

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

Order Instituting Rulemaking to
Establish Policies and Rules to Ensure
Reliable, Long-Term Supplies of
Natural Gas to California.

Rulemaking 04-01-025
(Filed January 22,
2004)

**COMMENTS ON CALIFORNIA NATURAL GAS
UTILITIES' PHASE 1 PROPOSALS –
CALIFORNIA PUBLIC UTILITIES COMMISSION
DOCKET R.04-01-025**

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Representing:
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COMMENTS ON CALIFORNIA NATURAL GAS UTILITIES' PHASE 1 PROPOSALS – CALIFORNIA PUBLIC UTILITIES COMMISSION DOCKET R.04-01-025

Ratepayers for Affordable Clean Energy (“RACE”) submits its comments on the California Natural Gas Utilities’ Phase I Proposals to the California Public Utilities Commission in the above-referenced proceeding according to the March 23, 2004 deadline.

1. The Coalition

The growing membership of RACE now includes:

- a core of local California organizations like San Diego based Border Power Plant Working Group, Humboldt-based LNG Watch and the North Coast Environmental Center, Marin CAN, Vallejo CPR , Long Beach Citizens for Utility Reform, and Ventura citizens;
- statewide and national organizations concerned with gas over-dependence and development of green energy technologies, such as Greenpeace, Local Power, and Public Citizen;
- and international groups concerned with the impacts of American gas over-dependency on habitats that face gas drilling, such as Amazon Watch (Peru) and Pacific Environment (Russia);
- Our Consultant is Synapse Energy Economics, based in Cambridge, Massachusetts.

2. Summary

RACE submits the following comments in the aforesaid proceeding according to its March 23, 2004 deadline for comments on the gas proposals of the state’s gas utilities. Our basic assertions:

- any gas infrastructure investments related to accommodating an LNG terminal should *not* be charged to gas utilities' customers;
- core gas customers or bundled service electric customers would *not* benefit from paying for any LNG-related infrastructure;
- the California Public Utilities Commission should *not* renounce its responsibility and authority to review contracts negotiated by the gas utilities before approving them and delegate authority to a procurement review committee;
- affiliate transactions should *not* be rate base-able;
- LNG developers should *not* be able to acquire firm capacity rights to utility pipelines, and to sell those rights to whomever they wish whenever they wish;
- LNG developers should *not* be allowed to lock a gas utility's small residents and businesses ("core" customers) into contracts to guarantee the purchase of their LNG.

3. Procedural Protest

All RACE members protest at being forced to submit comments under a deadline that simply does not allow adequate time to receive, much less read or analyze, the gas utilities' answers to our March 9, 2004 data requests. Thus, we are able to discuss the larger context of natural gas, but without the benefit of clarifications of the utilities' proposals.

Fortunately, one of the state's gas utilities has answered a few of our questions so we may make comments on them - but this same utility has refused to answer more than half of the questions submitted according to the January 27, 2004 OIR. Specifically, SDG&E/SoCalGas refused to answer the questions RACE that most wanted answers to - claiming that the Cambridge Energy Resource Associates (CERA) data is confidential, although they never secured signatures to this effect, then claiming that their own electricity load forecasts have no bearing on this matter when

in fact virtually ALL forecasted new gas load in the foreseeable future is attributable to expectations of new gas-fired power plants, as we will demonstrate in Addendum B. In addition to commenting on the questions SoCalGas/SDG&E did answer, RACE will also explain the fallacy of these refusals of SoCalGas/SDG&E to answer data requests in the OIR.

4. Inadequate Time for RACE to Prepare Comments

In our Motion to Modify Schedule of March 9, RACE asked that, at a minimum, we be given opportunity to *receive and review* data requests from the Respondents. Today, we have received only half the answers to only one of our data requests. PG&E has indicated it will answer our data requests by Friday, March 26. As a result, RACE is unable to either fully respond or require evidence relative to, the gas utilities' filed procurement proposals.

5. Gas Utilities' Proposals

The California Energy Commission's gas load forecasts indicate that core gas customers will not need any new gas capacity in the foreseeable future. Indeed, all forecasted new gas demand is attributable to power plants that the gas utilities' affiliate electric companies want to build.

Yet, in varying degrees, the gas utilities seek to either lock core gas customers into purchasing their gas, or to force core gas customers to pay for pipeline upgrades attributable to linking LNG terminals to market. And they want the CPUC to forgo its traditional review of contracts to establish a pre-approval system followed by very limited review by a "procurement review committee."

As with Edison's Mountainview Power Plant under the rubric of electric procurement, Sempra also boldly proposes new affiliate transactions and self-dealing, asking the CPUC to allow an unregulated holding company to form a subsidiary to construct an LNG terminal, sell the gas to a third affiliate gas company, which will then sell the gas to another fourth affiliate electric company. This is inconsistent with both state law and CPUC policy.

Cambridge Energy Research Associates (CERA) was retained by SDG&E/SoCalGas to predict the commodity price impacts of an LNG terminal. The truth is that core gas customers would not benefit from CERA's predicted decline in gas commodity prices with the introduction of an LNG terminal in California - because these customers would have been de facto locked in advance of any market response to the domestic pipeline capacity made available to market players.

Any resulting price drop would strictly benefit non-core gas customers and power plant owners.

The fact that SoCalGas/SDG&E refused to answer RACE's March 9 , 2004 data request to explain the 20% "savings" promised by their consultant, Cambridge Energy Research Associates,

only underscores the fact that the gas procurement plans are in effect an effort to raid the recurring revenue streams of California ratepayers once again. It must not be countenanced by the Commission, however. This relates to the process issues raised by RACE in our March 9 Motion to Modify Schedule.

