DOCKETED

Docket Number:	16-RPS-02
Project Title:	Appeal by Los Angeles Department of Water & Power re Renewables Portfolio Standard Certification Eligibility
TN #:	213287
Document Title:	CEC Concept Paper for Implementation of AB 2196 CEC-300-2013-001
Description:	N/A
Filer:	Pam Fredieu
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	8/31/2016 12:49:31 PM
Docketed Date:	8/31/2016

STAFF PAPER

Concept Paper for the Implementation of Assembly Bill 2196 for the Renewables Portfolio Standard

Kate Zocchetti
Renewable Energy Office
Efficiency and Renewables Division
California Energy Commission

JANUARY 2013
CEC-300-2013-001

PREFACE

California Energy Commission staff prepared this *Staff Concept Paper for the Implementation of Assembly Bill 2196 for the Renewables Portfolio Standard* to explore the issues underlying its implementation of Assembly Bill 2196 (Chesbro, Statute 2012, Chapter 605) for the Renewables Portfolio Standard (RPS) and to propose staff's recommended approaches for implementing each provision in this new law, which took effect January 1, 2013, and is codified in Public Resources Code Section 25741 (a)(4) and Public Utilities Code Section 399.12.6.

In developing the this concept paper, California Energy Commission staff consulted with staff from other agencies including Cal EPA, California Air Resources Board, CalRecycle, and California Department of Food and Agriculture, and many interested stakeholders. Staff plans to consider and incorporate stakeholder input received in response to this paper to help inform the development of eligibility, reporting, and verification and compliance requirements pertaining to electricity generation facilities using biomethane injected into a common carrier pipeline for purposes of the RPS, into proposed revisions to the *RPS Eligibility Guidebook, Seventh Edition*, which the Energy Commission may consider for adoption in early 2013. Energy Commission staff is collaborating with California Public Utilities Code staff on issues related to procurement for retail sellers under AB 2196.

Staff has proposed an interpretation for the provisions in AB 2196 that the Energy Commission is responsible for implementing, and provides rationale where applicable. Stakeholders are invited to provide comments on staff's proposed interpretations and options for implementing AB 2196, and to address issues and questions provided in Section D of this paper. Staff will consider stakeholder input and revise proposed options for implementing each provision of AB 2196 as appropriate. Under the guidance of the lead commissioner on renewables, staff's revised options for implementing AB 2196 will be proposed in a staff draft *RPS Eligibility Guidebook, Seventh Edition*, for public release in early 2013.

Staff's proposals are provided below for each new provision of law under AB 2196. Text in bold-italic font is directly excerpted from AB 2196. Assembly Bill 2196 is provided in its entirety in Attachment A. This paper is organized as follows:

A. Foundational Issues

1. Meaning of ***"biomethane means landfill gas or digester gas, consistent with Section 25741 of the Public Resources Code."***
(Public Utilities Code Section 399.12.6 (g))

   Staff Proposal:
   An electrical generation facility using landfill gas or digester gas is a renewable electrical generation facility if it satisfies the requirements in Public Resources Code Section 25741 and is certified by the Energy Commission as an eligible renewable energy resource. For implementation of AB 2196, specific requirements are imposed if biomethane is delivered via a common carrier pipeline; if not so specified, other provisions apply to all facilities using biomethane (landfill gas or digester gas), including facilities using biomethane onsite or delivered through a dedicated pipeline.

   Rationale: This is a plain reading of the statute.

2. Meaning of ***"common carrier pipeline."***

   (Public Resources Code Section 25741(a)(4), Public Utilities Code Sections 399.12.6 (a)(1); 399.12.6 (a)(2)(E); 399.12.6 (b)(3); 399.12.6 (b)(3)(A); 399.12.6 (b)(3)(B); 399.12.6 (b)(3)(C); 399.12.6 (h))

   Staff Proposal:
   "Common carrier pipeline" means a gas conveyance pipeline that is owned or operated by a utility or gas corporation, excluding a dedicated pipeline.

   Rationale: This definition aligns with the definition in Assembly Bill 1900 (Gatto, Stats. 2012, ch. 602), a companion bill to AB 2196.

B. Requirements for Facilities Using Biomethane Under a Contract Executed Before March 29, 2012

"***Any procurement of biomethane delivered through a common carrier pipeline under a contract executed by a retail seller or local publicly owned electric utility and reported to the Energy Commission prior to March 29, 2012, and otherwise eligible under the rules in place as of the date of contract execution shall count toward the procurement requirements established in this article, under the rules in place at the time the contract was executed, including the Fourth Edition of the Energy Commission's Renewables Portfolio Standard Eligibility Guidebook, provided that those rules shall apply only to sources that are producing biomethane and injecting it into a common carrier pipeline on or before April 1, 2014.***"
(Public Utilities Code Section 399.12.6 (a)(1))

Note: Because this provision contains references to both RPS eligibility and procurement, staff's interpretation of this provision is presented in sections. Energy Commission staff is collaborating with CPUC staff and defers to the CPUC on issues related to procurement pursuant to AB 2196 for retail sellers.

3. Meaning of "***under a contract executed by a retail seller or local POU and reported to the Energy Commission prior to March 29, 2012, and otherwise eligible under the rules in place as of the date of contract execution…***"
(Public Utilities Code Section 399.12.6 (a)(1))

Staff Proposal:
An electrical generation facility using biomethane under a contract executed by a retail seller or local publicly owned electric utility (POU) before March 29, 2012, is eligible for the RPS if the biomethane source and quantity under a contract was reported to the Energy Commission in a complete application for RPS precertification or RPS certification that was received by the Energy Commission before March 29, 2012, and the facility meets all other application eligibility requirements under the *RPS Eligibility Guidebook* that was in place at the time of contract execution, including but not limited to the Fourth Edition of the *RPS Eligibility Guidebook*.

Rationale: Staff believes that the Legislature intended to allow eligibility of facilities using biomethane for the RPS under executed contracts with identified sources and quantities that were already RPS certified, precertified, or had pending applications for RPS certification with the Energy Commission prior to the Energy Commission's biomethane suspension on March 28, 2012. Staff assumes that if this information was reported to the Energy Commission by March 28, 2012, the contract for biomethane was executed before March 28, 2012. Generation from facilities using biomethane from sources that were not reported to the Energy Commission in an application for RPS certification or precertification before March 29, 2012, would not be eligible and would not count toward a retail seller or POU's RPS procurement requirements unless the facility met the requirements of Public Utilities Code Section 399.12.6 (b).

The Energy Commission's practice has been to determine a facility's RPS eligibility based on the *RPS Eligibility Guidebook* rules in place at the time an application for certification is received by the Energy Commission. However, by referencing the "rules in place as of the date of contract execution," AB 2196 modifies the Energy Commission's existing practice and requires the Energy Commission to determine a facility's RPS eligibility based on the *RPS Eligibility Guidebook* rules in place when the biomethane contract was executed. For the facilities that applied for certification immediately prior to the Energy Commission's March 28, 2012, biomethane suspension, the applicable *RPS Eligibility Guidebook* will be the fourth edition if the biomethane contract was executed on or after December 15, 2010 (the adoption date of the fourth edition) and before March 29, 2012. For facilities that applied for certification before December 15, 2010, and after December 19, 2007 (the adoption date of the third edition), the applicable *RPS Eligibility Guidebook* is the third edition.

