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COMMENTS OF THE LARGE-SCALE SOLAR ASSOCIATION ON PROPOSED CHANGES TO THE RENEWABLES PORTFOLIO STANDARD ELIGIBILITY GUIDEBOOK

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COMMENTS OF THE LARGE-SCALE SOLAR ASSOCIATION ON PROPOSED CHANGES TO THE RENEWABLES PORTFOLIO STANDARD ELIGIBILITY GUIDEBOOK

In response to the March 4, 2013 Notice, the Large Scale Solar Association (LSA) submits the following comments on the Proposed Changes to the Renewables Portfolio Standard (RPS) Eligibility Guidebook (RPS Guidebook), Seventh Edition. LSA applauds the California Energy Commission (Commission) for its thoughtful revisions to the RPS Guidebook, in particular the changes to the biomethane section. LSA's comments below focus on areas of the biomethane section that require further clarification to align with AB 2196, SBX1-2 and ensure enforceability of the guidelines.

I. THE COMMISSION HAS CORRECTLY RESTRICTED EXISTING BIOMETHANE CONTRACTS FROM SUBSTITUTING ELECTRICAL GENERATION FACILITIES

LSA supports the proposed restriction in Part II of the RPS Guidebook, Energy Resources Eligibility Requirements, Biomethane (Biomethane Section), which prohibits existing biomethane procurement contracts from changing designated electrical generation facilities. As indicated in our comments to the Commission's Concept Paper For The Implementation of Assembly Bill 2196 (Biomethane Concept Paper), allowing existing biomethane procurement contracts to change facilities would be contrary to the legislative history of AB 2196 and has no reasonable policy justification.¹ The proposed revisions to the RPS Guidebook properly bounds existing biomethane contracts to existing facilities, which is both environmentally preferable and aligned with the legislative intent of AB 2196.²

¹ TURN, LSA and CalWEA Comments on the Concept Paper for the Implementation of AB 2196 (Joint Comments), p.5. (February 8, 2013).

² Id.

II. THE PHYSICAL FLOW TEST FOR DELIVERY OF BIOMETHANE VIA COMMON CARRIER PIPELINES MUST BE REVISED

LSA is concerned with the proposed revisions to the Biomethane Section that specify requirements for delivery of new biomethane procurement contracts via common carrier pipelines. Of particular concern is the new test that the biomethane in the pipeline physically flow toward the generating facility at least fifty percent of the time on an annual basis.³ This new standard is at odds with the unidirectional flow requirement proposed in the Biomethane Concept Paper, which did not allow for displacement.⁴ By setting a standard that is based on an annualized percentage of flow in the direction of the facility, the Commission is now proposing to rely on displacement to meet the statutory flow requirement. A standard based on displacement does not appear to meet the requirements of AB 2196, which requires the pipeline physically flow toward the designated generating facility and was intended to ensure the biomethane would be burned at the designated facility. In addition, as drafted, the fifty percent flow requirement does not appear to be a verifiable standard. LSA understands from both oral comments made during the RPS Guidebook Workshop on March 14th (Workshop) and written comments on the Biomethane Concept Paper, that establishing the flow of a pipeline is challenging at best, the direction of the flow may change over time and that the biomethane producer has no control over the direction of the flow.⁵ LSA requests the Commission further clarify where this new test came from and how it will ensure that the physical flow requirement of AB 2196 is satisfied.⁶

Furthermore, during the Workshop, various stakeholders indicated that typical pathways involve multiple pipeline segments, each of which may not be oriented toward the electrical generating facility. While the proposed revisions to the Biomethane Section

³ RPS Guidebook at page 32 C(2)(a)

⁴ CEC Concept Paper for the Implementation of AB 2196 for the RPS, p.10 (January 2103).

⁵ See PG&E Comments on The CEC Concept Paper for the Implementation of AB 2196, p 4. (February 11, 2013) and LADWP Comments on The CEC Concept Paper for the Implementation of AB 2196, p. 13 (February 8, 2013).

⁶ §399.12.6 (b)(3)(a) requires: "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."

include a requirement that each pipeline segment flow toward the electrical generating facility at least fifty percent of the time, during the Workshop discussion, it appeared that Commission staff are open to allowing indirect delivery paths that involved pipeline segments that flow in different directions, with no orientation to the generating facility. This is confusing, in conflict with AB 2196, and must be clarified. Does the Commission intend to allow biomethane that is injected into a common carrier pipeline to follow circuitous routes or must each segment flow toward the electrical generating facility as proposed in the RPS Guidebook?

Given the lack of clarity already apparent in interpreting the requirements of this section, the fact that reliance on displacement is in conflict with AB 2196, and that fifty percent flow test appears to be nearly impossible to verify, it is clear that the new test is fundamentally flawed. LSA recommends that the Commission revise this section and return to its original unidirectional flow standard.

III. THE GUIDEBOOK MUST CLEARLY DELINEATE WHAT CONSTITUTES AN ACCEPTABLE DEMONSTRATION OF LOCAL ENVIRONMENTAL BENEFITS

The local benefits section is one of the key requirements for new biomethane contracts under AB 2196. This section ensures the State will receive actual benefits from these contracts and requires that new biomethane contracts demonstrate the achievement of reduction in either local air or water pollution or mitigation of nuisance. The Commission has made significant progress in developing the tests for demonstrating local benefits, however, it needs to further specify its standards so that it can be enforced in a clear and transparent manner. As drafted, it is unclear what will constitute an acceptable demonstration of benefits or what will require a second level showing and require empirical evidence. The Commission must also specify that it is impermissible to procure unrelated offsets in order to satisfy these tests. Acceptable demonstrations must be actual local California benefits related to the specific biomethane procurement contract. LSA recommends the Commission further develop the standards in this section to ensure both a level playing field and that any ambiguities are not taken advantage of.

IV. THE COUNT-IN-FULL CATEGORIZATION SHOULD NOT INCLUDE A DELIVERY REQUIREMENT

The proposed changes to the RPS Guidebook, which classify biomethane procurement contracts as count-in-full or PCC procurement need to be revised to align with SBX1-2. The RPS Guidebook proposes three classifications. The first two clearly delineate either count-in-full or PCC procurement based on contract execution date. The third, however, inserts a delivery requirement. It reads:

*“Both the biomethane procurement contract and PPA were executed before June 1, 2010, and the biomethane procurement contract provided for deliveries of biomethane to the designated electrical generation facility for generation before June 1, 2010, then the procurement of the biomethane based electricity generation may qualify, if at all, only as count-in-full procurement.”*⁷

It is unclear why the date of deliveries in the contract is relevant or included in this third classification. SBX1-2 draws a distinction between count-in-full and PCC procurement solely based on contract execution date.⁸ The RPS Guidebook cites no authority nor does it include a policy justification for adding a delivery date as an element to this classification. Adding a delivery date as a requirement to the classification upends the settled expectations of RPS contract classification and is contrary both to a plain reading of §399.16(d) and with the CPUC’s Decision on Portfolio Content Categorization, D. 11-12-052, which includes no such delivery requirement for retail sellers.⁹ LSA recommends the CEC to strike the underlined section above, to remove the reference to deliveries in the count-in-full requirement.

V. PORTFOLIO CONTENT CATEGORIZATION FOR EXISTING BIOMETHANE CONTRACTS

The RPS Guidebook indicates that procurement associated with any contract executed after June 1, 2010 should qualify as “PCC procurement” and that PCC categorization will be determined for Publically Owned Utilities (POUs) by the Commission under the Enforcement Procedures for the RPS for Locally Publicly Owned Utilities

⁷ Proposed Revisions to RPS Guidebook (7th Ed.), p. 20 (March 11, 2013).

⁸ Article 16 of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, as enacted by Senate Bill X 1-2 (Stats. 2011, 1st Ex. Sess., ch.1) §399.16(d).

(currently in draft form). While not specifically addressed in the RPS Guidebook, PCC categorization of existing biomethane contracts is of critical concern to LSA. As stated previously, the Commission must determine the appropriate PCC for existing biomethane contracts (those executed after June 1, 2010 and before March 29, 2012) based on a comprehensive review of these transactions to determine how they align with the characteristics of the three different PCCs.¹⁰ As the Commission is well aware, the reason for the suspension of biomethane contracts last March, was because most existing biomethane contracts are undeliverable to California and therefore do not result in additional biomethane production within California nor do they provide in-state benefits. With no new generation and no changes necessary to existing gas units, these contracts are paper only and must be treated as such and categorized as PCC 3.¹¹ Any other result not only undermines the integrity of the RPS program but also is contrary to the reasoning set forth by the Commission in issuing the suspension of these contracts last year.¹² Therefore, LSA urges the Commission to develop categorization criteria that reflect the characteristics of the PCC and the goals SBX 1-2 for existing biomethane contracts executed with biomethane supplies that do not meet the §399.12.6(b) standards, in order to determine the appropriate PCC.

Respectfully submitted,



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⁹ See CPUC Decision 11-12-052 pp 60-63 (December 21, 2011).

¹⁰ Joint Comments at 2

¹¹ Id at 3.

¹² Notice to Consider Suspension of the RPS Eligibility Guidelines Related to Biomethane, CEC Docket 11-RPS-01 and 02-REN-1038, March 16, 2012, page 3.