

Decision 10-05-005 May 6, 2010

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Southern California Gas Company (U904G), San Diego Gas & Electric Company (U902M) and Southern California Edison Company (U338E) for Approval of Changes to Natural Gas Operations and Service Offerings.

Application 06-08-026  
(Filed August 28, 2006)

**DECISION REGARDING PETITION FOR MODIFICATION OF  
DECISION 07-12-019**

**1. Introduction**

By this decision, we grant the Petition for Modification of Decision (D.) 07-12-019, filed by the Division of Ratepayer Advocates and the Southern California Generation Coalition, on September 11, 2009. We change the protest period to respond to advice letters filed pursuant to Ordering Paragraph 16 of D.07-12-019 from 10 to 20 days so that parties may engage in adequate review and discovery before filing their protests.

**2. Decision 07-12-019 and The Petition for Modification**

Decision (D.) 07-12-019 addressed the joint application of Southern California Gas Company (SoCalGas), San Diego Gas & Electric Company (SDG&E) and Southern California Edison Company. The Commission thereby authorized implementation of various revisions to the natural gas operations and service offerings of SoCalGas and SDG&E relating to core service, unbundled storage, and expansion of storage capacities.

The Petition for Modification (PFM) focuses on the provision of D.07-12-019 authorizing SoCalGas to transfer responsibility for managing minimum flow requirements for system reliability from the Gas Acquisition Department to the Utility System Operator.<sup>1</sup> SoCalGas needs a certain minimum amount of flowing supplies on its southern system to operate effectively. The SoCalGas Gas Acquisition Department had previously assured the availability of such flowing supplies, using core customer assets. As authorized by D.07-12-019, the SoCalGas System Operator took over the responsibility for managing these minimum flows as of April 1, 2009.

In D.07-12-019, the Commission authorized three basic System Operator tools for SoCalGas/SDG&E to help the System Operator fulfill its new role in providing flowing supplies to maintain system reliability:

- The ability of the System Operator to buy and sell gas on a spot basis to maintain system reliability;
- Authority to conduct Requests For Offers (RFOs) or open seasons consistent with the System Operator needs; and
- An expedited advice letter approval process for contracts that result from an RFO or open season process.

The SoCalGas proposal for the use of the expedited advice letter process was approved in D.07-12-019 (see Ordering Paragraph 16). The expedited advice letter process shortens the normal 20-day protest period to 10 days (and the reply period to three days). The scheduling details of the Expedited Advice Letter

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<sup>1</sup> See D.07-23-019, mimeo. at 56-57, 64, 107 (Finding of Fact 50) and 112 (Ordering Paragraph 16). Minimum flow obligations have been used by interstate pipelines to ensure reliability of system operations and are similar to operational flow orders currently in place for SoCalGas/SDG&E.

(EAL) proposal were described in testimony offered by SoCalGas/SDG&E as follows:

The EAL would allow 10 days for protests and three days for replies, and would seek Commission approval within 21 days. If the Commission does not act within 21 days, it shall be deemed rejected without prejudice.<sup>2</sup>

The Division of Ratepayer Advocates (DRA) and Southern California Generation Coalition (SCGC) seek modification of D.07-12-019 to change the 10-day period requirement for expedited protests of advice letters, and to replace it with a standard 20-day period. DRA and SCGC argue that the expedited schedule led to difficulties in connection with the review and attempts to engage in discovery of SoCalGas' first expedited advice letter filing under the new process. They claim that allowing only 10 days to protest an advice letter for approval of contracts obtained through an RFO or open season unduly constricts the ability of interested parties to obtain information necessary to permit them to submit protests to the Commission.

For the reasons discussed below, we conclude that the PFM has merit, and accordingly amend the protest period to 20 days.

### **3. Procedural Background**

The PFM was jointly filed by the Division of Ratepayer Advocates (DRA) and Southern California Generation Coalition (SCGC) on September 11, 2009. The Commission's Rules of Practice and Procedure require that if a PFM is presented more than one year after the underlying decision is issued, the petition must explain why it could not have been presented within one year of the

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<sup>2</sup> See Exhibit 29 at 5 (Schwecke - SoCalGas/SDG&E Testimony).

effective date. DRA and SCGC state that their PFM was submitted more than one year after the effective date of D.07-12-019 because SoCalGas filed the first advice letter pursuant to the expedited process on March 26, 2009, more than one year after the issuance of D.07-12-019. The parties' experience with the expedited process during their review of this advice letter formed the basis for their PFM. Accordingly, based on the timing of the advice letter filing, it is reasonable to conclude that parties' PFM should be accepted as being timely filed.

