California Energy Commission
DOCKETED
11-RPS-01
TN # 69432
FEB 08 2013

February 8, 2012

California Energy Commission
Docket Office, MS-4
RPS Proceeding
1516 Ninth Street
Sacramento, California 95814-5512

Re: Renewables Portfolio Standard (Docket No. 11-RPS-01 and Docket No. 01-REN-1038)

EDF Renewable Energy (herein "we") appreciates the opportunity to provide comments on the California Energy Commission (the "Energy Commission") Staff's *Concept Paper for the Implementation of Assembly Bill 2196 for the Renewables Portfolio Standard* (CEC-300-2013-001, January 2013) (the "Concept Paper"). Although several of the following comments do not directly address the issues and questions presented by the Concept Paper, the purpose of these comments is to assist the Energy Commission in ensuring that the final draft of the upcoming *Renewables Portfolio Standard ("RPS") Eligibility Guidebook, Seventh Edition,* which is expected to be released in early 2013, is consistent with industry practice and the text and legislative intent of Assembly Bill 2196 ("AB 2196"), which took effect in January 1, 2013, and is codified in Public Resources Code Section 2574(a)(4) and Public Utilities Code Section 399.12.6.

INTRODUCTION

There are three primary areas where some additional specificity would further the goals of AB 2196 with respect to the RPS eligibility of contracts executed prior to March 29, 2012. Below we briefly identify those three areas.

The accepted methods for reporting grandfathered contracts to the Energy Commission should be more broadly defined to include other written correspondence. The phrase "reported to the Energy Commission" should not be strictly interpreted to include only formal applications for pre-certification or certification of a biomethane contract for RPS eligibility with the Energy Commission. Instead, we urge the Energy Commission to interpret the term "reported" broadly and more reasonably, and credit any written correspondence with the Energy Commission prior to March 29, 2012 as reporting by the relevant contracting party, so long as the biomethane source, contract term, and contracted quantities are disclosed, and the contracting party is in receipt of an acknowledgement from the Energy Commission that they have received and reviewed the information pertaining to the contract in the context of RPS compliance. We elaborate below on why it would be contrary to the intent of AB 2196 to

exclude these contracts, given that power plants, and not biomethane contracts, are subject to certification.

The Guidebook should make clear that the types of contract amendments listed in Public Utilities Code Section 399.12.6(a)(2) are the exclusive set of contract amendments that trigger the requirements pertaining to biomethane delivery contracts executed after March 29, 2012. The Energy Commission should clarify that contracts executed prior to March 29, 2012 may be amended after March 29, 2012, provided that the amendments do not (1) increase the quantities of biomethane to be delivered under the contract, (2) change the source of the biomethane or (3) extend the term of the contract. As written, it is not clear that this list is exclusive, and it appears to limit if not prohibit amendments of any kind after March 29, 2012 unless the contract meets the requirements of Public Utilities Code Section 399.12.6(b). Restrictions beyond those specified in AB 2196 would be inconsistent with the text of the statute and the intent of the California legislature. Furthermore, such restrictions would be inconsistent with industry practice whereby contractual amendments are a common occurrence, and are an important aspect of ensuring ratepayer value.

Affidavits and/or Attestations from either the biomethane supplier or purchaser to the Energy Commission should fulfill the verification reporting requirements for the production and injection of biomethane into a common carrier pipeline. Finally, related to questions 2a and 2b in the Concept Paper, we propose that the Energy Commission verify that the biomethane source is injecting biomethane into a common carrier pipeline on or before April 1, 2014 by requesting an affidavit and/or attestation from either the supplier or the purchaser of the biomethane, as is consistent with the Energy Commission's past practice.

I. THE REPORTING REQUIREMENT FOR THE GRANDFATHERING OF CONTRACTS EXECUTED PRIOR TO MARCH 29, 2012 SHOULD BE DEFINED TO INCLUDE OTHER WRITTEN CORRESPONDENCE, DUE TO EXISTING CERTIFICATION OF POWER PLANTS PRIOR TO EXECUTION OF BIOMETHANE CONTRACTS.

Under AB 2196, contracts "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" would be eligible for RPS credit (Public Utilities Code Section 399.12.6(a)(1)).

