

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



FILED

03-09-11
04:59 PM

In the Matter of the Application of Golden State Water Company on Behalf of its Bear Valley Electric Service Division (U 913 E), for Approval of RPS Contract with BioEnergy Solutions, LLC, and for Authority to Recover the Costs of the Contract in Rates

Application No. 10-07-012

**JOINT MOTION OF THE DIVISION OF RATEPAYER ADVOCATES
AND GOLDEN STATE WATER COMPANY
(BEAR VALLEY ELECTRIC SERVICE DIVISION)
TO APPROVE SETTLEMENT
(SETTLEMENT AGREEMENT ATTACHED)**

Noel Obiora
Attorney
Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102
Telephone: (415) 703-5987
Facsimile: (415) 703-4432
E-Mail: noel.obiora@cpuc.ca.gov

Keith Switzer
Vice President of Regulatory Affairs
Golden State Water Company
630 East Foothill Boulevard
San Dimas, California 91773
Telephone: (909) 394-3600
Facsimile: (909) 394-7427
Email: kswitzer@gswater.com

March 9, 2011

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

In the Matter of the Application of Golden State Water Company on Behalf of its Bear Valley Electric Service Division (U 913 E), for Approval of RPS Contract with BioEnergy Solutions, LLC, and for Authority to Recover the Costs of the Contract in Rates

Application No. 10-07-012

**JOINT MOTION OF THE DIVISION OF RATEPAYER ADVOCATES
AND GOLDEN STATE WATER COMPANY
(BEAR VALLEY ELECTRIC SERVICE DIVISION)
TO APPROVE SETTLEMENT
(SETTLEMENT AGREEMENT ATTACHED)**

I. INTRODUCTION

Pursuant to Rule 12.1 of the Commission’s Rules of Practice and Procedure (“Rules”) the Division of Ratepayer Advocates (“DRA”), and Golden State Water Company (“GSWC”) on behalf of its Bear Valley Electric Service Division (“BVES”) (together, the “Parties”) submit this Joint Motion to Approve the Settlement Agreement between the Division of Ratepayer Advocates and Golden State Water Company with respect to an RPS-energy contract between BVES and BioEnergy Solutions, LLC (“Settlement Agreement”).

In the attached Settlement Agreement, the Parties address their request for approval of an option agreement to purchase biogas (“Biogas Option Agreement”), as more fully described below, and the related BVES request for permission to withdraw its request for approval of its RPS-energy contract with BioEnergy Solutions, LLC (“BioEnergy”) to acquire biomethane or biogas (“Biogas”).

The Parties respectfully request and hereby move the Commission for adoption of the Settlement Agreement entered into by the Parties in this proceeding and the approval of the Biogas Option Agreement attached to the Settlement Agreement. The purpose of this Joint Motion is to facilitate the Commission’s expeditious consideration and adoption of the attached

Settlement Agreement, approval of the Biogas Option Agreement and the withdrawal of the GPA from consideration by the Commission.

The Parties believe that the Settlement Agreement, which is dependent upon the approval of the Biogas Option Agreement, fulfills the criteria that the Commission requires for approval of such settlements in that it is reasonable in light of the whole record, consistent with the law, and in the public interest as required by Rule 12.1(e). For these reasons, the Commission should grant this Joint Motion, adopt the proposed settlement as set forth in the attached Settlement Agreement and approve the Biogas Option Agreement.

II. PROCEDURAL BACKGROUND

Senate Bill (SB) 1078 established the California Renewables Portfolio Standards (“RPS”) Program effective January 1, 2003. The RPS Program provides, among other things, that each electric utility under the jurisdiction of the Commission procure annual minimum quantities of electricity generated from eligible facilities power by renewable resources. The amount, subject to flexible compliance provisions, must increase by at least 1% each year, and must reach 20% of total retail sales by no later than 2010. BVES is subject to the RPS Program.

In furtherance of its efforts to comply with the RPS Program, on July 8, 2010 BVES submitted an application (“Application”) for Commission approval of an RPS-eligible gas purchase contract (“GPA”). The GPA is a ten-year term contract between GSWC, on behalf of its BVES Division, and BioEnergy for Biogas produced from dairy farms in Fresno County.

On July 29, 2010, Resolution ALJ-176-3258 preliminarily determined that this proceeding was ratesetting and that hearings would be necessary. On August 12, 2010, DRA filed a protest. BVES filed its reply on August 16, 2010. On August 30, 2010, a prehearing conference before Administrative Law Judge (“ALJ”) Seaneen M. Wilson took place in San Francisco to establish the service list, scope and procedural timetable for the proceeding. On September 16, 2010, Commissioner Nancy E. Ryan issued a Scoping Memo and Ruling of Assigned Commissioner.

Pursuant to the Scoping Memo, DRA served its testimony on November 5, 2010. On December 3, 2010, GSWC and DRA engaged in settlement talks, and following such settlement talks requested ALJ Wilson to suspend the procedural schedule in order for the Parties to continue their efforts to finalize a settlement agreement. On December 6, 2010, ALJ Wilson

granted the Parties request to suspend the schedule in this proceeding, with joint progress reports no later than January 7, 2011 and every four weeks thereafter until a settlement is reached.

On February 18, 2011, a Notice of All-Party Settlement Conference was electronically served on all individuals listed on the service list for an all-party settlement conference to be held at 1 p.m. on March 1, 2011. An all-party settlement conference was held by teleconference on March 1, 2011 beginning at 1 p.m. with representatives for DRA and BVES (the only parties in the proceeding) participating. A representative of Pacific Gas and Electric Company attempted to participate in the all-party settlement teleconference, but was advised that pursuant to Commission Rules of Practice and Procedure (Rule 12.1(b)) that attendance at a settlement conference is limited to parties and their representatives.

