

Decision 07-11-001 November 1, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of San Diego Gas & Electric Company (U 902 G) and Southern California Gas Company (U 904 G) for Authority to Integrate Their Gas Transmission Rates, Establish Firm Access Rights, and Provide Off-System Gas Transportation Services.

Application 04-12-004
(Filed December 2, 2004)

**OPINION DENYING THE PETITION FOR MODIFICATION OF
DECISION 06-12-031 FILED BY THE DEPARTMENT OF GENERAL
SERVICES AND THE SOUTHERN CALIFORNIA GENERATION COALITION**

Summary

Today's decision addresses the May 23, 2007 petition for modification of Decision (D.) 06-12-031 that was filed by the Department of General Services (DGS) and the Southern California Generation Coalition (SCGC). In that decision, we adopted a system of firm access rights for the gas transmission systems of San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCalGas).

The petition for modification of D.06-12-031 is denied for the reasons stated below.

Procedural Background

The petition for modification of DGS and SCGC was originally submitted for filing on April 25, 2007. However, due to filing problems with the document, the petition for modification was rejected by the Docket Office. On May 23, 2007, DGS and SCGC resubmitted the petition for modification for filing and the

Docket Office filed the petition as of that date. Notice of the filing of the petition for modification appeared in the May 24, 2007 Daily Calendar.

Separate responses to the petition for modification were filed by the Indicated Producers and Occidental of Elk Hills, Inc. (Occidental), and a joint response was filed by SDG&E and SoCalGas. All of the responses oppose the petition for modification.

Relief Requested

The petition for modification requests that D.06-12-031 be modified “to make clear that the set-aside for gas producers described in the Decision at page 100 is limited to the receipt points where the gas producer delivers natural gas into the system.”

DGS and SCGC state that they “were surprised to learn” that during the comment and protest period on SoCalGas’ Advice Letter 3706, which was filed on January 29, 2007, “that SoCalGas believes that gas producers should be allowed to utilize the rights granted in the set-aside at receipt points other than where the producers deliver gas into the system.” DGS and SCGC contend that the set-aside of capacity that was granted to the California producers in D.06-12-031 was designed to allow the producers to deliver their gas production into the SoCalGas and SDG&E system. DGS and SCGC assert that the set-aside of capacity was not intended “to allow those holding those set-asides to use their rights at other receipt points.”

DGS and SCGC request that D.06-12-031 be modified by adding the following sentences to the end of the paragraph which appears at pages 99-100 of D.06-12-031:

“The set-asides provided for California producers are intended to encourage intrastate gas production that flows into the SoCalGas

system. Accordingly, firm access rights obtained through the set-aside for California producers shall apply only to the receipt points where the gas production is delivered into the system. Firm access rights obtained through the producer set aside may not be used as a basis to obtain alternate firm access rights at other receipt points.”

Discussion

There are several reasons why we deny the petition for modification of D.06-12-031 that was filed by DGS and SCGC. First, as noted in the response by SDG&E and SoCalGas, their proposal has always been “to permit producers to have FAR [firm access rights] that would be similar to FAR at other receipt points on the system....” This is made clear in Exhibit 16 of this proceeding. In that exhibit at page 33, the SDG&E and SoCalGas witness, Rodger Schwecke, stated that they “would support a change to their proposal so that alternate firm nominations outside of a zone would be allowed at no additional cost but would, as Kern River [Gas Transmission Company] proposes, be scheduled after alternate firm nominations within a zone.” During the evidentiary hearings, Schwecke was asked on cross-examination by several parties about what this passage at page 33 of Exhibit 16 meant. (See 6 R.T. at pp. 782, 885, 900-901; 8 R.T. at pp. 991-992; 5 R.T. 676-678.)

SDG&E and SoCalGas also explained in their September 27, 2007 reply brief at page 17 that:

“Customers wishing to switch receipt points on a firm basis will be permitted to do so on an ‘alternate’ basis within their transmission zone, and SDG&E/SoCalGas have agreed that shippers should be able to switch their nominations on an alternate firm basis even outside their zones.”

The contention of DGS and SCGC that they were surprised to learn during the advice letter process that “SoCalGas believes that gas producers should be allowed to utilize the rights granted in the set-aside at receipt points other than where the producers deliver gas into the system” is contrary to what was explained in Schwecke’s testimony in Exhibit 16, and what he testified to during his cross-examination. As the Indicated Producers point out in their response to the petition for modification, DGS and SCGC “had an opportunity to raise and fully air their concern during the course of the hearing.” Although SCGC and DGS had the opportunity during the cross-examination of Schwecke to ask about the ability to use a producer’s FAR set-aside at receipt points outside of the zone, they failed to do so. (See SCGC cross of Schwecke, 7 R.T. at pp. 1018-1083.)

