

Decision 12-12-037 December 20, 2012

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

In the Matter of the Application of  
Southern California Gas Company  
(U904G) to establish a Compression  
Services Tariff.

Application 11-11-011  
(Filed November 3, 2011)

**DECISION GRANTING APPLICATION TO ESTABLISH A COMPRESSION  
SERVICES TARIFF SUBJECT TO CERTAIN RATEPAYER PROTECTIONS  
AND TO RULES TO ENSURE FAIR COMPETITION**

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Attachment A

**DECISION GRANTING APPLICATION TO ESTABLISH A COMPRESSION SERVICES TARIFF SUBJECT TO CERTAIN RATEPAYER PROTECTIONS AND RULES TO ENSURE FAIR COMPETITION**

**1. Summary**

This decision grants Southern California Gas Company's application to establish a Compression Services Tariff. The decision finds that the Compression Services Tariff, when subjected to the reporting and the accounting requirements adopted, is in the public interest because it offers additional choice to consumers and makes more widely available a service that reduces the health and environmental impacts from air pollution, reduces greenhouse gas emissions, and will lead to an increase in the use of natural gas, an alternative to gasoline and diesel fuel.

The decision requires that Southern California Gas Company provide a semi-annual report to the Commission on certain gas operations and on market shares relating to compressed gas services. This information will enable the Commission to ensure that Southern California Gas Company gains no unfair competitive advantage in the provision of this service and enable the Commission to monitor developments in this market.

The decision also requires Southern California Gas Company to establish balancing and tracking accounts. These accounts will ensure that customers taking the Compression Services Tariff bear all costs and risks and that non-participating ratepayers bear no costs or risks from the provision of this service.

The decision finds that the Commission has authority to authorize the Compression Services Tariff and that this authorization is consistent with the Public Utilities Code.

This proceeding is closed.

## **2. Procedural Background**

On November 3, 2011, Southern California Gas Company (SoCalGas) filed Application 11-11-011 (Application) requesting Commission authority to offer “a new tariff service to meet the current and future needs of non-residential customers requiring natural gas compression above the standard line pressure for customer end-use applications.”<sup>1</sup> The Application stated that in offering this service SoCalGas “will not, however, conduct activities beyond the point of the customer’s receipt of compression service and, as a consequence, will neither own, operate, or maintain facilities nor conduct business operations beyond the point of service delivery.”<sup>2</sup>

On December 1, 2011, Resolution ALJ 176-3285 reached a preliminary determination that this proceeding was ratesetting and that hearings would be necessary.

On December 15, 2011, the Division of Ratepayer Advocates (DRA), Clean Energy Fuels Corporation (Clean Energy), and Integrys Transportation Fuels, LLC (Integrys) each filed protests. In addition, the Southern California Generation Coalition filed a response to the Application.

On December 27, 2011, SoCalGas filed a Reply to the protests. On January 6, 2012, Mansfield Gas Equipment Systems Corporation (MGESC) filed a motion for party status.<sup>3</sup>

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<sup>1</sup> Application at 1.

<sup>2</sup> *Id.* at 1-2.

<sup>3</sup> At the January 23, 2012 prehearing conference (PHC), the Administrative Law Judge (ALJ) made MGESC a party to this proceeding. See TR PHC-1 at 2:23-25.

On January 23, 2012, a PHC was held in San Francisco to address issues concerning the management of this proceeding, including proposals concerning the scheduling of the proceeding.

On May 15, 2012, Clean Energy, DRA and Integrys served intervenor testimony.

On May 29, 2012, SoCalGas served rebuttal testimony.

On June 19 and 20, 2012, evidentiary hearings took place at the Commission offices in San Francisco.

On July 16, 2012, SoCalGas, DRA, Integrys and Clean Energy filed Opening Briefs.

Starting on June 19, 2012 and continuing through August 1, 2012, a series of motions for party status were filed in this proceeding. The details of these motions, ALJ rulings, the filing of reply briefs, motions to strike, responses to the motions to strike and replies to the responses are detailed in Administrative Law Judge's Ruling Providing for Comments and Replies on Certain Issues and Setting Aside Submission (ALJ Ruling), October 10, 2012. This ALJ Ruling affirmed certain grants of party status, the acceptance of reply briefs from parties, and established a cycle of comments and replies pertaining to the reply briefs. In addition, the ALJ Ruling set aside submission to obtain comments on certain points in testimony and solicited new information and responsive comments on what reports SoCalGas should provide to ensure the non-discriminatory provision of services needed in advance of the installation of compressed services.<sup>4</sup>

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<sup>4</sup> ALJ Ruling at 19.

In addition to the parties appearing at the prehearing conference, the ALJ granted party status to AGL Resources Inc. (AGL), Propel Fuels (Propel), Encana Natural Gas Inc., the American Gas Association (AGA), GNC Galileo Corporation (GNC), Clean Fuels Connection (Clean Fuels), Ryder Systems, Inc. (Ryder), Daimler Trucks North America (Daimler), Revolution CNG, LLC, Kings Canyon Joint Unified School District, Antelope Valley Air Quality Management District, US Air Conditioning Distributors-CNG Systems, American Honda Motor Co., American Integrated Services, Inc. (AIS), Solar Turbines Incorporated, Allsup Corporation, Regatta Solutions, Inc., and Western Energy Systems, Go Natural CNG, AGL, AMTEK Construction, and Landi Renzo USA.

On August 1, 2012, Allsup Corporation, AGL, Revolution CNG, Ryder , Daimler, American Honda Motor Co., Inc., AGA , GNC, DRA, Integrys, MGESC, Propel Fuels, Inc., Kings Canyon Joint Unified School District, Solar Turbines Incorporated, US Air Conditioning Distributors - CNG Systems, AMTEK Construction, Landi Renzo USA, Go Natural CNG, Clean Energy, Clean Fuels, AIS, and SoCalGas filed Reply Briefs.

Pursuant the ALJ Ruling, comments were filed on October 24, 2012, by SoCalGas, Clean Energy, Integrys, DRA. Reply comments were filed on October 31, 2012 by SoCalGas, Integrys, and DRA.

This proceeding was submitted on October 31, 2012.

### **3. Jurisdiction**

The Commission's jurisdiction over this tariff filing is broad but guided by specific statutory provisions.

Public Utilities Code Section 701<sup>5</sup> gives the Commission broad regulatory jurisdiction over public utilities:

701. The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

This broad authority is refined through additional statutes. The jurisdiction of the Commission over the offering of new tariffed service by a regulated gas corporation is very clear. Under § 454:

(a) Except as provided in Section 455, no public utility shall change any rate or so alter any classification, contract, practice, or rule as to result in any new rate, except upon a showing before the commission and a finding by the commission that the new rate is justified.

The authority to set prices for gas, however, is restrained by § 454.4, which requires the Commission to establish special rates for gas used by cogeneration plants that are not “higher than the rates established for gas utilized as a fuel by an electric plant in the generation of electricity.”<sup>6</sup>

Finally, three other statutory provisions are critical to the issues before us today. First:

740.3. (a) The commission, in cooperation with the State Energy Conservation and Development Commission, the State Air Resources Board, air quality management districts and air pollution control districts, regulated electrical and gas corporations, and the motor vehicle industry, *shall evaluate and implement policies to promote the development of equipment and*

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<sup>5</sup> All statutory references are to the Public Utilities Code unless otherwise noted.

<sup>6</sup> Section 454.4.

*infrastructure needed to facilitate the use of electric power and natural gas to fuel low-emission vehicles. Policies to be considered shall include both of the following:*

1) The sale-for-resale and *the rate-basing* of low-emission vehicles and supporting equipment *such as* batteries for electric vehicles and *compressor stations for natural gas fueled vehicles.*

Second:

740.3 (c) The commission's policies authorizing utilities to develop equipment or infrastructure needed for electric-powered and natural gas-fueled low-emission vehicles shall ensure that the costs and expenses of those programs are not passed through to electric or gas ratepayers unless the commission finds and determines that those programs are in the ratepayers' interest. *The commission's policies shall also ensure that utilities do not unfairly compete with non-utility enterprises.*

And, third, effective January 1, 2006, § 740.8 was modified to require that health and environmental benefits, greenhouse gas emission reductions, and increasing alternative fuel use were to be among the interests of ratepayers that the Commission should consider in evaluating utility proposals. Section 740.8 reads:

740.8. As used in Section 740.3, "interests" of ratepayers, short-or long-term, mean direct benefits that are specific to ratepayers in the form of safer, more reliable, or less costly gas or electrical service, consistent with Section 451, and activities that benefit ratepayers and that promote energy efficiency, *reduction of health and environmental impacts from air pollution, and greenhouse gas emissions related to electricity and natural gas production and use, and increased use of alternative fuels.*

These statutory provisions require the Commission to balance among the goal of promoting the development of infrastructure for fueling natural gas vehicles, the goal of preventing unfair competition by utilities with non-utility enterprises,

and the goals of reducing air pollution and increasing uses of alternatives to petroleum fuels.

#### **4. Issues before the Commission**

In this proceeding, SoCalGas proposed a new tariff service, called Compression Services Tariff (CST),

[T]o meet the future needs of non-residential customers requiring natural gas compression above standard line pressure for customer end-use applications. ... Under the proposed compression service tariff, SoCalGas will own and operate gas compressors and related equipment on the tariff customer's site to provide gas at pressure as specified by the customer. SoCalGas will not, however, conduct activities beyond the point of the customer's receipt of compression service and, as a consequence, will neither own, operate, or maintain facilities nor conduct business operations beyond the point of service delivery.<sup>7</sup>

SoCalGas notes that it currently "delivers natural gas to its customers at standard pressures range from one third of a pound to several hundred pounds per square inch (psi) depending on where a customer connection happens to be located on SoCalGas's system."<sup>8</sup> SoCalGas notes that currently it does not guarantee non-standard pressure levels under its standard tariff terms, but SoCalGas states that the "proposed Compression Services Tariff is similar in concept to the provisions of SoCalGas's Tariff Rule 2 for Special Facilities."<sup>9</sup>

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<sup>7</sup> Application at 2.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* SoCalGas states that Tariff Rule 2 is designed for the installation of facilities with a typical life greater than fifty years. Under Rule 2 Section C, "Pressure," "[f]or connected loads of one million Btu/hour or greater, the following delivery pressures can be provided upon request and acceptance by the Utility: 4. Such other pressure as the

*Footnote continued on next page*

SoCalGas states that under the CST, it:

[W]ill design, procure, construct, own, operate, and maintain on customer premises, equipment associated with the compression of natural gas in order to meet customer-specified pressure requirements.<sup>10</sup>

SoCalGas will price the tariff via a service contract, and notes:

The contract terms, including cost and rate components, adjustments, performance requirements, and payment terms are to be agreed upon in advance by the customer and SoCalGas. Furthermore, Compression Services Tariff customer charges would cover full capital cost recovery as well as operations, maintenance and overhead costs. In some cases, customers may be offered the opportunity to renew the service agreement, either through a contract provision or as a separately negotiated agreement.<sup>11</sup>

SoCalGas will offer the service to all non-residential SoCalGas customers, but providing the service “will depend on non-discriminatory factors such as safety, system capacity, SoCalGas resource availability, technical feasibility, and acceptability of commercial terms.”<sup>12</sup>

SoCalGas sees the potential customers for this market as:

