

Decision 09-02-030 February 20, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Harbor City Estates, LLC,

Complainant,

vs.

Southern California Gas Company (U904G),

Defendant.

Case 07-01-007
(Filed January 4, 2007)

Edward G. Poole, Attorney at Law, for
Anderson & Poole, complainant.

Allen K. Trial, Attorney at Law, for
San Diego Gas & Electric Company, defendant.

MODIFIED PRESIDING OFFICER'S DECISION

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MODIFIED PRESIDING OFFICER'S DECISION

Harbor City Estates, LLC seeks an order that Southern California Gas Company (SoCalGas) accept transfer of Harbor City's submetered gas system pursuant to Pub. Util. Code §§ 2791-2799. This decision finds that the System meets the requirements set forth in § 2794 and has a value of \$132,544, and orders SoCalGas to complete the transfer as set forth in §§ 2791-2799.

1. Procedural History

Harbor City Estates, LLC (Harbor City) operates a manufactured housing community, commonly known as a mobile home park (MHP), in Harbor City, California. On January 4, 2007, Harbor City filed this complaint against SoCalGas. Harbor City asks that SoCalGas be required to accept transfer of Harbor City's submetered gas system (System) pursuant to Pub. Util. Code §§ 2791-2799.

On February 21, 2007, SoCalGas answered the complaint and also moved to dismiss. Harbor City responded to the motion on March 8, 2007, and SoCalGas replied to the response on March 16, 2007.

A key procedural defect alleged by SoCalGas was the failure of the parties to engage in Commission-sponsored mediation. Administrative Law Judge (ALJ) Victoria S. Kolakowski, in a ruling on April 6, 2007, offered the services of the Commission's Alternative Dispute Resolution (ADR) program to help the parties in reaching a settlement of the dispute. In response to the ruling, the parties engaged in mediation with a neutral ALJ otherwise not involved in this proceeding. On August 2, 2007, mediation concluded; no settlement was reached.

A prehearing conference (PHC) was held on September 10, 2007. At the PHC, the parties discussed the issues, and agreed upon a schedule for the conclusion of the proceeding. The parties later held an unreported status conference call with ALJ Kolakowski on October 12, 2007, and agreed upon a schedule that could not be completed within the statutory period of 12 months. The assigned Commissioner and ALJ Kolakowski issued a Scoping Memo on October 23, 2007, which included the extended schedule.

The Commission granted an extension of six months for the statutory deadline in Decision (D.) 07-12-041, dated December 20, 2007. The new deadline for completion of this proceeding was July 7, 2008.

Hearings were held on December 17 and 18, 2007, at the Commission's headquarters in San Francisco.¹ Harbor City's opening brief, along with a request for official notice of certain documents, was filed on January 18, 2008. SoCalGas' opening brief was filed on February 1, 2008. Harbor City filed a reply brief on February 8, 2008, at which point the record was closed and the case submitted for decision.

During the drafting of this decision, ALJ Kolakowski determined that additional testimony was necessary, and so issued a ruling on April 7, 2008, reopening the record for supplemental testimony. The parties submitted supplemental testimony on April 23, 2008, and rebuttal testimony on April 30, 2008.

¹ Certain evidentiary issues arising from those hearings are addressed in Section 4 below.

On April 23, 2008, Harbor City requested supplemental hearings, which were held on June 23, 2008, at the end of which the record was again closed and the case submitted for decision.

Because the delay caused by the supplemental hearings would result in the present decision issuing after July 7, 2008, the Commission approved in D.08-06-033 (dated June 26, 2008) an additional six-month extension for resolving this matter, setting a new deadline is January 7, 2009. The Commission subsequently extended the deadline in D.08-12-051 (dated December 18, 2008) to May 29, 2009.

Harbor City's request for official notice was granted in an ALJ's Ruling on August 15, 2008. That ruling opened the record to receive the noticed documents as exhibits, then closed the record and resubmitted the case for decision.

2. The Harbor City Submetered Gas System

Harbor City operates and maintains the System, which serves 192 spaces in an MHP in Harbor City, California, with SoCalGas providing the master meter gas service.² The System is commonly trenched with other utilities. The depth of the trenches varies throughout the system, but was originally specified to be at a minimum depth of 18 inches, which is not in dispute.³ The system was originally specified to be constructed from polyethylene (PE) pipes,⁴ although whether this is the case was a matter of dispute at hearing.

² Exhibit 1, pages 2-3.

³ See Exhibit 5-A, B and C. Harbor City's Schones excavated two random locations in the System, and determined the depths to be 19 inches and 30 inches of cover. Exhibit 16, page 3.

⁴ Exhibit 5-B.

Whether the System is built entirely of PE pipes or of a mixture of PE and metal was a contested issue in this proceeding. It is undisputed that the System does not contain cathodic protection, which is needed to arrest corrosion in metallic pipes. SoCalGas contends that the failure to provide such protection makes the System of questionable reliability.⁵

Harbor City contends that cathodic protection is not necessary, as the System is entirely PE.⁶ SoCalGas argues that there is no proof that the System does not contain metallic pipe, partly because necessary records were not maintained.⁷ Harbor City argues that this lack of records is not compelling, as the System was inspected by the governing agency at the time of construction and was found to be adequate.⁸

SoCalGas' argument was originally bolstered by certain inspection reports that referred to tests of the cathodic protection system. However, as explained below in Section 5, these reports were completed by an inspector, Ed Trzepacz, who did not actually perform the inspections and who falsified reports.