III. FACTUAL BACKGROUND

BioEnergy is a developer of “cow power” or Biogas projects. For a period of time, BioEnergy operated a full scale, commercial facility located in Fresno County (the “Vintage Dairy”), where Biogas was created, scrubbed, compressed, and injected as pipeline quality natural gas into Pacific Gas and Electric’s (“PG&E”) pipeline. The Biogas, which is an RPS-eligible fuel for electric generation, ultimately was to be nominated to be burned at the Bear Valley Power Plant (“BVPP”), which has been pre-certified by the CEC as an “RPS-eligible” generating unit. At the time BVES entered into negotiations with BioEnergy for the GPA, BioEnergy was already providing Biogas to PG&E under a contract with PG&E (approved by the Commission in Resolution E-4076).

At one time, the Vintage Dairy had a substantial herd of cows. With additional gas from digesters at surrounding dairies, BioEnergy claimed that the entire facility was capable of producing 1,350 MMBtu/day of Biogas which, according to BioEnergy, would have been sufficient to provide to BVES the contracted amount of Biogas under the GPA, as well as provide to PG&E the contracted amount of Biogas under its contract with BioEnergy.

The GPA was the result of bilateral negotiations between BVES and BioEnergy. With delivery of the Biogas to BVPP, which currently has an average heat rate of 12,645 Btu/KWh, the levelized price of electricity resulting from the GPA of \$151.74/MWh would be higher than the 2009 market price referent of \$84.48/MWh for a ten-year contract with a commercial on-line date for 2010. BVES noted in its Application that the contract price of the Biogas of \$12/MMBtu was above current natural gas hub prices. BVES stated in its Application and

associated prepared testimony that the GPA was the least-cost best-fit option for BVES to acquire RPS-eligible energy as compared to any bids received as a result of Requests for Proposals by BVES in 2006, 2007 and 2008.

BVES requested that the Commission approve the GPA and authorize recovery of costs of the GPA in BVES rates. In addition, BVES requested authority to establish a GPA memorandum account to track unrealized gains and/or losses of the GPA as required by Statement of Financial Accuracy Standards No. 133 regarding derivative instruments.

In November 2010, BVES learned that there might be problems with Biogas production capabilities at the Vintage Dairy facility. Upon contacting BioEnergy, BVES was advised that BioEnergy was unable to obtain the needed financing to acquire certain Biogas-production equipment. BioEnergy stated that it had returned certain prototype Biogas-production equipment that had been rented by BioEnergy and had suspended its Biogas operations at Vintage Dairy.

As a result of the suspension of Biogas production by BioEnergy, BVES negotiated with BioEnergy the general terms of a Biogas Option Agreement. The primary objective of the Biogas Option Agreement was to provide BVES with the option to acquire Biogas from BioEnergy in the future once Biogas production is resumed, and to avoid costly and time-consuming litigation.

Promptly upon learning of the suspension of Biogas production by BioEnergy and the successful negotiation of the general terms of a Biogas Option Agreement with BioEnergy, BVES met with representatives of DRA and advised them of the recent developments resulting in the suspension of Biogas production by BioEnergy. Following the meeting with DRA, BVES executed the Biogas Option Agreement with BioEnergy. After engaging in negotiations, DRA and BVES reached a proposed settlement of the Application, as set forth in detail below.

IV. SUMMARY OF PROVISIONS OF SETTLEMENT AGREEMENT

The key provisions of the Settlement Agreement are that the Parties agree that the execution of the Biogas Option Agreement preserves for BVES and its customers the core value of the GPA. Specifically, the Biogas Option Agreement provides an option for BVES to purchase renewable energy for BVES' customers for ten years into the future, with an anticipated reduction in the price of Biogas as compared to the GPA. In addition, the Parties agree that the execution of the Biogas Option Agreement avoids potentially costly and time-consuming litigation between BVES and BioEnergy.

As part of the Settlement Agreement, BVES requests Commission permission to withdraw its Application for approval of the GPA and the establishment of a GPA memorandum account. This request is contingent upon the Commission approving, without change, the Biogas Option Agreement.

V. SUMMARY OF BIOGAS OPTION AGREEMENT

The key provisions of the Biogas Option Agreement, which is attached to the Settlement Agreement as Attachment 1, are as follows:

- A ten-year option to purchase up to the same amounts of Biogas as provided in the GPA. The option is conditioned upon BioEnergy resuming production of Biogas in sufficient quantities to satisfy both the existing PG&E Biogas contract and a new Biogas contract with BVES as a consequence of BVES exercising its option. [Section II]
- The price of Biogas under a new contract with BioEnergy would be equal to the lowest price of Biogas previously offered by BioEnergy to another purchaser with respect to a Biogas contract of similar length and volumes of Biogas. [Section III]
- The Biogas to be delivered to BVES shall not take priority over or come at the expense of deliveries of Biogas to PG&E. [Section IV]
- Any Biogas contract resulting from BVES exercising its option shall contain the same terms and conditions as the GPA, except for price. Any resulting (future) Biogas contract shall be subject to Commission approval. [Section VI]
- The Biogas Option Agreement is subject to support by DRA and approval by the Commission. [Section VII]
- The GPA shall be null and void if the Biogas Option Agreement is approved by the Commission. [Section VIII]

A. TEN-YEAR OPTION TO PURCHASE BIOGAS

Section II of the Option Agreement grants to BVES the option (but not the obligation) to purchase up to an annualized daily average of 60 MMBtu and 120 MMBtu of Biogas in year one and year two, respectively, and up to an annualized daily average of 350 MMBtu of Biogas in years three through ten of a potential future ten-year Biogas purchase contract. These annualized amounts mirror the provisions of the GPA. The option may be exercised by BVES at any time within ten years of December 2, 2010 (the date of the Biogas Option Agreement). The option is subject to BioEnergy resuming production of Biogas in amounts sufficient to satisfy the Biogas delivery requirements of both the PG&E Biogas Contract and the amount of Biogas which BVES exercises an option to purchase pursuant to this Biogas Option Agreement. In the event BioEnergy fails to resume production of Biogas by December 2, 2020, neither party to the Option Agreement is liable or obligated to the other party.