[C]ustomers who own or wish to own NGV refueling facilities, CHP facilities, and peaking generation facilities. NGV applications typically require 3600 psi gas delivery. CHP facilities typically require natural gas pressure between the range of 75 psi for microturbines and 500 psi for larger turbines. Peaking generation facilities, requiring up to 1000

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Utility and the Customer agree to.” SoCalGas tariffs Rule 2, Sheet 2, Section C, “Pressure,” at <http://socalgas.com/regulatory/tariffs/tm2/pdf/02.pdf>

<sup>10</sup> *Id.* at 2.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 3.

psi and some industrial processes would also be candidates for compression service.<sup>13</sup>

SoCalGas argues that “approval of this Application will allow expanded use of NGVs [natural gas vehicles] and CHP [combined heat and power] facilities to provide environmental benefits to natural gas ratepayers which is encouraged by both state law and Commission policy and does so in a way that does not burden ratepayers.”<sup>14</sup> SoCalGas explains that:

SoCalGas will own and operate gas compressors and related equipment on the tariff customer’s site to provide gas at pressure as specified by the customer, but will not conduct activities beyond the point of the customer’s receipt of compression service. As a consequence, SoCalGas will neither own, operate or maintain facilities nor conduct business operations, such as natural gas vehicle (“NGV”) refueling or combined heat and power (“CHP”) generation, beyond the point of compression service delivery. Even in the very narrow instance of very small NGV refueling units that are manufactured with an integrated dispensing hose, the customer will be completely responsible for NGV refueling and use of natural gas as a vehicle fuel.<sup>15</sup>

SoCalGas seeks approval of this application, “as filed, SoCalGas’s CST, because it is expressly designed to enable its non-residential customers to elect a tariff service which will aid the state in meeting its declared clean air and energy policy goals by allowing these customers to exercise a valuable tool, but at their

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<sup>13</sup> *Id.* at 3.

<sup>14</sup> *Id.* at 3-4.

<sup>15</sup> SoCalGas Opening Brief at 1-2.

own choice, and at their own expense, to meet their current and future natural gas compression needs.”<sup>16</sup>

The central question before this Commission is whether to approve, modify, or reject the application of SoCalGas to offer compressed gas services as part of its tariff offerings.

To answer this question, the Scoping Memo detailed four central issues for the Commission to consider in answering this major question. Those four questions, slightly amended to reflect the record in this proceeding, are as follows:

1. Is the Application and proposed service consistent with policies adopted by the Commission and California law, or do Commission policies or California law preclude the provision of compressed gas services by SoCalGas?
2. Are the terms of the tariff anticompetitive, as alleged by protesters? Can the Commission monitor the provision of gas services needed in advance of the installation of compressed gas services to ensure equal treatment of parties who compete with SoCalGas?
3. Does the tariff cover the full costs of this service?
4. Are the proposed rates just and reasonable?

This decision will address each of these questions in turn.

**5. Is the Application and Proposed Service Consistent with Policies adopted by the Commission and California law, or do Commission policies or California Law Preclude the Provision of Compressed Gas Services by SoCalGas?**

The first issue in this proceeding is whether Application is consistent with law and Commission precedent.

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<sup>16</sup> SoCalGas Opening Brief at 1.

### **5.1. Positions of Parties**

SoCalGas argues that the CST is consistent with state law and policy and with Commission adopted policies.

Concerning state laws and policies, SoCalGas claims that the CST is “consistent with state and regional clean air goals.”<sup>17</sup> SoCalGas argues that § 740.8, which became effective on January 1, 2006, “requires that the Commission consider the health impacts and environmental benefits to be gained from greenhouse gas emission reductions by, among other things, increasing alternative fuel use.”<sup>18</sup> In addition, SoCalGas points out that “Assembly Bill 32, the Global Warming Solutions Act of 2006,”<sup>19</sup> required that the California Air Resource Board (CARB) adopt a statewide greenhouse gas emissions limit, and in response “CARB adopted the Low Carbon Fuel Standard requiring a reduction of not less than 10 percent in the carbon intensity of California’s transportation fuels by 2020.”<sup>20</sup> SoCalGas argues further that Assembly Bill 1007 adopted goals of “achieving a 20% increase in nonpetroleum fuel use in the year 2020 and a 30 percent [increase] in the year 2030.”<sup>21</sup>

SoCalGas further notes that the South Coast Air Quality Management District (SCAQMD) adopted a series of “fleet rules” designed to shift public agencies to “low emissions and alternative fuel vehicles whenever a fleet

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<sup>17</sup> *Id.* at 5.

<sup>18</sup> *Id.* at 5.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

operator with 15 or more vehicles replaces or purchases new vehicles.”<sup>22</sup> This rule creates “a need for additional CNG refueling infrastructure to serve the alternative fuel vehicles required under these regulations.”<sup>23</sup>

SoCalGas also points to the California Energy Commission’s 2009 Integrated Energy Policy Report, which it claims notes that “much of the fuel infrastructure does not exist and must be built to ensure that California can meet its mandated renewable and alternative fuel goals.”<sup>24</sup>

SoCalGas also argues that “State law and Commission policy support expansion of CHP as an environmentally beneficial technology and the Compression Services Tariff offers the potential to aid in adoption of CHP.”<sup>25</sup> SoCalGas notes that CARB “set a target for new CHP installations totaling 4,000 MW statewide by 2020.”<sup>26</sup>

Concerning Commission policies, SoCalGas argues that the CST “is modeled after, similar to, and consistent with its existing Tariff Rule 2, which provides that the utility can install and own incremental facilities at a customer’s request and recover costs from that customer under a facility-specific rate over the useful life of the asset.”<sup>27</sup> Furthermore, SoCalGas argues that “previously approved utility programs for natural gas refueling facilities in fact set precedent

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<sup>22</sup> *Id.* at 6.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 7.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

for both constructing facilities on customer premises and on the customer side of the meter.”<sup>28</sup>

SoCalGas argues that its proposed service incorporates “the key policy elements articulated in Decision (D.) 95-11-035 – that utility offerings not unfairly compete; and that ratepayers not be placed at the risk incurred when cost recovery is dependent on uncertain retail sales of fuel to the public.”<sup>29</sup>

Clean Energy opposes the Application, arguing that the Application is inconsistent with state law and Commission policy directives.

Clean Energy argues that “SoCalGas seeks the authority to install NGV *refueling stations*, not simply to provide compression services.”<sup>30</sup> As such, Clean Energy argues that the Compression Services Tariff “would violate existing law and policy, embodied in D.95-11-035, D.97-12-088, D.11-07-029 and Public Utilities Code Section 740.3.”<sup>31</sup>

Clean Energy argues that “SoCalGas’s proposed scope of services places the utility squarely in the middle of the NGV refueling market, despite its claims to the contrary.”<sup>32</sup> Arguing by analogy to the Electric Vehicle proceeding,<sup>33</sup> Clean Energy argues that:

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<sup>28</sup> *Id.* at 8.

<sup>29</sup> *Id.* at 10.

<sup>30</sup> Clean Energy Opening Brief at 1.

<sup>31</sup> *Id.* at 2.

<sup>32</sup> *Id.* at 3.

<sup>33</sup> Rulemaking 09-08-009.

As it did in the EV proceeding, the Commission should keep its focus on the infrastructure market to frame the issues presented by the parties in this Application.<sup>34</sup>

Clean Energy contends that “SoCalGas would provide most, and in some cases all, of the equipment required to construct a NGV refueling station”<sup>35</sup> and that it would “provide O&M services for all NGV refueling equipment it installs and owns.”<sup>36</sup> Clean Energy argues that with the Compression Service Tariff, “SoCalGas is proposing to fully enter the NGV refueling infrastructure market.”<sup>37</sup>

Based on Clean Energy’s description of SoCalGas’s proposed services, Clean Energy argues that approval of the Application would violate D.95-11-035, which Clean Energy argues:

[P]rohibited ratepayer funding refueling station programs and directed any refueling market development to be undertaken by utility affiliates, highlighting the need to “*avoid giving the utility any market advantage, based on its monopoly status.*”<sup>38</sup>

Clean Energy argues further that as proposed by SoCalGas, the Compression Services Tariff would ignore D.97-12-088, which Clean Energy claims indicates that “the proposed NGV refueling services should be provided by an unregulated marketing affiliate.”<sup>39</sup> The relation between the new affiliate and the

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<sup>34</sup> Clean Energy Opening Brief at 4.

<sup>35</sup> *Id.* at 5.

<sup>36</sup> *Id.* at 6.

<sup>37</sup> *Id.* at 10.

<sup>38</sup> *Id.* at 10, emphasis in original, footnote citation omitted.

<sup>39</sup> *Id.* at 16.

utility should, in Clean Energy's view, be regulated by the affiliate transaction rules adopted in D.97-12-088.

Clean Energy also argues that the proposed provision of Compression Services would conflict with D.11-07-029, which Clean Energy contends "prevents electric utilities from owning alternative fuel vehicle infrastructure on the customer's site of the meter."<sup>40</sup> Clean Energy argues that

The grounds for rejecting utility ownership EVSE [electric vehicle service equipment] on the customer side of the meter in the EV recharging market are just as relevant in the NGV refueling infrastructure market, and accordingly SoCalGas's Application must be denied.<sup>41</sup>

Finally, Clean Energy argues that § 740.3 "requires the Commission to reject the CST [Compression Services Tariff] Application."<sup>42</sup> Clean Energy contends that "§ 740.3 requires the Commission to balance 'ratepayer interest' and unfair competition when it considers applications authorizing the utilities to enter the NGV refueling infrastructure market...."<sup>43</sup> Clean Energy argues "any potential benefits of this program are speculative, at best, and could be achieved through other competitors and/or a utility affiliate."<sup>44</sup>

Clean Energy summarizes its argument as follows:

SoCalGas has not demonstrated that the Application will increase alternative fuel vehicle use but the record does highlight the financial risk that ratepayers may ultimately

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<sup>40</sup> *Id.* at 10.

<sup>41</sup> *Id.* at 21.

<sup>42</sup> *Id.* at 21.

<sup>43</sup> *Id.* at 21.

<sup>44</sup> *Id.* at 22.

bear and the competitive harm that may result. On balance, § 740.3 guides the Commission to reject the CST Application.<sup>45</sup>

DRA also opposes the proposed tariff as inconsistent with Commission policies concerning natural gas vehicle refueling. DRA argues that D.95-11-035 concludes that “SoCalGas should no longer be in the NGV refueling business.”<sup>46</sup> DRA argues that this has proved beneficial to competition and states that “[t]here are more than 35 to 40 companies competing in the NGV Refueling business in California.”<sup>47</sup> DRA concludes that “entry by SoCalGas would deter much of the competition.”<sup>48</sup>

DRA also includes a long discussion of affiliate transaction rules adopted in D.97-12-088. DRA concluded its discussion of the affiliate transaction rules with a reference to D.06-12-029, stating that:

[T]he Commission referred to three audit reports which had found that San Diego Gas and Electric Company’s and SoCalGas’ joint utilization of Energy Risk Management as a corporate shared service had “resulted in the means and transfer of confidential information from the utility to the affiliate, created the potential for unfair competitive advantage, and provided a conduit for the transfer of confidential information to a covered affiliate.”<sup>49</sup>

In Comments on the Proposed Decision, DRA clarifies that its purpose in citing this apparent violation of affiliate transaction rules is to express its support for “the Commission’s clarification in 2006 that strengthened these rules, so as to

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<sup>45</sup> *Id.* at 22.

<sup>46</sup> DRA Opening Brief at 6.