The second reason for not granting the petition for modification is that there are several references in D.06-12-031 to the proposal of SDG&E and SoCalGas to use the FAR set-aside rights at other receipt points. In describing the FAR proposal of SDG&E and SoCalGas, we stated the following at page 13 of the decision:

“In response to parties’ concerns, SDG&E and SoCalGas are also willing to allow the FAR to be used for out-of-zone receipt points without an additional charge, which would be scheduled after alternate firm nominations within a zone.”

At page 42 of the decision, we stated that Kern River and SES Terminal LLC had proposed that out-of-zone nominations be allowed at no additional cost, and that those nominations have a lower priority. In addition, we noted that SDG&E and SoCalGas “support the change to allow alternate firm nominations out-of-zone at no additional cost, and that such a nomination be scheduled after the alternate firm nominations within-the-zone,” and that Clearwater Port LLC supports such a proposal.

In discussing the flexibility of the FAR proposal and the unbundled FAR proposal in the decision, we explained that the holder of the FAR could move its gas through the designated receipt point, and that the FAR holder could also “bring in gas through receipt points within the same zone and through receipt points outside the FAR holder’s zone.” (D.06-12-031, p. 78.)

All of the references cited above demonstrate that the adopted FAR proposal included the ability of the FAR holder to use its rights at receipt points outside of the zone. DGS and SCGC did not take issue with these references in their comments on the proposed decision. As Occidental aptly points out in its response to the petition for modification at page 3, DGS and SCGC “do not allege that there are any new or changed facts which would justify the fundamental modifications to the FAR system they propose, nor do they explain why they did not have a sufficient opportunity to address these issues during the course of the proceeding.”

The third reason for not granting the petition for modification is that the language that DGS and SCGC seek to add to D.06-12-031 would discriminate against the holders of FAR who are California gas producers, as opposed to the other FAR holders. If the petition to modify D.06-12-031 is granted, only the California gas producers who hold FAR would be prevented from using them at other receipt points. As the Indicated Producers and Occidental point out, the other FAR holders would be free to use their rights at other receipt points.

For all of the reasons stated above, the petition of DGS and SCGC for modification of D.06-12-031 should be denied.

Comments on Proposed Decision

The proposed decision of the 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. DGS and SCGC filed joint comments on the proposed decision. Reply comments were filed by the Indicated Producers.

DGS and SCGC contend that the proposed decision ignores the substance of the issue that they raised. They contend that because the set aside granted to the producers in D.06-12-031 is based on the producer's peak month production over the most recent three-year period, "it would be appropriate to limit use of the set-aside to the receipt points for which it is granted and not alternate points." (Joint Comments, p. 2.) The point that they raise in their joint comments about peak month production was an issue that SCGC raised in its January 16, 2007 application for rehearing of D.06-12-031, which we denied in D.07-09-046. (See D.07-09-046, p. 13.) We decline to modify D.06-12-031 as requested by DGS and SCGC in their petition for modification and their joint comments on the proposed decision.

Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner, and John S. Wong is the assigned ALJ in this proceeding.

Findings of Fact

1. DGS and SCGC request that D.06-12-031 be modified to add additional sentences which would allow only the California gas producers to use their FAR at the receipt points where their gas production is delivered into the system.
2. Exhibit 16 and the cross-examination of Schwecke regarding that exhibit, demonstrate that SDG&E and SoCalGas intended that all FAR holders be allowed to use their FAR at other receipt points on the system.

3. DGS and SCGC had the opportunity during the cross-examination of Schwecke to ask about the ability to use a producer's FAR set-aside at other receipt points, but failed to do so.

4. D.06-12-031 contained several references to the proposal of SDG&E and SoCalGas to use the FAR set-aside rights at other receipt points, but DGS and SCGC did not take issue with these references in their comments on the proposed decision.

5. If the petition to modify D.06-12-031 is granted, only the California gas producers who hold FAR would be prevented from using them at other receipt points.

Conclusions of Law

1. The modification that DGS and SCGC seek would discriminate against the holders of FAR who are California gas producers, as opposed to the other FAR holders.

2. The petition for modification of D.06-12-031, filed by DGS and SCGC, should be denied.

O R D E R

IT IS ORDERED that:

1. The May 23, 2007 petition for modification of Decision 06-12-031 filed by the Department of General Services and the Southern California Generation Coalition is denied.

2. Application 04-12-004 is closed.

This order is effective today.

Dated November 1, 2007, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners