

Decision 09-01-009 January 29, 2009

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

In the Matter of the Application of  
Southern California Gas Company to  
Establish Regulatory Authority Over the  
Access for Natural Gas Provided by  
California Gas Producers.

Application 04-08-018  
(Filed August 16, 2004)

**DECISION REGARDING THE PETITION FOR  
MODIFICATION OF DECISION 07-08-029**

**1. Summary**

Today's decision addresses the petition for modification of Decision (D.) 07-08-029 (petition) that was filed on October 4, 2007 by the Southern California Gas Company (SoCalGas).

In D.07-08-029, we addressed the terms and conditions by which California natural gas producers (California producers) can access the gas transmission system of SoCalGas system. As part of the terms and conditions, we adopted protocols for the monitoring of gas quality for natural gas produced in California and delivered into the SoCalGas system. Among the adopted protocols, we established a monitoring interval of four to eight minutes for the testing of non-hydrogen sulfide constituents for California-produced gas that is directly connected to SoCalGas' distribution system. For California producers who are connected to SoCalGas' transmission system, we adopted a 24-hour testing interval for non-hydrogen sulfide constituents. (See D.07-08-029, pp. 34-35.)

SoCalGas seeks to modify D.07-08-029 by expanding the monitoring of non-hydrogen sulfide constituents on a four to eight minute interval to those California producers who are connected to SoCalGas' transmission line where that gas can be directly delivered to end use customers through SoCalGas' distribution system.

Based on the information contained in SoCalGas' petition, we decline to rule on the petition at this point in time. Instead, this proceeding shall be reopened to take additional evidence on the issues of: (1) whether California-produced gas can enter into SoCalGas' transmission line and be delivered into the distribution line without the opportunity for blending or mixing with other gas supplies; and (2) for non-hydrogen sulfide constituents, what kind of monitoring interval should apply if the California-produced gas can enter into SoCalGas' transmission line and be delivered into the distribution line without an opportunity for blending or mixing with other gas supplies. Afterwards, we will then issue a decision on whether SoCalGas' petition to modify D.07-08-029 should be granted or denied.

## **2. Background**

As a result of the California producers' concern with SoCalGas' plans to develop the natural gas in and around its gas storage fields as requested in Application (A.) 04-01-034, a stipulation was reached whereby SoCalGas agreed to file the application that resulted in D.07-08-029.<sup>1</sup> That decision is the subject of SoCalGas' petition for modification that is before us today.

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<sup>1</sup> A.04-01-034 addressed SoCalGas' application for authority to produce native gas located at or near its existing natural gas storage facilities. (See D.06-06-065.) Due to the concerns of the California producers regarding the potential for cross subsidies from

*Footnote continued on next page*

SoCalGas filed its petition on October 4, 2007. Exxon Mobil Corporation (Exxon Mobil) filed a response to the petition on November 5, 2007, and a joint response to the petition was filed on November 5, 2007 by the Indicated Producers, Western States Petroleum Association, and the California Independent Petroleum Association (collectively referred to as “IP et al.”).<sup>2</sup> SoCalGas filed a reply to both responses on November 15, 2007.

As part of its petition, SoCalGas requested that its advice letter filing, as directed in Ordering Paragraph 2 of D.07-08-029, be suspended until the Commission acts on the petition. In a November 27, 2007 letter to SoCalGas’ counsel, the Commission’s Executive Director granted SoCalGas’ request to suspend the filing of the advice letter until 30 days after the issuance of a final Commission decision on the petition.

### **3. Discussion**

#### **3.1. Modification Request**

SoCalGas seeks to modify the text in section 4.6.1.2 and Finding of Fact (FOF) 13 in D.07-08-029 to allow SoCalGas to expand the four to eight minute interval for the monitoring of non-hydrogen sulfide constituents to those California producers who deliver gas into SoCalGas’ transmission line where that gas can be delivered to end use customers through SoCalGas’ distribution system.

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ratepayers to shareholders, discrimination, and anticompetitive behavior, the stipulation in A.04-01-034 resulted in the filing of this application to address the standardized terms and conditions of access to the SoCalGas system by the California producers.

<sup>2</sup> Our use of the term “California gas producers” or “California producers” include Exxon Mobil and IP et al.

