PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ITEM 7
AGENDA I.D. # 12420

ENERGY DIVISION **RESOLUTION G-3485 (Rev.1)**
October 31, 2013

R E S O L U T I O N

Resolution G-3485. Southern California Gas Company requests approval of a Third Memorandum in Lieu of Contract between the Utility System Operator and the Gas Acquisition Department for services to maintain Southern System reliability pursuant to Decision 07-12-019.

PROPOSED OUTCOME: This Resolution approves the request with one modification. The modification places a limit on the number of years that a Memorandum in Lieu of Contract can be used without specific prior Commission approval.

SAFETY CONSIDERATIONS: This resolution has an indirect positive impact on customer safety through its potential to reduce curtailments.

ESTIMATED COST: Unknown

By Advice Letter 4513 Filed on June 28, 2013

SUMMARY

This resolution approves, with one modification, the proposed Third Memorandum in Lieu of Contract (MILC) intended to support Southern System reliability. Southern California Gas Company (SoCalGas) filed Advice Letter (AL) 4513 on June 28, 2013 requesting approval of a Third MILC between the SoCalGas System Operator (SO) and the SoCalGas Gas Acquisition Department (GA) to support minimum flow requirements on its Southern System. Under the Third MILC, the GA will commit to delivering gas supplies equal to bundled core's actual share of Southern System flow requirements specific to each gas day that the MILC is in effect. In exchange for taking on this obligation, GA will have met its share of the System Reliability Memorandum Account (SRMA) cost. The AL requests that the MILC become effective on

November 1, 2013 and end on October 31, 2014.[1] Further the AL requests that the "Third MILC would continue for subsequent one-year terms unless it is: (1) cancelled in writing by SoCalGas at least 30 days prior to the next term; or (2) superseded by a Commission decision in the upcoming SoCalGas Southern System application."[2] The request effectively "evergreens" the MILC subject to conditions (1) and (2) above.

This resolution approves the Third MILC subject to the modification that it be limited to three subsequent one-year terms covering the period of November 1, 2013 through October 31, 2016 unless (1) cancelled in writing by SoCalGas at least 30 days prior to the next term; or (2) superseded by a Commission decision in the upcoming SoCalGas Southern System application or other proceeding.

BACKGROUND

SoCalGas needs a certain minimum amount (which can vary depending upon conditions) of flowing supplies on its Southern System for the system to operate efficiently, safely and reliably. The SoCalGas Gas Acquisition Department (GA) had previously assured such flowing supplies using core customer assets. When GA needed to purchase additional spot supplies to meet minimum flow requirements at Ehrenberg, the eastern origin of the southern System, its incremental costs to do so were recorded in a memorandum account.

In response to a SoCalGas/San Diego Gas & Electric/Southern California Edison Application to transfer this responsibility from GA, Decision (D.) 07-12-019 directed the System Operator (SO) to take over responsibility for managing Southern System minimum flow requirements as of April 1, 2009.[3]

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[1] The effective date would be the later of November 1, 2013, or the effective date of Commission approval.

[2] Request for Approval of a Third Memorandum in Lieu of Contract between the System Operator and the Gas Acquisition Department for Services to Maintain Southern System Reliability. SoCalGas Advice Letter No. 4513, June 28, 2013, p. 3.

[3] The SO is "broadly defined to constitute the SoCalGas departments responsible for the operation of its transmission system, including storage, hub services, pooling services receipt point access, offsystem deliveries, and system reliability. The System Operator functions

Footnote continued on next page

D.07-12-019 further granted Applicant's proposal for a variety of system Operator tools:

- the ability of the SO to buy and sell gas on a spot basis, as needed, to maintain system reliability;
- authority to conduct requests for offers (RFO) or an open season process consistent with SO needs; and
- authority to approve an expedited Advice Letter approval process for contracts that result from a RFO or open season process.[4]