Absent these falsified reports, we find no credible reason to doubt that the System was constructed of PE pipes in accordance with the plans. As the system was inspected at the time of construction and was found to be compliant with

⁵ Exhibit 12, pages 4-6.

⁶ Exhibit 3, page 5.

⁷ Exhibit 12, pages 9-11.

⁸ Exhibit 17, page 4. The agency responsible for oversight of construction of submetered gas systems in MHPs is the California Department of Housing and Community Development, as discussed in Sections 3.3.1 and 3.4 below.

established safety regulations, we also find that the System is PE and does not require cathodic protection.

3. Transfer of Harbor City's Submetered Gas System to SoCalGas under §§ 2791 et seq.

The Legislature adopted Stats. 1996, Ch. 424, Sec. 1 (effective January 1, 1997), codified as Pub. Util. Code §§ 2791-2799, to create a formal mechanism governing transfer of MHP submetered utility systems to the gas or electric service utility that provides the master-meter service.⁹

These code sections grant the MHP operator the discretion to: (1) compel the utility to accept the transfer of any submetered system that can safely and reliably provide service to its existing customers; and (2) compel the utility to provide the MHP operator with an estimate of the costs to make the system safe and reliable.

The only Code Section that grants any discretion to the utility is in § 2794(2), which allows the utility to waive requirements that might stand as an impediment to transfer. Hence, the clear intention of the statute is to facilitate such transfers, as long as the systems meet, or can be improved to meet, the basic standards of safety and reliability.

The central question in this proceeding is whether the System meets these basic standards of safety and reliability, as well as the other requirements of §§ 2791-2799, such that SoCalGas may be compelled to accept the transfer.

⁹ In a submetered utility system such as the System, a utility supplies service to a master meter, with the operator of the submetered system operating as a small utility service for its individual submetered customers. Therefore, the System can be called either a submetered system or a master-metered system. Here, we will use the term submetered system.

3.1. The Statute

Harbor City is seeking a Commission order that SoCalGas accept transfer of the System pursuant to §§ 2791-2799. SoCalGas argues that the System does not meet the criteria for acceptability of transfer set forth in § 2794(a).

Section 2794(a) establishes three criteria which must be satisfied for a system to be considered acceptable for transfer:

- (1) It is capable of providing the end users a safe and reliable source of gas or electric service.
- (2) It meets the Commission's general orders (GOs), is compatible, and, in the case of new construction, meets the gas or electric corporation's design and construction standards insofar as they are related to safety and reliability. The parties may waive these requirements by mutual agreement and, where necessary, with Commission approval. The agreed upon deviations may be reflected in the purchase price.
- (3) It is capable of serving the customary expected load in the park or community determined in accordance with a site-specific study, studies of comparable parks or communities, industry standards, and the gas or electric corporation's rules as approved by the Commission.

Harbor City has demonstrated that the System meets these criteria, as explained herein.

3.2. Standards of Safety and Reliability

SoCalGas relies in its testimony and written arguments upon two sets of standards regarding safety and reliability. The first is the minimum standards for pipeline safety regulations set forth in 49 Code of Federal Regulations (C.F.R.) Part 192 which apply to all gas pipeline systems. SoCalGas argues that these regulations constitute an irrefutable minimum standard for safety for gas

systems.¹⁰ The second is SoCalGas' own standards for pipeline safety, which it contends it must follow pursuant to 49 C.F.R. § 192.13(c), which provides that utilities must follow their own safety procedures.¹¹ SoCalGas is correct in its reliance upon the federal standards, but is incorrect in its reliance upon its own standards.

The Commission's GO 112-E, Section 101.2 incorporates by reference 49 C.F.R. Part 192. Therefore, the minimum safety standards set forth in 49 C.F.R. Part 192 are applicable to all gas pipelines covered under GO 112-E, including the System.

SoCalGas' standards, which are binding on SoCalGas under 49 C.F.R. § 192.13(c), are an entirely different matter, as these are within SoCalGas' discretion and control.¹² While this provision requires SoCalGas to follow its own standards, it neither requires nor justifies SoCalGas using those standards beyond the minimums set forth in 49 C.F.R. Part 192 to thwart the application of §§ 2791-2799. As explained below, some of the discretionary SoCalGas standards would eliminate most MHP submetered systems from eligibility for transfer under §§ 2791-2799.

¹⁰ SoCalGas Opening Brief, pages 2-3.

¹¹ Exhibit 12, pages 7-8.

¹² 49 C.F.R. § 192.13(c) allows utilities to "modify as appropriate" their own "plans, procedures, and programs."

It may be that some MHP submetered gas systems, perhaps even this System, may not meet all of the ordinarily exacting standards that SoCalGas applies to its own operations. However, the legislature did not require that a submetered gas system meet the utility's internal standards to be eligible for transfer pursuant to §§ 2791-2799. That is consistent with the Legislature's goal, in adopting §§ 2791-2799, to have gas utilities acquire, operate and maintain these MHP submetered systems, as long as they meet the ordinary minimum safety and reliability requirements.

