

Decision 04-12-009 December 2, 2004

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

Application of Southern California Gas Company for Authority to Update its Gas Revenue Requirement and Base Rates. (U 904 G)

Application 02-12-027  
(Filed December 20, 2002)

Application of San Diego Gas & Electric Company for Authority to Update Its Gas and Electric Revenue Requirement and Base Rates. (U 902 M)

Application 02-12-028  
(Filed December 20, 2002)

Investigation on the Commission's Own Motion Into the Rates, Operations, Practices, Service and Facilities of Southern California Gas Company and San Diego Gas & Electric Company.

Investigation 03-03-016  
(Filed March 13, 2003)

**MODIFYING DECISION 03-12-057 FOR  
SOUTHERN CALIFORNIA GAS COMPANY  
AND SAN DIEGO GAS & ELECTRIC COMPANY  
2005 BASE MARGIN MEMORANDUM ACCOUNTS**

**Summary**

This decision resolves the interim rate relief request of Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E) in their September 30, 2004 Petition to modify Decision (D.) 03-12-057. We grant the specific relief sought to extend the lives of the memorandum accounts authorized in D.03-12-057. We authorize, subject to refund, the extension of the memorandum accounts to track the revenue shortfall until issuance of a Phase 2

decision for Application (A.) 02-12-027 and A.02-12-028 on the post-test year 2004 ratemaking mechanism<sup>1</sup> applicable to 2005. We therefore modify D.03-12-057.

### **Background**

SoCalGas and SDG&E filed A.02-12-027 and A.02-12-028, respectively on December 20, 2002.<sup>2</sup> These are applications for authority to increase retail rates in the 2004 test year and for post-test year ratemaking mechanisms to adjust the adopted base margin for intervening years until the next general rate case and the adoption of a new test year. On September 29, 2004 SoCalGas and SDG&E filed a *Petition to Modify Decision 03-12-057* (petition) and a *Motion to Shorten Time to Respond* (motion).<sup>3</sup> By Ruling dated October 5, 2004,<sup>4</sup> the assigned Administrative Law Judge (ALJ) directed any interested parties to file and serve responses to the petition by October 15, 2004, and allowed SoCalGas and SDG&E to file and serve a reply on October 22, 2004.

### **Petition for Modification**

In D.03-12-057, the Commission authorized a memorandum account for each of the two utilities to track effective January 1, 2004, the Test Year 2004 authorized margin for each that the Commission would later authorize in a

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<sup>1</sup> Post-test year ratemaking is often referred to as an “attrition adjustment.” Phase 2 examines in detail whether, and if so how, the authorized revenue requirements for SoCalGas and SDG&E should be adjusted between test years. Any use of the word attrition does not prejudice any of the Phase 2 ratemaking proposals.

<sup>2</sup> A Ruling dated January 22, 2003 consolidated these applications.

<sup>3</sup> The original filing was dated September 30, 2004 on its cover page. On October 1, 2004, SoCalGas and SDG&E corrected the filing procedurally to comply with Rule 2.1(b) and separated into two documents the Petition and Motion. Applicants indicated their agreement to this change in conformance with Rule 3(e).

<sup>4</sup> Served electronically on October 4, 2004.

decision in Phase 1 of the proceeding some time after January 1, 2004. Phase 2 of this proceeding includes, among other things, proposals for post-test year ratemaking that would adjust the two utilities' authorized margins in 2005 and each year thereafter until the next general rate case decision.

SoCalGas and SDG&E filed the petition because they were concerned that that a final Commission decision in Phase 2 of this proceeding might not to be issued before the beginning of 2005. The Commission previously authorized memorandum accounts in D.03-12-057 to ensure that the results of Phase 1 would be applicable for a full year in 2004. SDG&E and SoCalGas now request that the Commission modify the decision to extend the memorandum accounts to provide that the 2005 margin authorized as a result of a Phase 2 decision will be applicable for a full year in 2005.

Rule 47(b) provides that a petition for modification "...must propose specific wording to carry out all requested modifications to the decision." In compliance with this requirement, attached to the petition was an appendix showing the Findings of Fact, Conclusions of Law, and Ordering Paragraphs of D.03-12-057, and also identifying the additional language as proposed by SoCalGas and SDG&E to modify the decision.

Applicants propose<sup>5</sup> two new findings of fact, 6 and 7:

"6. The current schedule in the proceeding will not allow for a decision before the end of 2004 in Phase 2, including on proposals for annual adjustments ("attrition") of adopted test year 2004 authorized margin to be applicable for calendar year 2005 and thereafter."

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<sup>5</sup> Appendix to Petition, pp. 1 - 3.

