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

Application of Southern California Gas  
Company (U 904 G) and San Diego Gas &  
Electric Company (U 902 G) for Renewable  
Natural Gas Tariff.

Application 19-02-015  
(Filed March 15, 2019)

**WILD TREE FOUNDATION  
COMMENTS IN OPPOSITION TO PROPOSED SETTLEMENT**

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In accordance with the provisions of Rule 12.2 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), Wild Tree Foundation (“Wild Tree”) respectfully files the following comments in opposition to the Proposed Settlement Agreement proposed by Applicants Southern California Gas Company and San Diego Gas & Electric Company (“Applicants” of “Sempra Utilities”) on April 13, 2020.

**INTRODUCTION**

Applicant’s proposal for a “green” RNG tariff is a classic Trojan Horse. The proposal is calculated to later act as a justification for continued and/or increased ratepayer funded investment into natural gas infrastructure to build up what will ultimately become largely stranded assets due to the necessary decline in fossil natural gas use and state policies necessitating electrification. As stated by the Renewable Natural Gas Coalition, “A well-designed voluntary tariff that gives SoCalGas and SDG&E’s customers the option to use RNG

*will lay the groundwork for further efforts to decarbonize California's use of gaseous fuels.”<sup>1</sup>*

This statement is telling in that it does not recognize the reality to diminishing usefulness of natural gas infrastructure for any purpose and instead couches decarbonization necessities as groundwork for new natural gas infrastructure spending to further expand Applicant's rate base.

The Commission should not allow itself to be manipulated by the seemingly innocuous “voluntary” nature of Applicant's proposal. As stated so revealingly by the RNG Coalition, the Applicant's proposal is setting the groundwork for efforts to push California into an expensive, unnecessary, and wasteful policy pathway of continued reliance on pipeline transported gaseous fuels. Going down the policy path, even in a small first step, represents wasted efforts and investments in the wrong direction and should be rejected. It would be unjust and unreasonable for the Commission to intervene further than required by law to incentivize use of biomethane into the pipeline for the claimed purpose of decarbonizing buildings, when other uses are less expensive and achieve greater GHG emission reductions. The scarcity, lack of scalability, and excessive cost of RNG pipeline injection makes RNG swapping for building decarbonization bad policy because it would divert limited resources away from hard-to-electrify cases such as heavy truck transportation fuel, methane consuming industries, and renewable baseload capacity.<sup>2</sup>

The Application is a meritless, half-baked attempt to establish a program for utility procurement of pipeline-injected biomethane prior to the Commissions promulgating rules regarding utility procurement of biomethane pursuant to SB 1440. The Proposed Settlement is

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<sup>1</sup> Prepared Direct Testimony of Sam Wade on Behalf of the Coalition for Renewable Natural Gas at p. 13 (emphasis added). NOTE: all references to testimony are to those submitted in this proceeding A.19-02-015.

<sup>2</sup> See for example Direct Testimony of Thomas R. Del Monte, JD/MBA On Behalf Of Wild Tree Foundation at p. 11; Protest of the Sierra Club at p. 11.

only a slightly differently-worded version of the Application agreed to by like-minded parties that cures none of the defects with the project as proposed in the Application.

The Proposed Settlement is not reasonable in light of the whole record, is not consistent with law, and would not be in the public interest. The Application is incomplete as it lacks basic information regarding the cost of the program and the burden it will place on ratepayers. The Proposed Settlement provides no further information regarding cost and actually does not settle the critical issue of whether ratepayers will fund the program. The Proposed Settlement's program would utilize existing RNG sources that have been used as far back as 2012 and out-of-state sources not required to meet the SB 1440 requirements that California's environment benefit for their use.<sup>3</sup> This in no way provides additionality required to demonstrate that use of RNG has actually provided any GHG emission reduction benefits.

Applicants attempt to create a market for waste methane in competition for transportation use would be counterproductive to efforts to decrease waste methane generation, the most effective method for reducing methane emissions. Where methane generation cannot be avoided, the most efficient, cost-effective, and safe use is on-site such as for distributed electricity production and support of onsite commercial vehicles such as garbage trucks and heavy equipment. Onsite use of waste methane eliminates the emissions from leaks in transmission and distribution systems. Sempra Utilities' program would discourage onsite use of waste methane while increasing redundant and unnecessary gas transmission and distribution infrastructure to accommodate biomethane transport from far flung generation sites that nearly universally already have sufficient electrical transmission infrastructure to accommodate onsite power generation with little modification.

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<sup>3</sup> "Utilities will not procure any supplies or attributes from sources contracted before January 1, 2012 to serve RNG Tariff customers."

The Proposed Settlement program would actually exacerbate the problems in the Application regarding lack of supply and high cost. The Proposed Settlement would establish a “pilot” program for at least five years of length to be potentially extended indefinitely based upon an advice letter filing. The initial time limitation on the program and complete lack of demonstrated customer interest means that procurement contracts would be short duration contracts for small amounts. Such contracts would obviously be disfavored by RNG suppliers and would demand a price premium. This would make procurement exceedingly expensive given that contracts for pipeline-injected RNG cannot possibly be competitive with contracts for transportation use that carry greatly increased value due to credits.

The sole substantive difference between the Application and the Proposed Settlement is that there are some claimed limits on the sourcing of biomethane. These “limits” are nothing more than a ruse, designed to create the illusion that anything has actually been settled in the Proposed Settlement. The “limits” do not cure the fact that the proposed biomethane procurement would violate public utilities Code requirements for sourcing in that it would allow for 50-100% out-of-state sourcing without limitation regarding injection into California pipelines or demonstrated benefit to California’s environment. The terms are also written in such a way that they are almost meaningless because in state non-landfill biomethane will undoubtedly be much more expensive than out-of-state, thereby resulting in little to no in-state procurement.

The Sempra Utilities would attempt to trick consumers into accepting increased rates by marketing their program as “green” even though such a program would lay the groundwork to harm the environment, human health, and our climate by discouraging replacement of gas appliances; increasing likeliness of methane leaks in transport instead of onsite use; and frustrate future efforts to decrease methane emissions by creating a market for waste methane and by

diverting biomethane from existing undersupplied and difficult to decarbonize markets of on-site baseload electricity generation and transportation uses. The Proposed Settlement should be denied and the application should be dismissed.

## ARGUMENT

### I. STANDARD OF REVIEW

The Commission can only approve settlements that are “reasonable in light of the whole record, consistent with law, and in the public interest.”<sup>4</sup> The Commission may reject a proposed settlement whenever it determines that the settlement is not in the public interest.<sup>5</sup> This is regardless of whether or not a settlement is contested.<sup>6</sup>

The settlement “[r]esolution shall be limited to the issues in that proceeding and shall not extend to substantive issues which may come before the Commission in other or future proceedings.”<sup>7</sup> Furthermore, adoption of settlement “does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding.”<sup>8</sup>

Parties to a proceeding may contest a proposed settlement by filing comments contesting all or part of the proposal.<sup>9</sup> Wild Tree contest the Proposed Settlement though the filing of these comments in opposition. Where a settlement is contested, as here, the Commission engages in a closer review of the settlement compared to an all-party settlement. “Central to our analysis here, where the proposed settlement is contested, is the relevant objections or concerns of

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<sup>4</sup> Rule 12.1, subd. (d).

<sup>5</sup> Rule 12.4.

<sup>6</sup> Rule 12.1, subd. (d).

<sup>7</sup> Rule 12.1, subd. (a).

<sup>8</sup> Rule 12.5.

