

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Adopting Rules to Account for the Consideration Allocated to California Core Natural Gas Ratepayers Under Settlements of Natural Gas Antitrust Cases I-IV.

Rulemaking 09-07-029
(Filed July 30, 2009)

**DECISION GRANTING PETITION OF PRICE INDEXING CASES
SETTLEMENT CLASS TO MODIFY IMPLEMENTATION
OF DECISION 10-01-024****Summary**

This Decision grants the motion of the Price Indexing Settlement Class for adoption of a memorandum of understanding and modifies the implementation of Decision 10-01-024 to rectify Class Counsel's February 2010 incorrect administrative handling of the Defendant AEP Energy Services, Inc. (AEP) \$5 million component of the Price Indexing Cases Settlement. The \$5 million AEP settlement, plus interest, should have been divided between core and non-core customers before distribution, with 55.7% going to non-core customers and 44.3% to core customers. Instead, 100% of the \$5 million, plus interest, was mistakenly transferred on a pro rata basis to Pacific Gas and Electric Company, Southern California Gas Company, San Diego Gas and Electric Company, Southwest Gas Corporation, (collectively, the Utilities) and the Long Beach Gas and Oil Department (Long Beach Gas) in February 2010. The erroneous distribution was inherently reflected in core customer rates by credits to the respective Utility's PGA for core gas sales customers and in direct refunds to

certain core customer classes. This Decision directs the Utilities to debit their respective purchased gas accounts for their pro rata portion of the mistakenly transferred funds, thereby reversing the error and making those funds available for the Utilities to remit to the Class Settlement Administrator for subsequent distribution to the non-core customer classes.

Long Beach Gas is not affected by this Decision.

2. Background

On January 21, 2010, the Commission issued Decision (D.) 10-01-024, Decision Adopting Allocation Methodologies and Implementation Procedures for Sempra and Price Indexing Case Settlements (Decision), rendered in Order Instituting Rulemaking 09-07-029 (OIR). The OIR dealt with how to allocate net settlement proceeds among the Utilities from two class action lawsuits litigated in the San Diego Superior Court against certain suppliers of natural gas for refunds to their respective core customer classes. The two class actions are commonly referred to as the Sempra Cases and the Price Indexing Cases. The Decision contemplated that approximately \$50.5 million (plus accrued interest) of net proceeds from the Price Indexing Cases Settlement would be distributed as refunds to core customers of the Utilities.¹ The \$50.5 million represented the net amount of the Price Indexing Cases Settlement that was allocated to the core customer classes in the underlying Antitrust Cases adjudicated in the San Diego Superior Court.² The Decision adopted allocation methodologies based on section 3.3 of D.03-10-087, Opinion Regarding Treatment of Consideration

¹ D.10-01-024 at 3; Finding of Fact 1; *and see* Petition (P.) for Rulemaking, P.09-04-022, dated April 28, 2009, at 4.

² *Id.*

Received Pursuant to El Paso Settlement, to divide the total Settlement proceeds between the Utilities.³ Core gas proceeds from both settlements were allocated as follows: Pacific Gas and Electric Company (PG&E) 46.7%, San Diego Gas & Electric Company (SDG&E) 14.42%, Southern California Gas Company (SoCalGas) 31.49%, Southwest Gas Corporation (Southwest Gas) 3.32%, (collectively, the Utilities) and Long Beach Gas and Oil Department (Long Beach Gas) 4.07%.⁴ The Decision also adopted accounting and ratemaking treatment for the Settlement Refunds and ordered the Utilities to file Refund Plan Advice Letters to implement the return of the Settlement proceeds through adjustments to core sales customer rates by crediting each utility's respective purchased gas account (PGA) or by direct refunds for core-elect, core subscription, core aggregation and wholesale customer classes, as appropriate.⁵ The Advice Letters setting forth the Refund Plans were approved by the Commission's Energy Division by letter authority under General Order 96-B. The Refund Plans contemplated crediting all funds received from Class Counsel for refunds to core customers, consistent with the Decision.⁶

³ *Id.*, at 1.

⁴ *Id.*, Ordering Paragraph 3 and Attachment A.

⁵ D.10-01-024, *Attachment A*.

⁶ Advice Letter No. 3098-G for PG&E; Advice Letter No. 4077 for SoCalGas; Advice Letter No. 1930-G for SDG&E; and Advice Letter Nos. 834 and 834-A for Southwest.