<sup>47</sup> *Id.* at 7.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 9.

preclude this misconduct.”<sup>50</sup> DRA faults SoCalGas for failing to propose a separate affiliate to provide the NGV refueling service.<sup>51</sup>

Integrys also opposes the SoCalGas Application. Integrys argues that “[s]ince 1995, the Commission has not permitted utilities to use ratepayer funds to build, own, or operate NGV refueling stations located on customer property.”<sup>52</sup> Integrys argues that the “SoCalGas program would thus provide the complete CNG refueling package, and claims to the contrary are not sustainable.”<sup>53</sup>

Integrys argues that “Intervenors are on record that they would have no objection to a non-utility affiliate.”<sup>54</sup>

Finally, Integrys asserts that Commission policy should ban “it from the CNG market.”<sup>55</sup>

## **5.2. Discussion: Law and Policy Do Not Preclude Provision of Compression Services Tariff**

A review of the relevant sections of the Public Utilities Code makes it clear that § 701 provides the Commission with broad authority to grant or deny this application.

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<sup>50</sup> DRA Comments at 5.

<sup>51</sup> DRA Opening Brief at 21.

<sup>52</sup> Integrys Opening Brief at 4.

<sup>53</sup> *Id.* at 6.

<sup>54</sup> *Id.* at 6.

<sup>55</sup> *Id.* at 14.

Furthermore, § 454 gives the Commission the responsibility to review a showing by the utility concerning a proposed offering and to determine the rate is justified. No new service can be offered without such a finding.

Section 740.3 indicates a legislative concern that the Commission “evaluate and implement policies to promote the ... infrastructure needed to facilitate the use of ... natural gas to fuel low-emission vehicles,” including “compressor stations.” The Commission policies, however, “shall also ensure that utilities do not unfairly compete with non-utility enterprises.”<sup>56</sup> In 2006, § 740.8 was modified to ensure that when considering ratepayer interests, that the Commission recognize the “reduction of health and environmental impacts” and “increased use of alternative fuels” as in the public interest.

Thus, a statutory analysis indicates that the Commission has the authority to grant this application. Moreover, the statutes require that the Commission, when considering this application which would affect the infrastructure needed to facilitate the use of NGV vehicles, consider the public interest, as defined in § 740.8, and take steps to ensure that the policies “ensure that utilities do not unfairly compete with non-utility enterprises.”

Clean Energy’s argument that granting the application would prove inconsistent with policies embodied in D.95-11-035 is not convincing. First, SoCalGas is not seeking to open retail NGV refueling facilities as described and discussed in that decision, but instead to offer gas available to customers under tariff at requested pressures.

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<sup>56</sup> TIM740.3 (c).

Second, the financial risks involved in the provision of CST are very different from those involved in retail NGV facilities. The retail NGV facilities, as noted in D.95-11-035, carry substantial market risk associated with the construction and operation of a retail service business. The service proposed in this application has a tariff that is contractually structured to recover the full cost of service independent of the volume of gas the customer users. Thus, this service does not have a high “retail sales” risk because it is marketed as a piece of infrastructure and is priced to recover infrastructure costs, not the entire package of retail costs, which would include a storefront, sales personnel, advertising and other items.

Third, the revision of § 740.8 in 2006 requires the Commission to examine this application in light of the new statutory framework and not simply apply past policies to this application. Thus, even if D.95-11-035 did prohibit the offering of compression services – which it does not – the Commission would need to revisit that decision.

In conclusion, D.95-11-035 does not adopt policies that prohibit the offering of the compression services proposed in this application and the revision to § 740.8 to recognize a consumer interest in “reduction of health and environmental impacts” and “increased use of alternative fuels” would, in any event, require a fresh analysis of this application.

Furthermore, the Application is not inconsistent with D.11-07-029, the alternative fuels investigation. First, D.11-07-029 addressed electric facilities – not gas facilities – and made no ruling pertaining to natural gas

facilities despite explicit requests by Clean Energy.<sup>57</sup> As such, Clean Energy's argument that the provision of equipment on the customer's side of the meter is prohibited by D.11-07-029 is not persuasive. Electric vehicle charging, the subject of D.11-07-029, is very different from the provision of compressed gas service and D.11-07-029 makes no general ruling pertaining to utility facilities on the customer side of the meter.

Moreover, the adoption of such a requirement for CST would have mixed effects. For some customers, whose premises have sufficient space, SoCalGas could simply move the meter and install compressors on its side of the meter. For customers whose physical space is more constrained, relocation would prove impossible or expensive, and this requirement would preclude CST from SoCalGas. As this example makes clear, a prohibition on the placement of compression equipment on the customer's side of the meter would raise the costs of providing the service and in some cases preclude its offering. These arbitrary results fail to serve the public interest.

In addition, the Application does not contravene the policies set in D.97-12-088. First, D.97-12-088 and D.06-12-029 stated a utility may offer "existing products and services offered by the utility pursuant to tariff," "unbundled versions of existing utility products and services, with the unbundled versions being offered on a tariffed basis," and "new products and services that are offered on a tariffed basis."<sup>58</sup>

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<sup>57</sup> SCG-5 at 9.

<sup>58</sup> See Affiliate Transaction Rules issued pursuant to D.97-12-088 and D.06-12-029 Section VII, Utility Products and Services.

Second, as DRA's own history of the evolution of the affiliate transaction rules in response to the actions of San Diego Gas and Electric Company make clear, affiliate transaction rules can be abused. Moreover, as the discussion below will indicate, it is possible to adopt cost recording, reporting, and disclosure regulations for the regulated utility that make the creation of an affiliate unnecessary for ensuring a fair competitive marketplace.

In summary, California law grants the Commission authority to grant this application. In addition, California law supports the granting of applications in the public interest, which statutes define to include reductions of health and environmental impacts from air pollution and increased use of alternative fuels, as long as the Commission's policies ensure "that utilities do not unfairly compete with non-utility enterprises."<sup>59</sup> This decision will therefore examine the competitive marketplace and then assess the costs, the prices, and the benefits of the proposed service to determine whether to approve the application.

**6. Are the Proposed Terms and Conditions for Providing Compressed Gas services by SoCalGas Anti-competitive? Can the Commission Ensure Non-discriminatory Treatment of Other Parties Offering Compression Services who Need Gas Services from SoCalGas?**

Section 740.3 (c) states that "[t]he commission's policies shall also ensure that the utilities do not unfairly compete with non-utility enterprises." This section addresses the question of what the Commission should do, if anything, to ensure that utilities do not unfairly compete with non-utility enterprises.

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<sup>59</sup> Section 740.3.

### 6.1. Positions of Parties

Clean Energy argues that “in light of the utility’s numerous advantages over non-utility competitors,” the Commission must simply reject the Application.<sup>60</sup> Clean Energy contends that its position as a monopolist gives SoCalGas gas “unfair marketing and cost advantages in the NGV refueling infrastructure market.”<sup>61</sup> Clean Energy lists the following advantages:

- SoCalGas has 5.9 million captive customers and a greater ability to advertise new services, including a website and bill insert capabilities, whose cost is covered by ratepayers.<sup>62</sup>
- “SoCalGas would be allowed to use embedded costs authorized in previous general rate cases for the proposed services.”<sup>63</sup> Clean Energy argues that “SoCalGas would be able to rely on resources currently funded in rates.”<sup>64</sup> Clean Energy lists “customer outreach, contract development, engineering and cost estimation, procurement and construction, construction and engineering oversight, and operations and servicing.”<sup>65</sup>
- “SoCalGas’s role in interconnecting NGV customers to its distribution system makes it the first point of contact for all customers interested in CNG refueling services.”
- “SoCalGas’s role in interconnecting NGV refueling stations to its distribution system ensures that the utility has greater and more direct access to the information necessary to make a proposal to a potential customer. Non-utility competitors

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<sup>60</sup> Clean Energy Opening Brief at 59.

<sup>61</sup> *Id.* at 60.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

must get information regarding the availability of utility distribution service (e.g., delivery pressure and capacity) from SoCalGas before they can provide new potential customers with bids.”<sup>66</sup>

- SoCalGas’s current website includes information discouraging customers from relying on non-utility competitors.<sup>67</sup>
- SoCalGas has information on all CNG refueling customers and stations in its service territory because of its position as sole supplier of gas.
- SoCalGas has a lower cost of capital than non-utility competitors.<sup>68</sup>
- SoCalGas has lower outreach costs.<sup>69</sup>

Clean Energy concludes that D.97-12-088 “makes clear that the proposed NGV refueling services should be provided by an unregulated marketing affiliate.”<sup>70</sup>

DRA similarly argues that SoCalGas has unfair advantages. First, DRA argues that cross subsidies, lower costs of capital, access to the utility billing envelope and access to the customer bill provide a cost advantage.<sup>71</sup> Second, DRA argues that SoCalGas’ use of confidential customer information gives it a market power advantage. Third, DRA argues that SoCalGas’s “critical information about SoCalGas’ infrastructure” gives it an unfair competitive advantage.<sup>72</sup> DRA argues that because of this potential for unfair competition, “it

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<sup>66</sup> *Id.* at 60-61.

<sup>67</sup> *Id.* at 61.

<sup>68</sup> *Id.* at 62.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at 16.

<sup>71</sup> DRA Opening Brief at 21.

<sup>72</sup> *Id.* at 25.

is far easier and fairer to the competitors and to the captive ratepayers for an unregulated affiliate of SoCalGas to enter into this market, subject to the requirements of the Affiliate Transaction Rules.”<sup>73</sup>

In addition, Integrys argues that the “utilities advantages are not limited to price”<sup>74</sup> and cites access to “confidential customer information,” “[p]re-existing customer relations,” and deficiencies in SoCalGas’s website listing of third party suppliers of compression services.<sup>75</sup>

Furthermore, Integrys argues that “changing policy to permit entry into this market would disrupt this burgeoning market and cause ratepayer harm.”<sup>76</sup> This results, in Integrys view, because “utilities can rely on name recognition and brand equity to enjoy ... market power ....”<sup>77</sup> Integrys also argues that “[a]s a monopoly provider with a captive customer base, SoCalGas has access to a lower cost of capital that its competitors do”<sup>78</sup> and this can lead to a lower price.

SoCalGas contends that its CST promotes fair competition, is not anticompetitive, and will expand market opportunities. SoCalGas argues that Clean Energy and Integrys currently provide for “98% of the CNG fuel in SoCalGas’ service territory and have a strong interest in preserving the status quo.”<sup>79</sup> SoCalGas contends that D.95-11-035, which prevented utility

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<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 10.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at 11.

<sup>79</sup> SoCalGas Brief at 15.

involvement in NGV fueling stations, “focused on fully compensatory pricing as the *only* competitive issue that it specifically identified as being the key to avoiding unfair competition.”<sup>80</sup>

SoCalGas argues that the CST:

[P]romotes a robust competitive market by reducing barriers to entry and expansion for smaller third-party equipment and service providers. For example, one of the barriers that the CST will reduce is the significant up-front capital funds required to purchase compression equipment. This, in turn, will encourage competition, resulting in lower prices and more choices for customers.<sup>81</sup>

Concerning SoCalGas’s lower cost of capital, SoCalGas contends:

The fact that Clean Energy might have difficulty matching the capital charge structure used in the Compression Service Tariff does not make the CST in any way unfair.<sup>82</sup>

SoCalGas, in response to the arguments of Clean Energy and DRA pertaining to affiliate transaction rules and D.97-12-088, holds that “the proposed service is simply a variation of a currently authorized tariff under which the utility may install incremental facilities to provide natural gas at pressure other than standard pressure and recover the incremental cost from the customer”<sup>83</sup> and therefore subject to the “Utility Products and Services” rules, which permit a

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<sup>80</sup> *Id.* at 16. SoCalGas quotes from D.95-11-035 at 88: “Any future utility refueling station program must be designed to avoid giving the utility any market advantage, based on its monopoly status. Among other things, construction, operation and commodity charges must be full compensatory ....”

<sup>81</sup> *Id.* at 17.

<sup>82</sup> *Id.* at 19.

<sup>83</sup> SoCalGas Reply Brief at 14.

utility to offer “unbundled versions of existing utility products and services” and “new products and services” on a tariff basis.<sup>84</sup>

Concerning the other advantages cited by Clean Energy, SoCalGas responds that “[t]he cost tracking system is more than adequate to prevent cross subsidization,” that “affiliate rules permit the use of the utility brand with appropriate disclosures,” and that intervenors “greatly exaggerate the value of propriety customer information.”<sup>85</sup> SoCalGas does agree that its “status as the supplier of gas distribution to existing or potential CNG sites does inform SoCalGas of potential new CNG facilities if new or expanded gas supply facilities are required,”<sup>86</sup> but SoCalGas argues that “scripts, disclaimers,” and other regulations can ensure competitive neutrality.<sup>87</sup>

In comments filed in response to an ALJ Ruling of October 10, 2012, SoCalGas argues that “the process for establishing new service is well established, with a common series of steps.”<sup>88</sup> SoCalGas states:

Upon approval of the CST, SoCalGas proposes to initiate a semi-annual reporting and certification process to verify provision of new service on a non-discriminatory basis in accordance with the ruling of ALJ Sullivan. Each semi-annual report will contain:

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<sup>84</sup> *Id.* at 13.

<sup>85</sup> *Id.* at 14.

<sup>86</sup> *Id.* at 14.

<sup>87</sup> *Id.* at 15.

<sup>88</sup> SoCal Gas, *Comments and Proposal of Southern California Gas Company for a Reporting Mechanism to Ensure that All SoCalGas Services Needed in Advance of the Installation of Compression Services from SoCalGas are Offered Equally to All Customers* (SoCalGas Response to ALJ Ruling), October 24, 2012.

1. Completion or cycle time statistics for CST projects and other similar projects not taking service under the CST with analysis and explanation of significant variances from the average completion time (with supporting documentation as needed).
2. SoCalGas management certification forms signed by responsible SoCalGas management stating there has been no preference shown to any CST project in the provision of gas service by SoCalGas.
3. Customer certification forms from each CST customer verifying their awareness that the CST is an optional tariff, that taking service under the CST provides no preference in the provision of any service from SoCalGas, that they are aware that the same or similar services as the CST may be provided by others and that they have received a list of such providers.<sup>89</sup>

In collaboration with CNG customers, SoCalGas has established several process metrics (Key Performance Indicators or KPI's) related to the cycle time required to establish new service. SoCalGas believes that cycle time measures are the most objective measures to augment its certification of non-discriminatory provision of service under the CST.<sup>90</sup> SoCalGas notes that it has two existing KPI's and proposed to provide a semi-annual report that includes information on these KPI's with data segregated by "those who receive service under CST and those that do not."<sup>91</sup> These data will be presented, along with a "statistical and variance analysis."

SoCalGas proposes the details of the semi-annual report as follows:

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<sup>89</sup> *Id.* at 4.

<sup>90</sup> *Id.* at 6.

<sup>91</sup> *Id.* at 14.

1. A cover page with narrative summary;
2. Plots of cycle times for the reporting period showing both average and standard deviation, divided into subsets for CST and non-CST projects:
  - a. Preliminary Pressure Request KPI (days):
    - i. All Customers,
    - ii. Compression Services Tariff Customers,
    - iii. Non-Compression Services Tariff Customers,
  - b. New Business Service KPI (weeks):
    - i. All Customers,
    - ii. Compression Services Tariff Customers,
    - iii. Non-Compression Services Tariff Customers;
3. A table for each metric (Preliminary Pressure Request KPI, New Business Service KPI) listing each project in order of initiation with the following columns:
  - a. Project number (project numbering based on when each project entered the process from 1 to N where N is the number of projects completed in the reporting period),
  - b. Compression Services Tariff or Non-Compression Services Tariff project,
  - c. Metric cycle time,
  - d. Metric variance from target,
  - e. Variance explanation (if greater than one standard deviation);
4. A table for any SoCalGas Rule 20/21 Allowances granted to New Business Service projects with the following columns:
  - a. Project number (identical to project numbers used in previous table),
  - b. Allowance amount requested by customer,
  - c. Allowance amount granted by SoCalGas,

- d. Allowance variance,
- e. Allowance variance explanation (if applicable);
5. CST customer certifications;
6. SoCalGas Management certification.

In reply to SoCalGas's proposed report, Integrys argues that none of the proposals suggested in the SoCalGas Comments will alleviate the threats to competition, to ratepayers, and to the continued development of a natural gas vehicle infrastructure in California that have been identified during the course of this proceeding. Thus the application should be rejected.<sup>92</sup>

Nonetheless, Integrys asks that in the event that the Commission does not reject the application, it requests that all competitors receive notice as follows:

SoCalGas provides notice of customer name and contact information to each competitive provider which has requested such information. (Competitive providers are allowed to request to remain on a notice list to receive all such notices.) Competitive providers and customers are free to enter into their own arrangements for service while any of the following steps are being pursued. As a follow-up, SoCalGas will also provide each requesting competitive provider with the 'Preliminary NGV Site Evaluation form' described below after it has been submitted.<sup>93</sup>

Integrys argues that this approach is fair because "SoCalGas is already made aware of each and every prospective customer of Integrys and other competitors very early on."<sup>94</sup>

Further, Integrys also argues that:

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<sup>92</sup> Integrys Transportation Fuels, LLC, *Reply Comments to October 24, 2012 Filings* (November 3, 2012) at 2.

<sup>93</sup> *Id.* at 2-3.

<sup>94</sup> *Id.* at 4.

[T]o the extent that a SoCalGas agreement with a customer to provide compressed natural gas services becomes effective, SoCalGas should be required to hold a request for proposal (“RFP”) process to identify opportunities for competitive businesses to become part of the supply chain. In every such solicitation, SoCalGas must be required to provide the opportunity for competitive providers to bid to provide a full, turnkey solution that would include both the installation of any new facilities and for the ongoing customer management portion of the services. SoCalGas would provide the capital and would receive the rate base impacts of the agreement, but competitive suppliers would not be frozen out.<sup>95</sup>

**6.2. Discussion: The CST can Be Provided in a Way to Ensure that SoCalGas does not Unfairly Compete**

Section 740.3 (c) states that “[t]he commission’s policies shall also ensure that the utilities do not unfairly compete with non-utility enterprises.” From this decision’s point of view, the key concept is to ensure the fairness of competition.

In many competitive markets, firms will have different competitive advantages and competitive disadvantages. This decision will address the advantages identified by the parties opposing SoCalGas’s entry into the market, assess whether they are, in fact, an advantage that enables a utility to unfairly compete with a non-utility enterprise, and then determine whether it is possible to eliminate the unfair advantage

Parties claimed that SoCalGas has an unfair advantage because of its access to lower cost sources of capital. But, is this advantage unfair? Does it derive from monopoly regulation?

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<sup>95</sup> Integrys Transportation Fuels, LLC, *Comment and Reply in Response to Administrative Law Judge’s Ruling of October 10, 2012* (November 3, 2012), at 2.

The experience of the Commission makes it clear that the lower cost of capital is not a simple function of monopoly regulation. For example, small water companies have monopolies in their service territory, yet they often do not have *any* access to capital markets, and the Commission develops rates for these companies assuming 100% equity financing.

In addition, even for large companies, regulation does not ensure access to low cost capital markets. In the midst of the California energy crisis, PG&E filed for bankruptcy, and had limited access to capital markets at that time. Indeed, the state of California had to purchase power during that time because of vendor doubts about the credit worthiness of California utilities.

Moreover, one of the reasons for SoCalGas's low cost of capital is regulation itself. The Commission sets the cost of capital for regulated utilities to ensure that it is fair and not excessive, and the costs of capital reflect the costs to companies with similar risk profiles. The Commission then requires that the utilities use this adopted cost of capital. Thus, SoCalGas has no choice about using a low cost of equity for pricing its services. In this case, regulation denies SoCalGas the freedom to price its service using either a higher or lower cost of capital than the one authorized by the Commission. Furthermore, the Commission routinely finds that rates set using this cost of capital are reasonable. It is not rational to find rates set using this cost of capital both "reasonable" and "unfair to competitors" at the same time.

Moreover, requiring that SoCalGas create an affiliate for marketing its CST would likely have no effect on the cost of capital. The Commission's experience with affiliates shows that when they are substantially smaller than the regulated utility, as would be the case here, the financial markets price debt and equity based on the profitability and on the cash flows to the corporation as a whole.

Thus, the finances of the regulated monopoly tend to set the terms for the unregulated affiliate's access to capital markets and its costs of capital as well.

In summary, although SoCalGas has an advantage in its cost of capital, that advantage is not "unfair," and is not a direct result of its monopoly franchise. Instead, the low cost of capital is a function of the size of SoCalGas and the specific character of California rate regulation. The low cost of capital, moreover, is set at a level that the Commission deems necessary to produce reasonable rates. There is no "unfair" competitive advantage stemming from SoCalGas's cost of capital that would argue for rejection of the Application.

There is merit, however to the argument that SoCalGas's access to its customers may offer it an unfair advantage, but it is possible through regulation to eliminate the unfair advantage. In particular, this decision can restrict the advantages that accrue to SoCalGas from its access to bill inserts and to a website funded by ratepayers. Concerning bill inserts, this decision will preclude SoCalGas from using bill inserts to market compression services. Concerning the SoCalGas's website and call center, this decision will adopt the policy that the web postings and marketing scripts of SoCalGas should be reviewed as part of an advice letter for the tariffing of this service to ensure that the web posting and marketing scripts do not provide an unfair advantage to SoCalGas. In particular, this decision requires the posting on the SoCalGas website of a list of others offering compression services within its territory.

The argument that SoCalGas has access to 5.9 million captive customers and therefore an unfair ability to advertise new services is not convincing. As the utility with an obligation to serve, SoCalGas does have a relationship with all its customers, but that does not necessarily provide information on whether the

customer has or plans to purchase a vehicle fueled by natural gas or has a need for compression services.

Furthermore, although SoCalGas may have acquired brand equity from its provision of services in a responsible way, this is not an “unfair” advantage it possesses because it is a utility. The Commission has wide experience with other utilities whose treatment of customers or provision of services has reduced brand equity.

In addition, many of the advantages that arise from utility regulation are counterbalanced by disadvantages that new entrants do not have. First, to offer or to change this service, SoCalGas must get Commission approval. Second, to change the pricing formula, SoCalGas must also get Commission approval. Third, SoCalGas cannot restrict the offering in any way that is discriminatory. SoCalGas has an obligation to serve, and must offer the service throughout its territory on equal terms, or have a rational basis for not doing so.

Concerning the issue of unfair advantages arising from SoCalGas’s position as the monopoly provider of gas distributions services, this decision finds the semiannual report proposed by SoCalGas will provide the information needed to guarantee that all customers receive equal treatment in the steps needed to establish service.