“7. Using memorandum accounts with respect to any adjustment of authorized margin that is authorized for 2005 in a Phase 2 decision will result in fair treatment of ratepayers and shareholders.”

SoCalGas and SDG&E proposed one new conclusion:

“5. It is reasonable to ratepayers and shareholders to allow interim rate relief pending a Phase 2 decision, subject to refund, for SoCalGas and SDG&E with respect to authorized margin for 2005.”

And applicants proposed two new ordering paragraphs:

“ 3. Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E) are granted interim rate relief effective on January 1, 2005, subject to refund pending a decision in Phase 2 of the consolidated proceedings.”

“4. SoCalGas and SDG&E shall modify their memorandum accounts established in compliance with D.03-12-057 to correctly calculate any revenue shortfall or over collection related to base rate authorized margin for 2005 as may be authorized by the Commission in a Phase 2 decision, by filing an advice letter with the Energy Division within 21 days of the mailing of this decision. This advice letter shall be effective on January 1, 2005, subject to Energy Division determining that it is in compliance with this order.”

SoCalGas and SDG&E assert that the Commission has previously authorized similar forms of interim rate relief for other utilities and cites relief for Southwest Gas Company in D.03-05-032 in A.02-02-012, and for Southern California Edison Company in D.03-05-076 in A.02-05-004.<sup>6</sup>

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<sup>6</sup> Petition, p. 5.

SDG&E petitions<sup>7</sup> that the memorandum account applicable to the 2005 authorized margin for SDG&E operate so as to provide that SDG&E recovers

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<sup>7</sup> Petition, p. 6.

exactly the margin that is ultimately authorized by the Commission for the period from January 1, 2005 until the effective date of a Phase 2 decision later in 2005, regardless of the level of electric and gas sales/throughput in 2005 until the Phase 2 decision is effective. This is consistent with the authority granted in authorizing a memorandum account in Phase 1 for SDG&E.

### **Schedule Delays**

The scope of a test year proceeding is necessarily broad; the intention is to reflect the interests of ratepayers by identifying the proper corporate structure for SoCalGas and SDG&E to serve their gas and electric load. The assigned Commissioner and ALJ recognized the impact of delaying the schedule in the April 2, 2003 *Scoping Memo* and the May 22, 2003 *Ruling Clarifying the Scoping memo and Modifying the Schedule*. The breadth of these proceedings were such that Phase 1 was not concluded before the test year, and the attrition Phase, Phase 2 for the adoption of post-test year ratemaking procedures, will not be concluded before January 1, 2005.

### **Legal Authority to Grant Interim Relief**

This decision asserts the Commission's authority to grant interim relief in these proceedings.

In this proceeding, we previously authorized the creation of memorandum accounts applicable to the Phase 1 Test Year 2004 revenue requirements for SoCalGas and SDG&E.

We find that granting interim relief is compatible with Pub. Util. Code § 728<sup>8</sup> in that we are addressing only a portion, and not the totality, of the rate

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<sup>8</sup> Section 728. "Whenever the commission, after a hearing, finds that the rates or classifications, demanded, observed, charged, or collected by any public utility for or in

*Footnote continued on next page*

charged to customers for gas and electric services. This was also considered previously in adopting the memorandum accounts for the test year.

No party raised an objection to granting interim relief or responded to the petition to modify D.03-12-057.

In D.03-12-057 the Commission found that a delay in implementing rates without the safeguard of a memorandum account would constitute unfair treatment.<sup>9</sup> We discounted as unpersuasive any argument that SoCalGas and SDG&E needed to demonstrate either a financial emergency or distress before we would or could authorize an interim recovery mechanism. Nothing has changed that would persuade us differently with respect to recovery of the post-test year 2005 revenue requirement.

### **Rate Impact on Customers**

We will not adopt any interim cash rate relief for post-test year 2005, but we remind all parties that no final relief or reduction is presumed to be reasonable before there is a fully developed record. Because we will not adopt final post-test year 2005 rates before the start of the year, there will likely be an over- or under-collection subject to refund.

### **Memorandum Account**

SoCalGas and SDG&E proposed that the two companies should be allowed to continue to track and recover the final authorized revenues regardless

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connection with any service, product, or commodity, or the rules, practices, or contracts affecting such rates or classifications are insufficient, unlawful, unjust, unreasonable, discriminatory, or preferential, the commission shall determine and fix, by order, the just, reasonable, or sufficient rates, classifications, rules, practices, or contracts to be thereafter observed and in force." (Emphasis added.)

<sup>9</sup> D.03-12-057, *mimeo*, Finding of Fact No. 2.

of differences between Commission-forecast and actual gas and electric sales/throughput, which means that the companies would ultimately collect the post-test year 2005 adopted increase for the period of time interim relief was in effect. We will authorize the extension of the authority for the memorandum accounts to track the actual revenues from sales in order to compute an accurate revenue shortfall or over collection compared to the post-test year revenue requirement during the interim period.

