-state" renewable resources reducing the likelihood of new investment in renewable resources. The CEC should strive to simplify the interpretation of these less-relevant today concepts as much as possible.

2. Should this definition be different for a biomethane facility receiving gas from either a dedicated pipeline (including onsite) or a common carrier pipeline? Why or why not?

SMUD Response: No, there is no reason to consider a different answer here in cases where the biomethane is cleaned up to pipeline quality and delivered to a generating facility. Again, the key concept is substantial replacement of the main turbine or engine electrical generating equipment in the existing (prior to 1/1/2005), non-procured (prior to 1/1/2010), non-CBA connected generating facility where the biomethane is used. In the extremely few instances – if any – in which these constraints would apply, the current definition is perfectly sufficient. Again, the CEC should strive to simplify the *RPS Guidebook* in these instances.

3. Should any distinction be made for separate ownership of the gas collection or process equipment and the electricity generation facility using biomethane? If so, how?

SMUD Response: No, there is no need to complicate the *RPS Guidebook* with consideration of separate ownership of the gas collection and the electricity generation facility in biomethane cases. In addition to the fact that there will be very few, if any, of the existing (prior to 1/1/2005), non-procured (prior to 1/1/2010), non-CBA connected generating facilities where biomethane is used for the RPS, SMUD's believes that the ownership of the gas collection and processing equipment is irrelevant (see previous answer).

B. Certification application deadlines relating to the eligibility date

The seventh edition of the RPS Guidebook requires applicants of precertified facilities to apply for certification within 90 days of commencing commercial operations to retain the eligibility date assigned to the facility upon its precertification. This requirement was added to ensure that the Energy Commission has accurate facility information submitted in a timely manner, and that facilities are certified before a utility claims generation from the facility for the RPS.

1. Is this a reasonable requirement? Why or why not? If this is not a reasonable requirement, is there a different timeframe for applying for certification that is more reasonable?

SMUD Response: SMUD agrees that it is reasonable to ask applicants to apply for certification and/or provide accurate facility information within 90 days of commencement of operations, but does not think that the consequence of missing this deadline should be the loss of eligible RPS generation as part of a general procurement

transaction -- and to the California RPS of eligible RPS generation. SMUD suggests keeping the 90-day requirement, but altering the current policy of changing the eligibility date of the generator as a consequence of missing the deadline. This consequence is simply too significant in most cases.

In general, the CEC should not establish administrative deadlines that lead to loss of RPS generation. As many stakeholders at the workshop mentioned, in addition to avoiding any double-counting of generation for the RPS, the CEC should strive to count as much eligible RPS generation as possible once, and not lightly establish administrative burdens such as the current 90-day, change-in-eligibility-date policy that cause the loss of that RPS generation. In this case, SMUD suggests that the status of a facility be "suspended" until the facility is certified. There may still be a potential loss of generation down the road if the suspension is not lifted, but there should be no specific deadline for this, rather a case-specific communication process aimed at lifting the suspension.

Unless the CEC establishes better monitoring of the status of pre-certified facilities, the only way in which a missed 90-day deadline will be apparent is if the transaction parties themselves realize the that this has happened. SMUD believes that RPS stakeholders are genuinely interested in certifying their facilities as expected as soon as possible, but occasionally will face circumstances that unfortunately cause such a deadline to be missed. Often, this is simply an inadvertent communication issue, exacerbated perhaps by facility startup events that take unexpected time and attention.

In these circumstances, simply extending the deadline just risks transferring the problem of one missed deadline to another missed deadline. Increasing or decreasing the consequence of a missed deadline is unlikely to achieve significant improvements in timeliness – no stakeholder is consciously weighing the consequence of not certifying on-time, which is currently quite significant, against the cost of timely certification, and deciding to wait. Rather, the RPS Guidebook is complicated, individual requirements therein are not that difficult to miss, and the challenges of starting up a facility can pull stakeholder attention away from administrative requirements. Hence, SMUD suggests suspension and an enhanced communication protocol would best serve the CEC's goals of getting timely information while counting as much eligible generation as possible and making the RPS process work more smoothly for all. Of course, this question is entwined with what happens with any changes to the pre-certification process in future *RPS Guidebooks*. – if that process is somehow altered or replaced, there likely would be some impact on the 90-day certification deadline policy.

2. Is there an alternative approach to ensure the Energy Commission receives important facility information in a timely manner?

SMUD Response: SMUD agrees that it is reasonable for the CEC to get important facility information in a timely manner. As mentioned above, a 90-day requirement after commercial operations is reasonable. SMUD believes that this will result in timely information the vast majority of the time. When this deadline is missed, a suspension and case-specific communication process is the best way to get the missing information.

It seems to SMUD that the 90-day deadline is somewhat arbitrary with respect to the timeliness of information. That is, SMUD is unaware of any information in the certification process that would cause a RPS difficulty if not available to the Energy Commission within 90 days. The general issue is getting accurate and up to date facility information upon commercial operation and on an ongoing basis, and a suspension and communication process seems like the best structure to achieve that goal without harming the RPS. Again, in addition to avoiding double counting, the CEC should strive to "count once" eligible renewable generation when it happens, not establish administrative reasons to not count that generation.

3. Should a facility remain precertified if the estimated commercial operations date passes and the facility does not submit an application for certification within the specified timeframe?

SMUD Response: Yes, if pre-certification continues into the future, a facility should remain pre-certified – or, most importantly, continue to have generation considered eligible from the beginning of operation, including any test energy. This is one of the main values of pre-certification, and this should not be lost if a certification application is not submitted on-time.

C. The definition of a dedicated pipeline for biomethane

For an electric generation facility using biomethane, AB 2196 makes a distinction between biomethane used by an onsite generating facility, used by an offsite generating facility and delivered to the generating facility using a dedicated pipeline, and used by a facility and delivered through a common carrier pipeline. With the implementation of AB 2196, the Energy

Commission defines a dedicated pipeline as follows:

> "Dedicated pipeline - for purposes of RPS eligibility of biomethane, refers to a gas conveyance pipeline that is not part of a common carrier pipeline system, that conveys biomethane from a specific biomethane producer to a specific electrical generation facility and to no other end users." (RPS Guidebook, Seventh Edition, page 118)

This definition was intended to ensure that for the RPS, biomethane delivered to an offsite electrical generation facility through a dedicated pipeline can only be consumed at the specified facility and no other.

1. Does the Energy Commission's definition of dedicated pipeline achieve the objective stated above? If not, please propose an alternative definition.

SMUD Response: Yes, the definition as it stands adequately achieves the objective stated. SMUD contends, however, that the stated objective does not fit all circumstances where pipeline delivery to an off-site facility occurs, but is not through a "common-carrier" pipeline. SMUD suggests alternative structures in the answer to question 2 below.

