

Decision **PROPOSED DECISION OF ALJ LONG** (Mailed 3/5/2010)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U902M) for authority to update its gas and electric revenue requirement and base rates effective on January 1, 2008.

Application 06-12-009
(Filed December 8, 2006)

And Related Matters.

Application 06-12-010
Investigation 07-02-013

**DECISION DENYING THE PETITION TO MODIFY DECISION 08-07-046
WHICH REQUIRES TEST YEAR 2012 GENERAL RATE CASES
FOR SAN DIEGO GAS & ELECTRIC COMPANY
AND SOUTHERN CALIFORNIA GAS COMPANY**

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1. Summary

The petition to modify Decision 08-07-046 is denied. San Diego Gas & Electric Company and Southern California Gas Company must timely file a general rate case for Test Year 2012.

2. Requested Relief & Response

San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCalGas) filed a petition,¹ pursuant to Rule 16.4,² with the Division of Ratepayer Advocates (DRA), seeking (1) to set aside the four-year rate cycle adopted in Decision (D.) 08-07-046, (2) that the Commission now adopt an additional year of attrition in 2012 for both companies that was rejected in D.08-07-046, (3) to adopt different attrition allowances than were previously proposed by SDG&E, SoCalGas, and DRA for 2012, and (4) to defer the next general rate case to a Test Year 2013.

None of the other settling parties joined in the petition. Petitioners (SDG&E, SoCalGas, and DRA) argue the deferral benefits DRA by avoiding

¹ Noticed on the Commission's November 9, 2009 Daily Calendar.
(http://docs.cpuc.ca.gov/WORD_PDF/DAILY_CALENDAR/109553.PDF)

² All citations herein to Rules are to the Commission's Rules of Practice and Procedure as adopted in August 2009.
(http://docs.cpuc.ca.gov/published/RULES_PRAC_PROC/105138.htm)

All citations herein to Code Sections refer to the California Public Utilities Code.
(<http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=puc&codebody=&hits=20>)

litigating two rate cases for major utilities at the same time. That is, there would be an overlap of the combined SDG&E and SoCalGas general rate case for Test Year 2012 with a scheduled Test Year 2012 general rate case for Southern California Edison Company (Edison). Edison is presently on a three-year rate case cycle adopted in D.09-03-025.

A timely opposition to the petition was filed jointly by The Utility Reform Network (TURN) on behalf of itself, Aglet Consumer Alliance (Aglet), and the Utility Consumers' Action Network (UCAN) (Responders). Jointly, they oppose, or are concerned, that the currently proposed 2012 attrition is materially richer than the attrition originally proposed by the petitioners in the original settlement proposal. Petitioners were permitted to reply to the Responders pursuant to Rule 16.4(g).

As discussed later, SDG&E and SoCalGas filed a motion to withdraw the joint petition, and DRA responded that the Commission should continue to consider the petition.

3. Standard of Review

SDG&E and SoCalGas, and DRA as joint petitioners, must demonstrate by a preponderance of the evidence that the relief they request is just and reasonable and the related ratemaking mechanisms are fair.

4. Opposition to the Petition

The Responders' opposition argued the petition was not reasonable because it excludes the interests of other parties, and it is excessive when compared to the 2012 attrition allowance proposed by petitioners and rejected in D.08-07-046. TURN proposes "that the Commission extend the [rate cases] of SDG&E and SoCalGas to Test Year 2013, but deny authorization of additional attrition revenue requirements and other ratemaking changes for 2012.

Alternately, the Commission can extend the [rate cases] to 2013 and defer consideration of reasonable attrition revenue requirements to allow full participation by other parties.” (TURN Response at 1-2.) This would result in a formal rate proceeding to litigate the proposed 2012 attrition.

TURN argues that “where the original request [in the proposed settlements] had linked the fifth year to an additional attrition year revenue requirement of \$97 million, the current request adds ratemaking adjustments that would further reduce the risks faced by the utilities. It is, in effect, the same request the Commission already rejected, with a higher price tag attached.” Further, if “the Commission [had] adopted a fifth attrition year when it issued D.08-07-046, the 2012 revenue requirements would have increased by \$45 million for SDG&E and \$52 million for SoCalGas as compared to 2011 levels, without any other changes to the ratemaking mechanisms or practices in place under the [rate case] decision.” [Footnote citing – D.08-07-046, Appendix 3, p. 5, Paragraph III.D.] The Petition to Modify seeks to retain the \$97 million total increase for 2012, [footnote omitted] and it characterizes the change as a 3.08% increase as compared to the “2011 revenue requirement for escalation.” [Footnote omitted.] However, the Petition to Modify would also have the Commission adopt a series of new ratemaking mechanisms, including a cap on the escalation risk the utilities will face in 2012, segregating the Transmission Integrity Management Program to eliminate any risk the utilities might otherwise face if they over-spend the rate case-approved funding level for that program, and various other ratemaking mechanisms that would insulate SDG&E and SoCalGas from risks as compared to the original request for a 2012 attrition year. The asking price for a fifth year added to the rate case cycle, according to

TURN, increased substantially after the Commission adopted D.08-07-046. (TURN Response at 5-6.)

