

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ITEM 10

I.D. 11952

RESOLUTION G-3481

April 4, 2013

ENERGY DIVISION

**R E S O L U T I O N**

Resolution G-3481. Southern California Gas Company requests approval of an agreement to provide compression services to the Los Angeles Unified School District.

**PROPOSED OUTCOME:** This Resolution approves the agreement between Southern California Gas Company (SoCalGas) and the Los Angeles Unified School District (LAUSD) for SoCalGas Company to provide natural gas compression services to the District. The agreement is approved contingent on meeting all requirements of Decision 12-12-037 applicable to SoCalGas compression services, including those ultimately specified in the SoCalGas Compression Services Tariff.

**SAFETY CONSIDERATIONS:** The service to be provided involves inherent safety risks associated with the compression of natural gas. It is the utility's responsibility to adhere to all Commission rules, decisions, General Orders, and statutes including Public Utility Code Section 451 to take all actions "...necessary to promote the safety, health, comfort, and convenience of its patrons, employees and the public."

**ESTIMATED COST:** No cost to ratepayers. Los Angeles Unified School District will pay for the cost under the agreement.

By Advice Letter 4337 filed on February 28, 2012

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**SUMMARY**

**This Resolution approves an agreement between Southern California Gas Company (SoCalGas) and the Los Angeles Unified School District (LAUSD) for SoCalGas to provide natural gas compression services to the District.**

SoCalGas filed Advice Letter (AL) 4337 on February 28, 2012 notifying the Commission of a compression services agreement with the LAUSD. The service will increase the pressure under which natural gas will be provided and allow for the fueling of natural gas vehicles. As a result, the LAUSD will be able to fuel its natural gas powered bus fleet at the district's Sun Valley facility.

The agreement is approved with the requirements consistent with Ordering Paragraphs 3 and 6 of Decision (D.) 12-12-037. SoCalGas shall:

1. Establish balancing and tracking accounts to ensure that the LAUSD bears all costs and risks associated with the provision of services under the agreement and to ensure thereby that non-participating customers bear none of the costs and risks associated with the agreement; and,
2. Include this agreement as part of the semi-annual report and incorporate the information concerning the agreement in the report.

The protests of Clean Energy Fuels Corporation, the Division of Ratepayer Advocates, and Integrys Transportation Fuels, LLC are denied.

SoCalGas must adhere to all applicable local, state and federal safety regulations in providing the gas compression service.

## **BACKGROUND**

**On November 3, 2011 SoCalGas filed Application (A.) 11-11-011 requesting 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 proposed compression service and the associated Compression Service Tariff (CST) target market consists of customers who own or wish to own Natural Gas Vehicle (NGV) refueling facilities, Combined Heat and Power (CHP) facilities, and peaking generation facilities. As discussed further below, Decision (D.) 12-12-037 approved SoCalGas' proposal on December 20, 2012.

**On February 28, 2012, SoCalGas filed AL 4337 which provided a compression services agreement between SoCalGas and the Los Angeles Unified School District (LAUSD). The agreement provides for the same services anticipated in A. 11-11-011 and approved in D. 12-12-037. LAUSD will pay a fee to**

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<sup>1</sup> Application 11-11-011, p. 1.

**SoCalGas as specified in the agreement.** The AL states that the LAUSD is converting its school bus fleet to compressed natural gas (CNG) fuel use for improved air quality, public health benefits, and lower annual fuel costs. To do so necessitates that the LAUSD add CNG fueling capacity at its facility in Sun Valley in order to fuel more than 200 school busses. The AL states that SoCalGas will provide facilities and services necessary to provide natural gas at pressure higher than standard line pressure and the LAUSD will provide the additional facilities and dispensers necessary to use the compressed natural gas delivered under the agreement. The AL summarizes the agreement, stating that SoCalGas will “design, permit, construct, own, operate, and maintain in good working order and condition all equipment associated with providing the required facilities and services and does not include any required commodities such as uncompressed gas...[available under existing tariffs] or electricity to power the facility.” Further, it is made clear that “SoCalGas will not be involved in any activities related to resale of compressed natural gas should LAUSD elect to engage in CNG retailing or public access.”<sup>2</sup> In return for the services, “LAUSD will pay SoCalGas monthly service fees for the duration of the contract term of twelve years which will cover the full capital cost recovery as well as the operations, maintenance and overhead cost for the duration of the contract term.”<sup>3</sup> SoCalGas provided a copy of the agreement as well as an exhibit detailing the determination of the monthly service fees as confidential attachments to the AL.

The AL asserts that because the service is provided to a government agency under terms and conditions otherwise deviating from its tariffs then in effect, the service may be provided as long as the Commission is advised of such action through an Advice Letter.