Currently, D.07-08-029 provides that the monitoring of non-hydrogen sulfide constituents is to be performed on a 24-hour interval for California-produced gas that flows into SoCalGas' transmission line. The four to eight minute interval for the monitoring of non-hydrogen sulfide is limited to California "producers who are directly connected to SoCalGas' distribution main...." (D.07-08-029, p. 35, FOF 13, p. 79.)

SoCalGas seeks to modify D.07-08-029 because it contends that there may be situations in which the California-produced gas can be delivered to end use customers without the opportunity for that gas to be diluted by blending. According to SoCalGas, if this gas does not meet its gas quality specifications, this could lead to the entry of harmful, non-complying gas which could affect pipeline integrity and pose safety risks to end use customers.

SoCalGas attached two declarations in support of its petition. Those declarations state that under certain situations where a California producer delivers gas into a transmission system, which gas then flows into the distribution system, the gas could be delivered directly to end use customers without the opportunity for blending with other pipeline supplies.

SoCalGas' proposed modification would have the effect of extending the four to eight minute interval testing of non-hydrogen sulfide constituents that we adopted for those California gas producers who are directly connected to SoCalGas' distribution main, to those California gas producers who deliver gas into a SoCalGas transmission line.

### **3.2. Position of SoCalGas**

SoCalGas contends that it has "consistently and repeatedly pointed out" in this proceeding that the Commission needs to ensure that SoCalGas' strict gas quality enforcement protocol of four to eight minute interval has to be "adopted

for all situations wherein California-produced gas can be delivered to end use customers without the opportunity to be diluted by blending.” (Petition, pp. 1-2.) SoCalGas proposes that D.07-08-029 needs to be modified “to eliminate any ambiguity concerning the enforcement mechanism to be applied by SoCalGas to California gas production that can be delivered unblended into distribution systems or directly to end users, versus California gas production being delivered into a ‘transmission’ system.” (Petition, p. 1.)

SoCalGas acknowledges that “no evidence was specifically adduced on point by any party as to whether end use customers are situated so that they would be subject to receiving undiluted, off-spec California production from a ‘transmission’ pipeline.” (Petition, p. 3.) SoCalGas contends that there are such customers, and has attached the Declaration of David M. Bisi and the Declaration of Thanathep E. Trinooson to the petition. SoCalGas contends that the two declarations offer examples of times when SoCalGas has “very little practical ability to blend excessive quantities of non-spec gas before such gas enters a ‘distribution’ system for delivery to end use customers....” (Petition, pp. 3-4.)

SoCalGas justifies its petition on the grounds that D.07-08-029 adopted a strict gas quality protocol for “distribution or end use customers,” and that such protocols should be applied “to all situations where SoCalGas’ distribution or end use customers receive California produced gas from SoCalGas pipeline facilities which may be categorized as either ‘distribution’ or ‘transmission.’ ” (Petition, p. 2.)

### **3.3. Position of the California Producers**

Exxon Mobil, and IP et al. oppose SoCalGas’ petition for modification.

Exxon Mobil contends that SoCalGas’ petition should be rejected because there is no evidence in the record to support a modification of D.07-08-029.

Exxon Mobil argues that the Commission cannot modify D.07-08-029 because SoCalGas' petition relies upon statements and documents that were not a part of the record in this proceeding. The two declarations, and the individuals named in the declarations, were not part of the testimony that SoCalGas presented during the four days of evidentiary hearings in March 2006, nor have those declarations been subjected to discovery or cross examination.

Exxon Mobil points out that SoCalGas' petition also relies on the "Consent Decree" that was entered into between El Paso Natural Gas Company (El Paso) and the United States Department of Transportation. SoCalGas filed a motion on August 13, 2007 in this proceeding to take official notice of the Consent Decree. However, the Commission did not act on the motion when D.07-08-029 was issued, nor was the Consent Decree subjected to the discovery process or to cross-examination in this proceeding.

Exxon Mobil contends that the Commission's determination in D.07-08-029 as to the monitoring interval for gas quality was fully supported by the record that was developed in this proceeding.

