

**STATE OF CALIFORNIA
BEFORE THE CALIFORNIA ENERGY COMMISSION**

In the matter of:	)	Docket No. 11-RPS-01
	)	
Developing Regulations and Guidelines	)	Docket No. 02-REN-1038
for the 33 Percent Renewables Portfolio	)	
Standard	)	Comments On: Draft Seventh
	)	Edition, <i>Renewables Portfolio</i>
	)	<i>Standard Eligibility Guidebook</i>
	)	
	)	March 25, 2013

**Comments of the Sacramento Municipal Utility District
(SMUD) on Draft Seventh Edition of the
Renewables Portfolio Standard Guidebook**

Thank you for the opportunity to provide comments on the Draft Seventh Edition of the Renewable Portfolio Standard (RPS) Guidebook. This is a significant set of changes to the Guidebook, including fuller implementation of SBX1 2 and implementation of the eligibility changes established by AB 2196. It is clear that CEC staff has thought in detail about these next steps in the RPS, and SMUD appreciates their hard work and their willingness to engage with stakeholders and with other state agencies to develop the protocols reflected in the Guidebook.

In particular, SMUD continues to appreciate and strongly support the interpretation, first developed in the Biomethane Concept Paper, that the term "... original contract ..." in Section 399.16(a)(2) covers any extensions to or modifications of a contract that are signed and reported to the CEC prior to March 29, 2012. This interpretation is consistent with the intent of this part of the law, which aimed to honor the terms of contracts legitimately signed under rules in place, prior to regulatory or legislative action to change those rules.

SMUD also greatly appreciates the movement seen in the Guidebook away from the Biomethane Concept Paper to expand the meaning of the words "... reported to ..." in relation to the statute's requirements for biomethane contracts signed prior to March 29, 2012. SMUD supports the inclusion of pre-March 29, 2012 contracts that had not

applied for precertification or certification prior to that date, but had met the requirement in the statute by being “reported to” the CEC, in connection with eventual plans to certify the contracted biomethane for the RPS. SMUD suggests some slight clarification of the language in the Guidebook below.

However, on several aspects, described below, SMUD believes that the staff has interpreted AB 2196 incorrectly or too narrowly. SMUD again encourages the CEC to pay significant attention to the legislative intent of AB 2196. In our view, the bill was crafted to do two main things: 1) grandfather existing biomethane contracts under existing rules – in place when the contracts were legitimately signed; and 2) establish new rules for biomethane contracts signed in the future (specifically, post March 28, 2012 – but the biomethane suspension means there has been no contract activity since that date). In this regard, where the CEC has room for alternate interpretations of a provision of AB 2196, it should give weight to the interpretation that fully honors these contracts, and avoids intervening in valid historical contract negotiations and terms.

SMUD appreciates the CEC’s intent for quick deliberation on the points raised below and comments from other stakeholders so that the CEC can proceed to remove the current suspension on biomethane certifications for the RPS, and, more importantly perhaps, to reduce the current uncertainty in the market regarding biomethane contracts and sources that were expected to be grandfathered by AB 2196.

A. Slight Clarification What is Meant by the Words “... reported to...” in Section 399.12.6(a)(1), in Relation to Contracts Signed Prior to March 29, 2012.

Again, SMUD appreciates the change from the Concept Paper so that a filed application for certification or pre-certification is not required to receive “grandfathered” treatment pursuant to AB 2196. The main intent of this section of the bill was to treat contracts signed prior to biomethane suspension under the rules established by the CEC at the time the contract was signed. As SMUD has pointed out before, this law did not require reporting of these contracts through applications for certification or pre-certification. Rather, use of the term “reported to” encompasses various means of informing the CEC of pre-March 29, 2012 contracts, so long as the CEC was notified of the contract by the statutory deadline. The common sense meaning of the term would include contracts that were discussed with the CEC. In SMUD’s case, e-mails and other correspondence document that a 2009 biomethane contract was reported to the CEC, and a letter from the CEC expressing approval of the ‘delivery structure’ for the contracted project, shows without question that the CEC knew about the project well before the March 2012 deadline.

The Guidebook includes as “grandfathered” any contracts that were reported to the CEC “... *in connection with* the application for RPS certification or precertification of the designated electrical generation facility.” SMUD believes that this covers the case mentioned above, since SMUD did request pre-certification the resource in the contract prior to March 29, 2012, but this request was not granted by the CEC. At the time, the CEC stated in an e-mail that neither pre-certification nor certification of the proposed contract was possible, because the facility designated for using the biomethane was already certified, and there was no provision at the time for precertification in such cases, nor could certification be granted because the biomethane was not yet flowing.

