

**BEFORE THE ENERGY COMMISSION OF THE STATE OF CALIFORNIA**

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

NOTICE Re STAFF

CONCEPT PAPER

IMPLEMENTING A.B. 2196

Re RPS PROGRAM

California Energy Commission

**DOCKETED**

**11-RPS-01**

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**COMMENTS OF**

**BIOFUELS PT. LOMA, LLC**

On the Commission's Concept Paper for the Implementation of Assembly Bill 2196 for the  
Renewable Portfolio Standard

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Date: February 8, 2013

## I. INTRODUCTION

BioFuels Pt. Loma, LLC, (“BPL”) appreciates this opportunity to submit comments in response to the California Energy Commission’s *Concept Paper for the Implementation of Assembly Bill 2196 for the Renewable Portfolio Standard* (the “Concept Paper”), issued January 25, 2013. BPL is an Encinitas-based company that owns and operates a 950 mmbtu/day biomethane production plant located at the City of San Diego’s Point Loma wastewater treatment works (“Pt. Loma Plant” or “Pt. Loma Facility”). This plant captures a large portion of the City’s sewage digester gas, which was previously burned in an open flare, and processes the digester gas through state-of-the art facilities to produce biomethane that is not only commercial pipeline quality, but cleaner than standard natural gas in terms of sulfur compounds and other inorganic compounds.

The biomethane we produce is used to generate electricity at three emissions-free fuel cells. One is located within the Pt. Loma Plant, producing electricity to operate the facility. Two other, larger fuel cells are located offsite, operating as distributed generation facilities that provide electricity directly to consumer facilities owned by the City of San Diego and the University of California, San Diego. To reach those two offsite fuel cells, BPL injects biomethane into the SDG&E common carrier pipeline at Pt. Loma, and directs it for use by the off-site fuel cells. Again, *and critically for purposes of these comments*, those off-site fuel cells constitute “distributed generation” facilities (“DG Facilities”) under for purposes of California’s Renewables Portfolio Standard Program (“RPS Program”).

Importantly, the Pt. Loma Facility executed contracts to sell biomethane to the off-site fuel cells before March 29, 2012, and it began injecting that biomethane into SDG&E's common carrier pipeline to service those contracts in February 2012.

As an important in-state biomethane producer, BPL is acutely aware of the importance that renewable energy credits ("RECs") play in promoting a strong, indigenous market for biomethane production. Developing the Pt. Loma Plant required a significant capital investment, totaling over \$12 million. Our decision to build the Pt. Loma Plant was premised on our biomethane being an eligible renewable fuel for the RPS, both for the DG Facilities that we currently supply, as well as other types of electric generation facilities once our current arrangements expire. We believe that it is the intention of both the Legislature and the CEC to encourage the further development of local biomethane sources through eligibility as a renewable fuel under the RPS Program.

However, certain interpretations of A.B. 2196 contemplated by the Concept Paper could (we believe unintentionally) prevent the Pt. Loma Facility from ever constituting an eligible renewable fuel under the RPS Program. We also believe that there is a very straightforward interpretation of A.B. 2196 that prevents this: *that A.B.2196 simply does not address the use of biomethane sourced through a common carrier pipeline by DG Facilities.* Rather, A.B. 2196 imposes new conditions on the use of such "Directed Biomethane" by "a retail seller or publicly owned electric utility". As a consequence, (i) an in-state biomethane source such as the Pt. Loma Facility may continue to sell its Directed Biomethane to DG Facilities anywhere in California, and those DG Facilities may produce RECs by virtue of the use of such Directed Biomethane, regardless of the date of any common carrier pipeline injections, or of any contracts with DG Facilities; and (ii) any Directed Biomethane sold by the Pt. Loma Facility to a retail

seller or publicly owned electric utility (“POU”) under any new contracts may produce RECs so long as such future sales comply with the conditions set forth in A.B. 2196.

We provide detailed comments below. Capitalized terms used but not defined in our comments have the meaning given to them in the Concept Paper or the Public Utilities Code. All Section references are to the Public Utilities Code, and all Concept Paper references are to the numbered sections of that document.

## II. COMMENTS ON CONCEPT PAPER

### A. Section 399.12.6 Does Not Apply to DG Facilities Utilizing Directed Biomethane.

First, we note that a DG Facility in California does not constitute either a “retail seller” or local publicly owned electric utilities (“POU”) for purposes of the RPS Program.<sup>1</sup>

Second, the plain language of the new Section 399.12.6 applies only to contracts involving the use of Directed Biomethane by retail sellers and POU’s. The statute first “grandfathers” contracts executed by retail sellers and POU’s prior to March 29, 2012 (Section 399.12.6(a)(1)), and then applies new standards to any new “contracts” and to extensions or amendments to the grandfathered “contracts” (Section 399.12.6(a)(2); Section 399.12.6(b)). Section 399.12.6(b) then lays out the new standards that will apply to these new “contracts” executed on or after March 29, 2012, or “contract amendments” executed on or after March 29, 2012. Our essential argument is this: these references to “contracts” and “contract amendments” in Section 399.12.6(a)(2) and Section 399.12.6(b) can only be referring to the types of contracts

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<sup>1</sup> Section 399.12(j) defines a retail seller as an “electric corporation,” an “electric service provider” or a “community choice aggregator.” DG Facilities do not fall into any of these definitions. Nor is a DG Facility a POU, as defined in Section 224.3.

addressed in Section 399.12.6(a)(1) – i.e., contracts “executed by a retail seller or local publicly owned electric utility”.