<sup>9</sup> Rule 12.2.

opposing parties and the question of whether the settlement agreement provides a negotiated resolution of all the disputed issues.”<sup>10</sup> In reviewing any settlement proposed in this proceeding, the Commission should look to relevant precedents relating to contested settlements affecting a broad public interest.<sup>11</sup> The Commission has long relied upon the factors used by the courts in approving class action settlements in reviewing settlements that affect a broad public interest such as all customers of a utility:<sup>12</sup>

The standard used by the courts in their review of proposed settlements is whether the class action settlement is fundamentally fair, adequate, and reasonable. [Citations omitted.] The burden of proving that the settlement is fair is on the proponents of the settlement. [Citations omitted.] In order to determine whether the settlement is fair, adequate, and reasonable, the court will balance various factors which may include . . . : the strength of applicant’s case; the risk, expense, complexity, and likely duration of further litigation; the amount offered in settlement; the extent to which discovery has been completed so that the opposing parties can gauge the strength and weakness of all parties; the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of class members to the proposed settlement. [Citations omitted.]

In addition, other factors to consider are whether the settlement negotiations were at arm’s length and without collusion; whether the major issues are addressed in the settlement; whether segments of the class are treated differently in the settlement; and the adequacy of representation. [Citations omitted.]<sup>13</sup>

## **II. THE PROPOSED SETTLEMENT IS NOT CONSISTENT WITH LAW**

This Application and Proposed Settlement is presumptive; the Commission should deny this and any other similar applications until it has completed its review pursuant to SB 1440 (as codified in Public Utilities Code sections 650 and 651.) Applicants are attempting an end run

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10 D.16-12-065 at p. 7.

11 D.09-12-045 at p. 33.

12 D.88-12-083; D.09-12-045; D.16-12-065.

13 D.09-12-045 at 33-35, quoting D.88-12-083.



around state law by seeking to increase procurement of biomethane prior to the Commission rulemaking regarding biomethane procurement by the gas utilities. This application is little more than an attempt to evade the requirements of Public Utilities Code section 651 that biomethane eligible for procurement be delivered through a dedicated pipeline or be physically injected into a California common carrier pipeline and/or provide environmental benefit to California. SB 1440, codified in Public Utilities Code section 651 requires the Commission to act regarding biomethane as follows:

(a) The commission, in consultation with the State Air Resources Board, shall consider adopting specific biomethane procurement targets or goals for each gas corporation so that each gas corporation procures a proportionate share, as determined by the commission, of biomethane annually. Prior to establishing biomethane procurement targets or goals, the commission shall make both of the following findings:

- (1) The targets or goals are cost-effective means of achieving the forecast reduction in the emissions of short-lived climate pollutants pursuant to Section 39730.5 of the Health and Safety Code and other greenhouse gases pursuant to Division 25.5 (commencing with Section 38500) of the Health and Safety Code.
- (2) The targets or goals comply with all applicable state and federal laws.

(b) If the commission adopts specific biomethane procurement targets or goals for each gas corporation pursuant to subdivision (a), the commission shall do all of the following:

- (1) Consider the recommendations developed pursuant to Section 39730.8 of the Health and Safety Code.
- (2) Ensure the targets or goals are consistent with the organic waste disposal reduction targets specified in Section 39730.6 of the Health and Safety Code and the regulations adopted pursuant to Section 42652.5 of the Public Resources Code to achieve those targets.

The Commission has not yet opened a proceeding pursuant to section 651 and thus has not made any determinations regarding whether or not it will adopt specific biomethane procurement targets or goals for the gas utilities. Yet, Applicants are attempting to secure Commission approval for a biomethane procurement program now. Applicant's haste is utterly unjustified given that Applicants have stated that "the earliest estimated date that SDG&E can

bill customers on this RNG Tariff rate would be 2022”<sup>14</sup> and the fact that there is no existing certification that could be used for the proposed program.

Moreover, the biomethane procurement program that Applicants are attempting to gain approval for in the Proposed Settlement would be in violation of clear mandates in section 651. The Commission is tasked with ensuring that ensuring that any biomethane targets or goals are consistent with Health and Safety Code section 39730.6 landfill organic waste disposal reduction targets. The Proposed Settlement would seek to create a market for landfill RNG which would frustrate the purpose of the Health and Safety Code section 39730.6 “targets to reduce the landfill disposal of organics.” The Motion explains that up to 75% of procurement would be from landfill RNG:

Procurement for the program has a minimum in-state requirement. SoCalGas will procure at least 50% of RNG Tariff demand from in-state sources, of which at least half is from sources other than landfill gas. The average cost of the in-state RNG supply portfolio is subject to a limit of 200% of the average cost of the total out-of-state portfolio to meet RNG Tariff demand, based on RNG premium over and above index. Average costs shall be the mean price of all contracts used to meet demand within each portion (in-state and out-of-state) of the portfolio. After the first solicitation, if the PAG (see below) determines that in-state non-landfill RNG will be excluded from the procurement, then the PAG can decide to raise the in-state average cost limit up to 250% to accommodate in-state non-landfill supplies. If there are still no qualifying non-landfill offers, the remaining demand will be met with qualifying in-state landfill (up to the 250% average cost limit) until the next solicitation. In the event there are no qualifying in-state landfill offers in any instance, demand will be met with out-of-state RNG until the next solicitation.” (Motion at p. 10.)

This plan would also not meet the section 651 requirement regarding source of biomethane, as explained by Agricultural Energy Consumers Association:

With respect to SB 1440, SoCalGas and SDG&E state only that a voluntary RNG Tariff program will complement any mandatory procurement program adopted pursuant to SB 1440; they do not address the eligibility requirements in SB 1440. SoCalGas and SDG&E admit in a data response that the proposed RNG Tariff would not be bound by the requirements of SB 1440. They also admit that potentially all RNG procurement under

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<sup>14</sup> Direct Testimony of Grant Wooden on Behalf of SDG&E/SoCalGas at p. 13.

the program could be from out-of-state sources, including sources outside the continental United States. [citations omitted]<sup>15</sup>

The Commission is tasked with “ensur[ing] that biomethane eligible for any procurement program” is delivered to California through a dedicated pipeline or is delivered to California through a common carrier pipeline and meets both of the following requirements:

- (i) The source of biomethane injects the biomethane into a common carrier pipeline that physically flows within California, or toward the end user in California for which the biomethane was produced.
- (ii) The seller or purchaser of the biomethane demonstrates that the capture or production of biomethane directly results in at least one of the following environmental benefits to California:
  - (I) The reduction or avoidance of the emission of any criteria air pollutant, toxic air contaminant, or greenhouse gas in California.
  - (II) The reduction or avoidance of pollutants that could have an adverse impact on waters of the state.
  - (III) The alleviation of a local nuisance within California that is associated with the emission of odors.<sup>16</sup>

The Proposed Settlement would have at least 50% of the procured biomethane from outside California. There is little chance that Applicants will be able to procure RNG for pipeline injection in California for significantly less cost than out of state and thus most likely 100% of the biomethane procured for this project will not meet the sourcing requirements. Critically, the out-of-state procurement would like involve gas swaps which are clearly not in compliance with the section 651 requirements. As explained by TURN,

Noting the higher price for in-state supplies, and the fact that only 2 out of 80 operational RNG production facilities are located in California, the Joint Utilities suggest that there may be limited opportunities to rely on in-state sources. For resources located outside the state, procurement would be sourced from “RNG where there is a pipeline pathway flowing to the Applicants’ system.” This condition does not appear to be particularly

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<sup>15</sup> Prepared Direct Testimony Of Michael Boccadoro On Behalf Of Agricultural Energy Consumers Association at pp. 6-7.