IP et al. contend that SoCalGas' proposed modification will have the effect of "imposing the four to eight minute interval on virtually all producer interconnections." (IP et al., Response, p. 2.) IP et al. contend that the two declarations of SoCalGas are insufficient to support the proposed modification of D.07-08-029 because the declarations rely on extreme and unusual operating conditions, and the declarations did not contain any data or factual basis about the mixing of the California-produced gas as it enters the pipeline or the blending with additional supplies in SoCalGas' gathering and transmission systems...." (IP et al., Response, p. 3.)

IP et al. state that they are unable to determine if the reason for SoCalGas' petition for modification is related to concerns about flame lift, flame out, or the Wobbe Index. IP et al. contend that SoCalGas' petition does not contain sufficient information about these issues for the Commission to modify D.07-08-029.

IP et al. also contend that SoCalGas' petition is misleading in that it incorrectly concludes that SoCalGas will have to wait 24 hours before it can shut in production if the gas exceeds the non-hydrogen sulfide specifications. According to the graphs and explanation provided in the response of IP et al., after the initial set up of the monitoring occurs and the first 24 hours has been reached, if the running average exceeds the allowable specification, the producer's gas will be shut in and the producer's gas flow will not resume until the gas contaminant level drops to the accepted specification level.

As for SoCalGas' request to take official notice of the Consent Decree, IP et al. states that SoCalGas has failed to demonstrate how the Consent Decree is analogous to the SoCalGas system, or how the provision in the decree about the rejection of low British thermal unit gas after 12 minutes or three analyses, whichever is shorter, is relevant.

IP et al. contend that the monitoring intervals adopted in D.07-08-029 for California gas connected to the distribution system and to the transmission system were based on an extensive evidentiary record, well reasoned, and properly balanced the competing interests. According to IP et al., SoCalGas' petition fails to establish a factual basis upon which the Commission can modify D.07-08-029.

If the Commission decides that it wants to address SoCalGas' petition, despite SoCalGas' use of statements and documents that were not a part of the

record in this proceeding, Exxon Mobil and IP et al. contend that in order to have a fully developed record, the Commission must provide an opportunity for discovery, additional testimony, and an evidentiary hearing.

### **3.4. Analysis**

Rule 16.4 of the Commission's Rules of Practice and Procedure addresses the requirements for the filing of a petition for modification of a Commission decision. That rule states in pertinent part:

(a) A petition for modification asks the Commission to make changes to an issued decision. Filing a petition for modification does not preserve the party's appellate rights; an application for rehearing ... is the vehicle to request rehearing and preserve a party's appellate rights.

(b) A petition for modification of a Commission decision must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision. Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit.

The issue before us is whether D.07-08-029 should be modified so that the four to eight minute interval testing for non-hydrogen sulfide constituents can be expanded to cover California gas producers who also deliver gas into SoCalGas' transmission line. In its November 15, 2007 reply, SoCalGas frames the issue as: "Should all end users who receive unblended California-produced gas be protected from the potential harm caused by the delivery of non-spec gas into SoCalGas' system by use of the strict protocol."

Although SoCalGas contends that the purpose of the proposed modification is to "eliminate any ambiguity concerning the enforcement

mechanism to be applied by SoCalGas to California gas production,” we do not agree with SoCalGas that an ambiguity exists in D.07-08-029. As Exxon Mobil and IP et al. correctly point out, D.07-08-029 clearly states that a four to eight minute enforcement interval will apply to California gas producers whose gas is delivered directly into SoCalGas’ distribution system, and that a 24-hour enforcement interval will apply to California producers who are directly connected to SoCalGas’ transmission system. (See D.07-08-029, p. 35.) Instead of clarifying D.07-08-029, SoCalGas’ proposal would have the effect of changing when the four to eight minute monitoring interval should be used.

SoCalGas’ petition seeks to make changes to the text of D.07-08-029 based on the possibility that certain situations could arise. As we discuss below, these situations were not raised by SoCalGas during the four days of evidentiary hearings that were held in March 2006, and the two declarations attached to the petition and the Consent Decree do not contain the information necessary for us to modify the decision at this time.