D.07-12-019 also provided that Applicants' request for approval of additional SO tools on an interim basis be made by advice letter and that further consideration of the process for review and approval of additional System Operator tools shall be made in the next Biennial Cost Allocation Proceeding (BCAP).[5]

On November 3, 2011, SoCalGas filed AL 4291 requesting approval of a MILC between the SO and GA as part of an additional tool to support SoCalGas' minimum requirements on its Southern System. Resolution G-3468 approved the request for a MILC on July 12, 2012. The resolution included two modifications. In summary, the modifications required that if the bundled core's share of Southern System's minimum flow requirements was not met by the volumes of flowing supplies specified by the MILC, GA would be responsible for a proportional share of the costs associated with the shortfall. Further, the

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explicitly exclude the Gas Procurement Department which will not be involved in any of the system-related operation activities." D.07-12-019.

[4] In response to a Petition for Modification filed by the Division of Ratepayer Advocates (DRA) and the Southern California Generation Coalition (SCGC), the Commission issued D.10-05-005, which replaced the 10-day protest period allowed for expedited advice letters with the regular 20-day protest period for these advice letters. D.07-12-019, Ordering Paragraph 15, p. 58.

[5] SoCalGas and SDG&E filed Application (A.) 08-02-001 requesting authority to revise their rates effective January 1, 2009 in their Biennial Cost Allocation Proceeding (BCAP). That BCAP resulted in D.09-11-006 wherein, the Commission adopted a Settlement Agreement of all parties. Among other provisions, the adopted Settlement Agreement changed the term of the Cost Allocation Proceeding filing to every 3 years – a Triennial Cost Allocation Proceeding (TCAP).

Resolution also limited the term of any future MILC not to extend beyond the life of the current TCAP.

On August 17, 2012, SoCalGas filed AL 4394 requesting approval of a Second MILC. In Resolution G-3476, approved on March 21, 2013, the Commission approved the Second MILC subject to three modifications. The first modification required that in order for core to be relieved of SRMA cost on a day in which they were incurred, GA must supply core's actual share of Southern System flow requirements specific to that gas day. The second modification eliminated percentages in the MILC representing core's share. This modification makes the Second MILC consistent with the first modification. Finally, a third modification required that a Tariff change be made consistent with the availability of data on core's gas day share of Southern System flow requirements.

On June 28, 2013 SoCalGas filed AL 4513 requesting approval of a Third MILC. The Third MILC differs significantly from the first and the second with regard to one item, the term of the agreement. SoCalGas requests that "the Third MILC would have an initial term beginning on November 1, 2013 and ending on October 31, 2014. In addition, the Third MILC would continue for subsequent one-year terms unless: (1) cancelled in writing by SoCalGas at least 30 days prior to the next term; or (2) superseded by a Commission decision in the upcoming SoCalGas Southern System application."[6] The Advice Letter continues "SoCalGas is proposing a year-by year 'evergreening' of the Third MILC in order to avoid the uncertainty and gaps in coverage associated with the existing annual MILC advice filing process." SoCalGas comments that "Other than the term provision…the substance of the Third MILC is the same as the Second MILC adopted in Resolution G-3476."[7]

NOTICE

Notice of AL 4513 was made by publication in the Commission's Daily Calendar. SoCalGas states that a copy of the Advice Letter is being sent to the parties listed

[6] SoCalGas Advice Letter No. 4513, op. cit. p. 3.

[7] Ibid., p. 4.

on Attachment A (to the Advice Letter), which includes parties in A.08-02-001, the 2009 BCAP and A.11-11-002, the 2013 TCAP.

PROTESTS

AL 4513 was timely protested by The Indicated Producers (IP),[8] the Southern California Generation Coalition (SCGC) and Southern California Edison (SCE)[9]. The IP filed a protest on July 18, 2013 that raises two issues. First, the protest states that the right to enter into a MILC should be available on a nondiscriminatory basis to all customers. Second, the protest states that there is no justification for an "evergreen term" and that SoCalGas should be limited to a three year term for renewals with the last renewal expiring not later than October 2016.