The Concept Paper proposes interpreting the phrase "reported to the Energy Commission" to mean that a contract for an electrical generation facility using biomethane is eligible for RPS credit (under requirements before March 29, 2012 and at the time of the contract's execution) if the biomethane source and quantity under the contract were reported to the Energy Commission in a complete application for RPS pre-certification or RPS certification that was received by the Energy Commission before March 29, 2012, and the facility meets all other applicable eligibility requirements under the RPS Eligibility Guidebook that were in place at the time of the contract execution. We understand and appreciate that the Energy Commission is trying to give specificity to the phrase "reported to the Energy Commission" and would like to ensure that phrase creates a well-defined set of contracts that the Commission can easily track. However, it is our view that the proposed interpretation would impose a stricter standard than is

contemplated by the text of AB 2196 and exclude contracts that were clearly intended by the legislature to be grandfathered. If the legislature intended the reporting threshold to entail either pre-certification or certification, then it would have been very easy to include such terms in the legislation. Such an interpretation would unduly narrow the statute, and thwart its purpose. In addition, we believe that this proposed interpretation is inconsistent with the practices of the Energy Commission prior to March 29, 2012.

As noted above, the text of the statute does not indicate that a contract for biomethane must be reported as part of an application for pre-certification or certification prior to March 29, 2012 in order to be eligible for RPS credit. The statute simply provides that the contracts must be "reported." Merriam Webster defines "report" as "to give an account of." In other words, the plain meaning of the word "report" is to communicate information. By reading additional requirements into the interpretation of the phrase "reported to the Energy Commission," we believe that the Concept Paper is imposing a higher standard of communication that is warranted by the plain language of the statute.

We believe that the legislative history of the statute supports a broader interpretation of the phrase "reported to the Energy Commission" as well. Specifically, when the California State Senate discussed AB 2196 in its floor debate held on August 23, 2012, the content of the discussion, as it related to the grandfathering of contracts, focused almost exclusively on the date of the execution of the contracts as the relevant marker. Senator Christine Kehoe, who brought AB 2196 to the floor, concluded her remarks by stating that AB 2196 will "allow current contracts negotiated in good faith to be operable and clarifies what the rules are going forward." Senator Joe Simitian stated that "[a]ll of the contracts prior to the [March 2012] date will be grandfathered in for purposes of the RPS credit." There was no mention of a requirement to pre-certify or certify contracts with the Energy Commission. Rather, the legislature focused on the date the relevant contract was executed as the key determinant of RPS eligibility. We believe that by requiring a completed application for pre-certification or certification, the Concept Paper misconstrues the legislative intent of the statute, which was merely to establish a bright line (*i.e.*, the date) for eligibility.

Additionally, the Concept Paper does not specifically address the unique challenges presented by contracts that were entered into after the power plant that is to receive and use the biomethane for power generation was already certified by the Energy Commission. It should be noted that prior to March 29, 2012, the Energy Commission did not have procedures in place for certifying or pre-certifying contracts between already certified electrical generation facilities and new biomethane source facilities. Once an electrical generation facility was certified by the Energy Commission, there was no certification process in place for the addition of source facilities. However, the application of the proposed reporting requirements would cause these contracts, many of which received written guidance and recommendations from the Energy Commission's staff as well as written confirmation that their contract met the RPS delivery requirements according to the existing Guidebook, to become ineligible for RPS credit. This outcome is inconsistent with the text of AB 2196 and the legislative intent to provide RPS credit to all contracts entered into prior to March 29, 2012 and eligible under the rules in place at the time.

In light of the above conflict between the Concept Paper's recommendation and the practices and procedures that were in effect prior to March 29, 2012, we strongly recommend that the Commission adopt a reporting requirement that credits written correspondence between the Energy Commission and either party to a biomethane contract executed prior to March 29, 2012, provided the contract is between a biomethane source facility and a certified electrical generation facility. The written correspondence should include the delivery scenario contemplated by the contract and an acknowledgement from the Energy Commission that it has received the description of the delivery scenario and that such a delivery scenario would qualify for RPS eligibility if fulfilled.

II. CLARIFICATION THAT CONTRACT AMENDMENTS TO GRANDFATHERED CONTRACTS ARE PERMITTED PROVIDED THAT THE AMENDMENTS ARE NOT SPECIFICALLY PROHIBITED UNDER AB 2196.

