

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

ITEM # 10 I.D. # 10589

RESOLUTION G-3460

September 8, 2011

R E S O L U T I O N

Resolution G-3460. Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E) request authorization to establish the General Rate Case (GRC) Memorandum Account which would include a GRC Margin Subaccount (GRCMS) and a New Environmental Regulation Subaccount (NERS).

PROPOSED OUTCOME: This Resolution grants SoCalGas and SDG&E's request to establish the GRC Memorandum Account, but denies the request to include the NERS.

ESTIMATED COST: None.

By SoCalGas Advice Letter 4230 filed on April 1, 2011 and SDG&E Advice Letter 2242-E/2023-G filed April 1, 2011.

SUMMARY

This resolution grants SoCalGas' and SDG&E's request to establish the GRC Memorandum Account (GRCMA). This resolution also grants the utilities' request to establish the GRCMA but denies their request to include a New Environmental Regulation Subaccount (NERS). The NERS is denied because: 1) the establishment of the NERS is beyond the authority granted by the Commission in the ruling issued on March 2, 2011 in Application (A.) 10-12-005/A.10-12-006, and 2) the NERS would include costs related to new environmental laws not yet approved or defined, 3) the utilities already have existing memo accounts to record Assembly Bill (AB) 32 fees, and 4) the California Air Resources Board recently announced a delay in the cap-and-trade program.

BACKGROUND

On December 15, 2011, SDG&E and SoCalGas filed their respective GRC applications (A.10-12-005 and A.10-12-006) to establish revenue requirements for their electric and natural gas services for the period from January 1, 2012 through December 31, 2015. In that proceeding, SDG&E and SoCalGas filed a joint motion on January 10, 2011 requesting authorization to establish a GRC memorandum account to record the difference between the rates currently in effect for utility service and the final rates adopted in the GRC in the event a final Commission decision is not rendered in time for 2012 rates to take effect January 1, 2012.

A scoping memo and ruling in A.10-12-005/A.10-12-006 by Assigned Commissioner Peevey and Administrative Law Judge Wong was issued on March 2, 2011 addressing SDG&E's and SoCalGas' joint motion. The scoping memo also adopts a delayed schedule to begin evidentiary hearings for the consolidated general rate case applications on November 30, 2011 and continue through December 23, 2011. With a delay in the procedural schedule, the assigned commissioner and administrative law judge reasoned that a GRC memorandum account for SDG&E and SoCalGas should be granted since a final Commission decision will not likely issue in time for the 2012 rates to take effect on January 1, 2012.

On April 1, 2011, SDG&E and SoCalGas filed Advice Letter (AL) 2242-E/2023-G and AL 4230 respectively requesting authorization to establish the GRC Memorandum Account (GRCMA). The GRCMA would include a GRC Margin Subaccount (GRCMS) and a New Environmental Regulation Subaccount (NERS). SDG&E and SoCalGas state that the purpose of the GRCMS of the GRCMA is to record the shortfall or overcollection resulting from the difference between the current effective rates and the rates adopted by the Commission in A.10-12-005/A.10-12-006. Additionally, the utilities state that the purpose of NERS is to track the incremental O&M and capital related costs associated with new and proposed federal and state Greenhouse Gas (GHG) requirements that may be incurred beginning January 1, 2012. According to SDG&E and SoCalGas, the costs tracked in the NERS subaccount would include: 1) AB 32 Administrative Fees; 2) Cap and Trade costs; and 3) Subpart W of the GHG Mandatory Reporting Rule monitoring and reporting of emissions costs.

NOTICE

Notice of AL 4230 and AL 2242-E/2023-G was made by publication in the Commission's Daily Calendar. SoCalGas and SDG&E state that a copy of the Advice Letter was sent to all parties listed on Attachment A of their respective advice letters, which includes the interested parties in their respective GRC applications.

