

**M e m o r a n d u m**

**Date:** June 20, 2012

**To:** The Commission  
(Meeting of June 21, 2012)

**From:** Lynn Sadler, Director  
Office of Governmental Affairs (OGA) — Sacramento

**Subject:** **AB 2196 (Chesbro) – Renewable energy resources.**  
**As amended: May 15, 2012**

**LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: OPPOSE UNLESS AMENDED**

**SUMMARY OF BILL**

AB 2196 seeks to align the procurement of **biogas** with the new portfolio content categories or “buckets” established in SB 2 (1X) (Simitian, Stats. 2011, Ch. 1), which are designed to differentiate various types of renewable **electricity** procurement contracts for compliance with the RPS program.

This bill would modify rules concerning landfill gas, digester gas, or another renewable fuel delivered to an electricity generating facility through a common carrier pipeline (generally referred to as biomethane) in both the Public Resources Code and the Public Utilities Code. If AB 2196 is enacted, Public Resources Code § 25741(a) would require that the transaction for the fuel meet comparable conditions of Public Utilities Code § 399.16 (the portfolio content categories or “buckets”) and that the transaction be verified by Western Renewable Energy Generation Information System (WREGIS) or a comparable system. Section 399.16 of the Public Utilities Code both defines the “buckets” and sets limitations on their use towards RPS compliance. For instance, it caps the percentage of electricity that can come from generation facilities that are not directly connected to a California balancing authority or can deliver to California in real time.

The amendments to the RPS statute made by AB 2196 would add a new section to the Public Utilities Code (Section 399.12.6). Section 399.12.6 would establish new rules for how generation from pipeline biomethane delivered through a common carrier pipeline counts for compliance with the RPS program and would establish eligibility criteria for biomethane resources. AB 2196 would also require the environmental attributes associated with the biomethane production and capture to be transferred to, and retired

by, the retail seller (or local publicly owned utility) using the fuel for compliance with the RPS.

## **SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION**

### Background

This bill is only a partial solution to a complicated set of facts, and it has negative implications. Until recently, current law, California Public Utilities Commission (CPUC) rules, California Energy Commission (CEC) regulations, and utility tariffs had the impact of prohibiting landfill gas produced in California from being injected into a pipeline in California and thus prevented it from counting toward the RPS unless there was generation onsite at the landfill to combust the gas. However, no rules prevented landfill gas produced in Texas, and never delivered to California, to count for compliance for California's RPS program. The CEC recently suspended its rules that allowed pipeline biomethane to count toward the RPS pending further consideration and Legislative action. Under the CEC suspension, NO new contracts for biomethane or incremental biomethane from existing contracts that is injected into a utility pipeline can count toward the RPS.

### Summary of Supporting Arguments

- This bill would support the intent to establish consistent eligibility and portfolio content category rules for biogas procurement
- This bill would have negative implications for in-state biogas producers
- This bill would have negative implications for California's cap and trade program
- Some of the conditions set in this bill for the procurement of biomethane to count for RPS compliance would be very difficult for the CPUC and/or CEC to implement and administer

## **SUMMARY OF SUGGESTED AMENDMENTS**

**Eliminate Section 399.12.6(b)(3)(C):** *All environmental attributes of biomethane production and capture are transferred to the retail seller or local publicly owned electric utility that uses that biomethane to count toward the procurement requirements of this article, and the environmental attributes are subsequently retired.*

This provision should be deleted because it does not help resolve the question about how to treat biomethane contracts within the RPS portfolio content categories and it provides no additional benefits to ratepayers. In addition, it creates administrative and cost containment problems for both the RPS as well as the greenhouse gas cap and trade programs. Specifically:

- **This provision would not affect the portfolio content category of a biomethane contract.** If all facilities must transfer such environmental attributes, this requirement

could not be used as a defining factor for determining which “bucket” an RPS project falls into.