B. PRICE OF BIOGAS UNDER OPTION AGREEMENT

Section III provides that the price of the Biogas that BVES exercises its option to purchase from BioEnergy shall be equal to the lowest price of Biogas previously offered by BioEnergy to another purchaser with respect to a Biogas contract of similar length and volumes of Biogas.

C. DELIVERIES OF BIOGAS TO PG&E ARE NOT IMPAIRED

Section IV provides that in the event BVES exercises its option to purchase Biogas from BioEnergy, BVES and BioEnergy agree that delivery of such Biogas to BVES shall not take priority over or come at the expense of deliveries of Biogas to PG&E pursuant to the PG&E Biogas Contract as originally approved by the Commission.

D. SAME TERMS AND CONDITIONS AS GPA; AGREEMENT SUBJECT TO COMMISSION APPROVAL

Section VI provides that if BVES exercises any or all of its option to purchase Biogas from BioEnergy Solutions, the resulting (future) Biogas contract between BioEnergy and BVES shall contain the same terms and conditions as the GPA previously executed by the parties, except for (i) the changes in pricing as provided in Section III thereof, (ii) the amounts of Biogas that BVES exercises an option to purchase thereunder and (iii) such other or different terms and conditions as mutually agreed to by BVES and BioEnergy.

Section VI also provides that any resulting (future) Biogas contract between the BVES and BioEnergy shall be subject to Commission approval.

E. UPON APPROVAL OF OPTION AGREEMENT, GPA NULL AND VOID

Section VIII provides that, subject to the Biogas Option Agreement being approved by the Commission, the GPA shall be null and void and neither party to the GPA is liable or obligated to the other party thereunder.

VI. THE SETTLEMENT MEETS THE CRITERIA UNDER RULE 12.1

The Settlement Agreement meets all standards for approval by the Commission as identified in Rule 12.1 (d). That rule states:

The Commission will not approve stipulation or settlements, whether contested or uncontested, unless the stipulation or settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

First, the Settlement Agreement and the Option Agreement are reasonable. Second, the Parties are aware of no statutory provision or prior Commission decision that would be impermissibly contravened or compromised by the Settlement Agreement or the Option Agreement. And third, the Settlement Agreement and Biogas Option Agreement are in the public interest.

The Parties believe that this Joint Motion, the Settlement Agreement and the related Biogas Option Agreement convey sufficient information for the Commission to discharge its regulatory obligations. Thus, taken as a whole, the Settlement Agreement and the attached Option Agreement satisfy the Commission's standards for approving settlements presented to it.

A. The Settlement Agreement and Biogas Option Agreement Are Reasonable in Light of the Record as a Whole.

In light of the significant and concerted effort of BVES to acquire RPS-eligible energy that is both best-fit and least-cost when compared to the relatively few other offers received from RFPs in 2006, 2007 and 2008, and BVES' small, unique load pattern and remote location, the Settlement Agreement and Biogas Option Agreement are reasonable. Moreover, approval of the Settlement Agreement and the Biogas Option Agreement avoids potentially costly and time-consuming litigation. BVES is in urgent need of RPS-eligible energy, both now and in the future. The Biogas Option Agreement represents a golden opportunity for BVES to acquire

RPS-eligible energy at competitive prices. Moreover, should BVES seek to exercise its option, any resulting RPS energy contract would be subject to review and approval by the Commission. There is no downside risk to BVES' customers to approve the Biogas Option Agreement – only an upside benefit.

In light of the record as a whole, the Settlement Agreement and the Biogas Option Agreement are reasonable and should be approved by the Commission.

B. The Settlement Is Consistent With Law and Prior Commission Decisions.

The Parties assert that the Settlement Agreement is consistent with law and prior Commission decisions. Also, the issue resolved in the Settlement Agreement (*i.e.*, procurement of RPS-energy for BVES) is well within the scope of this proceeding. Approval of the Settlement Agreement and the Biogas Option Agreement will have no effect on rates.

C. The Settlement Agreement Is in the Public Interest.

The principal public interest affected by the Settlement Agreement and the Biogas Option Agreement is the preservation of the core value of the GPA to BVES and its customers, and the avoidance of costly litigation.

By approving the Biogas Option Agreement, the Commission preserves for BVES a valuable, future opportunity to deliver to its customers RPS-eligible energy that fits BVES' operations and customer loads, at a potentially reduced price. A win-win scenario that is in the public interest.

Rejection of the Settlement Agreement and the Biogas Option Agreement would needlessly eliminate an opportunity for BVES to obtain badly needed and, potentially, attractively-priced RPS-energy. Rejection would also result in BVES and its customers receiving no benefit whatsoever for BVES' time-consuming, substantial efforts and expense in negotiating and executing the GPA, and BVES' preparation of the Application for approval of the GPA. Rejection of the Settlement Agreement and Biogas Option Agreement is a lose-lose scenario and not in the public interest.