**Decision (D.) 12-12-037 granted Southern California Gas Company’s application to establish a Compression Services Tariff.** The Decision stated that the CST “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

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<sup>2</sup> AL 4337, p. 2.

<sup>3</sup> Ibid., p. 2.

gasoline and diesel fuel.”<sup>4</sup> However, the D.12-12-037 noted that, in order to serve the public interest, the CST would need to be subject to reporting and accounting requirements to ensure that SoCalGas does not gain an unfair competitive advantage and that CST customers bear all cost and risks of providing the service. Those requirements consist of a semi-annual report on market shares relating to the service and to the establishment of balancing and tracking accounts.

On February 4, 2013, SoCalGas submitted AL 4459 to the Commission. By that advice letter, SoCalGas proposed tariffs to comply with D.12-12-037.

### **NOTICE**

SoCalGas states that a copy of the advice letter was sent to the parties on Attachment A to the advice letter which includes the service list for A.11-11-011, Compression Services Tariff.

### **PROTESTS**

**Advice Letter 4337 was timely protested by Clean Energy Fuels Corporation (Clean Energy), the Division of Ratepayer Advocates (DRA) and Integrys Transportation Fuels, LLC (Integrys). Clean Energy provided a “supplement” to its original timely protest after the close of the protest period.**

On March 16, 2012, Clean Energy filed a protest to AL 4337. The protest presents five arguments for the Commission to reject the AL. First, it asserts the service proposed for the LAUSD is the same service that SoCalGas is seeking approval for in A.11-11-011. Clean Energy comments that it is inappropriate for SoCalGas to enter into an agreement with the LAUSD to provide that service unless and until A.11-11-011 is approved. Second, the protest states that SoCalGas bases its authority to enter the agreement with the LAUSD on an “overly broad and inaccurate interpretation of the provisions of Section 8.2.3 of General Order (GO) 96-B.”<sup>5</sup> That provision allows SoCalGas to provide a service to a government agency under terms and conditions otherwise deviating from its tariffs then in effect. Clean Energy asserts that the compression service is a new service, not a deviation from an already effective tariff. Third, the protest posits that the AL is

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<sup>4</sup> Decision 12-12-037, p.2.

<sup>5</sup> Clean Energy Fuels Corporation’s Protest of SoCalGas Advice Letter 4337, March 16, 2012, p. 4.

inconsistent with Commission policy that “precludes utility activities to promote the development of alternative fuel vehicle markets which adversely impact the development or the preservation of competitive markets served by non-utility enterprises.”<sup>6</sup> In this regard Clean Energy references Commission decisions D.95-11-035 and D.93-07-054. Fourth, Clean Energy asserts that Section 8.2.3 of GO 96-B does not allow for SoCalGas to enter into the agreement with LAUSD without approval of an Application such as A.11-11-011. Finally, Clean Energy views the agreement to be inconsistent with Decision 11-07-029 where the Commission precluded jurisdictional electric utilities from owning electric vehicle service equipment located on the customer’s side of the utility meter. The protest asserts that the decision stops electric utilities from competing directly with non-utilities in the electric vehicle service equipment (EVSE) market in order to protect the “emergence and development of a competitive EVSE market served by non-utility enterprises.”<sup>7</sup> The protest contends that in order to maintain a level playing field between competing technologies (natural gas vs. electric fueled vehicles) there should be regulatory parity limiting gas utilities in the same manner that D.11-07-029 limits electric utilities.

On March 16, 2012, Integrys filed a protest to AL 4337. Integrys provides two overarching reasons for its protest. First, the relief sought in the AL is pending before the Commission in a formal proceeding and second, the relief requested would violate or is not authorized by the statute or Commission order on which SoCalGas relies. Specifically, Integrys asserts that since services and associated issues to the services proposed in the AL are being addressed in A.11-11-011 the AL should be rejected. Additionally, the protest considers the services proposed in AL 4337 to be new services. As such they would not represent a modification to a standard service and would not fall under the authority granted in GO 96-B, Section 8.2.3. The protest continues that Section 8.2.3 does not provide authority to provide services that are not allowed by Commission policy. In this regard it suggests that the proposed service would adversely impact a competitive market already served by non-utility enterprises and further references D.11-07-029 regarding the EVSE market.

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<sup>6</sup> Ibid., p.6.

<sup>7</sup> Ibid., p. 9.