- **It is inconsistent with RPS policy.** The requirement that environmental attributes associated with biomethane production and capture be conveyed to the RPS buyer along with a renewable energy credit (REC) would be a new policy. The longstanding RPS program’s definition of a REC states, in part, that a REC only “includes all renewable and environmental attributes associated with the production of electricity from the eligible renewable energy resource...”
- **It is unclear whether this provision provides any value to ratepayers.** The value of avoiding greenhouse gas (GHG) emissions when methane is captured only has value within regulatory or voluntary programs aimed at reducing GHG emissions. This value can be monetized as an offset when a regulatory or voluntary GHG program sets protocols certifying offsets from a particular type of project. However, the bill’s provision to transfer such attributes as part of an RPS contract does not make that contract more valuable within the RPS program. Also, as discussed below, it is unclear whether a retail seller could even utilize an offset retired according to this bill if one could be created under the California Air Resources Board’s (ARB) cap and trade rules. (The environmental attributes from different types of biomethane producers, e.g. dairy digesters and landfill gas facilities, also have very different values within the voluntary and regulatory GHG emission reduction programs.) If the environmental attributes do create value outside the RPS program, this would create administrative issues to coordinate with the ARB and would be difficult to track/verify with existing tracking systems.
- **It would discourage certain types of in-state biogas production, which we think the bill is actually intending to promote.** It would require, for example, in-state dairy digesters to give away environmental attributes that could otherwise be sold as an offset into California’s cap and trade market. To compound the problem, these attributes have no value for the RPS program and it is unclear whether or not retail sellers would not be able to use the offset for compliance with the cap and trade program since the bill would require the offset to be “retired” immediately. Thus, neither the dairy nor the retail seller would get value from the avoided greenhouse gas emissions.
- **It has negative implications for California’s cap and trade program.** The ARB has developed policies for the use and certification of offsets to be used for the cap and trade program. This bill would take certain offsets off the market.

**Eliminate or Amend Section 399.12.6(b)(3)(A):** *The source of biomethane injects the biomethane into a common carrier pipeline that physically flows toward the generating facility that contracted for the biomethane, and that facility meets the requirements of Section 25741 of the Public Resources Code.*

This provision should be deleted because it would have the unintended consequence of significantly limiting contracting options for biomethane sources in California by preventing them from contracting with generating facilities located in California. Moreover, to the extent this provision is intended to limit RPS eligibility for out-of-state biomethane sources, this provision may be redundant to Section 399.12.6(b)(3)(E), if interpreted to require all RPS eligible biomethane sources to be located in California.

Alternatively, Section 399.12.6(b)(3)(A) could be amended as follows: *The source of biomethane injects the biomethane into a common carrier pipeline that physically flows toward or within the state of California and the generating facility that contracted for the biomethane, and that facility meets the requirements of Section 25741 of the Public Resources Code.* While this amended language would allow greater contracting flexibility for biomethane sources and generating facilities located in California, it may be nonetheless redundant given the requirements of Section 399.12.6(b)(3)(E).

### **Section 399.12.6(b) should clarify the grandfathering provisions for biomethane.**

- Section 399.12.6(b) states that, *“On or after January 1, 2012, the use of biomethane shall count towards the procurement requirements established in this article if that use satisfies all applicable requirements established by the Energy Commission and meets any of the following requirements:”*
  - The Legislative Counsel Digest says this grandfathering exemption is for contracts for the generation of electricity from biomethane. However, the actual language does not reflect this since it says “the use of biomethane”, which implies the use of the fuel. The Legislature should clarify the language and should consider using similar language to Section 399.16(d) if the intent is similar.
- Section 399.12.6(b)(3) states that, *“The source of biomethane did not inject biomethane into a pipeline prior to April 12, 2011, or the source commenced injection of sufficient incremental quantities of biomethane after April 12, 2011, to satisfy the contract requirements.”*
  - It is not clear what problem this provision is trying to address, or what its relationship is to the grandfather date of January 1, 2012 also included in new Section 399.12.6(b).

### **DIVISION ANALYSIS (Energy Division)**

If enacted, the CPUC would have to implement this bill through a formal proceeding and in coordination with the CEC. As discussed in this section, we foresee a few problems with implementing the recent amendments to AB 2196 that put specific RPS eligibility conditions on biomethane and that require integration of biogas fuel procurement into the RPS program’s electricity-based rules.

### **The requirements in the bill are inconsistent with the existing RPS electricity-based framework**

- The RPS program, including the portfolio content categories (or “buckets”) as set forth in Section 399.16 of the Public Utilities Code, are constructed around the procurement of electricity (and the associated RECs) from an RPS-eligible generator and related electrical infrastructure. This bill (in Public Resources Code 25741(a)(4)) would require biogas fuel contracts to “meet conditions comparable to Section 399.16 of the Public Utilities Code”. However, these rules cannot be directly applied to the procurement of biogas fuel. For example, one of the conditions to qualify as a “bucket 1” product is that the generation facility must: *“Have a first point of interconnection with a California balancing authority, have a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area, or are scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source...”* (399.16(b)(1)(A))
- Because of this inconsistency, we suggest the bill be more specific about how to integrate biogas fuel contracts in the portfolio content category framework.
  - If the CEC and/or CPUC determined that biogas delivered to a generating facility through a common carrier pipeline was classified as “bucket 1” procurement this resource could account for a minimum of 75% of all RPS procurement by 2020.
  - If the CEC and/or CPUC determined that biogas delivered to a generating facility through a common carrier pipeline was classified as “bucket 3” procurement this resource could account for a maximum of 10% of all RPS procurement by 2020.

