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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 February 28, 2019)

**WILD TREE FOUNDATION OPENING BRIEF ON THE APPLICATION OF
SOUTHERN CALIFORNIA GAS COMPANY AND SAN DIEGO GAS & ELECTRIC
COMPANY FOR RENEWABLE NATURAL GAS TARIFF**

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Pursuant to the *Administrative Law Judge's DATE Email Ruling*, Wild Tree Foundation submits the following opening brief on the Application of Southern California Gas Company (U 904 G) and San Diego Gas & Electric Company (U 902 G) (“Applicants”) For Renewable Natural Gas Tariff (“Application”).

INTRODUCTION

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. Under the proposed program, the Applicant utilities would seek to circumvent the requirements of SB 1440 that biomethane procured by the utilities enhance California’s environment.

The Application is incomplete as it lacks basic information regarding the cost of the program and the burden it will place on ratepayers. The information provided regarding cost is inaccurate and without any evidentiary support. The Contested Settlement provides no further information regarding cost and actually does not settle the critical issue of whether ratepayers will fund the program. The Contested Settlement is 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 Contested Settlement is not reasonable in light of the whole record, is not consistent with law, and would not be in the public interest.

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.¹

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. The proposed program would discourage onsite use of

¹ 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.

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. Furthermore, the Contested Settlement program would actually exacerbate the problems in the Application regarding lack of supply and high cost by seeking short term, low value contracts.

The sole substantive difference between the Application and the Contested 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 Contested 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. At the same time, the Contested Settlement effectively provides no restrictions on sourcing for in-state biomethane.

Applicants would attempt to trick consumers into accepting much higher 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 Contested Settlement should be denied and the application should be dismissed.

ARGUMENT

A. POLICY ASPECTS OF SETTLEMENT

1. Additionality

The Contested 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.² This in no way provides additionality required to demonstrate that use of RNG for the proposed project has actually provided any GHG emission reduction benefits. Furthermore, in-state biomethane procurement would not be required to demonstrate additionality or meet any other relevant standard.

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 Contested 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 they enjoy to continue operation is unconvincing.³ Further, allowing inclusion of existing facilities magnifies the risk of fraudulent and uneconomic behavior by the project proponents by incentivizing them to make

² "Utilities will not procure any supplies or attributes from sources contracted before January 1, 2012 to serve RNG Tariff customers."

³ Prepared Direct Testimony of Sam Wade on Behalf of the Coalition for Renewable Natural Gas at pp. 7-8.

their project appear uneconomic but for the new incentive, when the project economics are or would be healthy if run efficiently.

2. Long-Term Contracts

The Contested Settlement program would actually exacerbate the problems in the Application regarding lack of supply and high cost. The Contested 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, as described further below, 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. Short term, low dollar contracts – that which Applicants state they plan on using for procurement under the Contested Settlement – are unlikely to be found given the healthy market for high dollar transportation uses.⁴

3. Compliance with Other RNG Standards

As discussed in more detail below, Applicants will not be able to prove compliance with any standards because there exists no reliable, independent, third party-administered verification systems to verify GHG emission reductions or the characteristics of RNG sources. The Application and Contested Settlement have been intentionally crafted to evade application of the

⁴ Direct Testimony of Thomas R. Del Monte, JD/MBA On Behalf Of Wild Tree Foundation at p. 5.

relevant law regarding biomethane procurement and GHG emission reductions. Under the Application and Contested Settlement, none of the biomethane procurement would be subject to any of the requirements of Senate Bill (SB) 1440 that it comply with the requirements in Pub. Util. Code Section 651(b)(3). Furthermore, under the Contested Settlement, in-state sources would not be subject to any requirements pursuant to CARB Cap and Trade regulations other than, perhaps, that the fuel not be from an unusual source that doesn't meet the expansive definition provided in the regulations.

a. The Contested Settlement Is an Attempt to Evade Standards Mandated in SB 1440

This Application and Contested 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 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. Applicants' 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"⁵ and the fact that there is no existing verification programs that could be used for the proposed program.

Moreover, the biomethane procurement program that Applicants are attempting to gain approval for in the Contested 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 Contested 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

⁵ Direct Testimony of Grant Wooden on Behalf of SDG&E/SoCalGas at p. 13.

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 the program could be from out-of-state sources, including sources outside the continental United States. [citations omitted]⁶

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.

⁶ Prepared Direct Testimony Of Michael Boccadoro On Behalf Of Agricultural Energy Consumers Association at pp. 6-7.

(III) The alleviation of a local nuisance within California that is associated with the emission of odors.⁷

The Contested 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 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]⁸

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.”⁹ AB 2196

⁷ Pub. Util. Code, § 651.

⁸ Direct Testimony Of Matthew Freedman On Behalf Of The Utility Reform Network at pp. 4-5.

⁹ Testimony of Thomas R. Del Monte, JD/MBA On Behalf Of Wild Tree Foundation

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.”¹⁰ 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.

b. The Contested Settlement RNG Procurement Criteria Do Not Provide for Additionality or Verifiable GHG Emission Reductions

Settling Parties based their entire concept of GHG emissions and compliance with a self-defined RNG procurement criteria.¹¹ The criteria, including the Applicable Standards, were apparently constructed by cherry-picking incompatible standards and applying them to their RNG Tariff proposal. In the Contested Settlement, the Settling Parties have proposed counting the GHG emissions reductions using a “lifecycle analysis such as” the GREET model that calculates carbon intensity (“CI”)¹² based upon minimum regulatory requirements for transportation fuels.¹³ Applicants would then “leverage existing California Air Resources Board (“CARB”) Cap-and-Trade regulations”¹⁴ and the Mandatory Reporting of Greenhouse Gas

¹⁰ 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.

¹¹ A.19-02-015, *Joint Motion for Approval of Settlement* (April 13, 2020) at Appendix A, p. 3.

¹² A.19-02-015, *Joint Motion for Approval of Settlement* (April 13, 2020) at Appendix A, p. 4, heading B.

