

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



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Application of Southern California Gas  
Company (U904G) to establish a  
Compression Services Tariff

Application 11-11-011

**PROTEST OF THE DIVISION OF RATEPAYER ADVOCATES**

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**I. INTRODUCTION**

Pursuant to Rule 2.6 of the California Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure, DRA hereby files its Protest to the to Southern California Gas Company’s (“SoCalGas”) application (“Application”) to establish a tariff (“Compression Services Tariff”) under which SoCalGas will be authorized to provide natural gas compression service to “future” or existing customers that may need such service. Examples of customer end-use applications that can be served under the proposed tariff include Natural Gas Vehicle (“NGV”) refueling operations, Combined Heat and Power (“CHP”) facilities, and peaking power plants.

Essentially, SoCalGas intends on using ratepayer funds to finance the costs of natural gas compression services to various programs for public end-users. SoCalGas then proposes to allocate the full cost of the program to tariff customers to provide refunds to the ratepayers. The application deals with very complex issues that require significant Commission scrutiny as it seeks authorization for unique issues that the Commission has probably not addressed in a single application for at lease a decade. For example, the legal issues trigger laws that range from state public utility and contract laws to federal antitrust laws. The relief sought deals with private enterprise, yet seems to be justified through the

Commission's environmental goals. While DRA emphasizes its complete support of furthering the state's environmental goals, the application should conform to the standards that the Commission uses to determine its numerous other energy resource programs. For example, the Commission provides an analysis such as measuring costs against energy saved to approve certain programs that further the Commission's environmental goals.<sup>1</sup> SoCalGas asks the Commission to re-review its consistent policy of encouraging competitive markets that are unrelated to actual utility services for ratepayers or that are mandated by the Commission.

## **II. DISCUSSION**

### **A. Burden of Proof**

As the Applicant, SoCalGas must meet the burden of proving at the application is reasonable and it is entitled to the relief it is seeking.<sup>2</sup> SoCalGas therefore carries the burden to resolve or demonstrate the reasonableness of each factual or legal issue that SoCalGas has asked the Commission to approve.

### **B. Issues Identified**

DRA has identified preliminary questions and issues listed below. At this preliminary phase, DRA has not made any conclusions. DRA may identify more issues through discovery or further analysis prior to the Prehearing Conference (PHC). DRA's issues are material to the Commission's resolution of the application. It is evident that the scope of the application is beyond creating a tariff, but includes, and is not limited to, using ratepayer funds to provide the upfront costs to enter this line of business. The Application requires the Commission to reevaluate certain policy goals that have not been addressed in

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<sup>1</sup> As done with all other energy savings programs such as Energy Efficiency and the Energy Assistance program.

<sup>2</sup> Opinion on Southern California Edison Company's Test Year 2006 General Rate Case Increase Request (2006) D.06-05-016, mimeo, p. 7.

years, especially within a single application. As such, there are numerous issues and subissues that the Commission should question. While the answers may be unknown to DRA currently, they may lead to further questions.

A preliminary list of issues is below:

- 1. Whether it is necessary for SoCalGas to provide compression services to NGV, CHPs, or peaker power plants. This would include determining whether there are currently providers for natural gas compression services for these applications. To put broadly, why is SoCalGas submitting its application now, at this time and point?**
- 2. Concerning the environmental benefits, the application raises some questions that may establish that the request may not be as beneficial to the environment as stated.**
  - a. The current application lacks measurements to determine the extent that environmental benefits are accrued through this application.**
  - b. The Commission has already established numerous programs to further environmental policies and would ratepayer money be more effectively spent by enhancing already established and known programs that lack uncertainty and do not involve startup costs.**
- 3. Are the proposed activities related to the business operations of utility services or cost of doing business to provide utility services? This is a material question as to whether this is a rate setting case. Indeed this issue involves both questions of fact and law to resolve.**
- 4. The application requests ratepayers to fund the upfront costs to design, procure, and construct gas compression services**

**that SoCalGas will ultimately own, which seem to be a private business activity. Is it reasonable for the Commission to expend ratepayer funds for non-utility activity? Is SoCalGas' application consistent with current Commission policy, guidance and directives pertaining to the provision of compression services by utilities? If so, how does it comply with the current Commission policy? If not, how does it differ from the policy and why is it reasonable to deviate from current Commission precedent on the issue?**

