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**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)

**SCOPING MEMO AND RULING OF THE ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE**

**1. Summary**

Today's scoping memo and ruling (scoping ruling) addresses the scope of issues to be covered in this Order Instituting Rulemaking (Rulemaking) concerning biomethane standards, and related rules and enforcement provisions. This scoping ruling also sets forth the procedural schedule that will be followed in this Rulemaking.

**2. Background**

Assembly Bill (AB) 1900, which was enacted into law in Chapter 602 of the Statutes of 2012, amended and added several code sections pertaining to biogas and biomethane. Among other things, Health and Safety Code Section 25421 requires the Office of Environmental Health Hazard Assessment (OEHHA), in consultation with other state agencies to "compile a list of constituents of concern that could pose risks to human health and that are found in biogas at concentrations that significantly exceed the concentrations of those constituents in natural gas," to determine the health protective levels for this list of

constituents of concern, and to identify the health risks associated with realistic exposure scenarios by May 15, 2013. (Health and Safety Code Section 25421(a)(1)-(3).) That code section also requires the California Air Resources Board (CARB) to “determine the appropriate concentrations of constituents of concern,” and to “identify reasonable and prudent monitoring, testing, reporting and recordkeeping requirements, separately for each source of biogas, that are sufficient to ensure compliance with the health protective standards,” also by May 15, 2013 (Health and Safety Code Section 25421(a)(4) - (5).)

The California Public Utilities Commission (Commission) opened this Rulemaking on February 21, 2013, to implement two provisions of AB 1900. First, Health and Safety Code Section 25421(c) requires the Commission to adopt, on or before December 31, 2013, “standards that specify, for constituents that may be found in that biomethane, concentrations that are reasonably necessary to ensure” the protection of human health, and pipeline and pipeline facility integrity and safety. Also on or before December 31, 2013, Health and Safety Code Section 25421(d) requires the Commission to adopt “the monitoring, testing, reporting, and recordkeeping requirements identified” by the CARB. In addition, these Health and Safety Code provisions state that the Commission is to give due deference to CARB’s determinations.

Second, the Rulemaking was also opened to address the addition of Public Utilities Code Section 784. That code section requires the Commission to “adopt pipeline access rules that ensure that each gas corporation provides nondiscriminatory open access to its gas pipeline system to any party for the purposes of physically interconnecting with the gas pipeline system and effectuating the delivery of gas.” In addition, Health and Safety Code

Section 25421(f)(2) provides that the Commission “shall require gas corporation tariffs to condition access to common carrier pipelines on the applicable customer meeting the standards and requirements” that have been adopted by the Commission.

The Rulemaking invited interested persons to file comments on the Rulemaking. Opening comments to the Rulemaking were filed by ten parties, and reply comments on the Rulemaking were filed by three parties.

Since AB 1900 requires the OEHHA, CARB, and other state agencies to complete certain work by May 15, 2013, and for the Commission to adopt biomethane standards, and monitoring, testing, reporting, and recordkeeping requirements by December 31, 2013, a prehearing conference (PHC) was noticed for and held on March 27, 2013.

The purpose of the PHC was to discuss the scope of issues to be covered in this Rulemaking, the work effort that is needed, and to discuss the procedural schedule for meeting the requirements of AB 1900. An opportunity was provided to allow interested parties to file PHC statements in advance of the PHC. Four PHC statements were filed.

In accordance with the Rulemaking, the respondent gas utilities and other parties were provided an opportunity to serve “proposed testimony” which contains their “preliminary information and recommendations” concerning the “standards, requirements, rules and enforcement protocols” that should be considered. (Rulemaking at 4.)

### **3. Scope of Issues**

#### **3.1. Introduction**

In developing the scope of issues for this proceeding, we considered the preliminary list of the scope of issues that were listed in the Rulemaking, the

comments that were filed in response to the Rulemaking, and the prepared testimony that was served on March 25, 2013. These issues were also listed on the agenda that was used for the PHC. The parties at the PHC had an opportunity to comment on whether these issues should be included in the scope of this proceeding, and to raise any additional issues that they believed should be included.

