



**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

**FILED**  
01/25/22  
10:09 AM

Order Instituting Rulemaking to Adopt Biomethane Standards and Requirements, Pipeline Open Access Rules, and Related Enforcement Provisions.

Rulemaking 13-02-008  
(Filed February 13, 2013)

**OPENING COMMENTS OF THE RURAL COUNTY REPRESENTATIVES  
OF CALIFORNIA AND THE ENVIRONMENTAL SERVICES JOINT  
POWERS AUTHORITY ON THE PROPOSED DECISION  
IMPLEMENTING SENATE BILL 1440 BIOMETHANE PROCUREMENT  
PROGRAM**

**RURAL COUNTY REPRESENTATIVES  
OF CALIFORNIA**

John Kennedy, Policy Advocate  
1215 K Street, Suite 1650  
Sacramento, CA, 95814  
Telephone: (916) 447-4806  
Email: [jkennedy@rsrcnet.org](mailto:jkennedy@rsrcnet.org)

**ENVIRONMENTAL SERVICES JOINT  
POWERS AUTHORITY**

Staci Heaton, Deputy Executive Director  
1215 K Street, Suite 1650  
Sacramento, CA 95814  
Telephone: (916) 447-4806  
Email: [sheaton@rsrcnet.org](mailto:sheaton@rsrcnet.org)

January 25, 2022

## TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	2
SUMMARY OF RECOMMENDATIONS.....	3
I. INTRODUCTION.....	4
II. BACKGROUND.....	4
III. DISCUSSION.....	5
A. Order Paragraph 17 Regarding Tipping Fees Needs Minor Refinement.....	6
B. Sections Regarding Prohibition of Diesel Vehicles Need Significant Revisions to Conform to Scope of Previous Discussions and Avoid Introduction of Fatally Different and Ambiguous Terms and Requirements.....	7
C. On-Site Generator Restrictions Need Modification.....	11
D. Proposed Decision Should Refine Scope of Pilot Projects.....	12
E. Proposed Decision Should be Modified to Clarify That Contracts May Be Renewed Upon Expiration of the Term.....	13
IV. CONCLUSION.....	13
APPENDIX A.....	15

## **TABLE OF AUTHORITIES**

California Health and Safety Code Section 39730.6

California Public Resources Code Section 41780

California Public Resources Code Section 41780.01

California Public Resources Code Division 30, Part 3, Chapter 13.1

California Vehicle Code Section 670

Senate Bill 155 (Budget and Fiscal Review, Chapter 258, Statutes of 2021), Section 50

California Short Lived Climate Pollutant (SLCP): Organic Waste Reduction Regulations

CPUC Commission Rules of Practice and Procedures: Rule 14.3

## SUMMARY OF RECOMMENDATIONS

Per Rule 14.3 (b) of the Rules of Practice and Procedure, and as discussed below, RCRC/ESJPA respectfully requests that the Proposed Decision be modified to:

- Recognize that changes in the facility tipping fee will not always require the project developer and investor-owned utility to modify or renegotiate the terms of the biomethane procurement contract.
- Align the scope of the NZE/ZE procurement requirement with the intended purpose to minimize the purchase and/or lease of diesel trucks rather than heavy-duty construction vehicles used at those facilities (for which a NZE/ZE option is not commercially available).
- Provide that the NZE/ZE procurement requirement does not apply if a ZNE/ZE/biomethane option is not commercially available for the intended use at the time of purchase or lease.
- Align the Proposed Decision with previous discussions that the NZE/ZE procurement requirement is specific to the facility and/or facilities that the biomethane is to be procured from and does not necessarily commit the producer to exclusively purchase NZE or ZE vehicles used in other facilities or for other aspects of the operations.
- Allow biomethane production facilities co-located at landfills to increase on-site energy generation using biogas if they can demonstrate that 1) on-site conversion to biomethane and use in a fuel cell (or similar technology) is infeasible, 2) that increased on-site energy generation will produce fewer emissions than flaring, and 3) that emissions from increased on-site energy generation will be mitigated.
- Clarify that biomethane procurement contracts may be renewed upon expiration of the 10-15 year contract term.