¹³ A.19-02-015, *Leadership Counsel and Sierra Club Reply Comments to ALJ’s Request for Information* (June 29, 2020) at p. 2 (citing *M.J. Bradley & Associates, Renewable Natural Gas Project Economics* (July 2019) at p. 5).

¹⁴ A.19-02-015, *Joint Reply to Response of Wild Tree Foundation to ALJ’s Request for Comment* (June 29, 2020) at p. 2.

Emissions (“MMR”)¹⁵ regulations to meet GHG reduction verification and additionality requirements.¹⁶ The CARB Cap-and-Trade regulations being referred to are Title 17 California Code of Regulations (“CCR”) § 95852.1, § 95852.1.1, and § 95852.2 to cover additionality and CCR §§ 95100-95157 to cover reporting and verification.

i. GREET Methodology Is not Designed to Be Applied to Pipeline Injected RNG

The proposed GHG emission accounting scheme lacks the integrity necessary for informed regulatory oversight in protecting ratepayers from misleading greenwashing schemes. For example, the use of the GREET model to measure CI for pipeline injected RNG is wholly inappropriate because the CI calculations employed by the GREET model use a CI baseline established based upon current transportation fuel regulations and average emissions per-mile-traveled. The assumptions involved in the various GREET well-to-wheel CI models are not sufficiently analogous to those applicable to the RNG sources and uses envisioned by Settling Parties proposal. This is further complicated by considering that CI the Settling Parties claim the RNG suppliers must calculate would have to also include analysis of the end use of the RNG including applicable building decarbonization standards and baselines. GREET CI models are greatly simplified in that they can use a standardized single baseline metric of emissions per vehicle mile traveled that can be applied to all GREET fuel pathways using the specific fuel.

The GREET model does not have an equivalent baseline metric for commercial and residential RNG end uses. This further diminishes the value of GREET modeling for the propose project, allowing only a limited “well-to-pump” analysis. A well-to-pump analysis

¹⁵ Applicant Testimony at chapter 5 pp. 9-10.

¹⁶ A.19-02-015, *Joint Motion for Approval of Settlement* (April 13, 2020) at Appendix A, p. 4, heading C.

cannot not demonstrate verifiable GHG reductions nor can it provide the Commission with comparable figures to evaluate whether ratepayers are being duped to pay extra for doubtful greenhouse gas reductions.

The Settling Parties may argue that their threshold concept of only procuring RNG from sources that have a lower CI than natural gas¹⁷ addresses this shortcoming with the argument that RNG substitution is always better than natural gas in commercial buildings and homes. However, this is a deceptive simplification. In a large margin of cases, the imprecision and potential inaccuracy imparted by the use of an incomplete modeling system that applies inappropriate assumptions makes it possible for an RNG source to be procured that actually has a higher CI than natural gas. For instance, it is entirely possible for an out-of-state landfill RNG source to have a higher CI than natural gas produced in Bakersfield due to transmission pipe leakage in interstate transport.

The second major problem with the Settling Parties' procurement criteria is that it relies upon Applicant-defined "Applicable Standards" that kind of, but does not really, rely upon CARB Cap and Trade regulations. As Leadership Counsel and Sierra Club correctly point out, Section 95852.1.1 of California's cap-and-trade regulations "is not an appropriate foundation upon which to design a voluntary procurement program in part because it fails to require additionality to ensure that participation results in environmental benefits beyond what would have occurred in the absence of the program."¹⁸ As explained below, section 95852.1.1 does not

¹⁷ A.19-02-015, *Joint Motion for Approval of Settlement* (April 13, 2020) at Attachment A, p. 2, heading C.

¹⁸ A.19-02-015, *Leadership Counsel and Sierra Club Reply Comments to ALJ's Request for Information* (June 29, 2020) at p. 2 (citing *M.J. Bradley & Associates, Renewable Natural Gas Project Economics* (July 2019) at p. 5).

require additionality in verifying GHG emissions reductions and additionality is required to verify whether a GHG emissions reduction program is actually reducing emissions.

ii. The Applicable Standards Create a Loophole for Procurement of In-State RNG That is Not Additional

The Contested Settlement creates a potential loophole the Utilities could exploit to procure in-state biomethane that fails to provide additionality and would likely not, therefore, serve to decrease GHG emissions or otherwise improve California’s environment. The Applicants would rely upon their own “Applicable Standards” for procurement as defined in the Contested Settlement that would supposedly ensure compliance with California statutes and policy goals. Instead of including the specific law the Contested Settlement will supposedly apply, the Contested Settlement relies on “Applicable Standards” for the Utilities to procure RNG. However, as written, the “Applicable Standards” leave out crucial language from CARB’s Cap-and-Trade regulations and fails to address the fact that the Cap and Trade regulations essentially provide no standards for in-state biomethane. The Contested Settlement defines the “Applicable Standards” as:

RNG eligible for the biomethane exemption requirements set in the Mandatory Reporting of Greenhouse Gas Emissions (“MRR”) and Cap-and-Trade Regulation, including that the RNG must be either: (A) an increase in the biomass derived fuel production capacity, at a particular site, where an increase is considered any amount over the average production at that site over the last three years; or (B) recovery of the fuel at a site where the fuel was previously being vented or destroyed for at least three years or since commencement of fuel recovery operations, whichever is shorter, without producing useful energy transfer.¹⁹

In the Administrative Law Judge’s (“ALJ”) June 10, 2020 *Email Ruling on Further Information*, the ALJ posed the question of whether “the Settlement recognize that the requirements in 17 CCR § 95852.1.1 only apply to biomethane generated outside of California

¹⁹ Contested Settlement at (III)(A)(5).

and do not apply to in-state RNG?”²⁰ The ALJ correctly identified an inconsistency between the “Applicable Standards” and CARB’s Cap-and-Trade regulations.

