

**BEFORE THE
CALIFORNIA ENERGY COMMISSION**

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**COMMENT OF SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
ON THE PREPARATION OF THE 2011 BIOENERGY ACTION PLAN
DOCKET 10-BAP-01**

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I. INTRODUCTION AND SUMMARY

The Southern California Public Power Authority (“SCPPA”)¹ respectfully submits this comment on the draft 2011 Bioenergy Action Plan (“Plan”) issued in December 2010 by the California Energy Commission (“CEC”) for the Bioenergy Interagency Working Group (“Working Group”).

SCPPA strongly supports actions to further develop the bioenergy industry and remove barriers to its growth. SCPPA members procure biogas for combustion at their electricity generating facilities. SCPPA members require biogas to have the following two characteristics:

- When the biogas is combusted at the SCPPA members’ CEC-certified generating facilities, the electricity generated must constitute renewable energy for the purposes of the California Air Resources Board (“ARB”) regulation *California Renewable Electricity Standard*, Title 17, California Code of Regulations (“CCR”), Subchapter 10, Article 6 (“RES Regulation”), and any applicable renewable portfolio standard established by statute.
- Carbon dioxide emissions from the combustion of the biogas must not count towards the SCPPA member’s greenhouse gas compliance obligation under the ARB regulation *California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms*, Title 17, CCR, Subchapter 10, Article 5 (“Cap and Trade Program”).

¹ SCPPA is a joint powers authority. The members are Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, Los Angeles Department of Water and Power, Imperial Irrigation District, Pasadena, Riverside, and Vernon. This comment is sponsored by Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, Imperial Irrigation District, Pasadena and Riverside.

Biogas without the above characteristics, or with only one of them, is not desired. However, the Plan does not address, or even mention, the Cap and Trade Program and its restrictions on the use of biogas as a zero-emissions fuel. These restrictions will be a significant factor in the future development of the biogas industry. The Plan should address these issues and should include an additional action item: preparing a biofuel certification program that meets the ARB's need to ensure biofuel is not double-counted as a zero-emissions fuel.

SCPPA supports Action 1.5 in the Plan, "Revisit Restrictions on the Injection of Biomethane Derived from Landfill Gas." Californian landfill gas should be able to be injected into pipelines subject to appropriate testing and quality control, in the same way that out-of-state landfill gas is currently accepted.

SCPPA's comments are set out in detail below.

II. THE PLAN SHOULD ADDRESS THE BIOGAS REQUIREMENTS IN THE CAP AND TRADE PROGRAM.

The Cap and Trade Program is supported by the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions, Title 17, CCR, Subchapter 10, Article 2 ("MRR"). The Cap and Trade Program includes certain restrictions on the ability to count biogas combustion as zero-emissions, notably in sections 95852(h), 95852.1 and 95852.2. However, more significant restrictions are contained in section 95131(i) of the MRR. If not addressed, these restrictions could significantly hamper the biogas industry by limiting, and imposing additional costs on, biogas that meets the two characteristics above.

A. The biogas provisions in the MRR are too restrictive.

Section 95131(i) of the MRR sets out extensive requirements for the verification of biomass-derived fuels in order for those fuels to be counted as zero-emissions under the Cap and Trade Program. SCPPA understands the need to ensure that biofuels are properly verified and are

not double counted. However, some requirements in section 95131(i) are overly broad and would be very difficult and expensive to comply with.

1. *Biofuel suppliers should not be subject to multiple site visits each year.*

For example, each entity using biofuel must appoint an accredited verifier to make a site visit to each biofuel entity in the chain of custody for that fuel, including the headquarters or records offices of biofuel marketers or other entities that do not physically store or produce the fuel on-site. There are a limited number of biofuel suppliers but many potential purchasers. A single supplier may therefore be subject to multiple verifications a year, one by each purchaser. Suppliers are very unlikely to agree to this. In addition, an end user purchasing biofuel from an intermediary may have no contractual relationship with an upstream supplier, and thus no way to require the supplier to submit to verification.

Each verification requires time and resources from the entity being verified, particularly in relation to the site visits. Allowing for each supplier to be visited once on behalf of all or several purchasers from that supplier would significantly reduce the burden on both suppliers and purchasers. The verification provisions as currently drafted do not appear to allow for this.

2. *The biofuel contract eligibility requirements should be revised.*

Another key issue with section 95131(i) of the MRR is the requirement that the contract for the purchase of the biofuel was in effect prior to January 1, 2010 and remains in effect. Biofuel can only be purchased under contracts signed after that date if it is new or increased production (section 95131(i)(2)(A)). All other biofuel will carry a compliance obligation under the Cap and Trade Program. This is an attempt to ensure that biofuel purchasers do not engage in “contract shuffling”, but it is too broad for this purpose and unnecessarily reduces the amount of biofuel that will be eligible under the Cap and Trade Program. This issue should be addressed in a more targeted way to minimize adverse effects on the limited market for biofuels.

