

BEFORE THE CALIFORNIA ENERGY COMMISSION

In the Matter of:

Developing Regulations and Guidelines
For the 33 Percent Renewables Portfolio
Standard

and

Implementation of Renewables
Investment Plan Legislation

Docket No. 11-RPS-01

Docket No. 02-REN-1038

RPS Proceeding

02-REN-1038

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**COMMENTS OF BLOOM ENERGY CORPORATION ON NOTICE TO CONSIDER
SUSPENSION OF THE RPS ELIGIBILITY GUIDELINES RELATED TO
BIOMETHANE**

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BIOMETHANE**

Bloom Energy Corporation (“Bloom”) respectfully submits these comments on the California Energy Commission’s (“CEC”) Notice to Consider Suspension of the RPS Eligibility Guidelines Related to Biomethane (“Notice”) in the RPS Proceeding. Bloom appreciates the opportunity to provide these comments. The Notice discloses that the CEC is considering suspending its guidelines, previously adopted in 2007¹ and still currently effective, which allow electric generation facilities, like those developed by Bloom, to be certified as eligible for the Renewables Portfolio Standard (“RPS”) if the facilities use biomethane to generate electricity. The Notice justifies the suspension as allowing the CEC time to: (i) determine if the current guidelines regarding the RPS eligibility of electric-generating facilities utilizing pipeline biomethane realize any environmental benefits consistent with Senate Bill 2 (1x), and (ii) verify that no fraud is occurring with regard to the injection, delivery, and use of pipeline biomethane.

Bloom opposes the suspension for the reasons described below; however, Bloom is especially concerned with the manner in which the CEC intends to suspend its current guidelines. According to the Notice, the CEC will only allow those facilities that have submitted an application for RPS certification before the suspension date to continue to be eligible to receive RPS certification. Thus, the suspension proposed in the Notice will improperly penalize

¹ See RPS Guidebook (Second Edition), Publication #: CEC-300-2007-006-CMF.

Bloom, its customers, and other businesses that have relied on the CEC's current guidelines to make substantial business decisions and investments. Bloom and its customers have entered into long-term contracts to pay a premium to purchase pipeline biomethane instead of conventional natural gas. The CEC's potential suspension would punish both Bloom and its customers for their environmental leadership.

As will be described more fully below, Bloom respectfully requests that if the CEC does suspend the RPS Eligibility Guidelines related to biomethane, the CEC allow those facilities that have already entered into a contract to take ownership of biomethane prior to the date of the suspension of the current guidelines to seek and receive RPS certification. By taking such an action to ensure that businesses that relied on the current guidelines are not unfairly penalized, the CEC promotes regulatory certainty, continues to enable investment in California RPS projects, and ensures that there is no chilling effect on companies seeking to develop innovative, renewable facilities in California and their customers.

I. BLOOM ENERGY CORPORATION

Bloom Energy Corporation is a fuel cell company founded and operating in California since 2002. Bloom manufactures a unique on-site power generation system that utilizes an innovative new fuel cell technology with roots in the National Aeronautics and Space Administration's ("NASA") Mars program. When running on renewable fuels, Bloom's systems are capable of efficiently producing renewable electricity twenty four hours a day, every day of the year.

To date, Bloom has developed a fleet of close to 200 power generation systems, called Bloom Boxes, which utilize biomethane in California. Each Bloom Box produces 100 kW for its California customer and is either currently online or scheduled to come online by August 2012. By running primarily on biomethane (Bloom Boxes generally utilize a fuel mix of 75% biomethane and 25% natural gas²), Bloom plans to provide its customers with a clean, reliable and affordable source of baseload, renewable energy from an RPS facility.

² Renewable credits are only generated for the renewable portion of the facility's generation that is considered RPS eligible. See RPS Guidebook (4th Edition), Publication # CEC-300-2010-007-CMF, at 32.