California Code of Regulations, Title 17, sections 95852.1, 95852.1.1, and 95852.2 are found within CARB’s Cap-and-Trade Regulations. Section 95852.2 defines biomethane sources for which “the combustion of the following fuel types count toward applicable reporting thresholds, as applicable in MRR, but do not count toward covered entity’s compliance obligation.”²¹ Section 95852.2’s list is exhaustive and provides an exemption for most of the existing biomethane sources from the compliance obligations.

Section 95851.1 creates exceptions to the section 95852.2 exemptions. Section 95851.1 establishes that “an entity that has emissions from combustion of biomass-derived fuels is required to report and verify its emissions pursuant to MRR and has a compliance obligation for every metric ton of CO₂e emissions: (a) From combustion of fuel types that are not listed under section 95852.2; or (b) From combustion of fuels sourced from outside California that do not meet the requirements of section 95852.1.1; or (c) That are reported as non-exempt biomass derived CO₂ under MRR.”²² Subdivision (c) establishes emissions from out-of-state biomethane must be reported and count towards the covered entity’s compliance obligations – in other words, these emissions are not exempt.

Section 95852.1.1 further narrows the section 95852.1 exceptions, which allows for exemption for out-of-state biomethane that meets certain criteria. The subsections regarding onsite use or pre-January 1, 2012 contract for purchase of biomethane is not relevant here, as the Contested Settlement would divert biomethane from onsite use and the Contested Settlement

²⁰ A.19-02-015, Email Ruling on Further Information (June 10, 2020).

²¹ Cal. Code Regs., tit. 17, § 95852.2.

²² Cal Code Regs., tit. 17, § 95852.1.

states the “Utilities will not procure any supplies or attributes from sources contracted before January 1, 2012 to serve RNG Tariff customers.”²³ Therefore, the only relevant requirement under section 95852.1.1 states: the entity claiming the biomass-derived fuel must be the first entity to contract for the biomass-derived fuel and the contract for the biomethane must either (A) increase the biomethane production capacity, at a particular site, where an increase is considered any amount over the average production at that site over the last three years; or (B) recover fuel at a site where the fuel was previously being vented or destroyed for at least three years or since commencement of fuel recovery operations, whichever is shorter, without producing useful energy transfer.²⁴

In their response to the ALJ’s request for more information regarding the CARB standards, the Settling Parties state “[i]n order to promote consistency with the Applicable Standards as well as parity with non-utility RNG providers, Settling Parties assert that Applicable Standards described in § 95852.1.1(a)(2)(A) and (B) should apply only to out-of-state sources, while § 95852.1 should apply to both out-of-state and in-state sources.”²⁵ The Applicable Standards of the Contested Settlement includes the language of section 95852.1.1(a)(2)(A) and (B) but leaves out critical language: “the entity claiming the biomass-derived fuel must be the first entity to contract for the biomass-derived fuel.”²⁶ For out-of-state biomethane emission to be exempt from compliance obligations under normal application of section 95852.1.1, the source must be *additional* to existing sources.

While the Contested Settlement does not recognize that the applicable law it purports to rely upon does not apply to in-state biomethane, the Applicants state “*until recently*, Applicants

²³ Contested Settlement at (IV)(C)(3).

²⁴ Cal. Code Regs., tit. 17, § 95852.1.1, subd. (a)(2).

²⁵ Joint Response at p. 3.

²⁶ Cal. Code Regs., tit. 17, § 95852.1.1(a)(2).

and Settling Parties understood § 95852.1.1 to apply to all sources of biomethane, and not just out-of-state sources.”²⁷ The Applicant’s use of “*until recently*” demonstrates the Applicant’s manipulation of CARB’s Cap-and-Trade regulations to suit their own agenda. In its entirety, the Applicant’s response also reveals a major flaw in the Contested Settlement, essentially creating a loophole that could avoid additionality.

Instead of section 95852.1.1 compliance, the Applicants wish to establish a third-party verification regarding carbon intensity information, which is irrelevant to compliance with CARB regulations. The Applicants state:

The Utilities will contract with an independent third-party verification company to verify that the RNG carbon intensity information provided by the RNG suppliers is aligned with the LCFS methodology. The compliance of purchased RNG supplies with MRR and Cap-and-Trade Regulation will be verified by a third-party independent verification body, accredited by CARB, as required to receive the biomethane exemption under the Cap-and-Trade Regulation.²⁸

Wild Tree understands such verification does not currently exist and the Applicants would rely upon some sort of future verification program that is being developed by a non-profit that Applicants provides funds and leadership to and therefore is not, by definition, an independent third party. This is discussed in more detail below. Verification for in-state sources would verify only that a not unusual type of fuel was being used as compliance with CARB regulations. This verification would provide no useful information as nothing of consequence would be verified.

²⁷ A.19-02-015, *Joint Response to Administrative Law Judge’s Request for Comments on Air Resources Board Statute Interpretation of Southern California Gas Company (U 904 G), San Diego Gas & Electric Company (U 902 G), Public Advocates Office at the California Public Utilities Commission, Environmental Defense Fund, the Bioenergy Association of California, the Coalition for Renewable Natural Gas, Agricultural Energy Consumers Association, and SFE Energy California Inc.* (June 22, 2020) (“Joint Response”) at p. 2 (emphasis added).

²⁸ Joint Response at p. 3.

Because the Contested Settlement is silent to section 95852.1.1's applicability to in-state biomethane, and the Contested Settlement makes a commitment to procure in-state biomethane for the proposed project, the Contested Settlement leaves open a loophole for Applicants to procure in-state biomethane that fails to meet the additionality standards set out in section 95852.1.1. Thus, the Applicant could comply with the letter of the Contested Settlement by procuring in-state biomethane that does not provide additionality. Without additionality, procurement of biomethane provides no GHG emission reduction benefits and could result in greater GHG emissions, increased harm to human health especially in disadvantaged communities, and cause other harm to California's environment, climate, and people.