However, since SMUD’s attempt to certify or pre-certify the facility in 2009 was denied, it is not wholly clear that the language “... in connection with ...” applies, since there is no actual application. In the March 14 workshop on the Guidebook, CEC staff mentioned that a letter on CEC letterhead referencing a proposed project and dated prior to March 29, 2012 project would be considered sufficient “reported to” documentation. SMUD requests that the Guidebook include language providing that written notice, by email, letter or otherwise, to the CEC prior to March 29, 2012, qualifies as “reported to”, or clarify in Guidebook that a filed application for certification or precertification prior to March 29, 2012 is explicitly not required, such as by adding the phrase “... even if such an application was not filed prior to March 29, 2012.”

B. Nothing in AB 2196 Authorizes the CEC to Prohibit Switching Designated Facilities for Biomethane from a Particular Source.

In a change from the Biomethane Concept Paper, the Guidebook now prohibits switching a pre-March 29th, 2012 contract from one designated generation facility to another. SMUD does not see the need for this change, and believes that the treatment in the Guidebook is in fact contrary to the intent of AB 2196 – to grandfather existing contracts signed prior to March 29th, 2012 under the existing rules – in place when the contracts were legitimately signed. Unlike the “reported to” requirement discussed above, AB 2196 says nothing about the “designated facility” in establishing requirements for pre-March 29th, 2012 contracts in Section 399.12.6(a)(1), nor does or “change in designated facility” appear in Section 399.12.6(a)(2) describing changes that may trigger of the applicability of new biomethane rules established under section 399.12.6(b).

The CEC got this right in the Biomethane Concept Paper – switching designated facilities should be allowed, not prohibited -- and there are many legitimate reasons to structure a shift in biomethane use from one facility to another

First, the prohibition against switching facilities has the potential to leave some “grandfathered” contracts stranded, with no recourse for the contracting utility. For

example, SMUD has a pre-March 29th, 2012 biomethane contract for which there is no clear designated facility at present (pre-certification for the facility was denied by the CEC in 2009), and this new requirement, which is not in the law, could retroactively strand this procurement. SMUD can see no rational policy basis for this result.

Second, the prohibition against switching creates uncertainty in circumstances where a facility designated for use in a biomethane application has to shut-down for an extended period. Would the contracting utility be allowed to count as eligible alternate generation while the designated facility is down, and would the utility even be allowed to count generation from the contract once the designated facility is back on line? Such a rule constrains RPS eligibility in ways that AB 2196 does not.

Finally, a prohibition on switching designated facilities could prevent utilities from using biomethane in the most efficient plants possible. SMUD is aware that some POUs expect to switch the designated facilities for some biomethane contracts from their currently designated facilities to new, more efficient facilities coming online. The State generally promotes such actions to improve efficiency and keep the RPS affordable, but here the proposed Guidebook language may prevent them. The Guidebook would not appear to prevent a new biomass facility from using the same amount of fuel more efficiently to produce more renewable energy. SMUD can imagine no legitimate reason to treat biomethane differently.

C. The CEC Should Alter The Proposed Definition Of Dedicated Pipeline To Include Pipelines Such As Those Operated By SMUD – Dedicated Solely To The Use Of SMUD’s Power Plants.

The Guidebook defines the terms “common carrier pipeline” and “dedicated pipeline” as:

Common carrier pipeline – a gas conveyance pipeline that is owned or operated by a utility or gas corporation, excluding a dedicated pipeline.

Dedicated pipeline – for purposes of RPS eligibility of biomethane, refers to a gas conveyance pipeline that is not part of a common carrier pipeline system, that conveys biomethane from a specific biomethane producer to a specific electrical generation facility and (sic) to no other end users.

These definitions are close to those proposed in the Concept Paper, which states the rationale for using these definitions as “aligning” with the definitions enacted by AB 1900, a companion bill to AB 2196. These definitions, however, are enacted in and relevant for the Health and Safety Code, and are not applicable, and not necessarily relevant, to the eligibility issues of AB 2196. The purposes of AB 1900 are to protect human health from potentially harmful constituents that could be present in biomethane

produced from landfills and other sources, and to ensure the integrity and safety of gas pipelines operated by California gas corporations. The purpose of the common carrier language of AB 2196, on the other hand, is to regulate the sources and commerce of biomethane for the RPS. Arguably, the State's interests involved in regulating human health are more vital than those governing commercial interests.