This report shall include all the information proposed by SoCalGas. In particular, this report should include information on KPI’s discussed above, a management certification that there has been no preference shown to any project and a customer certification that the CST is an optional tariff, that taking service under the CST provides no preference in the provision of any service from SoCalGas, that they are aware that the same or similar services may be provided by others and that they have received a list of such providers.

This decision declines to adopt the proposals of Integrys for a 30-day shopping period for any SoCalGas CST customer and its requirement that SoCalGas offer an RFP for the compression services whenever it has an agreement with a customer. These steps are very intrusive into the customer/company relationship and are not appropriate at this time. In particular, under an RFP, SoCalGas would lose the ability to standardize equipment and services in ways that it may find attractive and competitive.

## **7. Does the SoCalGas service cover the full cost of service?**

Requiring that the price covers the full cost of a service is the key to ensuring that a utility obtains no unfair advantage with a non-utility providing the same service. This section addresses the question of whether the CST will cover its full costs of service.

### **7.1. Positions of Parties**

Clean Energy argues that the “proposal to use traditional ratemaking for a competitive service will unnecessarily expose ratepayers to risk.”<sup>96</sup> Clean Energy contends that “there is no guarantee that program costs and revenues will ultimately match” and, “if they do not match, SoCalGas’s proposed methodology would place any shortfall on the ratepayers’ side of the ledger.”<sup>97</sup> In addition, Clean Energy argues that “[a] more subtle form of ratepayer risk lies in the allocation of indirect costs, such as customer outreach costs – between monopoly and utility CST service.”<sup>98</sup>

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<sup>96</sup> Clean Energy Opening Brief at 43.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

Clean Energy's argues that under traditional ratemaking, following project construction, "the project's capital costs will be rolled into ratebase."<sup>99</sup> Once this is done, Clean Energy asserts, shareholders will realize a return, even if the pricing of the CST fails to cover its costs. In addition, in the case of a customer bankruptcy, Clean Energy argues that ratepayers "will bear the loss that arises when undepreciated capital is removed from ratebase."<sup>100</sup>

Clean Energy also argues that "the allocation of shared costs to CST Services could result in cross-subsidies by non-participating ratepayers."<sup>101</sup>

DRA also contends that "SoCalGas' proposed tariff and 'standard offer' contract do not ensure that ratepayers will not face any risks or pay for any of SoCalGas' costs."<sup>102</sup> In particular, DRA argues that this result arises because "the proposed tariff and service agreement explicitly provide that the rates are subject to negotiation, leaving the ratepayers' interest unprotected."<sup>103</sup> Furthermore, DRA expresses doubts concerning SoCalGas's ability to "predict with pinpoint accuracy ... every individual cost element that would be incurred for the entire service life of the gas compression service."<sup>104</sup> DRA also doubts the ability of "SoCalGas employees to accurately track, allocate, and report all labor hours and

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<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at 45.

<sup>101</sup> *Id.* at 48.

<sup>102</sup> DRA Opening Brief at 12.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

all other costs associated with the tariff service for the entire twenty year life of the gas compression service facilities.”<sup>105</sup>

Furthermore, DRA argues that “SoCalGas’ use of embedded costs, which are already included in general rates, constitute ratepayer subsidies.”<sup>106</sup> DRA contends:

Essentially, ratepayers will float SoCalGas the embedded labor resources necessary to provide the Compression Services Tariff until the embedded costs are balanced and returned to ratepayers in the year spent, as part of the annual regulatory account balance update filing. Even this arrangement constitutes a ratepayer subsidy as SoCalGas gets the benefit of using these embedded resources for up to one year before balancing the costs and crediting back to ratepayers.<sup>107</sup>

Finally, DRA argues that “SoCalGas’ ratepayers may face future risks if the Commission were to approve SoCalGas’ application.”<sup>108</sup> DRA raises two concerns: liability risks associated with the provision of compression services and the possible bankruptcy of the customer.

Integrys raises similar concerns about the potential harm to ratepayers from the CST. Like Clean Energy and DRA, Integrys argues that if there is a loss on the service, “ratepayers may end up paying for SoCalGas’ mistake.”<sup>109</sup>

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<sup>105</sup> *Id.* at 13.

<sup>106</sup> *Id.* at 16.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* at 18.

<sup>109</sup> Integrys Opening Brief at 13.

Integritys also argues that “to the extent that SoCalGas is underinsured in relation to the Proposed Tariff, ratepayers could be forced to bear the costs.”<sup>110</sup>

In its opening brief, SoCal Gas asserts:

SoCalGas demonstrated in its testimony, that the CST is specifically designed to be fully compensatory, recovering all costs from the tariff customer without the need for ratepayer subsidy. In addition, the tariff price is designed to fully recover the revenue requirements of providing service based on estimated costs which include a contingency to minimize the risk of the actual costs being higher than estimated containing no subsidies, hidden or otherwise, and thus no costs which are not designed to be recovered from the CST customer.<sup>111</sup>

In reply, SoCalGas argues that Clean Energy’s discussion of ratemaking is “flawed.”<sup>112</sup>

SoCalGas has procedures in place to accurately forecast costs. The CST customer is contractually obligated to pay the full cost of service. SoCalGas bears 100% of the risk of any revenue shortfall that occurs prior to the General Rate Case following the placement of the CST facility in service. Such a loss, if it occurred, would not be recovered. In a subsequent General Rate Case, SoCalGas could request inclusion in future rates of net revenue in the event of a forecast shortfall over the entire CST project group. This situation is highly unlikely and would only be approved if the Commission found it to be in the public interest.<sup>113</sup>

Nevertheless, SoCalGas states:

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<sup>110</sup> *Id.* at 13.

<sup>111</sup> SoCalGas Opening Brief at 26-27.

<sup>112</sup> SoCalGas Reply Brief at 21.

<sup>113</sup> *Id.*

In the unlikely event that there are tracked costs on a net basis which were not collected from the tariff customer, SoCalGas could present the Commission with those costs during a General Rate Case and, to the extent the Commission deems the costs were incurred in the ratepayer interest, SoCalGas may recover.<sup>114</sup>

Concerning the hypothetical bankruptcy of a customer, SoCalGas argues:

CST customers must have satisfactory credit in order to be eligible for service. Due to this credit requirement, the probability of non-payment, or default, by a tariff customer is very low and the small risk is compensated by the inclusion in the rate of an uncollectable revenue charge. A variety of techniques such as letters of credit and parent-company guarantees can be employed where needed to ensure adequate credit. Should loss experience dictate, the uncollectable revenue charge could be modified by filing an Advice Letter with the Commission and publishing the revised rate schedule.<sup>115</sup>

Concerning who bears the risks for the capital investments, SoCalGas states:

[I]n a future GRC, the calculation of the revenue requirement that will be used to set all customer rates, is calculated by reducing the authorized base margin by the miscellaneous revenue forecast approved by the Commission. In the next GRC proceeding, the capital asset amounts for the CST will be rolled into authorized rate base along with the miscellaneous revenues garnered from the service, and therefore neither is included in base rates. As such, it is the Compression Services Tariff customers who are paying for the service and not the general ratepayers.<sup>116</sup>

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<sup>114</sup> *Id.* at 22.

<sup>115</sup> SoCalGas Opening Brief at 27-28.

<sup>116</sup> *Id.* at 28.

Regarding the non-capital costs, SoCalGas states that:

[A]s described in Sections IV.B and C, of Ex. SCG-3, the Ownership and O&M Charge components for each CST project will be tracked. Mr. Reyes explained on cross examination that the result of this method for tracking of costs will enable the Commission, or any other party to future SoCalGas revenue proceedings, such as the GRC, to identify with particularity, the manner in which revenues from the monthly Ownership and O&M Charges will be used to fully recover SoCalGas' costs of providing service under its the CST.<sup>117</sup>

SoCalGas also states that:

In the unlikely event a CST customer cannot fulfill its contractual obligations, and unrecovered CST costs remain after balancing excess revenue collections from other CST customers, parties will be able to examine the reasonableness of such costs in the next GRC. Thus, ratepayers will never be responsible for any CST cost which the Commission does not find just and reasonable.<sup>118</sup>

In this scenario, as proposed by SoCalGas, the Commission would then decide whether to permit SoCalGas to recover these unrecovered CST costs.

## **7.2. Discussion: SoCalGas Should Pay Full Cost of Service and Shareholders Should Bear All Risks**

This decision finds that it is not appropriate for ratepayers who do not participate in the CST tariff to bear risks and costs that arise from the provision of the CST.

There are two accounts critical to ensuring that ratepayers who do not participate in the CST tariff do not bear risks or costs associated with it. The first

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<sup>117</sup> *Id.* at 28.

<sup>118</sup> *Id.*

account is a balancing account, which is the mechanism to credit back ratepayers for the use of services that are paid through the utilities embedded costs.

SoCalGas asserts that these costs are small compared to the overall costs of the CST, but it is critical to the fair provision of this service that these costs are charged to the CST. A second account, a tracking account, seeks to track both the costs and revenues related to a specific project. SoCalGas explains that, under its proposal, in almost all circumstances, the revenues generated by the CST will cover the costs.

There are, however, situations where, under SoCalGas's proposal, this might not occur. Under the SoCalGas proposal, if a CST customer failed to fulfill its contractual obligations and unrecovered costs remain in the balancing account, SoCalGas proposes that "parties will be able to examine the reasonableness of such costs in the next GRC."<sup>119</sup>

This decision finds that it is not appropriate for SoCalGas to seek the recovery of these uncollectible costs in the next GRC. First, to do so could result in a ratepayer subsidy of the CST. This would not be consistent with statutory provisions that require that utilities not have an unfair competitive advantage.

Second, this opportunity to recover costs through a subsequent GRC does not seem necessary to the provision of this service. SoCalGas has itself stated that the event of revenue shortfalls is "unlikely." It is therefore reasonable and proper that SoCalGas assume this risk.

Third, SoCalGas, through its tracking accounts has the ability to determine if it faces a revenue shortfall and amend its tariff to ensure that revenues exceed

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<sup>119</sup> SoCalGas Opening Brief at 28.

costs. Therefore, we will require SoCalGas to manage and respond to risks that it is facing.

Fourth, since SoCalGas has no obligation to provide this service, then in the event that revenues fail to meet costs, SoCalGas can file an Advice Letter seeking to withdraw the service.

In summary, SoCalGas should assume all risks associated with the provision of the CST. While assuming the economic risks associated with this service, SoCalGas has the opportunity to revise the pricing of the service via a subsequent advice letter filing to recover costs that were not accurately forecast. In particular, SoCalGas may revise prices, should it desire, to recover shortfalls in the balancing account and/or booked losses in the tracking accounts. Further, unlike other services that are part of the obligation to serve, SoCalGas may file an advice letter to withdraw the service. The general body of ratepayers, however, has no responsibility to cover revenue shortfalls for this service.

**8. Are the Proposed Rates Reasonable? Should the Commission Grant the Application as in the Public Interest?**

There are two other issues before the Commission. As with all proposed tariffs, the Commission must determine whether the proposed rates are “justified.”<sup>120</sup> In addition, there are the larger questions of whether the Commission should grant the application and whether the provision of this service by SoCalGas is in the public interest.

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<sup>120</sup> Section 454 (a).