### **The requirement for environmental attributes associated with biomethane production and capture to be transferred to a retail seller and subsequently retired has negative implications for California industries with the ability to produce biogas**

AB 2196 would require that, *“All environmental attributes of biomethane production and capture are transferred to the retail seller or local publicly owned electric and are subsequently retired.”* (Section 399.12.6(b)(3)(C))

The requirement that environmental attributes associated with biomethane production and capture be included with an RPS contract is a new policy. The longstanding RPS program rules only require the attributes included in a renewable energy credit to be transferred to the retail seller. The statutory definition of a REC states (399.12(h)(2)), that a REC “includes all renewable and environmental attributes associated with the production of electricity from the eligible renewable energy resource...”<sup>1</sup> Thus, the bill would constitute a significant departure from current RPS policy.

The impact of this provision to biomethane producers and retail sellers is either negative or neutral. Currently, the environmental attributes of biomethane production and capture

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<sup>1</sup> Public Utilities Code Section 399.12(h)(2); CPUC Decision 08-08-028.

have different values depending on the type of facility they are associated with. For instance:

- For dairy digesters, the environmental attributes associated with methane capture can be sold as offsets for California's cap and trade program.
  - This provides revenue to dairy digesters. If these environmental attributes had to be transferred to the retail seller and retired, the dairy may not be able to monetize their value, which is arguably needed to finance a new dairy digester facility. Dairies would benefit from a competitive offset market, and not one in which it has to transfer the offset to the retail seller in an RPS contract.
  - It is likely the dairy digesters would want the retail sellers to pay for the offset value that they can no longer get from the market, yet they it is unclear from the language in Section 399.12.6(b)(3)(C) whether these environmental attributes would have any value for retail sellers.
- For in-state landfill gas facilities, most have requirements established by California Air Resources Board to flare the gas to reduce GHG emissions. This is a complementary policy within cap and trade, so these facilities cannot create offsets.
  - In this case, the value of the environmental attributes of biomethane production and capture are zero, so transferring these attributes to the retail seller provides no benefit to the retail seller.

**The forced “retirement” of environmental attributes associated with biomethane production and capture has negative implications for the cap and trade program**

Section 399.12.6(b)(3)(C) would require that, *“All environmental attributes of biomethane production and capture are transferred to the retail seller or local publicly owned electric and are subsequently retired.”*

- It is unclear whether or not the retail seller (or POU) would be able to use the environmental attributes associated with biomethane production and capture towards compliance under California's cap and trade program. If not, the biomethane producer would be deprived the value of its environmental attributes associated with production and capture and the cap and trade program would lose the value of the offset. This would undermine the value of offsets under the cap and trade; offsets are intended to be a way to contain costs of the cap and trade program. If the bill would allow the retail seller (or POU) to use the offset towards compliance with the cap and trade, this could create administrative burden since the RPS and cap and trade tracking programs are not (and will not be) appropriately linked.
- It is also unclear whether or not this provision envisions a situation where the original purchaser of the biomethane is not a covered entity under cap and trade program. If this were the case, then no one could use the offset since this bill would require it to be retired.

**It would be very difficult, if not impossible, to demonstrate in all cases that a project producing biomethane “demonstrates that the capture and injection of biomethane causes a direct reduction of air or water pollution in California or alleviates a local nuisance within California...”**

- It is unclear whether there are standards in place for the CPUC or CEC to assess whether the requirements in Section 399.12.6(b)(3)(E) are met.<sup>2</sup>

**Section 399.12.6(b) establishes new grandfathering provisions for biomethane.**

- To implement this provision, the CPUC would have to modify D.11-12-052, new compliance rules proposed in an April 24, 2012 Proposed Decision (R.11-05-005) and the RPS compliance reporting forms.

**It is unclear which agency, the CPUC or CEC, is intended to implement the provisions in AB 2196.**

AB 2196 would add Section 399.12.6 to the Public Utilities Code to establish new for eligibility and compliance rules for biomethane. Since the CPUC implements the Public Utilities Code, as written, the CPUC interprets that the CPUC, not the CEC, would be responsible for the implementation and administration of these provisions. Because some of the conditions in new Section 399.12.6 address “eligibility” issues, which are customarily delegated to the CEC, the Legislature should specify which agency is authorized to implement the provisions in this section.