TURN also points out that the Commission recognized the likelihood that overlapping rate cases would eventually occur but was prepared to litigate those cases on a timely basis. (TURN Response at 5.)

5. 2008 Test Year General Rate Case

SDG&E filed Application (A.) 06-12-009, and SoCalGas filed A.06-12-010, both general rate case applications. They are related companies with some shared services. D.08-07-046 adopted for each company a Test Year 2008 revenue requirement, a mechanism for attrition adjustments until the next rate case, and performance and safety incentive mechanisms, which are reasonable and necessary to provide safe and reliable service to ratepayers. The initial requests by SDG&E and SoCalGas were for Test Year 2008 revenue requirements with further attrition increases for the subsequent five years of a proposed six-year rate cycle. The decision required SDG&E and SoCalGas to file another rate case for Test Year 2012 following a four-year cycle (Test Year 2008 plus three years of post-test year allowances) and it allowed the filing of a single combined application with separate revenue requirements for each company. (See D.08-07-046 at 2-3.)

6. Adopted Post-Test Year Ratemaking Settlements

D.08-07-046 required SDG&E and SoCalGas to file a rate case for Test Year 2012 and it allowed the filing of a single combined application with separate revenue requirements for each company. As a result of two applications for rehearing, the Commission, in D.09-06-052, made various changes to D.08-07-046,

but otherwise denied rehearing. None of the modifications to the decision³ affected the attrition mechanisms, which were addressed in two of ten proposed settlements, all of which intended to address various issues in the consolidated proceedings. D.08-07-046 adopted both post-test year ratemaking settlements and resolved the one open question of whether to adopt three or four years of attrition (for either a four-year or five-year rate cycle). (D.08-07-046 at 31.)

The proposed 2012 attrition in the settlements for SDG&E and SoCalGas was a single lump sum for each company, which meant that each company would be responsible for competently managing all operations, including capital additions, with existing rates as adjusted by the lump-sum, without regard to changes in inflation or other specific operating conditions.⁴ In adopting the post-test year settlements, the Commission stated:

We can adopt the proposed settlements provided the parties clearly accept that SDG&E and SoCalGas are in no way relieved of any obligation to spend sufficient funds for maintenance, repair, capital replacement, and expansion commensurate with the needs of the system. With that clarification, we adopt the proposed post-test-year settlements. (D.07-08-046 at 32.)

³ All page citations, Findings, Conclusions, and Ordering Paragraphs are cited herein as originally numbered in D.08-07-046. The rehearing decision, D.09-06-052, did not include a reformatted version of D.08-07-046 and therefore, for ease of citation, we cite herein to the original copy of D.08-07-046. No portion of D.08-07-046 that is relevant to this Petition to Modify was changed on rehearing by D.09-06-052.

⁴ SDG&E and SoCalGas point out in reply to comments opposing the proposed post-test year settlements that “the settlement revenue requirements are fixed dollar amounts, and are not like traditional attrition mechanisms at all. There is no adjustment for inflation and no adjustment to true up for recorded capital additions during the [general rate case] term, both of which are features of a traditional attrition mechanism.” (Reply at 4.) (D.08-07-046 at 31.)

The Commission, when it rejected a five-year rate cycle, articulated this explanation:

We find as a matter of public policy [five years] is too long a period without a thorough review of utility operations. For example, about six years ago, in late 2001, the restructured electric industry was in free-fall. We cannot adequately provide appropriate safeguards for ratepayers and an opportunity for shareholders to earn a fair return with any proposed post-test year rate adjustment mechanism for five years beyond the test year. Too many unforeseeable events will likely transpire, and the Commission should not handicap its regulatory oversight by foregoing timely GRC reviews of SDG&E and SoCalGas' operations. (D.08-07-046 at 35.)

Thus, the Commission determined that SDG&E and SoCalGas were reasonably allowed a lump sum for attrition to cover all contingencies, and that five years was too long a rate cycle.

6.1. Duration of the Post-Test Year Cycle

The duration of the post-test year rate cycle was discussed at great length in the decision and the Commission made a very specific choice to adopt a four-year cycle and not a five-cycle, as otherwise proposed in the settlement proposals with DRA, or a six-year cycle as proposed in the original application

In the settlements, DRA agreed to a five-year cycle but Aglet argued for a four-year cycle (thus settling parties asked the Commission to resolve this difference). Both of these options were already a settlement-based, compromised reduction, from the proposed six-year cycle in the applications. We adopted a four-year rate cycle (test year plus three years of attrition). (D.08-07-046, Conclusion of Law 26.)