Thus, Section 399.12.6 simply does not address contracts for Directed Biomethane used by DG Facilities. They are left to utilize Directed Biomethane as a renewable energy source without further limitation arising by reason of Section 399.12.6.

A contrary interpretation, that Section 399.12.6 applies to DG Facilities by implication, would mean that the Legislature intended that no existing DG Facility, now or in the future, could ever produce a REC from Directed Biomethane. Such an interpretation relies on an “implication by omission” – an interpretive stretch – and is contrary to the plain text of the statute. It is also, we assert, contrary to any discernible public policy evidenced by the Legislature regarding the RPS Program. By contrast, a plain application of the text of Section 399.12.6 would exempt DG Facilities from its application, and therefore allow DG Facilities located in California to continue to claim RECs from electricity generated from Directed Biomethane supplied by the Pt. Loma Facility.

BPL does not believe the Legislature or the CEC wish to bar DG Facilities from utilizing Directed Biomethane to qualify for RECs under the RPS. The actual value of RECs from DG Facilities is a separate issue, and it is irrelevant to the qualification standards applicable to DG Facilities using Directed Biomethane. The issue here is preserving the ability of DG Facilities to use Directed Biogas to produce RECs. Distributed generation is an important source of renewable energy in California, representing 30% of its renewable energy capacity in 2010<sup>2</sup>, and any effort to grow the indigenous biomethane sector must accommodate its future use by DG

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<sup>2</sup> Renewable Power in California: Status and Issues, Lead Commissioner Report (Dec. 30, 2011), 2.

Facilities. There is simply no support for any interpretation of Section 399.12.6 as a deliberate directive of the Legislature to eliminate use of Directed Biogas by DG Facilities.

B. The Pt. Loma Plant Can Sell Directed Biogas to Retail Suppliers or POUs in the Future Only if it Complies with Section 399.12.6(b).

The Pt. Loma Plant's current Directed Biomethane contracts with the DG Facilities will eventually end, and when they do it is reasonable to expect we will look for new customers who can use our biomethane to produce clean energy, including retail sellers and POUs. At issue is whether, because Point Loma was injecting biomethane into a common carrier pipeline before March 29, 2012, subsection (b)(3)(B) could bar the Pt. Loma Plant's Directed Biomethane from constituting a RPS-eligible fuel for non-DG customers. We do not believe this outcome would be consistent with the intent of the Legislature, and again, there is a straightforward interpretation of Section 399.12.6 that would prevent this unintended outcome.

We argued above that the text of Section 399.12.6(b) should be interpreted as follows (bold language in brackets added):

(b) For contracts [**with retail sellers or POUs**] executed on or after March 29, 2012, or for quantities of biomethane associated with contract amendments [**with retail sellers or POUs**] 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 of the following requirements....:

Here, the question is whether in the future, subsection (b)(3)(B) would prevent the Pt. Loma Facility from meeting "the following requirements" as they apply to Directed Biomethane, because the Pt. Loma Facility injected biomethane into a common carrier pipeline before March 29, 2012. We do not believe that this subsection was intended to produce such an outcome. Consistent with the statutory reading presented above, subsection (b)(3)(B) must similarly be

understood as referring to prior contract requirements with retail sellers and POUs, in this way (bold and bracketed text added):

- (b)(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 the 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 **[with a retail supplier or POU]**.
  - (B) The source of biomethane did not inject biomethane into a common carrier pipeline prior to March 29, 2012 **[to satisfy contract requirements with a retail seller or POU]**, or the source commenced injection of sufficient incremental quantities of biomethane after March 29, 2012, to satisfy the contract requirements **[with a retail seller or POU]**.
  - (C) [As written]

Again, understanding that references in 399.12.6 to “contracts” are to “contracts with retail sellers and POUs” produces logical results that promote the public policy goals of A.B. 2196. The final phrase in subsection (b)(3)(B) – “to satisfy the contract requirements” – means “to satisfy the contract requirements with a retail seller or POU”. Importantly, this phrase *is understood to condition both prior sections of the sentence*. Under the forgoing interpretation, the Pt. Loma Facility’s Directed Biomethane would constitute an eligible renewable resource for any retail supplier or POU, because the Pt. Loma Facility (A) injects biomethane into a common carrier pipeline that physically flows in California; and (B) did not inject biomethane into a common carrier pipeline prior to March 29, 2012 in order to satisfy contract requirements with a retail seller or POU.<sup>3</sup> The Pt. Loma Facility’s deliveries would also need to comply with the balance of subsection (b)(3)(C), of course.

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<sup>3</sup> Another ready interpretation is that the term “sufficient incremental quantities” only refers to quantities over any above quantities previously used, prior to March 29, 2012, to satisfy contract requirements with retail sellers and POUs. This would allow a source injecting into a common carrier prior to March 29, 2012, but selling only to DG Facilities, to later claim its entire output as “incremental” for purposes of this subsection.

### III. CONCLUSION

BPL supports CEC's and the Legislature's efforts to develop RPS rules that encourage the development of indigenous biomethane generating resources and believes that by adopting the clarifications and interpretations proposed above the CEC can avoid unnecessarily and unintentionally penalizing important in-state facilities such the Pt. Loma Plant. We look forward to continuing to work with CEC staff in the development of the next Guidebook.