AB 2196 also adds a provision to Section 25741 of the Public Resources Code, which the CEC implements, to develop rules for biomethane fuel contracts to fit into the portfolio content category rules of Public Utilities Code Section 399.16. Since the implementation of portfolio content category rules for retail sellers is in the CPUC’s purview, the bill should be modified to clarify which agency is authorized to implement the provisions in this section.

## **PROGRAM BACKGROUND**

The RPS program, as set forth in Public Utilities Code Sections 399.11- 399.31, requires that California retail sellers and publically owned utilities increase the portion of retail sales that comes from RPS-eligible resources so that by 2020 and for each year thereafter 33% of California’s retail electricity sales is supplied by RPS-eligible resources.

The RPS program was adopted in SB 1078 (Sher, Stats. 2002, Ch. 516), and subsequently modified by SB 107 (Simitian, Stats. 2006, Ch. 464), SB 1036 (Perata, Stats. 2007, Ch. 685) and SB 2 (1X) (Simitian, Stats. 2011, Ch. 1). The CPUC is

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<sup>2</sup> 399.12.6 (b)(3)(E) states:

The source of biomethane demonstrates that the capture and injection of biomethane causes a direct reduction of air or water pollution in California or alleviates a local nuisance within California that is associated with the emission of odors or volatile organic compounds.

statutorily responsible for 1) requiring each utility to submit an RPS Procurement Plan, 2) establishing an RPS cost limitation, 3) adopting a process that utilities must use to evaluate renewable energy projects proposed by independent power producers in response to the utilities' RPS solicitations, 4) adopting RPS compliance rules, 5) reviewing and approving or rejecting utilities' RPS contracts, and 6) reporting to the Legislature on various aspects of the RPS program.

The CPUC has adopted over 40 decisions to implement the RPS program and has approved approximately 200 RPS contracts for approximately 17,000 megawatts (2,500 megawatts of which have already begun delivering RPS eligible energy).

In May 2011, the CPUC initiated Rulemaking (R.) 11-05-005 to implement significant modifications made to the RPS program by SB 2 (1X). In D.11-12-052, the CPUC implemented the portfolio content categories established by SB 2 (1X).

## **LEGISLATIVE HISTORY**

AB 2196 is linked to AB 1900 (Gatto, 2012) by a contingent enactment clause.<sup>3</sup> AB 1900 would require the CPUC, on or before January 1, 2014, to consider adopting pilot projects involving the injection of biomethane into common carrier pipelines where a project satisfies certain safety, quality, and efficiency requirements. AB 1900 would prohibit a gas producer from knowingly selling, supplying, transporting, or purchasing gas collected from a hazardous waste landfill and would require the CPUC to:

- Identify all constituents that may be found in landfill gas that is to be injected into a common carrier pipeline and that could adversely impact the health and safety of the public, and to specify the maximum amount of those constituents that may be found in that landfill gas;
- To develop reasonable and prudent testing protocols for gas collected from a solid waste landfill that is to be injected into a common carrier pipeline to determine if the gas contains any of the identified constituents at levels that exceed the standards set by the CPUC.

## **FISCAL IMPACT**

Unknown.

## **STATUS**

AB 2196 is pending a June 25<sup>th</sup> hearing in the Senate Committee on Energy, Utilities and Communications.

## **SUPPORT/OPPOSITION**

None on file.

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<sup>3</sup> Each bill would become operative only if both are enacted and become effective on or before January 1, 2013.

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## BILL LANGUAGE

BILL NUMBER: AB 2196 AMENDED  
BILL TEXT

AMENDED IN ASSEMBLY MAY 15, 2012

INTRODUCED BY Assembly ~~Member~~ ~~Chesbro~~  
Members Chesbro and Gatto  
(Coauthor: Assembly Member Skinner)

FEBRUARY 23, 2012

An act to amend Section 25741 of the Public Resources Code, and to add Section 399.12.6 to the Public Utilities Code, relating to energy.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2196, as amended, Chesbro. Renewable energy resources.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, as defined, while local publicly owned electric utilities, as defined, are under the direction of their governing board. The existing California Renewables Portfolio Standard Program (RPS program) requires a retail seller of electricity, as defined, and local publicly owned electric utilities to purchase specified minimum quantities of electricity products from eligible renewable energy resources, as defined, for specified compliance periods. The specified minimum quantities of electricity products are based upon a percentage of the utility's total retail sales of electricity in California.

*Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission) to (1) certify eligible renewable energy resources, (2) design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers, (3) establish a system for tracking and verifying renewable energy credits (RECs) that verifies the generation and delivery of electricity associated with RECs, and (4) certify the eligibility of RECs associated with deliveries of electricity to a local publicly owned electric utility.*

*Under existing law the Energy Commission administers the Renewable Energy Resources Program (RER program) with the near-term objective of increasing the quantity of electricity generated by renewable electrical generation facilities, as defined, while protecting system reliability, fostering resource diversity, and obtaining the greatest environmental benefits for California residents, and with the long-term goal of obtaining a fully competitive and self-sustaining supply of electricity generated from renewable resources.*

*Under existing law, the RPS program's definition of an eligible renewable energy resource incorporates, by reference, the RER program's definition of a renewable electrical generation facility.*

This bill would amend the RER program's definition of a renewable electrical generation facility to provide that if the RPS program eligibility of a facility is based on the use of landfill gas, digester gas, or another renewable fuel delivered to the facility through a common carrier pipeline, the transaction for the procurement of that fuel, including the source of the fuel and delivery method, shall meet certain conditions, as specified.

This bill would impose certain requirements with respect to the eligibility of biomethane under the RPS program. The bill would specify that biomethane procurement contracts executed prior to January 1, 2012, and not subsequently modified, as specified, count in full toward the RPS program's procurement requirements. The bill would, with respect to contracts executed prior to January 1, 2012, but subsequently modified, as specified, and contracts executed after that date, impose certain requirements with respect to the capture, transportation, and use of biomethane, as specified. With respect to biomethane that is used by an onsite generating facility, and biomethane that is used offsite and delivered to the generating facility through a dedicated pipeline, the bill would specify that the use of that biomethane counts towards the RPS program's procurement requirements if that use satisfies all applicable requirements established by the Energy Commission. With respect to biomethane that is delivered to a generating facility through a common carrier pipeline, the bill would, among other things, require: (1) the biomethane to be injected into a common carrier pipeline that physically flows toward the generating facility that contracted for the biomethane; (2) all environmental attributes of biomethane production and capture to be transferred to the retail seller or local publicly owned utility that uses that biomethane to count toward the RPS program's procurement requirements, and that those attributes be subsequently retired; and (3) the source of biomethane to demonstrate that the capture and injection of biomethane causes a direct reduction of air or water pollution in California or alleviates a local nuisance within California that is associated with the emission of odors or volatile organic compounds.

This bill would become operative only if this bill and AB 1900 of the 2011-12 Regular Session are both enacted and become effective on or before January 1, 2013.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 25741 of the Public Resources Code is amended to read:

25741. As used in this chapter, the following terms have the following meaning:

(a) "Renewable electrical generation facility" means a facility that meets all of the following criteria:

(1) The facility uses biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation of 30 megawatts or less, digester gas, municipal solid waste conversion, landfill gas, ocean wave, ocean thermal, or tidal current, and any additions or enhancements to the facility using that technology.

(2) The facility satisfies one of the following requirements:

(A) The facility is located in the state or near the border of the state with the first point of connection to the transmission network of a balancing authority area primarily located within the state. For purposes of this subparagraph, "balancing authority area" has the same meaning as defined in Section 399.12 of the Public Utilities Code.

(B) The facility has its first point of interconnection to the transmission network outside the state, within the Western Electricity Coordinating Council (WECC) service area, and satisfies all of the following requirements:

(i) It commences initial commercial operation after January 1, 2005.

(ii) It will not cause or contribute to any violation of a California environmental quality standard or requirement.

(iii) It participates in the accounting system to verify compliance with the renewables portfolio standard once established by the commission pursuant to subdivision (b) of Section 399.25 of the Public Utilities Code.

(C) The facility meets the requirements of clauses (ii) and (iii) in subparagraph (B), but does not meet the requirements of clause (i) of subparagraph (B) because it commenced initial operation prior to January 1, 2005, if the facility satisfies either of the following requirements:

(i) The electricity is from incremental generation resulting from expansion or repowering of the facility.

(ii) Electricity generated by the facility was procured by a retail seller or local publicly owned electric utility as of January 1, 2010.

(3) If the facility is outside the United States, it is developed and operated in a manner that is as protective of the environment as a similar facility located in the state.

