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Dear Mr. Weisenmiller and Ms. Vaccaro:

Subject: Letter of Appeal for Denying LADWP's Petition for Reconsideration of Applications for Renewables Portfolio Standard (RPS) Certification for the Scattergood, Harbor, Valley and Haynes Generating Stations Using Biomethane from 2009 Shell and Atmos Contracts RPS ID 61596A, 61597A, 61598A, 61599A
Docket No. 11-RPS-01

This Letter of Appeal is provided to the California Energy Commission (CEC or Energy Commission) to appeal the Office of the Executive Director's decision to deny the Petition for Reconsideration filed by the Los Angeles Department of Water and Power (LADWP Petition).

Introduction

The Office of the Executive Director's letter denying LADWP's Petition relies on a lengthy memorandum from CEC staff directed to the CEC's Executive Director, dated November 30, 2015 ("2015 CEC Staff Memo"). The 2015 CEC Staff Memo specifically states that "to challenge staff's denial of RPS certification it must be shown that staff misapplied the eligibility criteria and factor in the RPS Guidebook, 4th Edition, OR applied criteria and factors other than those found in the RPS Guidebook, 4th Edition, in denying certification." p.22 (emphasis added).

The examples referenced below reflect the CEC Staff's confusion regarding the eligibility criteria and misapplication of the 4th Edition RPS Guidebook's standards:

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CEC Statement on August 11, 2011 ¹	2015 CEC Staff Memo ²
<p>“SBX1-2 defines a ‘renewable electrical generating facility’ as a facility that uses, among other technologies and fuels, biomass, digester gas, and landfill gas, and any additions or enhancements to the facility using that technology. These provisions have not changed since the law established the RPS with passage of Senate Bill 1078 in 2002. The law does not define the terms ‘biomass,’ ‘digester gas,’ or ‘landfill gas,’ and <u>is likewise silent as to whether these fuels must be used on the site of the fuel’s production to generate electricity for purposes of the RPS. Nor does the law specify how these fuels, if produced offsite, should be delivered to a power plant for purposes of generating electricity.</u>”</p>	<p>“The Energy Commission established delivery requirements for biogas transported through the natural gas transportation pipeline system in order to satisfy the fuel ‘<u>use</u>’ provisions of then Public Resources Code section 25741(b)(1).” (Emphasis added). CEC’s new interpretation.</p>
<p>“The Energy Commission <u>currently allows backhaul and forward haul transportation</u> agreements that are either firm or interruptible to be considered eligible delivery methods . . .”</p>	<p>“This necessarily <u>excludes</u> gas exchanges and other natural gas transport methods such as ‘displacements’ or ‘<u>backhauls</u>.’”</p>

CEC Statement on March 16, 2012	2015 CEC Staff Memo
<p>“The Law at that time, as well as now, did not specifically identify ‘biogas’ as an eligible renewable energy resources for purposes of the RPS, but did identify ‘biomass,’ ‘digester gas’ and ‘landfill gas’ as eligible renewable resources. These terms, however, were not defined in the law. <u>Nor did the law specify whether these fuels needed to be used on the site of the fuel’s production to generate electricity for the purposes of the RPS. Likewise, the law did not specify how these fuels, if produced offsite, should be delivered</u> to a power plant for purposes of generating</p>	<p>“The Energy Commission established delivery requirements for biogas transported through the natural gas transportation pipeline system in order to satisfy the fuel ‘<u>use</u>’ provisions of then Public Resources Code section 25741(b)(1).” (Emphasis added). CEC’s new interpretation.</p>

¹ Item 3 of Aug. 16, 2011 CEC Staff Workshop Notice on Pipeline Biomethane, interpreting the 4th Ed. RPS Guidebook.

² 2015 CEC Staff Memo at p13, re interpreting the 4th Edition RPS Guidebook

electricity.	
“Biomethane that is injected into a natural gas pipeline system for delivery to a designated power plant in accordance with the RPS Guidebook may not displace in-state fossil fuel consumption. It may, in fact, not be physically delivered to the purchasing power plant, or even to the state, and may not even be used to produce electricity.	“As the Energy Commission Staff understand, firm transportation service guarantees gas delivery without interruption (except in extraordinary circumstance) at the customer’s primary firm delivery point. Interruptible transportation service refers to transportation service offered to customers under schedules or contracts on an as-available basis.”
“Unlike other renewable resources that are located at the site of the power plant ... biomethane originates offsite and is delivered to the power plant via a non-dedicated natural gas pipeline system. This makes its use for the RPS more difficult or impossible to verify and introduces the possibility of fraud.”	“The only way an electricity generation facility could actually use biogas transported through the natural gas transportation pipeline system is if the biogas was delivered (or had the potential to be delivered) into California for use at the nominated facility.”

