

BEFORE THE
CALIFORNIA ENERGY COMMISSION

02-REN-1038

DOCKET

11-RPS-01

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Developing Regulations and Guidelines for the 33
Percent Renewables Portfolio Standard

and

Implementation of Renewables Investment Plan
Legislation

Docket No. 11-RPS-01

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**COMMENTS OF SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY ON
PROPOSED CHANGES TO RENEWABLES PORTFOLIO STANDARD ELIGIBILITY
GUIDEBOOK AND OVERALL PROGRAM GUIDEBOOK
FOR THE RENEWABLE ENERGY PROGRAM**

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I. INTRODUCTION.

The Southern California Public Power Authority (“SCPPA”)¹ respectfully submits this comment on the draft Fifth Edition of the *Renewables Portfolio Standard Eligibility Guidebook* (“Draft Eligibility Guidebook”) and the draft Fourth Edition of the *Overall Program Guidebook for the Renewable Energy Program* (“Draft Overall Guidebook”) released by the California Energy Commission (“Commission”) on October 14, 2011, and discussed at the workshop on October 21, 2011 (“Workshop”). SCPPA submits this comment to support and augment the comments of the California Municipal Utilities Association.

The Draft Eligibility Guidebook contains no substantive changes to the existing provisions on the eligibility of biomethane as a renewable fuel or the transport of biomethane to California, and SCPPA strongly supports that approach. No substantive changes to the existing provisions on the eligibility of biomethane or the transport of biomethane are required by the

¹ SCPPA is a joint powers authority. The members are Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, Los Angeles Department of Water and Power, Imperial Irrigation District, Pasadena, Riverside, and Vernon. This comment is sponsored by Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, the Imperial Irrigation District, Pasadena, Riverside, and Vernon.

terms of Senate Bill (“SB”) X1 2 (Simitian, 2011) or for any other reason. However, SCPPA proposes some changes to the Draft Eligibility Guidebook that do not involve the eligibility or transportation of biomethane.

Some further changes to the Guidebooks are required in order to correct some errors and to assist with the implementation of the expanded Renewable Portfolio Standard (“RPS”) program set out in SBX1 2 in an efficient and cost-effective manner.

II. NO CHANGES TO PROVISIONS ON THE ELIGIBILITY OR TRANSPORT OF BIOMETHANE ARE REQUIRED.

The Draft Eligibility Guidebook notes on page 24 that:

The Energy Commission is re-examining the requirements for pipeline biomethane in this section and as applicable in this guidebook pertaining to biomethane and may propose revisions to these requirements after consideration of public comments and input from technical staff.

It is unclear what revisions to the “requirements for pipeline biomethane” the Commission has in mind. SBX1 2 does not require any changes to the provisions in the Eligibility Guidebook on the eligibility and transport of biomethane.

SBX1 2 renumbers the current California Public Resources Code (“PRC”) section 25741(b)(1) as PRC section 25741(a)(1) without substantive modification.² PRC section 25741(a)(1) in SBX1 2 lists eligible fuels for “renewable electrical generation facilities.” The list of eligible fuels includes digester gas and landfill gas. If the Legislature had intended to remove these fuels from the list of eligible fuels in SBX1 2 it could have done so, but it chose not to do so. Consequently, digester gas and landfill gas – referred to in these comments as “biomethane” – continue to be RPS-eligible renewable fuels.

² SBX1 2 § 6.

Similarly, SBX1 2 does not contain any provisions addressing the transportation of biomethane to California. Thus, SBX1 2 does not provide any statutory basis for changing the provisions in the Eligibility Guidebook regarding the transportation of biomethane.

The biomethane provisions in the Eligibility Guidebook were fully discussed and revised only 12 months ago in the preparation of the current, Fourth Edition of the Eligibility Guidebook. No changes to law relating to biomethane have occurred since that time to justify any increased restrictions on the eligibility or transportation of biomethane in the Eligibility Guidebook.

Continuing the current provisions for electricity generated at California facilities by burning pipeline biomethane to be RPS-eligible would be consistent with SBX1 2 policy. SBX1 2 sets a goal of “procuring least-cost and best-fit electricity products from eligible renewable energy resources.”³ Electricity generated by burning pipeline biomethane in a California power plant is a “least-cost/best-fit” product. It does not require costly or environmentally questionable electrical transmission expansion. It does not strand existing generation resources. It can be used to follow load, avoiding investment in firming and shaping arrangements. Any change to the Eligibility Guidebook that would impair the use of pipeline biomethane to generate RPS-eligible electricity would be inconsistent with the SBX1 2 policy favoring least-cost/best-fit renewable products.

