California Energy Commission
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California Energy Commission
Dockets Office, MS-4
Re: Docket No. 11-RPS-01, and
Docket No. 02-REN-1038
RPS Proceeding
1516 Ninth Street
Sacramento, CA 95814-5512

Via Email: docket@energy.ca.gov **and** RPS33@energy.ca.gov

Subject: Docket numbers **11-RPS-01** and **02-REN-1038** – **Renewables Portfolio Standard – Comments from Element Markets Renewable Energy, LLC**

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Element Markets Renewable Energy, LLC ("Element Markets") would like to thank the Commission for providing an opportunity for stakeholders to comment on the Concept Paper concerning Implementation of AB 2196 and to express our appreciation for the staff's continuing efforts to work with all stakeholders on this issue.

Element Markets currently has contracts in place to supply landfill gas to public utilities (POUs) in the cities of Vernon and Burbank and to the Imperial Irrigation District. These agreements were entered into prior to the Commission's Temporary Suspension Order of March 29, 2012 and were intended to meet the so called "bucket one" provisions of SB1x 2. Pursuant to these agreements, Element Markets began flowing biomethane prior to the date of the Commission's Temporary Suspension Order and continues to provide biomethane on an on-going basis.

Due to the halt of the certification process for biomethane contracts caused by the Commission's Temporary Suspension Order, we have not yet received the full price for our biomethane deliveries and ask that CEC take swift action to commence certification of all pending applications. Due to the Commission's Suspension Order and the resulting delay in certification of applications submitted by POUs procuring biomethane, Element Markets' affiliates were unable to commence construction on the gas processing plants associated with some of the biomethane projects identified in the agreements or in the S-5 applications associated with the agreements submitted prior to March 29, 2012.. The projects will be completed once the certification process is complete and deliveries from the projects will enable Element Markets to meet the full contract quantities set forth in our agreements. During construction of the projects, Element Markets will deliver under the agreements and shift to the newly constructed sources once they are online. While Element Markets appreciates promises by the Administration and CEC staff that AB 2196 will be expeditiously implemented, no timeline for certification has been set and certainty regarding the future of these projects is needed to move ahead with construction.

Element Markets wishes to voice its support for the Concept Paper as proposed subject to the following comments and reservations:

1. The Guidebook should clearly state that any deliveries of biomethane to an applicant POU made prior to certification but pursuant to an eligible contract under Public Utility Code §399.12.6(a) are eligible as a renewable energy resource product.

2. The Commission proposes to require POUs to demonstrate that "the biomethane source(s)" is producing biomethane and injecting it into a common carrier pipeline before April 1, 2014. Requiring POUs to demonstrate that all the biomethane identified in the application will be produced and injected in a pipeline by April 1, 2014 is burdensome and arguably at odds with the intent of the statute. This interpretation does not take into account the way that contracts are structured to fulfill the procurement needs of utilities. POU applications pending before the Commission identify a variety of producers to deliver varying volumes biomethane to satisfy the volumetric requirements of the procurement. Some of the identified sources are already producing and delivering biomethane and others are scheduled to come on line later in the contract. Element Markets suggests that for RPS certification purposes, POUs be permitted to demonstrate only that a sufficient volume of biomethane to fulfill the contract will be produced and injected into a common carrier pipeline by April 1, 2014 from any combination of sources and once this has occurred, any of the sources properly identified in the contract or S-5s submitted prior to the date of the Commission's Suspension Order would be eligible to deliver under the certified agreement.

3. The Commission has asked for stakeholder input on "systems currently in place for the tracking of landfill gas, digester gas, or another renewable fuel delivered to an electric generating facility through a common carrier pipeline to ensure that requirements for delivery of the fuel to the electric generation facility are met" (Concept Paper § D2). Element Markets points out that existing tracking systems pursuant to Federal law (FERC) entail extensive tracking mechanisms. Natural gas pipelines currently track every dekatherm of Gas that flows and they are regulated entities. Invoices include transportation quantity and any park balances that may exist. We also have all of our storage contracts which track storage injected and storage withdrawal on monthly basis. Following the meter data of the plant and tracking the pipeline transportation documents, the pipeline storage documents, and the delivery volume, we can easily demonstrate the biogas flow and deliveries made. This has been proven in audits already completed by CEC for biogas facilities. These existing verification methods provide transparency and data that can help the CEC meet its objectives.

4. We also request that the revised Commission Guidebook provide some flexibility for producers concerning transportation of biomethane. The CEC's Suspension Order indicated that biomethane delivery pathways filed on S-5 forms could not be altered pending final resolution of the matter. Now that the Commission is preparing to lift the moratorium, Element Markets urges that the Guidelines allow for flexibility on delivery pathways for RPS eligible biomethane. Uncertainty over natural gas pipeline capacity in North America due to rapidly changing market conditions may lead to the need for biomethane producers to modify a transport pathway in order to fulfill their contractual requirements in California. Such modifications should be permitted as long as they are in accord with the statute.

Please do not hesitate to contact us should you have questions about the foregoing.

Very truly yours,

RANDALL N. LACK, SENIOR VP
ELEMENT MARKETS RENEWABLE ENERGY