



New Biogas Rules to be Considered at California Public Utilities Commission

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Upcoming decisions of the California Public Utilities Commission ("CPUC") on two matters related to biogas will substantially influence market opportunities for in-state biogas producers for the foreseeable future. The CPUC is expected to initiate a rulemaking later this month to address a number of policy and regulatory issues related to biomethane and pipeline open access, and especially regulatory impediments that may limit procurement of biogas. This rulemaking will run concurrently with the CPUC's consideration of an application of Southern California Gas Company ("SoCalGas") to establish a biogas services tariff for investing in the conditioning and upgrading of its pipeline infrastructure in coordination with customers who wish to upgrade their biogas for pipeline injection, onsite power generation, or compression natural gas vehicle fueling stations. Both matters could be of critical importance to the production and distribution of biogas in California.

Order Instituting Rulemaking into Biomethane Issues and Pipeline Open Access

The CPUC will consider adopting an Order Instituting Rulemaking ("OIR") on January 24 regarding biomethane issues and pipeline open access. Pursuant to the OIR, this proceeding will address and adopt: 1) standards relating to health, safety, and facility integrity for biomethane injected into pipelines, including conditioning access on meeting these standards, and requirements for monitoring, testing, reporting, and recordkeeping; 2) policies and programs to promote the in-state production and distribution of biomethane; and, 3) pipeline access rules providing for non-discriminatory open access for biomethane.

The CPUC is instituting this proceeding in light of Assembly Bill ("AB") 1900. The California Legislature passed AB 1900 last year to remove barriers to in-state transporting of biomethane by directing the CPUC and other agencies to develop new gas safety standards for non-hazardous landfill gas and prohibiting utilities from creating anti-competitive barriers to landfill gas once it has met safety standards. Specifically, AB 1900 enacts the following requirements, effective January 1, 2013:

- First, state agencies must work together to address potential health concerns related to biomethane. See Health & Saf. Code §§ 25420, 25421. The Office of Environmental Health Hazard Assessment ("OEHHA") is to compile a list of constituents occurring in biomethane in greater concentrations than in natural gas, which pose a risk to human health. The California Air Resources Board ("CARB") must identify exposure scenarios and the associated health risks for these constituents; determine appropriate concentrations for constituents based on these scenarios; and, identify reasonable monitoring, testing, reporting, and recordkeeping requirements for each source of biogas. The CPUC must adopt standards for biomethane injected into pipelines for the constituents identified by OEHHA. These standards will specify concentrations reasonably necessary to protect human health and pipeline integrity and safety. The CPUC must also adopt monitoring, testing, reporting, and recordkeeping requirements to ensure pipeline safety and integrity, and it must require gas utilities to condition tariffs on meeting these adopted standards.
- Second, the CPUC must adopt policies and programs to promote in-state production of biomethane. See Pub. Util. Code § 399.24. The California Energy Commission ("CEC") is also required to identify impediments that may limit the procurement of California biomethane.
- Third, the CPUC must adopt pipeline access rules for each gas utility to ensure open, non-discriminatory access to the gas pipeline system for biomethane gas sources. See Pub. Util. Code § 784.

While the CPUC will be working with OEHHA, CARB, and CEC to implement these statutory changes, it need not wait for OEHHA, CARB, or CEC to implement final regulatory decisions before it starts developing required standards and policies. As this rulemaking moves forward, the CPUC and its staff will incorporate final determinations from OEHHA, CARB, and CEC when appropriate.

Interested parties may file comments on the issues presented in the OIR within 21 days of the OIR's adoption. Reply comments will be due within seven days thereafter. The gas utilities are required, and other interested parties are encouraged, to serve preliminary information regarding the topics to be covered by this proceeding within 45 days of the OIR's adoption. A prehearing conference will be scheduled for a date within 45 to 60 days of the adoption of the OIR.

