

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

Order Instituting Rulemaking to Address
Natural Gas Distribution Utility Cost and
Revenue Issues Associated with
Greenhouse Gas Emissions.

R.14-03-003
(Filed March 13, 2014)

**PREHEARING CONFERENCE STATEMENT OF THE
INDEPENDENT STORAGE PROVIDERS**

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April 10, 2014

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Central Valley Gas Storage, LLC, Gill Ranch Storage, LLC, Lodi Gas Storage, LLC, and Wild Goose Storage LLC (collectively the “Independent Storage Providers” or “ISPs”), in accord with the Order Instituting Rulemaking (“OIR”) 14-03-003 issued on March 13, 2014, hereby submit their Prehearing Conference Statement.

1. Introduction.

The California Public Utilities Commission (“Commission” or “CPUC”) opened this OIR “to establish the policy, programs, rules and tariffs necessary for natural gas investor-owned utilities (natural gas corporations) to comply with the California Air Resources Board’s (“ARB”) Greenhouse Gas (“GHG”) Cap-and-Trade Program.”¹ The primary issues to be considered are (1) the treatment of GHG Cap-and-Trade compliance costs that natural gas corporations may incur if they are found to have a compliance obligation under the Cap-and-Trade Regulation,² (2) rules to govern utility procurement of Cap-and-Trade compliance instruments, (3) special considerations facing natural gas end-use customers that also have a compliance obligation under the Cap-and-Trade Regulation, (4) the use of revenues that natural gas corporations may receive if ARB allocates allowances for ratepayer benefit, and (5) policies concerning the treatment of emissions-intensive and trade-exposed entities that are customers of natural gas corporations.³

The OIR provides that “[e]ach California gas corporation under the Commission’s jurisdiction is a respondent to this Rulemaking... .”⁴ The ISPs are California gas corporations under the Commission’s jurisdiction, however, they are not “natural gas suppliers” under the

¹ OIR, p. 2.

² The Cap-and-Trade Regulation is set forth in sections 95801 to 96023 of Title 17 of the California Code of Regulations.

³ *Id.*

⁴ OIR, p. 22.

definitions in the Cap-and-Trade Regulation.⁵ As discussed further below, each of the ISPs transports storage customer gas between PG&E’s backbone transportation facilities and their respective underground natural gas storage facilities, but they do not distribute (or supply) gas to core or non-core end users for combustion in California. Storage customers of the ISPs may deliver stored gas to end users, but the ISPs do not.

Additionally, the ISPs provide competitive natural gas storage service at market-based rates. They do not have captive customers and are 100% at risk for recovery of their costs of service.

Given the scope of ISP service, the ISPs request that the Commission determine in any Scoping Memo or other appropriate ruling issued in this proceeding that because (1) the ISPs are not “natural gas suppliers” under the Cap-and-Trade Regulation, and (2) they provide service at market-based rates, they are not included as respondents to this proceeding. Such a determination would be consistent with the framework adopted (and pending revision) by ARB, and would ensure that any GHG emissions associated with gas stored at the ISPs’ facilities are not double counted for purposes of the Cap-and-Trade Regulation (*i.e.*, once by an ISP and again by the entity that delivers the stored gas to an end user).

Similarly, the questions posed in the OIR are drafted in a manner suited to natural gas distribution utilities who may fall within the definition of “natural gas supplier,” or whose rates are not market-based. Because the ISPs are not natural gas suppliers, and because the ISPs provide service at market-based rates, the ISPs are not able to provide responses to the questions.⁶

2. Based on the Cap-and-Trade Regulation and the Market-Based Rate Structure Under Which the ISPs Operate, the ISPs Should Not Be Respondents to This OIR.

Each of the ISPs is authorized by its certificate of public convenience and necessity to provide natural gas storage services at market-based rates. These two highlighted attributes

⁵ Cap-and-Trade Regulation section 95811(c); *see also* Proposed Amendments to the California Cap on GHG Emissions and Market-Based Compliance Mechanisms (March 21, 2014) (“Proposed Amendments to Cap-and-Trade Regulation”), section 95802(a)(231). (The ARB is presently scheduled to consider adopting the Proposed Amendments to the Cap-and-Trade Regulation at its April 24-25 Board meeting.)

⁶ For example, as discussed below, the ISPs are 100% at risk for recovery of their costs of service. Unlike cost-of-service regulated companies, they may not pass various costs of providing service directly on to their customers.

distinguish ISPs from the other “natural gas corporations” regulated by the Commission and, notably, what appears to be the overriding theme of the OIR: establishing a paradigm within which natural gas corporations under the Commission’s purview account for the costs and revenues associated with compliance with AB 32. Accordingly, the ISPs request that the Commission determine that the ISPs are not respondents to this proceeding because they are not “natural gas suppliers” under the Cap-and-Trade Regulation. Additionally, to the extent an ISP operates compression equipment that is or may become at some point in the future subject to the Cap-and-Trade Regulation, the market-based rate structure under which the ISPs operate does not fit within the revenue tracking and cost recovery concepts described in the OIR, further demonstrating the need to confirm the ISPs should not be respondents to the OIR.

a. ISPs Are Not “Natural Gas Suppliers” or “Supplier[s] of Natural Gas”.