The SCGC filed a protest on July 17, 2013. The protest concerns the ongoing evergreening provision proposed in AL 4513 and recommends that it be limited to three years ending October 31, 2016.

SCE's protest was filed on July 18, 2013. The protest concerns the evergreen provision and the ability of other shippers to have access to contractual provisions equivalent to those in the MILC. The protest proposes that the evergreen clause be limited to the earlier of "a CPUC decision in the upcoming SoCalGas Southern System Application or October 31, 2016, whichever date is earlier."[10] The protest also states that the Commission should "require

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[8] The Indicated Producers include Chevron U.S.A. Inc., BP Energy Co., ConocoPhillips Company and Occidental energy Marketing Inc.

[9] SCE incorrectly refers to its submission as a "response." General Order 96-B Section 3.13 defines a response as follows: "'Response' means a document, submitted by a third party, and is served on the utility submitting the advice letter, that unconditionally supports the relief requested in the advice letter and that may provide useful information regarding the advice letter." The SCE submission states its support but also makes clear that its' support is conditional as noted on Page 4 of the submission: "SCE supports MILC3 *as long as* all other SoCalGas customers have access to equivalent contractual provisions."(emphasis added) Accordingly this resolution refers to SCE's submission as a protest.

[10] Protest of SCE to Southern California Gas Company Advice Letter 4513, July 18, 2013, p. 4.

SoCalGas to provide equivalent terms and conditions that it offered GA in MILC3 to any creditworthy party who is willing and able to enter into a contract with the SO, provided the terms and conditions of such contract are consistent with the requirements of Resolution G-3476 (Rev.2)."[11]

On July 25, 2013 SoCalGas filed a reply to the protests of AL 4513. In its reply SoCalGas states that it "does not object to limiting the evergreening provision of the Third MILC to three one-year terms ending in October of 2016…."[12] However, the reply disagrees with SCE's protest proposing that the continuation of the Third MILC be terminated upon a CPUC decision in the upcoming SoCalGas Southern System Application. Regarding the IP's and SCE's protests that approval of a Third MILC should require SoCalGas to offer a MILC equivalent option to other customers, SoCalGas comments that the RFO process allows for customers to submit proposals that could mirror aspects of the MILC. The reply notes, however, that "core customers and noncore customers are situated very differently with respect to Southern System support costs – at least from the standpoint of a MILC-type support arrangement."[13]

DISCUSSION

The Third MILC should be approved with one modification. The "evergreen" clause should be limited to three one year terms ending not later than October 31, 2016 unless otherwise superseded in an intervening Southern System related CPUC decision or other proceeding. SoCalGas does not object to limiting the provision to three one year terms ending in October of 2016.
The Commission agrees with the three protesting parties that an open-ended evergreen clause is not appropriate. As noted in the SCGC protest, the natural gas market is dynamic and "Sunsetting the evergreen provision after three years, without prejudice to an extension if appropriate, would permit SoCalGas, stakeholders, and the Commission to reexamine the MILC in light of changes in

[11] Ibid., p. 4.

[12] Reply to Protests of SoCalGas Advice No. (AL) 4513 – Request for Approval of a Third Memorandum in Lieu of Contract between the System Operator and the Gas Acquisition Department for Services to Maintain Southern System Reliability. July 25, 2013. p. 2.

[13] Ibid., p. 4.

gas supply and usage patterns in a timely fashion."[14] Further, a three year period appropriately balances SoCalGas' needs with those of other stakeholders. As stated by the IP, "a three year term for renewals…should provide sufficient certainty and flexibility for the MILC to serve its purpose. SoCalGas and stakeholders should then discuss the renewal of the third MILC during the spring 2016 Customer Forum, if it has not already been addressed through SoCalGas's Southern System application."[15] However, the Commission agrees with SoCalGas that given that the Commission may not address termination of the MILC in the upcoming Southern System application proceeding there is no reason to automatically terminate it, as proposed by SCE, upon issuing a decision on that application. Further, the Commission agrees that incorporating this aspect of SCE's proposal would unnecessarily introduce uncertainty and potentially result in higher customer costs.