CEC Statement on October 5, 2012 ³	CEC 2015 Staff Memo ⁴
The 4 th Edition RPS Guidebook, “did not establish rigorous requirements to verify that the claimed quantity of biomethane was actually used by the designated power plant.”	“The Energy Commission established delivery requirements for biogas transported through the natural gas transportation pipeline system in order to satisfy the fuel ‘ <u>use</u> ’ provisions of then Public Resources Code section 25741(b)(1).” (Emphasis added). CEC’s new interpretation.

Also, the 2015 CEC Staff Memo applies criteria and factors other than those found in the RPS Guidebook, 4th Edition, in denying certification, inconsistent with CARB’s interpretation of how biomethane could be reported, and inconsistent with federal law.

³ CEC October 5, 2012 “Notice Regarding Implementation of Assembly Bill 2196 Pertaining to the Renewables Portfolio Standard Program.”

⁴ 2015 CEC Staff Memo, p.11.

Legal Standards	CEC 2015 Staff Memo Interpretation
<p>“FERC defines ‘transportation’ to include ‘storage, <u>exchange</u>, <u>backhaul</u>, <u>displacement</u>, or other methods of transportation.’” <i>Nat. Gas Clearinghouse v. F.E.R.C.</i>, 108 F.3d 387 (D.C. Cir 1997); 18 C.F.R. § 284.1(a).</p> <p>FERC “regards <i>exchange agreements</i>” “as regulated transportation, treating them as though they provide for <i>actual transportation</i> of the purchased gas across state lines” under the NGA; <i>Transwestern Pipeline Co. v. F.E.R.C.</i>, 747 F.2d 781, 782 (D.C. Cir. 1984).</p> <p>“The term ‘sale’ when used with respect to natural gas, includes an <i>exchange</i> of natural gas.” 15 U.S.C. § 3202(7).</p>	<p>“Gas exchanges and other natural gas transport methods, such as ‘displacements’ or ‘backhauls’ do not actually delivery gas from the injection site to the extraction site and are commonly used to avoid transportation costs.”</p>
<p>FERC “regards <i>exchange agreements</i>” “as regulated transportation, treating them as though they provide for <i>actual transportation</i> of the purchased gas across state lines” under the NGA; <i>Transwestern Pipeline Co. v. F.E.R.C.</i>, 747 F.2d 781, 782 (D.C. Cir. 1984).</p> <p>“Firm transportation service” means the “service is not subject to a prior claim by another customer or class of service and receives the same priority as any other class of firm service.” 18 C.F.R. §284.7(a)(3).</p> <p>“Interruptible transportation service” means “the capacity used to provide the service is subject to a priority claim by another customer or another class of service and receives a lower priority than such other classes of service.” 18 C.F.R. § 284.9(a)(3).</p>	<p>“As the Energy Commission Staff understand, firm transportation service guarantees gas delivery without interruption (except in extraordinary circumstance) at the customer’s primary firm delivery point. Interruptible transportation service refers to transportation service offered to customers under schedules or contracts on an as-available basis.”</p>
<p>“Were suppliers of gas and pipeline companies free to allocate <i>by contract gas from a particular source to a particular use, havoc would be raised with the federal regulatory scheme</i>, as it was construed.” <i>Cal. v. Lo-Vaca Gathering Co.</i>, 379 U.S. 366, 369 (1965); <i>Oklahoma Nat. Gas Co. v. F.E.R.C.</i>, 28 F.3d 1281, (D.C. Cir. 1994).</p>	<p>“The Energy Commission established delivery requirements for biogas transported through the natural gas transportation pipeline system in order to satisfy the fuel ‘<u>use</u>’ provisions of then Public Resources Code section 25741(b)(1).” (Emphasis added). CEC’s new interpretation.</p>
<p>“Biomethane nominated to a pipeline is identical to fossil-fuel derived natural gas; therefore the actual molecules of biomethane may not be combusted by the</p>	<p>“The only way an electricity generation facility could actually use biogas transported through the natural gas</p>

<p>operator with a purchase contract. Pursuant to section 95131(i)(2)(D) of MRR, the operator, or reporting entity, could employ one of two methods to provide evidence that the operator is ‘receiving the biomethane.’”</p> <p>“The second method is for the operator, or reporting entity, to provide evidence that the owner or marketer of the biomethane engaged in a ‘<u>swap</u>’ of the biomethane at the source with the natural gas delivered to the operator or reported entity. This would still require evidence that the biomethane was nominated to a pipeline, but would not require evidence that the biomethane physically flowed to the operator’s facility in California.” CARB’s <i>Guidance for California’s Mandatory Greenhouse Gas Emissions Reporting: Biomass-Derived Fuels Reporting</i> § 4.2.</p>	<p>transportation pipeline system is if the biogas was delivered (or had the potential to be delivered) into California for use at the nominated facility.”</p>
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Procedural Background

