

STATE OF CALIFORNIA

ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

In the matter of:

Developing Regulations and Guidelines for the 33
Percent Renewables Portfolio Standard

Docket No. 11-RPS-01

Docket No. 02-REN-1038

**COMMENTS OF CALPINE CORPORATION
ON THE PROPOSED CHANGES TO THE
RENEWABLES PORTFOLIO STANDARD ELIGIBILITY GUIDEBOOK**

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Calpine Corporation (“Calpine”) hereby comments on the California Energy Commission’s (“Commission”) Renewables Portfolio Standard Eligibility Staff Draft Guidebook, Seventh Edition (“Draft Guidebook”). Calpine operates two facilities that are Renewables Portfolio Standards (“RPS”)-certified biomethane resources and one facility with a pending RPS-certification for biomethane use (collectively, the “Calpine Facilities”). Each of the Calpine Facilities may generate electricity utilizing biomethane procured under a contract executed prior to March 29, 2012 and these facilities are eligible renewable resources consistent with the modifications made to the RPS statutes by Assembly Bill (“AB”) 2196. These comments focus on the Draft Guidebook’s new sections addressing RPS eligibility requirements for facilities certified to use biomethane to generate electricity and request that the Draft Guidebook be revised to clarify the obligations for those facilities unaffected by AB 2196.

I. Comments

A. Calpine's facilities continue to be RPS-eligible with passage of AB 2196 and under the Draft Guidebook.

Each of the Calpine Facilities is RPS-certified or pending certification for the use of biomethane procured under contracts executed prior to March 29, 2012. AB 2196 grandfathers for RPS-eligibility purposes “[a]ny procurement of biomethane delivered through a common carrier pipeline under a contract executed by a retail seller or local publicly owned electric utility 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....”¹ The Draft Guidebook similarly states that “Existing biomethane procurement contracts” are those contracts executed by a retail seller or publically owned electric utility (“POU”) before March 29, 2012.² The procurement contracts that supply biomethane for the Calpine Facilities were executed by the biomethane seller and a Calpine affiliate that is neither a retail seller nor a POU. Accordingly, the Calpine Facilities are not subject to the AB 2196 limitations for existing biomethane procurement contracts.

The AB 2196 and Draft Guidebook's rules for *new* biomethane procurement also do not apply to the Calpine's Facilities. Section 399.12.6(b) of the Public Utilities Code, which was added by AB 2196, states, in part, “[f]or contracts initially executed on or after March 29, 2012, or for quantities of biomethane associated with contract amendments 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 following requirements....”³

¹ Pub. Util. Code §399.12.6(a)(1).

² Draft Guidebook at 14, available at <http://www.energy.ca.gov/2013publications/CEC-300-2013-005/CEC-300-2013-005-ED7-SD.pdf>.

³ Pub. Util. Code §399.12.6 requirements are:

The Draft Guidebook relies upon this section for its definition of “new biomethane procurement contracts,” which are “[b]iomethane procurement contracts that were executed by a retail seller or POU on or after March 29, 2012; or were reported to the Energy Commission on or after March 29, 2012; or both [sic] in connection with an application for RPS certification or precertification of the designated electrical generation facility intended to use the procured biomethane.”⁴

Because Calpine’s procurement contracts were executed prior to March 29, 2012 and there have been no subsequent contract amendments affecting the potential supply of biomethane, they are not “new biomethane procurement contracts,” and are not limited by AB 2196’s requirements for contracts initially executed on or after March 29, 2012. Accordingly, these facilities continue to be RPS-eligible under AB 2196 and the Draft Guidebook.

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- (1) The biomethane is used by an onsite generating facility.
 - (2) The biomethane is used by an offsite generating facility and delivered to the generating facility through a dedicated pipeline.
 - (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 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.
 - (B) The source of biomethane did not inject biomethane into a common carrier pipeline prior to March 29, 2012, or the source commenced injection of sufficient incremental quantities of biomethane after March 29, 2012, to satisfy the contract requirements.
 - (C) The seller or purchaser of the biomethane demonstrates that the capture and injection of biomethane into a common carrier pipeline directly results in at least one of the following environmental benefits to California:
 - (i) The reduction or avoidance of the emission of any criteria air pollutant in California.
 - (ii) The reduction or avoidance of pollutants that could have an adverse impact on waters of the state.
 - (iii) The alleviation of a local nuisance within California that is associated with the emission of odors.

⁴ Draft Guidebook at 14.

B. The Draft Guidebook should be revised to clearly state that facilities with biomethane procurement contracts executed by a party who is neither a retail seller nor a POU and executed prior to March 29, 2012, do not fall under the requirements of Public Utilities Code §399.12.6(b).

AB 2196 does not limit or terminate the eligibility of those facilities certified to use biomethane procured under a contract executed before March 29, 2012 that does not include a retail seller or a POU as a party to the contract. The addition of §399.12.6(b) by AB 2196 also suggests that the intent of the Legislature is that RPS-eligibility be maintained for those facilities with biomethane procurement contracts executed prior to the Commission's suspension of new pipeline biomethane certifications.⁵ The intent that RPS-eligibility is maintained for facilities with pre-March 29, 2012 procurement contracts is also consistent with the Commission's effort to preserve existing biomethane procurement agreements for RPS-certified facilities at the time of the Commission's suspension of certain rules under the Renewable Portfolio Standard Eligibility Guidebook, Fourth Edition that would have allowed new certifications for new sources of pipeline biomethane.⁶

With the exception of the "retail seller or local publically owned electric utility" language in §399.12.6(a), there is nothing in AB 2196 or the Draft Guidebook that otherwise expresses or implies an intent to treat facilities with biomethane procurement contracts executed by retail sellers or POUs different than facilities with biomethane procurement contracts with other entities. For example, §399.12.6(f) of AB 2196, includes an "intermediary party" to a biomethane procurement contract among those entities that may not make marketing, regulatory, or retail claims asserting that the biomethane procurement contract results in greenhouse gas

⁵ The Commission suspended the ability of facilities to seek RPS-certification for the use of pipeline biomethane on March 28, 2012. (See Suspension of RPS Eligibility Guidelines Related to Biomethane, Resolution No: 12-0328-3, March 28, 2012, available at http://www.energy.ca.gov/portfolio/notices/2012-04-06_corrected_resolution_biomethane_suspension.pdf.)

reductions related to the destruction and capture of methane where the destruction is required by law. As “intermediary parties” are included in this section, it does not appear that the Legislature intended to exclude from RPS-eligibility facilities with biomethane procurement contracts not executed by a retail seller or a POU.

Calpine hereby requests that the Draft Guidebook be revised to clearly state that facilities with biomethane procurement contracts executed prior to March 29, 2012 by a party who is neither a retail seller nor a POU do not fall under the requirements of Public Utilities Code §399.12.6(b). To accomplish the above in the Draft Guidebook, Calpine requests that the following underlined sentence be added to the second paragraph under the Section “New Biomethane Procurement Contracts.”⁷

For purposes of this Section 2: New Biomethane Procurement Contracts, a “new biomethane procurement contract” includes a new biomethane procurement contract executed on or after March 29, 2012, an amendment to an existing biomethane procurement contract executed on or after March 29, 2012, or a biomethane procurement contract or contract amendment executed before March 29, 2012, but reported to the Energy Commission on or after March 29, 2012. A new biomethane procurement contract does not include any biomethane procurement contract executed prior to March 29, 2012.

C. The Draft Guidebook should clarify whether Calpine must comply with additional application obligations for biomethane certified facilities.

Because the Calpine Facilities do not clearly fall under the definition of “existing biomethane procurement contracts”⁸ it is not clear whether and to what extent these facilities would need to submit the new certification applications proposed in the Draft Guidebook.

⁶ See Resolution No. 12-0382-3, supra, Condition of Suspension para. 3.

⁷ Draft Guidebook at 17.

⁸ Draft Guidebook at 14.

Specifically, under the section “Application Process for Facilities Using Biomethane,” the Draft Guidebook states:

An electrical generation facility that is RPS certified or precertified under Section 1: Existing Biomethane Procurement Contracts, will be certified on a limited basis and will receive an RPS ID number with a “F” suffix indicating that the facility will not remain RPS certified after it has used the quantities of biomethane specified in the existing biomethane procurement contract, as determined by the Energy Commission. If the facility amends the contract term, quantities of biomethane, or biomethane sources, the facility must submit an amended application to the Energy Commission within 90 days of the change. A facility failing to do so will risk losing its RPS certification status. A facility that meets the requirements of Section 1: Existing Biomethane Procurement contracts, except that the biomethane source has not commenced biomethane delivery, will be RPS precertified on a limited basis; the applicant must submit an application for RPS certification within 90 days of commencement of receipt of biomethane deliveries.⁹

Because the Calpine facilities are not covered under the aforementioned Section 1, it is not clear whether, and to what extent the requirements of this section may apply.

If the Commission intends for facilities supplied with biomethane under a procurement contract executed prior to March 29, 2012 by a party who is neither a retail seller nor a POU to file an amended application within the time-frames noted above, then the Draft Guidebook should be revised to include the following underlined language:

An electrical generation facility that is RPS certified or precertified under Section 1: Existing Biomethane Procurement Contracts, or that has an executed biomethane procurement contract prior to March 29, 2012, will be certified on a limited basis and will receive an RPS ID number with a “F” suffix indicating that the facility will not remain RPS certified after it has used the quantities of biomethane specified in the existing biomethane procurement contract, as determined by the Energy Commission.

⁹ Draft Guidebook at 37.

D. The Draft Guidebook should give clear direction on what additional materials may be required from certified facilities and facilities with pending certifications.

The Draft Guidebook is ambiguous as to what documents, in addition to the revised application forms, may be required from certified facilities and those with pending certifications.

The Draft Guidebook requires:

An applicant for an electrical generating facility using or proposing the use of biomethane that is already certified, precertified, or pending certification, must submit a new application form as specified in the Seventh Edition of the RPS Eligibility Guidebook and provide *all documents* within 90 days of the adoption of the seventh edition of this guidebook to retain the facility's certification or precertification status; a facility failing to do so will be suspended and procurement from the facility will not be eligible for the RPS until the suspension is resolved.¹⁰

Considering the severe penalty associated with failing to submit "all documents," it is critical that the Draft Guidebook enumerate the specific documents that must be submitted by eligible biomethane facilities within the 90-day period. Accordingly, the Draft Guidebook should provide a complete list of the documents that must be provided in accordance with this paragraph.

Additionally, the Draft Guidebook should be revised to allow exceptions for those parties that have already submitted documents to the Commission after the resolution suspending further biomethane facility certification was issued on March 28, 2012. Where documents or data responses have already been submitted that provide information, such as the execution and expiration dates of biomethane procurement agreements and biomethane quantities that may be delivered pursuant to those executed agreements, these materials are already in the Commission's possession and should not need to be resubmitted. The Draft Guidebook should,

therefore, also be revised to acknowledge and accept the prior data responses and documents submitted by certified and pending certification facilities.

II. Conclusion

Calpine appreciates the opportunity to provide these comments and, for the reasons set forth herein, urges the Commission to revise the Draft Guidebook in accordance with the recommendations discussed above.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Gregory L. Wheatland", is written over a horizontal line.

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¹⁰ Draft Guidebook at 22-23, emphasis added.