



BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

**FILED**

06-28-12  
04:59 PM

Application of Southern California Gas Company (U904G) for Authority to: (i) Adjust its Authorized Return on Common Equity, (ii) Adjust its Authorized Embedded Costs of Debt and Preferred Stock, (iii) Decrease its Overall Rate of Return, and (iv) Revise its Gas Rates Accordingly, and for Related Substantive and Procedural Relief.

Application 12-04-017

And related matters.

A.12-04-015,  
A.12-04-016, and  
A.12-04-018

**COMMENTS OF THE UTILITY REFORM NETWORK  
ON SOCALGAS'S MICAM PROPOSAL**



Marcel Hawiger, Energy Attorney  
**THE UTILITY REFORM NETWORK**  
115 Sansome Street, Suite 900  
San Francisco, CA 94104  
Phone: (415) 929-8876 ex. 311  
Fax: (415) 929-1132  
E-mail: [marcel@turn.org](mailto:marcel@turn.org)

June 28, 2012

**COMMENTS OF THE UTILITY REFORM NETWORK  
ON SOCALGAS'S MICAM PROPOSAL**

**I. Introduction**

Pursuant to Rule 11.1 of the Commission's Rules of Practice and Procedure and to the directions in the June 15, 2012 Scoping Memo and Ruling ("Scoping Ruling") issued in these consolidated proceedings, The Utility Reform Network ("TURN") submits these comments on the proposal of the Southern California Gas Company ("SoCalGas") to stay the requirement of D.97-07-054 to file an Advice Letter in October updating the utility's return on equity based on the triggering of its Market-Indexed Capital Adjustment Mechanism ("MICAM"). SoCalGas presented its proposal in its April 24, 2012 Motion to Stay. Both the Division of Ratepayer Advocates ("DRA") and the Southern California Generation Coalition ("SCGC") filed responses to SoCalGas's Motion to Stay.

The Scoping Ruling clarifies that the fundamental first question is "whether this proceeding is the appropriate place to address SoCalGas's request to reset and to replace its Market-Indexed Capital Adjustment Mechanism with the uniform multi-year Cost of Capital Mechanism established by Decision (D.) 08-05-035." (Scoping Ruling, p. 3.)

TURN does not dispute that Phase 2 of this proceeding may be the appropriate forum for reviewing SoCalGas's existing MICAM. However, the Commission should not grant SoCalGas's premature motion. Even if the Commission agrees to amend the MICAM in Phase 2 of this proceeding, the most efficient and equitable outcome is to "reset" SoCalGas's ROE on January 1, 2013 based on the normal operation of the MICAM, and then to go forward with whatever outcome is adopted for a continued adjustment mechanism in Phase 2. Nevertheless, if the Commission does choose to evaluate SoCalGas's Phase 1 ROE showing, the MICAM result – a

new ROE of 10.02% - should represent the “ceiling” on any new ROE adopted in Phase 1 of this proceeding. Given SoCalGas’s history of attempting to reverse each and every reduction caused by the operation of the MICAM, the Commission should not now reward SoCalGas by adopting an initial ROE any higher than determined by the operation of the existing MICAM.

**II. The MICAM Should Not be Stayed at this Moment, and the Commission Should Use the MICAM Result as the “Ceiling” for Any ROE Changes Adopted in Phase 1 of This Proceeding**

SoCalGas’s Motion is premised on the assumption that this proceeding will determine SoCalGas’s new ROE and ROR. (Motion, p. 3.) SoCalGas argues that such an outcome would minimize confusion in the financial markets and reduce administrative burdens. (*Id.*)

As a first step, TURN suggests that the Commission should deny SoCalGas’s motion for a stay as premature. Whether the ROE will be reset, and whether the MICAM will be amended are at least issues that must be first addressed in this proceeding. SoCalGas should still file its October advice letter. Any automatic ROE adjustments in January 1, 2013 could be superceded by a Commission decision in this proceeding. As SCGC succinctly explained in its response motion:

SoCalGas’ motion is premature. Although SoCalGas is proposing in its cost of capital application that the Commission adopt 10.09 percent ROE to take effect in lieu of the lower 10.02 percent ROE that would result from operation of the MICAM, the Commission has not even begun to process the SoCalGas application let alone reach a decision. In fact, protests are not due until May 25, 2012. The operation of the MICAM should only be stayed if the Commission reaches a decision about SoCalGas’ proposals in the cost of capital application that permits SoCalGas to adjust rates on January 1, 2013, without complying with the MICAM. By filing its Motion for Stay, SoCalGas is attempting to get the Commission to prejudge the outcome of the cost of capital proceeding. Accordingly, the Commission should reject SoCalGas’ Motion for Stay without prejudice to the filing of a motion for stay of the MICAM if the Commission ultimately determines in the cost of capital proceeding that SoCalGas should be permitted to avoid operation of the MICAM.