We recommend that the Energy Commission clarify that amendments to grandfathered contracts that are not among the specifically prohibited changes listed in AB 2196 should be permitted, without placing the contract under the requirements of Public Utilities Code Section 399.12.6(b). The Concept Paper does not explicitly address amendments to grandfathered contracts after the March 29, 2012 deadline. However, one infers from Page 8 of the Concept Paper that amendments that were not executed nor reported to the Energy Commission would trigger the requirements of Public Utilities Code Section 399.12.6(b) with respect to such contract. This broad prohibition on all amendments after March 29, 2012 would go well beyond the explicit focus of AB 2196.

Under Public Utilities Code Section 399.12.6(a), biomethane contracts executed prior to March 29, 2012 are eligible to receive RPS credit provided they were in compliance with the rules in place as of the date of execution of the contract and they 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) also provides a list of disqualifying amendments that would render an eligible contract ineligible under the statute, namely:

- An extension of the term of the original contract;
- Any quantity of biomethane that exceeds the quantities of biomethane specified in the original contract;
- Any optional quantities of biomethane that can be exercised at the discretion of the buyer; and
- 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.

The disqualifying amendments enumerated in the statute reflect the interest of the California legislature in limiting the amount and sources of out-of-state biomethane delivered into the state for ratepayer value. We understand this policy and do not propose that the list of disqualifying amendments be changed. Our concern is that the Concept Paper did not specifically address how other amendments to eligible contracts that do not impact these areas will be treated. We propose that any amendments to contracts being grandfathered under AB 2196 that are not specifically prohibited by Public Utilities Code Section 399.12.6(a) (*i.e.*, the bulleted list above) should be permitted.

There are numerous contractual terms that could be amended by the parties for commercial or other reasons without offending the legislative intent of AB 2196. For example, it is common for RPS-related power contracts in California to be assigned by one supplier to another. Such a change in contractual terms would not conflict with the legislative intent of AB 2196, but could ensure and enhance the value of the contract for California ratepayers by ensuring that it is performed by the appropriate supplier. In short, contractual amendments are common in industry practice, and we request that the next Guidebook implementing AB 2196 clarify that amendments to eligible contracts are permitted so long as they are not specifically prohibited by Public Utilities Code Section 399.12.6(a).

III. AFFIDAVITS AND/OR ATTESTATIONS FROM EITHER THE BIOMETHANE SUPPLIER OR PURCHASER TO THE COMMISSION SHOULD FULFILL THE VERIFICATION REPORTING REQUIREMENTS FOR THE PRODUCTION AND INJECTION OF BIOMETHANE INTO A COMMON CARRIER PIPELINE.

Related to questions 2a and 2b in the Concept Paper, the Energy Commission is responsible for verifying that biomethane has been produced, captured, and injected into a common carrier pipeline on or before April 1, 2014 in order to insure that the grandfathered contracts have met the requirements to receive RPS credit. To this end, we recommend that the Energy Commission have suppliers provide an affidavit stating that biomethane from the contracted source has been delivered to a common carrier pipeline for delivery into California under the terms of the executed contract as is consistent with the Energy Commission's past practice.

We also note that Form CEC-RPS-1A:S5 can be adapted to allow the supplier to attest that biomethane injection into a common carrier pipeline has occurred by April 1, 2014.

IV. CONCLUSION

The recommendations above are intended to more closely align the rules to be adopted by the Energy Commission with the plain meaning and legislative intent of AB 2196, by:

- Avoiding the disqualification for RPS eligibility of biomethane contracts executed prior to March 29, 2012 for failure to report to the Energy Commission as defined in the Concept Paper.

- Avoiding the prohibition of all contract amendments after March 29, 2012 which would be inconsistent with the text of the statute as well as industry practice.

- Proposing a method to ensure verification of biomethane injection into common carrier pipelines on or before April 1, 2014, for those contracts executed prior to March 29, 2012 that is consistent with the Energy Commission's past practices.

We appreciate the Energy Commission's attention to the above matters and look forward to working further with the Energy Commission to implement AB 2196 fully.

Respectfully submitted,

EDF Renewable Energy

By: _____

Virinder Singh
Director—Regulatory & Legislative Affairs
EDF Renewable Energy
517 SW 4th Ave, Suite 300
Portland, Oregon 97212
Telephone: (503) 219-3166, x 1025
Email: virinder.singh@edf-re.com