The OIR observes that “[g]as utilities have two potential sources of Cap-and-Trade-related costs: as regulated natural gas suppliers that deliver gas to California end-users, and as owners and operators of facilities that directly emit at least 25,000 MTCO₂e per year and are covered entities under the Cap-and-Trade Regulation.”⁷ The OIR further notes that some natural gas corporations may own compressor stations that are now, or may in the future become, covered entities under the Cap-and-Trade Regulation (*i.e.*, to the extent GHG emissions from such facilities exceed the 25,000 MTCO₂e per year threshold).⁸

ARB currently proposes the following definition of “natural gas supplier”, which tracks the existing definition of “natural gas supplier” included in the description of “covered entities”:

‘Natural gas supplier’ or ‘supplier of natural gas’ means ***any entity that distributes or uses natural gas in California*** and is described below:

- (1) A public utility gas corporation operating in California;
- (2) A publicly owned natural gas utility operating in California; or
- (3) The operator of an intrastate pipeline not included in section 95811(c)(1) or 95811(c)(2) that distributes gas directly to end users. For the purposes of this article, an interstate pipeline is not a natural gas supplier.⁹

⁷ OIR, p. 5.

⁸ *Id.*

⁹ Proposed Amendments to Cap-and-Trade Regulation, section 95802(a)(231); existing Cap-and-Trade Regulation section 95811(c) (emphasis added).

Natural gas suppliers are subject to the Cap-and-Trade Regulation beginning January 1, 2015.¹⁰ They have “a compliance obligation for every metric ton CO₂e of GHG emissions that would result from full combustion or oxidation of all fuel *delivered to end users in California* contained in an emissions data report”¹¹ Suppliers of natural gas are to “report the total metric tons CO₂e of GHG emissions *delivered to all end users in California*”¹²

The ISPs do not meet the definition of “natural gas supplier” because they do not distribute natural gas to end users in California – they provide a service that takes gas out of the stream intended for supply distribution when it is not immediately needed and puts it back into that stream when it is needed. They are not suppliers, but merely one of many tools suppliers use to optimize their offering to consumers. While storage customers of the ISPs may be natural gas suppliers, or customers of natural gas suppliers, it is not possible for the ISPs to report GHG emissions for fuel delivered to end users in California because the ISPs do not deliver to end users. Consistent with the need for accurate accounting of GHG emissions and competitive neutrality, excluding ISPs from the definition of “natural gas supplier” ensures that natural gas delivered to end users for combustion in California by entities who do meet that definition is not counted twice – *i.e.*, once by an ISP and once by a natural gas supplier – for purposes of the Cap-and-Trade Regulation.

b. ISPs Provide Competitive Storage Services at Market-Based Rates.

The market-based rate structure under which the ISPs operate is incompatible with the cost recovery paradigm contemplated by the OIR. As providers of market-based rate services, ISPs have no captive customers. Whether or not an ISP will be able to recover any compliance costs will be dictated by market dynamics.¹³ In contrast, as noted in the OIR, the Commission has already granted some natural gas corporations under its jurisdiction the authority to track and recover GHG Cap-and-Trade-related costs.¹⁴ This authority has allowed such natural gas corporations to increase rates and charges to collect the reasonable level of revenue requirement

¹⁰ Cap-and-Trade Regulation, section 95812(d)(1).

¹¹ *Id.* at section 95852(c) (emphasis added).

¹² *Id.* at section 95852(c)(1) (emphasis added).

¹³ As noted above, any compliance obligation which an ISP may have will be the result of being the owner and operator of facilities that directly emit at least 25,000 MTCO₂e per year, not as the result of being a natural gas supplier.

¹⁴ OIR, p. 12.

necessary to recover compliance costs.¹⁵ The anticipated continuation of such course is reflected in the preliminary scope of the OIR¹⁶ as well as the initial set of issues to be addressed.¹⁷

Moreover, the fact that ISPs have no captive customers makes the accounting policies and protections that the Commission is proposing for those natural gas corporations that have captive customers not only unnecessary but impossible to effectuate. For instance, even if ISPs were to create balancing accounts and otherwise comply with the proposed structure in the OIR, they simply would not have the means – *i.e.*, regulated rates applied to captive customers – to effectuate the intent underlying that structure. In sum, ISP compliance cost recovery will not be affected by resolution of the issues to be addressed in the OIR, providing an additional basis for the exclusion of ISPs as respondents to this proceeding.

3. Conclusion.

The ISPs appreciate the Commission’s consideration of the issues discussed in this Prehearing Conference Statement. As explained herein, the ISPs are not “natural gas suppliers” under the Cap-and-Trade Regulation. Additionally, the ISPs operate under a market-based rate structure. Accordingly, the ISPs respectfully request that the Commission determine in any Scoping Memo or other appropriate ruling issued in this proceeding that the ISPs are not included as respondents to this proceeding.

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¹⁵ See, e.g., Decision 13-03-017.

¹⁶ See, e.g., OIR, p. 16 (preliminary scope includes “Orders directing how each natural gas corporation, if deemed by ARB to have a Cap-and-Trade Regulation compliance obligation, should track and recover costs associated with Cap-and-Trade compliance.”)

¹⁷ See, e.g., OIR, p. 17 (preliminary issues include “How should costs related to Cap-and-Trade Regulations be allocated between core and non-core gas customers?”).

¹⁸ In accordance with CPUC Rule 1.8(d), counsel for Gill Ranch Storage, LLC is authorized to sign this Prehearing Conference Statement on behalf of the ISP parties.