The only response to the PFM was an opposition filed jointly on October 12, 2009, by SoCalGas and SDG&E. The opposing parties argue that the existing expedited process adopted in D.07-12-019 works well and should not be changed. The PFM and the filed opposition by SoCalGas and SDG&E provide a sufficient basis to resolve the dispute at issue. No evidentiary hearings are necessary.

#### **4. Parties' Positions**

DRA and SCGC ask that one of the System Operator tools approved in D.07-12-019 to help fulfill the System Operator's new role in providing flowing supplies to maintain system reliability--the EAL approval process for contracts that result from a RFO or open season process--be changed to a regular advice letter process. In the PFM, DRA, and SCGC request that Finding of Fact 50 and Ordering Paragraph 16 of D.07-12-019 be revised to allow the normal twenty days, rather than an "expedited" ten days, for protests of SoCalGas's advice letters submitted for approval of System Operator system reliability contracts that result from RFOs or an open season process.

As the basis for their claim that the expedited schedule for protests is burdensome, DRA and SCGC point to difficulties experienced in connection with SoCalGas' March 26, 2009 filing of Advice Letter (AL)3976. This advice letter

sought “expedited approval of contracts” pursuant to its December 1, 2008 RFO to assist in managing SoCalGas’ minimum flow requirement. The request for approval involved a complex set of arrangements that SoCalGas said were necessary to meet minimum flow requirements on its Southern System. (AL at 1.)

Protests to AL 3976 were filed by SCGC, DRA and Shell Energy North America, and were subject to the shortened 10-day period for protests under the provisions of D.07-12-019. SCGC states that because of the shortened 10-day limit for protests, it did not have adequate time to prepare all of the data requests needed to evaluate AL 3976, or to undertake a meet-and-confer to obtain information that SoCalGas had refused to provide. SCGC experienced difficulty in obtaining information about the contracts proposed for approval. SoCalGas refused to provide requested contracts for SCGC’s perusal, even though SCGC was willing to enter into a confidentiality agreement if deemed necessary. SCGC sought information to assess the cost of purchases of gas to meet minimum flow requirements during the period 2005-2008, and related information.

SoCalGas had objected to SCGC data requests on the grounds of confidentiality without providing a confidentiality agreement. SoCalGas claimed that with the exception of very limited confidential and market-sensitive information requested by SCGC, (which SoCalGas deemed unnecessary to analyze AL 3976), it responded fully.

A response in opposition to the PFM was filed by SoCalGas and SDG&E on October 12, 2009. SoCal Gas claims that none of the arguments presented in the PFM provides a reasonable rationale for eliminating the expedited advice letter approval process as a System Operator tool.

SoCalGas and SDG&E argue that the expedited advice letter process adopted in D.07-12-019 is the appropriate vehicle to consider system reliability “tools” other than spot purchases or facility construction. They argue that additional time for protests will delay the process and will harm customers by causing higher costs for system reliability.

They argue that the expedited advice letter approval process adopted by the Commission in D.07-12-019 recognizes that the gas market serving California is a fluid and ever-changing marketplace, and that gas prices swing within a day, day-to-day, and month-to-month. For the System Operator to be most effective in lowering the cost of providing required minimum flowing supplies, the System Operator needs the ability to move quickly to lock in favorable supply arrangements that result from an RFO or open season process. They argue that the expedited advice letter process adopted in D.07-12-019 allows this to happen.

SoCalGas disputes SCGC’s complaints about not having enough time to review AL 3976. SoCalGas claims that SCGC and DRA were both able to have their views fully considered as part of the Commission’s extended deliberations regarding AL 3976—the first filing made to obtain authorization of System Operator contracts pursuant to the expedited advice letter process. SoCalGas claims that future filings are likely to go more smoothly as the parties and the Commission gain more experience with the approval process and the issues presented by proposed System Operator supply arrangements.

