

**BEFORE THE
ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
OF THE
STATE OF CALIFORNIA**

California Energy Commission

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In the Matter of:

Developing Regulations and Guidelines for
the 33 percent Renewable Portfolio
Regulations Standard

and

Implementation of Renewables
Investment Plan Legislation

Docket No. 11-RPS-01

Docket No. 02-REN-1038

Comments On: Concept Paper For
Implementation of Assembly Bill 2196

February 8, 2013

**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY (SCPPA)
COMMENTS TO CEC STAFF CONCEPT PAPER FOR THE IMPLEMENTATION OF
ASSEMBLY BILL 2196 FOR THE RENEWABLES PORTFOLIO STANDARD**

Pursuant to the procedures established by the California Energy Commission (“Commission” or “CEC”), the Southern California Public Power Authority (“SCPPA”) respectfully submits these Comments on the CEC Staff Concept Paper for the Implementation of Assembly Bill 2196 for the Renewables Portfolio Standard (“RPS”) (“Concept Paper”).

SCPPA is a joint powers authority consisting of eleven municipal utilities and one irrigation district. SCPPA members deliver electricity to approximately 2 million customers over an area of 7,000 square miles, with a total population of 4.8 million.

The SCPPA members include the municipal utilities of the cities of Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, Los Angeles, Pasadena, Riverside, Vernon, and the Imperial Irrigation District. Several of our members have entered into biomethane contracts and were closely involved in last year’s legislation, AB 2196.

SCPPA wants to thank the Commission for the opportunity to provide comments on this important Concept Paper. We appreciate the time and effort that the CEC staff and Commissioners have made in the development of the Concept Paper and we commend CEC staff for their thoughtfulness and thoroughness in preparing the Concept Paper.

Before addressing specific issues related to this biomethane Concept Paper, SCPPA recognizes that the implementation of AB2196 is a part of the overall RPS program. Many of the overall issues affecting biomethane relate to RPS. One area in particular relates to SBX1-2 (2011), which mandated a 33 percent RPS by December 31, 2020 with interim targets of 20 percent average of 2011 to 2013 and 25 percent by 2016 using renewable resource category criteria. SCPPA acknowledges that we are in the last year of the first compliance period. The CEC's implementation of AB 2196 plays a key role in the SCPPA members successfully achieving the state's RPS goals and compliance with SBX1-2. The SCPPA members and their governing City Councils acted in good faith under the then-applicable rules in entering into these biomethane contracts.

The second point that SCPPA would like to make is that the Legislature clearly intended to grandfather contracts that were executed prior to March 29, 2012 and set up explicit new rules for biomethane contracts that are signed after March 29, 2012. SCPPA encourages the CEC to lift the suspension and remove the current uncertainty in the market regarding biomethane contracts.

Third, uncertainty with respect to possible retroactive application of regulations affects commercial transactions to which SCPPA is a party. SCPPA is concerned that performance under existing agreements may be affected, which could in turn jeopardize achievement of RPS obligations of individual SCPPA members due to possible reduced deliveries. It is essential that clear guidance be given on the PCC category for generation from biomethane.

Lastly, disallowing biomethane from RPS would cause real, "cash" harm to POU ratepayers as 1) many biomethane contracts effectively require a POU to continue to purchase the biomethane (at full price) for the remainder of the contract even if the RPS qualification is disallowed and 2)

POUs would need to replace biomethane-fired RPS energy with energy from other renewable projects, substantially increasing portfolio energy supply costs. These outcomes would have a material, negative effect on ratepayers.

I. SCPPA COMMENTS ON THE CEC CONCEPT PAPER

1. Foundational Issues

A. The meaning of “common carrier pipeline” in A.2 should be broadened to align with industry definitions.

Overall, SCPPA agrees with the Foundational Issues outlined in Section A of the CEC Concept Paper. SCPPA comments on A.2. meaning of “common carrier pipeline.” SCPPA believes a broader definition is more in line with industry definitions of “common carrier pipeline.” SCPPA proposes that a “common carrier pipeline” means “every person owning, operating, or managing for public hire any pipeline or any part of the pipeline for the transportation of natural gas in interstate and/or intrastate commerce.”