Numerous Commission decisions have expressed a strong public policy favoring settlement of disputes if they are fair and reasonable in light of the whole record. *See, e.g.*, D.88-12-083 (30 CPUC 2d 189, 221-23) and D.91-05-029 (40 CPUC 2d 301, 326). This policy supports many worthwhile goals, including not only reducing the expense of litigation, and conserving scarce Commission resources, but also allowing parties to reduce the risk of

litigation. D.92-12-019 (46 CPUC 2d 538, 553). This strong public policy favoring settlements also weighs in favor of the Commission resisting the temptation to alter the results of the negotiation process. As long as a settlement taken as a whole is fair, reasonable, and in the public interest, it should be adopted without change.

The Parties believe that the Settlement Agreement is a reasonable compromise of their respective positions, and that the outcome in the Settlement Agreement is "reasonable in light of the whole record, consistent with law, and in the public interest" as required by Rule 12.1(e). Accordingly, the Parties request that the Commission adopt the Settlement Agreement without modification.

VII. CONCLUSION

For the reasons stated above, the Parties urge the Commission to approve the attached Settlement Agreement and Biogas Option Agreement without modification. As discussed, the Settlement Agreement and Biogas Option Agreement are reasonable in light of the whole record, consistent with law and are in the public interest.

Consequently, the Parties respectfully request that the Commission grant this motion, approve the attached Settlement Agreement and approve the Biogas Option Agreement as reasonable in light of the whole record, consistent with law and in the public interest.

Dated at San Dimas, California: March 9, 2011.

Respectfully submitted,

By: /s/ Noel Obiora

Noel Obiora
Attorney
Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102
Telephone: (415) 703-703-5987
Facsimile: (415) 703-4432
E-Mail: noel.obiora@cpuc.ca.gov

Respectfully submitted,

By: /s/ Keith Switzer

Keith Switzer
Vice President of Regulatory Affairs
Golden State Water Company
630 East Foothill Boulevard
San Dimas, California 91773
Telephone:(909) 394-3600
Facsimile: (909) 394-7427
Email: kswitzer@gswater.com

CERTIFICATE OF SERVICE

I certify that I have by electronic mail this day served a true copy of the attached MOTION OF THE DIVISION OF RATEPAYER ADVOCATES AND GOLDEN STATE WATER COMPANY (BEAR VALLEY ELECTRIC SERVICE DIVISION) TO APPROVE SETTLEMENT (SETTLEMENT AGREEMENT ATTACHED) on all parties listed on the attached Service List.

Dated: March 9, 2011, at Los Angeles, California.

/s/ Yolanda Gallo

Yolanda Gallo

SERVICE LIST

Electronic service list for A.10-07-012

Fred G.	Yanney	fyanney@fulbright.com
Keith	Switzer	KSwitzer@gswater.com
Noel	Obiora	nao@cpuc.ca.gov
Donald C.	Liddell	liddell@energyattorney.com
		mrw@mrwassoc.com
Allyson S.	Taketa	ataketa@fulbright.com
Kenneth	Brennan	KJBh@pge.com
		cem@newsdata.com
William F.	Dietrich	dietrichlaw2@earthlink.net
Cheryl	Lee	CNL@cpuc.ca.gov
Jonathan J.	Reiger	jzr@cpuc.ca.gov
Rahmon	Momoh	rmm@cpuc.ca.gov
Sean	Wilson	smw@cpuc.ca.gov

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

In the Matter of the Application of Golden State Water Company on Behalf of its Bear Valley Electric Service Division (U 913 E), for Approval of RPS Contract with BioEnergy Solutions, LLC, and for Authority to Recover the Costs of the Contract in Rates

Application No. 10-07-012

**SETTLEMENT AGREEMENT BETWEEN THE DIVISION OF RATEPAYER
ADVOCATES AND GOLDEN STATE WATER COMPANY, ON BEHALF OF ITS
BEAR VALLEY ELECTRIC SERVICE DIVISION**

Joe Como
Acting Director
Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Telephone: (415) 703-2381
Facsimile: (415) 703-2057
Email: joc@cpuc.ca.gov

Keith Switzer
Vice President of Regulatory Affairs
Golden State Water Company
630 East Foothill Boulevard
San Dimas, California 91773
Telephone: (909) 394-3600
Facsimile: (909) 394-7427
Email: kswitzer@gswater.com

March 2, 2011

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

In the Matter of the Application of Golden State Water Company on Behalf of its Bear Valley Electric Service Division (U 913 E), for Approval of RPS Contract with BioEnergy Solutions, LLC, and for Authority to Recover the Costs of the Contract in Rates

Application No. 10-07-012

**SETTLEMENT AGREEMENT BETWEEN THE DIVISION OF RATEPAYER
ADVOCATES AND GOLDEN STATE WATER COMPANY, ON BEHALF OF ITS
BEAR VALLEY ELECTRIC SERVICE DIVISION**

I. INTRODUCTION AND SCOPE OF SETTLEMENT

Pursuant to Article 12 of the Rules of Practice and Procedure (“Rules”) of the California Public Utilities Commission (“Commission”), the Division of Ratepayer Advocates (“DRA”) and Golden State Water Company (“GSWC”), on behalf of its Bear Valley Electric Service Division (“BVES”) (collectively, “the Parties”) have agreed on the terms of an overall settlement (“Settlement” or “Settlement Agreement”) in this BVES Application No. (A.) 10-07-012, and have entered into this Settlement Agreement.