SoCalGas seeks to modify the text of D.07-08-029 in two places. The objective of SoCalGas’ modification is to prevent gas that does not meet the specifications for non-hydrogen sulfide constituents from being allowed to enter a transmission line that delivers into a distribution line which then serves an end use customer, when that gas has no opportunity to be blended or mixed with other gas. However, SoCalGas acknowledges in its petition that “no evidence was specifically adduced on point by any party as to whether end use customers are situated so that they would be subject to receiving undiluted, off-spec California production from a ‘transmission’ pipeline.” (Petition, p. 3.) SoCalGas also states “that if the Commission had been informed that there are such downstream customers on its transmission system,” that the Commission would

have applied the four to eight minute enforcement interval. (SoCalGas, Reply, p. 2.)

SoCalGas would have us modify D.07-08-029 based on the two declarations that were attached to SoCalGas' petition.<sup>3</sup> As pointed out by Exxon Mobil and IP et al., however, the declarations lack the necessary information for us to modify the decision. Our review of the two declarations reveals that the allegations about what could occur are subject to certain qualifications. In the Declaration of David M. Bisi, he states that "Under certain supply and demand conditions, off-spec producer gas supplies delivered directly into the SoCalGas designated 'transmission' system can be delivered directly to distribution systems and end use customers without the opportunity for blending with other pipeline supplies." (Emphasis added.) Although Bisi's declaration refers to "a low demand condition with significant levels of producer deliveries," and to "a low demand, summer-load condition," there is no backup information in the declaration or citation to the record in this proceeding to support the conditions that are described in Bisi's declaration, or any examples of where such situations have occurred in the past. Similarly, the Declaration of Thanathep E. Trinooson does not describe the conditions under which the gas received in a transmission line can be delivered into the distribution system and to end use customers without the opportunity for blending to occur with other pipeline supplies. Also, the maps attached to Trinooson's declaration are supposed to "highlight the pipeline network where gas from the transmission system is delivered to

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<sup>3</sup> SoCalGas states in its November 15, 2007 reply at page 3 that the Commission "currently has before it all the relevant facts necessary to rule on the policy issue SoCalGas has raised."

high pressure or medium pressure distribution pipelines through regulator stations and finally, to end use customers.” However, as IP et al. point out, these maps carry a disclaimer that state in part that SoCalGas “does not represent that the information” on the maps “is accurate.”

In a nutshell, the two declarations simply assume that the California-produced gas that flows from the transmission line into the distribution system will not be blended with other gas supplies. However, the declarations fail to describe the circumstances that must exist in order for this kind of situation to occur, or whether such situations have occurred in the past. In addition, SoCalGas did not provide any citations to the record in this proceeding to support its assumption that the gas will not be blended with other gas supplies. Furthermore, the information contained in the two declarations have not been subjected to any discovery or to cross-examination.

SoCalGas’ petition also references the Consent Decree and suggests that the Consent Decree’s endorsement of certain gas quality enforcement protocols of El Paso “is useful for the Commission’s deliberations in this proceeding....” The producers correctly point out, however, that the Consent Decree was not introduced or discussed by SoCalGas during the evidentiary hearings.

Under normal circumstances, we would deny SoCalGas’ petition because SoCalGas has failed to establish a basis upon which D.07-08-029 should be modified. We remain concerned, however, that if the situation described by SoCalGas does materialize, whether end-use customers and SoCalGas’ system will experience safety-related problems. This concern was expressed in D.07-08-029 where we talked about our “obligation to balance the interests of the safety and integrity of the transmission system with the statutory goal in [Public

Utilities Code] Section 785 of encouraging the increased production of California gas.” (D.07-08-029, p. 33.)

Instead of denying or granting SoCalGas’ petition at this point in time, this proceeding should be reopened for the purpose of taking additional evidence on the issues of: (1) whether California-produced gas can enter into SoCalGas’ transmission line and be delivered into the distribution line without the opportunity for blending or mixing with other gas supplies; and (2) for non-hydrogen sulfide constituents, what kind of monitoring interval should apply if the California-produced gas can enter into SoCalGas’ transmission line and be delivered into the distribution line without an opportunity for blending or mixing with other gas supplies.

The assigned Administrative Law Judge (ALJ) should be directed to issue a ruling to hold a prehearing conference to discuss the procedural process for addressing these additional issues. SoCalGas and the California producers are encouraged to discuss these issues prior to the prehearing conference to determine if the safety-related concerns can be reconciled with encouraging the production of California gas. Following the procedural process that results from the prehearing conference, we then plan to issue a decision on whether SoCalGas’ petition to modify D.07-08-029 should be granted or denied.