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Adopt Biomethane Standards and Requirements, Pipeline Open Access Rules, and Related Enforcement Provisions.

Rulemaking 13-02-008  
(Filed February 13, 2013)

**OPENING COMMENTS OF THE RURAL COUNTY REPRESENTATIVES  
OF CALIFORNIA AND THE ENVIRONMENTAL SERVICES JOINT  
POWERS AUTHORITY ON THE PROPOSED DECISION  
IMPLEMENTING SENATE BILL 1440 BIOMETHANE PROCUREMENT  
PROGRAM**

**I. Introduction**

In accordance with Rule 14.3 of the California Public Utilities Commission (“Commission” or “CPUC”) Rules of Practice and Procedure (“Rules”), the Rural County Representatives of California (RCRC) and the Environmental Services Joint Powers Authority (ESJPA), collectively referred to hereafter as “RCRC/ESJPA,” respectfully submits comments on the Proposed Decision of Commissioner Rechtschaffen’s *Decision Implementing Senate Bill 1440 Biomethane Procurement Program* (revised on January 6, 2022) to the Order Instituting Rulemaking 13-02-008 (“Rulemaking”). RCRC/ESJPA was granted party status on January 18, 2022 and timely files these comments pursuant to Administrative Law Judge Bemesderfer’s email ruling on January 23, 2022.

**II. Background**

RCRC is an association of thirty-eight<sup>1</sup> rural California counties, and its Board of Directors is comprised of elected supervisors from those member counties. Rural counties are on the front

---

<sup>1</sup> RCRC members include Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, Glenn, Humboldt, Imperial, Inyo, Lake, Lassen, Madera, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas,

lines in providing a full range of services that are the "nuts and bolts" of representative democracy and service delivery. Many RCRC counties own and operate landfills and are charged with meeting the state's solid and organic waste diversion requirements.

ESJPA is a local government Joint Powers Authority formed in 1993 to assist its rural county members in complying with solid waste laws and waste diversion goals. ESJPA is currently comprised of 24 rural counties<sup>2</sup>. ESJPA provides regulatory advocacy and technical assistance to these rural counties, supports local public education campaigns, and administers various grants for recycling and hazardous waste management programs.

### **III. Discussion**

RCRC/ESJPA's member counties are uniquely interested in the Biomethane Procurement Program Proposed Decision because of their role in meeting the state's solid and organic waste diversion requirements and because many counties own and/or operate solid waste landfills and organic waste recycling facilities. Under Assembly Bill 939 (Chapter 1095, Statutes of 1989)<sup>3</sup>, local governments are charged with diverting 50% of solid waste from landfills. This was the precursor to AB 341 (Chapter 476, Statutes of 2011)<sup>4</sup>, which established a statewide goal of diverting 75% of solid waste from landfill disposal by 2020. Local governments are also charged with implementing the state's new requirement to divert 75% of organic waste from landfills by 2025 in order to significantly reduce short lived climate pollutant emissions.<sup>5</sup>

As noted in the Proposed Decision, the California Department of Resources Recycling and Recovery (CalRecycle) estimates that the state's existing infrastructure is inadequate to meet those goals, as it is estimated to be capable of diverting only 10 million of the 18 million tons of organic waste that must be diverted.<sup>6</sup> RCRC/ESJPA believe the Proposed Decision is complimentary to the extensive new requirements imposed upon local governments by CalRecycle's new Short

---

San Benito, San Luis Obispo, Santa Barbara, Shasta, Sierra, Siskiyou, Sonoma, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo and Yuba counties.

<sup>2</sup> ESJPA members include Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Glenn, Imperial, Inyo, Lake, Lassen, Madera, Mariposa, Modoc, Mono, Nevada, Plumas, Shasta, Sierra, Siskiyou, Tehama, Trinity, and Tuolumne counties.

<sup>3</sup> Public Resources Code Section 41780.

<sup>4</sup> Public Resources Code Section 41780.01.

<sup>5</sup> SB 1383 (Lara, Chapter 395, Statutes of 2016), Health and Safety Code Section 39730.6, Chapter 13.1 of Part 3 of Division 30 of the Public Resources Code.