The Parties intend that the Commission adopt this Settlement in its entirety. The Parties acknowledge that this Settlement represents a compromise of the positions of the Parties in this proceeding and has been negotiated as an integrated and interdependent settlement, and completely resolves all issues raised in this proceeding and is not based upon the Settlement’s individual elements viewed in isolation. The Parties acknowledge that their support and advocacy of it may be compromised by alterations to the Settlement Agreement or the attached Biogas Option Agreement. Either Party may withdraw from this Settlement Agreement if the

Commission modifies, deletes from, or adds to, the dispositions of the matters stipulated herein. In the event the Commission rejects or materially alters the Settlement Agreement or the attached Biogas Option Agreement, the Parties agree they are no longer bound by the terms of the Settlement Agreement and are not deemed to have waived any of their respective procedural or due process rights under California law.

The Parties agree, however, to negotiate in good faith with regard to any Commission changes in order to restore the balance of benefits and burdens, and to exercise the right to withdraw only if such negotiations are unsuccessful.

II. PARTIES' ORIGINAL POSITIONS

A. BVES Position

BVES submitted the Application for Commission approval of a Renewables Portfolio Standard (“RPS”) eligible gas purchase contract (“GPA”). The GPA is a ten-year term contract between GSWC and BioEnergy Solutions, L.L.C. (“BioEnergy”) for biomethane produced from dairy farms in Fresno County.

BioEnergy is a developer of “cow power” or biogas projects. BioEnergy operated a full scale, commercial facility located in Fresno County (the “Vintage Dairy”), where biogas was created, scrubbed, compressed, and injected as pipeline quality natural gas (“Biogas”) into Pacific Gas and Electric’s (“PG&E”) pipeline. The Biogas, which is an RPS-eligible fuel for electric generation, ultimately was to be nominated to be burned at the Bear Valley Power Plant (“BVPP”), which has been pre-certified by the CEC as an “RPS-eligible” generating unit.

The Vintage Dairy at one time had a substantial herd of cows. But with additional gas from digesters at surrounding dairies BioEnergy claimed that the entire facility was capable of producing 1,350 MMBtu/day which, according to BioEnergy, would have been sufficient to provide to BVES the contracted amount of Biogas under the GPA as well provide to PG&E the contracted amount of Biogas under a contract with PG&E (approved by the Commission in Resolution E-4076).

The GPA was the result of bilateral negotiations between BVES and BioEnergy. With delivery of the Biogas to BVPP, which currently has an average heat rate of 12,645 Btu/KWh, the levelized price of electricity resulting from the GPA of \$151.74/MWh would be higher than the 2009 market price referent of \$84.48/MWh for a ten-year contract with a commercial on-line date for 2010. BVES noted in its Application that the contract price of the Biogas of \$12/MMBtu was above current natural gas hub prices. BVES stated that the GPA was the least-cost best-fit option to acquire RPS-eligible energy as compared to any bids received as a result of Requests for Proposals by BVES in 2006, 2007 and 2008.

BVES requested that the Commission approve the GPA and authorize recovery of costs of the GPA in BVES rates. In addition, BVES requested authority to establish a GPA memorandum account to track unrealized gains and/or losses of the GPA as required by Statement of Financial Accuracy Standards No. 133 regarding derivative instruments.

B. DRA Position

DRA recommended that the Commission reject the application or modify the GPA based upon a Biogas price of \$6.00/MMBtu. DRA believed that the “premium” for the price of the Biogas under the GPA was excessive, the heat rate of the BVPP was inefficient, the resulting levelized price of electricity of \$151.74/MWh was more than the MPR for contracts of 10-year lengths, and the amount of Biogas proposed to be burned at the BVPP exceeded the operating limits placed on the BVPP by the South Coast Air Quality Management District.

III. SUBSEQUENT EVENTS AFFECTING GPA

A. Vintage Dairy Suspends Biogas Production

In November 2010, BVES learned that there might be problems with Biogas production capabilities at the Vintage Dairy facility. BVES immediately contacted BioEnergy to determine the status of Biogas production. BVES was advised by BioEnergy that it was unable to obtain the needed financing to acquire certain Biogas-production equipment. As a result, BioEnergy returned certain prototype Biogas-production equipment that had been rented by BioEnergy and

suspended its Biogas operations at Vintage Dairy.

B. Negotiation of Biogas Option Agreement

As a result of the suspension of Biogas production by BioEnergy, BVES negotiated with BioEnergy the general terms of a Biogas Option Agreement. The primary objective of the Biogas Option Agreement was to provide BVES with the option to acquire Biogas from BioEnergy in the future once Biogas production is resumed, and to avoid costly and time-consuming litigation.

C. Negotiations Between Parties

Promptly upon learning of the suspension of Biogas production by BioEnergy and following the negotiation of the general terms of a Biogas Option Agreement with BioEnergy, BVES advised DRA of the developments and the general terms of the Biogas Option Agreement. Following the meeting with DRA, BVES executed a Biogas Option Agreement with BioEnergy.

Shortly thereafter, the Parties reached a settlement of the Application, as set forth in more detail below.

IV. SETTLEMENT PROVISIONS

A. Parties Support Approval of Biogas Option Agreement

The Parties recognize that despite diligent efforts by BVES to identify and contract for cost-effective RPS-eligible resources that fit the load profile of BVES' customers, the results have been disappointing. Except for an RPS-eligible contract with the County Sanitation District No. 2 of Los Angeles for electricity generated by landfill gas¹ and the GPA with BioEnergy, BVES currently has no other contracts or other resources to provide RPS-eligible energy to BVES customers.