The Office of the Executive Director’s letter denying LADWP’s Petition for Reconsideration is dated December 22, 2015.⁵ LADWP received it on January 4, 2016. The Office of the Executive Director’s decision is in response to LADWP’s Petition for Reconsideration dated March 28, 2014. LADWP’s Petition for Reconsideration was filed in response to the CEC’s staff determination, in a letter dated February 28, 2014, that it was denying LADWP’s applications for certification of its Scattergood, Harbor, Valley, and Haynes facilities to use biomethane procured under contracts transacted in 2009 with Shell Energy North America, L.P. (Shell) and Atmos Energy Marketing, LLC (Atmos).⁶

Discussion

Upon a denial by the Executive Director of a petition for reconsideration, an applicant may file a letter of appeal to the Commission. The appeal shall be processed as a Request for

⁵ According to the CEC’s Docket Log for Docket Number 11-RPS-01, available on its website, the letter was submitted to the CEC docket clerk on December 24, 2015 at 11:32 AM, TN#207127.

<https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=11-RPS-01>

A “decision” is “effective on the day it is filed, unless it states otherwise.” 20 CCR 1720.4 It is unknown when the decision was actually “filed,” because there is no “filing,” only a “submission date” and a “docket date” It was submitted to the docket clerk immediately prior to the holidays and not received until nearly two weeks after it is dated. This is reflective of litigation gamesmanship of yore, much maligned by the courts, especially when the Guidebook only allows 30 days to respond.

⁶ For ease of reference these contracts will be referred to as the “2009 Shell and Atmos Contracts.”

Investigation.⁷ According to the RPS Guidebook, 7th Edition, p. 114, which is relied on by the CEC for this process, a letter of appeal must identify the “eligibility criteria in the guidelines that the appealing party believes were applied incorrectly in denying” RPS certification.

1. The CEC’s Past Statements Contradict Its Delivery and Use Interpretation in the 2015 CEC Staff Memo.

The 2015 CEC Staff Memo misinterprets and misapplies concepts in the 4th Edition RPS Guidebook contradicting its past statements. For example, the 2015 CEC Staff Memo states that the CEC has consistently interpreted the Third and Fourth Editions of the RPS Eligibility Guidebook “to include a biogas delivery requirement.” p.14, fn. 16. Yet, the CEC’s prior statements in a workshop and notice contradict this contention.

a. August 16, 2011 Notice of Staff Workshop States Delivery Allowed Backhaul.

After the 4th Edition RPS Guidebook was already published, in the August 16, 2011 Notice of Staff Workshop regarding pipeline biomethane, the CEC stated that “since the law established the RPS with passage of Senate Bill 1078 in 2002, . . . [it did not] specify how [biomethane], if produced offsite, should be delivered to a power plant for purposes of generating electricity.” The CEC went on to say that with the 4th Edition RPS Guidebook included “delivery requirements for delivering biogas... for use in an RPS eligible electric generating facility,” and it specifically asked whether it should retain the “current requirements” allowing backhaul and forward haul transportation agreements. This is contrasted with the 2015 CEC Staff Memo that clearly states that its re-interpretation of the 4th Edition RPS Guidebook, in 2015, does not allow backhaul as an acceptable delivery method.⁸

b. March 16, 2012 Notice to Consider Suspension of the RPS Eligibility Guidelines Related to Biomethane States the CEC’s Understanding of the Transportation System

In the notice to consider suspension of certifying facilities using biomethane, the CEC stated its understanding of how the delivery system worked:

First, the natural gas pipeline system is a non-dedicated transportation system. Once the biomethane is injected into the pipeline system it is commingled with fossil fuel natural gas in the pipeline. Second, the gas within the pipeline does not consistently flow in one direction. Lastly, there could be multiple extraction points on the pipeline system between the point of injection of the biomethane and extraction point for the designated power plant.⁹

⁷ Energy Commission’s Renewables Portfolio Standard Eligibility Guidebook, Seventh Edition (RPS Guidebook, 7th Edition) p. 114; 20 CCR Section 1231.

⁸ 2015 CEC Staff Memo, p.13, re-interpreting the 4th Ed. RPS Guidebook.

⁹ March 16, 2012 Notice to Consider Suspension of the RPS Eligibility Guidelines Related to Biomethane

This understanding coincided with the gas pipeline system when the 2009 Shell and Atmos Contracts were transacted. The 4th Edition RPS Guidebook reflected this understanding identified in the March 16, 2012 Notice. This understanding also corresponds with the Schlesinger Report. So it is difficult to understand why the 2015 CEC Staff Memo, now reaches a different conclusion, inconsistent with its prior interpretation for the 4th Edition RPS Guidebook.

c. October 5, 2012 Notice to Implement AB 2196 Recognized a Lack of Rigorous Standards in the 4th Edition RPS Guidebook

CEC Statement on October 5, 2012 ¹⁰	CEC 2015 Staff Memo ¹¹
The 4 th Edition RPS Guidebook, “did not establish rigorous requirements to verify that the claimed quantity of biomethane was actually used by the designated power plant.”	“The Energy Commission established delivery requirements for biogas transported through the natural gas transportation pipeline system in order to satisfy the fuel ‘ <u>use</u> ’ provisions of then Public Resources Code section 25741(b)(1).” (Emphasis added). CEC’s new interpretation.