On September 30, 2011, SCPPA submitted detailed comments (“September Comments”) in response to the Commission’s workshop on September 20, 2011 (“September Workshop”) on the use of biomethane delivered via the natural gas pipeline system for California’s RPS. For the reasons set out above and in SCPPA’s September Comments, the provisions in the Draft

³ SBX1 2, PUC § 399.16(b).

Eligibility Guidebook on the eligibility, delivery and transport of biomethane should not be changed.

III. THE ELIGIBILITY GUIDEBOOK SHOULD BE REVISED TO CLARIFY THE WAYS IN WHICH BIOMETHANE MAY BE USED.

Although no changes should be made to the existing provisions on the eligibility and transportation of biomethane, the Draft Eligibility Guidebook should be revised to include some new provisions to clarify the ways in which biomethane can be used as an RPS-eligible fuel.

A. The CPUC-approved gas tariffs are sufficient to track and account for pipeline biomethane.

The notice for the September Workshop raised questions relating to delays in the combustion of biomethane and biomethane transportation imbalances. As discussed in more detail in SCPPA’s September Comments, the provisions in the current Eligibility Guidebook and in the gas utilities’ tariffs, as approved by the California Public Utilities Commission (“CPUC”), sufficiently address these issues. Gas utility tariffs contain detailed rules governing all facets of gas transportation, storage, and imbalances. Title to gas, including biomethane, is accurately tracked throughout the gas transmission system and can be verified by detailed documentation. Likewise, gas utilities maintain accurate records of the volume of biomethane injected into storage and withdrawn from storage during any period.

No interruption in the transport of biomethane (such as storage) that is in accordance with the current Eligibility Guidebook and gas utility tariffs and associated rules and procedures should disqualify biomethane as a fuel for generating RPS-eligible electricity. To clarify this point, the following additional language should be included in section II.B(2) of the Draft Eligibility Guidebook:

If pipeline biomethane is delivered in accordance with the requirements of this section, the transport and use of the pipeline biomethane within California in accordance with the gas utilities’ CPUC-approved tariffs, rules, products, procedures and services –

including storage, parking, lending, balancing, scheduling, and pooling – shall not preclude that biomethane from generating RPS-eligible electricity when combusted at a certified facility. These rules and procedures are sufficient to track, verify and account for pipeline biomethane within California.

B. The provisions regarding “green attributes” in section II.B(2) should be deleted.

Section II.B(2) of the Draft Eligibility Guidebook contains the following paragraph on “green attributes” in relation to biomethane transactions:

As part of the RPS eligibility requirements, no party may sell, trade, give away, claim, or otherwise dispose of any of the attributes that would prevent the resulting electricity from being compliant with the definition of “green attributes” as defined in the *Overall Program Guidebook for the Renewable Energy Program*. For biogas that is delivered from the production facility to the electric generating facility applying for certification, these necessary attributes must be conveyed along with the biogas and sold for the purpose of use at the electricity generating facility such that the RECs generated would be eligible to meet the RPS.

This paragraph is unnecessary. The issue of “green attributes” relating to biogas or biomethane is fully addressed in the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulation (“Cap and Trade Regulation”) that was approved by the California Air Resources Board on October 20, 2011. The Cap and Trade Regulation includes specific restrictions to control the amount of offsets or “green attributes” (other than RECs) that may be generated by capturing methane that would otherwise escape into the atmosphere:

An entity may not sell, trade, give away, claim, or otherwise dispose of any of the carbon credits, carbon benefits, carbon emissions reductions, carbon offsets or allowances, howsoever entitled, attributed to the fuel production that would, when combined with the CO₂ emissions from complete combustion of the fuel, result in more CO₂e emissions than would have occurred in the absence of the fuel production. *In the case of biomethane or biogas produced from digesters or landfills, the resulting credit for avoided methane emissions may not exceed 23.75 metric tons of CO₂e per ton of captured methane.* All calculations of CO₂e

emissions are based on the 100-year global warming potentials included in MRR. Generation of Renewable Energy Credits is excluded from this analysis and will not prevent a biomass-derived fuel that meets the requirements in this section from being exempt from a compliance obligation.⁴

These restrictions are designed to ensure that there is no double-counting of the environmental benefits of biogas. All entities that are covered by the Cap and Trade Regulation or seek to transact in biogas-related carbon offsets pursuant to that regulation must abide by these restrictions.⁵

Given this development, the paragraph on “green attributes” in section II.B(2) of the Draft Eligibility Guidebook is no longer needed. Furthermore, it could result in confusion because it lacks the specificity of the relevant section in the Cap and Trade Regulation. It should be removed to eliminate the duplication and potential for confusion.