<sup>16</sup> Pub. Util. Code, § 651.

meaningful. The applicable ARB rules permit sellers to “swap” RNG at the source of production with conventional natural gas flowing into California. The use of swaps means that the production facility could be located practically anywhere in North America. When asked what RNG facilities could not demonstrate access to a pipeline “pathway” flowing to California, the Joint Utilities could only point to facilities that “do not interconnect not interconnect directly or indirectly to a local distribution pipeline, opting to instead utilize their fuels onsite or for purposes other than pipeline injection.” In other words, the only facilities excluded from eligibility would be those that do not have an ability to inject into any pipeline. [citations omitted]<sup>17</sup>

The use of swaps from far-flung producers would violate the requirements that the RNG be injected into a dedicated pipeline or flow into California and provide California environmental benefits.

Applicants seek here to reopen an undesired loophole closed in AB 2196 due to the “growing concern with RPS eligibility of some pipeline biomethane contracts.”<sup>18</sup> AB 2196 imposed eligibility requirements for biomethane under the RPS program. Legislative analysis explained that: “[I]n many instances, the pipeline biomethane for which an electricity generating facility receives RPS credit never physically receives the biomethane. Rather, the facility receives gas from a pipeline interconnected to the biomethane facility. But the pipeline interconnection may be very indirect, cover a distance of thousands of miles, and carry gas that flows away from California, west to east.”<sup>19</sup> The activity AB 2196 was enacted to prevent in California’s RPS is nearly perfectly analogous to what Applicants propose to create with this application.

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<sup>17</sup> Direct Testimony Of Matthew Freedman On Behalf Of The Utility Reform Network at pp. 4-5.

<sup>18</sup> Testimony of Thomas R. Del Monte, JD/MBA On Behalf Of Wild Tree Foundation

<sup>19</sup> Assembly Floor Analysis of AB 2196, Prepared by: Susan Kateley (September 1, 2012) at p. 2, available at: [https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201120120AB2196](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201120120AB2196).

### **III. THE PROPOSED SETTLEMENT IS NOT REASONABLE IN LIGHT OF THE WHOLE RECORD**

The Settling Parties make no presentation in their Motion for Proposed Settlement Approval (“Motion”) whatsoever regarding the contents of the record. Instead, the Settling Parties argue that the Proposed Settlement is reasonable because “A robust record has been developed on RNG generally, supply sources, potential benefits of the program, verification methodologies, and other topics.”<sup>20</sup> First, there is, at this point, no record in this proceeding – there has not been an evidentiary hearing held and thus parties have only served testimony and so no testimony is currently part of the record. There has also been no legal briefing and thus parties’ positions are also not part of the record.

Secondly, the evidence presented in testimony definitely demonstrates that the Proposed Settlement is not reasonable. The Application is incomplete and has been filed presumptively and the Proposed Settlement does not cure these defects. The program proposed in the Proposed Settlement will not benefit California’s environment or the climate and cost will be born by ratepayers –both those opting into the proposed tariff and those who did not opt in – for a program that will increase costs but does not have the intended net “green” benefits that the program is claims to provide.

#### **A. Application Is Per Se Incomplete**

The Application lacks basic information such as an actual cost estimate for the program. For example, Applicant states, “it is not possible for SDG&E to estimate the costs to implement

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<sup>20</sup> Motion at p. 16.

the RNG Rate in the new billing system at this time, because it has not yet been built”<sup>21</sup> and “actual annual Green-e certification costs are unknown at this time.”<sup>22</sup> The Proposed Settlement does not quantify additional costs it would add such as costs of intervenor’s participating in the Procurement Advisory Group’s bi-weekly meetings or costs to file and litigate all the required Advice Letters.

The Proposed Settlement does not include any further information regarding unknown costs and there are no cost limits established. But, the Proposed Settlement does included allowance for Sempra Utilities to recover any overruns from ratepayers. As explained further below, most of the costs that the Applicant claims are unknown are due to Applicants bringing the application at the wrong time and are thus an inexcusable problem of the Applicants’ own making. The Application is incomplete and should be dismissed as such along with the Proposed Settlement.

The Application and Proposed Settlement are also incomplete in that Applicant has provided no credible information regarding availability or pricing of RNG. Applicants state:

[T]he market for the purchase and sale of RNG is underdeveloped. For example, RNG prices are not tracked and published, leading to a lack of market liquidity. The Utilities believe that mandatory and voluntary utility procurement programs will support the development of a more robust and liquid RNG market.<sup>23</sup>

In responses to date request question “Provide any analysis SoCalGas or SDG&E has done regarding availability and pricing of existing RNG supplies, including source location,”

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<sup>21</sup> Prepared Direct Testimony Of Grant Wooden On Behalf Of Southern California Gas Company And San Diego Gas & Electric Company at p. 13.

<sup>22</sup> *Id.* at p.14.

<sup>23</sup> Prepared Direct Testimony Of Tanya Peacock On Behalf Of Southern California Gas Company And San Diego Gas & Electric Company at p. 5.

Applicant stated, “No such analysis has been done for the Green Tariff program yet.”<sup>24</sup> No information regarding price was provided by the Applicant until its second supplemental testimony whereby it claimed, based upon a blatantly results-oriented and self-serving set of assumptions, that there will be a commodity cost per therm of \$3.00. The Public Advocated Office (“CalAdvocates”) response to this testimony explains why this guesstimate is entirely lacking credibility:

The Applicants state that “[t]he amount of RNG required to meet the...demands for each segment [was calculated] with a commodity cost per therm of \$3.00.” The Applicants note that \$3.00 was chosen as the benchmark because, at that price, volunteers at the lowest subscription level could displace roughly 10% of their natural gas usage volume with RNG. For purposes of these calculations this subscription tier is placed at \$10, but this is a variable assumption subject to the Applicants’ discretion, as they have not decided what the subscription levels will be and may change them to optimize program participation. Whether or not the \$3.00 per therm commodity cost assumption is accurate or achievable based on real RNG procurement prices remains unclear due to a lack of RNG pricing data. The Applicants have not made a request for offers from RNG suppliers and no other concrete pricing information has been made available in this proceeding. Further, the Applicants stated in testimony that an advantage of the RNG Tariff program will be to develop RNG market information because currently “RNG prices are not tracked and published.” Because the proposed RNG Tariff program would allow volunteers to choose a dollar amount to spend, rather than a volume of RNG to purchase, the utilities’ RNG procurement price from suppliers would determine the volume of RNG associated with a customer volunteer’s predetermined monthly spend. The Applicants’ assumed \$3.00 per therm commodity cost is not supported by actual evidence. If this is not a realistic assumption, then \$10 per month would not displace roughly 10% of a participant’s natural gas service with RNG, which in turn raises questions regarding SoCalGas’ participation assumption, that customers would be willing to participate at \$10 per month for a 10% displacement. By linking multiple assumptions together in the consumption calculation, the \$3.00 per therm commodity cost becomes critical in determining revenues from the Program Charge. [citations omitted]<sup>25</sup>

CalAdvocates’ points here about the fatal weaknesses of the Applicant’s cost assumptions remain salient regardless of CalAdvocate’s later decision to partially join the

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<sup>24</sup> Public Advocates Office Prepared Testimony at Appendix C - Applicant Response to Public Advocates Office Data Request 1, Question 8.