Again, it is difficult to understand why the 2015 CEC Staff Memo, now reaches a different conclusion with “rigorous requirements to verify that the claimed quantity of biomethane was actually used by the designated power plant” as opposed to without, as was the interpretation at that time in October 2012.

The CEC Staff is applying standards post biomethane suspension retroactively, when that was not the intent with the biomethane suspension. In a letter dated February 22, 2012 addressed to Robert Weisenmiller, Chair of the CEC, a request was made from elected officials of the Legislature to “place a moratorium on permitting any additional pipeline biomethane transactions” for RPS compliance.¹² Shortly thereafter, in the “Notice to Consider Suspension of the RPS Eligibility Guidelines Related to Biomethane” dated March 16, 2012 (2012 Suspension Notice), the CEC stated that “By suspending the biomethane rules at this time, the Energy Commission hopes to protect program participants from prematurely entering into biomethane-related transactions that could be subject to different RPS eligibility rules established by the Energy Commission or enacted by the Legislature.” p. 4. The CEC intended to notify program participants so that they would not

¹⁰ CEC October 5, 2012 “Notice Regarding Implementation of Assembly Bill 2196 Pertaining to the Renewables Portfolio Standard Program.”

¹¹ 2015 CEC Staff Memo, p.11.

¹² Feb. 22, 2012 letter from Darrell Steinberg, Senate President Pro Tempore, Nancy Skinner, Assemblymember of the 14th District, Wesley Chesbro, Assemblymember of the 1st District, and Steven Bradford, Assemblymember of the 51st District.

enter into new biomethane contracts. The “different RPS eligibility rules” were not to apply retroactively to contracts entered into in 2009.

2. The Schlesinger Report Contains *Unrebutted* Expert Opinions on the Transportation, Delivery and Operations of Natural Gas Pipelines in the U.S.

Benjamin Schlesinger, Ph.D., a nationally-recognized gas and pipeline expert, prepared a report supporting LADWP’s Petition for Reconsideration.¹³ The Schlesinger Report explained how the U.S. gas pipeline system works in interstate commerce. Mr. Schlesinger has provided additional information to the CEC in support of LADWP’s letter of appeal (“2016 Schlesinger Letter”), which is incorporated herein as further supporting evidence.

The 2015 CEC Staff Memo states that it “has no reason to dispute the conclusion that biogas procured under the 2009 Shell and Atmos contracts is injected into natural gas pipelines that are interconnected to the U.S. gas transmission pipeline network, and that gas flowing through the transmission pipeline network can be delivered into California.” p.15. The 2016 Schlesinger Letter further adds that,

“Shippers of gas on U.S. pipelines are required to enter into transportation agreements (contracts) under the provisions of the pipeline’s FERC Gas Tariff. Contracts with gas pipelines – be they for firm service, interruptible service, backhaul services, etc. – obligate the pipeline to deliver gas physically from the point of receipt to the point of delivery. ”

When the 2015 CEC Staff Memo stated “It is unclear what the Schlesinger Report means when it refers to LADWP’s firm capacity contract on the Kern River Pipeline,” the 2016 Schlesinger Letter is informative.

The purpose of specifying “contract paths” in pipeline contracts is to determine the appropriate rate to charge for providing transportation and delivery services, not to ensure that any particular molecule gas is delivered anywhere. Once a gas pipeline accepts biomethane deliveries, the biomethane is indistinguishable with other gas on the pipeline, i.e., fungible, as explained in Figure 6 of the Schlesinger Report.

For this reason, CEC’s disallowance of biomethane delivered to the Department under the 2009 Shell and Atmos contracts because there was no demonstrated “contract path” is both artificial and superfluous. Forcing this showing creates an additional regulatory and financial burden for the Department and its vendors, and it is inconsistent with the way the gas industry operates under federal regulation because it would exclude common practice that bears the same result in any event. If anything, from my industry experience, the purpose of the requirement in the CEC’s Fourth Edition RPS Guidebook to enter into delivery contracts “from the injection point to California” isn’t really to ensure the same gas is actually delivered – that would be impossible – or to ensure any particular rate is charged.

¹³ Already referred to as the “Schlesinger Report” by the CEC and LADWP.