6.1.1. Five or Six Years Was Too Long

SDG&E and SoCalGas originally proposed the next rate case should be for Test Year 2014, following a six-year cycle of Test Year 2008 plus five subsequent

years of attrition adjustment. We found, as a matter of public policy, six years was too long a period without a thorough review of utility operations. Too many unforeseeable events would likely transpire, and the Commission chose not to handicap its regulatory oversight by foregoing timely rate case reviews of SDG&E's and SoCalGas' operations.

We also recognized and acknowledged at the time that Pacific Gas and Electric Company (PG&E) would file for Test Year 2011⁵ and Edison had filed for Test Year 2009⁶ (which could result in a Test Year 2012 for its next general rate case). Because of the burden of these rate cases on all parties, we preferred to avoid overlapping proceedings and 2010 was too close upon us to bring SDG&E and SoCalGas back for a 2010 test year general rate case. Therefore, the earliest we could reasonably consider another SDG&E and SoCalGas rate case was for Test Year 2012, even though Edison might (and did) receive a three-year rate case cycle for Test Year 2012. Thus a foreseen possibility in fact occurred: we have scheduled overlapping rate cases.

DRA argued in its comments in support of the five-year option, with a Test Year 2013, and pleaded its case that the staffing requirements of a rate case dictated the five-year cycle. Aglet argued a four-year option which we found to be better, closer to the standard of three years, and that five or six years would both be too long. We believed at the time of adopting D.08-07-046 that 2012 was the earliest year that might not "double-up" major rate cases (depending on the

⁵ D.07-03-044, *mimeo.* at 2.

⁶ D.06-05-016, *mimeo.* at 1, which reflects the adoption of Test Year 2006, post-test years 2007 and 2008.

outcome of the then-pending Edison rate case A.07-11-011). This potential for an overlap was not a new or surprising issue. We had addressed this issue before when we contemplated a potential overlap of a PG&E general rate case with a rate case for SDG&E and SoCalGas on a three-year cycle:

The Commission and DRA have sufficient resources to process simultaneous test-year 2011 GRCs for PG&E, SDG&E, and [SoCalGas]. (D.07-03-044, Finding of Fact 28, *mimeo.* at 275.)

We found, in D.08-07-046, that if we could expect to successfully pursue rate cases for Test Year 2011 for PG&E as well as SDG&E and SoCalGas, then we could also expect to successfully conduct rate cases for Edison as well as SDG&E and SoCalGas for Test Year 2012. The only differences were that the overlap slipped one year and the overlapping utility changed from PG&E to Edison.

7. Rules Applicable to This Petition to Modify

Rule 16.4 governs petitions to modify a Commission decision. Specifically, a “petition for modification asks the Commission to make changes to an issued decision” and imposes various obligations. Rule 3.2 governs authority to increase rates. A.06-12-009 et al. were applications to increase rates and therefore must comply with Rule 3.2.

7.1. Justification and Specific Wording

First, petitioners “must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications.” We find that SDG&E, SoCalGas, and DRA adequately complied with this requirement in Rule 16.4. This finding does not automatically mean the Petitioners were persuasive, and this is discussed elsewhere.

7.2. Citation to the Record

Petitioners must also ensure that any “factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed.” We find that Petitioners fail to make any of the necessary citations to the record in A.06-12-009 et al., and thus fail to comply with this required element in Rule 16.4.

7.3. New Facts

Petitioners must also ensure that any allegations of “new or changed facts must be supported by an appropriate declaration or affidavit.” We find that Petitioners failed to make any showing of new or changed facts, and included no affidavit to support any such allegations as required in Rule 16.4.

DRA asserts in its Comments on the proposed decision (at 4 – 6) that it satisfied the “new facts” requirement and thus there was a legal error in the proposed decision. This is not true. DRA incorrectly asserts that because the overlap of two rate cases foreseen in D.08-07-046 has now occurred, this is therefore a new fact. Nothing has changed: the expected overlap is simply expected to occur later this year as anticipated in 2008. Nor has anything substantively changed about the relative size of DRA or its skill set then or now that constitutes a new or changed fact. The anticipated impacts and challenges to the parties in 2008 are still the likely impacts and challenges later in 2010 when the applications are filed.