Changing from one California buyer of biogas to another California buyer should not preclude the biogas from being considered zero-emissions. Furthermore, the ARB should not preclude California entities buying biofuel that is available because a previous contract expires or is terminated for default, bankruptcy, or because the previous purchaser reduced its fuel demand, because this fuel is on the market for reasons other than the incentive under the California cap and trade program.

3. *Offsets from avoided methane emissions should not be precluded.*

Section 95131(i)(2)(B) of the MRR would not allow biofuel combustion to be considered zero-emissions if offsets have been created in respect of the use of that fuel. It should be clarified that only offsets for emissions avoided due to fossil fuel displacement (i.e. biofuel being used in place of fossil fuel) are precluded. Offsets for avoided methane emissions from the biomass waste fall into a separate category of emission reductions, and should not preclude the biofuel being treated as zero-emissions when combusted.

The ARB Compliance Offset Protocol for Livestock Manure (Digester) Projects addresses only the avoided methane emissions from livestock manure, not avoided emissions from fossil fuel displacement. The protocol and the accompanying Staff Report make a clear distinction between the two types of emission reductions, and specify that fossil fuel displacement is a separate category of emission reductions.

As the emission reductions from displacing fossil fuel with biogas are not covered by the protocol, no offsets are awarded under the protocol for those emission reductions. Therefore the MRR and the Cap and Trade Program should recognize those emission reductions by allowing biogas combustion to be treated as zero-CO₂-emissions, regardless of whether offsets have been, or could be, issued in respect of the avoided methane emissions.

Biogas combustion should only be treated as having CO2 emissions if offsets have been issued in respect of the displaced fossil fuel as well as the avoided methane emissions.

4. *Actual biofuel molecules will not reach the reporting entity.*

Sections 95131(i)(2)(E) and 95131(i)(4) of the MRR appear to require that the reporting entity receives the actual molecules of biofuel that it has purchased. This is not practicable as the molecules of pipeline-quality biogas are indistinguishable from those of the natural gas with which the biogas becomes blended once it is injected into a natural gas pipeline.

In addition, delivery of gas may take different forms under different procurement arrangements. The key requirements are that the biofuel is produced and consumed, and the reporting entity should not be required to demonstrate that it is the entity that has consumed the biogas.

B. The Working Group should prepare a biofuel certification program.

The problematic verification requirements in section 95131(i) of the MRR apply “[i]n the absence of certification of the fuel by an accredited certifier of biomass-derived fuels.” The ARB’s Initial Statement of Reasons relating to the MRR notes on page 37 that:

Although a certification program similar to the Renewable Energy Certificate under the Renewable Electricity Standard regulation (Title 17, CCR, section 97000 et seq.), with an elevated level of assurance, would be an ideal solution, time constraints prevented the development of this program at this time.

The development of a biofuel certification program would benefit the biofuel industry as a whole by providing a clear way to demonstrate that a particular amount of biofuel is eligible for zero-emissions combustion under the Cap and Trade Program. This is an important part of the value of biofuel to California purchasers.

The Working Group is well-placed to develop such a program. This action should be added to the list of actions in chapter 5 of the Plan, in section 4 (“Actions Addressing Gas Quality Standards”) or section 5 (“Actions Addressing Legislation and Statutory Challenges”).

III. PURSUE A SOLUTION TO THE ISSUE OF INJECTING CALIFORNIA LANDFILL GAS INTO PIPELINES.

SCPPA welcomes the inclusion of Action 1.5, “Revisit Restrictions on the Injection of Biomethane Derived from Landfill Gas.” SCPPA members are considering purchasing pipeline-quality landfill gas from out of state, as this biogas is not subject to the restrictions imposed on Californian landfill gas under Assembly Bill 4037 (Hayden, Chapter 932, Statutes of 1988) and the associated prohibitions on landfill gas set by natural gas pipeline operators. In-state landfill gas – a significant untapped resource – would be preferred if it were able to be transported in natural gas pipelines. Currently, Californian landfill gas is generally flared, wasting an environmentally and economically sound opportunity to reduce greenhouse gas emissions by displacing fossil fuel, and forcing generators to look to out-of-state sources of biogas.

There is no reason why Californian landfill gas, with appropriate testing procedures and test funding, should not be able to be injected into natural gas pipelines.

Action 1.5 does not provide a detailed plan, merely stating that Working Group agencies:

will work with California gas utilities through a public process to address and resolve barriers to introducing landfill gas into the California natural gas pipeline.

SCPPA looks forward to participating in this public process and resolving the issues necessary to be able to make use of the valuable resource that is California landfill gas.

IV. CONCLUSION

SCPPA urges the CEC to consider these comments when the Bioenergy Action Plan is being finalized. SCPPA appreciates the opportunity to submit these comments.

Respectfully submitted,

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