### **8.1. Positions of Parties on Reasonableness of Rates**

SoCalGas argues that:

[T]he proposed ratemaking treatment is just and reasonable because it employs well established methodologies identical to those used in general rate cases, the tariff customer bears the cost of the services received and non-participating ratepayers receive substantial benefits in exchange for the minimal risks they bear.<sup>121</sup>

Although Clean Energy, DRA, and Integrys dispute the appropriateness of permitting SoCalGas to provide this service, they did not dispute the ratemaking methodology that SoCalGas would use to price the service.

### **8.2. Positions of Parties on whether the Application is in the Public Interest**

DRA, in addition to the arguments that the CST will impose risks on ratepayers and will give SoCalGas unfair competitive advantages, contends that the tariff will produce no increase in environmental benefits. DRA argues that SoCalGas's survey, which indicated interest in CST, is biased. DRA contends that environmental benefits and gas throughput increases would occur if competitors provided the infrastructure. DRA concludes that "no benefits have been demonstrated for ratepayers."<sup>122</sup>

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<sup>121</sup> SoCalGas Opening Brief at 29.

<sup>122</sup> DRA Opening Brief at 20.

Clean Energy, in addition to its arguments that the CST contravenes Commission policy and statutes, argues that the CST will “displace, not expand, business opportunities for competitors.”<sup>123</sup> Clean Energy argues:

While the CST will not displace equipment manufacturers, SoCalGas will compete directly with non-utility competitors, like Clean Energy, who provide a range of NGV refueling services similar to those proposed by SoCalGas in its CST. Approval of SoCalGas’s Application thus will have a material impact on business opportunities for those entities that provide NGV refueling services. Opportunities that are limited to a manufacturer’s supply of equipment or O&M services on an *à la carte basis* will not benefit all competing entities in the NGV refueling infrastructure market.<sup>124</sup>

Clean Energy argues that the “risk of displacement resulting from the provision of CST services is amplified by SoCalGas’s cost of capital advantage.”<sup>125</sup> Clean Energy notes that SoCalGas’s cost of capital is 8.68% and it argues that “non-utility entities face a cost of capital that ranges from 14-18%”<sup>126</sup> Clean Energy further argues that “SoCalGas’s proposed contract with LAUSD [Los Angeles Unified School District] illustrates that its CST services are likely to displace non-utility competitors.”<sup>127</sup> Clean Energy concludes that:

Displacement of opportunities for non-utility service providers in the NGV refueling services market may have long-term adverse consequences for consumers. As the

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<sup>123</sup> Clean Energy Opening Brief at 54.

<sup>124</sup> *Id.* at 56.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

Commission observed in D.97-12-088, if one player exhibits market power in a competitive market, other competitors may be discouraged from entering that market.<sup>128</sup>

Clean Energy argues that the “*long-term* harm of allowing unfair competition is higher prices for consumers.”<sup>129</sup>

Clean Energy argues that despite SoCalGas’s contention that the combined throughput of Clean Energy and Integrys represents over 81.6% by volume of CNG dispensed and 98% of CNG sales volume from stations owned and operated by third parties, Clean Energy states that it “owns 98 stations, or 22% of 440 NGV refueling stations in the state.”<sup>130</sup>

Integrys also argues that “the purported benefits from a policy change are small, speculative, and unsupported by the record.”<sup>131</sup> More specifically, Integrys points out:

[B]enefits from utility involvement will only occur if there is an *incremental expansion* in the market as a result of the utility’s entrance – an acceleration of projects that would not otherwise be built by private market participants but would be built because of the existence of the Proposed Tariff.<sup>132</sup>

Integrys argues that SoCalGas’s customer survey “is critically flawed and is unreliable evidence incapable of supporting the SoCalGas claim regarding the acceleration and incremental addition of projects.”<sup>133</sup>

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<sup>128</sup> *Id.* at 58.

<sup>129</sup> *Id.* Emphasis in original.

<sup>130</sup> *Id.* at 42.

<sup>131</sup> Integrys Opening Brief at 7.

<sup>132</sup> *Id.* at 7-8. Emphasis in original.

<sup>133</sup> *Id.* at 8.

Furthermore, Integrys argues that in addition to producing no incremental benefits, “changing policy to permit utility entry into the market would disrupt this burgeoning market and cause ratepayer harm.”<sup>134</sup> Integrys claims that “a significant risk exists that non-utility entities will exit the market if utilities are permitted to participate.”<sup>135</sup>

SoCalGas argues that the tariff will produce ratepayer benefits, and cites the testimony of its witness:

[T]o the extent that an adopted Compression Services Tariff results in an expansion of the use of CHP systems and NGV's in SoCalGas' service territory, ratepayers benefit from avoidance of emissions from conventional generation of electricity and reduced pollution from gasoline and diesel vehicles. Increased use of natural gas as a vehicle fuel also creates a potential natural gas transportation rate reduction associated with increased system throughput.<sup>136</sup>

SoCalGas points out that “Clean Energy and Integrys who together provide 98% of the CNG fuel in SoCalGas service territory have a strong interest in preserving the status quo.”<sup>137</sup> SoCalGas states that “no party is offering a natural gas compression service similar to the natural gas compression service described in the proposed Compression Services Tariff.”<sup>138</sup>

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<sup>134</sup> *Id.* at 10.

<sup>135</sup> *Id.* at 12.

<sup>136</sup> *Id.* at 29, citing SCG-2 at 23.

<sup>137</sup> SoCalGas Opening Brief at 15.

<sup>138</sup> *Id.* at 16.

SoCalGas contends that, “as a unique offering, desired by customers, the proposed tariff will increase CNG adoption.”<sup>139</sup> SoCalGas argues:

Reasonably, an additional choice for customers, offered on fair and transparent terms, can only help more customers participate in their own CNG refueling solutions thus facilitating the evolution of a more robust competitive market to in turn produce the results desired by the state.<sup>140</sup>

SoCalGas argues against Clean Energy’s contention that the new service will only displace current providers of compression services, stating:

Logically, the more rational expectation is that the additional private capital which would be provided by SoCalGas through operation of the CST will lead to better customer value and increased, not diminished, growth in CNG as a transportation fuel.<sup>141</sup>

SoCalGas also argues that:

[B]ased on a recent interview .... Clean Energy’s focus is on serving only certain types of CNG users, i.e. very large central fleets, while the CST will be available on a non-discriminatory basis to all potential users, regardless of size, meeting the requirements of the tariff. ... The Compression Service Tariff could not be “displacing” any Clean Energy projects with the hundreds or thousands of fleet owners in SoCalGas’ service territory are not in the niche ....<sup>142</sup>

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<sup>139</sup> *Id.* at 18.

<sup>140</sup> *Id.* at 18.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.* at 20.

SoCalGas also cites its customer survey, which it claims “supports the contention that implementation and operation of the CST would allow faster and more pervasive customer adoption of natural gas for transportation.”<sup>143</sup>

SoCalGas, in its reply brief, details what it describes as the slow growth in the CNG market and the high market concentration, in which Clean Energy and Integrys have “at minimum, 82% market share by volume in Southern California and 98% of all CNG fuel that is sold by third-party service providers in the SoCalGas service territory.<sup>144</sup> SoCalGas argues that the CNG market is not developing fast enough, and participation by SoCalGas will lead to incremental growth. Moreover, SoCalGas argues that, even if the market growth is at its full potential, “the CST is consistent with State and Commission policy and is in the public interest, and responds to customer demand.”<sup>145</sup>

Concerning the numerous comments that it will produce no incremental demand for CST, SoCalGas argues:

It’s also difficult to understand, how the CST offering can be so compelling that SoCalGas will “win any bid it seeks” while also being so unattractive that it generates absolutely zero incremental demand. The interveners’ “kitchen sink” approach leads to an erratic presentation of isolated and, in many cases, either irrelevant or immaterial arguments that ignore the totality of the evidence and simplicity of the proposal as it relates to policy support, market need, and ratepayer protections.<sup>146</sup>

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<sup>143</sup> *Id.* at 21.

<sup>144</sup> SoCalGas Reply Brief at 27-28.

<sup>145</sup> *Id.* at 27.

<sup>146</sup> SoCalGas Reply Brief at 3, footnote omitted.

### **8.3. Discussion: Rates are Reasonable and Service is in the Public Interest**

Concerning the “reasonableness of the rates,” SoCalGas proposes to price the CST using traditional ratemaking methodologies. No party disputed this. This decision has adopted additional protections to ensure the segregation of all costs and revenues associated with this service in both a balancing account and a tracking account. In addition, this decision has adopted the restriction that SoCalGas must bear all risks associated with this service – even those risks of bankruptcy and liability that it has argued are small and should be subject to subsequent Commission review.

This decision finds that the proposed ratemaking methodology, when supplemented by the provisions to ensure that rates cover costs and that SoCalGas bears all risks associated with the service, yields rates that are reasonable.

Concerning the larger question of whether the provision of this service is in the public interest, § 740.8 makes it clear that “activities that benefit ratepayers and that promote energy efficiency, *reduction of health and environmental impacts from air pollution*, and greenhouse gas emissions related to electricity and natural gas production and use, *and increased use of alternative fuels*” are in the public interest.

The arguments of Clean Energy and DRA that the CST will produce no benefits are unconvincing. We find particularly unconvincing the argument that SoCalGas both has an advantage that will enable it to price CST services at lower costs yet these lower prices will lead to no incremental demand. The expansion in the use of natural gas in the Los Angeles area will certainly reduce the health and environmental impacts from air pollution and increase the use of alternative fuels. For these reasons, the CST is clearly consistent with the expanded

definition of the public interest contained in § 740.8 and Commission approval of this new service is entirely consistent with law.

Moreover, even if the provision of CST by SoCalGas produced no incremental demand for CNG, there is ample evidence in this proceeding that the market for Compressed Gas is highly concentrated, with Clean Energy and Integrys serving 82% by volume of all CNG sold in the SoCalGas service territory. Sales volume, not number of stations as Clean Energy suggests, is the appropriate measure of market share in the CNG market. The entry of SoCalGas into a market as concentrated as this will likely increase competition and certainly expand the choices of customers. Thus, on economic grounds alone, it is in the public interest to approve the CST service.

Finally, because of the Commission's concern that the market for compressed services remain competitive, the Commission finds it appropriate to monitor both the volume of compressed gas sold in the SoCalGas service territory and the volume of compressed gas sold by SoCalGas. For this reason, this decision requires SoCalGas to report this information as part of its semiannual report to the Commission.

## **9. Other Filings and Responses**

This section will discuss the reply briefs filed by parties other than SoCalGas, Integrys, DRA and Clean Energy and the filings of SoCalGas, Integrys, DRA and Clean Energy in response to the ALJ Ruling of October 10, 2012, and in reply to these responses.

### **9.1. Filings**

The Reply Briefs of Allsup Corporation, AGL, Revolution CNG, Ryder , Daimler, American Honda Motor Co., Inc., AGA , GNC, MGESC, Propel Fuels, Inc., Kings Canyon Joint Unified School District, Solar Turbines Incorporated, US

Air Conditioning Distributors – CNG Systems, AMTEK Construction, Landi Renzo USA, Go Natural CNG, Clean Fuels, and AIS generally expressed support for the Application.

As noted above, an ALJ Ruling of October 10, 2012, established an additional cycle of comments and replies pertaining to the Reply Briefs filed by these parties. Clean Energy, SoCalGas, Integrys and DRA each filed a Response to ALJ Ruling on October 24, 2012, and DRA, Intergy, and SoCalGas each filed a Reply to the Response to ALJ Ruling on October 31, 2012.