Therefore, to the extent that SoCalGas can modify its overall standards to meet the minimum safety standards under 49 C.F.R. Part 192 in a manner that is consistent with both §§ 2791-2799 and 49 C.F.R. § 192.13(c), it must do so. As a result, in terms of determining safety and reliability, the governing standards for purposes of this Decision are those standards set forth in 49 C.F.R. Part 192.

3.3. "Safe and Reliable Source"

For a system to be fit for transfer under §§ 2791-2799, it must be "capable of providing the end users a safe and reliable source of gas or electric service." Harbor City notes that there have been no reports of leaks or other problems with the System,¹³ and other than minor correctable reporting irregularities, the Commission's Utility Safety and Reliability Branch (USRB) has not cited any problems with the System during its regular inspections.¹⁴ There is no evidence that persuasively suggests that the System is unsafe or unreliable.

¹³ Exhibit 3, pages 5 and 11.

¹⁴ Exhibit 3, page 5.

SoCalGas argues that the System does not comply with certain of the pipeline safety regulations set forth in 49 C.F.R. Part 192, that these regulations constitute a minimum safety standard for gas systems, and that consequently, as a matter of law, the System is unsafe.¹⁵

There are four major areas in which SoCalGas argues that the System deviates from the federal safety standards: (1) depth of burial of the mains; (2) separation of the mains in trenches from water pipes; (3) clearance of the service line risers from the homes; and (4) system pressure. Each area is addressed separately below.

3.3.1. Depth of Burial of Mains

With regard to the depth of the mains, SoCalGas notes that 49 C.F.R. § 192.327(d) states:

A main¹⁶ may be installed with less than 24 inches (610 millimeters) of cover if the law of the State or municipality:

- (1) Establishes a minimum cover of less than 24 inches (610 millimeters);
- (2) Requires that mains be installed in a common trench with other utility lines; and
- (3) Provides adequately for prevention of damage to the pipe by external forces.

¹⁵ SoCalGas Opening Brief, pages 2-3.

¹⁶ A “main” is defined in 49 C.F.R. § 192.3 as “a distribution line that serves as a common source of supply for more than one service line.” The System comprises both mains, which are primarily buried beneath the roadways, and service lines connected to the mains, which bring the gas to the individual homes.

In California, the permitting authority for construction of MHP submetered gas systems is the California Department of Housing and Community Development (HCD). HCD regulations establish a minimum cover requirement of 18 inches, which the System complied with at the time of construction.¹⁷ The difference between HCD regulations and those described in 49 C.F.R. § 192.327(d) is that HCD regulations permit common trenching, rather than require common trenching. The difference is immaterial for present purposes because, in fact, the System's gas mains are installed in common trenches with other utilities.¹⁸

From a safety engineering perspective, there is no physical distinction between a gas main that is required to be commonly trenched and one that is permissibly commonly trenched.¹⁹ Hence, the failure of the System to meet this semantic requirement does not make the System any less safe than one that would otherwise comply with 49 C.F.R. § 192.327(d).

SoCalGas' arguments have shifted over the course of the proceeding (as have Harbor City's), but in general they are that: (1) mains must be buried at a depth of alternatively at least 24 inches²⁰ or at least 30 inches;²¹ and (2) common

¹⁷ Exhibit 22.

¹⁸ Exhibits 5-A, B and C.

¹⁹ While the Commission and the parties are rightly sensitive to the nuances of legal distinction between these phrases, the pipes are completely oblivious to our parsing of words – they respond only to physical laws. The Systems pipes' ability to be operated safely is a matter of engineering and physical fact, not a matter of legal status.

²⁰ SoCalGas Opening Brief, pages 14-16.

²¹ Exhibit 12, page 8; Hearing Transcript, page 172, line 4 to page 175, line 14.

trenching with other utilities is inherently unsafe.²² These arguments are inconsistent with 49 C.F.R. § 192.327(d), which allows common trenching under certain circumstances at a depth of less than 24 inches, and in general at a surface cover of 24 inches. Hence, the Commission finds that the System's common trenching at 18 inches of cover is not an impediment to the safe and reliable provision of gas services.

3.3.2. Separation of Mains in Common Trench

SoCalGas has argued that mains in a common trench must be separated by 12 inches,²³ and that the clearance indicated in the plans for the System (Exhibits 5-A, 5-B and 5-C) does not permit safe maintenance of the System.²⁴ Specifically, SoCalGas cites 49 C.F.R. § 192.325(b), SoCalGas' own standards and 2007 California Plumbing Code, Appendix E, Part D. E 36.1.²⁵

As SoCalGas acknowledges,²⁶ the language of 49 C.F.R. § 192.325(b) does not set a clear standard. Further, for reasons explained above, SoCalGas' standards are not governing. Hence, only the California Plumbing Code is relevant.

The 2007 California Plumbing Code is found at Cal. Code of Regs., Tit. 24, Part 5, and is adopted by the California Building Standards Commission on a triennial basis. SoCalGas alleges that Appendix E of this Code prohibits the

²² Exhibit 12, page 9.

²³ Exhibit 12, page 8; Exhibit 19, pages 5-6.

²⁴ *Id.*

²⁵ Exhibit 19, pages 5-6.

²⁶ *Id.*

placement of commonly trenched utilities within 12 inches.²⁷ Harbor City claims that this provision of Appendix E was not adopted.²⁸ Harbor City is correct.²⁹ Therefore, SoCalGas has not demonstrated that the System is unsafe due to the close placement of commonly trenched utilities.

