AGL Resources™

Ten Peachtree Place
Atlanta, GA 30309

404 584 4000 phone
www.aglresources.com

02-REN-1038
DOCKET
11-RPS-01
DATE NOV 02 2011
RECD. NOV 02 2011

November 2, 2011

VIA ELECTRONIC MAIL

California Energy Commission
Docket Office, MS-4
1516 Ninth Street
Sacramento, CA 95814-5512

Re: *Docket Nos. 11-RPS-01 and 02-REN-1038: RPS Proceeding: Post-Workshop Comments of AGLR Resources Inc. on the Staff Workshop on the Proposed Changes to the Renewables Portfolio Standard Eligibility Guidebook and the Overall Program Guidebook for the Renewable Energy Program (RPS Proceeding).*

Dear Chairman, Commissioners and Commission Staff:

AGL Resources Inc. ("AGL Resources") on behalf of its subsidiaries Renewco, LLC ("Renewco"), a developer, owner and operator of landfill gas facilities, and Sequent Energy Management, L.P. ("Sequent"), a seller of biomethane gas to Publically Owned Electric Utilities ("POU") in California (collectively, "AGL Resources"), hereby respectfully submits the following Post-Workshop Comments on the California Energy Commission ("CEC" or "Commission") Staff Workshop on the Proposed Changes to the Renewables Portfolio Standard Eligibility Guidebook ("RPS Eligibility Guidebook") and the Overall Program Guidebook for the Renewable Energy Program, which was held on October 21, 2011. The purpose of the Workshop was to solicit comments from interested parties on the proposed changes to the RPS Guidebook and the Overall Program Guidebook.

The initial Notice of Workshop included an Attachment A (Pipeline Biomethane Discussion Points), which summarized changes proposed in the RPS Guidebook, and an Attachment B (Barriers to In-state Biomethane Injection into the Natural Gas Pipeline), which included questions concerning possible changes to the RPS Guidebook. In these comments, AGL Resources addresses the proposed changes contained in Attachment A: Section II. Eligibility and Attachment B: Section C. Pre-certification of the Notice of Workshop in the context of the Staff Draft Guidebook, which was issued by Staff on October 15, 2011.

I. Background

AGL Resources has been an active participant in the development of the RPS Eligibility Guidebook. In response to the requests by Staff for comments, AGL Resources has submitted pre and post Workshop comments on the Staff Workshop on the Use of Biomethane Delivered via the Natural Gas Pipeline System for California's Renewables Portfolio Standard, and Renewco and Sequent each provided public testimony in support of the use of biomethane as a fuel source for RPS-eligible electric generating facilities at the September 20, 2011 Biomethane Workshop. Renewco also provided public testimony in support of the use of biomethane as a fuel source at the October 21, 2011 Workshop, which is the subject of these comments.

II. Comments

Stakeholder participation at the September 20, 2011 Biomethane Workshop and the October 21, 2011 RPS Workshop and comments in support of the use of biomethane as an eligible fuel source for RPS-eligible electric generating facilities have been considerable. It is rare for project developers, marketers, publically owned utilities and investor-owned utilities to be in collective agreement, however, this can be demonstrated with even a cursory review of the comments submitted in response to the Biomethane Workshop. The Commission's continued requests for input by affected stakeholders is appreciated, and is provided below.

A. Eligibility of Biomethane

Attachment A, Section II (Eligibility) to the Notice of Workshop states that minimal changes were made to the applicable pipeline biomethane guidelines of the Staff Draft Guidebook (Section II.B) pending further examination of public comments and input from technical staff. AGL Resources has reviewed the Staff Draft Guidebook (October 2011) and sees these proposed changes as a positive step toward providing regulatory certainty to the market, with limited exception, as further discussed below.

In general, biomethane project development companies have made considerable investments in facilities based on the eligibility requirements of the existing version of the RPS Eligibility Guidebook at the time. As such, any subsequent changes to the RPS Guidebook continues to "move the goalposts" and will impact the RPS "Bucket 1" eligibility of future development options and quell the associated green jobs that result from construction and operation of such facilities. At a point, eligibility requirements should be considered final so that the Commission can shift its focus and resources to compliance and the certification of facilities.

With respect to the Staff Draft Guidebook (October 2011), the introduction of the concept of a *Grace Period Exception*, which is found in Section III of the current Staff Draft Guidebook (October 2011), is a positive step in providing greater certainty and confidence for POUs and the project developers, and should be retained in any final version of the RPS Eligibility Guidebook. Staff recognition that a timeline for eligibility

facility certification is important in that project development opportunities are intrinsically tied to the ability to provide the biomethane to the market at some point in the future; unfortunately, without certainty around certification, project developers may be unwilling to take on risk that the biomethane output from the plant will be certifiable. Therefore, with the following exception, the timeline for eligibility facility certification, which should include pre-certification, is critical to attract fuel supply for POUs and is further discussed in detail in Section B (pre-certification) to these comments.