The purpose appears to be to ensure the Environmental Attributes flow to California, which they do under the 2009 Shell and Atmos contracts (see excerpt above).¹⁴

The 2015 CEC Staff Memo cites no supporting evidence or authority for its interpretation. Nor does the 2015 CEC Staff Memo cite evidence or authority rebutting the expert conclusions in the Schlesinger Report. A statement is simply made, but no support is provided. For example, “the Energy Commission does challenge the [Schlesinger Report’s] conclusion that an interpretation of the Energy Commission’s biogas delivery requirements that precludes deliveries through transport methods such as backhauls, would ‘run counter to the regulatory and commercial mechanisms that are in place throughout the grid’ and ‘would altogether preclude the use of natural gas pipelines to make biogas deliveries.’” 2015 CEC Staff Memo, p.15. The 2016 Schlesinger Letter adds:

First, our report described in detail how the U.S. gas pipeline grid functioned at the time the 2009 Shell and Atmos contracts were entered – i.e., on an open access basis under rules issued by, and pipeline tariffs approved by, the Federal Energy Regulatory Commission (FERC). What is an open access basis? Pipelines and shippers use the pipeline grid to route gas among buyers and sellers in the most economical way – this includes contracting with pipelines to provide any of a number of services, e.g., firm, interruptible, backhaul, storage and many others. To backhaul is to move gas against the flow in the pipeline, which involves exchanging one volume of gas for another. Since molecules cannot flow upstream any more than a canoe will float upriver, the only way to backhaul gas on a pipeline is to conduct an equal exchange of volumes.¹⁵ Shippers also commonly conduct exchanges of gas not involving the pipeline (see Figure 8 of our report), an arrangement that nonetheless involves delivery guarantees, as well as costs to shippers. Regardless of the mechanism, commitments to deliver gas using one or another means reside in enforceable agreements, such as the 2009 Atmos contract, which stated:

“The parties understand that this landfill gas will be delivered to Buyer through an exchange rather than direct long-haul transportation. Specifically, that environmental attributes will be unbundled from the gas near the landfill source, and the resulting gas without environmental attributes will be sold by the Seller in the local market. The gas will be with an equal quantity of gas and re-bundled with environmental attributes for delivery to Buyer at the specified delivery point as Standard Base Load gas.” (Atmos contract, 2nd Transaction Confirmation, Special Provision)

In its RPS Guidebook, Fourth Edition,¹⁶ the CEC clearly allowed the flexibility inherent in the U.S. gas pipeline grid as a means of delivering biomethane to in-state power plants because it states: “Delivery contracts with the pipeline operators may be for delivery with or

¹⁴ The 2016 Schlesinger Letter, identifies the applicable language in the contracts.

¹⁵ But shippers pay for backhaul, just like they must pay for any other pipeline service for which they have contracted. For example, see Attachment A, the backhaul rates Rockies Express Pipeline (REX) is authorized to charge in its FERC Gas Tariff.

¹⁶ California Energy Commission (CEC), Commission Guidebook: Renewables Portfolio Standard Eligibility, Fourth Edition, January 2011 (CEC- 300- 2010- 007- CMF).

against the physical flow of the gas in the pipeline.” (emphasis is mine).¹⁷ In the context of the gas industry’s activities, the meaning of this Guidebook regulation was clear – backhaul that took place in the 2009 Shell and Atmos contracts resulted in gas moving against the flow of gas in the pipeline and were, therefore, a valid, effective, enforceable way to transport biomethane to the Department’s power plants.

This provides the CEC with an additional understanding of how the natural gas transportation system in the U.S. operated in 2009.

3. The ARB’s Understanding of the Natural Gas Pipeline System Comports with the Schlesinger Report.

The explanation provided in the Schlesinger Report is also the understanding found in the CEC’s sister agency, the California Air Resources Board, which is consistent with LADWP’s understanding of CARB’s standards for Mandatory Reporting Requirement of Greenhouse Gas Emissions (“MRR”). “For biomethane and biogas, the verifier must examine all nomination, invoice, scheduling, allocation, transportation, storage, in-kind fuel purchase and balancing reports from the producer to the reporting entity and have reasonable assurance that the reporting entity is receiving the identified fuel.”¹⁸

CARB’s *Guidance for California’s Mandatory Greenhouse Gas Emissions Reporting* discussed CARB’s biomethane standards.¹⁹ Specifically, Section 4.2 of the *Biomass-Derived Fuels Reporting and Verification Guidance*, stated:

- “Biomethane nominated to a pipeline is identical to fossil-fuel derived natural gas; therefore the actual molecules of biomethane may not be combusted by the operator with a purchase contract. Pursuant to section 95131(i)(2)(D) of MRR, the operator, or reporting entity, could employ one of two methods to provide evidence that the operator is ‘receiving the biomethane.’”
- “The second method is for the operator, or reporting entity, to provide evidence that the owner or marketer of the biomethane engaged in a ‘swap’ of the biomethane at the source with the natural gas delivered to the operator or reported entity. This would still require evidence that the biomethane was nominated to a pipeline, but would not require evidence that the biomethane physically flowed to the operator’s facility in California.”