4. Meaning of ***"Any procurement of biomethane …shall count toward the procurement requirements established in this article, under the rules in place at the time the contract was executed …"***
(Public Utilities Code Section 399.12.6 (a)(1))

Staff Proposal:
The "procurement requirements established in this article" refers to the RPS procurement requirements established for retail sellers and POUs in Article 16 (commencing with section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, as enacted by Senate Bill X 1-2 (Stats. 2011, 1st Ex. Sess., ch.1). Procurement of generation from an electrical generation facility meeting #3(a) above will count toward the RPS procurement requirements of Article 16 under the rules in place when the contract was executed, which draws a distinction for renewable energy resource procurement contracts executed before June 1, 2010, and contracts executed on or after this date.

Rationale:
SBX1-2 generally requires retail sellers and POUs to satisfy the procurement requirements of Article 16 by procuring electricity products that 1) meet the Portfolio Content Categories specified in Public Utilities Code Section 399.16 (b) and were procured under contracts executed on or after June 1, 2010 (generally referred to "PCC procurement"), or 2) were procured under contracts executed before June 1, 2010, and satisfy the conditions of Public Utilities Code Section 399.16 (d) (generally referred to as "count in full procurement"). Hence, SBX1-2 draws a distinction between procurement contracts executed before June 1, 2010, and procurement contracts executed on or after this date. The date of execution of a biomethane contract should dictate whether the procurement of biomethane-based electricity generation from a facility qualifies as either PCC procurement or count-in-full procurement. If the biomethane contract was executed on or after June 1, 2010, the procurement of biomethane-based electricity generation should qualify as PCC procurement, provided all other requirements are satisfied, because the generation of biomethane-based electricity may begin no sooner than the commencement date of the biomethane contract itself. If the biomethane contract was executed before June 1, 2010, and the contract provided for deliveries of biomethane to the facility for generation before June 1, 2010, then the procurement of the biomethane-based electricity generation may qualify, if at all, only as count-in-full procurement, provided all other requirements are satisfied.[1]

For example, if a POU executed a biomethane contract on January 1, 2012, to supply biomethane to the POU's electrical generation facility starting on this same date, the electrical generation resulting from the designated use of the biomethane, if utilized by the POU to satisfy its RPS procurement requirements, may qualify as PCC procurement

1 California Energy Commission, November 2012. *33 Percent Renewables Portfolio Standard Pre-Rulemaking Draft Regulations*. CEC-300-2012-001-SD.

provided all other requirements were satisfied. This is so because the biomethane contract was executed after June 1, 2010.

By contrast, if a POU executed a biomethane contract on March 1, 2010, to supply biomethane to the POU's electrical generation facility starting on this same date, the electrical generation resulting from the designated use of the biomethane, if utilized by the POU to satisfy its RPS procurement requirements, may qualify, if at all, only as count-in-full procurement, provided all other requirements were satisfied.

5. Meaning of ***"those rules shall apply only to sources that are producing biomethane and injecting it into a common carrier pipeline on or before April 1, 2014…."***
(Public Utilities Code Section 399.12.6 (a)(1))

Staff Proposal:
Procurement of generation from electrical generation facilities using biomethane delivered through a common carrier pipeline and meeting the requirements of #3 above shall not count toward the procurement requirements of a retail seller or POU unless the retail seller or POU demonstrates that the biomethane source(s) is producing biomethane and injecting it into a common carrier pipeline before April 1, 2014.

Rationale: The retail seller or POU will be allowed only to claim generation from a source that was identified in the original contract and reported to the Energy Commission by March 29, 2012, if it is producing and injecting biomethane by April 1, 2014.

6. Meaning of ***"Any extension of the term of the original contract."***
(Public Utilities Code Section 399.12.6 (a)(2)(A)

Staff Proposal:
Any change in the duration of the original contract for the procurement of biomethane through a common carrier pipeline executed by a retail seller or POU and reported to the Energy Commission before March 29, 2012. The "original contract" includes any amendments to the original contract that were executed before March 29, 2012, and reported to the Energy Commission before March 29, 2012.

Rationale: Staff understands that some contract terms and conditions contain a provision that specifies that the contract term does not "begin" until the biomethane is being produced and injected into a common carrier pipeline, and that a beginning or end date might not be specified in the contract. Staff believes that the intention of the statute is to prohibit changing the length of time for production and injection of biomethane that was intended under the original contract. Changing the contract term or length of time for production and injection of biomethane into a common carrier pipeline could result in an increased quantity of biomethane being supplied to the electrical generation facility and potentially qualifying for the RPS, which is contrary to the intent of Public Utilities Code Section 399.12.6 (a).

7. Meaning of ***"Any quantity of biomethane that exceeds the quantities of biomethane specified in the original contract."***
(Public Utilities Code Section 399.12.6 (a)(2)(B))

Staff Proposal:
Any procurement reported by a retail seller or POU of generation from an electrical generation facility or facilities using biomethane delivered through a common carrier pipeline from sources identified in the original biomethane contract and reported to the Energy Commission before March 29, 2012, that is greater than the quantities (as measured in millions of British thermal units [MMBTUs]) of biomethane specified in the original biomethane contract will be subject to the eligibility requirements specified in subdivision (b) of Public Utilities Code Section 399.12.6. Only the incremental generation that exceeds the quantities (as measured in MMBTUs) specified in the original biomethane contract will be subject to PUC Section 399.12.6 subdivision (b); quantities (as measured in MMBTUs) specified in the original contract are subject to PUC Section 399.12.6 subdivision (a).

Rationale: AB 2196 clearly intends to limit the procurement that counts toward a retail seller's or POU's RPS procurement requirements to the quantities specified in the original biomethane contracts from the sources identified in those contracts. Procurement of generation from quantities of biomethane not identified in the original contract will not be counted for the RPS unless the facility meets the requirements specified in subdivision (b) of Public Utilities Code Section 399.12.6. If quantities are not specifically identified in the original contract because the buyer agreed to procure 100 percent of the biomethane produced, then the procurement associated with any amounts (as measured in MMBTUs) that exceed the maximum quantity (if specified) will not be counted for RPS unless the facility meets the requirements of subdivision (b).

8. Meaning of ***"Any optional quantities of biomethane that can be exercised at the discretion of the buyer."***
(Public Utilities Code Section 399.12.6 (a)(2)(C))

Staff Proposal:
Any procurement reported by a retail seller or POU of generation from an electrical generation facility or facilities using biomethane delivered through a common carrier pipeline from sources identified in the original contract executed and reported to the Energy Commission before March 29, 2012, that are specified as optional to the buyer in the original contract will be subject to the requirements of Public Utilities Code Section 399.12.6 subdivision (b).

Rationale: This provision is straight forward and does not need further interpretation except to specifically exclude supplier-based options. Staff understands that options at the discretion of the supplier are typically exercised within 100 days of contract execution. AB 2196 does not specifically exclude optional quantities that are exercised at the discretion of the supplier.