Given the fact that BVES has invested considerable time, effort and expense to negotiate

¹ This contract was submitted to the Commission June 2, 2010, under Application 10-06-003. No protests were filed. Approval by the Commission is expected in the near future.

and execute the GPA, and to prepare and submit a formal application² to the Commission for approval of the GPA, it was reasonable and prudent for BVES to quickly draft, negotiate and execute the Biogas Option Agreement with BioEnergy. The actions by BVES preserved the core value of the GPA for BVES' customers for ten years into the future, with an anticipated reduction in the price of Biogas as compared to the price in the GPA. Execution of the Biogas Option Agreement by BVES also avoided potentially costly and time-consuming litigation between it and BioEnergy.

B. Key Provisions of Biogas Option Agreement

Key provisions of the Biogas Option Agreement, which is attached hereto as Attachment 1, are as follows:

- Ten-year option to purchase up to the same amounts of Biogas as provided in the GPA. Option is conditioned upon BioEnergy resuming production of Biogas in sufficient quantities to satisfy both the existing PG&E Biogas contract and a new Biogas contract with BVES as a consequence of BVES exercising its option. [Section II]
- The price of Biogas under a new contract with BioEnergy would be equal to the lowest price of Biogas previously offered by BioEnergy to another purchaser with respect to a Biogas contract of similar length and volumes of Biogas. [Section III]
- Biogas to BVES shall not take priority over or come at the expense of deliveries of Biogas to PG&E. [Section IV]
- Any Biogas contract resulting from BVES exercising its option shall contain the same terms and conditions as the GPA, except for price. Any resulting (future) Biogas contract shall be subject to Commission approval. [Section VI]

² The Commission directed BVES to submit any power purchase agreements for RPS-eligible power for approval by means of an application, rather than an advice letter, as long as any cap on BVES charges for electricity is in place. D.08-05-029 at p. 29. A \$77/MWh cap is still in effect.

- Biogas Option Agreement subject to support by DRA and approval by Commission. [Section VII]
- GPA shall be null and void if Biogas Option Agreement is approved by the Commission. [Section VIII]

III. OTHER PROVISIONS OF SETTLEMENT AGREEMENT

As part of this Settlement Agreement, BVES requests permission of the Commission for BVES to withdraw its Application for approval of the GPA and a GPA Memorandum Account, without prejudice, provided that the Commission approves, without change, the Biogas Option Agreement attached to this Settlement Agreement.

IV. GENERAL TERMS & CONDITIONS

Rule 12.1(d) requires that a Settlement be “reasonable in light of the whole record, consistent with the law, and in the public interest.” The Settlement between the Parties in this proceeding satisfies the criteria in Rule 12.1(d). The Commission should adopt the Settlement Agreement and approve the Biogas Option Agreement, which is fully supported by the Parties.

A. The Settlement is Reasonable

Following the suspension of Biogas production by BioEnergy, BVES acted reasonably and prudently to seek and obtain an option to purchase Biogas from BioEnergy for a ten-year period. The benefits to BVES’ ratepayers of support for and approval of the Biogas Option Agreement were thoroughly discussed with DRA. Moreover, the Biogas Option Agreement addressed the specific concern of DRA with respect to the GPA (*i.e.*, the price of the Biogas). DRA’s right to review and protest, if necessary, any future Biogas contract with BioEnergy (including the price of the Biogas) is also preserved in the event BVES should exercise its option under the Biogas Option Agreement. In addition, the Biogas Option Agreement specifically provides as a precondition the approval of the Commission of any resulting Biogas contract in the event BVES exercises its option under the Biogas Option Agreement.

The Settlement Agreement, with the Biogas Option Agreement as its centerpiece, reflects

a reasonable compromise of the various contested issues between the Parties. The Parties believe the Settlement fairly balances the various interests affected in this proceeding, and is reasonable and consistent with the law and in the public interest. The Settlement, taken as a whole, provides a fair and reasonable resolution of the issues in this proceeding. The Parties fully considered the facts and the applicable law in reaching this Settlement.

B. The Settlement is Lawful

The Parties are not aware of any statutory provisions or prior Commission decision that would be contravened or compromised by the Settlement. The issues resolved in the Settlement Agreement are clearly within the scope of the proceeding. Moreover, the Settlement Agreement, if adopted, along with the concomitant approval of the Biogas Option Agreement, would result in the preservation of valuable rights for BVES, on behalf of its customers, to purchase Biogas in the future at very competitive rates.

C. The Settlement Serves the Public Interest

The Settlement is in the public interest. The Commission has explained in prior Commission decisions that a settlement well serves the public interest when the settlement “commands broad support among participants fairly reflective of the affected interest” and “does not contain terms which contravene statutory provisions or prior Commission decisions.”³

In this proceeding, the Parties fairly represent the affected parties’ interests. BVES provides electric service to customers in its service territory, and DRA is statutorily charged with representing ratepayers in California. The principal public interest affected by this proceeding is the acquisition of RPS-eligible energy that is least-cost, best-fit for BVES and its customers. The Settlement, and in particular the Biogas Option Agreement, advances these interests. In addition, Commission approval of the Settlement Agreement and the Biogas Option Agreement will provide speedy resolution of contested issues, which will conserve Commission resources and avoid potentially costly and time-consuming litigation between BVES and BioEnergy.

³ Re *San Diego Gas & Elec.*, D.92-12-019,46 CPUC 2d at 552.