However, rather than creating a broader exclusion from the common carrier pipeline definition in the commercial context of the RPS, the CEC has created an narrower exception than in the public health arena, and thus is attempting the regulate even more pipelines. The definition of "dedicated pipeline under AB 1900 reads:

Dedicated pipeline means a conveyance of biogas or biomethane that is not a part of a common carrier pipeline system, and which conveys biogas from a biogas producer to a conditioning facility or an electrical generation facility.

Thus, under AB 1900, a dedicated pipeline can carry biomethane from any producer to any number of electric generation facilities. However, the proposed CEC definition severely limits a dedicated pipeline to conveyances between a specific producer to a specific generation facility "and no other end users." SMUD does not understand why the CEC asserts that it wants to "align" the two definitions but then alters its own to be much more restrictive, and do so in a commercial context where the State has a narrower interest than when protecting the public health.

Another, fundamental, issue with the proposed definition of "common carrier", and its counterpart "dedicated pipeline", is that it does not include the core concept in all "common carrier" situations – that the entity owning the facility or company (here pipeline) is offering a transportation service *for hire*, and is legally bound to open the service in a tariff-governed, transparent, non-discriminatory manner to all parties that wish to purchase the transportation services. The CEC is ignoring this core concept in its proposed definitions in the Eligibility Guidebook.

This distinction is important for SMUD, as we own and operate a dedicated, private carrier, pipeline. SMUD takes biogas from the Sacramento County Waste Water Treatment facility, injects it into our nearby private pipeline and conveys it to our Cosumnes electrical generation facility. SMUD's pipeline is not for hire to the public, and no other end-users except for SMUD generators are connected to it. The typical tariffs and market rules governing third-party delivery through a contract carrier or common carrier pipeline do not apply. SMUD is not a "gas corporation" as defined in section 222 of the Public Utilities Code, or a "pipeline corporation under section 228, or a public utility under section 216, which are all subject to rate regulation by the California Public Utilities Commission ("CPUC").

The general sense understanding of the term “common carrier” is fairly clear. For example, the California Public Utilities Code defines “Common Carrier” as follows:

"Common carrier" means every person and corporation providing transportation for compensation to or for the public or any portion thereof, except as otherwise provided in this part. (See Pub. Util. Code §211.)

While this definition primarily is applied to transportation of people and goods in various types of vehicles, the definition does not exclude transportation of goods through pipelines. Hence, under this definition the CPUC establishes rules and tariffs for pipeline corporations and for electrical corporations that operate natural gas pipelines.

Wikipedia also illustrates the general concepts of common carrier versus private carrier situations:

A **common carrier** in common-law countries (corresponding to a **public carrier** in civil-law systems,^[1] usually called simply a **carrier**) is a person or company that transports goods or people for any person or company and that is responsible for any possible loss of the goods during transport.^[2] A common carrier offers its services to the general public under license or authority provided by a regulatory body. The regulatory body has usually been granted “ministerial authority” by the legislation which created it. The regulatory body may create, interpret, and enforce its regulations upon the common carrier (subject to judicial review) with independence and finality, as long as it acts within the bounds of the enabling legislation.

A common carrier is distinguished from a contract carrier (also called a *public carrier* in UK English),^[2] which is a carrier that transports goods for only a certain number of clients and that can refuse to transport goods for anyone else, and from a private carrier. A common carrier holds itself out to provide service to the general public without discrimination (to meet the needs of the regulator's quasi judicial role of impartiality toward the public's interest) for the "public convenience and necessity". A common carrier must further demonstrate to the regulator that it is "fit, willing, and able" to provide those services for which it is granted authority. Common carriers typically transport persons or goods according to defined and published routes, time schedules, and rate tables upon the approval of regulators. Public airlines, railroads, bus lines, taxicab companies, cruise ships, motor carriers (i.e., trucking companies), and other freight companies generally operate as common carriers. Under US law, an ocean freight forwarder cannot act as a common carrier.^[2]

A **private carrier** is a company that transports only their own goods. ^[1] The carrier's primary business is not transportation.

Private carriers may refuse to sell their services at their own discretion, whereas common carriers must treat all customers equally.

Similarly, a legal definition of common carrier can be found in West's Encyclopedia of American Law, edition 2.

A common carrier is legally bound to carry all passengers or freight as long as there is enough space, the fee is paid, and no reasonable grounds to refuse to do so exist. A common carrier that unjustifiably refuses to carry a particular person or cargo may be sued for damages.

The states regulate common carriers engaged in business within their borders. When interstate or foreign transportation is involved, the federal government, by virtue of the Commerce Clause of the Constitution, regulates the activities of such carriers. A common carrier may establish reasonable regulations for the efficient operation and maintenance of its business.