<sup>6</sup> CalRecycle, *Analysis of the Progress Toward the SB 1383 Organic Waste Reduction Goals* (2020), pages 9-10, [www2.calrecycle.ca.gov/Publications/Download/1589](http://www2.calrecycle.ca.gov/Publications/Download/1589).

Lived Climate Pollutant (SLCP): Organic Waste Reduction Regulations<sup>7</sup> regarding organic waste diversion and will help the state achieve those ambitious organic waste recycling targets.

We support the Proposed Decision as a way to help meet the state’s organic waste reduction requirements and relieve some of the pressure local governments face in achieving those targets alone; however, we recognize that there will be significant costs associated with these procurement requirements. Our member counties – many of whom have median household incomes far below the statewide average - are very sensitive to rising energy prices. We note that the CPUC Staff expects this procurement program could increase ratepayer costs 10-13%<sup>8</sup>; however, we urge the CPUC and utilities to do all in their power to minimize any cost increases for customers.

As the owners and/or operators of landfills and organic waste recycling facilities, our member counties are also very interested in making sure that the Biomethane Procurement Program is well-crafted, implementable, and achievable. To that end, we believe that several refinements to the Proposed Decision are vital to achieve the program’s goals and avoid unintended consequences that would chill interest in the program.

Beyond the short-term procurement requirements, RCRC/ESJPA is also interested in the proposed pilot projects. Our counties have been disproportionately impacted by recent catastrophic wildfires, so wildfire risk reduction and forest health improvement are among our counties’ most pressing goals. Agriculture is a major industry in many of our counties, and disposal pathways for managing agriculture waste are becoming more difficult to find. For these reasons, we support the pilot gasification projects to convert woody biomass, agricultural waste, and urban wood waste in support of wildfire prevention and SLCP reduction efforts.<sup>9</sup>

***A. Order Paragraph 17 Regarding Tipping Fees Needs Minor Refinement.***

The Proposed Decision appropriately rejects the staff proposal on tipping fees, which would have triggered renegotiation of contracts if a facility’s tipping fees are increased. Instead, the Proposed Decision requires contracts to “specify how tipping fees may modify contract terms.”

Tipping fees (or gate fees) are adjusted for a variety of reasons, including changed market conditions, labor costs, new laws, etc. RCRC/ESJPA had serious reservations about the staff proposal, since requiring contract renegotiation each time the tipping fee is adjusted would be

---

<sup>7</sup> <https://www2.calrecycle.ca.gov/Docs/Web/118371>.

<sup>8</sup> CPUC Energy Division Staff, R.13-02-008 Phase 4A Staff Proposal (DRAFT), June 1, 2021, pages 29-30.

<sup>9</sup> Proposed Decision Implementing Senate Bill 1440 Biomethane Procurement Program, January 6, 2022, pages 36-37.

extremely difficult and further complicate an already complex rate adjustment process. These challenges would have chilled interest among local governments and facility operators.

While we believe the Proposed Decision's Order Paragraph 17 is better, it should still be refined as noted below. There will be cases where contracts do not need to be modified when the tipping fee is adjusted. Furthermore, parties may contractually determine that rates do not need to be renegotiated when tipping fees change - either at all or if the change is under a specified threshold. The CPUC should not predetermine an outcome and imply that contract terms must be changed if tipping fees change. The proposed Order Paragraph 17 should be modified to clarify that contracts need not always require modifications or renegotiations when tipping fees change.

*17. Any contract between a project developer and an investor-owned utility shall specify how tipping fees may modify contract terms, **if at all**. Energy Division staff shall ensure that each contract meets this requirement prior to approval.*

***B. Sections Regarding Prohibition of Diesel Vehicles Need Significant Revisions to Conform to Scope of Previous Discussions and Avoid Introduction of Fatally Different and Ambiguous Terms and Requirements.***

There has been much discussion in this proceeding about barring the prospective purchase or lease of diesel trucks/vehicles by biomethane production facilities, but little discussion about the practical impact of those requirements in different contexts and for different types of operations. Biomethane production facilities may either be co-located at a solid waste landfill or at an off-site facility. How this section is constructed could have very different impacts for co-located and off-site biomethane facilities.