2. Requirements for Facilities Using Biomethane Under a Contract Executed Before March 29, 2012

The majority of SCPPA members have contracts that fall into this category: contracts signed after June 1, 2010 and before March 29, 2012. In this section, we have four (4) comments.

A. CEC should consider a biomethane contract as complete when the POU either submits current pre-certification or certification applications, the source and quantity, or the biomethane contract.

In B.3, SCPPA brings to the attention of CEC staff the proposal for “*under a contract 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...*” (Public Utilities Code Section 399.12.6 (a)(1))

In the staff proposal, staff proposes that biomethane will be an eligible resource for RPS ...if the biomethane source and quantity under a contract was reported to the Energy Commission in a complete application for RPS precertification or RPS certification that was received by the Energy Commission before March 29, 2012, and the facility meets all other application eligibility requirements under the *RPS Eligibility Guidebook* that was in place at the time of contract execution, including but not limited to the Fourth Edition of the *RPS Eligibility Guidebook*.

In the past, the CEC RPS pre-certification or RPS certification applications did not require biomethane quantity to be reported, therefore, RPS pre-certification and RPS certification applications received by the CEC prior to March 29, 2012 should be considered as contracts being reported to CEC. Additionally, because the CEC has delayed the process of reviewing applications, an application shall not be determined as “complete” or “incomplete” solely by CEC after the March 29, 2012 deadline. Instead, the CEC should consider a contract complete when a POU either provides the source and quantity, the biomethane contract, RPS pre-certification or RPS certification application.

B. SCPPA members classify biomethane as Portfolio Content Category (PCC) 1. CEC staff proposes in B.4 that the meaning of “*Any procurement of biomethane ...shall count toward the procurement requirements established in this article, under the rules in place at the time the contract was executed ...*” (Public Utilities Code Section 399.12.6 (a)(1))

SCPPA agrees with the CEC Staff Proposal and Rationale. We appreciate the staff’s commitment to granting SCPPA contracts the content category for which they were designed under RPS, Article 16 (commencing with section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, as enacted by Senate Bill X1-2 (Stats. 2011, 1st Ex. Sess., ch.1). Importantly, all the SCPPA members are using the biomethane for in-state generation and we are using the environmental attributes of the

contract for RPS compliance. In addition, while the biomethane contracts vary in length, most of the contracts last for roughly ten years.

SCPPA interprets “the rules in place...” as both the Fourth Edition of the Energy Commission’s Renewables Portfolio Standard Eligibility Guidebook (4th ed. RPS Eligibility Guidebook) and decisions made by POU governing boards. Under Section V. Publicly Owned Electric Utilities (page 74), the 4th ed. RPS Eligibility Guidebook states that “Each governing board of a local publicly owned electric utility (POU) shall be responsible for implementing and enforcing a renewables portfolio standard....” The 4th ed. RPS Eligibility Guidebook recognizes that POUs “implement and enforce RPS”. Since POU governing boards have the authority to classify biomethane, SCPPA members treat their biomethane as PCC 1.

C. CEC staff should recognize that each contract is different and treat it as such.

Staff proposes a meaning for B.7: *“Any quantity of biomethane that exceeds the quantities of biomethane specified in the original contract.”* (Public Utilities Code Section 399.12.6 (a)(2)(B))

SCPPA cautions CEC staff in applying a one-size-fits-all approach when reviewing biomethane contracts. Each contract is a complex commercial compromise between rights and obligations, costs and benefits, and options. As such, blanket determinations (e.g. quantity, duration, sources) will be at the detriment of the respective POU, which negotiated those complex compromises on behalf of its ratepayers. SCPPA sees this as a sanctity of contract issue. SCPPA would also like to reference SMUD’s comments and agree with the points that were made in their filing, especially the point about the CEC striving to “...weight towards the expected grandfathering of existing, varied biomethane contracts.”