PROTESTS

On April 20, 2010, the Division of Ratepayer Advocates (DRA) filed a protest to SDG&E AL 2242-E/2023-G and SoCalGas AL 4230. DRA states in its protest that the objection is not to the creation of the GRCMA itself but to the creation of the subaccounts within the GRCMA, specifically the NERS. DRA states that the NERS goes beyond the explicit permission granted in the Scoping Memo and Ruling. According to the protest, DRA opposes the creation of the subaccounts. Prior to the Advice Letters, DRA was unaware of SDG&E and SoCalGas' plans to include the subaccounts in their GRC memorandum Accounts. DRA also argues that the establishment of the NERS would pre-judge the types of costs eligible for inclusion in the SDG&E and SoCalGas NERS.

SoCalGas and SDG&E responded to the protests of DRA on April 27, 2011. The utilities believe the creation of the subaccounts within the GRCMA is consistent with the Commission's objective to leave both utility customers and shareholders essentially indifferent to the precise date that a final decision is issued and GRC rates implemented. The utilities state that the intent of the NERS is to ensure that costs associated with new environmental regulations are considered for future recovery effective back to January 1, 2012, pending the outcome of the utilities' request in the GRC for a similar balancing account. The utilities also say that that creation of the NERS does not prematurely adjudge the types of costs ultimately recoverable in that balancing account. In the utilities' view, the NERS simply alleviates the concern for retroactive ratemaking in the event the Commission approves the balancing account proposal in the GRC.

DISCUSSION

SoCalGas' and SDG&E's request to establish the GRC Memorandum Account (GRCMA) is approved, but the New Environmental Regulation Subaccount

(NERS) is denied. With the denial of the NERS, a separate subaccount within the GRCMA for the GRC Margin is unnecessary.

In the March 2, 2011 Scoping Memo and Ruling, the utilities were authorized to each establish a memorandum account to record the differential between the current annual base margin revenue requirement and the adopted annual base margin revenue requirement adopted by the Commission in A.10-12-005 and A.10-12-006. The Scoping Memo and Ruling specifically states “...SDG&E and SoCalGas should be authorized to establish respective GRC memorandum accounts so they can record the difference between the rates that are currently in effect and the final rates to be adopted in this proceeding...”¹ The creation of the GRCMA will ensure that the utilities recover their respective annual base margin revenue requirements adopted by their 2012 GRC irrespective of when a final decision for the GRC is issued. The purpose of the GRCMA is to record the shortfall or overcollection resulting from the difference between the current effective rates and the final rates adopted by the Commission in A.10-12-005 and A.12-12-006. Thus, the GRCMA is approved.

The New Environmental Regulation Subaccount (NERS), however, is denied because the establishment of the NERS is beyond the authority granted in the March 2, 2011 Scoping Memo and Ruling. In the utilities’ joint motion filed on January 10, 2011 requesting the GRCMA, the utilities made no mention of any subaccounts. The joint motion was also briefly discussed at the January 31, 2011 Prehearing Conference for A.10-12-005 and A.10-12-006, but the transcripts show that the discussion pertaining to the joint motion focused on the proceeding schedule and the establishment of a memorandum account. No mention of subaccounts was made at the Prehearing Conference. DRA did not protest the utilities’ joint motion. The utilities did not identify the subaccounts until the filing of AL 4230 and AL 2242-E/2023-G. Hence, the Scoping Memo and Ruling do not include any language regarding subaccounts.

In SoCalGas and SDG&E two prior rate cases, the Commission authorized memorandum accounts in each case, but no subaccounts were authorized in

¹ Assigned Commissioner and Administrative Law Judge’s Scoping Memo and Ruling, March 2, 2011, A.10-12-005 and A.10-12-006, Section 3.3: Joint Motion for Memorandum Accounts, paragraph 6.

either proceeding. In D.03-12-057, dated December 18, 2003, the Commission previously authorized memorandum accounts for SDG&E and SoCalGas to track the potential revenue shortfall or over-collection between the currently effective rates and the final rates adopted in A.02-12-027 and A.02-12-028. In D. 07-12-053, dated December 21, 2007, the Commission again authorized the utilities' to establish memorandum accounts to record the difference between the rates in effect at the time and the final rates adopted in A.06-12-009 and A.06-12-0101. Neither decision included language regarding subaccounts. Subsequently, the utilities' respective advice letters (SDG&E AL 1955-E/1741-G and SoCalGas AL 3811) following D.07-12-053 did not include subaccounts in their filings. The utilities' advice letters in that proceeding requested only the establishment of the General Rate Case Requirement Memorandum Account to track the shortfall or overcollection resulting from the difference between the rates currently in effect and the final rates adopted in A.06-12-009 and A.06-12-010.

Furthermore, the NERS would include costs related to new environmental regulations not yet approved or defined. SDG&E and SoCalGas state that the costs recorded in the NERS would be related to new environmental regulations. The description of the types of costs that would be included in the NERS is fairly broad and not adequately specific. In addition, at this stage of the GRC proceeding without the benefit of discovery or completed testimony, the Commission cannot determine whether these costs are truly related to new regulations or instead related to regulations that already existed at the time of the application and recovered in rates already. Though we agree with the utilities' response that any determination in this resolution will not and should not pre-judge the types of cost ultimately recoverable in the NERS, there are too many unanswered questions related to these new environmental costs to establish a new account through an advice letter filing and resolution. We cannot, therefore, grant the establishment of the new NERS subaccount at this time.

In addition, SoCalGas and SDG&E both already have an existing memo account which tracks Assembly Bill (AB) 32 implementation fees. On August 2, 2010, SoCalGas and SDG&E jointly filed A.10-08-002 with other utilities to increase their rates to cover the costs of AB 32 Administrative Fees. In an interim decision, D.10-12-026, the Commission authorized the establishment of memo accounts to record the AB32 implementation fees while the Commission determined in a second phase of the proceeding whether incremental rates were warranted to recover such costs. SoCalGas and SDG&E subsequently established their Environmental Fee Memorandum Accounts to record their

allocation of AB32 administrative costs. SoCalGas and SDG&E do not explain why they need another memo account to record such costs.

Finally, on June 29, 2011, California Air Resources Board (ARB) Chairwoman Nichols announced that it was delaying the implementation of the ARB's cap-and-trade program. According to the New York Times, at a California legislative hearing, Nichols said quarterly auctions of emissions allowances that each large emitter in the state must turn in would begin the second half of 2012, rather than February 2012 as planned. Large emitters would begin trading credits at the end of next year to cover their emission reduction obligations for 2013 and later. Thus, there is less urgency about the incurrence of costs related to cap-and-trade.

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 for comments on July 29, 2011.

Southern California Gas Company and San Diego Gas & Electric Company filed comments on the draft resolution on August 29, 2011. SoCalGas and SDG&E acknowledge that they "could have done better in specifying subaccounts within the GRCMA (both the NERS and GRCMS) when Applicants filed for the GRC memorandum account." Still, they believe that both the GRCMS and the NERS are directly related to the GRC, and the Commission would have the authority to authorize the NERS as well as the GRCMS.

SoCalGas and SDG&E also acknowledge that a memorandum account to track AB 32 fees was granted by the Commission in Decision 10-12-026, A.10-08-002. However, they state that "the expectation of Applicants was for that memorandum account to track AB 32 fees for 2011, and for those fees to be tracked in the GRCMA (via the NERS) beginning in 2012." D.10-12-026 does not

contain any language defining NERS nor does it mention its inclusion in the GRCMA. SoCalGas and SDG&E argue that the cap-and-trade, Subpart W, or PCB mitigation costs are not included in the AB 32 memo account.