Clean Energy argued that the Reply Briefs filed by the parties listed above “offer no citations to direct testimony or the transcript in the proceeding.”<sup>147</sup> Clean Energy argues further that these Reply Briefs “should not be weighed as support for the CST program” because these arguments and positions are “generalized.”<sup>148</sup> Furthermore, Clean Energy argues:

[T]he Commission will find very little, if any, analysis of the marketplace, alternatives or the impact SoCalGas’s proposal may have on long-term market development. Most importantly, not a single Inactive Party appears to have considered the notion that this service could be provided by an unregulated subsidiary of Sempra Energy.<sup>149</sup>

Clean Energy again states its objection to the provision of service by SoCalGas beyond the meter, arguing that “[u]nder Rule 2 and Rule 21, gas is delivered to the customer at the meter, and by changing the point of delivery this

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<sup>147</sup> Clean Energy Response to ALJ Ruling at 4.

<sup>148</sup> *Id.* at 5.

<sup>149</sup> *Id.* at 7.

application would deviate significantly from SoCalGas's published Rules."<sup>150</sup> Finally, Clean Energy argues that "the only solution is to reject the Application, leaving Sempra Energy to offer the service through an unregulated subsidiary."<sup>151</sup>

In addition to requesting market reports and protections, which were discussed above, Integrys objects that:

[W]ithout having the late-filing parties available for discovery and cross-examination, Integrys does not have the opportunity to develop the source of their interest in this proceeding, their knowledge of the offerings of Integrys and other similarly situated providers of compressed natural gas services, and their relationship to SoCalGas.<sup>152</sup>

DRA, like Integrys, also requests "an opportunity to respond to the eighteen reply briefs after conducting discovery."<sup>153</sup> DRA argues that "[c]onducting discover is vital to the due process right of DRA to effectively respond to the reply briefs."<sup>154</sup> Concerning the ALJ question asking what information can ensure an equal provision of services, DRA responded "the only way to ensure that utility services are offered in a non-discriminatory manner is to require that competitive services not related to core utility offerings be provided by an unregulated utility affiliate acting in accordance with the Affiliate Transaction rules."<sup>155</sup>

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<sup>150</sup> *Id.* at 14.

<sup>151</sup> *Id.*

<sup>152</sup> Integrys Response to ALJ Ruling at 3.

<sup>153</sup> DRA Response to ALJ Ruling at 1.

<sup>154</sup> *Id.* at 2.

<sup>155</sup> *Id.* at 3-4.

SoCalGas, as noted above, proposed a detailed reporting scheme to ensure equal treatment of all suppliers of compressed gas services, and argues that “the Commission can properly oversee the implementation of the CST.”<sup>156</sup>

Concerning the issue of discovery, SoCalGas argues that “DRA could have conducted discovery on these parties after they had been granted party status.”<sup>157</sup>

## **9.2. Discussion of Filings**

The Reply Briefs Allsup Corporation, AGL, Revolution CNG, Ryder , Daimler, American Honda Motor Co., Inc., AGA , GNC, MGESC, Propel Fuels, Inc., Kings Canyon Joint Unified School District, Solar Turbines Incorporated, US Air Conditioning Distributors – CNG Systems, AMTEK Construction, Landi Renzo USA, Go Natural CNG, Clean Fuels, and AIS did not raise legal arguments not already raised by other parties. Clean Energy is correct in noting that these Reply Briefs fail to cite the record in this proceeding. In addition, to the extent that these reply briefs introduced new facts supporting the application, this decision gives these new facts no weight since they were not introduced by an evidentiary showing.

Concerning the requests of Integrys and DRA to conduct discovery on parties filing Reply Briefs, this decision declines to order any additional discovery. The Reply Briefs of the parties listed above fail to cite to the record or to offer legal arguments in support of their positions, so this decision can only view them as statements of support. The Reply Briefs therefore have no

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<sup>156</sup> SoCalGas Reply to Responses to ALJ Ruling at 2.

<sup>157</sup> *Id.* at 4.

evidentiary weight in this decision. In light of the fact that the Reply Briefs do not carry evidentiary weight and the fact that parties did have an opportunity, albeit limited, to conduct discovery, permitting discovery at this time and further filings would serve no purpose.

**10. Conclusion: The CST is in the Public Interest**

In summary, this decision authorizes SoCalGas to file a CST as proposed in its application but with the additional requirement of a semi-annual reporting requirement discussed above and with the additional policy requirement that ratepayers bear no risks from the provision of this service.

As modified by this decision, the CST is in the public interest because, pursuant to § 740.8, it will help reduce the health and environmental impacts from air pollution, reduce greenhouse gas emissions, and will lead to an increase in the use of natural gas, an alternative to gasoline and diesel fuel.

The semiannual reporting requirement will enable the Commission to ensure that SoCalGas gains no unfair advantage in the provision of the CST.

In addition, the combination of balancing accounts and tracking accounts, as required by this decision, will ensure the protection of ratepayers from all risks associated with this service.

**11. Comments on Proposed Decision**

The proposed decision of the assigned ALJ was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on December 10, 2012 by SoCalGas, DRA, Clean Energy and Integrys. Reply comments were filed on December 17, 2012 by SoCalGas, DRA, Clean Energy, and Integrys.

SoCalGas' comments request that the Commission adopt certain additional policies pertaining to balancing and tracking accounts, competitively neutral scripts, website modifications, and proposed credit requirements.

This decision declines to do so. These matters fall outside the record of this proceeding and are best addressed in the Tier 3 advice letter associated with the implementation of this decision.

DRA's comments argue that this decision is "grounded in inaccuracies."<sup>158</sup> DRA argues that "SoCalGas does have detailed and confidential information on all non-residential customers that sell natural gas for NGVs."<sup>159</sup> DRA also argues that the proposed decision commits legal error in dismissing confidential information as a market advantage and argues that the only remedy is to forbid SoCalGas from offering this service. DRA argues further that the proposed decision is inconsistent with the NGV decision, the EV decision, statutory law, and argues that the decision commits legal error in concluding that an affiliate's cost of capital is related to that of the core utility.

In response, this decision finds that DRA Comments are unpersuasive and contain inaccuracies. The proposed decision did not claim that SoCalGas did not have information on those "who sell natural gas for NGVs," but instead notes that SoCalGas does not necessarily have information on who owns a NGV, or who plans to buy one, or who needs compression services. Similarly, the proposed decision analyzes D.97-12-088, and finds that since SoCalGas already offers compression services under Tariff Rule 2, policy supports the continued provision of this service the utility without the creation of an affiliate. The

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<sup>158</sup> DRA Comments at 2.

<sup>159</sup> *Id.*

proposed decision does not overturn the NGV decision, which limits SoCalGas's ability to offer retail refueling services. This decision finds that restricting SoCalGas to infrastructure services is not inconsistent with the NGV decision.

Furthermore, the proposed decision observes that the cost of capital in affiliates of a large utility applies administrative expertise acquired by the Commission over years of regulating telecommunications utilities under constantly changing organization structures. Moreover, this decision does not depend on this one fact.

Finally, DRA's comments fail to acknowledge the steps taken to ensure that the utility, not ratepayers, bear all costs associated with the provision of these services.

Clean Energy argues that the proposed decision "errs in concluding that SoCalGas's CST application will provide incremental benefits for the NGV market and ratepayers."<sup>160</sup> Clean Energy argues that the CST will simply displace services that otherwise would have been provided by non-utility competitors. Furthermore, Clean Energy argues that the proposed decision enables SoCalGas's "use of unfair advantages over non-utility entities in the provision of competitive services,"<sup>161</sup> citing SoCalGas's advantageous cost of capital and its access to captive customers.

Clean Energy calls for a policy that allows "an unregulated affiliate, rather than the utility, to offer CST services."<sup>162</sup> Clean Energy argues that this would "eliminate the risk of ratepayer subsidy of compression services and prevent the

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<sup>160</sup> Clean Energy Comments at 2.

<sup>161</sup> *Id.* at 6.

<sup>162</sup> *Id.* at 10.

utility from using unfair advantages to compete with non-utility entities.”<sup>163</sup>

Clean energy faults the decision for not adopting “the affiliate option.”<sup>164</sup>

Clean Energy also disputes the findings on market share, arguing that there are “35 market participants”<sup>165</sup> and notes that “since August 2010, Clean Energy was awarded only eight, or 20% of new contracts.”<sup>166</sup>

Clean Energy’s arguments are not persuasive. Clean Energy would have us believe that SoCalGas has unfair cost advantages that would allow it to underprice Clean Energy, but that these lower costs would not result in additional consumption. Such a result is implausible. Moreover, even if there is only a modest increase in the use of compressed natural gas, the entry by SoCalGas provides additional customer choice of provider in a market that is currently concentrated.

Furthermore, this decision finds that in determining the ratepayer interest, law now requires the Commission to consider whether a policy will reduce “health and environmental impacts” and increase the “use of alternative fuels,”<sup>167</sup> which this decision considers.

Finally, Clean Energy fails to recognize that competing firms need not have identical cost structures. This decision distinguishes the “unfair” advantages that arise from monopoly regulation from those that arise from market forces. As a result, the decision, as the law requires, takes steps to check

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<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Id.* at 12.

<sup>166</sup> *Id.* at 13.

<sup>167</sup> § 740.8.

the unfair advantages that SoCalGas has concerning its access to customers, but the decision concludes that a lower cost of capital should disqualify SoCalGas from offering this service.

Concerning Clean Energy's call for "the affiliate option," this is a matter not before the Commission. The matter before the Commission is to determine whether to grant the application. The decision does so, finding that the proposed service is consistent with law and the public interest.

Finally, concerning Clean Energy's market share analysis, the decision acknowledges that market share depends critically on how one defines the market. Measuring the market for compression services based on the amount of compressed gas sold, however, is a logical and straightforward measure, and it is clear that Clean Energy and Integrys have a strong market position.

Integrys argues that "Commission policy keeping regulated utilities out of this business [compressed natural gas services] has been a significant attraction point for all of this investment and must be preserved."<sup>168</sup> Integrys argues that the best way to mitigate the effects of SoCalGas's natural monopoly is for SoCalGas "to offer the proposed service through an unregulated affiliate."<sup>169</sup> Integrys argues further that the provisions adopted in this decision to protect against unfair competition "fall significantly short of a level playing field."<sup>170</sup>

Concerning the Comments of Integrys, these arguments largely repeat the arguments of earlier pleadings. The decision finds that the offering of a compression services tariff by SoCalGas is in the public interest because if

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<sup>168</sup> Integrys Comments at 2.

<sup>169</sup> *Id.* at 6.

<sup>170</sup> *Id.* at 7.

reduces emissions from vehicles and promotes the provision of alternative vehicle fuel. The adopted restrictions prevent unfair competition, and Compression Services is currently a tariff offering. Therefore, it is not necessary to limit the provision of compression services to affiliates and approving the tariff is in the public interest.