2. Is the Energy Commission's definition of dedicated pipeline too narrow? If so how could it be expanded while still achieving the objective stated above?

SMUD Response: Yes, the Energy Commission's definition of "dedicated pipeline" is too narrow. It does not clearly apply to SMUD's dedicated (to our use), private pipeline, and hence induces the CEC staff to consider SMUD's pipeline as involving "common-carrier" delivery, which is clearly not the case. SMUD has commented extensively on this issue in the past, and reiterates some of those comments below, suggesting alternatives that would correctly treat the pipeline delivery of biomethane through SMUD's private carrier pipeline.

The CEC staff has previously ruled that SMUD's delivery method into our pipeline from the local County Wastewater treatment facility does not comply with the requirements to be treated as a dedicated pipeline delivery. SMUD continues to assert that the delivery

method *does* comply with those requirements," since the Central Valley Financing Authority (CVFA) biogas can only be delivered to a single power plant. SMUD has previously provided comments to the CEC indicating that the CEC should designate SMUD's entire pipeline (serving only our power plants) as "dedicated" or the equivalent, rather than "common carrier", and reasserts that case here.

As the CEC understands, AB 2196 established significant additional requirements and constraints on biomethane transferred through a "common carrier" pipeline. These requirements and restrictions were aimed mostly at biomethane transported through common carrier pipelines from outside the state, and then through the common carrier pipelines within the state. SMUD does not believe that the law was intended to apply to SMUD's local pipeline. Application of the "common carrier" provisions to SMUD's local pipeline has had real life consequences to SMUD, and could have significantly larger consequences in the future, as explained below.

The CEC staff has until now concluded that the delivery method for gas injected into SMUD's pipeline directly does not meet the requirements to be seen as through a dedicated pipeline, because the pipeline used to deliver biomethane from the source connected to SMUD's pipeline to our Cosumnes power plant (CPP) also serves (upstream from the injection point) several of our other power plants.

SMUD reiterates that when the CVFA biogas is injected into the SMUD pipeline, the biogas can ***only*** flow toward and to CPP, and can ***never*** flow toward or to any of SMUD's other power plants. While it is physically feasible in principle for the flow to be reversed in a pipeline such as SMUD's, this will never happen in practice due to gas pressure in the pipeline and SMUD's practice of not injecting the CVFA biogas in circumstances that might otherwise yield a very slight chance of reverse flow.

For example, in situations where CPP is shut down, for scheduled or unscheduled maintenance, the CVFA biogas is not injected into the pipeline, and hence cannot flow to SMUD's other power plants, even if gas pressure was absent. In these cases, SMUD will either: 1) store the biogas prior to injection until CPP is restored to service; 2) deliver the biogas outside the pipeline to CVFA for combustion in the duct burners there; or 3) as a last resort, have the biogas flared at Sacramento Regional County Sanitation District (SRCSD) wastewater treatment facility. In short, the CVFA biogas can never flow to other end users on the SMUD pipeline, and hence SMUD believes that the situation fully meets the CEC Guidebook definition of a "dedicated pipeline" situation. Once injected into the pipeline, use of the biogas at CPP is guaranteed.

SMUD believes that the CEC has made a technical interpretation of language in AB 2196 and Assembly Bill 1900 that is not consistent with the intent of the legislation, and has suggested an alternative interpretation that is consistent with that intent. The CEC

RPS Guidebook defines the terms “common carrier pipeline” and “dedicated pipeline” as:

> **Common carrier pipeline –** a gas conveyance pipeline that is owned or operated by a utility or gas corporation, excluding a dedicated pipeline.
>
> **Dedicated pipeline** – for purposes of RPS eligibility of biomethane, refers to a gas conveyance pipeline that is not part of a common carrier pipeline system, that conveys biomethane from a specific biomethane producer to a specific electrical generation facility and to no other end users.

SMUD believes that the intent of the CEC in adopting these definitions was to align with the definitions established by AB 1900, but believes that the CEC had alternatives in this alignment that make more sense than the adopted definitions, as pointed out by SMUD. The definition of “dedicated pipeline” under AB 1900 reads:

> **“Dedicated pipeline** means a conveyance of biogas or biomethane that is not a part of a common carrier pipeline system, and which conveys biogas from a biogas producer to a conditioning facility or an electrical generation facility.”

Thus, under AB 1900, a dedicated pipeline can carry biomethane from any producer to any conditioning facility or electric generation facility, but not to commercial customers that typically interconnect to a common carrier pipeline. The CEC definition has added qualifiers that are not in the law that require a dedicated pipeline to connect **one** specific producer to **one** specific generation facility “… **and no other end users**…” These added requirements change the meaning of the law and have led the CEC to place SMUD’s private pipeline in the catch-all “common carrier” category.

The typical tariffs and market rules governing third-party delivery through a contract carrier or common carrier pipeline do not apply in SMUD’s case. The general understanding of what is meant by “common carrier” also does not apply. The California Public Utilities Code defines “Common carrier” as follows:

> "**Common carrier**" means every person and corporation providing transportation for compensation to or for the public or any portion thereof, except as otherwise provided in this part. (See Pub. Util. Code §211.)

SMUD’s pipeline does not meet this mainstream definition of common carrier because SMUD does not transport goods for compensation “… to or for the public or any portion thereof…”

Commercial and legal definitions of “common carrier” comport with the CPUC’s definition. For example, Wikipedia’s entry under “common carrier” includes:

> "A common carrier holds itself out to provide service to the general public without discrimination (to meet the needs of the regulator's quasi judicial role of impartiality toward the public's interest) for the "public convenience and necessity".

SMUD does provide gas transport service on our pipeline to the general public.

Wikipedia also provides a definition of "private carrier".

> "A **private carrier** is a company that transports only their own goods. [1] The carrier's primary business is not transportation. Private carriers may refuse to sell their services at their own discretion, whereas common carriers must treat all customers equally."

This is exactly SMUD's situation with our pipeline.

Similarly, a legal definition of common carrier can be found in West's Encyclopedia of American Law, edition 2.

> "A common carrier is legally bound to carry all passengers or freight as long as there is enough space, the fee is paid, and no reasonable grounds to refuse to do so exist. A common carrier that unjustifiably refuses to carry a particular person or cargo may be sued for damages."

SMUD is not legally bound to carry all gas in our pipeline, and can refuse service to any gas delivery by other parties without fear of being sued.

With the exception of the CEC's interpretation, SMUD does not operate a "common carrier" pipeline under any generally accepted definition. SMUD's pipeline is "… not part of a common carrier pipeline…" and "… conveys biogas from a biogas producer to a conditioning facility or an electrical generation facility," meeting the clear wording for defining a dedicated pipeline in AB 1900.