9. Meaning of ***"Any changes in the source(s) of biomethane identified in the original contract or original application for certification submitted to the Energy Commission prior to March 29, 2012."***
(Public Utilities Code Section 399.12.6 (a)(2)(D))

Staff Proposal:
Any procurement reported by a retail seller or POU of generation from an electrical generation facility using biomethane delivered through a common carrier pipeline from source(s) of biomethane that were not identified in the original contract or original application for RPS certification submitted to the Energy Commission before March 29, 2012, will be subject to the eligibility requirements specified in subdivision (b) of Public Utilities Code Section 399.12.6. The removal of a source(s) of biomethane identified in the original contract or application submitted to the Energy commission will not be considered a "change in the source(s) of biomethane" under this provision because it would not result in increased quantities of biomethane. However, the removal of a biomethane source cannot be replaced with a new source not identified in the original contract or application submitted to the Energy Commission. The "original application" submitted to the Energy Commission includes any amendments to a previously submitted application where the amendment is submitted to the Energy Commission before March 29, 2012. An application for RPS precertification submitted to the Energy Commission before March 29, 2012, may be substituted for an application for certification.

Rationale: The law specifies that the source(s) of biomethane must be: identified either in the original contract or the original application for certification submitted to the Energy Commission. Although the statute does not include an application for precertification as an acceptable mechanism for identifying biomethane sources for grandfathered facilities, the statute does appear to grandfather biomethane-based electrical generation associated with biomethane sources under contract and "reported to the Energy Commission" prior to March 29, 2012, regardless of what type of application was submitted to the Energy Commission. Moreover, because "precertification" is a type of "certification" that is specifically addressed in the Energy Commission's *RPS Eligibility Guidebook*, staff believes that the Legislature intended to include precertification as a subset of certification under AB 2196.

Staff also proposes that the Energy Commission allow an applicant of an RPS-certified electric generation facility that uses biomethane to substitute the designated facility, even if the new facility has not been previously RPS-certified or pre-certified. Because AB 2196 contemplates various eligibility criteria for procurement of biomethane delivered through a common carrier pipeline under a contract or contract amendments, it seems reasonable to allow a retail seller or POU to change the designation of the electric generation facility so long as the quantities of biomethane are not increased. Staff plans to link the electric generation facilities that use biomethane under a single contract to ensure that the sum of the electric generating facilities' generation attributed to biomethane does not exceed the quantities of biomethane specified in the contract executed before March 29, 2012.

Because the removal of a source of biomethane does not result in an increase in the quantities of biomethane that were specified in the original contract or original application for certification submitted to the Energy Commission prior to March 29, 2012, removal of a biomethane source would not be considered a "change in the source(s) of biomethane" and thus would not be considered an amendment that would cause any quantities of biomethane to be subject to the eligibility requirements specified in subdivision (b) of Public Utilities Code Section 399.12.6.

10. Meaning of ***"Any quantity of biomethane from a source not producing and capturing biomethane and injecting it into a common carrier pipeline on or before April 1, 2014."*** (Public Utilities Code Section 399.12.6 (a)(2)(E))

    Staff Proposal:
    Any procurement reported by a retail seller or POU of generation from an electrical generation facility or facilities using biomethane delivered through a common carrier pipeline from source(s) of biomethane that does not meet the provisions of #5 above will be subject to the requirements specified in subdivision (b) of Public Utilities Code Section 399.12.6. If it fails to meet the requirements of subdivision (b), then such procurement will not count toward the procurement requirements of a retail seller or POU.

    Rationale: This provision is interpreted in #5 above (interpreting Public Utilities Code Section 399.12.6 (a)(1)).

11. Meaning of ***"the conditions of this paragraph shall apply beginning March 29, 2012."*** (Public Utilities Code Section 399.12.6 (a)(2)(F))

    Staff Proposal:
    The terms "original contract" and "original application" as used in Public Utilities Code Section 399.12.6 (a)(2) include: 1) contract amendments executed before March 29, 2012, and reported to the Energy Commission before March 29, 2012, and 2) amendments to previously submitted applications for RPS certification where the amendment is submitted to the Energy Commission before March 29, 2012.

    Rationale: Since the provisions of subdivision (a)(2)(F)) clearly state that the conditions shall apply beginning March 29, 2012, the terms "original contract" and "original application" must be given meaning in light of this date and not interpreted to exclude contract amendments reported to the Energy Commission or amendments to applications submitted to the Energy Commission prior to March 29, 2012.

C. Requirements for Facilities Using Biomethane Under a Contract Initially Executed or Contract Amendments[2] Executed on or After March 29, 2012

12. Meaning of "***the biomethane is used by an onsite generating facility.***"
(Public Utilities Code Section 399.12.6 (b)(1))

Staff Proposal:
Biomethane is produced and captured at the landfill or digester source that is located at the same site/facility as the electrical generation facility that is using the biomethane to generate electricity and the biomethane is delivered from the source to the generating facility via a dedicated pipeline as defined in this paper.

Rationale: This is a fairly straightforward interpretation that guarantees that biomethane from a specific source is used by the onsite electrical generation facility. An onsite generating facility using biomethane for the RPS under a contract executed on or after March 29, 2012, is eligible for the RPS if it meets all other applicable requirements set forth in the *RPS Eligibility Guidebook* in place at the time the Energy Commission receives a complete application for certification or precertification, whichever occurs first.

13. Meaning of "***the biomethane is used by an offsite generating facility and delivered to the generating facility through a dedicated pipeline.***"
(Public Utilities Code Section 399.12.6 (b)(2))

Staff Proposal:
Biomethane is produced and captured at the landfill or digester that is not located at the site of the electrical generation facility that is using the biomethane and the biomethane is delivered to the facility through a pipeline that delivers gas to a specific electrical generation facility and to no other end users.

Rationale: Staff believes the Legislature expects assurance that an offsite electrical generation facility using biomethane delivered via a dedicated pipeline is actually using the biomethane. Staff's proposal also aligns with AB 1900, which defines a dedicated pipeline as a "conveyance of biogas or biomethane that is not part of a common carrier pipeline system, and which conveys biogas from a biogas producer to a conditioning facility or an electrical generation facility."

Other information sources imply that the term "dedicated" refers to a specific consumer of the gas. In that scenario if biogas is comingled with natural gas in the dedicated pipeline, only the portion of gas used that is attributable to biomethane will count for RPS; however, because the delivery would be the same as a common carrier pipeline, staff proposes that it

2 Contract amendments in this concept paper refer to the provisions in Public Utilities Code Section 399.12.6 subdivision (a)(2) as implemented by the Energy Commission.

should be subject to the same requirements as biomethane delivered through a common carrier pipeline.

In summary, staff believes that "dedicated pipeline" was meant to be applied in an equivalent manner as "onsite generating facility" except that there is more distance between the biomethane supply and a specific end user. An offsite generating facility using biomethane delivered through a dedicated pipeline for the RPS under a contract executed on or after March 29, 2012, is eligible for the RPS if it meets all other applicable requirements set forth in the *RPS Eligibility Guidebook* in place at the time the Energy Commission receives a complete application for certification or precertification, whichever occurs first.