On February 19, 2010, an aggregate total of \$55,202,040.28 in Price Indexing Cases Settlement Funds was transferred to the Utilities and Long Beach Gas, in proportion to the respective percentage set forth in the Decision.

On August 29, 2011, Class Counsel filed the Petition of Price Indexing Cases Settlement Class to Modify Implementation of D.10-01-024 (Petition). In the Petition, Class Counsel stated that certain proceeds from the Price Indexing Cases Settlement Fund were erroneously distributed to core gas ratepayers rather than non-core gas ratepayers. Class Counsel relied upon a Report prepared by the accounting firm of Damasco & Associates (Damasco Report) to identify and quantify the erroneous distribution.

On September 30, 2011, the Utilities, the Division of Ratepayer Advocate (DRA), and the City of Long Beach, acting through its Gas and Oil Department (Long Beach Gas), submitted a Joint Response and Protest to the Petition.

On October 12, 2011, Class Counsel submitted its Reply in support of the Petition, by leave of the Administrative Law Judge (ALJ).

A prehearing conference (PHC) was held on November 28, 2011. At the PHC, the ALJ directed the Parties to convene a workshop to determine whether an error did occur in the February 2010 distributions and the amount of such error, if any.

On January 5, 2012, PG&E, SoCalGas, SDG&E, Southwest, DRA, and Class Counsel met for the workshop. Long Beach Gas did not attend the workshop. Following the workshop, Mr. Damasco prepared two reports further explaining his analysis.

A Workshop Report was submitted to the ALJ on January 17, 2012.

On March 8, 2012 the Utilities, the Commission's DRA and Lieff, Cabraser, Heimann & Bernstein, LLP, as Class Counsel for the Price Indexing Cases Settlement Class (Class Counsel) filed and served a signed Memorandum of Understanding (the MOU) which articulates their common understanding of the procedural history of this proceeding, stipulates to several facts and provides proposed conclusions of law. Long Beach Gas did not participate in any discussions regarding this MOU. We treat the MOU as joint testimony for purposes of this proceeding.

On August 1, 2012 DRA informed the ALJ and the Parties that it had completed its audit and found no problems with the accounting mechanisms adopted to resolve the issues in this proceeding.

3. The Memorandum of Understanding

PG&E, SoCalGas, SDG&E, Southwest, DRA, and Class Counsel (Parties) stipulate to the following Facts:

- The \$55,202,040.28 transferred to the Utilities and Long Beach in February 2010 exceeded the "approximately \$50.5 million" (plus \$2,784,110.85 in accrued interest) contemplated in the Decision.
- The difference between the \$50.5 million (plus accrued interest) contemplated for core refunds by the Decision and the \$55.2 million amount actually distributed by Class Counsel in February 2010 stems from an incorrect handling of Defendant AEP's \$5 million component of the Price Indexing Cases Settlement. Rather than dividing the \$5 million AEP settlement between core and non-core customer classes before distribution, 100 percent of the \$5 million was mistakenly transferred to the Utilities and Long Beach in February 2010.

- The \$5 million AEP Settlement should have been allocated 55.7% to non-core customer classes and 44.3% to core customer classes before distribution to the Utilities and Long Beach in February 2010.⁷
- The Utilities and Long Beach confirm that an aggregate of \$55,202,040.28 was received by the Utilities and Long Beach in February 2010.⁸
- After applying the correct non-core/core class allocations, the total amount distributed in error in February 2010 to core customers of the Utilities is \$1,893,302.48 (i.e., \$55,202,040.28 - \$53,308,737.80).⁹
- The erroneous distribution was inherently reflected in core customer rates by credits to the respective Utility's PGA for core gas sales customers and in direct refunds to certain core customer classes under the 2010 Refund Plans submitted by PG&E, SoCalGas, SDG&E, and Southwest, in compliance with the Decision and approved by the Energy Division. As a result, core customers of the Utilities received greater refunds than they should have received if only the \$50.5 million (plus accrued interest) had been distributed by Class Counsel in February 2010.

⁷ See San Diego Superior Court December 8, 2008 Judgment, Final Order and Decree Granting Final Approval to Class Action Settlement with AEP Energy Services, Inc. at 6 (See Exhibit B to Declaration of Daniel M. Hutchinson in Support of Petition of Price Indexing Cases Settlement Class to Modify Implementation of Decision 10-1-024[sic].)