(4) If eligibility of the facility is based on the use of landfill gas, digester gas, or another renewable fuel delivered to the facility through a common carrier pipeline, the transaction *for the procurement of that fuel*, including the source of the fuel and delivery method, meets conditions comparable to Section 399.16 of the Public Utilities Code and is verified pursuant to the accounting system established by the commission pursuant to 399.25 of the Public Utilities Code, or a comparable system, as determined by the commission.

(b) "Municipal solid waste conversion," as used in subdivision (a), means a technology that uses a noncombustion thermal process to convert solid waste to a clean-burning fuel for the purpose of generating electricity, and that meets all of the following criteria:

(1) The technology does not use air or oxygen in the conversion process, except ambient air to maintain temperature control.

(2) The technology produces no discharges of air contaminants or emissions, including greenhouse gases as defined in Section 38505 of the Health and Safety Code.

(3) The technology produces no discharges to surface or groundwaters of the state.

(4) The technology produces no hazardous wastes.

(5) To the maximum extent feasible, the technology removes all recyclable materials and marketable green waste compostable materials from the solid waste stream prior to the conversion process and the

owner or operator of the facility certifies that those materials will be recycled or composted.

(6) The facility at which the technology is used is in compliance with all applicable laws, regulations, and ordinances.

(7) The technology meets any other conditions established by the commission.

(8) The facility certifies that any local agency sending solid waste to the facility diverted at least 30 percent of all solid waste it collects through solid waste reduction, recycling, and composting. For purposes of this paragraph, "local agency" means any city, county, or special district, or subdivision thereof, which is authorized to provide solid waste handling services.

(c) "Renewable energy public goods charge" means that portion of the nonbypassable system benefits charge required to be collected to fund renewable energy pursuant to the Reliable Electric Service Investments Act (Article 15 (commencing with Section 399) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code).

(d) "Report" means the report entitled "Investing in Renewable Electricity Generation in California" (June 2001, Publication Number P500-00-022) submitted to the Governor and the Legislature by the commission.

(e) "Retail seller" means a "retail seller" as defined in Section 399.12 of the Public Utilities Code.

SEC. 2. Section 399.12.6 is added to the Public Utilities Code , to read:

399.12.6. (a) Any procurement of biomethane delivered through a common carrier pipeline under a contract executed prior to January 1, 2012, and otherwise eligible under the rules in place as of the date of contract execution shall be subject to both of the following:

(1) All quantities of biomethane delivered under the terms of the original contract shall count in full towards the procurement requirements established in this article.

(2) Any quantities of biomethane delivered under the terms of a procurement contract that are associated with an extension of the term of the contract, an increased quantity of biomethane, or any change in the source or sources of biomethane specifically identified in the original contract shall count toward the procurement requirements established in this article only as provided in paragraph (b).

(b) On or after January 1, 2012, the use of biomethane shall count towards the procurement requirements established in this article if that use satisfies all applicable requirements established by the Energy Commission and meets any of the following requirements:

(1) The biomethane is used by an onsite generating facility.

(2) The biomethane is used by an offsite generating facility and delivered to the generating facility through a dedicated pipeline.

(3) The biomethane is delivered to a generating facility through a common carrier pipeline and meets all of the following requirements:

(A) The source of biomethane injects the biomethane into a common carrier pipeline that physically flows toward the generating facility that contracted for the biomethane, and that facility meets the requirements of Section 25741 of the Public Resources Code.

(B) The source of biomethane did not inject biomethane into a common carrier pipeline prior to April 12, 2011, or the source commenced injection of sufficient incremental quantities of biomethane after April 12, 2011, to satisfy the contract

requirements.

(C) All environmental attributes of biomethane production and capture are transferred to the retail seller or local publicly owned electric utility that uses that biomethane to count toward the procurement requirements of this article, and the environmental attributes are subsequently retired.

(D) All sellers and purchasers of biomethane comply with a system for tracking and verifying the use of biomethane, as established by the Energy Commission, that is equivalent to the system provided in subdivision (c) of Section 399.25.

(E) The source of biomethane demonstrates that the capture and injection of biomethane causes a direct reduction of air or water pollution in California or alleviates a local nuisance within California that is associated with the emission of odors or volatile organic compounds.

(c) For the purposes of this section, "biomethane" means landfill gas or digester gas, consistent with Section 25741 of the Public Resources Code.

SEC. 3. This act shall become operative only if this act and Assembly Bill 1900 of the 2011- 12 Regular Session are both enacted and become effective before January 1, 2013.