Sempra's effort to charge its core customers \$200 million for pipeline upgrades raises a good example of the risks incurred by the CPUC in conducting Phase I without evidentiary hearings

It is wrong to lock California's residents and businesses into imported foreign LNG terminal gas they don't even need just to prop up an LNG developer's uncompetitive business model, switching them from reliable domestic supplies to foreign imports shipped from LNG liquefaction plants in Russia, the Far East, the Middle East, or potentially South America - and it would be a direct violation of ratepayer rights to distribute the benefits of oversupplying natural gas to the very energy affiliates - and only the largest corporations - in a stereotypical western resource grab.

Unless changed to include evidentiary hearings, CPUC R.04-01-025 risks employing an over-truncated regulatory process to approve a major and irreversible CPUC restructuring of its responsibilities with respect to the protection of ratepayers.

Sempra wants Firm load contracts and is asking to lock core customers into their contracts so that they can be viable businesses. But the fact the CEC's gas load forecasts indicate that core gas

customers in California do not need any new gas capacity means LNG terminal developers may not be viable businesses.

Firm Tradable Capacity Rights

Finally, in this and other proceedings before the CPUC, utilities are seeking new gas transportation rules that would establish a firm capacity right on the SoCal Gas system. This new firm capacity is being suggested as a solution to potential future curtailments, which at this point are merely speculative. They would also serve to create a firm capacity right for shippers concerned not with end use customers that need firm capacity, but also with gas suppliers that need firm capacity, i.e. LNG suppliers.

It is understandable that LNG developers need to contract for firm capacity, so that LNG can flow under a firm contract - but not on the backs of California core gas ratepayers and electric ratepayers who do not, according to the CEC and ISO, need their business.

Is this happening because LNG suppliers demand firm capacity prior to building LNG facilities? If so this change should not predate any decision to build LNG facilities in California, and certainly contracts for firm capacity should not be made on behalf of core customers prior to LNG terminal developers initiating construction of the terminals.

Firm tradable capacity rights are key to LNG - it is a precondition of building a terminal because

the LNG developers need special considerations in order to be profitable. In particular, all LNG developers have proposed a priori access to their end-use market, and firm, tradeable access to pipelines.

Traditionally, this has not been allowed by the California Public Utilities Commission, nor anywhere else. A gas supplier can sign up for pipeline capacity on the day it seeks to send gas, and it is up to the gas utility to confirm and make accessible its pipeline capacity.

Some pipeline paths became constrained during the energy crisis and access was denied, thus exposing the inherent vulnerability of this energy resource. LNG regasification developers, attempting to develop terminals in populated areas that are unsafe for storage, want a 100% guarantee that they can get the LNG to market whenever the tanker pulls into harbor.

Thus, firm tradable rights also means giving control over a part of a pipeline's capacity to a gas supplier. While this would allow them to ship gas at any time wherever guaranteed, it also gives them the ability to not use that firm right, and have it reserved for them to dispense with, such as selling the capacity on a secondary market. That puts control into an entity other than the utility.

They are also free, though not legally, to lie, and to withhold capacity - as both gas and electric companies did during the energy crisis. During the energy crisis, El Paso sold over a third of its pipeline as firm rights to its own marketing affiliate, which chose not to use it at all - not to move a single molecule of gas through the capacity it owned. They did so, it was eventually proven, in

order to manipulate gas supply and dramatically to drive up the price of both gas and gas-fired power plant electricity. Thus, firm tradable capacity rights were the crux of California's 2000-2001 contrived power shortage, market manipulation, and energy crisis.

It is a logical conclusion that should the Commission authorize LNG developers to purchase firm tradable capacity rights to gas utility pipelines, it would increase the likelihood of contrived energy shortages and market manipulation in California.

Affiliate Transaction Proposal Even More Dangerous

There is a serious market abuse hazard under the utilities' proposed affiliate transactions with which the Commission has had ample experience, and should never again countenance. Sempra is proposing that the CPUC allow its subsidiary utilities to bill its gas customers to make its pipelines accommodate Sempra's proposed Baja LNG terminals, and have these utilities lock in their core customers to that capacity. This is occurring while Sempra's merchant power development affiliate is pushing the CPUC to allow it to rate base construction and fuel contracts for new gas fired generation, burning the new surplus gas at Palomar - or building new gas-fired power plants to burn it. Sempra's proposal portends a repeat of the 2000-2001 energy crisis.

Sempra is the only utility parent company trying to build an LNG terminal to supply the service areas of utilities, SoCalGas and SDG&E, owned by the company., Sempra is also the only utility parent company building new gas-fired generation in the service area of a utility (SDG&E) owned by the company. - all while refusing to answer RACE's data requests about electric load

forecasting based on the claim that it is not relevant.

6. RACE's Comments Are Made in Addendum Form With Exhibits Attached:

Addendum A - RACE Consultant Synapse Energy Economics Comments

Addendum B - Electric Utility Procurement & Community Choice Aggregation

Addendum C - Federal Preemption of CPUC Jurisdiction

Addendum D - The Sea Bed Methane Bridge

Addendum E - Local Impacts of LNG

Addendum F - Offshore LNG Terminals

Addendum G - Global Impacts of LNG

Respectfully,

Paul Fenn
Ratepayers for Affordable Clean Energy