14. Meaning of ***"a common carrier pipeline that physically flows within California or toward the generating facility for which the biomethane was procured under the original contract."*** (Public Utilities Code Section 399.12.6 (b)(3)(A))

    Staff Proposal:
    A generating facility using biomethane for the RPS under a contract executed on or after March 29, 2012, is eligible for the RPS if the biomethane is delivered through a common carrier pipeline that physically flows within California's geographic borders and is owned/operated by an entity regulated by the CPUC or local distribution network in California and meets all other applicable requirements set forth in the *RPS Eligibility Guidebook* in place at the time the Energy Commission receives a complete application for certification or precertification, whichever occurs first. If the pipeline is outside California's geographic borders, displacement is not allowed; the pipeline must physically flow only in the direction of the electrical generation facility for which the biomethane was procured under the original contract. ***SEE QUESTION #1 IN SECTION D***

    Rationale: Most interstate pipelines are unidirectional, but some are bidirectional, with two parallel pipelines running in either direction. When deliveries to an upstream facility are made, it is industry practice to contract for displacement, where a specific quantity of gas is received into the pipeline and a commensurate amount is withdrawn, without the gas necessarily flowing toward the withdrawal point.

    Because biogas is fungible with conventional natural gas once it is comingled in the common carrier pipeline, the delivery of the biogas must at least be toward the generating facility to ensure that the facility is capable of using the biogas.

15. Meaning of ***"the source of biomethane did not inject the biomethane into a common carrier pipeline prior to March 29, 2012, or the source commenced injection of sufficient incremental quantities of biomethane after March 29, 2012, to satisfy the contract requirements."*** (Public Utilities Code Section 399.12.6 (b)(3)(B))

Staff Proposal:
An electrical generation facility using biomethane delivered through a common carrier pipeline associated with a contract initially executed on or after March 29, 2012, shall not qualify as an eligible renewable energy resource for the RPS if the source injected biomethane into a common carrier pipeline before March 29, 2012, unless the source commenced injection of sufficient incremental quantities of biomethane after March 29, 2012, to satisfy the contract requirements. An electrical generation facility using quantities of biomethane delivered through a common carrier pipeline associated with amendments executed after March 29, 2012, to a contract initially executed before March 29, 2012, shall not be eligible unless the source commenced injection of sufficient incremental quantities of biomethane after March 29, 2012, to satisfy the contract amendment requirements. For contracts initially executed on or after March 29, 2012, "sufficient incremental quantities of biomethane" is limited to the quantities specified in the contract. For contract amendments executed on or after March 29, 2012, "sufficient incremental quantities of biomethane" is limited to the quantities specified in the contract amendment.

Rationale: Staff's proposal follows a plain reading of the statute, which relates to contracts initially executed on or after March 29, 2012, or to quantities of biomethane associated with contract amendments executed on or after March 29, 2012. Staff assumes that contracts that are amended on or after March 29, 2012, are contracts that were initially executed before March 29, 2012. While subdivision (a) of Public Utilities Code Section 399.12.6 deals with situations that exceed the quantities of biomethane that were specified in the original contract (extension of term, exceeds quantities, change in source, and so forth), subdivision (a) does not pertain to contract amendments executed after March 29, 2012. Those situations, along with those under this provision, are all subject to the more rigorous eligibility requirements in subdivision (b) of Public Utilities Code Section 399.12.6.

16. Meaning of **"*the reduction or avoidance of the emission of any criteria air pollutant in California.*"**
(Public Utilities Code Section 399.12.6 (b)(3)(C)(i))

Staff Proposal:
To qualify as an eligible renewable energy resource for the RPS, an electrical generation facility using biomethane delivered through a common carrier pipeline associated with contracts initially executed on or after March 29, 2012, or for quantities of biomethane associated with contract amendments executed on or after March 29, 2012, must demonstrate that the capture and injection of biomethane into a common carrier pipeline directly results in reduction or avoidance of the emission of any criteria air pollutants (or their precursors) in California, as defined by the California Air Resources Board (CARB). A criteria air pollutant is an air pollutant for which acceptable levels of exposure can be determined and for which an ambient air quality standard has been set. Examples include ozone, carbon monoxide, nitrogen dioxide, sulfur dioxide, PM10 and PM2.5.

The applicant must also provide baseline emissions of at least one criteria air pollutant (or its precursor), and show that an activity taken or planned by the applicant (pathway) results in a reduction or avoidance of emissions of the criteria air pollutant. For example, an applicant could demonstrate that the change in practice from flaring the biomethane at a landfill/anaerobic dairy digester to capturing and injecting biomethane into a common carrier pipeline (pathway) directly results in reduced or avoided emissions of a criteria air pollutant or its precursor compared to the existing practice of flaring the biomethane (or other established baseline).

Rationale: Staff's proposal follows a plain reading of the statute, and it is reasonable to rely on CARB's definition of a criteria air pollutant. A pathway approach provides flexibility for meeting this criterion without necessarily requiring empirical evidence that a specific activity results in the reduction or avoidance of the emission of a criteria air pollutant or its precursor, when compared to a baseline or the absence of the activity.

17. Meaning of ***"the reduction or avoidance of pollutants that could have an adverse impact on waters of the state."***
(Public Utilities Code Section 399.12.6 (b)(3)(C)(ii))

Staff Proposal:
To qualify as an eligible renewable energy resource for the RPS, an electrical generation facility using biomethane delivered through a common carrier pipeline associated with contracts initially executed on or after March 29, 2012, or for quantities of biomethane associated with contract amendments executed on or after March 29, 2012, must demonstrate that the capture and injection of biomethane into a common carrier pipeline directly results in reduction or avoidance of pollutants that could have an adverse impact on any surface water or groundwater, including saline waters, within the geographic boundaries of California. This definition of "waters of the state" is consistent with subdivision (e) of Water Code Section 13050, which defines the term to include all waters within the state's boundaries, whether public or private, including waters in both natural and artificial channels.

Staff proposes a pathway approach to demonstrating that this eligibility criterion is met, and may consider a "per se" finding that a specific activity (pathway) directly reduces or avoids pollutants that could have an adverse impact on waters of the state without having to produce empirical evidence. There is an abundance of empirical evidence in the literature documenting the environmental benefits of specific activities (pathways) related to biogas. An applicant would be required to reference specific literature applicable to the applicant's action for consideration by the Energy Commission.

Rationale: Staff's proposal follows a plain reading of the statute, and it is reasonable to rely on the definition of "waters of the state" as provided in Water Code Section 13050 (e). There is documented evidence in the literature demonstrating the environmental benefits of specific activities related to biogas and the impacts to water systems. A pathway approach provides flexibility for meeting this criterion without necessarily requiring empirical

evidence that a specific activity results in the reduction or avoidance of the emission of a criteria air pollutant or its precursor, when compared to business as usual or the absence of the activity.