In fact, SMUD owns and operates a "private carrier" pipeline which is dedicated to use by our power plants only, and does not serve the public or other customers in the tradition of common carriers. If the CEC continues to not explicitly recognize the "private carrier" situation in the RPS Guidebook, SMUD maintains that it is more appropriate and more in line with the intent of the legislation to include our private carrier pipeline under the "dedicated" category rather than the "common carrier" category.

SMUD proposes three reasonable alternative structures for dedicated, private, and common carrier pipelines to appropriately resolve this issue. These alternatives are:

1. Simply use the definition found in AB 1900, and indicate in Guidebook text that any pipeline that is not a "common carrier" pipeline is considered dedicated. It would be helpful to also indicate that the SMUD pipeline, or any pipeline that serves only the power plants of the pipeline owner, is considered dedicated.

2. Broaden the definition of "dedicated pipeline" to reflect the core concepts regarding common carrier pipelines and private carrier pipelines discussed above. Here, SMUD would suggest the following definition of dedicated pipeline:

   Dedicated pipeline – for purposes of RPS eligibility of biomethane, refers to a gas conveyance pipeline that is not part of a common carrier pipeline system, that conveys biomethane from a ~~specific~~ biomethane producer to a ~~specific~~ electrical generation facility, and to no other end users other than power plants associated with the pipeline owner, and is not for hire for public gas transportation.

3. Include a definition of "private carrier" pipeline, and indicate in Guidebook text that for purposes of RPS eligibility for biomethane contracts private carrier pipelines will be treated similarly to dedicated pipelines. Nothing prevents the CEC from developing and including definitions in the Guidebook to help structure a reasonable RPS market structure. SMUD suggests the following definition for private carrier pipeline.

   Private carrier pipeline – for purposes of RPS eligibility of biomethane, refers to a gas conveyance pipeline that is not part of a common carrier pipeline system, on which only the pipeline owner has authority to transmit biomethane or gas that it has purchased, and only for use in power plants owned by the pipeline owner. For purposes of biomethane in this Guidebook, a private carrier pipeline will be treated similarly to a dedicated pipeline.

In terms of defining what is meant by a dedicated pipeline and common carrier pipeline, it is clear that the CEC definition in the Guidebook is the outlier, not consistent with common legal and general use, and (SMUD maintains) not mandated by AB 1900. SMUD urges the CEC to rectify this situation.

This issue is important to SMUD as the errant inclusion of the SMUD pipeline in the "common carrier" category has significant consequences. These consequences include:

- SMUD has spent significant time clarifying the amount of biogas delivered under the CVFA contract and the contract start and end dates. Most of this time was

arguably unnecessary without the CEC designation of the SMUD pipeline as "common carrier". For existing biomethane contracts delivered through a "common carrier" pipeline, the CEC requires specific information about biomethane quantities and contract terms in order to determine when to invoke the provisions on page 13 of the *RPS Guidebook*, which would change the biomethane procurement to the "new contract" eligibility requirements. One of those provisions is that term of the contract not be extended – hence the CEC needs to clearly understand the terms of these common carrier contracts. Another provision is that the quantity of biomethane delivered under the contract not exceed the maximum amounts in the original contract – hence the CEC needs to clearly understand the quantity amounts in these common carrier contracts. This information is only significantly important for this eligibility purpose for "common carrier" contracts, not for private carrier or dedicated pipeline delivered contracts. If the SMUD pipeline, where the CVFA gas is injected, were not designated "common carrier", SMUD contends that much of the work and time involved in resolving these issues would not have been needed, saving time and resources for both SMUD and CEC staff.

- The CVFA contract, should the "common carrier" pipeline designation for the SMUD pipeline remain in place, would be subject to the reporting requirements in the *RPS Guidebook* on pages 22-26 (Seventh Edition). These requirements appear to apply to all common carrier pipeline projects, and are extensive, involving four different spreadsheets; monthly accounting, metering and pipeline nomination reports; and any supplemental documentation the CEC determines is necessary. Since the pipeline delivery path of the CVFA contract is static, short, local, and owned by SMUD; there is no need to provide a delivery path summary spreadsheet or a transport contract summary spreadsheet. *In fact, there is not an existing pipeline transport contract for the CVFA biogas.* There is no need to provide monthly pipeline nomination reports. There is no valid policy reason to subject the CVFA contract to these reporting requirements. SMUD does not believe that the legislature intended local biogas contracts such as the CVFA contract to be subject to these reporting requirements.
- In the future, the designation of the SMUD pipeline where the CVFA biogas is injected as "common carrier" would mean the loss of eligibility for the CVFA biogas. Should the CEC accept the approximate contract term SMUD has proposed to satisfy the CEC requests, then when the contract "term" ends twelve years from now, SMUD could be prevented from extending the contract and continuing the same use the biogas for the RPS. This happens because an extension of the contract term clearly triggers a provision on page 13 of the Guidebook and moves the contract into eligibility under "new" common carrier biomethane rules. These rules, as implemented on page 14 of the Guidebook, include a provision that the biomethane must be originally injected "… into a common carrier pipeline on or after March 29, 2012…" – a condition that cannot be met by the SRCSD biogas (which has been injected into SMUD's pipeline

starting in December, 2011). Again, SMUD cannot believe that the legislature intended to phase out RPS eligibility for this local biogas resource.

- New developments of local landfill gas or digester gas projects for potential injection into SMUD's pipeline would also be subject to the eligibility rules for new biomethane projects injected into a common carrier pipeline found on page 14 of the Guidebook. SMUD contends that there is no legitimate policy reason to impose the costs of proving that these eligibility requirements are met for such injections to SMUD's private carrier pipeline. SMUD has considered increasing the renewable generation available from some local landfills by investing in cleanup and connection facilities to transport the gas to our pipeline, and the costs of proving new, common carrier, pipeline eligibility will affect the prospects of these developments.

D. Energy storage facilities

The RPS Guidebook, Seventh Edition, provides requirements regarding the use of energy storage devices that are operated as part of a renewable electrical generation facility that is eligible for the RPS. If the energy storage device(s) and the renewable generation are metered as a single facility, they can be treated as a single electrical generation facility in a certification application. At this time, energy storage devices that are not operated and metered as part of a single renewable electrical generation facility may not be certified.

Stand alone energy storage devices are not inherently renewable, nor can they produce any electricity without consuming a greater quantity of energy than is discharged from the device.

1. Should energy storage facilities not directly connected to or metered as part of a renewable electrical generation facility be eligible for RPS certification? If so, how can the Energy Commission ensure that the output of the energy storage device is from a renewable electrical generation facility, and that no double counting of the renewable generation occurs?