## **12. Assignment of Proceeding**

Timothy Alan Simon is the assigned Commissioner and Timothy J. Sullivan is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. In this Application, SoCalGas proposes to offer a tariff for the provision of natural gas to non-residential customers at pressures that the customers desire.
2. Currently, SoCalGas delivers gas to customers at standard pressures that range from one third of a pound to several hundred pounds per square inch, but this pressure depends on where the customer connects to the gas system. SoCalGas does not guarantee non-standard pressures levels.
3. Under Tariff Rule 2 for Special Facilities, SoCalGas can provide gas at non-standard pressures when certain conditions specified in Rule 2 are met.
4. Under the proposed tariff for natural gas at desired pressures, SoCalGas would design, procure, construct, own, operate and maintain on customer premises equipment associated with the compression of natural gas to meet customer-specified pressure requirements.
5. Under the proposed tariff for natural gas at desired pressures, SoCalGas will price the tariff via a service contract that includes cost and rate components, adjustments, performance requirements and payment terms agreed upon in advance by the customer and SoCalGas.

6. The potential market for the services offered by this tariff include natural gas refueling facilities, combined heat and power facilities, and peaking generation facilities.

7. Under the proposed tariff, SoCalGas will neither own, operate, or maintain facilities nor conduct business operations, such as natural gas vehicle refueling or combined heat and power generation, beyond the point of compression service delivery.

8. Under the proposed tariff, SoCalGas could install certain very small compression units for natural gas refueling that are manufactured with an integrated hose. In this event the customer will be completely responsible for natural gas vehicle refueling and the use of natural gas as a vehicle fuel.

9. SoCalGas's low cost of capital does not give it an unfair competitive advantage over non-utilities providing compressed gas services.

10. The Commission's experience in other industries indicates that if the Commission created a separate affiliate to offer this service, that affiliate would have a low cost of capital whose terms were set by the revenue flows arising from the regulated utility.

11. It is reasonable to prohibit SoCalGas from using its access to bill inserts to promote the CST because such access would give SoCalGas an unfair competitive advantage in the provision of this service.

12. It is reasonable to require SoCalGas to include on its website information pertaining to the offering of compression services by other companies to ensure that SoCalGas's status as a utility does not provide it with an unfair competitive advantage.

13. It is reasonable to require SoCalGas to use competitively neutral scripts in answering inquiries concerning the CST. Neutral scripts ensure that SoCalGas's status as a utility does not provide it with an unfair competitive advantage.

14. It is reasonable for the Commission to review the proposed web page and scripts as part of its review of an advice letter filing to implement the CST.

15. SoCalGas's reputation with customers, for good or for bad, does not provide it with an unfair competitive advantage.

16. SoCalGas's access to customer information does not provide it with unfair competitive advantage in the provision of compressed gas services because the customer information does not provide information on who would desire compressed gas services.

17. To ensure that SoCalGas provides equal treatment to all customers in the monopoly distribution services needed to support compressed gas services, it is reasonable to require SoCalGas to provide a semiannual report to the Commission's Executive Director and to provide that report to the service list in this proceeding.

18. It is reasonable for SoCalGas to establish balancing accounts and tracking accounts to ensure that ratepayers not participating in the CST tariff bear no risk or costs that arise from the provision of the CST.

19. The pricing of the CST will use established pricing methodologies identical to those used in general rate cases.

20. The CST will lead to an incremental expansion in the use of natural gas in the Los Angeles area.

21. The CST will reduce the health and environmental impacts for air pollution because natural gas vehicles, which it supports, produce fewer emissions than vehicles that use traditional petroleum based fuels.

22. The market for compressed natural gas is highly concentrated with Clean Energy and Integrys serving 82% by volume of all CNG sold in the SoCalGas service territory.

23. It is reasonable for the Commission to require SoCalGas to provide information on the volume of compressed gas sold in SoCalGas's service territory and the volume of compressed gas provided by through SoCalGas's CST.

24. The entry of SoCalGas into the market for compression services will increase competition in the CNG market and expand choice for customers.

25. The Reply Briefs of Briefs Allsup Corporation, AGL, Revolution CNG, Ryder , Daimler, American Honda Motor Co., Inc., AGA , GNC, MGESC, Propel Fuels, Inc., Kings Canyon Joint Unified School District, Solar Turbines Incorporated, US Air Conditioning Distributors - CNG Systems, AMTEK Construction, Landi Renzo USA, Go Natural CNG, Clean Fuels, and AIS fail to cite to the record in this proceeding.

26. The Reply Briefs of Briefs Allsup Corporation, AGL, Revolution CNG, Ryder , Daimler, American Honda Motor Co., Inc., AGA , GNC, MGESC, Propel Fuels, Inc., Kings Canyon Joint Unified School District, Solar Turbines Incorporated, US Air Conditioning Distributors--CNG Systems, AMTEK Construction, Landi Renzo USA, Go Natural CNG, Clean Fuels, and AIS did not raise legal arguments not already raised by other parties.

27. It is reasonable and in the public interest to authorize the CST subject to the reporting, cost tracking, and marketing restrictions adopted in this proceeding.

### **Conclusions of Law**

1. Pursuant to § 701, the Commission has broad regulatory jurisdiction over public utilities and the services that they offer.
2. Pursuant to § 454, the Commission reviews the pricing of all tariff services to ensure that the new rate is justified.
3. Pursuant to § 740.3 (a), the Commission evaluates and implements policies to promote the development of equipment and infrastructure needed to facilitate the use of natural gas to fuel low emission vehicles.
4. Pursuant to § 740.3 (c), the Commission policies must ensure that utilities do not unfairly compete with non-utility enterprises.
5. Pursuant to § 740.8, the interests of ratepayers include reducing the health and environmental impacts from air pollution and increasing the use of alternative fuels.
6. Because SoCalGas is not seeking to open retail natural gas vehicle refueling facilities as described and discussed in D.95-11-035, the proposed CST is not inconsistent with the policies adopted in D.95-11-035.
7. Since the financial risks involved in the provision of natural gas under the CST are very different from those involved in retail natural gas vehicle businesses, the policies adopted in D.95-11-035 do not apply to this service.
8. Since § 740.8 was revised in 2006, the Commission must examine this application in light of a statutory framework that differs from that which supported the policies adopted in D.95-11-035.
9. D.11-07-029 did not set policies pertaining to natural gas facilities.
10. The Commission's affiliate transaction rules do not preclude the offering of either new services or versions of existing services under tariff.

11. Because the Compressed Services Tariff is a version of a service already offered by SoCalGas under Tariff 2, the Commission's affiliate transaction rules do not preclude this tariff.

12. No law or policy adopted by the Commission precludes the provision of natural gas pursuant to the CST proposed by SoCalGas.

13. Since the Commission will review the web page listings and marketing scripts in any advice letter filing implementing a CST, it can ensure that SoCalGas receives no unfair advantage.

14. Because of the requirement to file a semiannual report on the provision of monopoly services in preparation for the receipt of compressed gas services, the Commission can ensure equal treatment of customers and thereby preclude any unfair competitive advantage.

15. If ratepayers bear risks that arise from the provision of the CST by SoCalGas, then SoCalGas would have an unfair competitive advantage in the provision of this service.

16. Since SoCalGas will use well established methodologies identical to those used in general rate cases, the tariff customers face will have reasonable rates.

17. Pursuant to § 740.8, since the CST will lead to reductions in emissions it serves the public interest.

18. Since the CST is in the public interest, and since the pricing methodology assures reasonable rates, and since the reporting, cost tracking and marketing regulations prevent SoCalGas from acquiring an unfair competitive advantage, authorizing the filing of tariffs for CST is consistent with the law.

19. Since this decision does not rely on factual presentations made in the Reply Briefs of Briefs Allsup Corporation, AGL, Revolution CNG, Ryder, Daimler, American Honda Motor Co., Inc., AGA , GNC, MGESC, Propel Fuels,

Inc., Kings Canyon Joint Unified School District, Solar Turbines Incorporated, US Air Conditioning Distributors – CNG Systems, AMTEK Construction, Landi Renzo USA, Go Natural CNG, Clean Fuels, and AIS, it is not necessary to permit further discovery.

## **O R D E R**

### **IT IS ORDERED** that:

1. The Southern California Gas Company is authorized to file a Tier 3 advice letter for a Compression Services Tariff within 6 months of the effective date of this decision that offers compressed natural gas services to non-residential customers. The advice letter filing shall comply with the policies and regulations adopted in ordering paragraphs 2 through 6.

2. Southern California Gas Company shall price the Compression Services Tariff through a service contract that includes cost and rate components, adjustments, performance requirements and payments terms agreed upon in advance by the customer and SoCalGas. SoCalGas shall use well established methodologies identical to those used in general rate cases, to set the price of this service, and the tariff customer bears the cost of the services received.

3. The Southern California Gas Company shall establish balancing and tracking accounts to ensure that customers taking service through the Compression Service Tariff bear all costs and risks associated with the provision of the Compression Services Tariff and to ensure thereby that non-participating customers bear none of the costs and risks associated with the Compression Services Tariff.

4. The Southern California Gas Company shall use competitively neutral scripts in answering inquiries concerning the Compression Services Tariff. The

scripts shall be included as part of the Tier 3 advice letter seeking final approval of the tariff and shall be reviewed by the Commission to ensure their neutrality.

5. The Southern California Gas Company shall provide information on its website concerning the Compression Services Tariff in a competitively neutral way. The information for the website shall be included as part of the Tier 3 advice letter seeking final approval of the tariff and shall be reviewed by the Commission to ensure neutrality.

6. The Southern California Gas Company, as a condition for offering a Compression Services Tariff (CST), shall serve on parties to this proceeding and provide to the Commission's Executive Director a semiannual report pertaining to its provision of services needed to prepare for the receipt of compressed natural gas by utility and non-utility customers. The first semi-annual report shall cover the first six months following the Commission's resolution authorizing the CST and be due by the end of the ninth month following authorization. Subsequent reports will be due every six months. The report shall include the information in Attachment A. The report shall also include information on the total volume of compressed gas services provided in the Southern California Gas Company's service territory and the volume of compressed gas service provided through Southern California Gas Company's Compression Services Tariff.

7. Application 11-11-011 is closed.

This order is effective today.

Dated December 20, 2012, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
TIMOTHY ALAN SIMON  
CATHERINE J.K. SANDOVAL  
MICHEL PETER FLORIO  
Commissioners

I dissent.

/s/ MARK J. FERRON  
Commissioner

## ATTACHMENT A

1. A cover page with narrative summary;
2. Plots of cycle times for the reporting period showing both average and standard deviation, divided into subsets for Compression Services Tariff and non-Compression Services Tariff projects:
  - a. Preliminary Pressure Request Key Performance Indicators (KPI) (days):
    - i. All Customers
    - ii. Compression Services Tariff Customers
    - iii. Non-Compression Services Tariff Customers
  - b. New Business Service KPI (weeks)
    - i. All Customers
    - ii. Compression Services Tariff Customers
    - iii. Non-Compression Services Tariff Customers
3. A table for each metric (Preliminary Pressure Request KPI, New Business Service KPI) listing each project in order of initiation with the following columns:
  - a. Project number (project numbering based on when each project entered the process from 1 to N where N is the number of projects completed in the reporting period)
  - b. Compression Services Tariff or Non-Compression Services Tariff project
  - c. Metric cycle time
  - d. Metric variance from target
  - e. Variance explanation (if greater than one standard deviation)

4. A table for any SoCalGas Rule 20/21 Allowances granted to New Business Service projects with the following columns:
  - a. Project number (identical to project numbers used in previous table)
  - b. Allowance amount requested by customer
  - c. Allowance amount granted by SoCalGas
  - d. Allowance variance
  - e. Allowance variance explanation (if applicable)
5. Compression Services Tariff customer certifications
6. SoCalGas Management certification

**(END OF ATTACHMENT A)**