Noncore customers have the opportunity to propose contracts with provisions and benefits similar to those under the MILC through the use of the RFO process. The RFO is a tool provided for in D.07-12-019 and used by SoCalGas. As these customers have not availed themselves of this opportunity, there is no basis on which to conclude that they do not have access to similar benefits as those under the MILC. Therefore there is no reason to condition approval of the Third MILC on providing an option that may otherwise be available through effective use of the existing RFO process.

The Commission encourages noncore customers to actively participate in actions that provide for achieving Southern System reliability in the most cost effective manner. It also agrees that "self-providing" their physical gas requirements is, potentially, a desirable option. However, a proposal to "self-provide" needs to recognize the particular conditions of the individual customer including their differences from the circumstances under which other customers, including core customers, operate. In this regard it is not reasonable to adopt the specific approach designed for the specific circumstances of core customers relative to Southern System needs (including the needs of other system customers) and

[14] Protest of SCGC to Southern California Advice Letter No. 4513, July 17, 2013. p. 2.

[15] Protest of the IP to Southern California Advice Letter No. 4513, July 18, 2013. p. 2.

apply it to customers with other circumstances.[16] At the same time the Commission encourages noncore customers to use the RFO process and present proposals that could replicate similar/equivalent benefits to those provided by the MILC and that account for differences between core and noncore customers.

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 or reduced. Accordingly, this draft resolution was mailed to parties for comments.

On October 21, 2013, SCGC submitted comments on the draft Resolution. The comments support the timely adoption of the resolution allowing implementation of the third MILC and the modifications limiting the evergreen provision. SCGC states that it expects the MILC will significantly reduce costs.

FINDINGS AND CONCLUSIONS

1. The Third Memorandum in Lieu of Contract (MILC) requested for approval here replicates the Second MILC, as approved by the Commission in Resolution G-3476, except for the "evergreen" provision requested in the Third MILC.
2. The proposed evergreen provision would allow subsequent one-year terms until ended by Southern California Gas or by Commission decision in the upcoming SoCalGas Southern System application. There is no defined or committed date for SoCalGas to file its application or for a subsequent decision from the Commission.
3. The market for natural gas is dynamic. Based on this, an open ended evergreen provision is inappropriate. A three year sunset on the provision

[16] For example, SoCalGas presents, on page 4 of its reply, differences in how responsibility for Southern System demand is determined for core customers vis-à-vis noncore customers.

will provide SoCalGas with needed flexibility and certainty while allowing the Commission and stakeholders an opportunity to review the results of the MILC.

4. The existing Request for Offers 'tool' provided for in Decision 07-12-019 provides a mechanism for noncore customers to make specific proposals for contracts with provisions and benefits mirroring the MILC.
5. Noncore customers have not availed themselves of the opportunity through SoCalGas Requests for Offer to self-provide natural gas deliveries in a manner that would replicate MILC benefits.
6. Approval of the Third MILC should not be contingent on requiring that SoCalGas provide noncore customers with a MILC like arrangement.

THEREFORE IT IS ORDERED THAT:

1. The request of the Southern California Gas Company in Advice Letter 4513 for approval of a Third Memorandum in Lieu of Contact is approved subject to modification.
2. Southern California Gas Company shall, within 30 days, file a supplement to Advice Letter 4513, modifying the evergreen provision limiting it to three one year terms ending not later than October 31, 2016 unless otherwise terminated with 30 days notice by Southern California Gas Company or superseded in an intervening Southern System related CPUC decision or other proceeding.

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 October 31, 2013; the following Commissioners voting favorably thereon:

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PAUL CLANON
Executive Director