### **3.2. Scope of Issues to be Addressed**

The following are the scope of issues that will be considered in this proceeding:

- In order to implement AB 1900, what standards and requirements should the Commission adopt for constituents that may be found in biomethane that is to be injected into a common carrier pipeline?
- What is a common carrier pipeline for the purposes of AB 1900?
- To ensure human safety, and pipeline and pipeline facility integrity and safety, what issues need to be considered for the Commission to adopt monitoring, testing, reporting, and recordkeeping requirements for biogas?
- What type of process should be adopted to review and update the biomethane standards for the protection of human health and pipeline integrity and safety as required by AB 1900?
- What type of process should be adopted to review and update the monitoring, testing, reporting, and recordkeeping requirements as required by AB 1900?
- What tariff requirements should the Commission adopt for gas corporation tariffs so that the tariffs condition access to common carrier pipelines on the applicable customer meeting the Commission-adopted standards and requirements and safety procedures?

- What rules should the Commission adopt to ensure that each gas corporation provides non-discriminatory open access to its gas pipeline system to any party for the purposes of physically interconnecting with the gas pipeline system and effectuating the safe delivery of gas?
- Whether other requirements or processes need to be adopted to prevent a person from knowingly selling, supplying, or transporting, or knowingly causing to be sold, supplied, or transported, biogas collected from a hazardous waste landfill to a gas corporation through a common carrier pipeline?
- Whether other requirements or processes need to be adopted to prevent a gas corporation from knowingly purchasing gas collected from a hazardous waste landfill through a common carrier pipeline?
- In addition to Resolution ALJ-274, what other enforcement tools are necessary to ensure compliance with Commission-adopted standards, requirements, and rules?

In addition, the scope of this proceeding will include the following:

- In adopting biomethane standards and requirements, and to protect human health, the Commission shall give due deference to the determinations of the CARB pursuant to Health and Safety Code Section 25421(a)(4).
- In adopting monitoring, testing, reporting, and recordkeeping requirements for biogas, the Commission shall give due deference to CARB's determinations as set forth in Health and Safety Code Section 25421(a)(5).

### **3.3. Additional Issues**

For most of the scoping issues listed above, AB 1900 lists certain deadlines for OEHHA, CARB, and this Commission to complete their work. Much of the above work is technical in nature, and needs to be completed in a timely manner.

As discussed at the PHC, and as noted in the procedural schedule section below, evidentiary hearings may be needed to resolve questions of fact

concerning the standards and requirements the Commission should adopt. The need for evidentiary hearings will likely not be known until the CARB makes its determination of the appropriate concentrations of constituents in biomethane, and identifies the monitoring, testing, reporting, and recordkeeping requirements that are needed to ensure compliance with the health protective standards. In the event evidentiary hearings are needed, those hearings will take place beginning on August 19, 2013 at 10:00 am, and continue through August 22, 2013, as needed. Evidentiary hearing dates have been reserved for that purpose. As described in the procedural schedule below, a ruling will issue in mid-June 2013, advising parties whether the evidentiary hearings will take place.

The Rulemaking, and the parties to the Rulemaking, have raised the issue of the cost of implementing the standards and requirements that the Commission will be adopting, and who should pay for the costs of these standards and requirements. This cost issue also involves whether the biomethane producers should have to absorb the costs of meeting the Commission-adopted standards or requirements, or whether there should be policy considerations, such as a subsidy to promote biomethane, that might shift some or all of these costs to customers of the gas utilities.

At the PHC, The Utility Reform Network recommended that to the extent certain parties may argue that the promotion of biomethane should include subsidization of these costs by utility ratepayers, that this subsidy issue should be addressed as part of the cost issues being considered in this proceeding, rather than in Rulemaking (R.) 11-05-005 where there will be no information about potential costs. The representative for the Center for Energy Efficiency and Renewable Technologies pointed out that AB 1900's addition of Public Utilities

Code Section 399.24 is part of the statutes which address the renewables portfolio standard program, which is found in Article 16 of the Public Utilities Code under Chapter 2.3 of the Public Utilities Act, and that it may be more efficient to consider any possible biomethane subsidy issue in R.11-05-005. The Bioenergy Association of California suggested that since R.11-05-005 is focusing on electricity, that the biomethane barriers and cost issues might be better suited for this proceeding. (See PHC Reporter's Transcript at 8-16.)