SMUD Response: SMUD believes that the CEC should explore how stand-alone storage facilities could produce RPS eligible generation. SMUD agrees that energy storage devices are not inherently renewable, nor can they produce any electricity without consuming a greater quantity of energy than is discharged from the device. SMUD also believes that in order to have output generation that is considered RPS eligible, a stand-alone storage facility must have a commensurate amount of eligible renewable generation as input energy. Normally, a procuring entity would want to count the eligible renewable energy on the input side to achieve maximum RPS credit, forgoing any attempt to count the output energy for the RPS.

However, storage is considered a potential "clean" source of valuable system flexibility services and capacity for resource adequacy, and additional storage is being proposed

as a matter of state policy (e.g. SB 2514). Most storage options are also relatively expensive today, and policy incentives may be required to elicit storage procurement that reflects the system benefits that may derive from installation of storage options. This gives the CEC some rationale for exploring one feasible incentive for clean storage – possible RPS eligibility for the storage output.

One way to do this would be for the CEC to establish a system whereby eligible renewable generation is tracked in WREGIS as "input energy" to a WREGIS registered storage facility. If sufficient input energy is invested to reflect the registered and verified conversion efficiency of the facility, then the commensurate metered output of the facility (also tracked in WREGIS with a different certification number) might be considered to be fully consist of eligible renewable energy In effect, input renewable energy would be "retired" in WREGIS to a storage unit's account, and that storage unit would then be able to provide output renewable energy in a reduced amount reflecting the storage losses.

2. Given the inherent energy losses in storing electricity is there any benefit for utilities to procure renewable energy that has been stored in an energy storage device rather than directly procuring it from the renewable generator and allowing generic grid electricity to be stored? Explain. Do these benefits remain if delivery to the energy storage device requires firm transmission or another delivery arrangement similar to electrical generation facilities not interconnected to a California Balancing Authority to provide a Portfolio Content Category 1 product?

SMUD Response: SMUD believes that the only RPS-related benefit that could come from renewable energy as output from a storage device, rather than counted directly on the input side, is that the storage output would be structured to help utilities in an RPS compliance obligation. The overall RPS procurement percentage obligation is best met, in general, on the input side, where a greater amount of renewable generation can be counted. However, storage might be beneficial in meeting one of the more detailed RPS requirements, such as the Portfolio Content Category 1 requirement.

In this case, a storage facility might be constructed so that the output would be considered PCC1 if renewable, based on the location and delivery characteristics of the facility. Hence, if the input to the facility can be proven to be renewable, regardless of the PCC category, the output from the facility could help meet the PCC1 requirement. The storage facility would presumably bring the exact benefits the legislature desired with a PCC1 resource – new development and jobs, resource adequacy, etc., simply as a function of its development and location/delivery characteristics, even if charged up with grandfathered, PCC2 or other renewable resources.

Of course, these input resources could not also be used for the RPS – that would be double counting – and SMUD's suggested structure above is one way of ensuring against that double counting. Since there would be losses, the only reason in SMUD's mind that such a facility would be built, rather than taking RPS credit for the input energy, is the possible value of PCC1 compliance. SMUD thinks that the costs and operational characteristics of storage technologies (inherent losses) will prevent any real misuse of this PCC1 compliance option. However, to the extent that there is concern about how this new kind of facility may work in the RPS structure, the CEC should monitor development and operation to determine if any changes to RPS eligibility structures of such facilities should be established.

3. Should energy storage devices be allowed to shift delivery times for Portfolio Content Category 1 deliveries? Why or why not? If yes explain how this could be verified.

SMUD Response: Yes, but there would seem to be little reason to construct an expensive storage facility and count a reduced PCC1 amount of energy (compared to counting it directly) simply to shift delivery times. If a storage facility was built to provide flexible and local power at particular times for ancillary services or resource adequacy purposes, SMUD sees no reason why that facility would use PCC1 energy as an input, rather than counting that energy directly. There is no policy reason to disallow the concept, however.

With respect to verification, SMUD suggests it is not important to verify the timing of the input generation to the facility, and that timing of the output energy can be verified like the output of any other PCC1 generator. SMUD agrees that the output of a storage facility that meets the criteria for PCC1 generation (location, scheduling, etc.) should be considered PCC1, even if the input comes from other PCC or grandfathered generation.

E. Precertification

The Energy Commission currently offers precertification for electrical generation facilities that have not yet commenced commercial operations, or for facilities that have commenced commercial operations, but are not yet using an eligible renewable energy resource to generate electricity. The precertification of a facility is intended to provide the applicant an initial staff evaluation, based on the information provided, about whether the facility would meet the requirements of the RPS Guidebook in place when the precertification application was submitted to the Energy Commission. The status of precertification does not guarantee that the facility will become RPS certified, nor does it allow precertified facilities to apply for certification under the same eligibility requirements. Certification applications are evaluated under the RPS Guidebook in effect when the Energy Commission receives the certification application. The Energy Commission receives more applications for precertification than certification, and many precertified facilities fail to apply for certification or notify the Energy Commission that the project has been delayed or failed. This results in skewed data for the Energy Commission's electricity planning functions and unnecessary cost to administer the RPS program. In addition, precertification may send the wrong signal to utilities and financial institutions that are investing in precertified projects.

1. Are market participants, including facility owners, utilities, investors, or other stakeholders aware of the intended use of precertification, or is precertification being represented as having a different value intended by than the Energy Commission?

SMUD Response: Yes, market participants are generally aware of the intended use of precertification, and no market participant to SMUD's knowledge is representing precertification as having a different value than intended. No one views or represents a precertified status as a 100% guarantee of obtaining RPS certification. However, precertification does have two values, as mentioned at the Scoping workshop. First, obtaining precertification serves as a useful indication to investors that a proposed project meets the RPS requirements at the time proposed, and hence is likely to ultimately obtain RPS certification. This can help projects achieve financing, or lower the cost of financing, so that project development can occur.

Second, as currently constructed by the CEC, precertification has the value of establishing eligibility for RPS generation from the facility from the initial time of generation, including eligibility of "test energy". Without precertification, and with certification not allowed until a facility comes on-line, it would be inevitable that the initial generation for some period of time would be not be considered RPS-eligible generation. For this reason alone, precertification should continue, or be replaced by a structure that preserves the eligibility of this initial RPS generation from a facility.

2. Could the renewables market reasonably adjust to the elimination of the precertification process? Why or why not?

SMUD Response: SMUD believes that that the market could adjust to the elimination of precertification if, and only if, there was: 1) a process where the eligibility date for a facility could be established prior to the certification application so that all initial generation can be counted for the RPS (generation can be loss otherwise since the certification application currently is only allowed to be submitted when a facility has already achieved commercial operation); and 2) a process where the parties to a transaction could get an initial indication that the proposed facility is eligible at the time – to aid in obtaining financing or reducing the cost of financing so the facility can get built.