While we conceptually support the transition to clean vehicles, we note that this is a very challenging area where the desired alternatives may simply not be available to perform the type and scope of work demanded. Furthermore, Conclusion of Law #7 and Order Paragraph #18 are not consistent with the discussion on page 33 of the Proposed Decision or pages 51-52 of the Staff Proposal and introduce ambiguities and differences that could fatally chill program participation. As such, we take this opportunity to suggest modifications to better align the Proposed Decision with what has previously been discussed and contemplated and to reflect the practical reality of implementation.

*1. Trucks vs. Vehicles.*

RCRC/ESJPA is particularly concerned by the way in which the terms "trucks" and "vehicles" are used interchangeably in these documents, as the two terms can mean very different

things. While Vehicle Code Section 670 defines “vehicle” as devices that are used upon a highway, in common use “vehicle” means something much broader. It is not clear from the record whether the CPUC is relying on the Vehicle Code Section 670 definition of “vehicle.”

In common usage, the term “truck” is far narrower than “vehicle” and contemplates those vehicles used in the on-road transportation of organic waste. On the other hand, use of the term “vehicle” could be construed to capture all other equipment used at those facilities.<sup>10</sup> In light of the party comments and discussion, the Proposed Decision should be modified to specify that the diesel prohibition applies to *trucks*, rather than *vehicles*. Furthermore, the CPUC should provide an off-ramp for those types of vehicles for which a NZE/ZE/biomethane option is not commercially available for the intended uses (which may include heavy-duty trucks in the very short-term, but will likely include bulldozers, loaders, compacters, and graders commonly used at landfills for a longer period).

The Staff Proposal recommends requiring biomethane facilities to commit to the exclusive use of low carbon fuel *vehicles* as part of any expanded operations.<sup>11</sup> It further refines this by recommending that all newly purchased or leased *trucks* associated with biomethane facilities exclusively use Bio-CNG, electricity, or hydrogen, since the major concern appears to center on a potential to increase trucking of organic waste to digesters and the resulting diesel emissions.<sup>12</sup>

This shift from requiring the prospective lease or purchase of new *trucks* to be NZE or ZE to instead require all *vehicles* that operate at the biomethane facility to be NZE or ZE is very troubling and potentially unimplementable – especially for biomethane production facilities co-located at landfills. Moreover, it is unclear how the CPUC is defining “NZE” and whether a vehicle running on Bio-CNG will be considered NZE or something different for this procurement program.

Landfills use a large variety of equipment in daily waste management operations, including trucks and other types of heavy-duty construction vehicles. “Trucks” are commonly used to transport waste to the facility and would normally be used to move organic waste to an on-site or off-site biomethane facility. Large, heavy-duty bulldozers, compactors, graders, and loaders are

---

<sup>10</sup> Note that the Miriam-Wester Dictionary defines “vehicle” more broadly to include “a machine that is used to carry people or goods from one place to another” and would certainly encompass the heavy-duty construction equipment used at landfills.”

<sup>11</sup> *Staff Proposal*, pages 51-52.

<sup>12</sup> *Id.*

integral to daily landfill operations. Off-landfill biomethane production facilities are likely to use larger loaders, although they may also use smaller equipment like backhoe loaders or skid steers where a transition to natural gas-fueled vehicles may be closer to reality.

Natural gas-powered heavy-duty trucks are entering the marketplace, although truly electric heavy-duty trucks are still largely aspirational at this point (especially in rural areas where charging infrastructure is already in short supply). Many, but not all, solid waste collection vehicles have transitioned to run on renewable gas produced by landfills. At the same time natural gas/biogas or electric bulldozers, compactors, graders, or loaders do not appear to be available in the marketplace and it is not clear that they will be available anytime in the foreseeable future. While some manufacturers appear to be exploring natural gas-powered construction equipment, it appears that those are currently at the concept phase for the larger types of equipment (bulldozers, loaders, graders, compactors, etc.) used in landfill operations.

