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March 25, 2013

California Energy Commission
Dockets Office, MS-4
Re: Docket No. 11-RPS-01 and Docket No. 02-REN-1038
RPS Proceeding
1516 Ninth Street
Sacramento, CA 95814-5512
Emailed to docket@energy.ca.gov and RPS33@energy.ca.gov



Subject: Clean Energy's Comments on the Proposed Changes to the RPS Eligibility Guidebook

Dear Kate Zocchetti and California Energy Commission Staff,

Clean Energy and Clean Energy Renewable Fuels (CERF) write in conjunction to comment on the "Proposed Changes to the Renewables Portfolio Standard (RPS) Eligibility Guidebook." We would like to thank you for drafting the changes to the RPS Eligibility Guidebook and allowing us the opportunity to submit our comments.

Clean Energy is the largest provider of natural gas fuel for transportation in North America, and we fuel over 27,000 vehicles at over 400 stations across the United States. Clean Energy Renewable Fuels, a Clean Energy subsidiary, owns and operates two biomethane production facilities – one located in Dallas, Texas, and one located outside of Detroit, Michigan. These facilities produce pipeline quality biogas, or biomethane, for delivery in the nation's gas pipeline network and are registered renewable fuel producers under the federal Renewable Fuel Standard. Both facilities are under contract to deliver a portion of their biomethane product to California Publicly Owned Utilities. CERF is working on a number of biomethane projects within the State of California.

Renewable and Environmental Attributes

The first and potentially most important comment we would like to make is in regards to the conflicting and at times confusing language in the Guidebook related to the transfer of renewable and environmental attributes associated with biomethane. On page 23 (Section 3: *RPS Procurement Requirements for Biomethane*) of the Guidebook, it states that all contracts must specify that "all renewable and environmental attributes associated with production, capture, and injection of the biomethane are transferred in whole to the electric generating facility using the biomethane." The Guidebook also states, in Section 5.1: *Renewable and Environmental Attributes*, that "as part of the RPS eligibility requirements for biomethane, no party may sell, trade, give away, claim, or otherwise dispose of any of the attributes that would prevent the resulting electricity from being compliant with the definition of "green attributes" as defined in the glossary of terms."

Both of these statements contradict the requirements listed elsewhere in the Guidebook and the specific language of AB 2196 which states that, with respect the requirements for the transfer of biomethane environmental attributes, POUs and retail sellers must ensure that “sufficient renewable and environmental attributes of biomethane production and capture shall be transferred to the retail seller or the locally owned public utility to ensure that there are zero net emissions associated with the production of electricity from the generating facility using the biomethane.” Clearly “*all* attributes” and “*sufficient* attributes to meet zero net emissions” are very different requirements.

Moreover, the language requiring transfer of “all” attributes confuses and conflates what “environmental attributes” are and how they are generated. Attributes from the “capture” and destruction of methane that would otherwise emit to atmosphere do not and need not be transferred in whole to the power generator to be “net zero.” For example, a digester project that uses agricultural waste as a feedstock and captures methane *that would otherwise emit from the agricultural operation* reduces greenhouse gas (GHG) emissions from that operation even if the methane is simply flared (and not used to displace fossil fuel). Capture and destruction of the methane itself is one GHG reduction activity, and processing the methane to pipeline quality and subsequent use of the methane to displace fossil fuel natural gas is an entirely separate GHG reduction activity.

Requiring biomethane producers to transfer “all environmental attributes” to their power generation customers in order to comply with the RPS would also have the perverse effect of rendering the substantial GHG benefits that might be generated from voluntary capture and destruction of methane produced by agricultural waste of equal value (in terms of GHG emissions) to methane that is required by law to be captured and destroyed. If a producer has to transfer “all environmental attributes” then, from the perspective of the producer, it does not matter how many or what environmental attributes the producer is generating – they have to give them all away. Therefore, biomethane from a regulated source would be of equal value to biomethane that was voluntarily captured and processed into a power generation fuel. This would be counter-productive as it would eliminate the GHG emission reduction incentives for capture and destruction of otherwise unregulated methane emissions in any situation where that methane is processed and sold as a power generation fuel.

Therefore, the new Guidebook should clarify and make consistent the rule that “sufficient environmental attributes are transferred to ensure that there are net zero emissions” and delete references to the requirement to “transfer *all* renewable and environmental attributes associated with the production, capture and injection of the biomethane.” Organic waste digesters should be afforded the opportunity to profit from GHG emissions reductions that exceed what is required for the power generation facility to qualify as “net zero emissions,” and incentives for the operation to maximize GHG emission reductions should stay in place such as the ability to generate tradable credits under AB 32 (California Global Warming Solutions Act).