## **5. Discussion**

The dispute at issue in the PFM involves the question of whether a shortening of the protest period from 20 days to 10 days, as adopted in D.07-12-019, impairs the ability of interested parties to engage in review and discovery to be able to file complete and timely protests. Expedited proceedings

are appropriate if, and only if, there is a legitimate need for urgent action by the Commission. In testimony in support of its proposal as adopted in D.07-12-019, SoCalGas had argued that the expedited 10-day protest period was appropriate in order to allow the System Operator the ability to move quickly to lock in favorable supply arrangements that result from an RFO or open season process. In its opposition to parties' PFM, SoCalGas similarly claims that if potential suppliers are required to maintain open commitments for an extended period of time, they may not respond at all to RFOs or will increase their prices to cover the additional risk created by an extended open commitment.<sup>3</sup>

We conclude that DRA and SCGC have reasonably demonstrated that a modification in D.07-12-019 should be granted to eliminate the automatic expedited protest period. In Resolution G-3435, the Commission acknowledged the difficulties experienced by parties as a result of the expedited schedule for advice letter protests, stating:

Both SCGC and DRA and possibly Shell Energy may have felt pressured by the urgency of the time constraints of the Expedited Advice Letter process. Under the EAL process, protests are due within 10 days of filing of the EAL. EAL 3976 was filed on Thursday, March 26, 2009, and Protests were due on Monday, April 6, 2009. The content of EAL 3976, however, was complex. However, no party formally filed for an extension of the protest period, so none was granted. . . . Based on the experience with AL 3976, parties who experienced difficulty in dealing with the many issues of EAL 3976 within the 10 day protest period allowed by the Expedited Advice Letter process may wish to consider filing a Petition for Modification of D.07-12-019, asking that contracts being submitted for Commission

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<sup>3</sup> SoCalGas' Reply to Petition for Modification at 5.

approval under this decision, be submitted under the regular advice letter process, with a 20-day protest period, or by application.<sup>4</sup>

The difficulties experienced by the interested parties in engaging in review, discovery, and protest of AL 3976 provide indications of the burdens that can result from the shortened protest period. Moreover, we do not believe that the terms of the contracts covered in AL 3976 necessarily required a shortened 10-day protest period.

SoCalGas does not refute DRA and SCGC's argument that the contracts involved in AL 3976 covered a one-year term, and that a shortened 10-day protest period was not a necessity for purposes of Commission approval in a timely manner. If a full 20 days had been allowed for protests, the resulting due date would have been April 15, 2009, representing a period of two-and-one-half months before the contracts were to become effective. We conclude that there was no practical need to restrict the time for submitting protests to AL 3976 to only 10 days in order to result in a timely Commission resolution. Although the specific circumstances relating to subsequent advice letters filed under the D.07-12-019 expedited schedule may differ, we are concerned that parties may still experience difficulties in conducting an adequate review within a shortened 10-day protest period.

We appreciate the need for timely Commission action on advice letter requests for RFO contract approval given the dynamics of market forces, and the need to move quickly to secure favorable arrangements, as explained by SoCalGas. Nonetheless, we find no compelling argument to persuade us that the difference between a 10-day and a 20-day protest period will foreclose timely

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<sup>4</sup> See Commission Resolution G-3435, dated September 10, 2009 at 35-36.

Commission action on advice letters, or produce higher costs or reduced reliability to retail customers.

On the other hand, with a 10-day protest limit for advice letter filings for approval of contracts pursuant to the RFO process, parties could be unnecessarily burdened with limits on their ability to engage in necessary review, discovery, and protest. These burdens apply not only to interested parties, but also to Commission Energy Division staff that must process the advice letters, analyze related protests, and draft resolutions for Commission consideration within the constraints of the shortened schedule. Customers are better protected against higher costs or service impairment by a process that allows adequate time for review of advice letters.

We are not persuaded by the suggestion of SoCalGas that interested parties who believe that additional time is needed for a particular advice letter can simply ask for more time in responding to advice letters. Such a requirement would place an undue burden on parties to spend time preparing a separate showing as to why additional time is needed, while simultaneously engaging in review and discovery of the advice letter within the 10-day schedule. With uncertainty as to how a request for more time would be treated by the Commission, parties could still experience difficulty in efficiently planning and executing their review and discovery. We are not persuaded that extending the schedule for protests from 10 days to 20 days results in higher gas costs or reduced reliability in customer service. On the other hand, we conclude that customers are better served by a process that allows adequate time for review and protests, where deemed warranted. In this instance, we conclude that a 20-day protest period for advice letters filed pursuant to Ordering Paragraph 16 of D.07-12-059 is reasonable. Accordingly, we conclude that the requested

modification in D.07-12-059 is justified, and thus revise the period from 10 days to 20 days for protests to advice letters filed pursuant to Ordering Paragraph 16 of D.07-12-019.