3.3.3. Clearance of Risers from Homes

SoCalGas argued that the riser and meter assembly, in some cases, is located within four feet of the homes, which is a violation of SoCalGas' standards.³⁰ Harbor City cites Cal. Code of Regs., Tit. 25, § 1222(b), which at the time of construction of the System required that MHP gas outlets terminate within four feet of the outside rear half of the mobile home. Having concluded earlier that SoCalGas may not establish discretionary standards contrary to California law, the Commission concludes that this construction was required under California law and does not render the System unsafe or unreliable.

3.3.4. System Pressure

SoCalGas maintains its overall gas system pressure at a district pressure of 42-47 pounds per square inch gauge (psig), which is significantly higher than the System's pressure of roughly 5 psig.³¹ SoCalGas asserts that after any transfer, SoCalGas would likely operate the System at its higher system pressure.

²⁷ *Id.*

²⁸ Exhibit 16, page 8; Hearing Transcript, page 226, line 11 through page 227, line 28.

²⁹ See http://www.documents.dgs.ca.gov/bsc/prpsd_chngs/documents/2006/Part5-4.pdf at page 43, where the California Building Standards Commission states "Appendix E is not adopted."

³⁰ Exhibit 12, page 9 and Exhibit 18, page 5.

³¹ Exhibit 8, page 7.

SoCalGas argues that the System may not have been tested at this higher pressure, and therefore might become subject to leaks.

Alternatively, SoCalGas acknowledges that it could safely operate the System at a lower pressure if a district regulator station were installed at the master meter entrance point to the System. A district regulator station would cost approximately \$250,000.³² SoCalGas claims that such a regulator station is required under 49 C.F.R. § 192.195, 49 C.F.R. § 192.199, and 49 C.F.R. § 192.201.³³

SoCalGas further contends that the System cannot be operated reliably due to the low pressures in the System.³⁴ SoCalGas contends that operation at low pressures poses potential safety and reliability risks, particularly in a common trench with water utilities, because a leak could result in water entering the low pressure system,³⁵ which SoCalGas contends provides a safety and reliability hazard for the gas system.

Harbor City argues that if SoCalGas' interpretation were correct, then most MHP submetered systems would require a district regulator station, as relatively low pressure is a common operational situation with MHP submetered systems.³⁶ Harbor City notes that it has not had complaints about the quality of

³² Exhibit 19, pages 5-6.

³³ Exhibit 18, page 4.

³⁴ Exhibit 18, page 3.

³⁵ *Id.*

³⁶ Exhibit 17, pages 2-3.

service,³⁷ and has not been cited by the Commission's USB staff except for a minor reporting violation.³⁸

The only cited authority that actually requires a district regulator station in these circumstances is a SoCalGas standard. That standard, as we concluded above, cannot govern where it would thwart the application of §§ 2791-2799. If that standard were to govern universally, then most submetered systems operated at low pressure would need a costly district regulator station to allow transfer to the gas utility. That result is not necessary or reasonable.

SoCalGas' Koskie testified that:

...any place within the system, within our own system, any time that we would reduce pressure, we would change from one pressure, one pressure area to a lower pressure, the method that we would do that is through a regulator station. As opposed to when we come to the customer, when we come to the termination where it's turned over to the customer, the requirements are different. The requirements would be a single regulator to drop the pressure down to the customer. And then the customer would have regulation, and it would have safeguards themselves as well.³⁹

Koskie was unclear why a district regulator station would not be required to enter the MHP submetered system if SoCalGas treated it as a single customer but would be if required for such a system if SoCalGas operated it.⁴⁰

³⁷ Hearing Transcript, page 150, lines 6 through 10.

³⁸ Exhibit 3, page 5.

³⁹ Hearing Transcript, page 247, lines 18-28.

⁴⁰ If SoCalGas believed the system to be unsafe, then SoCalGas either should have already installed a district regulator station or otherwise isolated the system from other SoCalGas facilities.

SoCalGas also argues that the System has not been tested at pressures comparable to SoCalGas' recommended pressure of 40-60 psi, or even demonstrated to have been tested pursuant to 49 C.F.R. § 192.513(c).⁴¹ However, since we find the System may be operated safely at the current pressures, this is not a concern.

In light of the above discussion, there is no compelling reason to conclude that installation of a district regulator station prior to transfer would be necessary, or that the System could not be safely operated by SoCalGas.⁴²

3.4. Compliance with the Commission's General Orders

Section 2794(a)(2) requires that the System comply with all Commission's GOs. GO 112-E, Section 101.2 incorporates by reference all of 49 C.F.R. Part 192. This would include 49 C.F.R. § 192.327(d).

SoCalGas argues that under 49 C.F.R. § 192.327(d) which governs line cover, the System does not meet the required depth requirement of 24 inches or qualify for the exemption in that subsection.⁴³ However, that is not the appropriate end point for the present inquiry, and there are several compelling reasons to believe that the Commission's General Order should be interpreted to be consistent with a broader view of this requirement.

⁴¹ Exhibit 12, page 11; Exhibit 19, page 5.

⁴² This decision relates to the transfer of the System and the costs associated with that transfer. The question of what changes SoCalGas might make to the System after transfer is beyond the scope of this proceeding.

