

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

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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

**COMMENTS OF THE UNION OF CONCERNED SCIENTISTS
ON THE CONCEPT PAPER FOR
THE IMPLEMENTATION OF ASSEMBLY BILL 2196**

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**COMMENTS OF THE UNION OF CONCERNED SCIENTISTS ON THE CONCEPT PAPER
FOR
THE IMPLEMENTATION OF ASSEMBLY BILL 2196**

The Union of Concerned Scientists (UCS) appreciates this opportunity to submit comments on the staff concept paper for the implementation of Assembly Bill 2196. UCS applauds the efforts of the Commission to propose a framework for implementing the new statutory language and resolving much of the uncertainty surrounding the treatment of existing and future biomethane procurement as it relates to RPS compliance. UCS's comments are limited to two issues regarding biomethane procurement to resolve lingering uncertainty regarding RPS eligibility and procurement content classification of existing and future procurement.

**I. THE COMMISSION SHOULD REQUIRE UTILITIES TO SUBMIT PROOF THAT A
CONTRACT WAS EXECUTED PRIOR TO MARCH 29, 2012 BEFORE THE
CORRESPONDING ELECTRICITY GENERATION CAN BE COUNTED TOWARDS AN
RPS REQUIREMENT.**

Section B of the concept paper lays out the RPS eligibility and procurement criteria that must be met in order for electricity from biomethane contracts executed before March 29, 2012 to count towards a utility's RPS requirements.¹ Specifically, the Commission proposes that these contracts must (1) have been executed prior to March 29, 2012 and (2) the biomethane source and quantity under a contract was reported to the Commission in a complete application for RPS precertification or RPS certification that was received prior to March 29, 2012.² The verification of the existence or absence of an application received by a specific date is straightforward, but issue #3 of the concept paper does not explicitly require that utilities also submit proof that each biomethane contract was executed prior to March 29, 2012. Instead, the concept paper states: "Staff assumes that if this [application for RPS certification] was reported to the Energy Commission by March 28, 2012, the

¹ The treatment of these biomethane contracts is specified in section 399.12.6(a)(1) of the California Public Utilities Code.

² Concept Paper, p.3.

contract for biomethane was executed before March 28, 2012.”³ While issue #9, which interprets California Public Utilities (PU) Code Section 399.12.6(a)(2)(D), seems to imply that proof of contract execution is required in order to qualify for the RPS compliance treatment specified in Section 399.12.6(a)(1), UCS believes the Commission should clarify that in order for electricity from biomethane contracts executed prior to March 29, 2012 to count as eligible for the RPS, utilities must submit documentation that contains the date of contract execution, in addition to documenting that an application for RPS-certification of an electrical generation facility “using” biomethane was submitted prior to March 29, 2012.

II. THE COMMISSION SHOULD COMMIT TO A PROCESS TO RESOLVE THE PORTFOLIO CONTENT CATEGORY STATUS OF BIOMETHANE CONTRACTS

Section B of the concept paper also proposes to classify eligible biomethane procurement executed after June 1, 2010 and before March 29, 2012 into one of the three portfolio content categories (PCCs) established by PU Code Section 399.16. Whereas, eligible biomethane contracts executed before June 1, 2010, would “count in full” and not be classified into a PCC.⁴ Yet, the proposal fails to include a decision framework and set of criteria to guide the Commission’s determination of which PCC category classification is “appropriate” for each of these biomethane contracts.

UCS believes that the Commission must undertake a comprehensive review of these transactions to determine how they align with the characteristics of the three different PCCs. This is because neither the Commission nor the California Public Utilities Commission (CPUC) have reached any conclusion regarding the PCC treatment of pre-March 29, 2012 contracts for pipeline biomethane. In Decision 11-12-052, the CPUC declined to categorize pipeline biomethane transactions under the PCC structure established in PU Code section 399.16. Instead, the CPUC noted that “it is premature for this Commission to address the place of generation using pipeline biomethane as a fuel

³ Concept Paper, p.3.

⁴ Concept Paper, pp.5.

source in the new portfolio content categories while the CEC is considering changes to the eligibility criteria for pipeline biomethane.”⁵

The Commission’s decision to not include a proposal for how to determine the PCC treatment of pre-March 29, 2012 biomethane contracts, or commit to establishing a process in the future, perpetuates the regulatory uncertainty regarding how these contracts will be treated for the RPS program. UCS urges the Commission to clarify that the PCC classification of these contracts is still unknown, and commit to a process that will resolve this uncertainty.

Section C of the concept paper proposes a framework to interpret PU Code Section 399.12.6(b), which contains language identifying which types of biomethane contracts executed on or after March 29, 2012 would be eligible for the RPS program. UCS has no comments on the Commission’s proposal to define RPS eligibility of these transactions at this time, however we point out that the Commission also fails here to lay out a process for determining the “appropriate” PCC classification for RPS-eligible biomethane contracts that were procured on or after March 29, 2012. Again, UCS urges the Commission to clarify that the PCC classification of these contracts is still unknown, and commit to a process that will resolve this uncertainty.

Respectfully submitted,

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⁵ Decision 11-12-052, page 43.