<sup>25</sup> Public Advocates Office Rebuttal to Second Supplemental Testimony at pp. 3-5.

contested Proposed Settlement. An additional aspect of Applicants' cost assumptions and modeling that also demands recognition is that Applicants have withheld what information they do have on actual expected RNG from the Commission and intervenors. Applicants' have even gone so far as to violate the Commission's discovery standards by claiming there has been no analysis on RNG availability, pricing, and existing RNG supplies, when Applicants' admit elsewhere that they have generated materially relevant analysis on the subject. Specifically, as described above, Applicants provided no information in response to data request for "any analysis SoCalGas or SDG&E has done regarding availability and pricing of existing RNG supplies, including source location."<sup>26</sup> While CalAdvocates' appear to have accepted Applicants' feigned ignorance, the Application clearly states that they have "conducted a request for offers for [to procure RNG], received several offers, and is in the process of evaluating RNG supply options. Knowledge developed by engaging with RNG suppliers and understanding the impact of the LCFS and RFS programs on RNG supply provides valuable insight into the RNG market and available supplies for this RNG Tariff."<sup>27</sup> A request for offer necessarily includes a pricing and availability information, it is unreasonable to assume that Applicants have not done any material and relevant analysis on the responses they received from their RFO and continued engagement with the RFO respondents.

Based upon Applicants' failure to provide any such analysis they have clearly have when Applicants had a legal duty to produce such evidence, the Commission should assume that such analysis is contrary to the related assertions made in its Application and Proposed Settlement.

For instance, the Commission should assume that the respondent bids to the RNG RFO revealed

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<sup>26</sup> Public Advocates Office Prepared Testimony at Appendix C - Applicant Response to Public Advocates Office Data Request 1, Question 8.

<sup>27</sup> Prepared Direct Testimony Of Andrew Cheung On Behalf Of Southern California Gas Company And San Diego Gas & Electric Company at p. 2.



that the prices were too high and the availability was too scarce to support Applicants' proposed program.

## **B. Application Is Presumptive**

There is no merit to the Application and it should be denied with prejudice but, even if there were ever an appropriate time to file this application, it is not now. As described above, Applicant is attempting to circumvent Commission regulations to be promulgated in a future rulemaking instituted pursuant to SB 1440. For example, Applicant testifies that "SoCalGas is proposing a voluntary RNG tariff to provide customers an opportunity to purchase RNG above any potential baseline requirement that might be established by SB 1440."<sup>28</sup> This wrongly assumes that the Commission will establish targets<sup>29</sup> and that such targets will be set at levels where it would be reasonable to pursue RNG pipeline injection for building decarbonization. Such assumptions are invalid particularly in the face of the determinations made by the state that RNG is not a good tool for building decarbonization.

The CEC has determined that there is not enough waste methane to displace natural gas in buildings.<sup>30</sup> The CEC *decreased* reliance of waste methane in its most recent update to its Deep Decarbonization in a High Renewables Future explaining, "reduced dependence on

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<sup>28</sup> Prepared Direct Testimony Of Tanya Peacock On Behalf Of Southern California Gas Company And San Diego Gas & Electric Company at p. 3.

<sup>29</sup> SB 1440 only requires that the Commission "consider" establishing targets. The Commission is not required to establish targets if the Commission finds that the targets are inappropriate.

<sup>30</sup> CEC, *Deep Decarbonization in a High Renewables Future, Updated Results from the California PATHWAYS Model* (June 2018) at p. 33, available at <http://www.energy.ca.gov/2018publications/CEC-500-2018-012/CEC-500-2018-012.pdf>

biofuels in the High Electrification scenario is intended to reduce environmental risk, as well as cost risk.”<sup>31</sup>

RNG is not included in any fashion in the Commission’s implementation of building decarbonization BUILD Program and TECH Initiative pilot programs pursuant to SB 1477.<sup>32</sup> The joint Commission/CEC *Proposal for Building Decarbonization Pilots – Draft In compliance with SB 1477 (2018) and with CPUC R.19-01-0111*, over the objection of SoCalGas, did not include RNG as a building decarbonization method.<sup>33</sup> The Proposal states, “Building Decarbonization Coalition pointed out a study conducted by Energy Commission on renewable natural gas to learn how much renewable gas can be produced in California. It showed that production of RNG in CA will not meet the demand necessary to meet the 2030 goals and the cost would be high.”<sup>34</sup> The Applicant’s attempt at some clever wordsmithing<sup>35</sup> regarding SB 1440 provide no grounds for filing of this application prior to the Commission completing its rulemaking regarding biomethane procurement.

Additionally, the timing of this application is wrong given that the proposed program could not begin until at least 2022 and the fact that there is no existing certification for RNG sources even though the Proposed Settlement relies upon the existence of such a certification:

The procured RNG will be verified in several ways. Utilities will retain an independent third-party verification company to verify that the RNG carbon intensity information provided by the RNG suppliers is consistent with the GREET methodology used by

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<sup>31</sup> *Id.* at p. 46.

<sup>32</sup> D. 20-03-027.

<sup>33</sup> California Public Utilities Commission and California Energy Commission, *Proposal for Building Decarbonization Pilots – Draft In compliance with SB 1477 (2018) and with CPUC R.19-01-0111* (July 16, 2019) at pp. 15-16, available at: <https://www.cpuc.ca.gov/WorkArea/DownloadAsset.aspx?id=6442462255>.

<sup>34</sup> *Ibid.*

<sup>35</sup> *See, for example*, Prepared Direct Testimony Of Tanya Peacock On Behalf Of Southern California Gas Company And San Diego Gas & Electric Company at 3, 4, 6.

CARB to verify fuel pathways. Utilities will also use a third-party independent verifier to confirm the RNG supplies meet MRR and Cap-and-Trade regulations.<sup>36</sup>

There is no reliable, independent, third party-administered system that currently exists and so any claimed reliance on such a system, to be developed at some unspecified future date, is purely speculative. Applicant has provided insufficient information about its plans for independent, third party verification of the RNG sources it plans to use. The Motion and Proposed Settlement do not address certification any further than to state that “SoCalGas and SDG&E estimate they will each incur annual Green-e or equivalent program certification fees of \$25,000 annually.”<sup>37</sup>

The RNG Coalition testimony claims, “In the voluntary space, a creditable system to track and retire the environmental benefits associated with RNG is being developed by the Midwest Renewable Energy Tracking System (M-RETS) and certification aligned with that tracking will soon be offered by Green-E.”<sup>38</sup> There are no current tracking programs that can be used for the proposed green tariff and so any claims regarding such systems are speculative. Applicant has not indicated that it will use the M-RETS and California does not participate in this system for compliance markets and it will not determine eligibility for state or voluntary programs.<sup>39</sup>

Furthermore, the claim that the Green-E system can provide a credible tracking system is questionable. The Green-E program is being developed by Center for Resource Solutions. SoCalGas is a member of the Center for Resource Solutions Green-e Renewable Fuels Working

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<sup>36</sup> Motion at p. 11.

<sup>37</sup> Proposed Settlement at p. 10.

<sup>38</sup> Prepared Direct Testimony of Sam Wade on Behalf of the Coalition for Renewable Natural Gas at pp. 9-10.

<sup>39</sup> M-RETS Website, <https://www.mrets.org/about/mission-vision-values/> [as of October 31, 2019].

Group and made a donation of \$25,000 to support the development of the Green-e Renewable Fuels certification.<sup>40</sup> The Green-e Renewable Fuels certification development is otherwise funded by other gas utilities that have or are pursuing tariffs for RNG or companies that would benefit substantially from such tariffs.<sup>41</sup> “The Working Group are the funders that are helping to advance clean energy development and the availability of environmental commodities, while ensuring market integrity. Without this assistance, our work would not be possible.”<sup>42</sup>

In addition, SoCalGas and SDG&E each paid \$25,000 to the Center for Resource Solutions as sponsors of its 2019 Renewable Energy Markets Conference. A captured working group and \$75,000 in donations to the non-profit that is developing what is supposed to be an independent, 3<sup>rd</sup> party certification system calls into question the impartiality of the developer and system it is developing.