Any recoverable shortfall, or refundable over collection, should be determined on actual sales during the interim period between January 1, 2005, and the decision date based on a pro rata allocation of the authorized revenue requirement.

SoCalGas and SDG&E shall file an advice letter with the Energy Division to implement the necessary modifications to the memorandum accounts to account for the 2005 interim rate relief as granted.

### **Phase 2 Decision Before January 1, 2005**

SoCalGas and SDG&E propose that in the event of an effective final decision in Phase 2 before January 1, 2005, that the relief requested would be moot or if the decision is adopted before a decision is rendered on their petition that the Commission deem them to have asked for leave to withdraw this petition. The Commission has determined that it is unable to issue a decision on Phase 2 before January 1, 2005 and therefore adopts this decision.

### **Comments on Draft Decision**

This is an uncontested matter in which the decision grants the requested relief. Therefore, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

### **Assignment on Proceedings**

Carl W. Wood is the Assigned Commissioner and Douglas Long is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. The schedule adopted by ruling on May 22, 2003 for the consolidated A.02-12-027 and A.02-12-028 of SoCalGas and SDG&E, respectively, may not allow for a final decision on post-test year 2005 ratemaking before the start of calendar year 2005.

2. SoCalGas and SDG&E do not have to prove a financial emergency or financial distress to justify the allowance of interim rate relief; rather they must only prove that regulatory delay would otherwise lead to unfair treatment.

3. Using memorandum accounts will ensure that any revenue shortfall or over collection is determined accurately when interim revenues are compared to final test year revenue requirement.

### **Conclusions of Law**

1. Ratepayers are fully protected from over-paying for service by making the interim increase subject to refund.

2. Hearings are not required to adequately develop a record to adopt the interim rate mechanism.

3. It is reasonable to ratepayers and shareholders to allow interim rate relief, subject to refund, for SoCalGas and SDG&E. The September 30, 2004 Petition to Modify D.03-12-057 should be granted.

4. The interim rate relief granted in this Order does not violate the requirement of Pub. Util. Code § 728 that the final adopted test year 2004 revenue requirement be just and reasonable. Interim rates will be corrected by refund, as necessary.

**O R D E R**

**IT IS ORDERED** that:

1. The Petition to Modify Decision (D.) 03-12-057 filed by Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E) on September 30, 2004 is granted. Interim rate relief effective on January 1, 2005, is authorized subject to refund pending a decision in Phase 2 of the consolidated proceedings.

2. SoCalGas and SDG&E shall modify the existing memorandum accounts in compliance with this decision, to correctly calculate any revenue shortfall or over collection, by filing an advice letter with the Energy Division within 21 days of the mailing of this decision. This advice letter shall be effective on January 1, 2005, subject to Energy Division determining that it is in compliance with this order.

3. Two new findings of fact should be added to modify D.03-12-057:

“6. The current schedule in the proceeding will not allow for a decision before the end of 2004 in Phase 2, including on proposals for annual adjustments (“attrition”) of adopted test year 2004 authorized margin to be applicable for calendar year 2005 and thereafter.” And,

“7. Using memorandum accounts with respect to any adjustment of authorized margin that is authorized for 2005 in a Phase 2 decision will result in fair treatment of ratepayers and shareholders.”

4. The following Ordering Paragraphs are added to modify D.03-12-057:

“ 3. Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E) are granted interim rate relief effective on January 1, 2005, subject to refund pending a decision in Phase 2 of the consolidated proceedings.” And,

“4. SoCalGas and SDG&E shall modify their memorandum accounts established in compliance with D.03-12-057 to correctly calculate any revenue shortfall or over collection related to base rate authorized margin for 2005 as may be authorized by the Commission in a Phase 2 decision, by filing an advice letter with the Energy Division within 21 days of the mailing of this decision. This advice letter shall be effective on January 1, 2005, subject to Energy Division determining that it is in compliance with this order.”

5. The following additional conclusion is required to modify D.03-12-057:

“5. It is reasonable to ratepayers and shareholders to allow interim rate relief pending a Phase 2 decision, subject to refund, for SoCalGas and SDG&E with respect to authorized margin for 2005.”

6. Applications (A.) 02-12-027, A.02-12-028 and Investigation 03-03-016

remain open for the conclusion of Phase 2.

This order is effective today.

Dated December 2, 2004, at San Francisco, California.

MICHAEL R. PEEVEY  
President

CARL W. WOOD  
LORETTA M. LYNCH  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
Commissioners