4. Verification

a. Applicants Have Not Proposed Any Protocol For Verification

For a GHG emission reductions or GHG removal to count as a offset to GHG compliance obligations, CARB's requires that any offset must be real, additional, verifiable, permanent, and enforceable and must comply with an approved accounting offset protocol that incorporates these principles.²⁹ Applicants have no approved protocol³⁰ only vague ideas. As discussed above, the GREET methodology is not directly applicable to pipeline injected RNG. It is clear from the above discussion that the Applicable Standards require the alleged additionality feature of Section 95852.1.1 does not fulfil the additionality prong for in-state RNG sources. The Settling Parties now even admit that applying Section "95852.1.1 voluntarily to in-state sources will not

²⁹ CARB, Cap-and-Trade Regulation Instructional Guidance (September 2012) at Chapter 1, p. 12, available at <https://ww3.arb.ca.gov/cc/capandtrade/guidance/chapter1.pdf>.

³⁰ SoCal Gas and SD&E, Response to 1st Data Request from the Sierra Club (Response March 27, 2019) at p. 6, Response 6b.

elicit CARB's verification of compliance with § 95852.1.1." Therefore, the Applicable Standards further fail on verification prongs.

The Applicable Standards further create an enforcement problem because CARB standards do not apply to all in-state RNG procurement, as explained further above. In effect, the Applicable Standards inappropriately requires that the Commission take responsibility for interpreting and enforcing compliance with CARB regulations. What is further problematic, is that the Applicable Standards has the Commission further delegating the Commission's oversight duties to a Procurement Advisory Group (PAG) with no actual authority to over offering advice and, to the extent the PAG members overlap with Settling Parties, include a high proportion of members who have demonstrated in this proceeding that they do not have a firm grasp of how the CARB regulations actually work.

The Commission should consider further that the Settling Parties attempt to rely on Section 95852.1 for a meaningful standard at which it could comply for in-state RNG sources, further demonstrates the inappropriateness of using CARB biomethane regulations for this program. Section 95852.1 is simply a state policy choice to freely exclude in-state biomethane emissions from GHG compliance while erecting additional barriers to out-of-state sources. CARB, the Commission, and the California Energy Commission worked very hard over a number of years to design state regulatory principles that allowed California to favor in-state projects paid for by its ratepayers while not running afoul of the U.S. Constitution's Commerce Clause. For these reasons, verification that an RNG source meets CARB's biomethane exemptions is, at best, misleading as evidence that actual the RNG Tariff results in the claimed methane and carbon dioxide emissions. Therefore it is not reasonable in light of the record, impermissibly extends the Commission's authority to the oversight of CARB's regulations, and

not in the public interest in that as proposed is deceptive as to the actual environmental benefits of the program.

b. There Is No Reliable, Independent, Third Party-Administered Verification System

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 Contested Settlement do not address certification 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.”³¹

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.”³² 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.³³

³¹ Contested Settlement at p. 10.

³² Prepared Direct Testimony of Sam Wade on Behalf of the Coalition for Renewable Natural Gas at pp. 9-10.

³³ M-RETS Website, <https://www.mrets.org/about/mission-vision-values/> [as of October 31, 2019].

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 Group and made a donation of \$25,000 to support the development of the Green-e Renewable Fuels certification.³⁴ 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.³⁵ “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.”³⁶

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, 3rd party certification system calls into question the impartiality of the developer and system it is developing.

5. Program Costs

³⁴ 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).

³⁵ *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.”)

³⁶ Center for Resource Solutions, *Green-e Renewable Fuels FAQs*, <https://www.green-e.org/programs/renewable-fuels/faq>.

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 the RNG Rate in the new billing system at this time, because it has not yet been built”³⁷ and “actual annual Green-e certification costs are unknown at this time.”³⁸ The Contested 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 Contested Settlement does not include any further information regarding unknown costs and there are no cost limits established. But, the Contested Settlement does include allowance for Sempra Utilities to recover any overruns from ratepayers. 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 Contested Settlement.

The Application and Contested Settlement are also incomplete in that Applicant has provided no credible information regarding cost to participants or availability or pricing of RNG. As discussed in more detail below, Applicants’ participation cost estimates are wildly inaccurate and without foundation. In regards to price of RNG, the 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.³⁹

³⁷ Prepared Direct Testimony Of Grant Wooden On Behalf Of Southern California Gas Company And San Diego Gas & Electric Company at p. 13.

³⁸ *Id.* at p.14.

³⁹ Prepared Direct Testimony Of Tanya Peacock On Behalf Of Southern California Gas Company And San Diego Gas & Electric Company at p. 5.

In responses to the data request question “Provide any analysis SoCalGas or SDG&E has done regarding availability and pricing of existing RNG supplies, including source location,” Applicant stated, “No such analysis has been done for the Green Tariff program yet.”⁴⁰ 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. As explained further below, this figure is not based on any data but is a figment of Applicant’s imagination based upon desired program outcomes.

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 costs 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.”⁴¹ 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

⁴⁰ Public Advocates Office Prepared Testimony at Appendix C - Applicant Response to Public Advocates Office Data Request 1, Question 8.

⁴¹ Public Advocates Office Prepared Testimony at Appendix C - Applicant Response to Public Advocates Office Data Request 1, Question 8.

for this RNG Tariff.”⁴² 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 Contested Settlement. For instance, the Commission should assume that the respondent bids to the RNG RFO revealed that the prices were too high and the availability to was too scarce to support Applicants’ proposed program.

6. Marketing Claims

Applicants have already made marketing claims that are misleading and unproven regarding this program. Wild Tree endorses the comments that Sierra Club has provided regarding the misleading and dishonest nature of Applicants’ marketing. Wild Tree reserves the right to further address this topic in its reply brief.