For the present time, the cost associated with meeting the Commission-adopted standards and requirements will be addressed in this proceeding, after the Commission has undertaken the work associated with adopting such standards and requirements. Given the deadlines imposed by AB 1900, the cost-related issue may have to be addressed in a separate phase of this proceeding.

As for the policy issue of whether some or all of the costs of complying with the adopted biomethane standards and requirements should be subsidized by customers of the gas utilities, that is an issue that belongs in R.11-05-005, as discussed below in the biomethane promotion section.

### **3.4. Biomethane Promotion**

As stated in the Rulemaking, AB 1900 added Public Resources Code Section 25326, and Public Utilities Code Section 399.24.

Public Resources Code Section 25326 requires the State Energy Resources Conservation and Development Commission (Energy Commission) to "hold public hearings to identify impediments that limit procurement of biomethane in California, including, but not limited to, impediments to interconnection." (Stats. 2012, Ch. 602, 4.) That Public Resources Code section also requires the Energy Commission to "offer solutions to those impediments as part of the

integrated energy policy report prepared pursuant to” Public Resources Code Section 25302. (*Ibid.*)

To “facilitate the development of a variety of sources of in-state biomethane,” Public Utilities Code Section 399.24 requires this Commission to “adopt policies and programs that promote the in-state production and distribution of biomethane.” Public Utilities Code Section 399.20 through 399.32 broadly establishes the policies and rules for procurement from renewable energy resources and is currently addressed at the Commission in R.11-05-005.

In this Rulemaking, the Commission stated that the AB 1900 requirements concerning biomethane promotion would be addressed in R.11-05-005. At the March 27, 2013 PHC, some of the parties discussed whether the biomethane promotion issues should be considered in this Rulemaking, rather than in R.11-05-005.

The biomethane promotion requirement contained in Public Utilities Code Section 399.24 should remain in R.11-05-005. As noted in the January 9, 2013 “Second Amended Scoping Memo and Ruling” in R.11-05-005, AB 1900 was included in the scope of issues to be considered in that proceeding. The January 9, 2013 ruling at pages 3-4 notes that the adoption of policies and programs that promote the in-state production and distribution of biomethane “touches all the areas in which [R.11-05-005] addresses [renewables portfolio standard] procurement from bioenergy resources.” Since R.11-05-005 is to address biomethane promotion, it is in that proceeding where the issue of any subsidy of the cost of complying with the Commission-adopted standards and requirements for biomethane should be addressed. However, we remain open to revisiting whether additional work on biomethane promotion policies and

related costs subsidies is needed, after more progress has been made in R.11-05-005.

As for the Energy Commission's holding of public hearings, and offering of solutions regarding impediments that limit biomethane procurement, as required by Public Resources Code Section 25326, those are issues that are within the purview of the Energy Commission.

### **3.5. Collaboration with Other State Agencies**

AB 1900 requires certain work to be performed by other state agencies. The Commission's Energy Division has been working closely with OEHHA, CARB and other state agencies to meet the deadlines imposed by AB 1900. As the Rulemaking noted, OEHHA, CARB, and other state agencies have been working on the issues required of those agencies. In addition, OEHHA, CARB, and the Commission held its first workshop on the biomethane standards and requirements following the March 27, 2013 PHC. OEHHA and CARB have also encouraged the parties to participate in their process.

The Commission's Energy Division, together with OEHHA, CARB, and other state agencies will be hosting a second workshop on May 2, 2013, starting at 10:30 a.m. The workshop will be held in the auditorium at the California Environmental Protection Agency at 1001 I Street, Sacramento. Details of the second workshop can be found in the Commission's Daily Calendar under the "Public Meetings & Workshop Notices" section.