There are two distinct issues raised by SoCalGas's motion. The first is whether the Commission should stay the operation of the MICAM and adopt a new ROE for SoCalGas in Phase 1 of this proceeding, to be effective January 1, 2013. The second is whether the Commission should amend SoCalGas's MICAM in Phase 2 of this proceeding. These are two independent questions that can be decided separately.

The first question is the more difficult, both substantively and procedurally. Substantively, SoCalGas's motion fails to present evidence of why this cost of capital proceeding is the appropriate proceeding to terminate the MICAM and reset the ROE. The underlying question is thus whether SoCalGas's showing this application or in its recent cost-of-capital proceeding (Application 10-12-006) provided the requisite data and information to substantiate a change in the MICAM. Even more critically, did such a showing justify a *resetting of the ROE prior* to any adopted change in the MICAM.

TURN cannot fully evaluate this issue in this pleading and may provide additional input in our testimony scheduled for August 6, 2012. However, on the surface, the evidence submitted in this proceeding does not justify *resetting* the ROE based on modeling results rather than based on the operation of the MICAM. There is little in the record showing that the proposals submitted in A.10-12-006 or in this proceeding warrant a termination of the MICAM,<sup>1</sup> even *if* the Commission agrees in Phase 2 that the MICAM should be adjusted.

More importantly, as a matter of equity the Commission should not now reward SoCalGas by terminating the January 1, 2013 ROE reset triggered by the existing MICAM based on the history of SoCalGas's actions with respect to the MICAM. The MICAM has triggered twice during its fifteen years of operation, and was forecast to trigger a third time. All three of

---

<sup>1</sup> SoCalGas's primary showing on this issue is contained the testimony of Robert M. Schlax. SCG-1, p. 3-5.

these occasions resulted (or were forecast to result) in ROE decreases, and *on all three occasions* SoCalGas immediately filed for a stay of the MICAM.

The Commission twice rejected SoCalGas's attempt to stay the MICAM, in Decisions 03-01-008 and 09-07-033. The present Motion to Stay represents SoCalGas's third attempt. In those two prior decisions, the Commission made clear that the MICAM was part of a broader PBR package and should not be independently modified on a stand-alone basis. Rather, any changes to the MICAM should be addressed in the relevant rate case proceedings. The Commission went as far as to conclude that SoCalGas's "expedited request is without merit and has created a regulatory burden on the Commission and its staff."<sup>2</sup>

Courts have held that parties with "dirty hands" should not be rewarded as a matter of equity. SoCalGas's repeated attempts to terminate the MICAM, which was one part of the 1997 PBR package, whenever it operated to reduce the ROE evidence bad faith with respect to adhering to the regulatory bargain adopted in D.97-07-054 and reiterated in D.05-03-023.

Procedurally, the issue of whether SoCalGas's ROE should be evaluated in Phase 1 of this proceeding, or reset based on the actions of the MICAM, is complicated due to scheduling constraints. Intervenor testimony is due August 6, 2012, so that parties are already in the process of evaluating SoCalGas's substantive showing.

As a matter of fairness and overall equity, TURN thus recommends that the Commission require SoCalGas to submit the scheduled October advice letter, reducing SoCalGas's authorized ROE from 10.9% to 10.02% based on the triggering of the existing MICAM mechanism. The Commission should put SoCalGas on notice that this will be the highest starting ROE for SoCalGas in 2013. If the Commission finds credible evidence presented in Phase 1 that the ROE

---

<sup>2</sup> D.09-07-033, Conclusion of Law 2, *mimeo.* at 10.

should actually be lower than 10.02%, the Commission could reset the starting ROE to that lower amount. Based on SoCalGas's repeated attempts to change the MICAM results each and every time that it triggered (resulting in an ROE reduction), SoCalGas should not now be rewarded by authorizing any starting ROE that is higher than the outcome of the MICAM.

### **III. It Is Appropriate To Evaluate the MICAM in Phase 2 of This Proceeding**

TURN agrees that whether the MICAM should be continued or modified is a valid issue to address in Phase 2 of this proceeding.

June 28, 2012

Respectfully submitted,

By: \_\_\_\_\_/s/\_\_\_\_\_  
Marcel Hawiger, Energy Attorney

**THE UTILITY REFORM NETWORK**

115 Sansome Street, Suite 900

San Francisco, CA 94104

Phone: (415) 929-8876, ex. 311

Fax: (415) 929-1132

E-mail: [marcel@turn.org](mailto:marcel@turn.org)