C. Include provisions in section II.B(7)a on biogas at multifuel facilities.

Section II.B(7)a of the Draft Eligibility Guidebook contains provisions for measuring renewable generation from multifuel facilities, including facilities that use both natural gas and biogas or biomethane. SCPPA has no objection to the formulae included in this section.

However, as previously agreed by Commission staff, the references to “generation system” should be amended to refer to a “Project” as defined in the Draft Overall Guidebook, with the revisions to that definition that are discussed in section VIII.B of these comments, below.

SCPPA also suggests some additional wording to clarify that where there are several multifuel “Projects” receiving natural gas and biomethane at one site, the Project operator can determine which Project has received the biomethane, subject to reasonable limits.

For all thermal conversion technologies, ~~and~~ all fuels or energy resources contributing thermal energy to ~~each~~the ~~Project~~system

⁴ Cap and Trade Regulation, § 95852.1.1(b) (emphasis added).

⁵ Cap and Trade Regulation, § 96010.

that generates electricity, and any inputs not separately metered, must be accounted for in the measurement methodology as contributing to generation. ... Where multiple Projects generate electricity from natural gas and biogas or pipeline biomethane on a single site, the operator of the Projects may determine which Project has combusted the biogas or pipeline biomethane. The amount of biogas or pipeline biomethane allocated to a particular Project may not exceed the total amount of that fuel delivered to the Projects on that site, nor the total amount of gas combusted by that Project, during the relevant period.

IV. THE SUMMARY OF POU SBX1 2 REQUIREMENTS IN SECTION II.A SHOULD BE CORRECTED.

Page 17 of the Draft Eligibility Guidebook contains the following statements:

The law requires the governing board of each POU, no later than January 1, 2012, to adopt and implement a procurement plan that requires the utility to procure a minimum quantity of electricity products from eligible renewable energy resources for each compliance period. ...

For the second and third compliance periods through December 31, 2016, and December 31, 2020, the targets must equal 25 and 33 percent of retail sales, respectively.

These statements are erroneous.

First, the reference to January 1, 2012, as a deadline to adopt and implement a procurement plan is erroneous. SBX1 2 does not contain a deadline for publicly owned electric utilities (“POUs”) to adopt a procurement plan. Public Utilities Code (“PUC”) section 399.30(f)(1), promulgated by SBX1 2, states:

Each local publicly owned electric utility shall annually post notice ... whenever its governing body will deliberate in public on its renewable energy resources procurement plan.

Second, the sentence stating that “for the second and third compliance periods through December 31, 2016, and December 31, 2020, the targets must equal 25 and 33 percent of retail sales, respectively” is erroneous. This sentence incorrectly implies that POUs must procure 25

percent and 33 percent of their retail sales from renewable resources during the second and third compliance periods respectively.

Instead, SBX1 2 requires that POUs procure a “minimum quantity” of electricity products from renewable resources during the second and third compliance periods. PUC section 399.30(a) requires each POU to:

procure a *minimum quantity* of electricity products from eligible renewable energy resources, including renewable energy credits, as a specified percentage of total kilowatthours sold to the utility’s retail end-use customers, each compliance period, to achieve the targets of subdivision (c).

Emphasis added. Likewise, PUC section 399.30(b) requires POUs to procure “a minimum quantity” for each of the three compliance periods, 2011-2013, 2014-2016, and 2017-2020. PUC section 399.30(c) requires that the minimum quantities be calculated to show reasonable progress from 20 percent of retail sales at the end of the first compliance period to 25 percent by December 31, 2016, and from 25 percent at the end of the second compliance period to 33 percent of retail sales by December 31, 2020:

The quantities of eligible renewable energy resources to be procured for all other compliance periods reflect reasonable progress in each of the intervening years sufficient to ensure that the procurement of electricity products from eligible renewable energy resources achieves 25 percent of retail sales by December 31, 2016, and 33 percent of retail sales by December 31, 2020.⁶

Thus, SBX1 2 does not require POUs to obtain 25 percent of retail sales from renewable resources during the entirety of the second compliance period or 33 percent during the entirety of the third period. The CPUC recently reached the same conclusion in interpreting PUC section 399.15 regarding retail sellers in its October 28, 2011 Proposed Decision in R.11-05-005 entitled

⁶ SBX1 2, PUC § 399.30(c)(2).