3. Could test energy, which is generated before a facility commences commercial operations, be made RPS eligible through other means than a precertification?

SMUD Response: SMUD suggests that, if precertification is considered cumbersome by the CEC staff, alternative methods of counting test energy, or any energy prior to the certification application date, could be developed and end up being less cumbersome. This only addresses one of the two "values" of precertification, however, albeit perhaps the most important one in SMUD's view.

For example, on this topic the CEC could alter the certification process so that when a newly constructed facility applies for certification – upon achieving commercial operations – the eligibility date can be requested in the certification application so that test energy is included as eligible. SMUD is not aware of any solid reason that RPS eligibility per se must correspond to the certification application date, and in fact the precertification process allows an earlier date. The potential earlier eligibility date that comes from precertification could be simply built into the certification process, in SMUD's view. For existing facilities under a new contract, the eligibility date could again be requested in the certification application to correspond to the actual beginning date of energy delivery under the contract.

4. What measures should the Energy Commission take to ensure that applicants for precertification fully intend to complete the development of the planned facility and commence commercial operations?

SMUD Response: SMUD does not support any additional steps or actions as part of the existing precertification process in order to monitor or ensure project development – that is not the CEC's role. SMUD believes that part of the CEC's concern with precertification is that the application is nearly as comprehensive and time-consuming to prepare and to review as an actual certification application. SMUD understands a concern that CEC staff time may be inordinately taken up in precertification application review for projects that eventually do not get built. SMUD does not believe that adding to the precertification process some review of project development "intent" will alleviate the perceived problem.

Rather, SMUD suggests that the CEC consider reducing staff time on precertification applications by reducing the complexity of the process to the minimum amount of information required for the financing value represented above, along with incorporating the eligibility date change recommended above in the certification process. These steps, in SMUD's mind, will reduce the number of precertification applications received (because the eligibility date connection would be removed) and reduce the amount of time needed to review the remaining applications (because there would be less material to review).

Once precertified, SMUD does not believe that CEC staff need to spend time monitoring a project or be concerned about the project's development (until it is actually developed) – there is no real staff time used simply to keep a precertified project on the books. However, if the CEC is interested in reducing the current volume of precertified but not developed projects, SMUD suggests that CEC staff or a consultant take on a one-time task of reviewing the current list for projects that are substantially beyond their expected on-line date, and attempting to reduce the number of "inactive" precertifications" through some kind of targeted communication with the project applicants.

5. Can the precertification process be revised to provide greater assurance to developers and the renewable electricity market? Can greater assurance be provided without guarantying the certification of a precertified facility or without evaluating the certification application under the edition of the RPS Guidebook used to precertify the facility?

SMUD Response: SMUD believes that increasing the degree to which a precertified status guarantees ultimate certification of the project will have a beneficial impact on the

market. Regulatory certainty is valuable to project developers, and the CEC should do everything within its statutory discretion to advance the regulatory certainty of the RPS program. SMUD has contended before and still believes that as long as a project being pre-certified does not materially change as it progresses to certification (in technology, etc.), it could be evaluated under the guidebook in place for precertification. Hence, if the CEC changes minor RPS requirements in new guidebook versions, the precertified project that does not materially change would be grandfathered rather than rendered non-eligible due to some small program change. SMUD would be willing to consider a proposed time limit for the applicability of the precertification guidebook, so that the potential grandfathering timeframe would be limited.

F. Application of new eligibility requirements to RPS certified facilities

The Energy Commission has historically applied changes in RPS eligibility requirements on a prospective basis. For example, when a change in law resulted in a revision to an eligibility requirement, the change affected facilities applying for certification after the law was implemented in the RPS Eligibility Guidebook. As a result, facilities certified under a previous RPS Guidebook remain RPS certified without demonstrating compliance with the revised RPS Guidebook, and may retain benefits no longer provided to facilities newly seeking RPS certification. The Energy Commission is particularly interested in the following areas:

1. Assembly Bill 1954 eliminated the Energy Commission's discretion to set a de minimis amount of fossil fuel used at an eligible renewable energy resource to count toward the RPS as renewable. AB 1954 set the de minimis amount of nonrenewable fuel at two percent with an allowance of up to five percent under specific conditions. Specific information can be found in Sections III.B.2 and 3, of the RPS Guidebook, Seventh Edition.

2. Assembly Bill 3048 requires all existing small hydroelectric facilities that commenced commercial operations before January 1, 2006, to have been under contract to or owned by a retail seller or local publicly owned electric utility as of December 31, 2005, to be eligible for the RPS.

3. Senate Bill X 1-2 requires the electricity generated by an existing facility that commenced commercial operations prior to January 1, 2005, and has its first point of interconnection to the transmission network within a non-CBA outside California, to be procured by a retail seller or POU as of January 1, 2010, in order for the existing facility to be RPS-eligible.

The Energy Commission is seeking stakeholder response to the following questions.

1. Should the Energy Commission hold all RPS-certified facilities to the requirements of all subsequent RPS Guidebooks even if new requirements are established after the facility becomes certified? Why or why not?

SMUD Response: No, the CEC should continue its historical practice that provides renewable projects regulatory certainty that, once certified as RPS eligible, the facility

retains that eligibility at least through the end of the procurement contract/ownership agreement under which or for which it was certified. Requiring renewable projects to meet unknown future requirements would add substantial risk to project developers that would likely discourage new development, and would increase RPS costs to reflect the increased risk. Again, regulatory certainty is valuable to project developers, and the CEC should do everything within its statutory discretion to advance the regulatory certainty of the RPS program.

2. What would be the impact, if any, on utilities if an RPS-certified facility that does not meet the requirements of the current RPS Guidebook was required to re-certify under the current guidebook? What would be the impact, if any, on owners of these noncompliant facilities?

SMUD Response: SMUD does not support requiring recertification every time the RPS Guidebook is changed, even if limited to some subset of facilities that "… do not meet the requirements of the current RPS Guidebook…" The phrasing of the question is odd, as if a facility "… does not meet the requirements…" it may be difficult to recertify the facility to meet those requirements. SMUD believes that the intent of the question is really to ask whether facilities that might be affected by a RPS Guidebook change should be required to verify that they still meet the latest eligibility requirements as changed.

As mentioned, SMUD does not support changing the current RPS policy in any way that would reduce regulatory certainty. The impact of this potential change on utilities could vary from a utility ending up non-compliant when they acted in good faith to procure eligible renewables. For example, a utility that in good faith procured a significant portion of its compliance obligation from an eligible facility that is then stripped of eligibility near the end of a compliance period would have few, if any, and likely expensive, if available, substitute procurement to bring in for compliance. In addition, the regulatory uncertainty for project developers would lead to higher costs (to compensate for the risk of being stripped of eligibility) and fewer compliance options available (as less development would occur).