On March 19, 2012 the Division of Ratepayer Advocates (DRA) filed a protest to AL 4337. The protest provides two reasons, each put forth in similar terms by the other protesting parties, for the Commission to delay action on the AL. First, DRA comments that GO 96-B Section 8.2.3 “only provides for granting government agencies with services at rates and charges deviating from its tariffs then in effect.”<sup>8</sup> DRA argues that, since SoCalGas acknowledges that it does not provide for gas compression services and therefore there is no existing tariff in effect, the proposed agreement with the LAUSD is inconsistent with Section 8.2.3 of GO 96-B. Second, DRA states that “all of the policy and factual issues related to natural gas compression services will be heard in the upcoming proceeding A.11-11-011.”<sup>9</sup> DRA therefore asserts that it would be appropriate to delay action on AL 4337 pending the Commission’s decision on A.11-11-011.

On March 26, 2012, SoCalGas filed its reply to the protests. SoCalGas asserts that, contrary to the arguments of Clean Energy, Integrys and DRA, AL 4337 does not provide for a new service but “is providing a service allowed under its Rule 2 but deviating from certain aspects for the benefit of its customer, LAUSD. Currently, non-residential customers who wish to receive natural gas at non-standard pressures can request to be served under Tariff Rule 2 which provides SoCalGas the ability to accommodate a customer for such service by planning, building, owning and operating certain special facilities.”<sup>10</sup> Further, SoCalGas disputes the Clean Energy and Integry interpretation of Commission policy. The reply argues that Commission policy prohibits utilities from owning Natural Gas Vehicle refueling stations on customer property but does not prohibit them from providing a service in support of the refueling facilities which are owned, operated and maintained by the LAUSD. Finally, SoCalGas asserts that the other issues raised by Clean Energy and Integrys are outside the scope of what can be addressed in an advice letter and, as such, the protesting parties can argue them in the hearing process provided by A.11-11-011.

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<sup>8</sup> Division of Ratepayer Advocates Protest to Southern California Gas Company Advice Letter No. 4337, March 19, 2012, p. 2.

<sup>9</sup> Ibid., p.2.

<sup>10</sup> Reply to Protests of SoCalGas Advice No. (AL) 4337 – Compression Services Agreement with Los Angeles Unified School District, March 26, 2012, p. 3.

On June 29, 2012, Clean Energy filed a Supplement to its prior protest of March 16<sup>th</sup>. The supplement proposes that information revealed in A.11-11-011 hearings must be considered regarding AL 4337. The supplement expands on and reinforces the arguments made in the original protest.

## **DISCUSSION**

**Application 11-11-011, the associated hearing and the resulting Decision 12-12-037 addresses all of the issues raised by the protesting parties. In D. 12-12-037, the Commission has granted authority for providing service of the same type presented in the SoCalGas agreement with the LAUSD. Based on this, Advice Letter 4337 is approved.**

Application 11-11-011 addressed the issues that are involved in this advice letter. The hearings in that proceeding provided opportunity for the parties to raise the issues, and present evidence and arguments. The decision addressed each of the specific elements of the protest as they related to Commission policy regarding market competition and providing compression services in the Natural Gas Vehicle refueling market as proposed in the agreement with the LAUSD. Further, D.12-12-037 provides for reporting measures regarding SoCalGas' market share as a way of monitoring any lessening of the competitiveness of the market. Additionally, the decision requires accounting that will identify any instances of subsidization of SoCalGas compression service projects or activities by ratepayers. Finally, the decision placed full responsibility for any losses/revenue shortfalls resulting from compression services solely on the company and prevents those losses or shortfalls from being passed on to ratepayers.

**Contrary to the protest of Clean Energy, the Commission finds in D.12-12-037 that, the CST is consistent with prior Commission policies.** Clean Energy relies on decisions D.95-11-035, D.93-07-054 and D.11-07-029 as the basis for its assertion that the CST deviates from established Commission policies and that the CST is inconsistent with Commission policy established in D.95-11-035 and D.11-07-029 because these decisions preclude SoCalGas from building, owning and operating refueling infrastructure. Clean Energy references D.93-07-054 and D.95-11-035 to conclude that because of advantages SoCalGas has as a result of its monopoly status, it will have unfair competitive advantages that are not mitigated in the design of the tariff. Similarly, Integrys asserts that the CST would allow SoCalGas to provide services that are not allowed by Commission policy. Integrys raises the adverse impact that the CST would have on a

competitive market already served by non-utility enterprises and, in particular, references D.11-07-029 precluding utilities from involvement in the EVSE market.

The Commission has addressed all these issues in D. 12-12-037 and finds that the CST is consistent with prior Commission policies because SoCalGas is not seeking to open retail natural gas vehicle refueling facilities as described and discussed in D.95-11-035.