18. Meaning of ***"the alleviation of a local nuisance within California that is associated with the emission of odors."***
(Public Utilities Code Section 399.12.6 (b)(3)(C)(iii))

Staff Proposal:
To qualify as an eligible renewable energy resource for the RPS, an electrical generation facility using biomethane delivered through a common carrier pipeline associated with contracts initially executed on or after March 29, 2012, or for quantities of biomethane associated with contract amendments executed on or after March 29, 2012, must demonstrate that the use of biomethane directly results in mitigating a local nuisance in California associated with the emission of odors. This could be demonstrated by providing documentation showing a direct relationship between the capture and injection of biomethane into the common carrier pipeline and the minimization or resolution of a violation of a local nuisance in California associated with the emission of odors. A "nuisance" is generally defined in Civil Code Section 3479 as "Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway…"

Use of the term "local nuisance" in Section 399.12.6(b)(3)(C)(iii) indicates the Legislature intended the benefits from mitigation or alleviation of a nuisance to be localized. In order to recognize this localized benefit, staff believes it is appropriate to allow the local jurisdiction, within which the biomethane source is located, to define a nuisance associated with odor emissions. The local jurisdiction may be a city, county, air pollution control district or other local jurisdiction that establishes rules or standards for nuisances of odors. A local nuisance does not need to be established under the rules or standards of the local jurisdiction to meet this provision. However, if a facility's operation has created a local nuisance associated with the emission of odors, the applicant must provide documentation of the nuisance and demonstrate that the capture and injection of biomethane into a common carrier pipeline directly results in the mitigation of the odor nuisance.

Rationale: Staff's proposal follows a plain reading of the statute, and it is reasonable to rely on a local jurisdiction's definition of a local nuisance associated with the emissions of odors. Staff proposes a pathway approach to demonstrating that this eligibility criterion is met, and may consider a "per se" finding that a specific activity (pathway) directly alleviates or mitigates a local nuisance within California associated with the emissions of odors. There is an abundance of empirical evidence in the literature documenting the environmental benefits of specific activities (pathways) related to biogas.

19. Meaning of "***use of biomethane shall be assigned to the appropriate portfolio content category based on the application of the criteria in subdivision (b) of Section 399.16 to the procurement of electricity by the retail seller or local publicly owned electric utility from the generating facility consuming the biomethane***" for contracts initially executed on or after March 29, 2012, or for quantities of biomethane associated with contract amendments executed after March 29, 2012.
(Public Utilities Code Section 399.12.6 (e))

Staff Proposal:
Any procurement of electricity by a retail seller from an RPS-certified electrical generation facility or facilities using biomethane associated with contracts initially executed on or after March 29, 2012, or for quantities of biomethane associated with contract amendments executed on or after March 29, 2012, will be assigned to the appropriate portfolio content category based on the criteria in subdivision (b) of Public Utilities Code Section 399.16 as specified by the CPUC in Decision 11-12-952 or any future CPUC decision. Any electricity procurement by a POU from an RPS-certified electrical generation facility or facilities using biomethane associated with contracts initially executed on or after March 29, 2012, or for quantities of biomethane associated with contract amendments executed on or after March 29, 2012, will be assigned to the appropriate portfolio content category based on the criteria in subdivision (b) of Public Utilities Code Section 399.16 as specified by the Energy Commission in its regulations for *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities*.

Rationale: Staff's proposal aligns with the plain reading of AB 2196 for contracts executed on or after March 29, 2012. Senate Bill X1-2 established portfolio content categories and portfolio balance requirements for electricity procurement contracts executed after June 10, 2010. As noted in item 4 above, SBX1-2 generally requires retail sellers and POUs to satisfy the procurement requirements of Article 16 by procuring electricity products that 1) meet the Portfolio Content Categories specified in Public Utilities Code Section 399.16 (b) and were procured under contracts executed on or after June 1, 2010 (generally referred to "PCC procurement"), or 2) were procured under contracts executed before June 1, 2010, and satisfy the conditions of Public Utilities Code Section 399.16 (d) (generally referred to as "count in full procurement"). Hence, SBX1-2 draws a distinction between procurement contracts executed before June 1, 2010, and procurement contracts executed on or after this date.

The date of execution of a biomethane contract should dictate whether the procurement of biomethane-based electricity generation from a facility qualifies as either PCC procurement or count in full procurement. If the biomethane contract was executed on or after June 1, 2010, the procurement of biomethane-based electricity generation should qualify as PCC procurement, provided all other requirements are satisfied, because the generation of biomethane-based electricity may begin no sooner than the commencement date of the biomethane contract itself. PCC procurement may fall within one of three bucket of eligibility. SBX1-2 establishes certain minimum and maximums, which vary over time, for

two of the three buckets. The assignment of electricity procurement to a particular PCC bucket is based primarily on the electrical generating facility's interconnection and details of electricity delivery to a balancing authority, and the execution dates and terms of the electricity procurement contract(s). Assignment of electricity procurement into a PCC bucket is undertaken in the RPS procurement verification and compliance processes by the Energy Commission and CPUC for POUs and the retail sellers, respectively.

20. Meaning of:
    a) *"…**the transaction for the procurement that fuel, including the source of the fuel and the delivery method…is verified pursuant to the accounting system established by the [Energy] commission pursuant to [section] 399.25 of the Public Utilities Code, or a comparable system, as determined by the [Energy] commission.**"*
    (Public Resources Code Section 25741(a)(4))

    and

    b) *"**All sellers and purchasers of biomethane shall comply with a system for tracking and verifying the use of biomethane, as established by the Energy Commission, that is equivalent to the system required by subdivision (c) of Section 399.25.**"*
    (Public Utilities Code Section 399.12.6 (d))

Staff Proposal:
All transactions for the procurement of biomethane used by an RPS-certified electrical generating facility to generate electricity for the RPS (including transaction for the source of the fuel and the delivery method) must be verified by the Energy Commission to ensure that the procurement is attributable to the biomethane source under contract, that the biomethane designated for use by the electrical generating facility is not used for any other purpose, and that the biomethane delivery to the facility meets the requirements set forth in the *RPS Eligibility Guidebook*. The Energy Commission must also ensure that the environmental attributes associated with the biomethane are conveyed to the retail seller or POU. Biomethane is defined as landfill gas or digester gas.

In addition to the submission of pipeline agreements and gas supply, storage, and delivery invoices, staff recommends that a tracking and verification system for the use of biomethane include the submission of relevant information in biomethane contracts, along with the use of independently audited data as determined by the Energy Commission.

The Energy Commission staff is also exploring possible collaboration with the CARB with its reporting and verification of greenhouse gas (GHG) emissions under the Mandatory Reporting of Greenhouse Gas Emissions regulations (MRR).[3] ***SEE QUESTION #2 IN SECTION D.***

3 CARB's regulations for the Mandatory Reporting of Greenhouse Gas Emissions (Title 17, California Code of Regulations, sections 95100-95157) incorporates by reference certain requirements promulgated

Rationale: Relevant language from subdivision (c) of Public Utilities Code Section 399.25 states that the Energy Commission shall "establish a system for tracking and verifying renewable energy credits that, through the use of independently audited data, verifies the generation of electricity associated with each renewable energy credit and protects against multiple counting of the same renewable energy credit. The Energy Commission shall consult with other western states and with the WECC in the development of this system."

The Energy Commission has an established verification system for procurement of biomethane delivered through a natural gas transportation pipeline to ensure that the quantity of biomethane (adjusted for energy content) supplied to the transportation pipeline is accurately measured on a monthly basis and corresponds to the quantity of gas used at the electric generation facility attributable to biomethane. The Energy Commission currently requires attestations for each entity responsible for biomethane delivery from the production source to California (or to the generating facility if not located in California).