With respect to previously RPS-eligible facilities, it is likely that the loss of RPS-certification would cause the facility to no longer be a viable generator going forward, causing economic harm to those facility owners. In addition, loss of these facilities would of course impact the success of the RPS, the cost of the RPS, and the contribution of renewable generation to the overall electricity system depended upon by California's electricity consumers.

In addition, there would be an increased administrative burden for the CEC staff and RPS stakeholders that would come from reviewing and recertifying the existing fleet of renewable generation. The CEC should not lightly take on this burden, and impose the associated burden on RPS stakeholders.

3. If the eligibility of a facility is rescinded, or revised, due to a change in the RPS Guidebook or law, when should the change in the eligibility go into effect? When the law went into effect, upon adoption of the revised RPS Guidebook, or at some other time?

SMUD Response: SMUD believes that the CEC should avoid changes to the RPS Guidebook that would increase regulatory uncertainty, as this will simply increase RPS costs and threaten compliance. SMUD understands, however, that the CEC must at times respond to legislative changes affecting the RPS. When that happens, the CEC should strive to implement the legislative change so that currently eligible facilities are grandfathered until the end of their current contracts or useful lives, as most often allowed by changes in law.

With respect to when a change in eligibility should go into effect, SMUD suggests that this decision depends upon the circumstances. If the CEC is simply changing or updating a Guidebook, the change may be best made effective from the date of Guidebook adoption or some future specified date, while grandfathering facilities certified at the time of the change. However, if there is a change in RPS law enacted by the legislature, the structure of that legal change may imply an effective date that is different than when the changes enacted by the law are reflected in the adoption of a new RPS Guidebook.

For example, SBX1 2 was a comprehensive RPS revision that established a variety of RPS obligations pre-dated to January 2011. SMUD believes that the overall RPS compliance, portfolio content requirements, clear eligibility of unbundled RECs as PCC3 resources, are in place due to SBX1 2 from January 2011 forward. Hence, SMUD supports the CEC determination in the Seventh Edition of the RPS Guidebook that the new eligibility for water conveyance hydro facilities between 30 MW and 40 MW established by SBX1 2 began on January 1, 2011, rather than the effective date of SBX1 2, or some later date when an implementing RPS Guidebook is adopted.

SMUD similarly believes that the CEC should consider PCC3 procurement as eligible from January 2011 forward, and not from the date that the RPS Guidebook may have changed to reflect SBX1 2. Hence, SMUD contends that the distributed PCC3 procurement SMUD has been accumulating and counting for the RPS should be

considered eligible at least from January 2011 forward. Limiting the eligibility here to a later RPS Guidebook date merely removes generation that would normally be available to SMUD and other RPS obligated utilities from January forward for no particular policy reason.

On the other hand, if a change in law acts to restrict RPS eligibility, the earlier questions of regulatory (and here legislative uncertainty) are brought into the picture, and SMUD recommends that the CEC strive to use its regulatory discretion, if available, to avoid removing eligibility from already certified resources. For example, when AB 2196 was enacted, it changed the going forward eligibility conditions for certain biomethane contracts, but explicitly grandfathered contracts that had already been signed and reported to the CEC. Here, as described in more detail below, SMUD again encourages the CEC to use its regulatory discretion to implement the law while avoiding wherever possible causing existing RPS facilities to lose eligibility or incur additional costs. The Seventh Edition of the RPS Guidebook, and subsequent implementation steps by the CEC staff, have not embodied this principle as much as SMUD would have expected, and some change here in future Guidebooks is warranted.

4. To implement such requirements should RPS-certified facilities be required periodically re-certify, or re-certify due to the adoption of a new guidebook or the close of an existing contract?

SMUD Response: SMUD does not believe the CEC should change its historical practice here and require any periodic recertification – this will simply increase regulatory uncertainty and raise RPS procurement and administrative costs well beyond any possible benefit of such a blanket policy. SMUD believes that generally an Amendment to Certification is necessary at the start of a new contract with a facility, but thinks that this is already structured by the RPS Guidebook adequately, and does not need to change. Again, regulatory certainty is valuable to project developers, and the CEC should do everything within its statutory discretion to advance the regulatory certainty of the RPS program.

In addition to the topics raised by CEC staff for the Scoping Workshop, addressed above, several additional topics raised by stakeholders were discussed, and SMUD comments on these topics below.

G. Retroactive REC Creation And Use Of Interim Tracking System.

One topic at the Scoping Workshop involved another instance where administrative requirements currently threaten the ability to fully count generated and fully eligible RPS procurement. The general issue here is similar to the earlier CEC-staff question about the 90-day deadline for certification after commencement of operations – that requirement is also causing the potential loss of viable RPS generation for merely administrative reasons. Here, the issue is the requirement that RPS generation be tracked in WREGIS, since the Interim Tracking System is currently no longer available per the RPS Guidebook.

While SMUD agrees that RPS generation should be predominately if not entirely tracked in WREGIS, that system has administrative barriers that in some cases reject fully eligible generation. For instance, SMUD has procured energy from a counterparty for which WREGIS is currently refusing to create certificates for the initial months of generation, due to an administrative oversight, and the WREGIS requirement that generation from a facility can only be automatically tracked starting approximately 3 months prior to generator registration. In this case, the generator was not fully registered as expected, though it was thought that that had happened, and mitigating circumstances caused this fact to be realized too late to get full WREGIS accounting of the generation. WREGIS does have a potential solution for counting this generation, but it requires a request by the CEC to WREGIS and it appears that mostly administrative barriers at the CEC may prevent that request from being made.

SMUD believes that the CEC should strive not to under-count renewables towards meeting California RPS in situations such as this. The CEC should consider either extending the ITS – an option fully within its control and within the scope of a Guidebook revision, or there should be a viable, CEC-sanctioned path for creating retroactive certificates in WREGIS to cover this and similar cases. This may ultimately be addressed by changing WREGIS rules to avoid the need for a CEC request to WREGIS for this activity. Until that potential change happens, SMUD believes that the CEC should consider continuation of the ITS.

Some of the current issues resulting in potential ‘non-counting’ of eligible generation are the result of the new RPS requirements on POUs from SBX1 2. The POU community was not and officially required to participate in WREGIS until the CEC regulatory process implementing SBX1 2 was final, on October 1, 2013. At that time, the CEC had already decided in the RPS Guidebook that POUs could not use the ITS for any generation after October, 2012. However, this end date for the ITS was arguably arbitrary – not linked to any particular compliance deadline or requirement in SBX1 2.