**D.12-12-037 addresses each of the points raised by Clean Energy and Integrys regarding the conflicts between the CST and Commission policy in the Decision's Conclusions of Law:**

- Conclusion of Law 6 notes that “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.95-11-037.”<sup>11</sup>
- Conclusion of law 8 notes that since section 740.8 was revised in 2006, the statutory framework differs from that which supported policies adopted in D.95-11-035.
- Conclusion of law 9 states that D.11-07-029 did not set policies regarding natural gas facilities.
- Conclusion of law 14 describes that with the requirements under the decision for SoCalGas to file a semiannual report on the provision of monopoly services “the Commission can ensure equal treatment of customers and thereby preclude any unfair competitive advantage.”<sup>12</sup>
- SoCalGas is subject to cost tracking and marketing regulations concerning the CST. Conclusion of law 18 notes that because SoCalGas is prevented from acquiring an unfair advantage due to these regulations, authorizing the filing of tariffs for the CST is consistent with the law.

**Consistent with D.12-12.037, in order to ensure that the agreement with the LAUSD does not result in unfair competition, (1) SoCalGas should be required to include the tracking and balancing accounts required by the decision; and, (2) information regarding the agreement should be included in the required**

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<sup>11</sup> Decision 12-12-037, 12/20/2012, p. 63.

<sup>12</sup> Ibid., p.64.

**semi-annual report.** D.12-12-037 builds in safeguards to eliminate the possibility that ratepayers would subsidize the CST. Such a subsidy would cause the CST to be anticompetitive. To address this concern the decision requires that tracking and balancing accounts be established for the CST. Additionally, to monitor the competitive market and assist in identifying any anticompetitive impacts of the CST, D.12-12-037 requires semi-annual reports to the Commission. The agreement with LAUSD should be required to establish the same balancing and tracking accounts and it should be included in the semi-annual report.

The tracking and balancing accounts will ensure that the SoCalGas bears all costs and risks and ratepayers bear no costs or risks from the provision of this service. The balancing account will record the cost of the use of services that are paid through the use of embedded utility resources. These costs will then be credited back to ratepayers. The tracking account will record costs and services related to the LAUSD agreement. This account will be used to identify any revenue shortfalls that will be either collected through adjustments to fees or otherwise insulated from any ratepayer subsidy. The use of these accounts ensures that full responsibility for any losses/revenue shortfalls resulting from compression services falls solely on the company and prevents those losses or shortfalls from being passed on to ratepayers.

**D.12-12-037 also made clear that any costs not recovered from CST customers would not be included in any future ratemaking proceedings and will not be incorporated in the utility's base revenue requirement and rates. As with all other provisions of D-12-12-037, this requirement applies to the LAUSD Agreement and any SoCalGas costs associated with the project incurred prior to the Decision. The treatment of costs associated with the LAUSD Agreement will be handled according to the Compression Services Tariff that is ultimately adopted by the Commission in its determination on SoCalGas AL 4459.**

### **COMMENTS**

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties on March 4, 2013 for comments.

On March 25, 2013 SoCalGas submitted comments on the draft resolution. The comments state SoCalGas' support of the draft resolution and of the requirements that the tracking and balancing accounts adopted in D.12-12-037 concerning compression services be applied to the LAUSD Agreement to eliminate the possibility of ratepayer subsidies. Finally, the comments state that SoCalGas agrees that the resolution's requirement that the Agreement be included in the Compression Service semiannual report will promote transparency and ensure fair competition.

On March 25, 2013 the DRA submitted comments regarding the draft Resolution. DRA states that the draft Resolution properly and correctly denies the SoCalGas interpretation that its agreement with LAUSD is a deviation from Tariff Rule 2 by conditioning approval of AL 4337 on complying with the requirements of D.12-12-037. DRA goes on to point out that D.12-12-037 requires that non-participating ratepayers bear no cost or risk related to the tariff and notes that costs already incurred by SoCalGas may have been treated in ways that conflict with the Decision. Based on these comments DRA recommends modifying the draft Resolution to clarify that all capital costs and expenses associated with SoCalGas' agreement with the LAUSD will be excluded from ratemaking proceedings and will not be incorporated in the utility's base revenue requirement and rates. In conclusion, DRA recommends that AL 4337 be withdrawn and that the agreement be treated as consistent with D.12-12-037. Alternatively, DRA recommends delaying action on AL 4337 until completion of the pending Energy Division resolution on AL 4459, which specifies the requirements of the implementation of SoCalGas' gas compression service.