SMUD does not operate a “common carrier” pipeline under any generally accepted definition. However, CEC Staff stated at the Eligibility Guidebook workshop on March 14th that their understanding of the SMUD pipeline situation did not fit in the definition of “dedicated pipeline” in the Guidebook. Treatment of SMUD’s situation as a “common carrier” pipeline by the CEC could result in substantial harm to SMUD, as AB 2196 allows three paths for RPS eligibility for future biomethane contracts – on-site use, dedicated pipeline delivery, or common carrier pipeline delivery, with significant additional constraints and conditions on this third path. Should the CEC determine that SMUD’s situation fits under the “common carrier” path in AB 2196, for purposes of RPS eligibility, we would be subject to these constraints and conditions. In particular:

- New developments of local biogas projects for potential injection into SMUD’s pipeline would be subject to the constraints found in 399.12.6(b)(3)(C). SMUD contends that there is no reason for the costs of proving that these constraints are met to apply to SMUD’s private carrier pipeline situation.
- When SMUD’s current commodity agreement to purchase biogas from the Sacramento Wastewater Treatment Facility ends, the biogas would no longer be eligible for the RPS if delivered through our pipeline, per 399.12.6(b)(3)(B), which says in part that new contracts for biomethane must be for gas that has not been injecting into a common carrier pipeline prior to March 29, 2012.

If SMUD does not have a “common carrier pipeline”, and as stated above, the proposed definition of “dedicated pipeline” is overly restrictive, then we find ourselves in a regulatory limbo. SMUD believes that the error here is in the proposed Guidebook definition of “dedicated pipeline”, which includes the words: “...from a *specific* biomethane producer to a *specific* electrical generation facility *and to no other end users.*” SMUD has no problem with the first part of the definition, which simply refers to “... not a common carrier pipeline...” but believes that in the latter part cited above the italicized terms go beyond the legal definition in AB 1900, and beyond what is

necessary to distinguish conveyance of biomethane in our private pipeline. Our pipeline is "... not part of a common carrier pipeline..." and "... conveys biogas from a biogas producer to a conditioning facility or an electrical generation facility." It actually meets the definition in AB 1900. SMUD sees no reason for narrowing the definition from AB 1900 as the CEC has included in the proposed Guidebook. Thus, SMUD requests that the CEC consider one of three actions to appropriately resolve this issue:

1. Simply use the definition found in AB 1900, and indicate in Guidebook text that any pipeline that is not a "common carrier" is considered dedicated.
2. Broaden the definition of "dedicated pipeline" to reflect the core concepts regarding common carrier pipeline discussed above. SMUD suggests the following definition of dedicated pipeline:

Dedicated pipeline – for purposes of RPS eligibility of biomethane, refers to a gas conveyance pipeline that is not part of a common carrier pipeline system, that conveys biomethane from a ~~specific~~ biomethane producer to a ~~specific~~ electrical generation facility, and that is not for hire and to ~~no other~~ users other than the pipeline owner.

3. Include a definition of "private carrier" pipeline, and indicate in Guidebook text that for purposes of RPS eligibility for biomethane contracts private carrier pipelines will be treated similarly to dedicated pipelines. SMUD suggests the following definition for private carrier pipeline.

Private carrier pipeline – for purposes of RPS eligibility of biomethane, refers to a gas conveyance pipeline that is not part of a common carrier pipeline system, on which only the pipeline owner has authority to transmit biomethane for which it has contracted.

D. The CEC Should Not Use the Proposed Hourly Schedule/Hourly Meter Structure For Determining The Portion Of RPS Procurement Scheduled Into A California Balancing Authority Is Considered PCC1.

There are essentially four ways by which procurement can count as Procurement Content Category 1 resources under SBX1 2. A resource can either be:

1. interconnected within a California balancing authority;
 2. interconnected to distribution facilities used to serve end-users within a California balancing authority;
 3. associated with a dynamic transfer agreement to a California balancing authority;
- or

4. scheduled into a California balancing authority without substituting electricity from another source (other than the renewable generator).

For this last method, and only this last method, SBX1 2 explicitly allows the use of another source to provide real-time ancillary services required to maintain an hourly or sub-hourly import schedule into a California balancing authority. In a separate clause, the law states that only the fraction of the schedule actually generated by the eligible renewable energy resource can count as a PCC1 resource.

Clearly the Legislature did not want “substitute power” – the practice in PCC2, to be included in procurement intended to qualify as PCC1. Just as clearly, however, the Legislature did not want the common commercial practice of maintaining hourly or sub-hourly schedules with non-renewable ancillary services to disqualify eligible renewable electricity from PCC1 status. At the same time, the Legislature makes clear that any electricity beyond that scheduled should not count as PCC1.