¹⁷ The American Gas Association and gas pipelines define backhaul using literally the same words, see, for example, <https://www.aga.org/knowledgecenter/natural-gas-101/natural-gas-glossary/b> and Rockies Express Pipeline LLC, FERC Gas Tariff, Third Revised Volume No. 1, Rate Schedule BHS, Backhaul Transportation Service, Sec. 2.2.

¹⁸ See 17 C.C.R. § 95131(i)(2)(D)(1)

¹⁹ April 30, 2014.

- Section 4.2.2, Figure 3: Delivery via In-Kind Gas Swap - “Figure 3 provides an example of an arrangement where biomethane is transferred from a landfill to an operator, or reporting entity, where there is no physical pathway through interconnected pipelines.”

An important aspect of SBX1-2, specifically for POUs, is that the ARB is tasked with imposing penalties for POUs.²⁰ It would not make sense for the CARB to impose standards by the CEC with which it expressly disagrees. Similar to CARB, the CEC should accept the well-established structures of natural-gas transactions.

4. The CEC’s Eligibility Requirements Are Inconsistent with Federal Standards under the Natural Gas Act

The CEC’s primary arguments for the denial of LADWP’s certification application are identified on pages 10-11 of the 2015 CEC Staff Memo. The CEC raised the following contentions:

- “Gas exchanges and other natural gas transport methods, such as ‘displacements’ or ‘backhauls’ do not actually deliver gas from the injection site to the extraction site and are commonly used to avoid transportation costs.”
- “As Energy Commission staff understand, displacement is a method of natural gas transportation where gas is injected into a natural gas pipeline and an equivalent amount of gas is extracted downstream; however, the injected gas is not scheduled to be delivered to the extraction point. Backhaul is basically the same as displacement, except that backhaul is used in cases where the gas in the pipeline flows from the extraction point towards the injection point.”
- “In contrast to gas exchanges, gas delivered through firm or interruptible service does result in actual gas delivery.”
- “As the Energy Commission Staff understand, firm transportation service guarantees gas delivery without interruption (except in extraordinary circumstance) at the customer’s primary firm delivery point. Interruptible transportation service refers to transportation service offered to customers under schedules or contracts on an as-available basis.”
- “The only way an electricity generation facility could actually use biogas transported through the natural gas transportation pipeline system is if the biogas was delivered (or had the potential to be delivered) into California for use at the nominated facility.”

The CEC cites no authority for the basis of its understanding, but the CEC’s interpretation of the natural gas transportation and delivery requirements are contrary to federal gas standards under the Natural Gas Act. FERC regulates the sale or transportation of natural gas in interstate commerce pursuant to the federal Natural Gas Act, 15 U.S.C. § 717 *et seq.* (“NGA”).

²⁰ PUC 399.30 (p)

“FERC defines ‘transportation’ to include ‘storage, exchange, backhaul, displacement, or other methods of transportation.’” *Nat. Gas Clearinghouse v. F.E.R.C.*, 108 F.3d 387 (D.C. Cir. 1997); 18 C.F.R. § 284.1(a). FERC “regards ***exchange agreements***” “as regulated transportation, treating them as though they provide for ***actual transportation*** of the purchased gas across state lines” under the NGA; *Transwestern Pipeline Co. v. F.E.R.C.*, 747 F.2d 781, 782 (D.C. Cir. 1984). “The term ‘sale’ means any sale, ***exchange***, or other transfer for value.” 15 U.S.C. § 3301(20). “The term ‘sale’ when used with respect to natural gas, includes an ***exchange*** of natural gas.” 15 U.S.C. § 3202(7).

The CEC’s attempt to distinguish gas exchanges from gas delivered through firm or interruptible service agreements is arbitrary and incorrect. Federal law defines “firm transportation service” as “service [that] is not subject to a prior claim by another customer or class of service and receives the same priority as any other class of firm service.” 18 C.F.R. §284.7(a)(3). “Interruptible transportation service” means “the capacity used to provide the service is subject to a priority claim by another customer or another class of service and receives a lower priority than such other classes of service.” 18 C.F.R. § 284.9(a)(3).

In addition, the CEC’s attempt to distinguish between gas delivered through exchanges is inconsistent with federal public policy prohibiting the use of commingled natural gas. 15 U.S.C. § 3374(a)(1). The NGA declares any provisions prohibiting commingling of natural gas under contracts subject to FERC jurisdiction as void and against public policy.

The U.S. Supreme Court decision in *California v. Lo-Cava Gathering Co.*, 379 U.S. 366 (1965), is instructive. In *Lo-Vaca*, the United States Supreme Court interpreted the scope of federal jurisdiction under the NGA. The Court provided that, similar to the flow of electricity, the flow of natural gas followed “an engineering and scientific, rather than a legalistic or governmental, test.” *Id.* at 368.