Staff proposes that the current tracking system must be expanded to ensure that environmental attributes associated with the biomethane are conveyed to the retail seller or POU procuring the biomethane and not disposed of separately from the biomethane itself or double counted. Lastly, staff recognizes that the Legislature intended for data regarding the biomethane source and delivery method be independently audited, and proposes that the Energy Commission perform such audits as it deems appropriate. The Energy Commission should continue to consult with the CARB to explore future opportunities to enhance the robustness of the Energy Commission's tracking system to ensure that procurement transactions for biomethane are adequately verified using independently audited data if feasible.

21. Meaning of ***"sufficient renewable and environmental attributes of biomethane production and capture shall be transferred to the retail seller or local publicly owned electric utility that uses that biomethane to ensure that there are zero net emissions associated with the production of electricity from the generating facility using biomethane."***
(Public Utilities Code Section 399.12.6(c))

Staff Proposal:
For retail sellers, Energy Commission staff defers to the CPUC in implementing Decision 08-08-028 on Definition and Attributes of Renewable Energy Credits for Compliance with the California RPS (August 21, 2008),[4] as may be modified by a subsequent decision of the CPUC. (Also see CPUC decision D.04-06-014 setting forth RPS Standard Terms and Conditions in Appendix A (pp. A2-A3) – See STC 2.
(http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/37401.pdf)

---

by the United States Environmental Protection Agency in its Final Rule on Mandatory Reporting of Greenhouse Gases (Title 40, Code of Federal Regulations, Part 98).

4 http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/86954.pdf

POUs must demonstrate to the Energy Commission that sufficient environmental attributes are transferred to the POU to ensure that there are net zero emissions associated with the production of electricity from the generating facility using the biomethane. The Energy Commission may require that the POU submit a copy of the electricity procurement contract along with an attestation signed by all parties to the contract that sufficient environmental attributes are transferred to the POU to ensure that there are net zero emissions associated with the production of electricity from the generating facility using the biomethane. The Energy Commission will rely on CPUC Decision D.08-08-028, as may be subsequently modified, to determine what "zero net emissions" are. ***SEE QUESTION #3 IN SECTION D.***

Rationale: For retail sellers, Energy Commission staff defers to the CPUC for implementation of this provision. POUs must demonstrate to the Energy Commission that they have secured these attributes. The Energy Commission will collaborate with the CPUC and may clarify this requirement for POUs in the event that the CPUC modifies Decision 08-08-028, to which AB 2196 directly refers.

22. Meaning of "***A retail seller, local publicly owned electric utility, or an intermediary party to a biomethane procurement contract shall not make a marketing, regulatory, or retail claim that asserts that a biomethane procurement contract to which that entity was a party resulted, or will result, in greenhouse gas reductions related to the destruction of methane if the capture and destruction is required by law. If the capture and destruction of the biomethane is not required by law, a retail seller, local publicly owned electric utility, or an intermediary party to a biomethane procurement contract shall not make a marketing, regulatory, or retail claim that asserts that a biomethane procurement contract to which that entity was a party resulted, or will result, in greenhouse gas reductions related to the destruction of methane, unless the environmental attributes associated with the capture and destruction of the biomethane pursuant to that contract are transferred to the retail seller or local publicly owned electric utility that purchased that biomethane and retired on behalf of the retail customers consuming the electricity associated with the use of that biomethane, or unless the biomethane procurement contract prohibits the source of biomethane from separately marketing the environmental attributes associated with the capture and destruction of the biomethane sold pursuant to that contract. These attributes shall be retired and may not be resold.***"
(Public Utilities Code Section 399.12.6 (f))

Staff Proposal:
Commission staff defers to the CPUC for implementation of this provision for retail sellers. For POUs, staff believes that this provision applies to all uses of biomethane by an electrical generation facility, including onsite use, delivery through a dedicated pipeline, and delivery through a common carrier pipeline. Staff proposes the following:

a) A POU or intermediary party to a biomethane procurement contract may not make a marketing, regulatory, or retail claim of GHG reductions related to the destruction of methane if the capture and destruction of methane is required by law.

i. If the biomethane source is required by law to capture and destroy the methane produced by the biomethane source, the POU must convey this information to the Energy Commission.

b) If the biomethane source is not required by law to capture and destroy the methane produced by the biomethane source, a POU or intermediary party to a biomethane procurement contract may make a marketing, regulatory, or retail claim of greenhouse gas reductions related to the destruction of methane only if one of the following applies:

i. The environmental attributes associated with the capture and destruction of the biomethane are transferred to the POU and are retired and not resold.

ii. The biomethane procurement contract does not allow the biomethane source to separately market the environmental attributes associated with the capture and destruction of the biomethane sold under the contract and the attributes are retired and not resold.

If the POU makes a regulatory claim of GHG reductions related to the destruction of methane, the POU must demonstrate that the attributes associated with methane destruction are retired and not resold by demonstrating to the Energy Commission that the biomethane source is registered with a greenhouse gas registry program and that carbon credits or offsets have been retired.[5]

If the POU makes a marketing or retail claim of GHG reductions related to the destruction of methane, the POU must demonstrate that the attributes associated with methane destruction are retired and not resold by demonstrating to the Energy Commission that the biomethane source is registered with a greenhouse gas registry program and that carbon credits or offsets have been retired in a voluntary offset program on behalf of its customers consuming the electricity associated with the use of biomethane.[6] ***SEE QUESTION #4 IN SECTION D***.

Rationale: This provision protects the rights of the biomethane producer to maintain ownership of the environmental attributes associated with methane destruction if appropriate, and protects consumers if the biomethane producer transfers these attributes to the POU. If methane destruction is already required by law, then such activity is "business as usual" and no claim may be made by the POU for GHG reductions associated with the methane destruction that occurs by capturing and destroying methane associated with the biomethane contract. However, if methane destruction is not required by law, then the POU may not make GHG reduction claims unless the attributes are retired and not resold. Simply establishing that the POU has ownership of these attributes is not enough to ensure that the attributes are not resold; however, unless a marketing, retail or regulatory claim of GHG

5 Examples of GHG registries are the Climate Action Reserve (http://www.climateactionreserve.org/) and the Climate Registry (http://www.theclimateregistry.org/).

6 An example of a program that oversees the voluntary GHG offset market is Green-e Climate® (http://www.green-e.org/getcert_ghg.shtml).

reductions is made by the POU or intermediary to the biomethane contract, the attributes may be retained by the POU.

D. Outstanding Issues and Questions

Energy Commission staff identified the following outstanding issues, potential options, and related questions regarding the details of implementing Assembly Bill 2196, to which staff seeks stakeholder input.

1. AB 2196 places restrictions on the direction of the gas flow in a common carrier pipeline if biomethane is delivered through it to an electric generation facility for purposes of the RPS. Staff understands that some common carrier pipelines are unidirectional, and others are bi-directional, where parallel pipelines deliver gas in opposite directions.
    a. For common carrier pipelines that physically flow within California, please discuss how the Energy Commission can be assured that the biomethane remains within the state's geographic borders.
    b. For pipelines that do not physically flow within California's geographic borders, please provide examples of how a retail seller or POU can document that the delivery of biomethane was through a common carrier pipeline that only physically flows in the direction of the electrical generation facility.