As provided for in Health and Safety Code Section 25421, the Commission will give due deference to the CARB determination regarding the concentration of constituents that may be found in biomethane that are reasonably necessary to ensure the protection of human health, and to the CARB's determination of

reasonable and prudent monitoring, testing, reporting, and recordkeeping requirements.

#### **4. Procedural Schedule**

The Rulemaking adopted a preliminary schedule, which established the dates for filing of comments on the Rulemaking, and the serving of preliminary information in the form of prepared testimony. The March 29, 2013 PHC provided an opportunity for the parties to discuss the procedural schedule for the scope of issues to be addressed in this proceeding.

The Rulemaking discussed the need “to provide a reasonable opportunity for each respondent and party to supplement, modify, amend or change its proposed testimony [i.e., the preliminary information] as more information becomes available.” (Rulemaking at 15.) At the PHC, it was suggested that this additional information should occur after the CARB completes its work by May 15, 2013, so that parties can comment on the CARB results, and to determine if evidentiary hearings are needed. To provide for that opportunity, the procedural schedule will provide an opportunity for the respondents and other parties to serve supplemental testimony addressing the CARB results. This supplemental testimony shall address whether the CARB’s determination of the appropriate concentrations of constituents of concern in biomethane is appropriate, and if not, the reasons why a different standard should be adopted instead. The supplemental testimony shall also address whether CARB’s identification of the monitoring, testing, reporting, and recordkeeping requirements should be adopted, and if not, the reasons why different requirements should be adopted instead. In addition, the introductory section of such supplemental testimony, the respondents and other parties shall state whether evidentiary hearings are needed, and if so, what factual areas they

intend to litigate. This supplemental testimony shall be served on the service list on or before June 7, 2013.

Following the service of the June 7, 2013 supplemental testimony, a ruling will then issue on whether the evidentiary hearings scheduled to begin on August 19, 2013, will take place or not.

The respondents and other parties will also have the opportunity to serve concurrent rebuttal testimony on the issues raised by the June 7, 2013 supplemental testimony. This concurrent rebuttal testimony shall be served on the service list on or before July 1, 2013.

If the ruling decides that evidentiary hearings will be held, the evidentiary hearings will be held in San Francisco at the Commission's offices at 505 Van Ness Avenue, San Francisco. The evidentiary hearing will begin on Monday, August 19, 2013, at 10:00 a.m., and continue through August 22, 2013, as needed.

If the ruling decides that evidentiary hearings are not needed, a proposed decision will then be drafted using all of the prepared testimony that has been served, which will consist of the March 25, 2013 preliminary information, the June 7, 2013 supplemental testimony, and the July 1, 2013 concurrent rebuttal testimony.

It is anticipated that a separate procedural schedule to address the cost issues of complying with the Commission-adopted standards and requirements will be established in late summer or early fall of 2013.

The following procedural schedule is adopted.

Preliminary Information served.	March 25, 2013
PHC held.	March 27, 2013
Workshop 1 held (San Francisco).	March 27, 2013
Workshop 2 to be held	May 2, 2013

(Sacramento).	
CARB and OEHHA report due.	May 15, 2013
Supplemental testimony to be served regarding CARB and OEHHA results, and whether evidentiary hearings needed.	June 7, 2013
Ruling to issue on whether evidentiary hearings will take place.	Mid-June 2013
Concurrent rebuttal testimony to be served.	July 1, 2013
Evidentiary hearings to be held, if needed, at the CPUC, 505 Van Ness Avenue, San Francisco.	August 19, 2013 at 10:00 a.m., and each weekday through August 22, 2013, as needed
Opening briefs to be filed, including request for oral argument, if requested.	To be decided
Reply briefs to be filed, and projected submission date.	To be decided
Proposed decision issued.	Within 90 days of filing of reply briefs
Comments and reply comments on proposed decision.	In accordance with Rule 14.3 of the Commission's Rules of Practice and Procedure
Decision adopted by the Commission if evidentiary hearings held.	Approximately December 2013
Issuance of ruling regarding procedural schedule to address cost issues of complying with Commission-adopted standards and requirements.	Late summer or early fall 2013
Proposed decision issued on cost issues.	To be decided
Decision adopted by the Commission on cost issues.	First quarter of 2014

Pursuant to Rule 13.13(b) of the Commission's Rules of Practice and Procedure, if evidentiary hearings are held, a party may request that a final oral

argument be held before the Commission. Any party requesting oral argument shall include a written request in its opening brief following the conclusion of the evidentiary hearings.