8. SDG&E and SoCalGas Motion to Withdraw

8.1. Granting the Motion

On February 10, 2010, SDG&E and SoCalGas filed a motion to withdraw the petition, noting the need to begin work to otherwise timely file a notice of intention and, subsequently, a rate application for Test Year 2012. The

companies also correctly noted that the Commission has the discretion to grant or deny the motion to withdraw⁷ (Motion at 2-3). In this instance, withdrawing the petition does not avoid a pending proposed decision by the Commission (one had not yet been mailed for comment) and no party is disadvantaged because withdrawing the petition merely preserves the status quo (SDG&E and SoCalGas must file a Test Year 2012 general rate case). We therefore grant the motion to withdraw. As a result, by granting the motion to withdraw by SDG&E and SoCalGas, there is no longer a joint petition with DRA to modify D.08-07-046.

8.2. DRA's Response to SDG&E and SoCalGas Withdrawing from the Joint Petition

On February 17, 2010, DRA filed a response to the SDG&E and SoCalGas motion to withdraw from the petition. It asked the Commission to continue consideration of the petition citing its concerns with overlapping general rate cases. The principle example cited was the protracted litigation of the Edison 2009 test year. (Response at 3-4.) DRA continues to urge that the Commission defer SDG&E and SoCalGas to a five-year cycle in order to litigate Edison's next general rate case on a three-year cycle. DRA raises no new arguments which were not known when the Commission ordered 2012 test year general rate cases for SDG&E and SoCalGas as well as Edison.

9. Denial of the Petition

The petition fails to be persuasive as either a matter of policy or necessity that the rate cases for SDG&E and SoCalGas should be delayed by a year. The

⁷ Citing to D.06-01-004, *Southern California Gas Company* 1992 Cal PUC LEXIS 340 *4, 43 CPUC2d 639, *Southern California Edison Company* 1996 Cal PUC LEXIS 127 *4, 65 CPUC2d 130, and D.01-05-057.

petition also fails to satisfy the requirements of Rule 16.4 and thus fails for procedural reasons as well.

Petitioners have not shown that, as a matter of policy, any harm results from a 2012 test year general rate case for SDG&E and SoCalGas. The last decision fully and deliberately examined and determined that a four-year cycle was clearly preferred to a five- or six-year cycle. Petitioners fail to provide any compelling policy reason to extend the cycle, and further, they failed to satisfy Rule 16.4 and cite to any new facts or persuasive justification.

The petition also fails because, if granted as filed, it would grant a rate increase without notice to customers (Rule 3.2) and without notice there could be no due process.⁸ There has been no examination of the rate proposals added to the 2012 attrition allowance over the allowances included in the original settlement proposal. DRA's justification for the petition is its concern for its workload. TURN's alternative proposal would only result in another rate proceeding for a single year's attrition allowance and would be no savings over conducting a full rate case the subsequent year, and, therefore, we find it unappealing.

For these reasons, we deny the petition to modify D.08-07-046.

⁸ In its Comments (at 6 - 8) on the proposed decision, DRA asserts incorrectly that there was adequate notice and thus legal error in the proposed decision. DRA cites to the original customer notice on February 27, 2007 for the original application, making the tenuous argument that the rate increase proposed by DRA in its petition to modify is less than the increase originally sought in the application. The proceeding was closed by D.08-07-046 and customers should be able to rely on such closure to end their risk for a rate increase without new notice. There is no legal error in the proposed decision.

10. Comments on Proposed Decision

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and comments were allowed under Rule 14.3. Comments were filed on March 24, and March 25, 2010, by DRA and TURN, respectively; and reply comments were filed on March 30, 2010 by SDG&E and SoCalGas. Minor additions have been incorporated into the decision based on the comments and reply, but there have been no substantive changes. We have ignored those comments which merely reargue the positions of the parties.

11. Assignment of Proceeding

John A. Bohn is the assigned Commissioner, and Douglas M. Long is the assigned ALJ in this proceeding.

Findings of Fact

1. The Commission adopted a four-year rate case cycle for SDG&E and SoCalGas in D.08-07-046, and also required the companies to file a Test Year 2012 general rate case.
2. The Commission knew there was a likelihood that the general rate case for SDG&E and SoCalGas may coincide with a general rate case for either PG&E or Edison.
3. No new facts were identified in the petition.
4. There was no customer notice of the proposed rate increase within the proposed 2012 attrition year requested in the petition.
5. SDG&E and SoCalGas withdrew from the joint petition leaving DRA as the sole sponsor of the petition.

Conclusions of Law

1. The petition to modify D.08-07-046 does not comply with the requirements of Rule 16.4.
2. The petition to modify D.08-07-046 does not comply with the requirements of Rule 3.2.
3. It is reasonable to grant the motion by SDG&E and SoCalGas to withdraw from the joint petition.
4. It is reasonable to deny the petition to modify D.08-07-046.
5. These proceedings should be closed.

O R D E R

IT IS ORDERED that:

1. The petition to modify Decision 08-07-046 is denied.
2. Application (A.) 06-12-009, A.06-12-010, and Investigation 07-02-013 are closed.

This order is effective today.

Dated _____, at San Francisco, California.