2. AB 2196 requires the Energy Commission to verify the transaction for the procurement of landfill gas, digester gas, or another renewable fuel delivered to the facility through a common carrier pipeline, including the source of the fuel and the delivery method, using the accounting system required pursuant to Public Utilities Code 399.25 or a comparable system.

    AB 2196 also requires all sellers and purchasers of biomethane (defined as "landfill gas" or "digester gas") to comply with a system for tracking and verifying the use of biomethane, including but not limited to biomethane delivered through a common carrier pipeline, as established by the Energy Commission, that is equivalent to the system required by subdivision (c) of Public Utilities Code Section 399.25.

    Relevant language in Public Utilities Code Section 399.25(c) states that the Energy Commission shall "establish a system for tracking and verifying renewable energy credits that, through the use of independently audited data, verifies the generation of electricity associated with each renewable energy credit and protects against multiple counting of the same renewable energy credit."
    a. Please provide information regarding the systems currently in place for tracking the use of landfill gas, digester gas, or another renewable fuel delivered to an electric generating facility through a common carrier pipeline. Include metrics for volume and heat content, for both production and capture of landfill gas, digester gas, or

another renewable fuel delivered through a common carrier pipeline, injection into the pipeline if applicable, and delivery to the generating facility.

b. Please provide information regarding the systems currently in place for tracking the use of landfill gas, digester gas, or another renewable fuel delivered to an electric generating facility through a common carrier pipeline, to ensure that contract requirements for delivery of the fuel to the electric generating facility are met. Include metrics for volume and heat content, for both production and capture of landfill gas, digester gas, or another renewable fuel delivered through a common carrier pipeline, injection into the pipeline if applicable, and delivery to the generating facility.

3. AB 2196 requires that for all electricity products generated using biomethane, sufficient renewable and environmental attributes are transferred to a retail seller or POU to ensure that there are net zero emissions associated with the production of electricity from the generating facility using the biomethane. The Energy Commission staff defers to the CPUC to implement this provision for retail sellers.

   a. Please provide information on how the Energy Commission could verify whether sufficient environmental attributes were transferred to a POU to ensure that there are net zero emissions associated with the production of electricity from the generating facility using the biomethane.

4. AB 2196 restricts retail sellers, POUs and intermediaries to biomethane procurement contracts from making marketing, regulatory, or retail claims of greenhouse gas (GHG) reductions related to the destruction of methane. If the capture and destruction of the biomethane is required by law, a retail seller, POU or intermediary to the biomethane contract may not claim that the contract resulted or will result in GHG reductions associated with the capture and destruction of methane. If the capture and destruction of the biomethane is not required by law, a retail seller, POU or intermediary to the biomethane contract may claim that the contract resulted or will result in GHG reductions associated with the capture and destruction of the methane under two scenarios.

   The first scenario is if the environmental attributes associated with the capture and destruction of biomethane pursuant to the contract are: 1) transferred to the retail seller or POU that purchased the biomethane, 2) retired on behalf of the retail customer consuming the electricity associated with the use of that biomethane, and 3) are not resold by the retail seller or POU. The second scenario is if: 1) the biomethane contract prohibits the source of the biomethane from separately marketing the environmental attributes associated with the capture and destruction of the biomethane sold pursuant to the contract, 2) the environmental attributes are retired on behalf of the retail customer consuming the electricity associated with the use of that biomethane, and 3) the environmental attributes are not resold by the retail seller or POU. The Energy Commission staff defers to the CPUC to implement this provision for retail sellers.

a. Please provide information on how the Energy Commission could verify whether a POU's biomethane procurement contract contains terms and conditions (or has the potential to address) pertaining to the environmental attributes associated with GHG reductions associated with methane destruction.
b. Please identify and describe any existing systems or processes that a POU could use to demonstrate to the Energy Commission that the environmental attributes associated with GHG reductions acquired by the retail seller or POU are retired and not resold or available for another purpose. For example, could the Green-e©[7] "Climate Certified Carbon Offsets" be used to demonstrate that GHG reduction attributes have been retired and are not available for another purpose?

7 Copyright © 2012. All Rights Reserved. Green-e is a registered trademark of CRS. Visit http://www.green-e.org/getcert_ghg_products.shtml for more information.

Attachment A: Assembly Bill 2196

Staff Concept Paper for the Implementation of Assembly Bill 2196 for the Renewables Portfolio Standard

BILL NUMBER: AB 2196 CHAPTERED
BILL TEXT

CHAPTER 605
FILED WITH SECRETARY OF STATE SEPTEMBER 27, 2012
APPROVED BY GOVERNOR SEPTEMBER 27, 2012
PASSED THE SENATE AUGUST 31, 2012
PASSED THE ASSEMBLY AUGUST 31, 2012
AMENDED IN SENATE AUGUST 31, 2012
AMENDED IN SENATE AUGUST 22, 2012
AMENDED IN SENATE AUGUST 6, 2012
AMENDED IN SENATE JUNE 20, 2012
AMENDED IN ASSEMBLY MAY 15, 2012

INTRODUCED BY Assembly Members Chesbro and Gatto
(Coauthor: Assembly Member Skinner)

FEBRUARY 23, 2012

An act to amend Section 25741 of the Public Resources Code, and to add Section 399.12.6 to the Public Utilities Code, relating to energy.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 25741 of the Public Resources Code is amended to read:

25741. As used in this chapter, the following terms have the following meaning:

(a) "Renewable electrical generation facility" means a facility that meets all of the following criteria:

(1) The facility uses biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation of 30 megawatts or less, digester gas, municipal solid waste conversion, landfill gas, ocean wave, ocean thermal, or tidal current, and any additions or enhancements to the facility using that technology.

(2) The facility satisfies one of the following requirements:

(A) The facility is located in the state or near the border of the state with the first point of connection to the transmission network of a balancing authority area primarily located within the state. For purposes of this subparagraph, "balancing authority area" has the same meaning as defined in Section 399.12 of the Public Utilities Code.

(B) The facility has its first point of interconnection to the transmission network outside the state, within the Western

Electricity Coordinating Council (WECC) service area, and satisfies all of the following requirements:

(i) It commences initial commercial operation after January 1, 2005.

(ii) It will not cause or contribute to any violation of a California environmental quality standard or requirement.

(iii) It participates in the accounting system to verify compliance with the renewables portfolio standard once established by the commission pursuant to subdivision (b) of Section 399.25 of the Public Utilities Code.

(C) The facility meets the requirements of clauses (ii) and (iii) in subparagraph (B), but does not meet the requirements of clause (i) of subparagraph (B) because it commenced initial operation prior to January 1, 2005, if the facility satisfies either of the following requirements:

(i) The electricity is from incremental generation resulting from expansion or repowering of the facility.

(ii) Electricity generated by the facility was procured by a retail seller or local publicly owned electric utility as of January 1, 2010.

(3) If the facility is outside the United States, it is developed and operated in a manner that is as protective of the environment as a similar facility located in the state.

(4) If eligibility of the facility is based on the use of landfill gas, digester gas, or another renewable fuel delivered to the facility through a common carrier pipeline, the transaction for the procurement of that fuel, including the source of the fuel and delivery method, satisfies the requirements of Section 399.12.6 of the Public Utilities Code and is verified pursuant to the accounting system established by the commission pursuant to 399.25 of the Public Utilities Code, or a comparable system, as determined by the commission.

