



March 25, 2013

California Energy Commission
Docket Office, MS-4

**Re: Docket No. 11-RPS-01 and
Docket No. 02-REN-1038**

RPS Proceeding
1516 Ninth Street
Sacramento, California 95814-5512

**Re: Comments on Staff Draft Guidebook for Renewables Portfolio Standard
Eligibility Seventh Edition (CEC-300-2013-005-ED7-SD), March 2013**

EDF Renewable Energy (herein “we”) appreciates the opportunity to provide comments on the California Energy Commission (the “Energy Commission”) March 2013 Staff Draft Guidebook for Renewables Portfolio Standard Eligibility Seventh Edition (CEC-300-2013-005-ED7-SD) with a focus on implementation of Assembly Bill 2196 (“AB 2196”) regarding biomethane, 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

We are supportive overall of Staff’s language regarding RPS eligibility for biomethane contracts executed prior to March 29, 2012, and appreciate Staff’s professionalism and industriousness. Our first two points below seek clarification on the language in a way that intends to solidify language rather than revise the intent of the language. We see these points as technical revisions to the proposed language and are happy to work with the Energy Commission further on these points.

Our final point relates to the treatment of biomethane procurement contracts executed after June 1, 2010 and prior to March 29, 2012 within the portfolio content categories (PCCs) established in Senate Bill X 1-2.

- I. PROPOSED LANGUAGE REGARDING “OFFSITE GENERATING FACILITY USING A COMMON CARRIER PIPELINE –BIOMETHANE” ON PAGES 13 AND 14 OF THE UNMARKED VERSION OF THE DRAFT GUIDEBOOK CONTAINS LANGUAGE THAT SHOULD BE REVISED TO REFLECT THE FACT THAT A CONTRACT FOR BIOMETHANE MAY HAVE BEEN EXECUTED SPECIFICALLY TO SUPPLY A POWER PLANT THAT WAS ALREADY CERTIFIED BY THE ENERGY COMMISSION, WITH THE CONTRACT ITSELF SPECIFYING THE POWER**

**PLANT AND ASSOCIATED REPORTING TO THE ENERGY COMMISSION
NOTING THE IDENTITY OF SAID POWER PLANT.**

Thus, we propose the following addition as signified by underlined text:

“Offsite Generating Facility Using a Common Carrier Pipeline –Biomethane is produced and captured at a landfill or digester that is not located at the site of the electrical generation facility that is using the biomethane and the biomethane is delivered to the facility through a common carrier pipeline as defined in this guidebook. Biomethane procurement contracts for this type of facility fall into one of two categories:

- Existing biomethane procurement contracts: Biomethane procurement contracts that were executed by a retail seller or POU before March 29, 2012, and were reported to the Energy Commission both before March 29, 2012 in connection with an application for RPS certification or precertification of the designated electrical generation facility intended to use the procured biomethane. For biomethane procurement contracts to supply a designated electrical generation facility that was already certified or pre-certified to use biomethane for RPS compliance prior to execution of the biomethane procurement contract, such contracts must have been reported to the Energy Commission before March 29, 2012 in connection with the designated electrical generation facility.”

II. PROPOSED LANGUAGE ON “EXISTING BIOMETHANE PROCUREMENT CONTRACTS” ON PAGE 14-15 OF THE UNMARKED VERSION OF THE DRAFT GUIDEBOOK INCLUDES LANGUAGE SIMILAR TO THAT NOTED ABOVE REGARDING THE TIMING OF THE REPORTING OF AN EXECUTED CONTRACT TO THE ENERGY COMMISSION RELATIVE TO THE CERTIFICATION OF THE DESIGNATED ELECTRICAL GENERATION FACILITY, WHICH CAN BENEFIT FROM ADDITIONAL LANGUAGE AKIN TO WHAT WE PROPOSE ABOVE. FURTHER, THE PROPOSED LANGUAGE CONTAINS LANGUAGE REGARDING “INCREMENTAL” GENERATION THAT CAN BENEFIT FROM ADDITIONAL LANGUAGE THAT SPECIFIES THAT “INCREMENTAL” GENERATION IS SOLELY RELATED TO THE QUANTITIES OF BIOMETHANE ABOVE THOSE SPECIFIED IN THE BIOMETHANE PROCUREMENT CONTRACT, AND NOT TO ANY DIFFERENCES IN QUANTITIES INJECTED BEFORE APRIL 1, 2014 AND ON OR AFTER APRIL 1, 2014 WHEN BOTH QUANTITIES FALL BELOW THOSE SPECIFIED IN THE BIOMETHANE PROCUREMENT CONTRACT.

Thus, we propose the following addition as signified by underlined text:

“An electric generating facility using biomethane delivered through a common carrier pipeline pursuant to a biomethane procurement contract executed by retail seller or POU before March 29, 2012, is eligible for the RPS if the facility meets all applicable 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*, and additionally satisfies all of the following requirements:

“a) The biomethane procurement contract was reported to the Energy Commission before March 29, 2012, in connection with the application for RPS certification or precertification of the designated electrical generation facility. For biomethane procurement contracts to supply a designated electrical generation facility that was already certified or pre-certified to use biomethane for RPS compliance prior to execution of the biomethane procurement contract, such contracts must have been reported to the Energy Commission before March 29, 2012 in connection with the designated electrical generation facility

“b) The source(s) and the amount of biomethane under the biomethane procurement contract were reported to the Energy Commission before March 29, 2012 in connection with the application for RPS certification or precertification of the designated electrical generation facility. A facility that was already RPS certified before March 29, 2012, and seeking to add a new biomethane source(s) pursuant to a biomethane procurement contract executed by the retail seller or POU before March 29, 2012, may provide a copy of written documentation submitted to and acknowledged by Energy Commission staff before March 29, 2012, in lieu of having reported the source(s) and the amount of biomethane under the biomethane procurement contract.

