

## DOCKETED

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**SENATE ENERGY, UTILITIES AND COMMUNICATIONS COMMITTEE**  
**ALEX PADILLA, CHAIR**

AB 2196 - Chesbro  
As Amended: June 20, 2012

Hearing Date: June 25, 2012  
FISCAL

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**DESCRIPTION**

Current law requires investor-owned utilities, community choice aggregators, and electric service providers (collectively referred to as retail sellers) and local publicly owned utilities (POUs), to increase purchases of renewable energy such that at least 33% of total retail sales are procured from renewable energy resources by December 31, 2020. In the interim each entity is be required to procure an average of 20% of renewable energy for the period of January 1, 2011 through December 31, 2013 and 25% by December 31, 2016. This is known as the Renewables Portfolio Standard (RPS).

Current law requires all renewable electricity products to meet the requirements of a “loading order” that mandates minimum and maximum quantities of three product categories (or “buckets”) which includes renewable resources directly connected to a California balancing authority or provided in real time without substitution from another energy source, energy not connected or delivered in real time yet still delivering electricity, and unbundled renewable energy credits.

Current law requires the California Energy Commission (CEC) to certify generating facilities for purposes of establishing eligibility under the RPS and to design and implement an accounting system to verify compliance with the RPS by retail sellers and POUs.

Current law defines a renewable electrical generation facility and includes in that definition a facility that uses landfill gas or digester gas (biomethane).

This bill clarifies the definition of an eligible renewable electrical generation facility to include a facility that generates electricity utilizing biomethane delivered through a common carrier pipeline if the source and delivery of the fuel can be verified by the CEC. For facilities that rely on the procurement of biomethane delivered through a common carrier pipeline based on contracts executed or amended after January 1, 2012, the CEC must certify that the fuel source:

- is injected into a pipeline that physically flows toward the generating facility that will use the fuel;
- the source was newly developed after January 1, 2012 or increased deliveries after January 1, 2012 to meet the new contract;

- renewable and environmental attributes are transferred to the retail seller or POU that uses the biomethane for compliance with the RPS to ensure that the electric generation is carbon neutral;
- the seller and purchaser comply with a tracking system to verify deliveries of biomethane; and
- the source of the biomethane causes a direct reduction of air or water pollution in the state or alleviates a local nuisance related to the emission of odors.

Current law permits procurement from contracts for renewable generation executed prior to June 1, 2010 to “count in full” toward a retail seller’s or POU’s RPS requirements and further exempts those contracts from the three product categories or “bucket” requirements.

This bill counts in full, as eligible generation for purpose of complying with the RPS, electric generation that relies on procurement of biomethane from a contract executed prior to January 1, 2012.

## **BACKGROUND**

*Eligible Renewable Generation* – Procurement from a renewable facility cannot be counted for purposes of complying with the RPS unless that facility has been certified as RPS-eligible by the CEC. Facilities interested in obtaining a bilateral contract or competing in a load-serving entity's RPS solicitation generally certify the facility with the CEC.

There are two types of certification: (1) RPS Certification, and, (2) RPS Pre-Certification. Renewable facilities that are under development may seek "pre-certification," with the understanding that the CEC will verify the information submitted in the pre-certification application once the facility has been completed and is delivering electricity. All certified and pre-certified facilities are subject to audit. The Western Renewable Energy Generation Information System (WREGIS) has been developed to satisfy current RPS tracking requirements. All RPS-certified facilities must register with WREGIS.

The fourth edition of the CEC’s RPS eligibility guidebook, released in January 2011, introduced a number of changes to the treatment of biomethane injected into the natural gas pipeline system. Some of the more noteworthy changes were the creation of the biogas section as a stand-alone section, the introduction of the term “pipeline biomethane,” and clarifying the delivery requirements for delivering biogas (now called pipeline biomethane, or biomethane) for use in an RPS-eligible electric generating facility.

The CEC certifies an “eligible renewable facility.” In the case of pipeline biomethane, the CEC will certify a natural gas plant that will receive pipeline biomethane. The CEC does not and has not considered the execution date of a contract in its certification process.

Pipeline biomethane stands out in the portfolio of eligible RPS resources because it is transported to a natural gas facility and it is the natural gas facility that gets certified as RPS-eligible because some portion of the generation from the facility is considered renewable based on the fuel source. Other RPS-eligible facilities have the fuel source and generating facility at the same site.

Consequently, in trying to define as eligible pipeline biomethane, the CEC had to try and fit a square peg into a round hole and in so doing may have not acted consistent with the purposes of the RPS program particularly as it was amended by SB x1 2 (Simitian, 2011).