⁴³ As noted above, the System meets a requirement of 18 inches. Exhibit 12, pages 6-8. See detailed discussion of this issue at Section 3.3.1 above.

First and foremost, the agency designated by the Legislature to oversee the construction of MHP submetered gas systems is now, and has been for the relevant past, HCD. HCD has incorporated into its regulations the same provisions of 49 C.F.R. Part 192 as the Commission has in GO 112-E. Nevertheless, the clear language of Cal. Code of Regs., Tit. 25, § 1216 permits trenching at 18 inches without any requirement of joint trenching.

In deference to our sister agency's interpretation of its own guiding statutes and regulations, the Commission accepts gas mains trenched at 18 inches in MHPs as meeting the minimum gas safety standards under federal law.

This is not an unreasonable conclusion. Prior to the USRB taking over enforcement of 49 C.F.R. Part 192 in 1995, the U.S. Dept. of Transportation's Office of Pipeline Safety (OPS) had direct responsibility for oversight of these MHP submetered gas systems. There is nothing in the record of this proceeding, or readily available in the public records of which the Commission could take official notice, that indicates that OPS has ever objected to HCD's interpretation of this regulation.

It is a basic precept of legislative interpretation that when presented with competing interpretations, those interpretations which render the legislation inoperative are disfavored over those which meet the legislative intent. It is clear in this case that the Legislature intended that utilities must receive in transfer any system which may be safely and reliably operated.

Fundamentally, the purpose of all of these regulations is to ensure that the gas system meets minimum safety and reliability requirements. As explained above in Section 3.3, the System is safe, and as explained below in Section 3.5, it is reliable. To apply the interpretation propounded by SoCalGas to the System would render a great number, if not most, MHP submetered gas systems

ineligible for transfer under §§ 2791-2799. This cannot be what the Legislature intended when adopting §§ 2791-2799.

For these reasons, GO 112-E must be interpreted to be consistent with HCD practices, i.e., to allow a depth of 18-inches even though joint trenching is not required by the HCD regulations. There is no other deviation from the GOs alleged by SoCalGas, other than those based upon SoCalGas' own safety standards, which are not relevant to this determination. Therefore, we find that the System meets the requirements of GO 112-E.

3.5. Capable of Serving the Customary Expected Load

Harbor City has satisfactorily provided gas service to its residents since the re-installation of the System in 1995 without incident or disruption of service.⁴⁴ While SoCalGas raises numerous hypothetical objections to the System, it provides no credible contrary testimony. Hence, the System meets this requirement for transfer under § 2794(a).

3.6. Transfer is Appropriate Under § 2794(a)

As demonstrated above, each of the three essential elements required to allow a transfer of a submetered system pursuant to § 2794(a) are met by the System. Hence, the System is eligible for transfer, and SoCalGas must accept the transfer under §§ 2791-2799.

4. Valuation of Harbor City's Submetered Gas System

The parties disagree regarding the valuation of the System. Harbor City argues that it should receive benefits of two potential revenue streams: (1) the

submeter discount; and (2) the line extension (LE) allowance.⁴⁵ SoCalGas responds that the revenues gained by SoCalGas from the transfer are more than offset by the increased costs represented by the submeter discount,⁴⁶ and that the purpose of the LE allowance is not met by the transfer of a submetered system.⁴⁷ We reject Harbor City's arguments for the reasons set forth below.

The submeter discount is the differential between the master-meter rate paid by the MHP operator to the gas utility for the purchase of gas for its system, and the applicable rate charged by the gas utility to its customers. Pub. Util. Code § 739.5(a) requires that an MHP operator charge its customers/tenants the same rate as the gas utility charges its customers. Section 739.5(a) also says that:

The commission shall require the corporation furnishing service to the master-meter customer to establish uniform rates for master-meter service at a level which will provide a sufficient differential to cover the reasonable average costs to master-meter customers of providing submeter service, except that these costs shall not exceed the average cost that the corporation would have incurred in providing comparable services directly to the users of the service.

Harbor City argues that since an average rate was used, some MHP operators will have costs greater than the average, while other MHP operators will have costs below the average. Harbor City is concerned that SoCalGas will try to "cherry-pick" which systems to accept in transfer, and only accept the

⁴⁴ Exhibit 3, pages 4-5 and 12; Hearing Transcript page 150, lines 6-10; Harbor City's Opening Brief, pages 6-7.

⁴⁵ Exhibit 7, pages 4-9.

⁴⁶ Exhibit 9, page 4.

⁴⁷ Exhibit 9, pages 5-6.

lower-cost systems.⁴⁸ This will also result in the average costs increasing due to stranding the higher cost systems.

Harbor City's concerns are unwarranted. First, as established above, SoCalGas has no discretion in whether to accept a qualifying system. Therefore, SoCalGas cannot "cherry-pick" which systems to accept, since it has no discretion in which systems to accept for transfer.

Second, while it is true that some MHP operators benefit from the submeter discount being an average cost while others will be disadvantaged, that is an artifact of the averaging process and not an intentional windfall that entitles the MHP operator to benefit during the transfer.

Finally and most importantly, the clear purpose of the submeter discount is to compensate the MHP operator for the costs of operation of the submetered system. Once SoCalGas accepts transfer of the System, Harbor City will be relieved of the operations of the System, and therefore should be revenue neutral to the transfer.