⁸ October 31, 2011 Joint Reply of Pacific Gas and Electric Company, Southern California Gas Company, San Diego Gas & Electric Company, Southwest Gas Corporation, and the City of Long Beach to Administrative Law Judge's Ruling to Admit or Deny Receipt of Overallocation of Funds from Settlement of AEP Energy Services Component of the Settlement of the Price Indexing Cases.

⁹ Long Beach also received a portion of the erroneous distribution, amounting to \$77,057.41. Long Beach is not subject to the Commission's jurisdiction for the purposes of this MOU and the relief Class Counsel seeks.

- An aggregate amount of \$1,638,680.44 of the \$1,893,302.48 erroneous distribution was credited to the respective PGA for each Utility for the benefit of core customers subject to such PGAs.
- The Utilities' pro rata shares of the amount erroneously distributed to the Utilities' core gas sales customers in February 2010 via credits to their respective PGA are as follows: (1) PG&E: \$770,114.02; (2) SoCalGas: \$580,282.38; (3) SDG&E: \$225,755.46; and (4) Southwest: \$62,528.58.
- For purposes of the MOU, the Parties agreed that Long Beach Gas is not subject to Commission jurisdiction. Class Counsel reserves the right to separately pursue recovery from Long Beach in an appropriate manner and venue.
- Debiting each Utility's respective PGAs by the above pro rata share of the erroneous distribution would reverse the effect of the error and make those funds available for the Utilities to remit to the Class Settlement Administrator for subsequent distribution to the non-core customer classes.
- Because they are not subject to PGAs, direct refunds in an aggregate amount of \$177,564.63 were provided to the Utilities' respective core aggregation, core subscription, core elect, and wholesale customer classes.

The costs to recover the erroneous distribution from PG&E, SoCalGas, SDG&E, and Southwest's core aggregation, core subscription, core elect, and wholesale customer classes would be more expensive than the value of monies that can be recovered. The aggregate amount of the erroneous distribution to these customer classes is \$177,564.63. Class Counsel is willing to forego recovery of these erroneous distributions, and agrees to cover this shortfall.

4. Discussion

Rule 12.1(d) of the Commission's Rules of Practice and Procedure provides that, before the Commission will approve settlements, whether contested or

uncontested, the settlement must be reasonable in light of the whole record, consistent with law, and in the public interest.

We find that the Memorandum of Understanding fully satisfies these requirements and should therefore be approved as the basis for granting the petition to modify the Decision.

The Parties are fairly reflective of the affected interests. Both Class Counsel and DRA represent ratepayer interests, including residential and small business customers. All Parties have evaluated and considered the factual basis for the Class's Petition, including a review of the Damasco Report and DRA's audit. All Parties also participated in the all-day workshop on January 5, 2012, thereby fulfilling the requirements of Rule 12.1(b) relative to public settlement conferences. The ratepayer interests have been thoroughly considered, and in light of the record, the MOU protects those interests.

The MOU avoids the unnecessary time and expense of further litigation between the Parties, thereby avoiding the need for evidentiary hearings, reducing the Commission resources that must be devoted to this proceeding, and permitting saved resources to be devoted to other matters.

The Memorandum of Understanding is consistent with prior Commission decisions on allocating and implementing the Price Indexing Case Settlements. The Decision specifically contemplated that approximately \$50.5 million (plus accrued interest) of net proceeds from the Price Indexing Cases Settlement would be distributed as refunds to core customers of the Utilities and adopted allocation methodologies based on section 3.3 of D.03-10-087 to divide the total Settlement proceeds between the Utilities. Consistent with the Decision and D.03-10-087, the MOU contemplates the return of proceeds from the Price Indexing Cases Settlement Fund that were erroneously distributed to core gas

ratepayers rather than non-core gas ratepayers by debiting and remitting a pro rata share from each Utility's respective PGA in the percentages adopted and set forth in the Decision.

The MOU is a reasonable compromise of the Parties' respective positions.

The MOU is in the public interest and in the interest of the Utilities' customers.

5. Categorization and Need for Hearing

The October 29, 2009 Scoping Memorandum issued in this matter categorized this application as Ratesetting, and determined that hearings were not necessary. All of the issues raised in the Joint Reply and Protest have been resolved. There is no apparent reason why the petition should not be granted.

6. Comments on Proposed Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Pub. Util. Code and Rule 14.6(c)(2), the otherwise applicable 30-day period for public review and comments is waived.

7. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Richard W. Clark is the assigned ALJ in this proceeding.

Findings of Fact

1. The \$55,202,040.28 transferred to the Utilities and Long Beach in February 2010 exceeded the "approximately \$50.5 million" (plus \$2,784,110.85 in accrued interest) contemplated in D.10-01-024.

2. The difference between the \$50.5 million (plus accrued interest) contemplated for core refunds by the Decision and the \$55.2 million amount actually distributed by Class Counsel in February 2010 stems from an incorrect

handling of Defendant AEP Energy Services, Inc. (AEP) \$5 million component of the Price Indexing Cases Settlement. Rather than dividing the \$5 million AEP settlement between core and non-core customer classes before distribution, 100% of the \$5 million was mistakenly transferred to the Utilities and Long Beach in February 2010.

3. The \$5 million AEP Settlement should have been allocated 55.7% to non-core customer classes and 44.3% to core customer classes before distribution to the Utilities and Long Beach in February 2010.

4. The Utilities and Long Beach confirm that an aggregate of \$55,202,040.28 was received by the Utilities and Long Beach in February 2010.

5. The erroneous distribution was inherently reflected in core customer rates by credits to the respective Utility's PGA for core gas sales customers and in direct refunds to certain core customer classes under the 2010 Refund Plans submitted by PG&E, SoCalGas, SDG&E, and Southwest, in compliance with the Decision and approved by the Energy Division. As a result, core customers of the Utilities received greater refunds than they should have received if only the \$50.5 million (plus accrued interest) had been distributed by Class Counsel in February 2010.

6. An aggregate amount of \$1,638,680.44 of the \$1,893,302.48 erroneous distribution was credited to the respective PGAs for each Utility for the benefit of core customers subject to such PGAs.

7. Because they are not subject to PGAs, direct refunds in an aggregate amount of \$177,564.63 were provided to the Utilities' respective core aggregation, core subscription, core elect, and wholesale customer classes.

8. The Utilities' pro rata shares of the amount erroneously distributed to the Utilities' core gas sales customers in February 2010 via credits to their respective

PGA are as follows: (1) PG&E: \$770,114.02; (2) SoCalGas: \$580,282.38; (3) SDG&E: \$225,755.46; and (4) Southwest: \$62,528.58.

9. Debiting each Utility's respective PGAs by the above pro rata share of the erroneous distribution would reverse the effect of the error and make those funds available for the Utilities to remit to the Class Settlement Administrator for subsequent distribution to the non-core customer classes.

10. The costs to recover the erroneous distribution from PG&E, SoCalGas, SDG&E, and Southwest's core aggregation, core subscription, core elect, and wholesale customer classes would be more expensive than the value of monies that can be recovered. The aggregate amount of the erroneous distribution to these customer classes is \$177,564.63. Class Counsel is willing to forego recovery of these erroneous distributions, and agrees to cover this shortfall.

Conclusions of Law

1. There are no errors of fact or law in D.10-01-024 that require correction or modification.

2. The Commission has broad powers to determine and fix the just and reasonable rates charged by or collected by any public utility for or in connection with any service.

3. To the extent there is an error in the underlying amounts used to calculate the prior credits to PGA rates or charges in the Refund Plan Advice Letters previously approved by the Energy Division, then the Commission has appropriate jurisdiction and can correct such errors, including, without limitation, upon its own sua sponte motion.

4. Debiting each Utility's respective PGA to reverse the effect of the erroneous distribution to core customers subject to such PGAs is consistent with

the accounting and ratemaking treatment adopted for the original refunds in D.10-01-024.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E), Southern California Gas Company (SoCal Gas), San Diego Gas and Electric Company (SDG&E), and Southwest Gas Corporation (Southwest) (collectively the Utilities) are directed to debit their respective PGAs by the following amounts (1) PG&E: \$770,114.02; (2) SoCalGas: \$580,282.38; (3) SDG&E: \$225,755.46; and (4) Southwest: \$62,528.58 by recording the adjustment to their PGAs in connection with their month-end closing of the next accounting period after the Commission issues an order to that effect.
2. Pacific Gas and Electric Company, Southern California Gas Company, San Diego Gas and Electric Company, and Southwest Gas Corporation are directed to remit the amounts above to the Price Indexing Cases Settlement Administrator in the month following the Commission's adoption of this decision.
3. Rulemaking 09-07-029 is closed.

This order is effective today.

Dated _____, at San Francisco, California.