Bloom currently has one pre-certified RPS facility in California.³ However, through Bloom's pre-certification application process for this facility, Bloom's facility served as a test subject for the CEC to determine the RPS eligibility of an in-state, distributed, electric-generating facility utilizing pipeline biomethane from an out-of-state fuel production facility. Bloom does expect to seek RPS certification for all of its electric-generating facilities in California that utilize pipeline biomethane.

II. THE CEC SHOULD NOT CREATE REGULATORY UNCERTAINTY AND CHILL INVESTMENT IN RENEWABLE DEVELOPMENT IN CALIFORNIA

Given California's ambitious goals to ensure that 33% of California's energy consumption is from renewable resources and to reduce greenhouse gas ("GHG") emissions to 1990 levels by 2020, the CEC should foster a regulatory environment that incents new and innovative renewable development in California. While Bloom encourages the CEC to evaluate its current guidelines related to the RPS eligibility of electric-generating facilities utilizing biomethane, the CEC should not unfairly penalize those companies like Bloom that have relied on the current guidelines and accordingly made significant investments. Furthermore, the CEC's current guidelines should not be suspended as they both result in incremental environmental benefits to California and provide appropriate safeguards against any issues of fraud related to the injection, delivery and use of biomethane.

A. The CEC Should Not Unfairly Penalize Those Companies that Have Already Entered Into a Contract to Take Ownership of Biomethane Prior to the Date of the Suspension of the Current Guidelines

Bloom appreciates that the CEC reaffirms the critical importance of promoting regulatory certainty and thus enabling parties which make investments based on its current RPS rules that have been in effect since 2007 not to be at risk to lose the investment in the event of a subsequent change in regulatory policy. The Notice accordingly would establish that the suspension, should it go into effect, "will not affect power plants that are certified as RPS-eligible by the Energy Commission and permitted to use biomethane as part of that certification, subject to the following limitations:

³ Bloom-Moffett facility, RPS ID#: 61291-C.

1. The biomethane is used in accordance with the requirements of the edition of the *RPS Eligibility Guidebook* under which the power plant was certified for the RPS;
2. The power plant's use of biomethane is limited to the biomethane procured under contract(s) with sources that were specifically identified in the power plant's approved application for RPS certification;
3. To ensure that the amount and availability of biomethane supplied to a RPS-certified power plant is not increased after the suspension takes effect, power plant operators shall provide the Energy Commission adequate documentation of the biomethane supplied to the power plant prior to the effective date of the suspension. This documentation shall include, but not be limited to, information on the term length of the biomethane supply contracts, the start and end dates of supply contracts, and the terms of biomethane delivered monthly under the supply contracts; and
4. Any extension of a biomethane contract term, increase in biomethane supply, or other change in the supply contract that increases the amount or availability of biomethane supplied to the RPS-certified power plant will require an amendment to the power plant's RPS certification. No such amendments will be considered by the Energy Commission during the suspension, and will be subject to the requirements in place when the Energy Commission lifts the suspension."

Appropriately, these limitations ensure that a currently RPS-certified facility can continue to use biomethane even after the suspension, as long as the facility does not change its existing contract for biomethane. In the Notice, the CEC also assures that "[c]omplete applications for RPS certification and RPS pre-certification for power plants seeking to use biomethane that are received by the Energy Commission prior to the effective date of the suspension will be processed in accordance with the Fourth Edition of the *RPS Guidebook*." Here again, the CEC appropriately ensures regulatory certainty by allowing those who have begun the certification process to continue the process under the same rules under which they submitted their application.

However, to best ensure regulatory certainty and to not penalize those businesses that made investments of funds and resources based on the current guidelines, the CEC should allow those facilities that have already entered into a contract to take ownership of biomethane prior to

the date of the suspension to also seek and receive RPS certification. The CEC has already recognized in the Notice that developers that have already submitted an application to the CEC for RPS certification of their facilities that utilize biomethane clearly relied on the current guidelines and so should be allowed to continue to seek and receive RPS certification. So, too, should developers that have entered into contracts for biomethane for their facilities but have not yet submitted an application to request certification for those facilities, be allowed to seek and receive RPS certification.