To date, CEC staff has interpreted these provisions of SBX1 2 to effectively require an annual hourly analysis of meter and schedule data to determine how the hourly schedule compares to the hourly metered data from the renewable facility, and only allow PCC1 status for the lesser of these two amounts on an hourly basis. This interpretation tends to minimize, and thus discriminate against, PCC1 procurement from resources scheduled into a California balancing authority. As SMUD and others have commented, this interpretation is not required by the legislation, and suffers from several problems, including:

- It establishes an incentive to “over-schedule” one’s renewable procurement, in order to prevent loss of a portion of the value of the PCC1 resource one has procured. This over-scheduling will itself cause increased costs as it implies inefficient use of the transmission system.
- It can cause the loss of PCC1 contract value through no fault of the contracting parties, as a PCC1 resource generates and is scheduled as is common in the electricity market but some portion of that generation is diminished in value to the purchasing entity (hence the incentive to overschedule noted above). It is unclear if existing contracts can be restructured to represent this loss of value on an ongoing basis – procuring parties may yet have to pay full PCC1-value for the renewable generation, and at best it complicates the contractual process for this eligible generation unnecessarily.
- It significantly increases the complexity of the RPS in three ways:
 - o The process for use of the annual hourly spreadsheet described in the Guidebook and the time required to establish the hourly determination of PC categorization for both the procuring party and the CEC. The

complication exists in part because the process envisioned is so different from the normal, monthly electricity market settlement process. If the electricity market in the West moves to intrahour scheduling, as is expected, this determination may get even more complicated and time-consuming.

- o The allocation of shortfall necessary amongst parties for any resources that have contracted PCC1 scheduled power to multiple buyers in California (as the CEC-calculated PCC1 amounts would be lower than the total contracted amounts).
- o The additional complexity of more resources being divided between PC Categories, depending on hourly generation and scheduling characteristics. It seems common sense that this division should be avoided if possible.

SMUD continues to contend that the legislation does not require this “hourly comparison” interpretation at all. SBX1 2 states that “only the fraction of the schedule actually generated by the eligible renewable energy resource” shall count as PCC1. It does **not** read “only the fraction of the **hourly** schedule actually generated by the eligible renewable energy resource” shall count. CEC staff has taken the words “hourly or subhourly import schedule” from a separate clause earlier in the sentence and read those words into the next clause, thus changing the meaning of the latter clause. SMUD continues to contend that the CEC should strive to come to an interpretation here that is consistent with the intent of the Legislation and consistent with normal electricity market settlement procedures, to prevent over-scheduling, loss of contract value, and complexity.

For a any resource scheduled into a California balancing authority on a unit-contingent basis, there are differences on an hourly basis between the schedule and the metered generation, because generation varies based on ambient conditions and other factors in each hour, and, with the exception of dynamic schedules, scheduling conventions typically require that energy schedules at interties between balancing authorities be held constant during the time period of the schedule (typically hourly). This necessitates real-time ancillary services to maintain the schedule. In some hours, the metered amount may be less than the scheduled amount, and in some hours greater, and over the course of the monthly period used for settlements these would tend to offset, leading to little discrepancy between the contracted generation and the scheduled procurement. This appears to be all that the Legislature was in fact intending for scheduled PCC1 products. The Legislature could have included the word “hourly” in the clause limiting how much procurement would count as PCC1 if they had intended the CEC staff interpretation.

In the March 14th CEC workshop on the Guidebook, staff presented a tabular representation of the hourly scheduling requirement. This chart shows:

PCC 1 Scheduled -Why Hourly Data is Needed

Hour Ending	Metered Volume MWh	Scheduled Volume MWh	Lesser of Schedule & Meter =PCC 1
1	100	0	0
2	0	0	0
3	0	0	0
4	100	100	100
5	100	100	100
6	125	100	100
7	75	100	75
8	75	100	75
9	75	100	75
Total	650	600	525

It should be noted that in this illustrative example there are large deviations (25%) shown between the schedule and the output of the generator, and that in practice these are not common for the types of contracts being discussed. In actual practice, for non-intermittent resources, deviations between actual generator output and the energy schedule at an intertie between two balancing authorities will be slight, driven by the fact that the output of a generator is often not exactly the same from moment to moment, but drifts up and down over the course of any time period. In practice, a renewable resource which had such large deviations as highlighted in staff's example would likely need to be firmed and shaped and would be a PCC-2 resource.