Given that compliance for POUs began in January 2011, and the POU enforcement regulations were not completed until October of 2013, over 90% through the first, 2011-2013 compliance period, SMUD suggests that the end of the ITS be reconsidered in the RPG Guidebook. Getting RPS compliance structures, registrations, etc. up and running for the POU community is happening, but has been complicated by the uncertainty of regulations not being final. A reasonable extension of the use of the ITS is feasible and is reflective of the "starting" nature of the RPS obligation for POUs.

There is precedent for an ITS extension, for retail sellers prior to SBX1 2 being enacted and as WREGIS was being established. For retail sellers, the Interim Tracking System was established and used for the RPS for 2004 through 2007 (initially), with the December, 2007 RPS Guidebook stating that WREGIS would be used starting in January 1, 2008. However, that start date was going to be problematic for the three main obligated entities under the RPS, the large IOUs, due to legal disputes with WREGIS rules, so the same RPS Guidebook gave the large IOUs another four months to start using WREGIS, until May 1, 2008. Even that proved insufficient, however, as WREGIS was starting up. There was general difficulty getting generators to register as required and appropriately with WREGIS. In the December 2010 Guidebook, then, the CEC memorialized this difficulty by stating that the new date for stopping use of the ITS was generally January 1, 2009. Even then, however, the CEC recognized that there would be instances where the ITS may still be necessary after that date, and the Guidebook stated that: "For months in which WREGIS data are unavailable, the ITS may be used with advance Energy Commission staff approval". (December 2010 RPS Guidebook, page 67). This case by case use of the ITS was sanctioned through the end of 2010, or the end of the RPS process that was replaced by SBX1 2.

There is no doubt that using WREGIS is preferable. SMUD and other POUs will continue to track the vast majority of their generation in WREGIS, but allowing an extension of the use of ITS for the initial implementation of the RPS for POUs seems reasonable and commensurate with the leeway originally provided for retail sellers. Due to an apparent confusion between different parts of the May 2012 RPS Guidebook, it was unclear whether the deadline for POU use of the ITS was the beginning or the end of October, 2012, and this was clarified later as the end of that month. However, the POU community has not been provided with any extension of ITS use similar to that provided earlier to retail sellers, while facing similar "startup" issues. SMUD recommends that the POU community at least be allowed to use the ITS on a case-by-case basis through the end of the first compliance period for the RPS – up to January 2014, a similar not as long extension as that provided for retail sellers in 2010. Alternatively, SMUD recommends that all RPS obligated entities be allowed to use the ITS on a case-by-case basis until either WREGIS or CEC rules are changed to allow for easier creation of retroactive RECs.

H. Reconsidering How Distribute Generation Counts For The RPS

There was a lengthy discussion at the Scoping Workshop about the difficulties that smaller, distributed renewable systems are facing with respect to RPS participation. Many stakeholders suggested that the CEC should examine this participation issue, and consider ways to make it easier for distributed generation to count for the RPS. The issues facing these distributed generators include:

1) The requirements for expensive revenue-quality meters, similar to those required for larger generators, even for distributed solar systems already installed without those meters. There does not appear to SMUD to have been adequate CEC consideration of the cost of this requirement for these smaller systems (a significantly greater percentage of total system costs), of how aggregation of systems (as required) would tend to achieve the same level of accuracy as individual meters due to up and down errors tending to cancel out, and consideration about how smart meters may in the future interact with distributed systems in a way that makes the added cost of an additional meter (beyond the inverter on the system) even more clearly an unnecessary cost.
2) The transaction costs of aggregation of these systems into units that can viably participate in WREGIS, as required for the RPS (outside of the ITS issue discussed above). These costs are significant, particularly as systems are set up to allow more automation, rather than hand entry and hand checking of data prior to WREGIS submission. The CEC should consider an alternative tracking structure for these systems until participation in WREGIS is made easier through automation and potential changes in WREGIS rules (such as the limit on aggregation to units of no more than 250 kW initially). The WREGIS aggregation and participation cost is a particularly vexing issue for the "excess" generation covered by AB 920 programs, which is generally so small that toiling to get included in the RPS does not make sense.
3) The fact that these systems have been deemed to fall within PCC3, the lowest value RPS category, even though they meet all the requirements of PCC1 other than the questionable "bundled" requirement. Even if the first two issues above are addressed, expansion of an entities distributed generation beyond a certain amount will lead directly toward the 10% limit on PCC3 procurement, potentially rendering any further participation in the RPS void.

Because of these issues, distributed generation participation in the RPS is likely to be severely constrained. With the potential loss of SB 1 incentives, the challenges to net-metering, and the potential loss of federal tax credits, participation in the RPS may be the one remaining state policy tool that acts to help achieve the Governor's 12000 MW DG goal, but this policy tool is currently almost toothless for this purpose.

I. Treatment Of Biomethane In The RPS Guidebook

At the Scoping Workshop, stakeholders raised concerns over how post-AB 2196 implementation could potentially negatively impact dairy and digester gas projects, which could not have been the intent of the law. The CEC staff acknowledged that a significant number of these on-site systems are currently suspended, due to difficulty following the CEC requirements implemented for AB 2196. SMUD believes that the CEC has regulatory discretion under the law to change from the current under burden on these systems, and does not believe that the Legislature intended such a large burden for on-site digester gas and landfill gas generators. SMUD simply repeats below some of its previous comments on the biomethane implementation as examples of issue and concerns that should be reexamined by CEC staff in the next Guidebook.

A. Nothing in AB 2196 Authorizes the CEC to Prohibit Switching Designated Facilities for Biomethane from a Particular Source.

In a change from the Biomethane Concept Paper, the Guidebook now prohibits switching a pre-March 29th, 2012 contract from one designated generation facility to another. SMUD does not see the need for this change, and believes that the treatment in the Guidebook is in fact contrary to the intent of AB 2196 – to grandfather existing contracts signed prior to March 29th, 2012 under the existing rules – in place when the contracts were legitimately signed. Unlike the "reported to" requirement discussed above, AB 2196 says nothing about the "designated facility" in establishing requirements for pre-March 29th, 2012 contracts in Section 399.12.6(a)(1), nor does or "change in designated facility" appear in Section 399.12.6(a)(2) describing changes that may trigger of the applicability of new biomethane rules established under section 399.12.6(b).

The CEC got this right in the Biomethane Concept Paper – switching designated facilities should be allowed, not prohibited -- and there are many legitimate reasons to structure a shift in biomethane use from one facility to another

First, the prohibition against switching facilities has the potential to leave some "grandfathered" contracts stranded, with no recourse for the contracting utility. For example, SMUD has a pre-March 29th, 2012 biomethane contract for which there is no clear designated facility at present (pre-certification for the facility was denied by the

CEC in 2009), and this new requirement, which is not in the law, could retroactively strand this procurement. SMUD can see no rational policy basis for this result.