In reliance of the existing CEC regulations Bloom has successfully completed commercial negotiations to have close to 200 of its facilities receive pipeline biomethane. Thus, the CEC should not exclude any of these Bloom facilities, or any other electric-generating facilities, which have entered into contracts to receive pipeline biomethane in reliance on the CEC's current guidelines from seeking and receiving RPS certification. Any such exclusion would have a chilling effect on renewables development in California as developers would not have the certainty regarding the regulatory rules then in effect to make business decisions often involving significant investments. If the CEC suspends the previously adopted guidelines, it should allow any facilities that entered into contracts to receive pipeline biomethane prior to the date of that suspension to seek and receive RPS certification.

B. The CEC Should Not Suspend Its Current Guidelines Related to the RPS Eligibility of Facilities Utilizing Biomethane

In its Notice, the CEC explains that its proposed suspension would have two main purposes. First, the suspension will allow the CEC time to determine if the current guidelines regarding the RPS eligibility of electric-generating facilities utilizing pipeline biomethane realize any environmental benefits consistent with Senate Bill 2 (1x). Second, the suspension will allow the CEC to verify that no fraud is occurring with regard to the injection, delivery, and use of pipeline biomethane. However, as will be described below, neither purpose warrants the complete moratorium on the current guidelines as described in the Notice. Such a moratorium would serve only to stymie the development of much needed distributed, renewable generation.

1. Bloom Boxes Result in Incremental Environmental Benefits

Bloom Boxes are distributed electric-generating facilities that utilize pipeline biomethane and result in incremental environmental benefits. On an annual basis, Bloom Boxes running on biomethane in California utilizing a fuel mix of 75% pipeline biomethane and 25% natural gas should result in a total of approximately 124 million pounds of GHG reductions.

Bloom's customers have purchased a Bloom Box utilizing pipeline biomethane for the express purpose of receiving energy from a renewable facility that results in incremental GHG reduction, both specifically in California and worldwide. Thus, the CEC's suspension of the current guidelines would only serve to stymie the efforts of corporations and institutions in California like eBay, Wal-Mart, Staples, Kaiser Permanente, Coca-Cola, and Caltech that are trying to do their part to help California reach its goals with regard to GHG reduction.

2. The Current Guidelines Require Attestations Under Penalty of Perjury Regarding the Injection, Delivery, and Use of Pipeline Biomethane

The current RPS certification application requires that a representative of the electric generating facility utilizing pipeline biomethane, a representative of the entity delivering pipeline biomethane to the electric generating facility, and a representative of the production facility injecting biomethane into the pipeline system must all sign attestations under penalty of perjury. These attestations ensure that these representatives, and the companies they represent, are liable if they commit any fraud related to their biomethane sales.

Thus, while the CEC may determine additional methods to verify that no fraud is occurring, a suspension of the current guidelines is unnecessary as the attestations ensure that the companies and their representatives will be held liable if any fraud is eventually discovered. While ensuring that fraud does not occur is an important function of the CEC, completely suspending the current guidelines in order to determine a more suitable verification system is unnecessary given that the current guidelines ensure that consequences exist if fraud is discovered. By instituting the suspension, the CEC serves to stymie all development of renewable facilities utilizing pipeline biomethane in order to ensure that no bad actors appear. The CEC ought not to throw out the baby with the bathwater in its zeal to eliminate potential

fraud. Additional guidelines and verification can be developed without a total moratorium on RPS certification for electric-generating facilities utilizing pipeline biomethane.

III. CONCLUSION

Bloom respectfully requests that the CEC not suspend the current RPS Eligibility Guidelines related to biomethane. However, if the CEC does issue such a suspension, it should still allow those electric-generating facilities that have already entered into a contract to take ownership of biomethane prior to the date of the suspension of the previously adopted guidelines to seek and receive RPS certification.

Respectfully submitted,

By: _____/s/_____

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