In addition, this chart appears to SMUD to include another concept beyond the use of real-time ancillary services to maintain an hourly or sub-hourly schedule. In hour 1 above, the generator is producing 100 MWh of power, but this power is not scheduled into a California balancing authority – hence there can be no use of real time ancillary services to maintain a schedule. In hours 4-9, however, power is scheduled and is generated, and the presumption in the example is that real-time ancillary services are being used to maintain the schedule (though the variations are larger than typical).

Note that during these 6 hours, the actual generation was 550 MWh, while the total amount scheduled was 600 MWh.

SMUD contends that in the example shown, the proper interpretation of the statute is to determine the lesser of the amount actually scheduled versus the amount actually generated over the 6 hours when power is scheduled. This leads to a PCC1 amount from the example generator of 550 GWh, not the 525 GWh determined via the Staff's hourly comparison. Note that this is the full amount that the procuring entity both contracted for (was generated in scheduled hours) and scheduled into California, preserving the value of the contract, and avoiding the complexity of dividing the procurement into different PC categories (Note that the additional 100 MWh from hour 1 in the example may have been procured by the same RPS obligated entity, or someone else, but was clearly not scheduled into California, even with substitute power beyond that found in real time ancillary services, so would at best be considered a PCC3 procurement). SMUD's proposed interpretation also avoids the over-scheduling concern raised by many parties, as it removes the incentive to increase the schedule in order to get the entire procurement categorized as expected – as a PCC1 resource.

It is reasonable to consider the hourly and sub-hourly real time ancillary services used in this manner. The main ancillary service used on an hourly and sub-hourly basis for this purpose is imbalance energy – energy typically provided by a balancing authority to balance the differences between actual generation and the schedule, which must be held constant in common scheduling convention. In hours 7-9 in the example shown, the host balancing authority (or other balancing party) would be providing generation to balance the under-generation in comparison to the schedule. In hour 6, the renewable generator would be delivering its energy as imbalance energy to the host balancing authority, meaning that the host balancing authority was able to reduce its own generation needed for the remainder of its obligations. Hence, considering all the hours together, the net difference between the schedules and the actual energy output of the renewable generator reflects the net hourly or sub-hourly ancillary service energy that the host balancing authority had to provide (or accepted) in service of this renewable generator.

In practice, expanding from the example above, California electricity markets are characterized today by hourly scheduling (typically) and monthly settlements based on e-tags (typically). Hence, SMUD proposes that hours be aggregated on a monthly basis, with the purchasing entity in California only claiming as PCC1 the lesser of the monthly import schedules for that renewable generator or the procured, metered, monthly output of the generator.

SMUD understands that the situation illustrated in the example, where the total scheduled amount is the lesser number, when if the generation that is not scheduled is subtracted, the total generation amount would be the lesser number, has raised concerns at the CEC leading to the hourly comparison interpretation. However, SMUD contends that this situation is unlikely for two reasons: 1) because there is a general market disincentive to over-schedule or to under-schedule and 2) because of the scheduled PCC1-type contracts under consideration are not highly variable (intermittent) generators.

First, over-scheduling a resource comes with additional and unnecessary costs to the procuring party. Scheduling implies procuring transmission capacity, and one generally wants to procure the minimum needed to get the power one has procured through the transmission system to the point desired. Over-scheduling also increases the need for imbalance services, which adds costs to the entire system, some of which are borne by the procuring party. Under-scheduling potentially leaves contracted for generation undelivered, necessitating power purchase elsewhere, and also increases imbalance energy services, with additional costs.

Second, non-intermittent renewable resources such as geothermal and biomass power plants will likely be procured under PCC1 contracts (there is no particular reason to firm and shape these), and intermittent renewable resources like solar and wind power plants likely will be procured under firmed and shaped PCC2 contracts (if not under dynamically transferred PCC1 contracts, which do not have the scheduling issue in question here). The non-intermittent, PCC1-type resources are not likely to have hourly schedules differ from hourly generation as widely as shown in the example – the resource will not be generating when not scheduled, and will likely generate close to the schedule in most hours when scheduled. Some hours will show higher generation than scheduled, and others lower, consistent with the concept of needing hourly or sub-hourly real time ancillary services. Over the course of the 730 hours or so in a month, these differences should even out with proper scheduling, and all of the eligible renewable energy actually produced and scheduled to California could be counted as PCC1 generation.