“c) The facility meets the requirements under the *RPS Eligibility Guidebook* that was in place at time of the execution of the biomethane procurement contract.

“d) The biomethane source(s) under the biomethane procurement contract are producing biomethane and injecting it into a common carrier pipeline before April 1, 2014. Electric generation attributable to a biomethane source producing and injecting biomethane into a common carrier pipeline on or after April 1, 2014 in quantities that exceed the maximum quantities specified in the existing biomethane procurement contract as originally executed and reported to the Energy Commission before March 29, 2012, is subject to the eligibility requirements in Section 2: New Biomethane Procurement Contracts. The retail seller or POU must demonstrate that this requirement is met for each source associated with procurement claimed by submitting a pipeline invoice or pipeline meter data to the Energy Commission with an application for certification or amended certification.

“e) The biomethane is used by the designated electrical generation facility pursuant to the biomethane procurement contract that was executed by the retail seller or POU before March 29, 2012.

“A facility failing to meet all of the requirements above is subject to the eligibility requirements in Section 2: New Biomethane Procurement Contracts.”

III. PCC ALLOCATION OF BIOMETHANE PORTFOLIO CONTRACTS EXECUTED BETWEEN JUNE 1, 2010 AND MARCH 29, 2012 SHOULD REFLECT THE CLEAR LEGISLATIVE INTENT OF AB 2196—THAT IS, THEY PROVIDE THE ORIGINALLY INTENDED RPS COMPLIANCE VALUE FOR PUBLICLY-OWNED UTILITIES ABSENT TRANSACTIONS THAT ARE WIDELY UNDERSTOOD AS AFFECTING PCC CATEGORIZATION STATUS.

Stakeholders comments to the Energy Commission in response to the Staff's *Concept Paper for the Implementation of Assembly Bill 2196* included several comments asserting how those biomethane procurement contracts executed after June 1, 2010 and prior to March 29, 2012 should be categorized among the PCCs established in Senate Bill X 1-2. We refer back to the legislative intent of AB 2196. Our own comments on the *Concept Paper* include statements from Senators regarding AB 2196 that clearly point to the intention to have grandfathered contracts to count towards RPS compliance for publicly-owned utilities (POUs), and we repeat those statements below:

“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.’”

We note that many biomethane procurement contracts executed prior to March 29, 2012 were intended in good faith to create a path between the biomethane source and electrical generation facilities directly interconnected into a California balancing authority. This alone should qualify such contracts and the associated electrical generation and renewable energy credits, if bundled, to qualify as a “PCC 1” product.

We also note that it is widely understood that many California utilities are not in need of resources that would fall into “PCC 3” but rather need resources over the long-term that fall into “PCC 1”. Those stakeholders that are pleading to Staff to allocate contracts executed between June 1, 2010 and March 29, 2012 are surely aware of this commercial reality, and are taking a second “bite of the apple” after enactment of AB 2196 in trying to minimize and even eliminate the RPS compliance value of these contracts by shunting them into PCC 3 regardless of the good faith effort among counterparties to comply with the RPS eligibility rules at the time of the execution of such contracts. We find that this effort clearly undermines the abovementioned legislative intent of AB 2196 to grandfather the RPS value of pre-March 29, 2012 contracts.

The one clear bright line that should disqualify the output of electrical generation (i.e., the energy and the associated RECs) from biomethane procurement contracts executed between June 1, 2010 and March 29, 2012 from PCC 1 status is when the POU subsequently disaggregates the energy from the REC and sells the REC separately to another entity, thereby placing the output into PCC 3 status. Such unbundling clearly results in a “REC-only” transaction per the statute and rules underlying the 20% RPS in place prior to enactment of Senate Bill X 1-2.

IV. CONCLUSION

Our first two recommendations above are intended to clarify the Staff's proposed language rather than alter their direction. Specifically, the recommendations intend to do the following for biomethane procurement contracts executed prior to March 29, 2012:

- Reflect the range of sequencing of contract execution and subsequent reporting to the Energy Commission vis-à-vis certification of the designated electrical generation facility, such that reporting of the contract to the Energy Commission need not be done at the same time as the submission of an application for pre-certification or certification of the designated electrical generation facility

- Specify that “incremental electric generation” associated with biomethane procurement contracts means generation from quantities of biomethane above those specified in the executed biomethane procurement contract, rather than generation from quantities of biomethane above those injected into a common carrier pipeline prior to April 1, 2014 if both the quantity injected prior to April 1, 2014 and the quantities injected on or after April 1, 2014 fall below those specified in the executed biomethane procurement contract.

Our final recommendation is for the Energy Commission to allocate all grandfathered contracts executed between June 1, 2010 and March 29, 2012 to PCC 1, unless the associated energy and REC output from the designated electrical generation facility are unbundled per clear language in statute and rules governing RPS compliance in California over the last decade, in which case the energy and REC output should be categorized as PCC 3.

We appreciate the Energy Commission’s overall hard and professional work and attention to the above matters. We look forward to working further with the Energy Commission to implement AB 2196 fully.

Respectfully submitted,

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