*Pipeline Biomethane Suspension* – After the release of the 2011 eligibility guidebook by the CEC, controversy ensued over the new classification of “pipeline biomethane.” The adoption of SB x1 2 (Simitian, 2011) with its product categories, delivery requirements, and environmental objectives raised further question as to whether pipeline biomethane as defined as eligible in the guidebook was consistent with the RPS program. The guidelines for pipeline landfill and digester gas do not require displacement of fossil fuel consumption, the reduction of air pollution, or other environmental benefits to California. Additionally the contracts being signed by some California retail sellers and POUs were with landfills from as far away as Pennsylvania, Ohio and Tennessee – locales which make it physically impossible to verify delivery of the fuel to California particularly because the flow of those pipelines passes through pipelines flowing in the opposite direction of California. The RPS also intends that the program achieve “additionality” – that new development of renewables occurs – but in the case of many of the contracts, the biomethane had been flowing for quite some time so that there appears to be no new capture or incremental capture occurring. Additionally, the current guidebook lacks vigorous requirements to verify that the claimed quantity of biomethane was actually used by the designated power plant or that the necessary biomethane attributes were transferred to the power plant operator for purposes of the RPS and not double-counted for other purposes.

The CEC recognized that its guidebook was inconsistent with the requirements of SB x1 2 and on March 28, 2012, voted to suspend the RPS eligibility guidelines relative to biomethane with specified conditions. The resolution adopted by the CEC provided that it would not accept applications for pre-certification of facilities after 5:00 p.m. on that date. The existence or execution of a contract was irrelevant to that action. Power plants that were pre-certified for the RPS by the CEC will remain pre-certified. Complete applications for RPS certification and RPS pre-certification for power plants seeking to use biomethane that were received by the CEC prior to the deadline “will be processed in accordance with the eligibility guidelines in effect on that date.”

*Contract Eligibility under Suspension* – As a result of the suspension, some POUs and retail sellers have executed contracts for which they are not certain that they will be able to obtain certification of the generating facility. The CEC did not and does not consider the execution of contracts in their certification process and the suspension did not consider contract execution either. As a result, if there is a contract for the purchase of biomethane and the facility has been certified as eligible then the generation will be RPS eligible. If a facility that planned to receive biomethane filed for final or pre-certification with the CEC by March 28<sup>th</sup> at 5:00 p.m. the CEC indicates that those applications will be processed in accordance 2011 RPS guidebook. If a facility did not file a pre-certification with the CEC before the deadline, regardless of a contract, that generation and contract has no legal status before the CEC at this time.

*Grandfathered Contracts* – To finesse the transition from the 20% by 2010 RPS program to the 33% by 2020 program, SB x1 2 grandfathered all RPS contracts entered into prior to June 1, 2010 and provided that those contracts will “count in full” under the new program requirements. Under rules adopted by the California Public Utilities Commission, this means that generation

from contracts executed prior to June 1, 2010 will be netted out from the total RPS obligation; the remaining retail sales requirement under the RPS will be required to meet the new product content categories, commonly referred to as buckets, under the new program. Buckets are a critical new feature required for compliance in the RPS program. Retail sellers and POUs have interim procurement obligations leading up to 33% by 2020. The program defines three product categories, the “buckets”, and sets limitations on the quantity of electricity products for each of the three buckets in each compliance period with an emphasis on electric generation delivered directly to a California balancing authority. Because the biomethane and the generating facility are geographically separate, usually by thousands of miles, it is not clear under the law or CEC or CPUC policy into which bucket the resulting generation would be eligible.

### **COMMENTS**

1. Author’s Purpose. According to the author, the RPS is the centerpiece of the state's effort to develop a clean energy system and reduce pollution and greenhouse gas emissions associated with electricity consumption. Over the past ten years, the RPS statutes have evolved to include very specific eligibility conditions and limits for various renewable electricity technologies and products. Under the RPS, renewable fuels must be "used" to generate electricity to be eligible for the RPS. The 2011 legislation which codified the current 33 percent by 2020 RPS goal (SBX1 2) also established very carefully negotiated product content categories (or "buckets"), which place the highest value on renewable energy that is directly delivered into California because it has the greatest economic, environmental and reliability benefits.

Under the RPS, the eligibility of "pipeline biomethane," where landfill gas or digester gas is claimed as the fuel source for a natural gas power plant, but is not literally "used" by the power plant to generate electricity and renewable energy credits, is unclear. Under a suspension order adopted by the California Energy Commission on March 28, 2012, no new certifications, fuel sources, or contracts for pipeline biomethane will be permitted. All existing certified facilities/contracts are “grandfathered” under the existing rules. The CEC deferred action on a handful of pending certifications.

AB 2196 would override the CEC suspension and reinstate RPS eligibility for pipeline biomethane going forward, under conditions comparable to other renewable energy sources. In particular, the fuel source and delivery method would be (1) considered in determining the appropriate product content category under the RPS (Section 399.16) and (2) subject to verification by WREGIS or a comparable independent tracking system.

