

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



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Otay Landfill Gas, LLC,

Complainant,

vs.

San Diego Gas & Electric Company (U902M),

Defendant.

Case 16-06-011  
(Filed June 22, 2016)

**JOINT PREHEARING CONFERENCE STATEMENT**

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September 14, 2016

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**I. INTRODUCTION**

As directed in the August 23, 2016 *Assigned Administrative Law Judge Ruling Noticing Prehearing Conference* (ALJ Ruling), Otay Landfill Gas, LLC (“Otay Landfill Gas”) and San Diego Gas and Electric Company (“SDG&E”) jointly submit this Prehearing Conference Statement (“Joint Statement”).

**II. PREHEARING CONFERENCE ISSUES**

As requested by the ALJ Ruling, counsel for Otay Landfill Gas and SDG&E conferred to prepare this Joint Statement. Because the two parties could not agree on the main issues, as outlined in Section II.A., or on the materiality of certain facts alleged to be in dispute, as noted in Section II.B., the parties submit their respective positions below, as each party has determined appropriate and without editing from the other party.

**A. Identification of the specific factual and legal issues that the Commission needs to decide in this case**

**Otay Landfill Gas' Statement of the Issues**

1. What is the meaning, intent and application of the term “property,” as used in Section D.8 of the Schedule Re-MAT tariff to describe “Daisy Chaining?”

2. Is Otay Landfill Gas' Otay 3 landfill-gas fueled renewable energy facility (“Otay 3”) a project located on “property” that is subject to the “Daisy Chaining” provision of SDG&E's Re-MAT tariff?

3. Whether Otay Landfill Gas sought to break up larger projects into smaller pieces or “daisy-chain” in order to evade the Re-MAT tariff size restriction?

4. Whether SDG&E appropriately exercised its “sole discretion [to] determine that the Applicant does not satisfy” the “Eligibility Criteria” for a Re-MAT contract pursuant to Section D.8 of the Schedule Re-MAT tariff describing “Daisy Chaining?”

5. Whether Otay 3 was eligible for a Re-MAT contract and SDG&E would have provided Otay 3 with a Re-MAT contract but for SDG&E's interpretation of the “Daisy Chaining” provision in its Re-MAT tariff?

6. Whether, if the Commission determines that SDG&E should have approved a Re-MAT contract for Otay 3 and orders SDG&E to provide a Re-MAT contract to Otay 3 under SDG&E's now closed Re-MAT program, are there any other projects that can still request a Re-MAT contract under SDG&E's closed Re-MAT program?

### **SDG&E's Statement of the Issues**

1. Did SDG&E apply the plain meaning of the terms of the applicable Re-MAT tariff, which is attached as Exhibit 1 to SDG&E's Answer to Otay Landfill Gas' request for service under SDG&E's Re-MAT tariff?

2. Does the applicable Re-MAT tariff provide for an exception or special treatment for certain technologies, such as landfill gas technologies with respect to daisy chaining?

#### **B. What material facts are undisputed and whether this proceeding can be resolved via legal briefing rather than by an evidentiary hearing**

As noted previously, the parties have not been able to agree on which facts are "material" or "undisputed." Therefore, the parties are unable at this stage of the proceeding to provide a list of "material facts that are undisputed."

Otay Landfill Gas and SDG&E do not believe hearings are needed at this time, but both parties reserve their rights to request hearings should disputes over material facts and/or discovery by the parties make hearings necessary.

#### **C. The status of settlement discussions, if any**

Since the filing of the complaint, Otay Landfill Gas and SDG&E have had settlement discussions between their attorneys as well as a scheduled settlement conference call on September 1, 2016 with representatives of Otay Landfill Gas and SDG&E. Unfortunately, the parties have not been able to resolve the issues raised in Otay Landfill Gas' complaint.

**D. Whether mediation conducted by a neutral ALJ, other than the assigned ALJ, would be helpful in resolving the disputed issues**

**1. Response of Otay Landfill Gas Regarding Mediation**

Otay Landfill Gas recommends using the CPUC's Alternate Dispute Resolution ("ADR") program to resolve this dispute.

**2. Response of SDG&E Regarding Mediation**

SDG&E finds that, because the parties have already engaged in discussions before and since the filing of the Complaint, this proceeding should proceed to briefing. Also, because this case involves a discrete question regarding SDG&E's tariff, SDG&E finds that it is best if the Commission render a decision on the merits.

**E. Whether any discovery is needed and the anticipated date that discovery will be completed**

Otay Landfill Gas and SDG&E do not currently believe that discovery is needed, but both parties reserve their rights to seek discovery if the need arises.

**F. Whether hearings are needed**

Otay Landfill Gas and SDG&E do not believe hearings are needed at this time, but both parties reserve their rights to request hearings should disputes over material facts and/or discovery by the parties make hearings necessary.

**Statement of Otay Landfill Gas Regarding Oral Argument**

Otay Landfill Gas is willing to participate in an oral argument if the ALJ and Commission would find it helpful to resolve this matter.

**Statement of SDG&E Regarding Oral Argument**

The limited scope of this case is a straight-forward interpretation of a single, discrete

tariff provision. SDG&E does not find oral argument to be necessary or appropriate in this case.

**G. If the parties believe that a hearing is needed, the estimated number of days required, and the number of witnesses that each side plans to present at the hearing**

Although the parties do not believe that hearings are needed at this time, should subsequent determination and/or discovery by the parties make hearings necessary, the parties estimate that evidentiary hearings will last no longer than two days. It is premature to estimate the number of witnesses each party would call and/or present at such hearings, if they occur.

**H. A proposed schedule for this case, including dates for completing discovery, filing prepared written testimony, and for hearing**

The parties prefer to discuss scheduling with the ALJ at the PHC.

DESCRIPTION	DATE

DATED: September 14, 2016

Respectfully Submitted,

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RONALD LIEBERT

/s/ PAUL A. SZYMANSKI

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