## **6. Comments on Proposed Decision**

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. No comments were received.

## **7. Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner and Thomas R. Pulsifer is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. In D.07-12-019, the Commission authorized SoCalGas to transfer responsibility for managing minimum flow requirements for system reliability from the Gas Acquisition Department to the Utility System Operator.

2. In D.07-12-019, the Commission adopted recommendations for an expedited advice letter process for seeking approval of contracts resulting from RFOs relating to management of minimum flow requirements for system reliability by the Utility System Operator. D.07-12-019 adopted the recommendation to allow 10 days for protests and three days for replies, and to seek Commission approval within 21 days.

3. Certain parties experienced difficulties in conducting review, discovery, and preparing protests relating to the expedited advice letter request filed on March 26, 2009, by SoCalGas pursuant to D.07-12-019.

4. Absent a requirement for expedited review, the regular period for the filing of a protest in response to an advice letter pursuant to Ordering Paragraph 16 of D.07-12-019 would be 20 days.

5. There is no persuasive evidence to show that the difference between a 10-day and a 20-day protest period for advice letters requesting approval of contracts pursuant to requests for offers pursuant to management of minimum flow requirements for system reliability will produce higher costs or impaired reliability in customer service.

6. Petitioners have made a reasonable showing that the shortening of the protest period from 20 days to 10 days for advice letters filed pursuant to Ordering Paragraph 16 of D.07-12-019 may place an undue strain on parties' ability to engage in necessary review, discovery, and formulation of protests, where deemed necessary.

7. Customers' interests are best served by a process that provides adequate time for parties to engage in review and discovery in response to advice letter requests for approval of arrangements to meet the minimum flow requirements for system reliability as referenced in Ordering Paragraph 16 of D.07-12-019.

### **Conclusions of Law**

1. Expedited proceedings for approval of advice letter requests are appropriate if, and only if, there is a legitimate need for urgent action by the Commission.

2. There is no basis to conclude that customers will experience higher costs or reduced service reliability solely as a result of allowing for a 20-day instead of a 10-day protest period for advice letters filed pursuant.

3. The September 11, 2009 PFM of D.07-12-019 filed by DRA and SCGC should be granted to revise the required protest period from 10 days to 20 days applicable to advice letters filed pursuant to Ordering Paragraph 16.

**O R D E R**

**IT IS ORDERED** that:

1. The September 11, 2009 Petition for Modification of Decision 07-12-019 filed by the Division of Ratepayer Advocates and the Southern California Generation Council is granted, to revise the required protest period from 10 days to 20 days applicable to advice letters filed pursuant to Ordering Paragraph 16. The modifications of Finding of Fact 50 and Ordering Paragraph 16 are set forth in the Attachment A to this decision.

2. Application 06-08-026 is closed.

This order is effective today.

Dated May 6, 2010, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
TIMOTHY ALAN SIMON  
NANCY E. RYAN  
Commissioners

## Attachment A

### Adopted Modifications to Decision (D.) 07-12-019\*

The following modifications to D.07-12-019 are hereby adopted:

Findings of Fact 50 on page 107 is revised as follows:

50. Except for the proposal to use an expedited Advice Letter approval process for contracts that result from an RFO or open season process, ~~t~~The specific tools proposed by Applicants for use by the System Operator provide a reasonable means of meeting the System Operator's expanded role of providing system reliability.

Ordering Paragraph 16 on page 112 is revised as follows:

16. Applicant's proposal is granted for the following System Operator tools:

- (a) The ability of the System Operator to buy and sell gas on a spot basis, as needed, to maintain system reliability.
- (b) Authority to conduct requests for offers (RFO) or open season process consistent with the System Operator needs.
- (c) Authority ~~to approve~~ for an expedited Advice Letter approval process for contracts that result from a RFO or open season process. is denied.

**(End of Attachment A)**