7. RNG for Building Decarbonization

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

⁴² Prepared Direct Testimony Of Andrew Cheung On Behalf Of Southern California Gas Company And San Diego Gas & Electric Company at p. 2.

scalability, and excessive cost of RNG pipeline injection makes RNG swapping for building decarbonization bad policy.⁴³ 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 transportation fuel, methane consuming industries, and renewable baseload capacity.⁴⁴ CARB's 2017 Scoping Plan, Table 10⁴⁵ provides an apple-to-apples comparison with the metric of \$/ton GHG for each GHG emission reduction strategy considered.⁴⁶ 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.⁴⁷ 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."⁴⁸ 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

⁴³ 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.

⁴⁴ Rebuttal Testimony Of Thomas R. Del Monte, JD/MBA On Behalf Of Wild Tree Foundation at p. 5.

⁴⁵ CARB, *California's 2017 Climate Change Scoping Plan* (November 2017) at p. 46, available at <https://ww3.arb.ca.gov/cc/scopingplan/scopingplan.htm>.

⁴⁶ Rebuttal Testimony of Thomas R. Del Monte, JD/MBA On Behalf Of Wild Tree Foundation at p. 4.

⁴⁷ Direct Testimony of Thomas R. Del Monte, JD/MBA On Behalf Of Wild Tree Foundation at p. 11.

⁴⁸ Final 2018 Integrated Energy Policy Report Update Volume II at p. 20.

electrification is preferable over RNG building utilization as the lowest cost economy wide option.⁴⁹ 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 Report Update, “There is a growing consensus that building electrification is the most viable and predictable path to zero-emission buildings.”⁵⁰

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.⁵¹ 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.⁵² 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.⁵³

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”⁵⁴ is a report by the Energy Futures

⁴⁹ 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.

⁵⁰ CEC, Final 2018 Integrated Energy Policy Report Update Volume II (2018) at p. 28, available at: https://ww2.energy.ca.gov/2018_energy_policy/.

⁵¹ Direct Testimony of Thomas R. Del Monte, JD/MBA On Behalf Of Wild Tree Foundation at p. 11.

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ ⁵⁴ Prepared Direct Testimony Of Tanya Peacock On Behalf Of Southern California Gas Company And San Diego Gas & Electric Company at p. 2.

Initiative (“EFI”).⁵⁵ 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.⁵⁶ EFI’s analysis concludes that the by 2030, RNG could provide less than 10% of the building sector’s gas demand in 2030.⁵⁷ 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.⁵⁸ 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.”⁵⁹ Adopting an RNG strategy alongside an electrification risks driving up costs and ultimately slowing the pace of decarbonization in the building sector.⁶⁰ 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.

8. CARE

Wild Tree does not have any comments to make regarding this topic. Wild Tree reserves the right to address this topic in its reply brief.

⁵⁵ Supplemental Testimony (SoCalGas/SDG&E) at pp. 3-4.

⁵⁶ Direct Testimony of Thomas R. Del Monte, JD/MBA On Behalf Of Wild Tree Foundation at pp. 12-13.

⁵⁷ 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;

⁵⁸ *Id.* at p. 180

⁵⁹ *Ibid.*

⁶⁰ Direct Testimony of Thomas R. Del Monte, JD/MBA On Behalf Of Wild Tree Foundation at pp. 12-13.

9. Other Policy Issues

B. FACTUAL ISSUES

1. Program Support

Applicants have not proven there is customer demand for a “green” RNG tariff and will not be able to attract customers to the proposed program given the extremely high cost. In ordering the Applicant to provide further testimony in regards to customer demand for the proposed tariff, the ALJ explained, “The Commission also needs more information on whether these and other customers would be interested in subscribing to the proposed RNG Tariff program with a Commodity Charge that could be four times higher than their current gas service charge even before the addition of the Program Charge.”⁶¹ Instead of providing more information on whether customers are willing to pay more than four times more, Applicants provided cost estimates that doubled the RNG commodity price to \$3.00 making it more than 8 times the commodity price for traditional natural gas. Participating customers would pay both an RNG Commodity Charge and a Program Charge, a fee calculated to cover the administrative and marketing costs. With the addition of the estimated Program Charge, not paid by regular gas tariff customers, of \$0.23 per therm for recovering SoCalGas marketing and administration expenses or \$1.42 per therm for SDG&E expenses, the cost for RNG program participation would be \$3.23 for SoCalGas customers and \$4.42 per therm for SDG&E customers. The cost per therm would be 9 times higher for SoCalGas participating customers and more than 12 times

⁶¹ A.19-02-015, *Administrative Law Judge’s Ruling Directing Submission Of Supplemental Testimony* at p. 7.

higher for SDG&E participating customers than the non-RNG Commodity Charge of \$0.36/therm under the SoCalGas's regular gas tariff.⁶²

Applicants have failed to demonstrate that customers will be interested in subscribing to a proposed RNG Tariff program with a commodity charge four times higher than their current gas service charge much less shows that there is interest in a program with 9 or 12 times higher charges. Bills for residential and non-residential participants will increase very large increases in their bills.

Non-residential participants that agree to pay a premium for a 10, 25, or 50% of their use gas to be biomethane, will have extreme increases in their bills. For example, a non-residential customer that agrees to 10% biomethane charges will see its bills increase by almost 80% (SoCalGas) or more than double (SDG&E).⁶³ On a 25% plan, bills will almost triple (SoCalGas) or quadruple (SDG&E) and on a 50% plan, bills will increase by more than five (SoCalGas) or six (SDG&E) times.

Residential customers will also see steep increases in bills under the \$10, \$25 or \$50 monthly flat rate plans. According to Applicants, the average residential customer uses 420 therms a year or 35 therms per month.⁶⁴ At \$.36 per therm, 35 therms would be a monthly bill of \$12.60. A \$10 bill increase, which is the lowest allowable increase, would represent an 80% increase in the monthly bill. A \$25 bill increase would almost triple the bills and a \$50 bill increase would increase bills five fold.

⁶² Prepared Direct Testimony of Andrew Cheung, Chapter 3 (Cheung, Chapter 3), Table ASC-1; See also *Administrative Law Judge's Ruling Directing Submission Of Supplemental Testimony* at p. 6.