Generation that occurs in an hour that is not scheduled should be uncommon, and should be minor in comparison to the scheduled generation over a month, leading to a relatively unimportant effect on the “what counts as PCC1” issue. SMUD contends that the market problems from using the CEC proposed method outweigh any potential benefits of the proposed method, which is attempting to prevent these minor and relatively unlikely situations, and that there are other, much less disruptive methods of checking for and preventing them.

First, the hourly scheduled amounts can be checked, and any hours where there is generation that is not scheduled in that hour can be discarded. This could be done on a monthly settlements basis, or through an annual hourly spreadsheet similar to that proposed by the CEC, but without the problematic hour by hour selection of the lesser quantity, and provided or kept as an auditable resource to be checked on a spot basis.

Second, the CEC could require a calculation of the average hourly variance between metered and scheduled generation in a month or year, and perform additional checks for procurement where the average hourly variance was above a predetermined amount such as 2%. While variation within a 2% margin may allow a de-minimus quantity of “extra-PCC1” generation in a few cases, this would be commensurate with the de-minimus requirements in other parts of the RPS. Significant hourly average hourly variance between metered and scheduled generation may also be an indication that a procuring entity is attempting to procure a relatively intermittent resource through a PCC1-type contract when it may be more appropriate for a PCC2-type contract. Third, the CEC could require additional information such as hourly metering and scheduling data for a PCC1 contract derived from a clearly intermittent resource, in order to verify that the PCC1 content of the contract is fully valid.

E. The CEC Should Be Careful To Avoid Additional Eligibility Requirements For Biomethane Contracts Delivered Through A Common Carrier Pipeline And Signed And Reported Prior To March 29, 2012.

As mentioned earlier, SMUD believes that AB 2196 had two main intents: 1) to grandfather existing biomethane contracts under existing rules – in place when the contracts were legitimately signed; and 2) to establish new rules for biomethane contracts signed on or after March 29, 2012. Section 399.12.6(a)(1) is the main section covering the first intent, applying to existing biomethane contracts involving delivery through a common carrier pipeline, and requiring that these contracts generally be processed under the “... rules in place at the time the contract was executed, including the Fourth edition of the Energy Commission’s Renewable Portfolio Standard Eligibility Guidebook ...”, if the sources for the contracts are producing biomethane prior to April 1, 2014.

Other sections of AB 2196 appear, however, to apply to “all” biomethane contracts, as they do not refer to contracts signed either before, or after, March 29, 2012 (specifically, sections 399.12.6 parts (c), (d), (f), and (g)). There is an apparent conflict between these sections of AB 2196 and 399.12.6(a)(1), and SMUD contends that the CEC must give full weight to 399.12.6(a)(1) by avoiding the implementation of any additional requirements from the other sections in AB 2196 for the existing contracts covered by 399.12(a)(1).

SMUD understands that in the Third and Fourth editions of the RPS Guidebook, there is language reserving the right of the CEC to ask for additional information related to information provided in the certification applications processed under those Guidebooks. It would appear to SMUD that none of the additional information being considered by the CEC would be inconsistent with applications filed under these previous Guidebooks, so that there may be no eligibility issues that arise with the new information. SMUD would vigorously contest any determination of ineligibility of a resource covered by 399.12.6(a)(1) based on an interpretation of lack of conformance to the newly required information provisions. SMUD does not believe that AB 2196 allows such a result.

F. The CEC Should Minimize The Additional Administrative Burden Necessary To Achieve The Requirements Of Sections 399.12.6(c), (d), and (f).

AB 2196 contains a definition of biomethane that explicitly includes all landfill and digester gas resources, even if these resources are not cleaned up to the pipeline-quality gas previously defined by the CEC as “biomethane”. In addition, several provisions in AB 2196 appear to apply to all sources of biomethane, including facilities that are simply those using landfill gas or digester gas on-site, rather than being injected into a common carrier pipeline, although the intent of the legislation was to clarify eligibility of historical contracts delivered through common-carrier pipelines and to establish new rules for such resources post March 19, 2012. SMUD encourages the CEC to interpret these provisions of the statute to avoid unnecessary and retroactive procedures to re-verify the eligibility of existing small landfill gas or digester gas facilities.

Rather than ask these existing, smaller sources to reapply, to provide additional environmental attributions beyond those already contained in certifications to date, to annually report information that is not germane or unavailable, or to participate in an unnecessary and duplicative tracking mechanism, SMUD recommends that the CEC simply deem any existing, certified, project that is not delivered through a common carrier pipeline already compliant with any new protocols or structures implemented per AB 2196.