2. Going Forward. This bill aligns the RPS program statutory structure which relies on and assumes that fuel supplies and the generation facilities are coincidental, with the growth potential and delivery characteristics of the development of pipeline biomethane where the fuel source and generation facility are disconnected. This bill would override the CEC suspension and reinstate RPS eligibility for pipeline biomethane for contracts entered into after January 1, 2012, under conditions comparable to other renewable energy sources. In particular, the biomethane fuel source and pipeline delivery method would be (1)

considered in determining the appropriate product content category or "bucket" and (2) subject to verification by an independent tracking system.

There has been little controversy concerning these provisions but there may be an unintended consequence from the requirement that the biomethane "physically flows toward the generating that contracted for the biomethane." In effect this would require that all generating facilities be downstream of the fuel source. To clarify this provision, *the committee may wish to consider amendments that require the flow within the state or toward the generating facility.*

3. Looking Back. This bill will override the suspension of pipeline biomethane and the associated generation facilities as eligible renewable resources by the CEC and count as eligible under the RPS program any procurement of pipeline biomethane under a contract executed prior to January 1, 2012. It is important to distinguish this bill from the CEC's suspension because the CEC determined eligibility based on the certification status of a facility and not on contracts for the fuel supply. Consequently, this bill will grandfather an unknown number of contracts that never filed for a certification or pre-certification of the facility with the CEC.

Some parties argue that the bill should be amended to change the grandfather date to coincide with the CEC suspension but the additional contracts that would be brought in as a result of the date change were not likely eligible for continued processing under the conditions of the CEC suspension because they never filed an application for certification or pre-certification of the facility. Nevertheless parties continue to argue for consistency between this bill and the CEC suspension which is apples and oranges and not possible since the bill concerns contract execution date and the CEC suspension was based on the certification status of a generating facility.

4. Caught Betwixt & Between? Regardless of the grandfather date for the contracts, the remaining issue for those contracts is product content eligibility or what bucket into which the generation would count. Because the product categories took effect in the spring of 2011, the CEC has yet to consider into which bucket this generation would count for POUs. The bill currently provides that those contracts will "count in full" for purposes of the RPS but does not specify a product content category or bucket. The author's intent appears to be that these contracts will be treated the same as other grandfathered contracts under the RPS and that the total electric generation resulting from the pipeline biomethane will be netted out from the total RPS obligation in future compliance periods. The remainder of the RPS compliance obligation for retail sellers and the POUs would have to meet the product compliance categories or buckets associated with the new RPS program.

Some parties argue for amendments to this bill which would count these contracts as specifically eligible under bucket 1. There is no precedent for this in the RPS program. Additionally, the effect of grandfathering these contracts as bucket 1 would likely be to eliminate any future procurement obligations for generation in bucket 1 and allow any remaining generation necessary for RPS compliance to be achieved by the purchase of RECs further avoiding the purpose of the program to develop new renewable generation.

To ensure clarity of the author's intent and consistency with the treatment of other grandfathered contracts in the RPS program, *the committee may wish to consider cross-referencing the treatment of biomethane for contracts executed prior to January 1, 2012 with current law for contracts grandfathered prior to June 1, 2010 as provided for in Public Utilities Code Section 399.16 (d).*

5. Double Referral. Should this bill be approved by the committee, it should be re-referred to the Senate Committee on Environmental Quality for its consideration as "Do Pass." In the interest of time, amendments taken in this committee will be accepted and processed by the Environmental Quality Committee.

### **ASSEMBLY VOTES**

Assembly Floor	(66-1)
Assembly Appropriations Committee	(12-0)
Assembly Natural Resources Committee	(6-1)
Assembly Utilities and Commerce Committee	(10-0)

### **POSITIONS**

#### **Sponsor:**

Author

#### **Support:**

California State Association of Electrical Workers  
California State Pipe Trades Council  
Californians Against Waste  
Clean Power Campaign  
Coalition of California Utility Employees  
The Utility Reform Network  
Union of Concerned Scientists  
Western States Council of Sheet Metal Workers

#### **Support, if amended:**

Ameresco  
Burbank Water and Power  
California Association of Sanitation Agencies  
California Municipal Utilities Association  
California Wind Energy Association  
Large-Scale Solar Association  
City of Los Angeles (LADWP)  
Sacramento Municipal Utility District  
Waste Management

**Oppose, unless amended:**

California Public Utilities Commission  
Clean Energy  
Coalition For Renewable Natural Gas  
Shell Energy North America  
Southern California Edison

**Kellie Smith**  
**AB 2196 Analysis**  
**Hearing Date: June 25, 2012**