⁶³ SoCalGas - \$0.36 per therm for 90% of use + \$3.23 for 10% = \$.647 per therm; \$.647/\$.36 = 1.79 times increase. SDG&E - \$0.36 per therm for 90% of use + \$4.42 for 10% = \$.766 per therm; \$.766/\$.36 = 2.13 times increase.

⁶⁴ Applicant 2nd Supplemental Testimony at p.10fn6.

The credibility of all of Applicant’s testimony providing guesstimates for participation and cost assumptions is undermined by the Applicant’s 2nd Supplementary Testimony footnote 6 to the statement that, “The amount of RNG required to meet the above demands for each segment with a commodity cost per therm of \$3.00⁶ was calculated.” Footnote 6 reads, “\$3.00 was chosen as a benchmark as this would allow residential customers choosing the smallest subscription level to displace approximately 10% of their annual usage with RNG (based on a system average of 420 therms per year).”⁶⁵ Applicants herein admit that there is no validity whatsoever to their consumption calculations because the \$3.00 per therm commodity cost was reverse engineered from Applicant’s desired program usage, not from actual data regarding the commodity cost. Furthermore, the method described in footnote 6 is wrong because a \$3.00 commodity charge means that residential customers choosing the smallest subscription level of \$10 would “displace” less than 10% of annual usage with biomethane. At \$3.23 or \$4.42 a therm, the average residential user of 35 therms a year would be able to displace 3.10 or 2.26 therms which would be 8.86% (SoCalGas) or 6.46% (SDG&E) of usage.

The credibility of the \$3.00 therm guesstimate is further undermined by the fact that this was generated based upon the “amount of RNG required to meet the above demands” which are guesstimated to be 0.5% for residential customers and 0.1% for small, 0.025% for medium, and 0.025% for large usage non-residential customers. The SoCalGas Consumption Calculations assumptions for this level of demand rely upon cherry-picked, mischaracterized results from its focus group results and comparison to programs in other states that are not equivalent to that proposed here and which have very low participation rates.

⁶⁵ *Ibid.*

First, the Consumption Calculations actually provide a range of participation rates with the above-stated rates being the upper end of the spectrum.⁶⁶ Secondly, Applicant provides no calculation to justify estimated usage rates based upon comparison to RNG tariffs in other states with different program design and the comparisons do not support the conclusion. Vermont's program, for example, is stated as having a .09% participation rate.⁶⁷

Thirdly, the Consumption Calculations ignores the fact that, among Applicant's own focus group participants that supposedly indicated interest in RNG, most of those supposedly interested in an ill-defined renewable gas program would be willing to pay more than a 25% increase of bills. Instead, the assumptions used for the calculations are that 69% of residents and 65% of business are "willing to pay more" per focus group survey results.⁶⁸ This assumptions ignores its own results such as that Applicant's business focus group responses indicated that none (0%) of respondents that had indicated some sort of interest in an RNG program would be willing to pay 75% or 100% increase.⁶⁹ Yet, based upon Applicant's data, the program would, at a minimum, increase non-residential customer bills by almost 80% (SoCalGas) or more than 100% (SDG&E). In regards to customer demand, Applicant has demonstrated that, at the price point they have arbitrarily selected, which is likely far too low given the high cost of RNG, there is no customer interest.

As discussed above, Applicants have not provided any evidence on the record regarding the cost of RNG purchases and thus the true cost of the program is not known. Cal Advocates explain how this deficiency impacts Applicant's consumptions calculations:

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

⁶⁶ 2nd Supplemental Testimony at Attachment D.

⁶⁷ 50 participants out of 55,000 customers.

⁶⁸ 2nd Supplemental Testimony at Attachment D.

⁶⁹ 2nd Supplemental Testimony at p. 176 (pdf), Business Customer Insight Panel.

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. . . 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.

The obvious truth is that Applicants have not provided the data needed to demonstrate that a “green” RNG tariff, of any length of time, that will greatly increased rates for questionably sourced biomethane is just and reasonable. The ALJ's preliminary determination stands correct that “the Application lacks an adequate and affirmative showing that there is sufficient customer demand to support the Utilities' proposed program.”⁷⁰

2. Supply

a. RNG will always be a local product produced at local scale and there will never be sufficient supply of RNG to replace natural gas

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.⁷¹ Applicants claim there is “104 to 208 BCF/year of total RNG supply potential in California.”⁷² 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/year⁷³ fossil natural gas usage. The California situation is similar

⁷⁰ *Administrative Law Judge's Ruling Directing Submission Of Supplemental Testimony* at pp. 5-6

⁷¹ Direct Testimony of Thomas R. Del Monte, JD/MBA On Behalf Of Wild Tree Foundation at p. 3.

⁷² Prepared Direct Testimony Of Andrew Cheung On Behalf Of Southern California Gas Company And San Diego Gas & Electric Company at p. 1.

⁷³ U.S. Energy Information Administration, *Natural Gas Consumption by End Use*, https://www.eia.gov/dnav/ng/ng_cons_sum_deu_SCA_a.htm.

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.⁷⁴

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.

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.⁷⁵

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.⁷⁶ 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.”⁷⁷ 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.⁷⁸ 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-CO₂e), and a renewable

⁷⁴ 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>.

⁷⁵ Direct Testimony of Thomas R. Del Monte, JD/MBA On Behalf Of Wild Tree Foundation at p. 4.

⁷⁶ CEC, *2017 Integrated Energy Policy Report* (February 2018) at p. 254, available at: https://ww2.energy.ca.gov/2017_energy_policy/ (“2017 IERP”).

⁷⁷ 2017 IEPR at p. 250.

⁷⁸ *Id.* at p. 252

identification number (“RIN”) credit price of \$1.78 per D3 RIN.⁷⁹ 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) 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.”⁸⁰

The Applicants have not demonstrated that their proposed RNG tariff will result in growth of the market for RNG in California. While the Contested 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.⁸¹ 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.⁸²

The production of renewable natural gas for transportation fuel is the primary RNG market driver today.⁸³ 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

⁷⁹ *Ibid.*

⁸⁰ 2017 IEPR at p. 270.

⁸¹ Supplemental Testimony (SoCalGas/SDG&E) at p. 7.

⁸² Direct Testimony of Thomas R. Del Monte, JD/MBA On Behalf Of Wild Tree Foundation at p. 5.

⁸³ Direct Testimony of Thomas R. Del Monte, JD/MBA On Behalf Of Wild Tree Foundation at p. 6.

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.”⁸⁴ A market is not going to develop based upon Applicants’ offers to purchase RNG for a much lower 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.”⁸⁵ 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.⁸⁶ 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’s⁸⁷, defined as “medium-grade and subject to moderate credit risk and as such may possess certain speculative characteristics.”⁸⁸ SoCalGas is rate A1, “upper-medium grade and are subject to low credit risk”

⁸⁴ 2017 IEPR at p. 11.

⁸⁵ Prepared Direct Testimony Of Andrew Cheung On Behalf Of Southern California Gas Company And San Diego Gas & Electric Company at p. 3.

⁸⁶ Direct Testimony of Thomas R. Del Monte, JD/MBA On Behalf Of Wild Tree Foundation at p. 6.

⁸⁷ 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>.

⁸⁸ Moody’s, *Rating Symbols and Definitions*, <https://www.moodys.com/Pages/amr002002.aspx>.

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 utilities operating in California.”⁸⁹ 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.

3. Environmental Benefits

Applicants have not demonstrated that they can provide verified, accurate GHG accounting that demonstrates an environmental benefit and has not otherwise demonstrated that there will be environmental benefit from the proposed program. Applicant has outright refused to tailor its proposal to meet SB 1440 requirements that biomethane procurement benefit California’s environment and has also written the Contested Settlement in such a way so as to provide a loophole for procurement of non-additional in-state sources.

At the same time, Applicants’ objective for the program will cause harm to California’s environment. 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.⁹⁰ As

⁸⁹ 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.

⁹⁰ Direct Testimony of Thomas R. Del Monte, JD/MBA On Behalf Of Wild Tree Foundation at p. 8.

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.”⁹¹

There are two insurmountable barriers to the pipeline injection of RNG use being economic in anything except fringe cases.⁹² 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 transportation fuel alternative. To put this in perspective, there was approximately 4.2 billion gallons of diesel fuel sold in California in 2015.⁹³ 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

⁹¹ 2017 IEPR at p. 271.

⁹² Direct Testimony of Thomas R. Del Monte, JD/MBA On Behalf Of Wild Tree Foundation at p. 8.

⁹³ CEC, *Diesel Fuel Data, Facts, and Statistics*,
https://ww2.energy.ca.gov/almanac/transportation_data/diesel.html.

decarbonization options does not make sense. As such, RNG will never be a scalable decarbonization strategy for natural gas systems in the building sector.⁹⁴

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.⁹⁵ Leakage of methane at all points along the RNG life cycle can completely erase any claimed GHG emissions reductions.⁹⁶ Onsite use of RNG eliminates the emissions caused by leakage in transport and storage, including pipeline leakage.⁹⁷

4. Program Impacts on Nearby Disadvantaged Communities

Wild Tree does not have any comments to make regarding this topic. Wild Tree reserves the right to address this topic in its reply brief.

5. Review and Reporting

The Contested Settlement seeks to establish a permanent RNG tariff through the guise of a “pilot program.” What has been proposed is not a pilot program, but is instead a permanent

⁹⁴ Direct Testimony of Thomas R. Del Monte, JD/MBA On Behalf Of Wild Tree Foundation at p. 9.

⁹⁵ 2017 IEPR at p. 247.

⁹⁶ 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>.

⁹⁷ *Id.* at p. 17.

program that would be subject only to a single undefined advice letter review at 3 years. The Contested Settlement states:

The Utilities shall demonstrate that the RNG Tariff program has resulted in reduced GHG emissions compared to a business-as-usual calculation, using the carbon accounting methodologies agreed upon in this settlement. If the RNG Tariff program does not result in reduced GHG emissions after three years, this will be a primary consideration of the Commission when evaluating whether the program is reasonable to continue.⁹⁸

As discussed herein, there is no carbon accounting methodology that has been agreed upon – only a statement that Applicants will use something “such as” the GREET methodology. The GREET methodology is not designed to account for GHG emission from pipeline-injected RNG and so Applicants have proposed only that they will invent some new methodology that might be similar to GREET. What exactly that methodology is, is completely unknown and would remain unknown until the advice letter review, at which point ratepayers’ ability to review the methodology, its assumptions, its input, and results would be extremely constrained by the limitations of the advice letter process.

The Contested Settlement also states that GHG emission reductions will be only a “primary consideration of the Commission” in evaluating the program. Therefore, the Commission could still approve the program to continue even if it there had been no GHG emission reductions. There are, therefore, no standards whatsoever established regarding whether or not the program would continue.

A Tier 3 advice letter proceeding is insufficient to protect ratepayers from paying for greatly increased bills for alleged environmental benefit that Applicants cannot prove will occur. There will be signification questions of material fact in such a review and a full evidentiary hearing application proceeding would be necessary to examine such facts. It would be the first

⁹⁸ Contested Settlement at (II)(C).

time that the actual GHG emission accounting methodology had been reviewed since Applicants have provided no information whatsoever in this proceeding as to what that methodology will be. If a pilot program was approved, which it should not, it should be for an absolute limited time period. At the expiration of that time period, Applicants could apply for a permanent tariff through an application, should they so desire.

6. Price of RNG

As discussed in detail above, Applicants have provided no credible data on the price of RNG. This is one of many aspects of this Application that are incomplete. Without such basic information, the Commission cannot make an informed decision that the Application is just and reasonable and it should, thus, be dismissed.