The suspension of SoCalGas’ filing of the advice letter filing, as set forth in the November 27, 2007 letter from the Commission’s Executive Director, should continue until we have resolved the two open issues and a decision has been adopted on whether SoCalGas’ petition should be granted or denied.

#### **4. Comments on Proposed Decision**

The proposed decision of ALJ John S. Wong in this matter was mailed to the parties in accordance with Public Utilities Code § 311 and comments were

allowed pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure. Opening comments were filed on January 9, 2009, by SoCalGas, and reply comments were filed on January 16, 2009, by Exxon Mobil and IP et al. All of the comments have been reviewed and considered, but no changes to the proposed decision were required.

## **5. 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. SoCalGas seeks to modify D.07-08-029 to allow SoCalGas to expand the four to eight minute interval for the monitoring of non-hydrogen sulfide constituents to those California producers who deliver gas into SoCalGas' transmission line where this gas can be delivered to end use customers through SoCalGas' distribution system.
2. D.07-08-029 adopted the four to eight minute interval for the monitoring of non-hydrogen sulfide for California producers who are directly connected to SoCalGas' distribution main.
3. No ambiguity exists in D.07-08-029.
4. D.07-08-029 clearly states that a four to eight minute enforcement interval will apply to California gas producers whose gas is delivered directly into SoCalGas' distribution system, and that a 24-hour enforcement interval will apply to California producers who are directly connected to SoCalGas' transmission system.
5. SoCalGas acknowledges that no evidence was presented on whether end use customers are situated so that they could receive undiluted, off-spec California gas from a transmission pipeline.

6. The two declarations assume that the California-produced gas that flows from the transmission line into the distribution system will not be blended with other gas supplies, and fail to describe the circumstances that must exist in order for this kind of situation to occur or whether such situations have occurred in the past.

7. SoCalGas did not provide any citations to the record to support its assumption that the gas will not be blended with other gas supplies.

8. The two declarations and the Consent Decree were not introduced into evidence during the evidentiary hearings in this proceeding.

9. We remain concerned that if the situation described by SoCalGas does materialize, whether end-use customers and SoCalGas' system will experience safety-related problems.

### **Conclusions of Law**

1. Instead of denying or granting the petition, this proceeding should be reopened for the purpose of taking additional evidence on two issues so that we can resolve SoCalGas' petition to modify D.07-08-029.

2. The assigned ALJ should be directed to issue a ruling to hold a prehearing conference to discuss the procedural process for addressing the two issues in this proceeding.

3. The suspension of SoCalGas' filing of the advice letter filing, as set forth in the November 27, 2007 letter from the Commission's Executive Director, should continue until we have resolved the two open issues and a decision has been adopted on whether SoCalGas' petition should be granted or denied.

## **O R D E R**

**IT IS ORDERED** that:

1. We decline at this point in time to grant or deny the October 4, 2007 petition for modification of Decision 07-08-029, filed by Southern California Gas Company (SoCalGas), until we have resolved two other issues in this proceeding listed below.

2. This proceeding shall be reopened to for the purpose of taking additional evidence on the issues of: (1) whether California-produced gas can enter into SoCalGas' transmission line and be delivered into the distribution line without the opportunity for blending or mixing with other gas supplies; and (2) for non-hydrogen sulfide constituents, what kind of monitoring interval should apply if the California-produced gas can enter into SoCalGas' transmission line and be delivered into the distribution line without an opportunity for blending or mixing with other gas supplies.

3. The assigned Administrative Law Judge shall issue a ruling to hold a prehearing conference to discuss the procedural process for addressing the two issues identified in the ordering paragraph above.

4. The extension granted to SoCalGas to file its advice letter, which is contained in the November 27, 2007 extension letter of the Commission's Executive Director, shall continue until the Commission resolves the two open issues in this proceeding and a decision is adopted concerning SoCalGas' petition for modification.

5. Application 04-08-018 remains open.

This order is effective today.

Dated January 29, 2009, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH

JOHN A. BOHN  
RACHELLE B. CHONG  
TIMOTHY ALAN SIMON  
Commissioners