The *Lo-Vaca* Court “considered the anatomy of the pipeline system to discover the channel of the constant flow; ... The result of our decisions is to make the sale of gas which crosses a state line at any stage of its movement from wellhead to ultimate consumption in interstate commerce with the meaning of the [NGA].” *Id.* (internal citation omitted). The Court held attempts to place restrictions against commingling of natural gas to be void.

As the Court explained: “Were suppliers of gas and pipeline companies free to allocate by contract gas from a particular source to a particular use, ***havoc would be raised with the federal regulatory scheme***, as it was construed.” *Id.* at 369. In addition, “parties may not avoid the jurisdiction of the Federal Power Commission by stipulating in their contract that, contrary to the actuality of pipeline transportation, all the supplier’s gas sold under the contract will be used interstate.” *Federal Power Comm’n v. Amerada Petroleum Corp.*, 379 U.S. 687, 689-90 (1965).

The 2015 CEC Staff Memo that now claims gas exchanges are ineligible is belied by the 4th Edition of the RPS Guidebook, which recognized that “delivery contracts with the pipeline

operators may be for delivery with or *against the physical flow of the gas* in the pipeline.” This was also identified in the Schlesinger Report.

The American Gas Association (AGA) defines “Backhaul” as “a transaction that results in the transportation of gas *in a direction opposite of the aggregate physical flow of gas in the pipeline*. This is typically achieved when the transporting pipeline redelivers gas at a point(s) upstream from the point(s) of receipt. A backhaul condition will exist as long as the aggregate backhaul transactions total less than the aggregate forward haul transactions. A backhaul transaction can result in a delivery by non-delivery or cut back (reduction) of physical flow at a delivery point.” See <https://www.aga.org/knowledgecenter/natural-gas-101/natural-gas-glossary/b>

The CEC’s delivery standard permitting delivery against the flow of gas confirms that backhaul transactions are RPS-eligible. Moreover, as discussed below, LADWP did in fact have a firm transportation service agreement for the delivery of the biomethane under the 2009 Shell and Atmos Contracts.

5. LADWP had Transportation Agreements in place that met CEC Requirements

The CEC denied certification of LADWP’s 2009 Shell and Atmos Contracts because LADWP did not have a contract for firm or interruptible delivery of the gas. However, ***LADWP did have firm transportation agreements with Kern River Gas Transmission Company (“KRT”) used for delivery of the biomethane gas procured under the 2009 Shell and Atmos Contracts.*** This satisfies the 4th Edition RPS Guidebook.

On April 2, 1990, LADWP and KRT entered into a Firm Transportation Service Agreement for delivery natural gas, which was restated on May 28, 2013. See Restatement of Firm Transportation Service Agreement, Contract No. 1006. On January 31, 2001, LADWP and KRT entered into an additional Firm Transportation Service Agreement, which was also restated on May 28, 2013. See Restatement of Firm Transportation Service Agreement, Contract No. 1706. KRT Agreement Nos. 1006 and 1706 provide firm transportation delivery service for gas received at Opal Wyoming and transported to SoCal Gas’ delivery points at Kramer Junction and Wheeler Ridge.

The biomethane procured under the 2009 Shell and Atmos Biomethane Agreements were delivered to LADWP under the KRT Firm Transportation Service Agreements Nos. 1006 and 1706. These two contracts are referenced in the Schlesinger Report. This should clarify the understanding of the 2015 CEC Staff Memo when it stated “it is unclear what the Schlesinger Report means when it refers to LADWP’s firm capacity contract on the Kern River Pipeline.” p.15.

In addition, LADWP provided the CEC with the KRT Firm Transportation Service Agreements (Contract Nos. 1006 and 1706) with attestation. LADWP has also already provided the CEC with attestations for the 2009 Shell and Atmos Contracts, included in the exhibits with its Petition for Reconsideration, hyperlinked below to the CEC’s docket. The KRT Firm Transportation Service Agreements confirm the injection of biomethane into the national pipeline

under the 2009 Shell and Atmos Contracts and the delivery of that gas to LADWP at SoCal Gas' delivery points in California. The LADWP's Response to the CEC's Staff's RPS Draft Summary Spreadsheet for CP1, dated January 19, 2016, sent to Theresa Daniels at the Renewable Energy Division of the CEC, also includes the invoices from the 2009 Shell and Atmos Contracts.

6. LADWP's 2009 Shell and Atmos Contracts Are Grandfathered Resources

LADWP entered into the Shell and Atmos Biomethane Agreements in 2009 pursuant to LADWP's 2008 RPS Policy, which included as eligible resources "renewable derived biogas (meeting the heat content and quality requirements to qualify as pipeline-grade gas) injected into a natural gas pipeline for use in renewable facility" and "multi-fuel facilities using renewable fuels (only the generation resulting from the renewable fuels will be eligible)." The CEC does not dispute that LADWP had no obligation to certify its biomethane agreements with the CEC under Section 387 and the 2009 Shell and Atmos Contracts met LADWP's eligibility requirements under its 2008 RPS Policy.²¹ Therefore, the CEC should count all the RECs up to the point in time of the effective date of SBX1-2, December 10, 2011. In addition, under the grandfathering provision of SBX1-2, the CEC should certify the 2009 Shell and Atmos Contracts.