Application of SoCalGas to Establish a Biogas Conditioning and Upgrading Services Tariff

Commissioner Michael Peevey and Administrative Law Judge ("ALJ") Robert Mason issued a Scoping Memo and Ruling on December 28, 2012, on SoCalGas' application to establish a biogas conditioning and upgrading services tariff, Application 12-04-024.

SoCalGas filed this application to establish a tariff to provide biogas conditioning and upgrade services to meet the needs of biogas producers that seek to upgrade their biogas for pipeline injection, onsite power generation, or compression natural gas vehicle fueling stations. Pursuant to SoCalGas' proposal, it would design, install, own, operate, and maintain the biogas conditioning or upgrade facility. SoCalGas proposed a standard form contract, which would set cost and rate components, performance and technology requirements, and payment terms; SoCalGas and the customer would agree to all such terms in advance. SoCalGas would have discretion to enter into such agreements based on resource availability, safety, system capacity, technical feasibility, and acceptability of commercial terms.

In support of its proposal, SoCalGas noted that the service fees would recover the fully allocated cost of serving that tariff service customer. SoCalGas also asserted that this service tariff would provide an infrastructure option to the service tariff customer, reducing the need for that customer to directly procure capital investment to develop, operate, and maintain such a facility. Thus, SoCalGas argues that this service tariff will increase use of biogas as an energy resource.

Several parties filed protests to the application including the Division of Ratepayer Advocates ("DRA"), the Southern California Generation Coalition ("SCGC"), and the Agricultural Energy Consumers Association ("AECA"). DRA alleged that SoCalGas' testimony was unclear as to how ratepayers would be credited for embedded costs spent to implement the service and raised several other questions. Commissioner Peevey and ALJ Mason incorporated a few of DRA's questions into the scope of this proceeding as Items 7 through 9 below. DRA further asserted that the application appeared justified in light of the CPUC's environmental goals, but stated that it should conform to other energy resource plans and should be consistent with the CPUC's policy of encouraging competitive markets. SCGC asked for clarification regarding how ratepayers would be credited for embedded costs that are already included in rates. AECA stressed that the SoCalGas' suggested tariff could help California dairies and other agricultural entities that wish to install and operate biogas technology resolve some of the obstacles impairing biogas technology deployment.

In the Scoping Memo and Ruling, Commissioner Peevey and ALJ Mason identified a list of factual and legal issues to be addressed in this proceeding, including:

1. Whether the CPUC should permit SoCalGas to establish a biogas services tariff;
2. Whether unregulated affiliates subject to the affiliate transaction rule should be approved to establish a biogas services tariff;
3. Whether SoCalGas' proposed tariff would affect market competition;
4. Whether there are environmental benefits and/or costs of the services tariff;
5. Whether the granting of this application would create risks and/or benefits to ratepayers;
6. Whether the passage of AB 1900 will affect this proceeding;
7. Whether the CPUC's rejection of SoCalGas' request to provide biogas conditioning will affect this proceeding;
8. Whether there are differences between this application and the biogas conditioning program before the CPUC in a separate proceeding; and
9. Whether this application is related to SoCalGas' application regarding its natural gas compression service tariff and whether a decision in that proceeding would affect the outcome of this proceeding.

The Scoping Memo and Ruling stated that opening testimony is to be served on January 30, 2013, with rebuttal testimony due February 13, 2013. Evidentiary hearings are scheduled for March 21 and 22. Opening briefs must be filed by April 5, and reply briefs by April 19, 2013.

Conclusion

The CPUC proceedings noted above will influence how the biogas industry and utilities can permit, procure, and finance biogas for the foreseeable future. Both proceedings are currently in early stages, providing many opportunities for interested parties to participate and influence policy and regulatory actions affecting the development and distribution of biogas in California. Nossaman's expertise in the laws and public policies affecting this field of energy, as well as in practice before the CPUC specifically, may be of decisive assistance in creating solutions for those in the biogas industry.