### **C. The Record Demonstrates that the Proposed Settlement is Not Reasonable**

As discussed further below, Applicant has not met its burden of proof of demonstrating that the proposed settlement is reasonable because undefined and potentially large costs will be born by non-volunteer ratepayers, scarcity of RNG resources and limitations of cost make the

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<sup>40</sup> Rebuttal Testimony Of Thomas R. Del Monte, JD/MBA on Behalf Of Wild Tree Foundation at Appendix A - Response to Wild Tree Foundation Data Request #3 to SoCalGas/SDG&E (October 25, 2019).

<sup>41</sup> *Ibid.* For example, see DTE Website, *BioGreenGas*, <https://newlook.dteenergy.com/wps/wcm/connect/dte-web/home/service-request/residential/renewables/biogreen-gas> [as of October 31, 2019]; Vermont Gas Website, *VGS Renewable Natural Gas*, <https://www.vermontgas.com/renewablenaturalgas/> [as of October 31, 2019]; Maas Energy Works, <https://www.maasenergy.com/> [as of October 31, 2019] (“Maas Energy Works celebrates as the Calgren Dairy Fuels digester pipeline cluster begins injecting R-CNG into the SoCalGas Utility Pipeline! MEW serves as the lead Developer of this project and we are very excited about achieving this incredible milestone.”)

<sup>42</sup> Center for Resource Solutions, *Green-e Renewable Fuels FAQs*, <https://www.green-e.org/programs/renewable-fuels/faq>.

program unrealistic, and because it will not serve to create a market for any new pipeline-injected RNG as claimed but will instead cause harm to ratepayers and our climate.

#### **IV. THE PROPOSED SETTLEMENT IS NOT IN THE PUBLIC INTEREST**

There is no argument in the Proposed Settlement regarding compliance with the standards set by the Commission in evaluating public interest of contested settlements. The contested Proposed Settlement addresses public interest as follows:

Moreover, nothing in the Settlement Agreement would jeopardize the public interest. The Settlement Agreement is the product of over four months of negotiations, including roughly eight group meetings and numerous emails and phone calls. The Settling Parties negotiated in good faith over this time, applying their expertise and collective judgment to a fulsome record. The Commission should find the Settlement Agreement to be in the public interest.

The Settlement Agreement, if adopted by the Commission, avoids the cost of further litigation, and frees up Commission and Settling Parties' time and resources to focus on other proceedings.<sup>43</sup>

Numerous emails and phone calls and supposed good faith negotiation are not factors that determine whether a settlement is in the public interest. Wild Tree provides the following analysis of some of “class action” factors considered by the Commission when reviewing proposed settlements.<sup>44</sup> The Proposed Settlement does not withstand such scrutiny and is demonstrated as not fundamentally fair, adequate, and reasonable and, therefore, not in the public interest.

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<sup>43</sup> Motion at p. 18.

<sup>44</sup> See D.09-12-045 at 33-35, quoting D.88-12-083.

## **A. Strength of Applicant's Case**

### **1. Applicants Have Not Demonstrated That the Proposed RNG Tariff Will Reduce GHG Emissions**

In considering this Application and Proposed Settlement, the Commission must consider, first and foremost, the fact that fossil natural gas utilization will and must drastically decline in California if our state is to meet its climate policies, leaving stranded and useless much of the natural gas infrastructure assets. The contraction of natural gas systems are inevitable and the Commission must be mindful of not wasting ratepayer money building out a system whose useful life will soon come to an end. The Proposed Settlement is calculated to provide justification for continued and/or increased ratepayer funded investment into natural gas infrastructure that will ultimately become largely stranded assets due to the necessary decline in fossil natural gas use.

Pipeline-injected RNG is not a cost effective GHG emission reduction strategy. As Wild Tree's testimony and other intervenor witnesses testimony demonstrates, the scarcity, lack of scalability, and excessive cost of RNG pipeline injection makes RNG swapping for building decarbonization bad policy.<sup>45</sup> RNG does not have any significant role to play in building decarbonization efforts in California because it is not abundant enough, costs too much, and lacks benefits such as improvement of indoor air quality and increase in public safety that other measures provide.

Pipeline injected RNG is not a cost-effective strategy for building decarbonization and such use diverts limited resources away from hard-to-electrify cases such as heavy truck

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<sup>45</sup> See, for example, Direct Testimony Of Thomas R. Del Monte, JD/MBA On Behalf Of Wild Tree Foundation at p. 11; Protest of the Sierra Club at p. 11.

transportation fuel, methane consuming industries, and renewable baseload capacity.<sup>46</sup> CARB's 2017 Scoping Plan, Table 10<sup>47</sup> provides an apple-to-apples comparison with the metric of \$/ton GHG for each GHG emission reduction strategy considered.<sup>48</sup> By far, pipeline RNG is the most costly GHG emission reduction strategy of those studied: \$1500/ton GHG is many times more expensive than other non-biomass related measures that range from -\$350/ton to \$350/ton. The exorbitant cost alone of the proposed policy pathway should compel the Commission to reject Applicant's proposal as not being just or reasonable.

Electrification paired with energy efficiency and behind the meter solar PV provides the best method to decarbonize buildings.<sup>49</sup> As noted in the 2018 IEPR Update, "There is a growing consensus that building electrification is the most viable and predictable path to zero-emission buildings."<sup>50</sup> More recent and on-point studies by Gridworks and E3 that compare the social and economic costs of achieving deep decarbonization pathways have also concluded that electrification is preferable over RNG building utilization as the lowest cost economy wide option.<sup>51</sup> As described above, the CEC and Commission do not recommend pipeline-injected RNG as a tool to decarbonize buildings. As the CEC stated in its 2018 Integrated Energy Policy

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<sup>46</sup> Rebuttal Testimony Of Thomas R. Del Monte, JD/MBA On Behalf Of Wild Tree Foundation at p. 5.

<sup>47</sup> CARB, *California's 2017 Climate Change Scoping Plan* (November 2017) at p. 46, available at <https://ww3.arb.ca.gov/cc/scopingplan/scopingplan.htm>.

<sup>48</sup> Rebuttal Testimony of Thomas R. Del Monte, JD/MBA On Behalf Of Wild Tree Foundation at p. 4.

<sup>49</sup> Direct Testimony of Thomas R. Del Monte, JD/MBA On Behalf Of Wild Tree Foundation at p. 11.

<sup>50</sup> Final 2018 Integrated Energy Policy Report Update Volume II at p. 20.

<sup>51</sup> See Gridworks, *California's Gas System in Transition: Equitable, Affordable, Decarbonized, and Smaller*, available at <https://gridworks.org/initiatives/cagas-system-transition/>; Energy and Environmental Economics, Inc., *Long-Run Resource Adequacy under Deep Decarbonization Pathways for California* (June 2019) available at: [https://www.ethree.com/wp-content/uploads/2019/06/E3\\_Long\\_Run\\_Resource\\_Adequacy\\_CA\\_Deep-Decarbonization\\_Final.pdf](https://www.ethree.com/wp-content/uploads/2019/06/E3_Long_Run_Resource_Adequacy_CA_Deep-Decarbonization_Final.pdf).