*Decision Setting Procurement Quantity Requirements for Retail Sellers for the Renewables Portfolio Standard Program (“Proposed Decision”).*⁷

SCPPA understands that the statements on page 17 of the Draft Eligibility Guidebook are intended to summarize the requirements in SBX1 2 and are not intended to have precedence over any requirements adopted in the Commission’s forthcoming regulations for the enforcement of RPS procurements on POUs.⁸ Nevertheless, to avoid any confusion, particularly prior to the adoption of any such regulations, it is important that the statements be correct. The statements should be revised as follows to properly reflect SBX1 2:

The law requires the governing board of each POU, ~~no later than January 1, 2012,~~ to adopt and implement a procurement plan that requires the utility to procure a minimum quantity of electricity products from eligible renewable energy resources for each compliance period. ... ~~For the second and third compliance periods through December 31, 2016, and December 31, 2020, the targets must equal 25 and 33 percent of retail sales, respectively.~~

V. REPORTING REQUIREMENTS SHOULD BE DESIGNED TO SUPPORT MULTI-YEAR COMPLIANCE PERIODS.

The Commission’s presentation at the Workshop stated that utilities will be required to prepare compliance period reports in 2014, 2017 and 2021 for the preceding compliance period (slide 42), and the Commission will determine RPS compliance and prepare RPS verification reports on a compliance period basis (slides 35-36).

The Draft Eligibility Guidebook states, consistently, that the Commission “will determine each POU’s compliance with its RPS requirements following each compliance period” based on the RPS verification reports.⁹

⁷ Proposed Decision at 14.

⁸ Draft Eligibility Guidebook at 15.

⁹ Draft Eligibility Guidebook at 103.

SCPPA supports these statements. PUC section 399.30, promulgated by SBX1 2, establishes compliance obligations for the multi-year compliance periods 2011-2013, 2014-2016, and 2017-2020. POUs are not subject to annual compliance obligations until 2021, and the Commission may not impose annual compliance obligations on POUs until 2021.

The CPUC's Proposed Decision is consistent with this understanding of PUC section 399.30. PUC section 399.15 applies to retail sellers and parallels PUC section 399.30. The Proposed Decision states: "[The] overall structure of new Section 399.15(b) favors the view that there is one, cumulative target for each of the two later compliance periods."¹⁰ This passage from the Proposed Decision addresses only the second and third compliance periods because there can be no reasonable doubt that there is a single compliance obligation for the first compliance period. Both PUC section 399.15 (for retail sellers) and PUC section 399.30 (for POUs) require that the minimum quantity for the first compliance period to be "equal to an average of 20 percent of retail sales" for the period.¹¹

VI. PRE-CERTIFICATION SHOULD BE RETAINED IF IT IS MADE MORE ROBUST.

The Workshop notice states that:

The Energy Commission is considering eliminating the option of pre-certifying a facility that is in development and not yet online. ... If the Energy Commission maintains pre-certification as an option for developers, staff believes pre-certification should have greater value by being a more robust and responsive system.¹²

The pre-certification system should be maintained only if it is made more "robust" so that it offers some benefits for renewable energy developers. Currently, pre-certification does not guarantee that certification will be granted, even if the project for which certification is sought is

¹⁰ Proposed Decision at 17.

¹¹ See Proposed Decision at 10-11.

¹² Workshop notice, September 23, 2011, Attachment B Part C.

exactly the same as described in the application for pre-certification.¹³ This does not provide the certainty that investors need to commit to renewable energy projects.

The pre-certification/ certification system should be amended in the Draft Eligibility Guidebook to provide that a renewable energy facility will automatically be certified if:

1. the facility has been pre-certified;
2. an application for certification is received within a certain period of time after pre-certification – for example, three years; and
3. the facility has not significantly changed between the pre-certification and certification applications (i.e., the technology, fuel etc remain as originally contemplated).

Regarding item 2 above, SCPPA understands that pre-certifications cannot be honored indefinitely and would support a time limitation that is reasonable given the length of time commonly taken to develop new renewable energy projects.