(b) "Municipal solid waste conversion," as used in subdivision (a), means a technology that uses a noncombustion thermal process to convert solid waste to a clean-burning fuel for the purpose of generating electricity, and that meets all of the following criteria:

(1) The technology does not use air or oxygen in the conversion process, except ambient air to maintain temperature control.

(2) The technology produces no discharges of air contaminants or emissions, including greenhouse gases as defined in Section 38505 of the Health and Safety Code.

(3) The technology produces no discharges to surface or groundwaters of the state.

(4) The technology produces no hazardous wastes.

(5) To the maximum extent feasible, the technology removes all recyclable materials and marketable green waste compostable materials from the solid waste stream prior to the conversion process and the owner or operator of the facility certifies that those materials will be recycled or composted.

(6) The facility at which the technology is used is in compliance with all applicable laws, regulations, and ordinances.

(7) The technology meets any other conditions established by the commission.

(8) The facility certifies that any local agency sending solid waste to the facility diverted at least 30 percent of all solid waste it collects through solid waste reduction, recycling, and

composting. For purposes of this paragraph, "local agency" means any city, county, or special district, or subdivision thereof, which is authorized to provide solid waste handling services.

(c) "Renewable energy public goods charge" means that portion of the nonbypassable system benefits charge required to be collected to fund renewable energy pursuant to the Reliable Electric Service Investments Act (Article 15 (commencing with Section 399) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code).

(d) "Report" means the report entitled "Investing in Renewable Electricity Generation in California" (June 2001, Publication Number P500-00-022) submitted to the Governor and the Legislature by the commission.

(e) "Retail seller" means a "retail seller" as defined in Section 399.12 of the Public Utilities Code.

SEC. 2. Section 399.12.6 is added to the Public Utilities Code, to read:

399.12.6. (a) (1) Any procurement of biomethane delivered through a common carrier pipeline under a contract executed by a retail seller or local publicly owned electric utility and reported to the Energy Commission prior to March 29, 2012, and otherwise eligible under the rules in place as of the date of contract execution shall count toward the procurement requirements established in this article, under the rules in place at the time the contract was executed, including the Fourth Edition of the Energy Commission's Renewables Portfolio Standard Eligibility Guidebook, provided that those rules shall apply only to sources that are producing biomethane and injecting it into a common carrier pipeline on or before April 1, 2014.

(2) The eligibility requirements of subdivision (b) shall apply beginning March 29, 2012, to any quantities of biomethane associated with any of the following:

(A) An extension of the term of the original contract.

(B) Any quantity of biomethane that exceeds the quantities of biomethane specified in the original contract.

(C) Any optional quantities of biomethane that can be exercised at the discretion of the buyer.

(D) Any change in the source or sources of biomethane identified in the original contract or the original application for certification submitted to the Energy Commission.

(E) Any quantity of biomethane from a source not producing and capturing biomethane and injecting it into a common carrier pipeline on or before April 1, 2014.

(F) The conditions of this paragraph shall apply beginning March 29, 2012.

(b) For contracts initially executed on or after March 29, 2012, or for quantities of biomethane associated with contract amendments executed on or after March 29, 2012, the use of biomethane by a generating facility shall not qualify as an eligible renewable energy resource unless it satisfies all applicable requirements established by the Energy Commission and meets any of the following requirements:

(1) The biomethane is used by an onsite generating facility.

(2) The biomethane is used by an offsite generating facility and delivered to the generating facility through a dedicated pipeline.

(3) The biomethane is delivered to a generating facility through a common carrier pipeline and meets all of the following requirements:

(A) The source of biomethane injects the biomethane into a common carrier pipeline that physically flows within California or toward the generating facility for which the biomethane was procured under the original contract.

(B) The source of biomethane did not inject biomethane into a common carrier pipeline prior to March 29, 2012, or the source commenced injection of sufficient incremental quantities of biomethane after March 29, 2012, to satisfy the contract requirements.

(C) The seller or purchaser of the biomethane demonstrates that the capture and injection of biomethane into a common carrier pipeline directly results in at least one of the following environmental benefits to California:

(i) The reduction or avoidance of the emission of any criteria air pollutant in California.

(ii) The reduction or avoidance of pollutants that could have an adverse impact on waters of the state.

(iii) The alleviation of a local nuisance within California that is associated with the emission of odors.

(c) For all electricity products generated using biomethane that are credited toward the renewables portfolio standard procurement obligations established pursuant to this article, sufficient renewable and environmental attributes of biomethane production and capture shall be transferred to the retail seller or local publicly owned electric utility that uses that biomethane to ensure that there are zero net emissions associated with the production of electricity from the generating facility using the biomethane. The provisions of this subdivision shall be applied in a manner consistent with the definition of "green attributes" as specified by the commission in Decision 08-08-028, Decision on Definition and Attributes of Renewable Energy Credits for Compliance with the California Renewables Portfolio Standard (August 21, 2008), as may be modified by subsequent decision of the commission.

(d) All sellers and purchasers of biomethane shall comply with a system for tracking and verifying the use of biomethane, as established by the Energy Commission, that is equivalent to the system required by subdivision (c) of Section 399.25.

(e) For contracts initially executed on or after March 29, 2012, or for quantities of biomethane associated with contract amendments executed after March 29, 2012, the use of biomethane shall be assigned to the appropriate portfolio content category based on the application of the criteria in subdivision (b) of Section 399.16 to the procurement of electricity by the retail seller or local publicly owned electric utility from the generating facility consuming the biomethane.

(f) A retail seller, local publicly owned electric utility, or an intermediary party to a biomethane procurement contract shall not make a marketing, regulatory, or retail claim that asserts that a biomethane procurement contract to which that entity was a party resulted, or will result, in greenhouse gas reductions related to the destruction of methane if the capture and destruction is required by law. If the capture and destruction of the biomethane is not required by law, a retail seller, local publicly owned electric utility, or an intermediary party to a biomethane procurement contract shall not make a marketing, regulatory, or retail claim that asserts that a biomethane procurement contract to which that entity was a party resulted, or will result, in greenhouse gas reductions

related to the destruction of methane, unless the environmental attributes associated with the capture and destruction of the biomethane pursuant to that contract are transferred to the retail seller or publicly owned electric utility that purchased that biomethane and retired on behalf of the retail customers consuming the electricity associated with the use of that biomethane, or unless the biomethane procurement contract prohibits the source of biomethane from separately marketing the environmental attributes associated with the capture and destruction of the biomethane sold pursuant to that contract. These attributes shall be retired and may not be resold.

(g) For the purposes of this section, "biomethane" means landfill gas or digester gas, consistent with Section 25741 of the Public Resources Code.

(h) If any provision of this section or the application of any provision of this section is held invalid, biomethane delivered through a common carrier pipeline pursuant to a contract executed within 180 days of, or at any time subsequent to, the invalidation of that provision shall not qualify as an eligible renewable energy resource.

SEC. 3. This act shall become operative only if this act and Assembly Bill 1900 of the 2011-12 Regular Session are both enacted and become effective before January 1, 2013.