For example, SMUD contends that there is no point for facilities that use biogas (biomethane) on-site to participate in the tracking system described in 399.12.6(d) in the same manner as facilities using a common carrier pipeline. Section 399.12.6(d) requires the CEC to require compliance with a tracking system equivalent to WREGIS, but does not require the CEC to establish identical requirements in this tracking system for on-site facilities versus facilities delivering through a common-carrier pipeline. Section 399.12.6(d) requires the tracking system that the CEC establishes for this purpose, if any, to be equivalent to WREGIS, and for on-site generation, this is already

the case. The CEC simply has to recognize this, and indicate that the AB 2196 tracking requirement is already met for these sources. Here, there is no difference between on-site biogas use and generation from a biomass facility (or other renewable generator, for that matter) – there is no chance that the fuel could go elsewhere and no greater chance that the relevant attributes might be double-sold, given participation in WREGIS. Establishing a duplicative tracking system in these cases is simply an extra burden for these facilities, with no purpose.

One presumes that the annual information filing requirements described on pages 39-42 of the Guidebook (redline/strikeout version) is intended to provide information for the additional biomethane tracking the CEC envisions per AB 2196. If so, then it is clear that these requirements do not make sense for biomethane used on-site. Every page and segment talks about biomethane pipeline nomination reports, storage nomination reports, delivery paths, points of receipt, points of delivery, pipeline names, amounts “injected” into a pipeline, etc.

Section 399.12.6(c) requires all electricity products using biomethane to provide sufficient environmental attributes to ensure that there are zero net emissions associated with the production of electricity from the generating facility using the biomethane. This section goes on to state that the provisions in the subdivision shall be applied in a manner consistent with the definition of “green attributes” that is already in use for the RPS. Arguably, the statute here simply indicates that the CEC should follow the green attributes procedures already in place for the RPS, particularly for on-site use, rather than develop a new attribute demonstration procedure. The Legislature may have been concerned that biomethane delivered through a common carrier pipeline would need additional procedures to ensure this tracking, but such additional procedures make no sense for on-site biomethane use.

The arguments above, for the most part, apply equally to any new, rather than existing, on-site use of biogas (biomethane), and these should be similarly treated – though here SMUD sees no difficulty with new facilities filling out new forms for certification or pre-certification, since there is no unnecessary duplication of effort.

G. The CEC Should Clarify That Pipeline Delivery Paths For Existing Biomethane Contracts (pre-March 29, 2012) Can Change Without Being Subject To Future Guidebooks

On page 30 of the redline/strikeout version of the Guidebook, and again on Page 40, the Guidebook states that revisions to the pipeline delivery paths associated with existing biomethane contracts must “... comply with the guidebook in place at the time the revision occurs.” At the workshop on March 14th, CEC staff indicated that they did not intend to subject pre-March 29, 2012 contracts to an ongoing “delivery path”

compliance requirement, and said that this language would be modified accordingly. SMUD appreciates this recognition, and reiterates the need for the changes here.

For these existing contracts (as with all contracts delivering through a common carrier pipeline system), delivery paths can change over time as a result of pipeline ownership changes, new pipelines put into service, economical benefits, reliability benefits, etc. SMUD's existing biomethane contracts, all with terms of 20-25 years, will most likely require one or more delivery path changes over the term of the agreements. Per Section 399.12.6(a)(1), these existing contracts should be required to meet the eligibility rules in place at the time the contract was executed and nothing more, now or at any point in the future. Section 399.12.6(a)(2) delineates the changes in one of these contracts that may trigger new eligibility rules, and none of these changes relate to the biomethane delivery path. Hence, the CEC should not subject these contracts to a new delivery path requirement.

H. The CEC Should Clarify That Pipeline Delivery Paths Will Be Approved Prior To Annual Reporting Requirements

Page 30 of the redline/strikeout version of the Guidbook states that "... a final determination on the eligibility of a delivery path will not be made until after the applicant submits the annual reporting requirements as specified in Section III. A.: Generation Tracking and Accounting." This practice is a significant change from the practice followed by the CEC to date for biomethane contracts, and SMUD recommends that the CEC find a way to return to the current practice.

In general, biomethane projects must have a determination that a proposed delivery path will be eligible ahead of time, usually before the project receives financing and construction begins but, at the latest prior to pipeline transport capacity being purchased. It will not work for an entity to contract for a project, have it financed and built, and contract for a pipeline delivery path, only to find out during a reporting exercise regarding the energy derived from that contract that the pipeline delivery path is not "eligible". These projects will simply not go forward with that risk. Hence, the CEC must find a way, even with the new requirements established by Section 399.12.6(b)(3)(A), to approve a biomethane pipeline path up front.

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Thank you again for the opportunity to comment.

/s/

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