Environmental Benefits to California

We are concerned that the Commission’s rules set forth in Section 2(c): *Environmental Benefits to California* for new biomethane contracts may be costly and difficult to comply with and therefore inhibit biomethane production projects in California. We believe that the Energy Commission should allow projects that are developed within California and demonstrate that they are capturing methane that would have otherwise have emitted into the atmosphere in California to presumptively qualify as “mitigating a local nuisance in California associated with the emissions of odors.”

Reapplication for Certification

The “Proposed Changes to the RPS Eligibility Guidebook” would now require each facility to reapply for certification. Given the volume and breadth of data and submissions that many biomethane producers and load-serving entities have made in prior submittals to the Commission, we believe that this represents an unnecessary administrative burden for everyone involved (including the Commission). It would seem far more efficient, at least with respect to projects that have been delivering biomethane to California for more than one year, to simply require a limited set of supplemental data.

Requirements for Demonstrating Physical Directional Flow

The requirements for new biomethane contracts to demonstrate physical directional “flow” are complicated and potentially impossible to prove. We are concerned that pipelines would be unable to even provide the data required. As an alternative, we would propose that the Commission consider a far more straightforward application of this rule, and simply require biomethane producers to demonstrate that there was sufficient physical directional flow of gas in the relevant pipeline(s) used to deliver their product to cover the total volume of biomethane they shipped to the buyer during the compliance period in question.

Delivery Path Requirements

Under the section entitled, “Pipeline Contracts and Delivery Paths,” the new Guidebook states, “Any revisions to that delivery path [must] comply with the Guidebook in place at the time the revision occurs.” We believe this is an unfair requirement that is contradictory to the express provisions in the statute that require that existing contracts be treated under the rules in place at the time they were signed. Moreover, this is impractical. Pipeline transport for existing contracts will need to change due to economics, pipeline maintenance or operational issues - and the subsequent arrangements should not be subject to the new rules. In fact is close to certain that during the term of a 10+ year biomethane contract, the pipeline transportation path will change. Producers and biomethane purchasers should not continue to be at regulatory risk due to their need to change which pipeline they are using. Requiring the producers to comply with new regulatory rules solely because they are

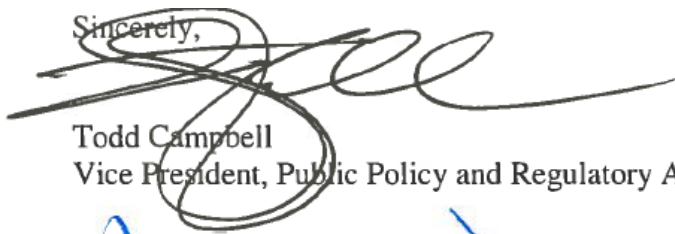
required to change their pipeline transportation arrangements also serves no regulatory purpose. For example, we have a biomethane sales agreement with a POU in Southern California. We have booked one-year firm transportation on the TransWestern pipeline to the SoCal Citygate to deliver the product in accordance with the requirements of the Guidebook that was in place at the time our contract was signed. In future years, however, we may elect to use the El Paso system if the cost is competitive or there are service disruptions in our existing arrangements. In both cases, we will fully comply with the requirements of the Guidebook that was in place at the time our contract for sale of the biomethane was signed. Under the express language of AB 2196, that is all that is required. The Guidebook should be revised to be consistent with the express language of AB 2196.

Use of Biomethane at a New Power Generation Facility

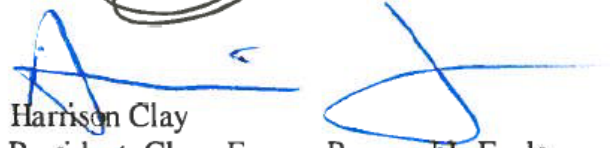
Lastly, we believe that the new Guidebook should allow the load serving entity that is buying the biomethane to use the biomethane at a new power generation facility if they buy or build a more efficient power generation unit. Preventing load-serving entities from routing the biomethane to the most efficient power generation unit in their fleet is counter-productive and serves no regulatory interest.

In conclusion, we thank you again for drafting the “Proposed Changes to the Renewables Portfolio Standard (RPS) Eligibility Guidebook” and for taking our comments into consideration.

Sincerely,



Todd Campbell
Vice President, Public Policy and Regulatory Affairs



Harrison Clay
President, Clean Energy Renewable Fuels

Cc: Kate Zochetti