For some SCPPA members, their contracts omit a specified amount of biomethane quantities. In those cases where there is no quantity, CEC staff should use 100% of the production as the specific quantity. Additionally, CEC should recognize additional

biomethane deliveries (also called make-up quantities) requirements if supplier did not meet minimum delivery requirements in preceding contract year(s).

D. Current interpretation of B.8 reduces contract value.

“Any optional quantities of biomethane that can be exercised at the discretion of the buyer.” (Public Utilities Code Section 399.12.6 (a)(2)(c))

SCPPA views staff’s interpretation of B.8 as a reduction in value of SCPPA members’ contracts. When SCPPA members negotiated their contracts, they included options to procure additional quantities. These provisions resulted in the contracts having a higher value. Had SCPPA members been informed that these option rights were going to be diluted, SCPPA members would have bargained for other considerations. Thus this restriction should be reconsidered as it relates to those contracts entered into prior to March 29, 2012 and AB 2196.

3. Outstanding Issues and Questions

SCPPA proposes CEC staff host a workshop to address these outstanding issues and questions.

4. Other Issues to Consider

A. A checklist should be adopted to help guide POUs in determining into which PCC a resources falls.

On September 21, 2012, CEC staff held a workshop on 2008-2010 RPS Procurement Verification and SB X 1-2 RPS Procurement Verification. During this workshop, Iberdrola presented a checklist that would help POUs determine if an energy resource falls within PCC1, PCC2, or PCC3. Many POUs submitted comments supporting this checklist, as it would help provide guidance to POUs. While we understand this guidance lacks the force of law, it provides a little more clarity into which PCC an energy resource may fall. SCPPA recommends a similar checklist, if the process for biomethane and RPS is different, should be created.

B. CEC staff should follow a similar process as the ARB's verification under MRR.

For the reporting/verification process for Biomethane, CEC staff should follow a similar process, if not jointly, with the ARB in developing a verification process. The report to the ARB is the same data as would be collected by the CEC. This would reduce data input error and save POU staff time.

C. Terms of Contract should begin on the initial flow date.

Due to the delay in the flow of biomethane gas under some of the contracts, the length of the contracts may be shorter than originally intended. For example a contract with a ten-year term from an execution date of March 1, 2012, which has applied for pre-certification and awaits certification pending the resumption of the process, has lost nearly a year in value with respect to generating claims for RPS purposes. Permitting a ten year term for RPS purposes from the date of initial flow would restore the value of the contract without allowing any additional biogas to be consumed. In this instance, the CEC should allow or confirm that the contract start date for RPS purposes would be the initial flow date.

D. Pre-certified biomethane gas should receive PCC treatment.

Some facilities have received pre-certification. While the process for certification has yet to occur, a limited quantity of biomethane has been flowing on a daily basis. The quantities of biomethane gas delivered to-date should qualify for PCC treatment.

E. Guidelines should include in managing its operational requirements the rights for biomethane customers to obtain all such tariff and other services provided by the Local Distribution Company (LDC).

Biomethane customers are entitled to the same services that the LDC, SoCalGas, offers to its other gas customers on its system including but not limited to interruptible and firm storage, park and loan services, line pack, and other new services introduced from time to time, as approved by the California Public Utilities Commission, which assist the customer in the prudent and efficient management of its fuel supplies.

II. Conclusion

SCPPA thanks CEC staff for their thoughtfulness and time into developing the Concept Paper For Implementation of Assembly Bill 2196. SCPPA believes staff is moving in the right direction and believes these changes, as well as those recommendations made by SMUD and CMUA, will make this Concept Paper stronger.

/s/

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