The second source of revenues to which Harbor City argues it should be entitled is the LE allowance.⁴⁹ This is a fee paid by the gas utility to an applicant, usually a residential real estate developer, to ensure recovery of refundable costs of establishing new service. Harbor City argues that since the submetered customers were never eligible to receive the LE allowance, they have been disadvantaged, and hence the appropriate solution is to provide the allowance to

⁴⁸ Exhibit 7, pages 6-7.

⁴⁹ Exhibit 7, page 7.

the builder, Harbor City.⁵⁰ SoCalGas argues that the LE allowance is for new customers only.

Fundamentally, although technically the 192 customers of Harbor City will be new to SoCalGas, there will be no difference in gas usage – in essence, one larger customer is being subdivided into 192 smaller customers. There is no reason why an LE allowance would be appropriate in this situation.

Also, there is nothing in §§ 2791-2799 that suggests that the Legislature intended for the transfer to compensate the MHP operator for past expenses, other than by receiving the current value of the system. Hence, we find that the LE allowance is not applicable to existing MHP submetered systems.

SoCalGas contends that the value of the System is zero, because, according to SoCalGas, the System needs to be totally replaced.⁵¹ We earlier rejected all of SoCalGas' arguments that the System needs to be totally replaced; consequently, SoCalGas' contention predicated on that need must fail.

When asked what the assessed value of the System would be if a transfer were ordered, SoCalGas' Daniel Meltzer testified that the System would be valued at \$132,544.⁵² This valuation is based upon a proprietary formula that considers a number of factors, which included characteristics such as total footage of mains, total footage of service lines, meter counts, number of spaces in the MHP, the condition of the pipes based upon factors such as age, material,

⁵⁰ *Id.*, pages 8-9. Although Harbor City states that the LE allowance was not available to customers, it would be the MHP operator who received the LE allowance. For a more thorough discussion of the LE allowance, see D.07-07-019, pages 6-9.

⁵¹ Exhibit 8, page 9.

⁵² Exhibit 19, page 6; Hearing Transcript, page 252, line 12 through page 253, line 14.

condition, etc., and installation date.⁵³ Since there was no contrary testimony to this valuation beyond that discussed above, the Commission adopts this figure as the value of the System.

In terms of costs of transfer, those are set forth in § 2795, and will be determined by the parties during the transfer, with the recognition that the System is adequate for transfer and need not be replaced or improved by installation of a district regulator station.

5. Other Issues

During the evidentiary hearings on December 17, 2008, Harbor City Estates offered the testimony of the Vice President of Park Utilities, Inc. (Park Utilities), Gary Mowrey. Park Utilities was contracted to perform quarterly patrol inspections of the System.⁵⁴ Mowrey was a substitute witness for Park Utilities' President, Thomas Grant, who was unavailable to testify.

Mowrey acknowledged on cross examination that one of Park Utilities' inspectors, Ed Trzepacz, filed falsified reports for inspections related to Harbor City, which were included in Harbor City's Exhibit 3.⁵⁵ Mowrey testified that he had not noticed that the falsified reports were included in Exhibit 3.

The Commission takes very seriously the submission of falsified records into the record of a proceeding, particularly if it were an intentional or willfully negligent violation of Rule 1.1. Hence, ALJ Kolakowski examined under oath three witnesses: (1) Mowrey; (2) Craig Townsend, Harbor City's on-site

⁵³ Exhibit 9, page 8.

⁵⁴ Exhibit 3, page 4.

⁵⁵ Hearing Transcript, page 44, line 21 through page 45, line 20.

manager; and (3) Allan Alt, Townsend's supervisor and off-site property manager. All witnesses testified that Harbor City was unaware prior to the evidentiary hearing that Park Utilities had falsified records.

Upon review of the testimony, ALJ Kolakowski ruled that the introduction of the falsified reports was not intentional on the part of Harbor City or its attorney, and hence no sanctions beyond admonishment were imposed.⁵⁶ In an ALJ's ruling on January 7, 2008, the reports identified in Exhibit 11 were admitted into the record for the purpose of establishing what the parties reasonably believed at the time of the filing of the complaint, and not for their probative value regarding the condition of the System during those periods. The remaining reports in Exhibit 3 were admitted into the evidentiary record.

6. Disposition of Rulings and Motions

All previously issued rulings are affirmed. All pending motions not otherwise granted herein are denied.

⁵⁶ This was an unfortunate incident that distracted from an already complex proceeding. It is essential that counsel/representatives carefully review with their witnesses all documents in their testimony to be certain that the testimony and documents are correct. In situations like this, where a witness is substituting for another witness in sponsoring prepared testimony, such review is still more a necessity. Mowrey did a great disservice to Harbor City, to SoCalGas and to the Commission by his failure to adequately prepare for the hearing. Grant did a far greater disservice, as he was Trzepacz' direct supervisor and should have been aware of the falsified reports, and yet he included these falsified records with his written testimony submitted under penalty of perjury.