7. Other Factual Issues

a. The Application is Incomplete and 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. The Applicants have provided no justification whatsoever why this program should be implemented now and there are many reasons why this program should never be implemented but, especially should not be implement 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.”⁹⁹ This wrongly assumes that the Commission will establish targets¹⁰⁰ 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 that there is not enough waste methane to displace natural gas in buildings.¹⁰¹ 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 biofuels in the High Electrification scenario is intended to reduce environmental risk, as well as cost risk.”¹⁰²

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 1477.¹⁰³ 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.¹⁰⁴ 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

⁹⁹ Prepared Direct Testimony Of Tanya Peacock On Behalf Of Southern California Gas Company And San Diego Gas & Electric Company at p. 3.

¹⁰⁰ 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.

¹⁰¹ 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>

¹⁰² *Id.* at p. 46.

¹⁰³ D. 20-03-027.

¹⁰⁴ 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>.

production of RNG in CA will not meet the demand necessary to meet the 2030 goals and the cost would be high.”¹⁰⁵ The Applicant’s attempt at some clever wordsmithing¹⁰⁶ 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 Contested 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 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.¹⁰⁷

C. WIND DOWN RECOVERY

Ratepayers that do not volunteer to sign up to pay for greatly increased bills in exchange for dubious claimed environmental benefits should not pay one single dollar for this program.

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 Contested 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

¹⁰⁵ *Ibid.*

¹⁰⁶ *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.

¹⁰⁷ A.19-02-015, *Joint Motion for Approval of Settlement* at p. 11.

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.¹⁰⁸

The fact that the Contested Settlement leaves one of the most critical issues, the effect on ratepayers, unaddressed is grounds alone for disapproval. The Contested 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 Contested Settlement, with prejudice. CalAdvocates' own testimony provides an explanation of the problem:

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]¹⁰⁹

¹⁰⁸ A.19-02-015, *Joint Motion for Approval of Settlement* at pp. 18-19.

¹⁰⁹ Public Advocates Office Rebuttal Testimony To The Second Supplemental Testimony at p. 5.

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 Contested 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.

D. LEGAL ASPECTS OF SETTLEMENT

1. 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.”¹¹⁰ The Commission may reject a proposed settlement whenever it determines that the settlement is not in the public interest.¹¹¹ This is regardless of whether or not a settlement is contested.¹¹²

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.”¹¹³ Furthermore, adoption of settlement “does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding.”¹¹⁴

Parties to a proceeding may contest a proposed settlement by filing comments contesting all or part of the proposal.¹¹⁵ Wild Tree contest the Contested Settlement though the filing of

¹¹⁰ Rule 12.1, subd. (d).

¹¹¹ Rule 12.4.

¹¹² Rule 12.1, subd. (d).

¹¹³ Rule 12.1, subd. (a).

¹¹⁴ Rule 12.5.

¹¹⁵ Rule 12.2.

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 opposing parties and the question of whether the settlement agreement provides a negotiated resolution of all the disputed issues.”¹¹⁶ In reviewing any settlement proposed in this proceeding, the Commission should look to relevant precedents relating to contested settlements affecting a broad public interest.¹¹⁷ 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:¹¹⁸

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.]¹¹⁹

Secondly, the evidence presented in testimony definitely demonstrates that the Contested Settlement is not reasonable. The Application is incomplete and has been filed presumptively and the Contested Settlement does not cure these defects. The program proposed in the

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

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

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

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

Contested 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.

2. The Contested Settlement Is Not Reasonable In Light Of The Whole Record, Consistent With Law, Or In The Public Interest

As discussed further above and in Wild Tree’s Opposition to the Contested Settlement, incorporated herein by reference, 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 both by participants and by non-volunteer ratepayers, scarcity of RNG resources and limitations of cost make the 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.

The Contested Settlement is not reasonable in light of the whole record. The evidence presented in testimony definitely demonstrates that the Contested Settlement is not reasonable. The Application is incomplete and has been filed presumptively and the Contested Settlement does not cure these defects. The program proposed in the Contested 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 greatly increase utility bills but does not have the intended net “green” benefits that the Applicants claims it provides.

The Contested Settlement is not consistent with law. As described in detail above, the Contested Settlement would establish a program for RNG procurement that does not comply with requirements of SB 1440.

The Contested Settlement is not in the public interest. There is no argument in the Contested Settlement regarding compliance with the standards set by the Commission in evaluating public interest of contested settlements. The contested Contested 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.¹²⁰

Numerous emails and phone calls and supposed good faith negotiation are not factors that determine whether a settlement is in the public interest. In its Opposition to the Contested Settlement, Wild Tree provides analysis of some of “class action” factors considered by the Commission when reviewing proposed settlements.¹²¹ The Contested Settlement does not withstand such scrutiny and is demonstrated as not fundamentally fair, adequate, and reasonable and, therefore, not in the public interest.

The strength of the Applicant’s Case does not support settlement. As described in Wild Tree’s Opposition to the Settlement, Applicant has not met its burden in proving any aspects of its case – it has not demonstrated what the project will cost, that there is any customers interest in such a program, that it will benefit the environment, or that it can provide verification of GHG emission reductions. In this case, settlement negotiations were not at arm’s length because the

¹²⁰ Motion at p. 18.

¹²¹ See D.09-12-045 at 33-35, quoting D.88-12-083.

settlement represents a consensus among like-minded parties and will not produce a genuine resolution of the issues.

E. PROPOSED MODIFICATION BY NON-SETTLING PARTIES

Wild Tree does not support a “green” RNG tariff in any form – short or long term, permanent or pilot, voluntary or required. For the many reasons cited herein, the Application and Contested Settlement should be denied. That said, if the Contested Settlement is approved, it should be modified so that the program is truly a pilot program that definitely concludes after 3 years. The proposal to permit extension through an advice letter proceeding is insufficient to protect ratepayers and is manifestly unjust and unreasonable.

CONCLUSION

For the reasons state herein and in Wild Tree Foundation’s Opposition to Contested Settlement, the Application and Contested Settlement should be denied.

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