The following addition to Section III.B.4 of the Staff Draft Guidebook (October 2011) may provide significant uncertainty to POUs and is hereby respectfully requested to be removed:

> "*All facilities must meet the eligibility requirements set forth in the edition of the RPS Eligibility Guidebook that is in place at the time the Energy Commission receives an application for certification* [Emphasis Added], *regardless of whether the facility had previously been awarded precertification status.*"

In effect, this new provision allows changes in the CEC Eligibility Guidebook to affect the eligibility of a facility for certification following pre-certification. POUs seek pre-certification explicitly to provide assurance that a facility will, in fact, become certified if completed as described in the precertification application. This process provides the POU with a level of confidence, which is needed to make substantial investments in long-term contracts. Without those long-term contracts, project developers may not be willing to make the investments in renewable gas projects. By not "locking in" the Guidebook in effect upon pre-certification, a well-intentioned POU and project developer could witness a project becoming ineligible in a future revision to the Guidebook, after investing substantial sums. This is an unmanageable risk that no project developer is likely to take, and effectively negates any value in precertification. Further, this proposal would likely discourage future development, and access to biomethane.

AGL Resources supports adoption of the following language in the Staff Draft Guidebook:

> "*...the facility should apply for certification and that the same RPS Eligibility Guidebook should apply* [Emphasis added] *to the facility's application...*"

It is not only important to provide an adequate time for development following pre-certification, but the facility requirements of the RPS Eligibility Guidebook that were in place at the earlier of the date that pre-certification was applied for, or the date development efforts began, should be considered in effect for determination of any final certification, unless the developer agrees to accept certification under a later revision to the RPS Eligibility Guidebook.

B. Pre-certification Requirements

In response to Attachment B, Section C (Pre-certification), Question No. 1 to the Notice of Workshop, the pre-certification process should not be eliminated. Pre-certification should be maintained as an absolute necessity to the project developer community. Significant investments in time and financial resources are required to develop a renewable project. The decisions to invest in such projects are predicated on the understanding that the projects will provide an acceptable risk-based return on investment. Pre-certification is a critical component of managing commodity risk and ensuring sales contracts will remain valid. It serves this role by providing certainty that the project will be considered RPS eligible before substantial capital investment is made. It provides both the seller and the purchaser of the renewable biomethane assurance that the project will qualify for certification and can be used to meet RPS requirements.

In response to Attachment B, Section C (Pre-certification), Question No. 2(a) to the Notice of Workshop, due to the highly varied nature of the types of renewable energy projects, equipment lead times, permitting requirements, and other factors associated with the type and size of each project, a one size fits all approach is not appropriate. There is not one single appropriate pre-certification expiration time frame. Given that the development cycle is at least 2-4 years for most projects, certainly nothing less than 5 years should be considered. Beyond that, provided the developer is showing forward continued progress on the project, as evidenced by capital expenditures, equipment orders, site work, permit applications, engineering work, and similarly meaningful activities within the previous 12-month period, then no expiration should be imposed.

In response to Attachment B, Section C (Pre-certification), Question No. 2(b) to the Notice of Workshop, the appropriate milestone for application for pre-certification could include any one of the following:

- An executed landfill gas purchase agreement between the developer and the landfill owner; or
- The commitment of substantial capital to the development of the project (e.g., through financing or board approval of a project), subject to successful pre-certification; or
- The commencement of site engineering work for the facility; or
- The placing of orders for large capital equipment for the project, subject to successful pre-certification; or
- An attestation from the developer that the project has begun development, subject to successful pre-certification; or
- A signed gas sales agreement with a California load serving entity, subject to successful pre-certification.

For most developers, any of the above conditions would have to be further conditioned on successful pre-certification, since most developers would be unwilling

to risk substantial capital without having confidence that the project will qualify to meet RPS requirements.

Unfortunately, this presents a "chicken and the egg" dilemma. The Commission clearly does not want to process pre-certifications on a myriad of projects that have little hope of being brought to completion. At the same time, a serious developer does not want to commit substantial capital resources to a project just to demonstrate it is worthy of filing for pre-certification, while it is uncertain that it will be granted such pre-certification. Therefore it is appropriate to validate the commitment of the developer subject to pre-certification before investing substantial capital. An attestation with proof of project funding availability seems to be one way to accomplish this goal.

III. Conclusion and Recommendations

AGL Resources respectfully requests the Commission to consider the foregoing and to craft policy that attracts investment in biomethane supply sources, which supports the very tenants of California's RPS program, as identified in PUC section 399.11(b), including:

- Displacing fossil fuel consumption within the state;
- Promoting the alternative use of existing generation facility regulatory assets;
- Meeting the state's climate change goals by reducing emissions of GHG gases associated with electrical generation;
- Promoting stable retail rates for electric service;
- Meeting the state's need for a diversified and balanced energy generation portfolio;
- Assisting with meeting the state's resource adequacy requirements; and
- Contributing to the safe and reliable operation of the electrical grid.

If you have any additional questions on this matter, please do not hesitate to contact me at 404-584-4108.

Respectfully Submitted,

Bryan Batson

Bryan Batson
Senior Vice President, Governmental and Regulatory Affairs

CC: Kate Zocchetti, CEC Renewable Energy Office
Mark Kootstra, CEC Renewable Energy Office
Gina Barkalow, CEC Renewable Energy Office