7. Conclusion

With the additional regulatory burdens, applications for certification of biomethane have plummeted. According to publicly available information on the CEC's own website, certifications prior to the biomethane suspension and CEC's current interpretation were in excess of 120. After the biomethane suspension in 2012, the applications are just over 30, a substantial decrease.²²

This impact is highlighted in the 2016 Schlesinger Letter, which provides:

Third, and perhaps most importantly, to discourage biomethane shipments into California is to discourage biomethane recovery projects altogether. The tremendous demand pull on landfill biomethane that would otherwise be exerted by California's RPS program and its world-scale economy is simply missing. Evidence that the biomethane market has chilled is clear from data issued by the Environmental Protection Agency (EPA), which show that in almost two years since my firm issued the Schlesinger Report, the number of U.S. landfill sites which were not recovering biomethane decreased by only 10 sites, down from 450 candidate sites in June 2013 as shown in Figure 3 of our report, to 440 sites as of March 2015.⁴ Failure to recover biomethane from 440 landfills is contributing to continual, and unnecessary, releases of methane gas, all of which will reach the atmosphere sooner or later, 475 million cubic feet per day (see Attachment B).

²¹ Even though the CEC's certification was not required, LADWP met the CEC's criteria under the Third Edition of the RPS Eligibility Guidebook, which was in effect in 2009 when LADWP procured the biomethane.

²² http://www.energy.ca.gov/portfolio/documents/List_RPS_CERT.xls

In the verification process currently underway, the CEC excluded 1,901,432 RECS generated from the use of biomethane procured from LADWP's 2009 Shell and Atmos Contracts and used at LADWP's Scattergood, Valley, and Haynes generating facilities. The CEC deemed these RECs ineligible. Based on the severity of this impact to LADWP and its ratepayers, it is incumbent upon the CEC to thoroughly review this letter of appeal and rectify the misunderstanding and misapplication of standards currently applied by the 2015 CEC Staff Memo and certify LADWP's facilities for use of biomethane under the 2009 Shell and Atmos Contracts.

Should you have any questions or require additional information concerning this matter, please contact Ms. Pjoy T. Chua at (213) 367-1750.

Sincerely,

JOHN R. DENNIS
Director of Power System Planning and Development
Los Angeles Department of Water and Power

Attachments via hyperlink:

1. Decision by Office of the Executive Director, dated December 22, 2015 (CEC TN# 207128), hyperlinked below.

http://docketpublic.energy.ca.gov/PublicDocuments/11-RPS-01/TN207128_20151224T113245_Response_to_Los_Angeles_Dept_of_Water__Power_Regarding_Petition.pdf

2. LADWP's Petition for Reconsideration, Dated March 28, 2014, (CEC TN#72876), hyperlinked below.

<http://docketpublic.energy.ca.gov/PublicDocuments/Migration-12-22-2015/Non-Regulatory/2000-2011%20Proceedings/11-RPS-01/2014/TN%2072876%203-28-14%20B%20Mochos%20LADWP%20Petition%20for%20Reconsideration.pdf>

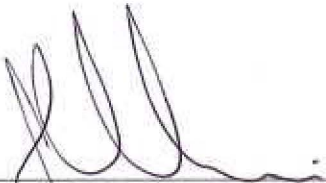
Attachments via pdf:

3. CEC Staff Letter Determining Ineligibility of 2009 Shell and Atmos Contracts, dated February 28, 2014.
4. 2016 Schlesinger Letter with Attachments, dated January 21, 2016
5. KRT Contracts
6. KRT Attestation
7. Verification by John Dennis

In the verification process currently underway, the CEC excluded 1,901,432 RECS generated from the use of biomethane procured from LADWP's 2009 Shell and Atmos Contracts and used at LADWP's Scattergood, Valley, and Haynes generating facilities. The CEC deemed these RECs ineligible. Based on the severity of this impact to LADWP and its ratepayers, it is incumbent upon the CEC to thoroughly review this letter of appeal and rectify the misunderstanding and misapplication of standards currently applied by the 2015 CEC Staff Memo and certify LADWP's facilities for use of biomethane under the 2009 Shell and Atmos Contracts.

Should you have any questions or require additional information concerning this matter, please contact Ms. Pjoy T. Chua at (213) 367-1750.

Sincerely,

A handwritten signature in dark ink, appearing to read 'J. Dennis', is written over a horizontal line.

JOHN R. DENNIS
Director of Power System Planning and Development
Los Angeles Department of Water and Power