Beside the fact that the recently announced delay of the cap-and-trade program mitigates the need for the NERS as previously noted in the discussion, the advice letter process is not the venue to discuss a broad category of costs not yet approved or defined. More appropriately, these items will be vetted in the General Rate Case proceeding. SoCalGas' and SDG&E's other comments simply reargue their position presented in the Advice Letter and included in their response to DRA's protest to the NERS subaccount.

FINDINGS AND CONCLUSIONS

1. On December 15, 2011, SDG&E and SoCalGas filed their respective GRC applications (A.10-12-005 and A.10-12-006) to establish revenue requirements for their electric and natural gas services for the period from January 1, 2012 through December 31, 2015.
2. On January 10, 2011, SDG&E and SoCalGas filed a joint motion requesting authorization to establish a GRC memorandum account to record the difference between the rates currently in effect for utility service and the final rates adopted in the GRCs in the event a final Commission decision is not rendered in time for 2012 rates to take effect January 1, 2012.
3. A scoping memo and ruling in A.10-12-005/ A.10-12-006 by Assigned Commissioner Peevey and Administrative Law Judge Wong, issued March 2, 2011 granted SDG&E and SoCalGas' joint motion to establish their respective GRC memorandum accounts.
4. SoCalGas and SDG&E filed their respective Advice Letters, AL 4230 and AL 2242-E/2023-G on April 1, 2011 requesting authority to establish the GRC Memorandum Account.
5. Within the GRC Memorandum Account, SoCalGas and SDG&E included two subaccounts: a GRC Margin Subaccount (GRCMS) and a New Environmental Regulation Subaccount (NERS).

6. Neither the joint motion nor the scoping memo and ruling mentioned subaccounts.
7. SoCalGas and SDG&E state that the purpose of the GRMCS included in the GRCMA is to record the shortfall or overcollection resulting from the difference between current effective rates and the final rates adopted by the Commission in A.10-12-005 and A.10-12-006, while the purpose of the NERS is to track the incremental O&M and capital related costs associated with new and proposed federal and state Greenhouse Gas (GHG) requirements that may be incurred beginning January 1, 2012.
8. On April 20, 2010, DRA protested AL 4230 and AL 2242-E/2023-G stating that the subaccounts extend beyond the Commission's approval of a GRC Memorandum Account.
9. The establishment of the GRCMA to record the shortfall or over collection resulting from the difference between effective rates and the rates adopted by the Commission in A.10-12-005/A.10-12-006 is granted because it is consistent with the authority that the Commission granted in the Scoping Memo and Ruling.
10. DRA's protest should be granted.
11. The NERS should be denied at this time because:
 - a) the establishment of the NERS is beyond the authority granted by the March 2, 2011 scoping memo and ruling in Application (A.) 10-12-005/A.10-12-006;
 - b) the types of costs that could be recorded in the NERS are not adequately specific, and without the appropriate discovery or completed testimony in the GRC application proceedings, the Commission cannot determine at this time whether the NERS costs are truly related to new regulations or to regulations that already existed at the time of the application and recovered in rates already;
 - c) the utilities have already established memo accounts to record AB 32 administrative fees, and;
 - d) the ARB recently announced a delay in the cap-and-trade program.
12. With the denial of the NERS, a separate GRC Margin Subaccount within the GRCMA is unnecessary.

THEREFORE IT IS ORDERED THAT:

1. San Diego Gas & Electric Company (SDG&E)'s and Southern California Gas Company (SoCalGas)'s request to establish the General Rate Case Memorandum Account (GRCMA) to record the shortfall or overcollection resulting from the difference between the current effective rates and the rates adopted by the Commission in A.10-12-005/A.10-12-006 is granted with modifications.
2. SDG&E's and SoCalGas' request to include a New Environmental Regulation Subaccount (NERS) within the GRCMA is denied.
3. SDG&E and SoCalGas must file a supplement to their respective Advice Letters removing the NERS within the GRCMA within 20 days of the effective of this Resolution.

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 September 8, 2011; the following Commissioners voting favorably thereon:

Paul Clanon
Executive Director