**5. This leads to the very important question of whether any anti-competitive issues arise. Will SoCalGas is entering into a competitive market or private enterprise? If so, then anti-trust laws apply triggering federal and state laws. This begs the question as to whether:**

- i. The Commission desires to provide SoCalGas protection from anti-trust laws that would otherwise apply to non-regulated entities. The Commission's policies have generally been to support competitiveness in private markets. And;**
- ii. If the Commission desires to change its policy of fostering competition in private markets to protect SoCalGas, can the Commission satisfy the legal hurdle via the State Action Doctrine.<sup>3</sup>**

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<sup>3</sup> Under the State Action Doctrine, the Commission must satisfy a two prong test. First, it must be 'clearly articulated and affirmatively expressed as state policy.' [California Retail Liquor Dealers Ass'n v. Midcal Aluminum, 445 U.S. 97, 105, 100 S.Ct. 937, 63 L.Ed.2d 233 (1980)(Midcal)] (Internal quotation marks omitted.) This may be satisfied if the conduct is a 'for see able result' of the state's policy. Town of Hallie v. City of Eau Claire, 471 U.S. 34, 38-39, 42, 105 S.Ct. 1713, 1716-17, 1718, 85 L.Ed.2d 24 (1985). Second, the conduct must be 'actively supervised [\*13] by the State itself.' Midcal, 445 U.S. at 105, 100 S.Ct. at 943 (internal quotation marks omitted). This is satisfied only if 'state officials have and exercise power to review particular

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- iii. And if so, dose the Commission desire and have the resources to provide mandated active oversight?**
- 6. Will competition increase or decrease?**
  - 7. What are the ratepayer benefits? What are SoCalGas shareholder benefits?**
  - 8. What are the ratepayer costs? What are SoCalGas shareholder costs?**
  - 9. What are the ratepayer risks? What are SoCalGas shareholder risks?**
  - 10. Is the ratepayer payback process open ended? When will the ratepayers upfront costs be paid back?**
  - 11. SoCalGas states that the costs borne by ratepayers for the compression activities will be refunded to ratepayers. The following issues stem from the refunds:**
  - 12. Will Public Utilities Code § 435.5 apply when issuing the refunds back to customers? If so, SoCalGas may need to file additional testimony to show how that rates are to be refunded on an “equitable pro rata basis” as mandated by § 435.5. There are strict guidelines as to how much current utility customers who will be funding the program will be refunded as opposed to future customers whose refunds should be based on a “pro rata basis” to make it fair. In addition, the allocation and refund to particular classes must**

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anticompetitive acts of private parties and disapprove those that fail to accord with state policy.'  
(remaining citations omitted.)" Nugget Hydroelectric, Inc. v. Pacific Gas & Electric Co., 981 F.2d  
429, 434 (9th Cir. 1992).

**be based by a “pro rata basis.” This requirement is mandated on the Commission.**

**13. Therefore, another question arises as to whether the Commission desires to oversee this process. On November 1, 2011, SoCalGas submitted their application in the Triennial Cost Allocation Proceeding (“TCAP”) A.11-11-002 to revise rates for gas services. It is unclear why this instant application should not be considered as part of SoCalGas' TCAP application.**

### **III. CATEGORIZATION, HEARINGS, AND SCHEDULE**

SoCalGas proposes that the proceeding be categorized as ratesetting. DRA does not object to the proposed categorization.

DRA and SoCalGas agree that hearings are needed. DRA requests that the Commission set a schedule that provides adequate opportunity for discovery, analysis, preparation of testimony, and preparation for evidentiary hearings. DRA is currently in the midst of preparing testimony for the Gas Safety OIR R11-02-019 that is due at the end of January 2012. SoCalGas and SDG&E have also recently filed its TCAP application (A.11-11-002) with protests scheduled to be filed in January 2012 which will require dedication of additional DRA staff resources.

DRA proposes that the Prehearing conference be held no earlier than February 6, 2012 and that scheduling issues be addressed at that time. At this time, DRA suggests that intervenor testimony be due no earlier than May or June of 2012. Clearly, the complex issues will take time and resources and SoCalGas should not hastily rush the application.

### **IV. CONCLUSION**

DRA looks forward to participating in the proceeding. DRA respectfully requests that the issues above be included within the Scope of the Application and to reserve the right to identify further issues prior to the PHC.

Respectfully submitted,

/s/ RASHID RASHID

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