Report Update, “There is a growing consensus that building electrification is the most viable and predictable path to zero-emission buildings.”<sup>52</sup>

An electrification pathway requires substantial energy efficiency retrofits for existing building stock, enhanced energy efficiency standards for new construction, and the implementation of technology in home and water heating, all of which will require considerable investment to be accomplished to scale.<sup>53</sup> Updates to the Title 24 Building Code have moved new constructions in the right direction in regards to efficiency and rooftop solar and implementation of SB 1477 will provide opportunities for innovation and market growth of low-carbon heating technologies.<sup>54</sup> An RNG building decarbonization pathway would displace only finite volumes of fossil natural gas in existing distribution systems, is very expensive, and lacks the capacity to scale.<sup>55</sup>

The only source that the Applicant cites for its proposition that “RNG can help reduce GHG emissions from energy use in buildings and provide an alternative to all electric buildings so Californians are not dependent on a single fuel source”<sup>56</sup> is a report by the Energy Futures Initiative (“EFI”).<sup>57</sup> First, SDG&E and SoCalGas are both sponsors of this report, making its value limited. But, more importantly, the Applicant greatly overstates the conclusions of the report.<sup>58</sup> EFI’s analysis concludes that the by 2030, RNG could provide less than 10% of the

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<sup>52</sup> CEC, Final 2018 Integrated Energy Policy Report Update Volume II (2018) at p. 28, available at: [https://ww2.energy.ca.gov/2018\\_energypolicy/](https://ww2.energy.ca.gov/2018_energypolicy/).

<sup>53</sup> Direct Testimony of Thomas R. Del Monte, JD/MBA On Behalf Of Wild Tree Foundation at p. 11.

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*

<sup>56</sup> <sup>56</sup> Prepared Direct Testimony Of Tanya Peacock On Behalf Of Southern California Gas Company And San Diego Gas & Electric Company at p. 2.

<sup>57</sup> Supplemental Testimony (SoCalGas/SDG&E) at pp. 3-4.

<sup>58</sup> Direct Testimony of Thomas R. Del Monte, JD/MBA On Behalf Of Wild Tree Foundation at pp. 12-13.



building sector's gas demand in 2030.<sup>59</sup> And even this estimate of "potential availability" is qualified by concerns regarding the long term viability of RNG due to limited market supply and high cost.<sup>60</sup> EFI adds that, "An additional economic issue is that RNG use is contingent on the existing natural gas infrastructure. As that infrastructure continues to age, costly upgrades, maintenance, and repairs will become necessary. At the same time, declining natural gas throughput because of energy efficiency and electrification have contributed to gas price increases for most customer classes in the last five years. With California's ambitious decarbonization efforts, it is likely that this trend will continue. The combination of these factors creates economic risk for the RNG pathway."<sup>61</sup> Adopting an RNG strategy alongside an electrification risks driving up costs and ultimately slowing the pace of decarbonization in the building sector.<sup>62</sup> Applicants have not shown that RNG is a viable building decarbonization strategy or that it can in any other way serve to decrease GHG emission.

The Proposed Settlement program is fraught with numerous deficiencies that call into serious question the efficacy of the proposed program in reducing global GHG emissions, much less emissions in California. Without demonstrated additionality there are, by definition, no verifiable GHG benefits. Defects are particularly likely when credits are claimed for projects that already exist; the Proposed Settlement would utilize sources established as far back as 2012 thereby providing no additionality and no GHG emission reduction benefits. The RNG Coalition's argument that existing projects need subsidies in addition to the current subsidies

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<sup>59</sup> Energy Futures Initiative, Pathways for Deep Carbonization in California (May 2019) at p. 179, available at: [https://energyfuturesinitiative.org/s/EFI\\_CA\\_Decarbonization\\_Full-b3at.pdf](https://energyfuturesinitiative.org/s/EFI_CA_Decarbonization_Full-b3at.pdf);

<sup>60</sup> *Id.* at p. 180

<sup>61</sup> *Ibid.*

<sup>62</sup> Direct Testimony of Thomas R. Del Monte, JD/MBA On Behalf Of Wild Tree Foundation at pp. 12-13.

they enjoy to continue operation is unconvincing.<sup>63</sup> Further, allowing inclusion of existing facilities magnifies the risk of fraudulent and uneconomic behavior by the project proponents by incentivizing them to make their project appear uneconomic but for the new incentive, when the project economics are or would be healthy if run efficiently.

## 2. This Program Will Not Create a Market for Pipeline-Injected RNG

Based on the limitations feedstock production, RNG will always be a local product produced at local scale and there will never be sufficient supply of RNG to replace natural gas.<sup>64</sup>

Applicants claim there is “104 to 208 BCF/year of total RNG supply potential in California.”<sup>65</sup>

Even granting the *technical* potential is achieved after numerous years and billions of incentive dollars, the best case of California produced RNG potential is offsetting 4.927% to 9.953% of California’s 2017’s 2,111 BCF/year<sup>66</sup> fossil natural gas usage. The California situation is similar to the national case in that available biogas feedstocks in the United States are only sufficient to produce enough RNG to replace 4-10% of existing distributed fossil natural gas demand.<sup>67</sup>

These extreme limitations of the impact of RNG for a fossil natural gas offset calls into question the value of the advancing policy in this direction further than that which is legally required.

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<sup>63</sup> Prepared Direct Testimony of Sam Wade on Behalf of the Coalition for Renewable Natural Gas at pp. 7-8.

<sup>64</sup> Direct Testimony of Thomas R. Del Monte, JD/MBA On Behalf Of Wild Tree Foundation at p. 3.

<sup>65</sup> Prepared Direct Testimony Of Andrew Cheung On Behalf Of Southern California Gas Company And San Diego Gas & Electric Company at p. 1.

<sup>66</sup> U.S. Energy Information Administration, *Natural Gas Consumption by End Use*, [https://www.eia.gov/dnav/ng/ng\\_cons\\_sum\\_dcu\\_SCA\\_a.htm](https://www.eia.gov/dnav/ng/ng_cons_sum_dcu_SCA_a.htm).

<sup>67</sup> American Gas Foundation, *The potential for renewable gas: Biogas derived from biomass feedstocks and upgraded to pipeline quality* (2011), available at: <https://www.eesi.org/files/agf-renewable-gas-assessment-report-110901.pdf>.

Importing more RNG from out-of-state resources may be able to up the fossil natural gas offset numbers a bit. However, in the out-of-state import case, the GHG benefits *gained* using the RNG in California are the same potential GHG benefits *lost* by the non-California jurisdiction importing the RNG, plus all the inefficiencies added for transportation and the required upgrading.<sup>68</sup>

Further, there are widely divergent estimates as to supply potential of RNG in California but there is agreement as to the fact that the amount of economically feasible RNG potential is much lower than that technically available.<sup>69</sup> The CEC explains in the 2017 Integrated Energy Policy Report (“2017 IEPR”) that “Economic potential refers to what is actually commercially viable when factoring in economies of scale of transporting the resource to market, cleaning and processing it, and myriad other associated requirements.”<sup>70</sup> The 2017 IEPR relies upon analysis from University of California, Davis that estimates 82 BCF/year of economically feasible RNG potential in California where the RNG can be sold for less than the net cost of fossil natural gas.<sup>71</sup> But, this assumes a natural gas market price of \$3/MMBtu, Low-Carbon Fuel Standard credit price of \$120 per metric ton of carbon dioxide equivalent (MT-CO<sub>2</sub>e), and a renewable identification number (“RIN”) credit price of \$1.78 per D3 RIN.<sup>72</sup> Without the added value of the credits, there is no economically feasible RNG because its price is much greater than natural gas. For example, as the CEC explains, “CARB’s SLCP Reduction Strategy (March 2017)

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<sup>68</sup> Direct Testimony of Thomas R. Del Monte, JD/MBA On Behalf Of Wild Tree Foundation at p. 4.