We anticipate that this proceeding will be completed as set forth in the above schedule, and expect this proceeding to be completed within 18 months from the date this scoping memo is issued pursuant to Public Utilities Code Section 1701.5.

**5. Categorization, *Ex Parte* Communications, and Intervenor Compensation**

This Rulemaking preliminarily categorized this proceeding as quasi-legislative. Today's scoping memo confirms that categorization, and determines that evidentiary hearings may be needed. Anyone who disagrees with this categorization must file an appeal of the categorization no later than 10 days after the date of this scoping memo. (See Rule 7.6.)

*Ex parte* communications shall be permitted as provided for in Rules 8.2, 8.3 and 8.5.

As provided for in Public Utilities Code Sections 1802 and 1804, any "customer" who intends to seek intervenor compensation must have filed a notice of intent to claim intervenor compensation by April 26, 2013, and meet the criteria for a "customer" as set forth in Public Utilities Code Section 1802(b) and in Rule 17.1 of the Commission's Rules of Practice and Procedure.<sup>1</sup>

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<sup>1</sup> The filing of a notice of intent does not guarantee an award of intervenor compensation. In order to receive an award, the customer's presentation must make a substantial contribution to the adoption of the Commission's order or decision, and the customer must receive a finding of significant financial hardship. (See Public Utilities Code Sections 1801.3, 1802(i), 1802.5, 1803, and 1804.)

**6. Hearing Officer**

If evidentiary hearings are held, the hearing officer for this proceeding shall be the assigned Commissioner, Carla Peterman, and Administrative Law Judge John S. Wong shall act as the assistant to the assigned Commissioner.

**7. Filing and Serving Documents**

Parties to this proceeding shall follow the directions described in section 6.2 of the Rulemaking at pages 23-24.

**IT IS RULED** that:

1. The issues to be resolved in this proceeding are listed in section 3 of this scoping memo and ruling, and raise issues of fact that may require evidentiary hearings.
2. The procedural schedule will follow the schedule set forth in section 4 of this scoping memo and ruling.
3. In the event evidentiary hearings are needed, the following dates will be reserved: beginning on Monday, August 19, 2013 at 10:00 a.m., at the Commission's Hearing Room, 505 Van Ness Avenue, San Francisco, and each weekday thereafter through August 22, 2013, as needed.
4. The supplemental testimony and concurrent rebuttal testimony in this proceeding shall be electronically served on the service list on the dates set forth in the procedural schedule, and print copies of such documents are to be provided to the assigned Commissioner and Administrative Law Judge.
5. The respondents and parties serving supplemental testimony shall state in the introduction whether evidentiary hearings are needed or not, and if so, what factual issues are to be litigated.

6. Any party requesting oral argument before the Commission shall include a written request in its opening brief following the conclusion of evidentiary hearings in this proceeding.

7. If evidentiary hearings are held, the hearing officer for this proceeding shall be the assigned Commissioner, Carla Peterman, and Administrative Law Judge John S. Wong shall act as the assistant to the assigned Commissioner.

8. The category for this proceeding is quasi-legislative, and this ruling on categorization is appealable within 10 days of this scoping memo pursuant to Rule 7.6.

9. *Ex parte* communications are permitted as provided for by Rules 8.2, 8.3, and 8.5.

10. Any customer who intends to seek intervenor compensation in this proceeding must have filed a notice of intent to claim compensation in this proceeding by April 26, 2013.

11. This ruling shall be served on the service list that has been established for this Rulemaking.

Dated May 2, 2013, at San Francisco, California.

/s/ CARLA J. PETERMAN

Carla J. Peterman  
Assigned Commissioner

/s/ JOHN S. WONG

John S. Wong  
Administrative Law Judge