

Decision 19-12-009 December 5, 2019

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Adopt Biomethane Standards and Requirements, Pipeline Open Access Rules, and Related Enforcement Provisions.

Rulemaking 13-02-008

DECISION ESTABLISHING A RESERVATION SYSTEM FOR THE BIOMETHANE INCENTIVE PROGRAM, EXTENDING DATE AND ADDRESSING RATE RECOVERY FOR PIPELINE INTERCONNECTION INFRASTRUCTURE

Summary

This decision implements an Incentive Reservation System for the biomethane monetary incentive program established in Decision 15-06-029. The biomethane monetary incentive program provides up to \$3 million for non-dairy clusters and \$5 million for dairy clusters that successfully interconnect with the natural gas pipeline system and operate by December 31, 2026. The Incentive Reservation System allows project developers to reserve incentive funds during the development phase of a project and receive the funds once the project is interconnected and operating. Applications for the Incentive Reservation System are designed to ensure that only viable projects can secure a spot on the reservation list. The Commission will maintain the Incentive Reservation System and make it publicly available to promote the transparency of the use of funds.

The decision also addresses consideration of rate recovery for pipeline interconnection infrastructure pursuant to Public Utilities Code §784.2.

1. Background

Decision (D.) 15-06-029 established a biomethane monetary incentive program to encourage biomethane producers to design, construct, and safely operate projects that interconnect and inject biomethane into California's natural gas Utilities' pipeline systems.¹ Initially, the incentive program authorized \$40 million for incentives of up to \$1.5 million per project, for projects that successfully interconnect and operate by June 11, 2020. The incentives are paid by the gas Utility that operates the pipeline system where the facility interconnects.

Public Utilities Code §399.19² extended the monetary incentive program to December 31, 2021 and increased the incentives to \$3 million for non-dairy clusters and \$5 million for dairy clusters. The Commission implemented AB 2313 in D.16-12-043.³ Only two projects have received incentives, and approximately \$31.82 million remains available. On October 2, 2019 Governor Newsom signed into law, SB 457 (Hueso 2019), which extends the program until

¹ D.15-06-029, *Decision Regarding the Costs of Compliance with Decision 14-01-034 and Adoption of Biomethane Promotion Policies and Program*,

<http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M152/K572/152572023.PDF>

² AB 2313 (Williams 2016),

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB2313

³ D.16-12-043, *Order Modifying Decision 15-06-029 in Response to the December 1, 2015 Petition for Modification and to SB 840 and AB 2313*,

<http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M171/K303/171303439.PDF>

December 31, 2026, or until all available program funds are expended, whichever occurs first.⁴

A July 5, 2018 Assigned Commissioner’s Scoping Memo and Ruling requested party comment on, among other things, extending the timeframe of the Biomethane Monetary Incentive Program.⁵ In comments, many parties expressed an interest in having a reservation system that would allow project developers to reserve incentive funds during the development phase of a project, rather than risking that the incentive funding will be expended before the project is online.

2. Implementation of SB 457

In accordance with SB 457, the date for awarding pipeline interconnection incentives shall be in effect until December 31, 2026, or until all available incentive funds are expended, whichever occurs first. Accordingly, Ordering Paragraph 2.a. of (pages 44-46) of D.15-06-029 shall be modified to state that the incentive program shall be in effect until December 31, 2026... In addition, Ordering Paragraph 2.h. of D.15-06-029 shall be modified to state that the Utilities’ reporting obligation terminates on January 16, 2027.

3. Biomethane Reservation System

Many parties stated that a reservation system for the pipeline interconnection incentives would facilitate new biomethane projects.

⁴ SB 457 (Hueso 2019),
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB457

⁵ Phase 3 Scoping Memo issued on July 5, 2018,
<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M217/K229/217229016.PDF>

3.1. Party Comments

Parties supporting a reservation or queue system include: Bioenergy Association of California (BAC); DTE Biomass Energy; California Association of Sanitation Agencies (CASA); Climate Resolve; Clean Energy; Agricultural Energy Consumers Association (AECA); Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E); East Bay Municipal Utility District (EBMUD); Harvest Power; Dairy Cares; DVO Inc.; California Natural Gas Vehicle Coalition; Maas Energy Works, Inc.