D. The Settlement Conveys Sufficient Information

The Parties believe that the Settlement Agreement and the Biogas Option Agreement convey sufficient information for the Commission to discharge its future regulatory obligations. Taken as a whole, the Settlement Agreement and the Biogas Option Agreement satisfy the Commission's standards for approving a settlement.

E. Miscellaneous Provisions

The Parties stipulate and agree that the execution of the Settlement Agreement shall not constitute the basis of estoppel or waiver in future proceedings by either Party. Furthermore, no Party hereafter shall be deemed to be bound by any position asserted by any Party, and no finding of fact or conclusion of law other than those expressly stated therein shall be deemed to be implicit in this Settlement Agreement. (Rule 12.5, Commission Rules of Practice and Procedure.)

The issuance of an Order approving this Settlement Agreement and the Biogas Option Agreement shall not be deemed to work as an estoppel upon the Parties or the Commission or otherwise establish or create any limitation on or precedent of the Commission in future proceedings.

The Parties stipulate and agree that all negotiations relating to this Settlement were consistent with Commission Rules and practices and neither Party shall be bound by any position asserted in the negotiations, except to the extent expressly stated in this Settlement Agreement. Accordingly, evidence of conduct or statements made during the course of the negotiation and discussion phases of this Settlement shall not be admissible as evidence in any proceeding before the Commission or any court.

The Parties agree that no signatory of the Settlement Agreement assumes any personal liability as a result of their signature. All rights and remedies of the Parties are limited to those available before the Commission.

This Settlement Agreement may only be modified by a writing subscribed to by both the

Parties.

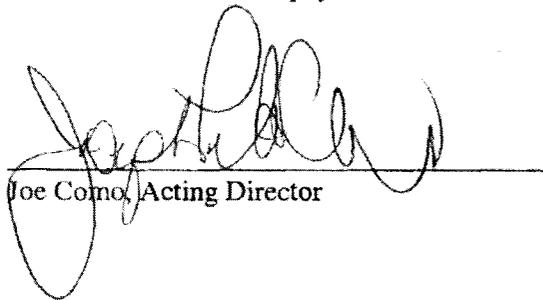
If the Commission chooses to adopt and approve the Settlement Agreement and the Biogas Option Agreement, this Settlement Agreement resolves all disputed matters which have been associated with this proceeding. Any disputed matters shall be deemed resolved except to the extent otherwise expressly provided in the Settlement Agreement.

This Settlement Agreement shall not become effective and shall be given no force or effect until the issuance of a final Commission decision that accepts and approves this Settlement Agreement and accepts and approves the Biogas Option Agreement.

This Settlement Agreement may be executed in one or more counterparts and each counterpart shall have the same force and effect as an original document and as if both Parties had signed the same document. Any signature page of this Settlement Agreement may be detached from any counterpart of this Settlement Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of the Settlement Agreement identical in form hereto but having attached to it one or more signature page(s).

Dated: March 2, 2011

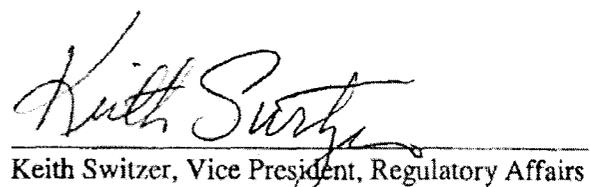
For the Division of Ratepayer Advocates:



Joe Colno, Acting Director

Dated: March 2, 2011

For Golden State Water Company
and Its BVES Division:



Keith Switzer, Vice President, Regulatory Affairs

BIOGAS OPTION AGREEMENT

By and Between

**Golden State Water Company
doing business as
Bear Valley Electric Service**

And

BioEnergy Solutions, LLC

This Biogas Option Agreement, dated as of December 2, 2010, is entered into by and between Golden State Water Company (“GSWC”), on behalf of its Bear Valley Electric Service (“BVES”) division, and BioEnergy Solutions, LLC (“BioEnergy Solutions”), which parties shall collectively be referred to as “Parties” and individually as a “Party” herein.

SECTION I. Recitals.

This Biogas Option Agreement is made with reference to the following facts, among others:

BioEnergy Solutions is a developer of “cow power” or biogas projects, including a dairy farm operation located in Fresno County, California (“Vintage Dairy”), which began shipping biogas to Pacific Gas and Electric Company (“PG&E”) in 2008 under a contract approved by the California Public Utilities Commission (“Commission”) pursuant to Resolution E-4076 (“PG&E Biogas Contract”).

GSWC, on behalf of its BVES division, executed with BioEnergy Solutions (i) a Base Contract for Sale and Purchase of Biogas, entered into September 18, 2009, for the sale and purchase of RPS-certified biogas or digester gas that meets the requirements of the natural gas pipeline owner for delivery into its system (“Biogas”), (ii) a Transaction Confirmation No. 1 for Immediate Delivery, dated October 21, 2009, and (iii) an Amendment No. 1 of Base Contract for Sale and Purchase of Biogas between Golden State Water Company and BioEnergy Solutions, LLC, dated as of April 1, 2010 (collectively, the “Biogas Purchase Contract”).

Following the execution of the Biogas Purchase Contract by the Parties, BioEnergy Solutions was unable to obtain the needed financing to acquire certain Biogas-production equipment. As a result, BioEnergy Solutions returned certain prototype Biogas-production equipment that had been rented by BioEnergy Solutions and suspended its Biogas operations at Vintage Dairy.

The Parties wish to avoid costly and time-consuming litigation with respect to the Biogas Purchase Contract previously executed by the Parties and have agreed to

enter into this Biogas Option Agreement in exchange for termination of the Biogas Purchase Contract, as more specifically set forth below.