Requiring all newly purchased or leased *vehicles* used at biomethane facilities be NZE, ZE, or run on bio-CNG could significantly chill interest in this program given the lack of compliance pathways that exist for meeting those requirements. Furthermore, such a requirement would disincentivize co-location of biomethane production facilities at landfills, thereby having the perverse impact of putting more trucks on the road to take material from the landfill to the biomethane production facility. Unless modified, the Proposed Decision could have the unintended consequence of putting more trucks on the road to haul material to off-site biomethane production facilities.

For these reasons, the CPUC should replace the term *vehicle* with *truck* in Order Paragraph 18 and provide an off-ramp for those types of vehicles for which a ZNE//ZE/biomethane option is not commercially available for the intended uses (which may include heavy-duty trucks in the very short-term, but will likely include bulldozers, loaders, compactors, and graders commonly used at landfills for a longer period). Failure to address these issues will create significant confusion and leave project operators in a Catch-22 situation where they are compelled to procure equipment that does not exist in the marketplace and thereby be in material breach of the CPUC's order (and likely also the contract with the investor-owned utility).

Additionally, Conclusion of Law Paragraph 7 is even broader and a greater departure from the previous discussions in the staff documents and party comments in suggesting that biomethane facilities should minimize the use of all fossil-fueled equipment. Again, this is not practical for

the reasons previously stated – especially for biomethane production facilities co-located at landfills. Furthermore, it is broader than what is contemplated in this proceeding and interferes with state and local air board permitting of mobile and stationary equipment at those facilities. For this reason, the Proposed Decision should replace the term *equipment* with *trucks* in Conclusion of Law Paragraph 7

2. *Universe of Facilities Impacted.*

The discussion section of the Proposed Decision suggests that the diesel provisions are “specific to the facility and/or facilities that the biomethane is to be procured from and does not necessarily commit the producer to exclusively purchase NZE or ZE vehicles used in other facilities or for other aspects of its operations.”<sup>13</sup> This is an important nuance that is not reflected in Order Paragraph 18 and which could have a tremendous impact on participation in the program – especially for those who seek to co-locate biomethane production facilities at a landfill facility. RCRC/ESJPA proposes to add that clarifying clause from page 33 of the Proposed Decision to Conclusion of Law Paragraph 18.

Biomethane facility owners will come in many shapes and sizes. Some will only operate standalone biomethane production facilities. Others will operate one or more landfills and/or fleets of solid waste collection facilities. Still others - like county governments - have large fleets and many different types of facilities that they operate in addition to a municipal landfill at which a biomethane production facility is co-located.

Reading Order Paragraph 18 in isolation, some potential participants may fear that they will have to commit to the procurement of NZE/ZE vehicles for all activities at a landfill at which a biomethane facility is co-located (or for their entire fleet), rather than just for that biomethane facility under contract with a gas utility. Given the discussion and direction on page 33 of the Proposed Decision, we believe this omission was an oversight and so merely seek to clarify that point in Conclusion of Law Paragraph 18. We have attempted to provide these conforming changes in section #4 below.

3. *Prospective Lease or Purchase vs. Use.*

The Staff Proposal and discussion section of the Proposed Decision contemplate that the restrictions on diesel powered “trucks” concern *prospective purchase and lease* activities;

---

<sup>13</sup> *Proposed Decision*, page 33.

however, Conclusion of Law Paragraph 7 seems to expand this requirement to all future use of all equipment at impacted facilities. This is deeply concerning for those who own and operate landfills and biomethane production facilities and who may be interested in participating in the program. RCRC/ESJPA believes that while the broad construction of Conclusion of Law Paragraph 7 likely stems from unintentional drafting ambiguities, the problem it creates must be resolved to provide certainty to those who may seek to participate under the Biomethane Procurement Program. RCRC/ESJPA have attempted to provide conforming changes to those section in #4 below.

RCRC/ESJPA appreciates that “Revision 1” to the Proposed Decision aligns the procurement requirement with previous discussions so it only impacts prospective leases and/or purchases. This resolves a major concern we had with the January 3, 2022 Proposed Decision.