7. Testimony and Exhibits

The following testimony was received into the record at the conclusion of the evidentiary hearings held on December 17, 2007 and December 18, 2007 (along with sponsoring party):

Exhibit 1 - Prepared Testimony of Craig Townsend (Harbor City)

Exhibit 2 - Photographs of Meter Locations (SoCalGas)

Exhibit 4 - Qualifications of Gary Mowrey (Harbor City)

Exhibit 5-A - Plans for Natural Gas Distribution System of Harbor City, Sheet 1 of 2 (SoCalGas)

Exhibit 5-B - Plans for Natural Gas Distribution System of Harbor City, Sheet 2 of 2 (SoCalGas)

Exhibit 5-C - Notes of Water System of Harbor City, Sheet 2 of 2 (SoCalGas)

Exhibit 6 - Printout of webpage for OPS Programs for U.S. Dept. of Transportation's (USDOT) Office of Pipeline Safety (OPS) (SoCalGas)

Exhibit 7 - Testimony of Richard J. McCann, Ph.D. (Harbor City)

Exhibit 8 - Testimony of Daniel D. Meltzer (SoCalGas)

Exhibit 9 - Testimony of Michael R. Schmidt (SoCalGas)

Exhibit 10 - Spreadsheet of Analysis of Schmidt's workpapers (Harbor City)

Exhibit 12 - Testimony of W. Jeffrey Koskie (SoCalGas)

Exhibit 12-G - Printout of webpage for OPS Regulations and Interpretations for USDOT's OPS (SoCalGas)

Exhibit 12-H - Utility Safety Branch Natural Gas & Propane Safety Report for 1998 (SoCalGas)

Exhibit 13 - Copy of Southern California Edison Company document "Process to Transfer Distribution Facilities/System to Southern California Edison" (Harbor City)

Exhibit 14 - "Answers and Objections to Southern California Gas Company to the First Set of Data Requests Propounded by Harbor City Estates, LLC" (Harbor City)

Exhibit 15 - "Answers and Objections to Southern California Gas Company to the Second Set of Data Requests Propounded by Harbor City Estates, LLC" (Harbor City)

The following Exhibits were admitted in the ruling of January 7, 2008, pursuant to caveats contained therein:

Exhibit 3 - Prepared Testimony of Thomas Grant and adopted by Gary Mowrey (Harbor City)

Exhibit 11 - Copies of all Patrolling Surveys from Ed Trzepacz (Harbor City)

Testimony was received into the record at the conclusion of the supplemental evidentiary hearings held on June 23, 2008. The identification of these exhibits was modified in an ALJ ruling on August 15, 2008:

Exhibit 16 - Additional Testimony (Harbor City)

Exhibit 17 - Rebuttal Testimony (Harbor City)

Exhibit 18 - Additional Testimony of W. Jeffrey Koskie (SoCalGas)

Exhibit 19 - Additional Testimony of Daniel D. Meltzer (SoCalGas)

Exhibit 20 - Rebuttal Testimony (SoCalGas)

In addition, on January 18, 2008, Harbor City requested that the Commission take official notice of certain documents. That request was granted in the ALJ's Ruling on August 15, 2008, and is identified as:

Exhibit 21 - Guidance Manual for Small Natural Gas Pipeline System Operators from the U.S. Dept. of Transportation (USDOT) website

Exhibit 22 - Reports of HCD related to the service line replacement of the System in 1995

8. Appeal

SoCalGas filed an appeal (Appeal) of the Presiding Officer's Decision (POD) on November 10, 2008, pursuant to Rule 14.4. Harbor City responded to the appeal on November 25, 2008.

The Appeal primarily restates the same arguments relied upon by SoCalGas in its previous motions and briefs, which are no more persuasive upon repetition. However, several of the points address the POD in a manner that warrants clarification.

At the heart of SoCalGas' appeal is its lengthy argument that the federal regulations of 49 C.F.R. preempt state regulation of pipeline safety standards. This argument is based upon an incorrect reading of the POD. We are not adopting new standards, or changing state pipeline safety standards to become looser than the federal standards.⁵⁷ Rather, we are recognizing that determination of construction compliance is properly in the jurisdiction of HCD, the state agency responsible for enforcing construction standards of MHPs; HCD itself incorporates those same federal gas safety standards into its inspection standards. It would be unreasonable for us to do otherwise, as it would be administratively burdensome (perhaps requiring review of plans, drilling test holes for depth, etc.), offensive to our sister agency's jurisdiction, and unfair to MHP operators who rely upon the inspection and certification of HCD in operating their facilities.

⁵⁷ See Appeal, page 17.

Hence, we do not reach SoCalGas' arguments about preemption, because they are not applicable in this case.⁵⁸

SoCalGas asserts in its appeal that the HCD standards apply only to "general gas 'service lines,'"⁵⁹ which is unsupported by the language of the cited provisions. Furthermore, the fact that HCD reviewed the System and its plans, which clearly specified the gas mains to be at a depth of 18 inches,⁶⁰ and subsequently approved the System, indicates that HCD's interpretation of its regulations is consistent with the approach taken herein.

Also, SoCalGas argues that the record of the proceeding "is absolutely void of any indication that Harbor City has taken measures to provide adequately for prevention of damage to the main pipelines by external forces."⁶¹ This is incorrect. The record shows that HCD inspected the System and certified that it was in compliance with its applicable standards, which incorporate 49 C.F.R. § 192.327(d) by reference. Hence, we may reasonably infer that this element was also met at the time of construction, and no evidence has been introduced to demonstrate that this has changed, or to reasonably undermine HCD's determination of the System's safety.