Most supporting parties stated that an incentive reservation system would provide certainty for developers in securing the limited amount of incentive funds, and thereby enable better financing of dairy digester projects. SoCalGas and SDG&E mention unexpected delays, and program funds being available at the commencement of the project but exhausted by the end of the project as examples in which there are uncertainties for the biomethane developers.⁶ The supporting parties commented that an incentive reservation system would allow the developers to reserve the funds and ensure that the money is available once the project successfully demonstrates biomethane injection.

Dairy Cares and AECA emphasized that the “Commission should develop participation criteria that will ensure only serious, permitted, and viable projects” receive a reservation.^{7,8} Harvest Power, Inc., SoCalGas, and SDG&E

⁶ SoCalGas, and SDG&E, July 27, 2018, Comments on Assigned Commissioner’s Amended Scoping Memo and Ruling at 19.

⁷ Dairy Cares, July 27, 2018, Comments on Assigned Commissioner’s Amended Scoping Memo and Ruling at 6.

⁸ AECA, July 27, 2018 Comments on Assigned Commissioner’s Amended Scoping Memo and Ruling at 4.

also noted that the reservation system should be transparent.^{9,10} There were no comments opposed to establishing an Incentive Reservation System.

3.2. Discussion

This decision establishes an Incentive Reservation System to facilitate the implementation of the biomethane monetary incentive program. To be eligible to receive an incentive payment, the producer must flow gas for 30 out of 40 days pursuant to the interconnection agreement.

Currently, there is no certainty that a developer will receive the biomethane monetary incentive program funds when the facility is interconnected and meets the criteria for receiving incentives. The Commission agrees that an Incentive Reservation System will provide more financial certainty for investors and developers of biomethane projects.

The Incentive Reservation System will create a queue to allow qualified projects to reserve funding from the program and receive the incentive once the projects are operating. The system is meant to promote transparency, provide certainty for project developers and investors, and facilitate investment in and development of biomethane interconnection projects. The proposed requirements for the Incentive Reservation System are intended to ensure that only viable projects are eligible to reserve a funding spot.

The reservation list (and any waiting list) for the Incentive Reservation System will be maintained by the Commission's Energy Division. The Utilities¹¹

⁹ Harvest Power, Inc., July 27, 2018, Comments on Assigned Commissioner's Amended Scoping Memo and Ruling at 6.

¹⁰ SoCalGas, and SDG&E, July 27, 2018, Comments on Assigned Commissioner's Amended Scoping Memo and Ruling at 19

will begin accepting applications for the Incentive Reservation System 60 days after this Decision. For applications received on the first day, the Commission will award reservations in order of the date of application for interconnection.

To ensure that the Incentive Reservation System remains transparent, the number of projects with a reservation, the number of projects on the waiting list, and the amount of remaining biomethane incentive funds, will be made publicly available by the Commission. The identity of incentive fund recipients and amounts received will also be made publicly available by the Commission.

3.3. Incentive Reservation System Application Process

Initial Reservation:

A reservation will be approved upon receipt and verification of a complete Incentive Application that includes the following:

- ✓ Contact Information
 - (a) First name, Last Name, Title, Company Name, Street Address, City, County, State, Zip Code, Office Phone, Mobile Phone, Fax Number, Email
- ✓ Interconnecting Facility Information
 - (a) Project name
 - (b) Project location
 - (c) Approximate location and information of the proposed Point of Interconnection
 - (a) Site Plan showing facility location and Point of Interconnection
- ✓ Proposed schedule
 - (a) Proposed commercial Operation Date

¹¹ Pacific Gas & Electric, SDG&E, SoCalGas and Southwest Gas are hereafter referred to as Utility or Utilities, as the context may require.

(b) Proposed Terms of Service (years)

- ✓ Documentation of a pending application for pipeline interconnection with the respective Utility with:

(1) For SoCalGas, SDG&E and PG&E

(a) Commencement of the Step 3 study process and

(b) Payment of any amount required by the Utility to initiate construction of the interconnection equipment.

i. For SoCalGas/SDG&E, the Step 3 process begins with the “Detailed Engineering Study”

ii. For PG&E, Step 3 is the “Engineering and Construction Phase.”

(2) For Southwest Gas

(a) Completed “Interconnection Engineering Studies” and

(b) Payment of any amount required by the Utility to initiate construction of the interconnection equipment.

The Utilities will develop a standard Incentive Reservation Form and make it available for developers to fill out and submit on their websites.¹²

Upon receipt of an Incentive Reservation Form, the Utilities will note the date and time of receipt of the Form and verify that the project meets the Incentive Reservation qualifications. Once the Incentive Reservation submission is verified by the Utility, the Utility will deliver the verified Incentive Reservation to Energy Division for tracking purposes. Upon receipt of a verified Incentive

¹² The regulatory compact is between the California Public Utilities Commission and the Utility.

Reservation, Energy Division will update the public Incentive Reservation System queue. If the project is eligible but funds are not available to reserve, the Energy Division will place the project on the public waiting list, and then award an Incentive Reservation for the project if funds become available. The Energy Division will notify the applicant of these determinations.

The Utilities will include the steps to receive an Incentive Reservation in any standard Renewable Gas Tariff that publishes.

The Energy Division may modify the criteria for an initial Incentive Reservation and continuing eligibility to reflect changes to the Utilities' interconnection processes.¹³

Continuing Eligibility:

As an operational deadline, projects must be operating within three years of the date of Energy Division's award of an Incentive Reservation to qualify to receive the incentives. The Executive Director may extend this date if there are delays that are beyond the control of the applicant. The Commission's Energy Division will verify initial and continuing eligibility.

Prior to making any incentive payment, the Utility must confirm with the Commission that the project has an active reservation. The Utilities shall notify the Commission of all incentive payments that are made within 48 hours and note whether the payment is all or part of the eligible incentive amount for that facility.

¹³ Pursuant to an Order in this proceeding dated August 22, 2019, Utilities will be submitting a proposed Joint Standard Renewable Gas Interconnection Tariff on November 1, 2019 which may modify the Utilities' processes for interconnection.

4. Addressing Rate Recovery for Interconnection Infrastructure Under Section 784.2

Public Utilities Code § 399.24 requires that the Commission “shall adopt policies and programs that promote the in-state production and distribution of biomethane.” Section 784.2 provides “[b]efore the exhaustion of the funds made available pursuant to the monetary incentive program for biomethane projects adopted in Decision (D.) 15-06-029 and no later than July 1, 2019, the commission shall open a proceeding to consider options to further the goals of Section 399.24, including consideration of whether to allow recovery in rates of the costs of investments” in infrastructure that connects biomethane facilities to the gas distribution pipelines. The Commission may authorize rate recovery for “prudent and reasonable” biomethane interconnection investments if it finds that the investments “provide a direct benefit, such as safety, reliability, affordability, or reducing greenhouse gas, to all classes of ratepayers and are in the interest of all classes of ratepayers.” At this time, the Commission does not have adequate information to make the findings referred to above, although, as described below, projects are currently underway that will provide the relevant information.

While Section 784.2 clearly expresses a desire for the Commission to consider rate recovery for pipeline interconnection costs before the incentive funds are exhausted, most of those funds remain unused. The incentive program established in D.15-06-029 and modified in D.16-12-043 authorized \$40 million in statewide funding, with \$3 million available per project and for dairy cluster projects (defined as three or more dairies in proximity), \$5 million available per project. The incentives are paid after the facility has begun successfully injecting biomethane into the pipeline. As of this date, only two facilities have received

incentives, and there is approximately \$31.82 million in ratepayer funding that remains available for other biomethane projects seeking to interconnect to the gas pipeline system. As more projects take advantage of these incentives, this will provide additional information to inform the Commission's evaluation under Section 784.2.

In addition, pursuant to Health and Safety Code 39730.7 and D.17-12-004, the Commission authorized dairy biomethane pilot projects to demonstrate interconnection to the gas pipeline system, with full ratepayer funding of the infrastructure required for interconnection. These pilot projects present an ideal opportunity to collect data and determine how to fulfill the statutory objectives of AB 3187. Six dairy biomethane pilot projects were selected in December 2018.¹⁴ These projects have completed environmental review and executed construction agreements with the Utility. However, they are only in the early stages of construction and much information about their costs and operations is not yet known.

The dairy biomethane pilot projects, in conjunction with the existing monetary incentive program, will allow the Commission to evaluate the biomethane production and interconnection process on a small scale and apply lessons learned to the emerging industry. The results of these pilot projects will assist the Commission in conducting the evaluation required by Section 784.2. Because the dairy pilot projects are still in development, it is premature to make general determinations about recovery in rates for investments in infrastructure to interconnect biomethane generation to the natural gas pipeline network. As

¹⁴ CPUC, CARB, and Department of Food and Agriculture Select Dairy Biomethane Projects to Demonstrate Connection to Gas Pipelines, December 2018, <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M246/K748/246748640.PDF>

results from the pilot projects become available, we will establish a schedule in this (or a successor) rulemaking for determining whether to allow recovery in rates of costs of investments for interconnection of biomethane projects more broadly.¹⁵

5. Categorization

The Commission has determined in prior rulings that this is a quasi-legislative proceeding. Accordingly, *ex parte* communications are permitted without restriction or reporting requirement pursuant to Article 8 of the Commission's Rules of Practice and Procedure.

6. Comments on Proposed Decision

The proposed decision of the Commissioner in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on November 1, 2019 and reply comments were filed on November 25, 2019 by Bioenergy Association of California (BAC), RNG Coalition, Dairy Cares, SoCalGas, SDG&E, Maas Energy Works, PG&E, Southwest Gas, Ametis Biogas, and CalBio. Commenting parties requested more stringent criteria to qualify for an incentive reservation to ensure that incentive funds could only be reserved by projects that will get built. Additionally, many suggestions were provided to clarify the process to request an incentive reservation.

¹⁵ We also note that another action underway to promote production and distribution of biomethane is implementation of SB 1440, codified in Section 651 of the Public Utilities Code. This statute requires the Commission, in consultation with the State Air Resources Board, to consider adopting specific biomethane procurement targets or goals for each gas corporation. The Commission's Energy Division has commenced the consultation with the Air Board that is necessary for implementation of SB 1440.

Maas Energy Works requested clarification that SB1383 Pilot Projects could additionally be eligible for an incentive reservation. Amertis Biogas requested clarification that SB 1383 pilot projects could not be additionally eligible for an incentive reservation.

Finally, commenting parties suggested that the Commission take proactive steps to gather additional information about project interconnection costs and potential impacts of ratebasing. BAC noted that the legislature has passed laws requiring the Commission to consider additional incentives and policies to accelerate instate biomethane and biogas production and use. The RNG Coalition noted that the legislative deadline to begin investigating impacts of ratebasing interconnection costs had already passed. Southwest Gas requested that the Commission not simply utilize the dairy methane pilot projects to develop any type of baseline cost estimates for renewable gas projects. Rather, Southwest Gas encouraged the Commission to issue a ruling to collect information about a range of costs for renewable gas producing technologies including wastewater treatment plants, municipal solid waste facilities, and others.

We have modified the eligibility requirements for an Incentive Reservation in response to multiple parties' concerns that it was too easy to tie up funds by getting an incentive reservation for a project that has little likelihood of being completed. This modification requires a larger financial commitment and therefore provides better assurances that only applicants that either already have, or have high likelihood of receiving, the necessary project financing, the necessary project financing and local regulatory approvals receive an incentive reservation.

We decline to opine on questions about eligibility of SB 1383 Pilot Projects since that topic should be addressed by applying the existing rules to a specific situation if one arises.

7. Assignment of Proceeding

Clifford Rechtschaffen is the assigned Commissioner and Karl J. Bemesderfer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The Commission established a biomethane pipeline interconnection incentive program in Decision (D.) 15-06-029 to encourage biomethane producers to design, construct, and to successfully operate biomethane projects that interconnect with the gas Utilities' pipeline systems.

2. AB 2313 (Williams)¹⁶ (Public Utilities Code Section 399.19) extended the pipeline interconnection incentive program to December 21, 2021 and increased the incentives to \$3 million for non-dairy clusters, up to 50% of interconnection costs, and \$5 million for dairy clusters, up to 50% of interconnection and gathering costs. The Commission implemented AB 2313 in D.16-12-043. SB 457 (Hueso)¹⁷ further extended the program to December 31, 2026 or until all funds are exhausted, whichever comes first.

3. The biomethane monetary incentive program has approximately \$31.82 million remaining.

¹⁶ AB 2313 (Williams 2016),
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB2313

¹⁷ SB 457 (Hueso 2019)
https://leginfo.legislature.ca.gov/faces/billTextclient.xhtml?bill_id=20190200SB457

4. Six dairy digester biomethane pilot projects that will receive ratepayer funding for all pipeline interconnection costs were selected in December 2018 and now are underway.