Second, the prohibition against switching creates uncertainty in circumstances where a facility designated for use in a biomethane application has to shut-down for an extended period. Would the contracting utility be allowed to count as eligible alternate generation while the designated facility is down, and would the utility even be allowed to count generation from the contract once the designated facility is back on line? Such a rule constrains RPS eligibility in ways that AB 2196 does not.

Finally, a prohibition on switching designated facilities could prevent utilities from using biomethane in the most efficient plants possible. SMUD is aware that some POUs expect to switch the designated facilities for some biomethane contracts from their currently designated facilities to new, more efficient facilities coming online. The State generally promotes such actions to improve efficiency and keep the RPS affordable, but here the proposed Guidebook language may prevent them. The Guidebook would not appear to prevent a new biomass facility from using the same amount of fuel more efficiently to produce more renewable energy. SMUD can imagine no legitimate reason to prevent such switching.

B. The CEC Should Be Careful To Avoid Additional Eligibility Requirements For Biomethane Contracts Delivered Through A Common Carrier Pipeline And Signed And Reported Prior To March 29, 2012.

As mentioned earlier, SMUD believes that AB 2196 had two main intents: 1) to grandfather existing biomethane contracts under existing rules – in place when the contracts were legitimately signed; and 2) to establish new rules for biomethane contracts signed on or after March 29, 2012. Section 399.12.6(a)(1) is the main section covering the first intent, applying to existing biomethane contracts involving delivery through a common carrier pipeline, and requiring that these contracts generally be processed under the "… rules in place at the time the contract was executed, including the Fourth edition of the Energy Commission's Renewable Portfolio Standard Eligibility Guidebook …", if the sources for the contracts are producing biomethane prior to April 1, 2014.

Other sections of AB 2196 appear, however, to apply to "all" biomethane contracts, as they do not refer to contracts signed either before, or after, March 29, 2012 (specifically, sections 399.12.6 parts (c), (d), (f), and (g)). There is an apparent conflict between these sections of AB 2196 and 399.12.6(a)(1), and SMUD contends that the CEC must give full weight to 399.12.6(a)(1) by avoiding the implementation of any additional requirements from the other sections in AB 2196 for the existing contracts covered by 399.12(a)(1).

SMUD understands that in the Third and Fourth editions of the RPS Guidebook, there is language reserving the right of the CEC to ask for additional information related to information provided in the certification applications processed under those Guidebooks. It would appear to SMUD that none of the additional information being considered by the CEC would be inconsistent with applications filed under these previous Guidebooks, so that there may be no eligibility issues that arise with the new information. SMUD would vigorously contest any determination of ineligibility of a resource covered by 399.12.6(a)(1) based on an interpretation of lack of conformance to the newly required information provisions. SMUD does not believe that AB 2196 allows such a result.

C. The CEC Should Minimize The Additional Administrative Burden Necessary To Achieve The Requirements Of Sections 399.12.6(c), (d), and (f).

AB 2196 contains a definition of biomethane that explicitly includes all landfill and digester gas resources, even if these resources are not cleaned up to the pipeline-quality gas previously defined by the CEC as "biomethane". In addition, several provisions in AB 2196 appear to apply to all sources of biomethane, including facilities that are simply those using landfill gas or digester gas on-site, rather than being injected into a common carrier pipeline, although the intent of the legislation was to clarify eligibility of historical contracts delivered through common-carrier pipelines and to establish new rules for such resources post March 19, 2012. SMUD encourages the CEC to interpret these provisions of the statute to avoid unnecessary and retroactive procedures to re-verify the eligibility of existing small landfill gas or digester gas facilities.

Rather than ask these existing, smaller sources to reapply, to provide additional environmental attributions beyond those already contained in certifications to date, to annually report information that is not germane or unavailable, or to participate in an unnecessary and duplicative tracking mechanism, SMUD recommends that the CEC simply deem any existing, certified, project that is not delivered through a common carrier pipeline already compliant with any new protocols or structures implemented per AB 2196.

For example, SMUD contends that there is no point for facilities that use biogas (biomethane) on-site to participate in the tracking system described in 399.12.6(d) in the same manner as facilities using a common carrier pipeline. Section 399.12.6(d) requires the CEC to require compliance with a tracking system equivalent to WREGIS, but does not require the CEC to establish identical requirements in this tracking system for on-site facilities versus facilities delivering through a common-carrier pipeline. Section 399.12.6(d) requires the tracking system that the CEC establishes for this purpose, if any, to be equivalent to WREGIS, and for on-site generation, this is already

the case. The CEC simply has to recognize this, and indicate that the AB 2196 tracking requirement is already met for these sources. Here, there is no difference between on-site biogas use and generation from a biomass facility (or other renewable generator, for that matter) – there is no chance that the fuel could go elsewhere and no greater chance that the relevant attributes might be double-sold, given participation in WREGIS. Establishing a duplicative tracking system in these cases is simply an extra burden for these facilities, with no purpose.

One presumes that the annual information filing requirements described on pages 39-42 of the Guidebook (redline/strikeout version) is intended to provide information for the additional biomethane tracking the CEC envisions per AB 2196. If so, then it is clear that these requirements do not make sense for biomethane used on-site. Every page and segment talks about biomethane pipeline nomination reports, storage nomination reports, delivery paths, points of receipt, points of delivery, pipeline names, amounts "injected" into a pipeline, etc.

Section 399.12.6(c) requires all electricity products using biomethane to provide sufficient environmental attributes to ensure that there are zero net emissions associated with the production of electricity from the generating facility using the biomethane. This section goes on to state that the provisions in the subdivision shall be applied in a manner consistent with the definition of "green attributes" that is already in use for the RPS. Arguably, the statute here simply indicates that the CEC should follow the green attributes procedures already in place for the RPS, particularly for on-site use, rather than develop a new attribute demonstration procedure. The Legislature may have been concerned that biomethane delivered through a common carrier pipeline would need additional procedures to ensure this tracking, but such additional procedures make no sense for on-site biomethane use.

The arguments above, for the most part, apply equally to any new, rather than existing, on-site use of biogas (biomethane), and these should be similarly treated – though here SMUD sees no difficulty with new facilities filling out new forms for certification or pre-certification, since there is no unnecessary duplication of effort.

J. General Simplification And Interaction With POU Regulations

At the Scoping Workshop, stakeholders suggested that the CEC should, while engaging in the staff-reported effort to simplify and shorten the Guidebook, consider areas where there may be duplications and over-lap with the RPS Regulations for POUs, and move to minimize these inconsistencies.

Thank you again for the opportunity to comment.

/s/

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