#### 4. Suggested Amendments.

To address these inconsistencies, improve the implementability of the Proposed Decision, and avoid unintentionally chilling participation, RCRC/ESJPA suggest the following modifications to Conclusion of Law Paragraph 7 and Order Paragraph 18:

*Conclusion of Law Paragraph 7. Biomethane procurement requirements should include minimizing the ~~use~~ prospective purchase or lease of ~~equipment~~ trucks powered by fossil fuels.*

*Order Paragraph 18. All biomethane procured through this program must be from facilities that commit to exclusively purchase and/or lease either near-zero emissions (NZE) or zero-emissions (ZE) ~~vehicles~~ trucks prospectively, except for circumstances where a NZE or ZE option is not commercially available for the intended use at the time of purchase or lease. This requirement is specific to the facility and/or facilities that the biomethane is to be procured from and does not necessarily commit the producer to exclusively purchase NZE or ZE vehicles used in other facilities or for other aspects of the operations. The greenhouse gas reduction and environmental benefit of such vehicles shall be factored in the carbon intensity score.*

#### C. ***On-Site Generator Restrictions Need Modification.***

Proposed Decision Order Paragraph 19 requires the gas utilities to “prioritize procurement of biomethane from production facilities that agree not to increase on-site generation of electricity using their own biogas beyond current generation levels unless that biogas is upgraded to biomethane that generates electricity through non-combustion technology such as an on-site fuel cell stack.” The narrative section of the Proposed Decision suggests that this should operate as “a procurement requirement, rather than a priority, to ensure the program does not exacerbate

exceedances of air quality standards for facilities located in a county listed as severe or extreme federal nonattainment area for particulate matter or eight-hour ozone.”<sup>14</sup>

RCRC/ESJPA believe that a bifurcated approach to prioritize, as opposed to require, capping on-site electrical generation from combustion is reasonable, as that this should not be a requirement throughout the state. We note that different parts of the state face very different air quality challenges. While the South Coast Air Quality Management District and the San Joaquin Valley areas have major air quality problems and looming deadlines to come into attainment with federal air quality standards, many of our rural member counties are already in attainment and so should not be subject to an inflexible requirement.

This requirement may not impose a substantial burden at standalone biomethane production facilities; however, it could impose a significant burden on biomethane production co-located at existing landfills. The Proposed Decision seeks to create demand for diverted organic waste, which will help achieve the state’s SB 1383 organic waste diversion requirements. To further the state’s other air quality and greenhouse gas reduction targets, landfills also capture methane from previously disposed waste through their landfill gas collection systems. That gas is commonly either flared or used to generate electricity on-site. Imposing restrictions on increased electrical production will preclude the productive use of landfill gas, where increased electrical generation could include either emissions control technologies or mitigation. We are concerned that this requirement could disincentivize co-location of biomethane production at existing landfills and increase the number of trucks taking organic waste to off-site biomethane facilities.

For these reasons, we suggest building in some flexibility to allow biomethane production facilities co-located at landfills to expand on-site energy generation if they can demonstrate that: 1) On-site conversion to biomethane and use in a fuel cell (or similar technology) is infeasible; 2) Increased on-site energy generation will produce fewer emissions than flaring; and, 3) Emissions from increased on-site energy generation will be mitigated.

***D. Proposed Decision Should Refine Scope of Pilot Projects.***

The Proposed Decision modifies the Staff Proposal for woody biomass pilot projects by allowing utilities to include agricultural waste and urban wood waste diverted from landfills. Order Paragraph 22 requires projects to coordinate with those pilot projects authorized for the

---

<sup>14</sup> *Proposed Decision*, page 34.

Department of Conservation by Senate Bill 155.<sup>15</sup> SB 155<sup>16</sup> allocated \$50 million to construct pilot projects in the Sierra Nevada range to create carbon-negative fuels from materials resulting from forest vegetation management. We agree that the CPUC and Department of Conservation should coordinate to maximize public and environmental benefits. At the same time, it is unclear whether the Proposed Decision is intended to merely allow forest vegetation management pilot projects to also accept agricultural and urban wood waste or to instead create projects that focus exclusively on the agricultural and/or urban wood waste streams.