On March 25, 2013 Clean Energy submitted comments on the draft Resolution. The comments state that approval of the draft Resolution is premature for three reasons. First, the draft Resolution authorizes the provision of service under the LAUSD agreement based on authority provided under D.12-12-037 and notes that that authority does not become effective until final resolution of Advice Letter 4459. Second the Commission cannot be assured at this point that captive ratepayers are protected from the cost of the LAUSD agreement. And, third, that CST customers and ratepayers would be best served by suspending implementation of the tariff until the final disposition of Clean Energy's Application of Rehearing of D.12-12-037. In addition to these comments, Clean

Energy comments that the draft Resolution does not address SoCalGas' argument that the LAUSD service is a deviation from its Rule 2 service.

Regarding the comments provided by DRA, this Resolution bases approval of the SoCalGas Agreement with the LAUSD on meeting all of the requirements of D.12-12-037. As there is value in adding clarifying language, the Resolution has been modified to incorporate such language. Meeting the requirements of D.12-12-037 effectively addresses the issues raised in Clean Energy's comments, that is, Clean Energy's statements about the authority granted under D.12-12-037, as well as comments concerning protection of ratepayers from costs of the LAUSD Agreement. Finally, concerning Clean Energy's comments about addressing SoCalGas' argument that the LAUSD Agreement is a deviation from its Rule 2 service, the resolution recognizes that the Agreement is for the same services requested in A.11-11-011 and requires that the Agreement comply with D.12-12-037. Any provisions ultimately approved in the Tariff presented in AL 4459 will also apply to the LAUSD Agreement. As such, the Commission does not consider the Agreement to be merely a slight deviation to Rule 2 service.

The commission appreciates the comments provided by SoCalGas, DRA and Clean Energy.

## **FINDINGS AND CONCLUSIONS**

1. On November 3, 2011, Southern California Gas Company (SoCalGas) filed Application (A.) 11-11-011 requesting Commission authority to offer a new tariff service that will provide natural gas compression service to customers requiring pressure levels above standard line pressure. The service targets Natural Gas Vehicle refueling facilities, Combined Heat Power facilities and peaking plants.
2. On February 28, 2012, SoCalGas filed Advice Letter (AL) 4337 notifying the Commission of an agreement to provide natural gas compression services to the Los Angeles Unified School District. The services would allow the school district to fuel its natural gas bus fleet at its Sun Valley facility.
3. SoCalGas states that its authority for entering the agreement with the school district is provided by GO 96-B Section 8.2.3. That section provides that a utility may provide service to a government agency under terms and conditions otherwise deviating from its tariffs then in effect.

4. Clean Energy Fuels Corporation, Integrys Transportation Fuels, LLC and the Division of Ratepayer Advocates filed timely protests to AL 4377. All three protests request that the AL be suspended and (1) challenge the authority under which the agreement would be implemented stating that the agreement provides a new service not a deviation from an existing service; and (2) assert that there are policy and factual issues raised by the AL that should be addressed through a formal proceeding and that these issues are being addressed in A.11-11-011.
5. Clean Energy Fuels Corporation and Integrys Transportation Fuels LLC also include in their protest the assertion that the agreement in AL 4337 is inconsistent with Commission policy regarding utility activity in a competitive market already served by non-utility enterprises.
6. The hearings regarding A.11-11-011 addressed all of the issues identified by the protesting parties.
7. Decision 12-12-037 approved the compression services requested in A.11-11-011. The Agreement for compression services between SoCalGas and the LAUSD is consistent with the compression services approved in the Decision.
8. Decision 12-12-037 requires SoCalGas to implement market monitoring and accounting practices addressing concerns about unfair competition by the utility.
9. The agreement between SoCalGas and LAUSD should be approved.
10. The agreement should be subject to all of the same requirements specified in D.12-12-037. It should include tracking and balancing accounts to assure that ratepayers are not subsidizing the agreement, and, it should be included in the semi-annual report.

**THEREFORE IT IS ORDERED THAT:**

1. The agreement for gas compression services between Southern California Gas Company and the Los Angeles School District is approved. Implementation of the agreement is subject to all of the requirements of Decision 12-12-037 and contingent on the resolution of Advice Letter 4459 presenting the Tariff
2. SoCalGas shall include any costs and revenues associated with the agreement in its balancing and tracking accounts established pursuant to D.12-12-037.

3. Non-participating ratepayers shall not be responsible for any costs that are not recovered under the Agreement and these costs shall not be included in any future rate proceedings.
4. SoCalGas shall include the information required in Attachment A of D.12-12-037 pertinent to the agreement in its semi-annual report required by Ordering Paragraph 6 of D.12-12-037.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on April 4, 2013 the following Commissioners voting favorably thereon:

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Paul Clanon  
Executive Director