Regarding item 3 above, if the project has changed significantly between pre-certification and certification, the eligibility rules in force at the time the certification application is received should be applied when determining whether the project can be certified.

Honoring pre-certification as discussed above is a limited form of “grandfathering” that would assist the renewable energy industry without unduly hampering the ability of the Commission to update its eligibility rules and apply the new rules. Grandfathering is a commonly-used concept. For example, SBX1 2 contains grandfathering provisions.¹⁴ From a policy standpoint, grandfathering allows regulated entities the certainty necessary to make long-term investments in a changing regulatory climate.

¹³ Draft Eligibility Guidebook at 75.

¹⁴ SBX1 2, PUC § 399.16(d).

VII. CERTIFICATES SHOULD CONTAIN MORE INFORMATION.

At the Workshop Commission staff noted that they are considering revising the format of the certificates issued when a facility is certified as RPS-eligible in respect of the combustion of biomethane. SCPPA supports this change. For ease of reference, certificates should include information on the approved fuel sources and the approved path of the fuel to California, together with the approval date applying to each approved source.

VIII. CERTAIN DEFINITIONS IN THE OVERALL GUIDEBOOK SHOULD BE REVISED.

A. The definition of “Local publicly owned electric utility” should be revised.

The definition of “Local publicly owned electric utility” in the Draft Overall Guidebook includes the following new language:

... a joint powers authority that includes one or more of these agencies and that owns generation or transmission facilities or furnishes electric services over its own or its member’s electric distribution system.¹⁵

This definition would apply to SCPPA. Consequently, SCPPA would be considered to be a local publicly owned electric utility under the Guidebooks. The purpose of including entities such as SCPPA as local publicly owned electric utilities is unclear. As it does not have any retail customers, SCPPA would not have any retail sales on which an RPS obligation could be calculated. However, it would be required to report to the Commission as a local publicly owned electric utility. Such reports would not provide any information that the Commission does not already receive from other sources.

SCPPA requests that this definition be revised either to exclude all joint powers authorities by deleting the wording above or to include a specific exemption for SCPPA.

¹⁵ Draft Overall Guidebook at 25.

B. The definition of “Project” should be revised.

The definition of “Project” in the Draft Overall Guidebook includes the following new language:

For all other facilities in the Renewables Portfolio Standard Program, “project” refers to a group of one or more pieces of electrical equipment, and ancillary equipment necessary to attach to the transmission grid, that are unequivocally separable from any other electrical generating equipment or components.¹⁶

The application of this sentence is unclear. It will not necessarily allow separate units at an electricity generating plant to constitute separate “projects,” as SCPPA previously requested and the Commission staff agreed in principle in August, 2011.

The Operating Rules of the Western Renewable Energy Generation Information System (“WREGIS”) define “Generating Unit” (as distinct from “Generating Facility”) as follows:

Any combination of physically connected generators, reactors, boilers, combustion turbines, and other prime movers operated together to produce electric power.¹⁷

The WREGIS Operating Rules state that:

Each Generating Unit at a facility may be registered separately or as a single facility, depending upon the needs of the Account Holder and the characteristics of the Generating Units.¹⁸

Therefore there may be several registered Generating Units at one site, or only one registered Generating Unit covering the whole facility. WREGIS certificates are issued on the basis of generation at each registered Generating Unit.¹⁹ SCPPA supports the WREGIS approach.

In order to implement the Commission staff’s agreement that separate generating units on the same site can be separate projects, and for ease of administration resulting from greater

¹⁶ Draft Overall Guidebook at 27.

¹⁷ WREGIS Operating Rules, December 2010, page 3.

¹⁸ WREGIS Operating Rules, December 2010, page 9.

¹⁹ WREGIS Operating Rules, December 2010, section 9.

consistency with the WREGIS Operating Rules, SCPPA suggests that the following sentence be included in the definition of “Project” in the Draft Overall Guidebook:

For multifuel facilities that burn biogas or pipeline biomethane and natural gas, “project” means any combination of physically connected generators, reactors, boilers, combustion turbines, and other prime movers operated together to produce electric power. There may be more than one project at a single site.

IX. CONCLUSION.

SCPPA appreciates the opportunity to provide these comments to the Commission and looks forward to working with the Commission to finalize the amendments to the Guidebooks.

Respectfully submitted,

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