SECTION II. Grant of Option to Purchase Biogas Upon Resumption of Biogas Production.

BioEnergy hereby grants an option to BVES (but BVES is not obligated to exercise all or any portion of the option) to purchase up to an annualized daily average of 60 MMBtu and 120 MMBtu of Biogas in year one and year two, respectively, and up to an annualized daily average of 350 MMBtu of Biogas in years three through ten of a potential future ten-year Biogas purchase contract, consistent with the annualized daily average amounts of Biogas set forth in the Biogas Purchase Contract previously executed by the Parties, a copy of which is attached hereto and identified as Exhibit A. This option to purchase Biogas up to the annualized amounts set forth immediately above for up to ten years may be exercised by BVES at any time within 10 (ten) years of the date first set forth above. The intent of the Parties is that the option granted herein by BioEnergy Solutions to BVES will allow, but not require, BVES to acquire up to (but not more than) the amounts of Biogas per year for up to 10 (ten) years on the same terms and conditions as provided for in the Biogas Purchase Contract previously executed by the Parties, except as otherwise specifically provided for herein. The option granted herein to BVES is subject to the condition precedent of BioEnergy Solutions resuming production of Biogas in amounts sufficient to satisfy the Biogas delivery requirements of both the PG&E Biogas Contract and the amount of Biogas which BVES exercises an option to purchase pursuant to this Biogas Option Agreement. In the event BioEnergy Solutions fails to resume production of Biogas within 10 (ten) years of the date first set forth above, neither Party is liable or obligated to the other Party under this Biogas Option Agreement.

SECTION III. Price of Biogas If Option Is Exercised by BVES.

The price of the Biogas that BVES exercises its option to purchase from BioEnergy Solutions shall be equal to the lowest price of Biogas previously offered by BioEnergy Solutions to another purchaser with respect to a Biogas contract of similar length and volumes of Biogas.

SECTION IV. Delivery of Biogas to BVES Shall Not Take Priority Over Biogas Deliveries to PG&E.

In the event BVES exercises its option to purchase Biogas from BioEnergy Solutions pursuant to this Biogas Option Agreement, the Parties agree that delivery of such Biogas to BVES shall not take priority over or come at the expense of deliveries of Biogas to PG&E pursuant to the PG&E Biogas Contract as originally approved by the Commission.

SECTION V. Notice of Resumption of Biogas Production.

BioEnergy Solutions shall provide written notice to BVES within 60 days of resumption of Biogas production. BioEnergy Solutions shall periodically provide actual and projected Biogas production information to BVES upon request. To the extent permitted by law and applicable Commission decisions, resolutions, etc., BVES shall keep such actual and projected Biogas production information confidential.

SECTION VI. Future Biogas Contract Shall Utilize Terms and Conditions of Biogas Purchase Contract

If BVES exercises any or all of the option to purchase Biogas from BioEnergy Solutions as provided herein, the resulting (future) Biogas contract between the Parties shall contain the same terms and conditions as the Biogas Purchase Contract previously executed by the Parties, a copy of which is attached hereto as Exhibit A, except for (i) the changes in pricing as provided in Section III hereof, (ii) the amounts of Biogas that BVES exercises an option to purchase hereunder and (iii) such other or different terms and conditions as mutually agreed to by the Parties. Any resulting (future) Biogas contract between the Parties shall be subject to Commission approval.

SECTION VII. Biogas Option Agreement Subject to DRA Support and Commission Approval.

This Biogas Option Agreement is subject to (i) support by the Division of Ratepayer Advocates (“DRA”) as a settlement of Application 10-07-012 to approve the BioEnergy Purchase Contract and (ii) approval by the Commission as a settlement of Application 10-07-012. If DRA support as a settlement of Application 10-07-012 or Commission approval of this Biogas Option Agreement as a settlement of Application 10-07-012 is not obtained, this Biogas Option Agreement shall be of no force or effect, and neither Party shall be liable or obligated to the other under this Biogas Option Agreement.

SECTION VIII. Upon Approval of Biogas Option Agreement, Biogas Purchase Agreement Shall Be Null and Void.

Subject to this Biogas Option Agreement becoming effective as provided in Section VII hereof, the Biogas Purchase Contract previously executed by the Parties shall be null and void and neither Party is liable or obligated to the other Party thereunder.

SECTION IX. Additional Provisions.

Neither Party may assign this Biogas Option Agreement without the advance written consent of the other Party, which consent will not be unreasonably withheld. The captions have been inserted only for convenience of reference and do not modify, explain, enlarge or restrict any provision of this Biogas Option Agreement. The validity, interpretation and effect of this Biogas Option Agreement are governed by and will be construed in accordance with the laws of the State of California. Time is of the essence of each term herein. Nothing herein is intended to confer any rights or remedies to any persons or entities other than the Parties. Ambiguities or uncertainties in the wording of this Biogas Option Agreement will not be construed for or against either Party, but will be construed in the manner that most accurately reflects the Parties’ intent as of the date they executed this Biogas Option Agreement. This Biogas Option Agreement may be executed in one or more counterparts, each of which is an original, but all of which together constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Biogas Option Agreement to be executed by their respective duly authorized representatives, all as of the day and year first written above.

BIOENERGY SOLUTIONS, LLC

By: 
Name: David R. Allen
Title: President

**GOLDEN STATE WATER COMPANY
d/b/a
BEAR VALLEY ELECTRIC SERVICE**

By: 
Name: ROBERT J. SPROWLS
Title: PRESIDENT & CEO