<sup>69</sup> CEC, *2017 Integrated Energy Policy Report* (February 2018) at p. 254, available at: [https://ww2.energy.ca.gov/2017\\_energypolicy/](https://ww2.energy.ca.gov/2017_energypolicy/) (“2017 IERP”).

<sup>70</sup> 2017 IEPR at p. 250.

<sup>71</sup> *Id.* at p. 252

<sup>72</sup> *Ibid.*

includes an assessment of different renewable gas end uses for different dairy operations. No modeled project was revenue positive in the absence of LCFS and RIN credits.”<sup>73</sup>

The Applicants have not demonstrated that their proposed RNG tariff will result in growth of the market for RNG in California. While the Proposed Settlement might seem, at first blush, to guarantee that 50% of the procurement will be in-state, sourcing RNG from California would not be economical at the voluntary tariff levels Applicants envision. The Applicants have insisted that it “must” be able to source RNG from out of state and even from out of country.<sup>74</sup> This is not surprising because all of California potential supply is already being sold into the higher value transportation market with no signs of slowing down.<sup>75</sup>

The production of renewable natural gas for transportation fuel is the primary RNG market driver today.<sup>76</sup> But in its RNG tariff, Applicants would specifically not be providing transportation fuel eligible for the credits. In the 2017 IEPR, the CEC explains the low value of such pipeline injected RNG: “Two independent studies carried out by the University of California, Davis, and ICF International concluded that existing government policies (with some modifications) could support the substantial growth of renewable gas, particularly as a transportation fuel. Both studies noted that renewable gas production can generate up to four times the revenue for transportation fuel use compared to electricity from the same renewable gas sources because of the monetary value of credits generated from the federal Renewable Fuels Standard and California Low Carbon Fuel Standard for renewable transportation fuels.”<sup>77</sup> A market is not going to develop based upon Applicants’ offers to purchase RNG for a much lower

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<sup>73</sup> 2017 IEPT at p. 270.

<sup>74</sup> Supplemental Testimony (SoCalGas/SDG&E) at p. 7.

<sup>75</sup> Direct Testimony of Thomas R. Del Monte, JD/MBA On Behalf Of Wild Tree Foundation at p. 5.

<sup>76</sup> Direct Testimony of Thomas R. Del Monte, JD/MBA On Behalf Of Wild Tree Foundation at p. 6.

<sup>77</sup> 2017 IEPR at p. 11.

price especially given the poor reputation and credit ratings of California's investor owned utilities.

The Applicants' claims that they will be able to convince RNG producers to accept lower prices based upon the advantages of contracting with an investor owned utility. "In general, suppliers/producers place a premium on contracts with a credit-worthy counterparty, longer contract terms and minimum delivery requirements. As a result, Gas Acquisition expects that RNG suppliers will be more likely to accept a pricing structure that discounts the incentives available in the transportation sector in return for the advantages of contracting with an investor-owned utility."<sup>78</sup> First, this assumes that current contracts for RNG as transportation fuel do not provide favorable terms for producers. In fact, transportation-specific biogas projects are a viable, financially attractive investment for financiers, investors, and developers.<sup>79</sup> Secondly, California investor owned utilities are not necessarily credit-worthy and have a deservedly poor reputation and so there is no reason to believe that contracting with such an entity will be preferable. SDG&E and Sempra are both currently rated Baa1 by Moody's<sup>80</sup>, defined as "medium-grade and subject to moderate credit risk and as such may possess certain speculative characteristics."<sup>81</sup> SoCalGas is rate A1, "upper-medium grade and are subject to low credit risk" but has a negative outlook due to its credit metrics, causing the biggest methane leak in United States history at Aliso Canyon, and "heightened regulatory and political uncertainty for all

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<sup>78</sup> Prepared Direct Testimony Of Andrew Cheung On Behalf Of Southern California Gas Company And San Diego Gas & Electric Company at p. 3.

<sup>79</sup> Direct Testimony of Thomas R. Del Monte, JD/MBA On Behalf Of Wild Tree Foundation at p. 6.

<sup>80</sup> Moody's, *San Diego Gas and Electric Ratings*, <https://www.moodys.com/credit-ratings/San-Diego-Gas-Electric-Company-credit-rating-657000>; Moody's, *Sempra Energy Ratings*, <https://www.moodys.com/credit-ratings/Sempra-Energy-credit-rating-600046021>.

<sup>81</sup> Moody's, *Rating Symbols and Definitions*, <https://www.moodys.com/Pages/amr002002.aspx>.

utilities operating in California.”<sup>82</sup> PG&E, of course, is rated as junk. There is no reason to believe that there are any “advantages” to contracting with investor owned utilities that will incent producers to accept a lower price for RNG than that is already available in the transportation fuel market. Such a scenario will not result in growth of RNG market in California.

Even if the proposed program would grow a market for pipeline-injected RNG as Applicant’s claim, there is no benefit to growing a market for pipeline injected RNG gas in competition with transportation utilized RNG and there is likely harmed caused by diverting RNG from onsite use for distributed electricity generation or truck and equipment fueling.<sup>83</sup> As the CEC explains, “Analyses indicate that renewable gas end use as a transportation fuel in natural gas vehicles should be prioritized since it provides the most cost-effective GHG emissions reductions with modest capital costs.”<sup>84</sup>

There are two insurmountable barriers to the pipeline injection of RNG use being economic in anything except fringe cases.<sup>85</sup> First, pipeline injected methane cannot compete with transportation use both economically and logistically. As discussed above, credits available for transportation RNG make it far more valuable than pipeline injected RNG. Logistically, pipeline injected RNG lacks the ready-made market for transportation RNG at generation sites.

Due to a current lack of electric powered options for the California’s fossil diesel fleet, it is widely recognized that compressed fossil natural gas or compressed RNG is the most practical

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<sup>82</sup> Moody’s, *Moody’s Affirms Southern California Gas at A1, Changes Outlook to Negative*, [https://www.moody.com/research/Moodys-affirms-Southern-California-Gas-at-A1-changes-outlook-to-PR\\_401174](https://www.moody.com/research/Moodys-affirms-Southern-California-Gas-at-A1-changes-outlook-to-PR_401174).

<sup>83</sup> Direct Testimony of Thomas R. Del Monte, JD/MBA On Behalf Of Wild Tree Foundation at p. 8.

<sup>84</sup> 2017 IEPR at p. 271.

<sup>85</sup> Direct Testimony of Thomas R. Del Monte, JD/MBA On Behalf Of Wild Tree Foundation at p. 8.

transportation fuel alternative. To put this in perspective, there was approximately 4.2 billion gallons of diesel fuel sold in California in 2015.<sup>86</sup> This equates to approximately 566 BCF/year of RNG, more than enough to absorb most, if not all, of California's potential RNG production. The vast majority of biogas feedstock that is biologically or thermally converted into RNG are moved by trucks and onsite heavy equipment - whether it is from trucks hauling food waste from city centers to landfills or trucks hauling grain and hay to cow feedlots where the manure methane can be captured in anaerobic digestion systems. The daily traffic of truck coming and going to biogas generation sites creates a ready-made market for transportation use at these locations.

Diverting potential RNG production away from a market with no current viable renewable alternative to use RNG in the building sector which has numerous other decarbonization options does not make sense. As such, RNG will never be a scalable decarbonization strategy for natural gas systems in the building sector.<sup>87</sup>

The second natural barrier to pipeline injection of RNG is the location of where biogas and biomethane are produced compared to where natural gas pipelines currently exist. For example, most landfills are located far outside the city boundaries not near an existing natural gas line. However, nearly all have a power line or two already servicing buildings and outhouses on the property. Following animal agriculture and landfills, the third largest contributor to methane emissions in California is leaks from transmission and distribution of natural gas.<sup>88</sup> Leakage of methane at all points along the RNG life cycle can completely erase any claimed

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<sup>86</sup> CEC, *Diesel Fuel Data, Facts, and Statistics*, [https://ww2.energy.ca.gov/almanac/transportation\\_data/diesel.html](https://ww2.energy.ca.gov/almanac/transportation_data/diesel.html).