Conclusions of Law

1. Currently, there is no certainty that incentive funds will remain available for a project that completes interconnection and meets the standards for receiving an incentive.

2. The Incentive Reservation System will create a queue to allow qualified projects to reserve funding from the program and receive the incentive once the projects complete interconnection and meet the standards for receiving an incentive.

3. The requirements for the Incentive Reservation System are intended to ensure that only viable projects are eligible to reserve a funding spot.

4. The Incentive Reservation System will facilitate development of projects that inject biomethane into the natural gas pipeline system.

5. Because the incentives represent a large expenditure of ratepayer funds, it is reasonable to make the identity of pipeline interconnection incentive recipients and amounts received publicly available.

6. The Commission does not have adequate information to conduct the evaluation of rate recovery of biomethane pipeline interconnection costs required by Public Utilities Code Section 784.2 at this time. It will conduct that evaluation using information that will be obtained from the dairy biomethane pilot projects that are currently underway.

O R D E R

IT IS ORDERED that:

1. The Utilities will develop a standard Incentive Reservation Form and submit it to Energy Division via Tier 1 advice letter within 20 days of this Decision and make it available for developers to fill out and submit to the Utilities on their websites. The incentive Reservation Form must demonstrate compliance with the eligibility criteria in Sections 3.23 and 3.3 of this Decision.

2. The Utilities will begin accepting applications for the Incentive Reservation System to be submitted to Energy Division within 60 days of this Decision .

3. Upon receipt of an Incentive Reservation Form, the Utilities will note the date and time of the receipt of the Form and verify that the project meets Incentive Reservation qualifications.

4. Once the Incentive Reservation Form is verified by a Utility, the Utility will deliver the verified Incentive Reservation to the Energy Division for tracking purposes within 5 business days.

5. Upon receipt of a verified Incentive Reservation, Energy Division will update the incentive reservation queue.

6. Energy Division will make the reservation list, waiting list, and remaining biomethane monetary incentive program funds publicly available.

7. Energy Division will verify eligibility of the projects for an incentive reservation.

8. An applicant must notify the Utility when it receives a reservation or is placed on the waiting list.

9. Each of Pacific Gas & Electric, Southern California Gas Company, San Diego Gas & Electric, and Southwest Gas Corporation shall provide a quarterly report to Energy Division within 5 days of the end of the quarter, for all

applicants with a reservation on the waiting list reporting the status of the interconnection project.

10. Energy Division may modify the criteria for an initial Incentive Reservation and continuing eligibility to reflect changes to the Utilities' interconnection processes and may modify the Incentive Reservation Form accordingly.

11. The Utilities will include the process to receive the Incentive Reservation in any Standard Renewable Gas Tariff that publishes.

12. As an operational deadline, projects must be operating within three years of the date of Energy Division's award of an Incentive Reservation to qualify to receive the incentives. The Executive Director may extend this date if there are circumstances that are beyond the control of the applicant.

13. Once the reservations in the system exceed the total available incentive funding, completed applications will be put on a waiting list and will be awarded an Incentive Reservation if additional funding becomes available.

14. Prior to making any incentive payment, the Utility must confirm to the Commission that that the project has an active reservation.

15. The Utilities shall notify the Commission of all incentive payments that are made within 48 hours, and whether the payment is all or part of the eligible incentive amount for that facility.

16. The identify of incentive recipients and amounts received will be made publicly available by Energy Division.

17. The Commission does not have adequate information to conduct the evaluation of rate recovery of biomethane pipeline interconnection costs required by Public Utilities Code 784.2 at this time but will conduct that evaluation using

information obtained from the dairy biomethane pilot projects that are currently underway.

18. The pipeline interconnection incentives shall be available until December 31, 2026, or until all available funds are expended, whichever occurs first.

19. Ordering Paragraph 2.a of D.15-06-029 is modified to state that the incentive program shall be in effect until December 31, 2026.

20. Ordering Paragraph 2.h of D.15-06-029 is modified to state that the Utilities' reporting obligations terminate on January 16, 2027.

This order is effective today.

Dated December 5, 2019, at San Francisco, California.

MARYBEL BATJER
President
LIANE M. RANDOLPH
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA
Commissioners