Given the pressing need to deploy additional facilities to assist with vegetation management and forest health projects, RCRC/ESJPA believes that agricultural and urban wood waste pilot projects should not displace forest health projects. Recognizing that different regions have different needs, we suggest requiring development of at least one pilot project for each waste stream, with an important caveat that facilities should not be limited to taking only one *type* of organic waste if other types can be accommodated. This will help prove technologies, address different waste streams, and promote geographic diversity.

***E. Proposed Decision Should be Modified to Clarify That Contracts May Be Renewed Upon Expiration of the Term.***

The Proposed Decision states that procurement contracts shall be for a minimum of 10 years and a maximum of 15 years; however, it is silent as to renewal. As a result, it is unclear whether utilities can renew contracts with biomethane producers for one or more additional terms. To resolve this ambiguity, RCRC/ESJPA suggests modifying Order Paragraph 30 as follows:

*30. Biomethane procurement contracts shall be for a minimum of 10 years and a maximum of 15 years **and may be renewed upon agreement of both parties.***

**IV. Conclusion**

RCRC/ESJPA urges the Commission to adopt the suggestions contained herein and accept these comments for filing.

---

<sup>15</sup> *Proposed Decision*, pages 49-50.

<sup>16</sup> “SEC. 50. Upon appropriation by the Legislature, fifty million dollars (\$50,000,000) shall be available in the 2022–23 fiscal year to the Department of Conservation, in coordination with the State Air Resources Board and the State Energy Resources Conservation and Development Commission, for pilot projects in the Sierra Nevadas to create carbon-negative fuels from materials resulting from forest vegetation management. All eligible projects shall identify a California use of the hydrogen or liquid fuel to be created and have a lifecycle analysis of the carbon emitted and sequestered from the project, including any emissions from related transportation needs of bringing the feedstock materials to the facility and delivering resulting fuels and carbon dioxide to its end uses...”

Respectfully submitted,

/s/ John Kennedy

John Kennedy  
Policy Advocate, RCRC  
Tel: (916) 447-4806  
E-mail: [jkennedy@rcrcnet.org](mailto:jkennedy@rcrcnet.org)

/s/ Staci Heaton

Staci Heaton  
Deputy Executive Director, ESJPA  
Tel: (916) 447-4806  
Email: [sheaton@rcrcnet.org](mailto:sheaton@rcrcnet.org)

Dated: January 25, 2022

## APPENDIX A

This Appendix is provided in compliance with Rule 14.3(b) of the Rules of Practice and Procedure and contains RCRC's proposed changes to the Conclusion of Law and Order.

1. The following changes should be made to the Conclusions of Law. Additions are underlined, and strikethroughs signify deletions.

*Conclusion of Law Paragraph 7.* Biomethane procurement requirements should include minimizing the ~~use~~ prospective purchase or lease of ~~equipment~~ trucks powered by fossil fuels.

2. The following changes should be made to the ORDER. Additions are underlined, and strikethroughs signify deletions.

*Order Paragraph 17.* Any contract between a project developer and an investor-owned utility shall specify how tipping fees may modify contract terms, if at all. Energy Division staff shall ensure that each contract meets this requirement prior to approval.

*Order Paragraph 18.* All biomethane procured through this program must be from facilities that commit to exclusively purchase and/or lease either near-zero emissions (NZE) or zero-emissions (ZE) ~~vehicles~~ trucks prospectively, except for circumstances where a NZE or ZE option is not commercially available for the intended use at the time of purchase or lease. This requirement is specific to the facility and/or facilities that the biomethane is to be procured from and does not necessarily commit the producer to exclusively purchase NZE or ZE vehicles used in other facilities or for other aspects of the operations. The greenhouse gas reduction and environmental benefit of such vehicles shall be factored in the carbon intensity score.

*Order Paragraph 30.* Biomethane procurement contracts shall be for a minimum of 10 years and a maximum of 15 years and may be renewed upon agreement of both parties.