<sup>87</sup> Direct Testimony of Thomas R. Del Monte, JD/MBA On Behalf Of Wild Tree Foundation at p. 9.

<sup>88</sup> 2017 IEPR at p. 247.

GHG emissions reductions.<sup>89</sup> Onsite use of RNG eliminates the emissions caused by leakage in transport and storage, including pipeline leakage.<sup>90</sup>

### **B. The Risk, Expense, Complexity, And Likely Duration Of Further Litigation And Stage Of The Proceeding**

The standard for considering litigation risks associated with approving a contested settlement is whether settlement would be better for ratepayers versus litigating to conclusion the Application. While Applicant makes much of supposed avoidance of litigation, this proceeding is at an advanced stage with only evidentiary hearing, which may or may not be held, and legal briefing remaining. This proceeding has not been protracted and the record will be closed and submitted for a decision without a great amount of additional effort by the parties.

### **C. Whether The Settlement Negotiations Were At Arm's Length And Without Collusion**

In this case, settlement negotiations were not at arm's length because the settlement represents a consensus among like-minded parties and will not produce a genuine resolution of the issues. Settlements are not intended to represent such consensus:

While we encourage parties to pursue settlement as a potential alternative to protracted disputes, we find that the outcome of this settlement process did not produce a genuine resolution of the issues. Rather than being the product of an arms-length process, the Settlement Agreement appears to represent a consensus among like-minded thinkers. Indeed, we are hard pressed to find any concessions given up in exchange for the settlement terms by any signatory to the agreement. This is particularly problematic where, as is the case here, the Settlement Agreement sponsors do not represent all

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<sup>89</sup> World Resources Institute, *The Production and Use of Renewable Natural Gas as a Climate Strategy in the United States* (April 2018) at pp. 15-17, available at: <http://www.wri.org/publication/renewable-natural-gas>.

<sup>90</sup> *Id.* at p. 17.



affected interests, and the Settlement Agreement lacks the support of any of the parties that are ratepayer advocates. We therefore conclude that the Settlement Agreement does not meet the standard for contested settlements set forth in D.09-12-045.<sup>61</sup>

Applicant inaccurately describes the settlement as some sort of grand compromise between adversaries:

Here, a broad group of active parties representing nearly every interest in the proceeding have joined this motion and have signed the attached Settlement Agreement indicating that they believe the agreement represents a reasonable compromise of their respective positions and is in the public interest. In addition to the Applicants, the Settling Parties include customer advocates (Public Advocates and AECA), one of the world's largest environmental organizations (EDF), representatives from different parts of the RNG industry (RNG Coalition and BAC), and a CTA representative (SFE Energy).<sup>91</sup>

AECA, RNG Coalition, BAC, and SFE Energy will all benefit personally from the Proposed Decision and are like-minded parties. EDF's advocacy in this case was never adversarial instead providing only tweaks to a program that EDF never objected to. Public Advocates Office did provide testimony in opposition to aspects of the project but was not averse to the project, having itself, proposed a pilot project. CalAdvocates testified, "Based upon the information provided, the Public Advocates Office recommends that if the Commission ultimately approves the Applicants' proposal for a voluntary RNGT program, then the Commission should approve the program as a limited two-year pilot. A pilot RNGT program would allow Applicants and the Commission the opportunity to assess the feasibility of utility-scale RNG procurement as an option for ratepayers wishing to lower the greenhouse gas impact of their gas service."<sup>92</sup>

Regardless, CalAdvocates is a not truly a full party to the Proposed Settlement because it has not joined in a key aspect of the settlement regarding whether ratepayers or shareholders will have to

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<sup>91</sup> Motion at p. 18.

<sup>92</sup> Public Advocates Office Prepared Testimony at p. 2.

pay for the stranded costs of the project when it does not make sufficient revenue to cover expenses.

#### **D. Whether The Major Issues Are Addressed In The Settlement**

The major issues of whether or not non-volunteer ratepayers will end up paying for this program and to what extent are not addressed in the Proposed Settlement. It reads:

The Settling Parties, while acknowledging the matters addressed in this Agreement, have agreed to fully resolve the issues set forth in this Proceeding, except for the Wind Down Recovery Issue. In the event that at the three-year review (see Section II.A, supra) the Commission determines to wind down the RNG Tariff program, it is possible that there could remain some program costs that have not been fully covered during the roughly five years of the program. In that event, Applicants believe they should be permitted to seek recovery of any outstanding costs in a subsequent GRC proceeding, under the typical standards and presumptions applicable in such proceedings. It is Public Advocates' position that any program costs remaining after a program wind down must be borne by shareholders, without an option to seek recovery elsewhere. Parties will separately brief this issue.<sup>93</sup>

The fact that the Proposed Settlement leaves one of the most critical issues, the effect on ratepayers, unaddressed is grounds alone for disapproval. The Proposed Settlement fails to explain exactly how this issue should be dealt with stating only that some sort of separate briefing will occur. When and by what procedure this briefing is support to occur is unclear.

The fact that the Applicants represented throughout this proceeding that their proposed program would not cost ratepayers until the question was precisely posed to them by the ALJ is disturbing. A cost to ratepayers that is deliberately obscured by the Applicant and is in no way quantified is grounds for dismissal of the Application and Proposed Settlement, with prejudice. CalAdvocates' own testimony provides an explanation of the problem:

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<sup>93</sup> Motion at pp. 18-19.

The questionable nature of the potential volunteer interest in the RNG Tariff program, and the lack of clarity that the program's revenues can meet its costs, suggest a high risk of the voluntary RNG Tariff program leading to stranded costs. Responding to the ALJ's question 3.2, the Applicants indicate that costs will be absorbed by non-participants in the general rate cases of SoCalGas and SDG&E. This runs directly contrary to claims made in the Application that "such a program can be efficiently offered with costs recovered just from participants, meaning this program would not require any broad incremental ratepayer funding." The Applicants' explicitly requested "authority to offer an RNGT program, and to collect program costs through rates charged to program participants." A.19-02-015 was not ordered by the Commission or the legislature; it is a request made purely under the Applicants' own initiative proposing to offer an optional new service to customers that are willing to pay for this service. SoCalGas and SDG&E's nonparticipating ratepayers should not be required to cover the costs of the voluntary RNG Tariff program in the event it cannot be "efficiently offered with costs recovered just from participants." Any stranded or unrecoverable costs resulting from the voluntary RNG Tariff program should be borne solely by utility shareholders. [citation omitted]<sup>94</sup>

Applicants has been misleading throughout this proceeding regarding the fact that they intend ratepayers to be on the hook for the stranded costs that will inevitably result from the failure of the proposed program. A program established via a contested Proposed Settlement that would saddle ratepayers with undefined costs incurred as a result of a failed program that will provide no ratepayer or environmental benefit is per se against public interest and should be denied.

## CONCLUSION

For the reasons stated herein, Wild Tree Foundation urges the Commission to deny approval of the contested Proposed Settlement and deny the Application. The Proposed Settlement does not meet the legal standard for a contested settlement and the underlying program would be harmful to ratepayers and our environment.

(signature page follows)

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<sup>94</sup> Public Advocates Office Rebuttal Testimony To The Second Supplemental Testimony at p. 5.

/s/ April Rose Maurath Sommer

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