⁵⁸ SoCalGas questions the jurisdiction of the Commission to require that gas utilities not set their discretionary safety standards in a manner which conflicts with state law. This is based upon an incorrect reading of 49 C.F.R. § 192.13(c), as discussed above in Section 3.2 and its associated footnotes. There is therefore no preemption issue presented by that requirement.

⁵⁹ Appeal, page 11.

⁶⁰ Exhibit 5.

⁶¹ Appeal, page 13.

Minor changes have been made to the POD to resolve typographical, clarifying and other non-substantive matters, as well as to note changes to the procedural history of the proceeding subsequent to issuance of the POD.

9. Assigned Commissioner and Presiding Officer

John A. Bohn is the assigned Commissioner, and ALJ Victoria S. Kolakowski is the presiding officer.

Findings of Fact

1. This proceeding was initiated on January 4, 2007.
2. D.07-12-041 extended the statutory deadline for resolution of this proceeding to July 7, 2008.
3. D.08-06-033 subsequently extended the statutory deadline for resolution of this proceeding to January 7, 2009.
4. D.08-12-051 further extended the statutory deadline for resolution of this proceeding to May 29, 2009.
5. Evidentiary hearings were conducted on June 23, 2008 and on December 17 and 18, 2008.
6. Harbor City operates and maintains a submetered gas system (System) serving 192 spaces in a manufactured housing community (commonly known as a MHP) in Harbor City, California. SoCalGas provides the master meter gas service.
7. The System was reinstalled in 1995, and was inspected by the California HCD, the designated state agency responsible for oversight of construction of gas systems in MHPs.
8. The System is constructed of PE pipe, and is commonly trenched with water utilities, with a minimum depth of 18 inches of cover. The System

includes mains underneath the common roadways in the MHP and individual service lines from the mains to the individual customer plots.

9. The System has operated since 1995 with no complaints of disruption of service.

10. Gas systems are subject to the minimum safety standards of 49 C.F.R. Part 192. Public utilities may have additional safety standards under 49 C.F.R. § 192.13(c).

11. 49 C.F.R. § 192.327(d) permits commonly trenched utility lines to have less than 24 inches cover to comply with state law, which means that lesser cover may be safe if determined to be so under state law.

12. Cal. Code of Regs., Tit. 25, § 1216 permits trenching at 18 inches in MHPs such as the System. HCD uses 18 inches as the minimum depth for MHP gas systems that it inspects.

13. 49 C.F.R. Part 192 and the California Plumbing Code do not specify a minimum separation between gas mains and other utilities in a common trench.

14. Cal. Code of Regs., Tit. 25, § 1222(b) specified at the time of construction of the System that gas outlets be within 4 feet of the rear of each mobile home, and the System complied with that requirement.

15. The System has been operated safely at its present pressure of approximately 5 pounds psig, and may continue to be safely operated at this pressure after transfer.

16. SoCalGas' discretionary standards related to line cover, line separations, distance of risers from mobile homes, and operating pressure thwart the application of §§ 2791-2799.

17. The submeter discount is designed only to compensate the MHP operator for its costs of operating the submetered system; thus, the discount is not part of

the value of the system for purposes of a transfer under Pub. Util.

Code §§ 2791-2799.

18. The LE allowance is not applicable to existing MHP submetered systems.

19. The present value of the System is \$132,544, based upon factors such as total footage of mains, total footage of service lines, meter counts, number of spaces in the MHP, the condition of the pipes based upon factors such as age, material, condition, etc., and installation date.

20. Exhibits 1-22 are identified herein and have been offered by either Harbor City or SoCalGas as testimony.

Conclusions of Law

1. A transfer of a submetered gas system from a MHP to a gas utility is governed by §§ 2791-2799.

2. The utilities' discretionary gas safety standards may not be set in a manner that thwarts the application of state law, including Pub. Util. Code §§ 2791-2799.

3. The System is capable of providing the end users a safe and reliable source of gas service.

4. The System is capable of serving the customary expected load in Harbor City.

5. The System complies with GO 112-E.

6. The System is acceptable for transfer under § 2794.

7. Valuation of a submetered gas system may not be based upon the submeter discount or the LE allowance.

8. The appropriate valuation for a submetered gas system transferred under §§ 2791-2799 should be based upon characteristics such as total footage of mains, total footage of service lines, meter counts, number of spaces in the MHP, the condition of the pipes based upon factors such as age, material, condition, etc.,

and installation date. Based upon these factors, the appropriate value of the System is \$132,544.

9. Exhibits 1-22 have been offered as testimony by the parties and should be entered into the record of this proceeding.

10. To resolve this long-standing dispute as soon as possible, today's order should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. Southern California Gas Company (SoCalGas) shall accept transfer of the submetered gas system (System) of Harbor City Estates, LLC (Harbor City), in its present condition, pursuant to Pub. Util. Code §§ 2791-2799.

2. SoCalGas and Harbor City shall develop a cost for transfer of the System pursuant to Pub. Util. Code § 2795, in a manner that reflects a present value of the System of \$132,544 and the other guidance contained in this decision.

3. SoCalGas and Harbor City shall comply with all other provisions of Pub. Util. Code §§ 2791-2799.

4. SoCalGas shall amend its operational rules, if necessary, in a manner consistent with this decision.

5. Exhibits 1-22 are entered into the record of this proceeding, under the conditions specified herein.

6. Case 07-01-007 is closed.

This order is effective today.

Dated February 20, 2009, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners