

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION G-3420
September 18, 2008

R E S O L U T I O N

Resolution G-3420. San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCalGas) request changes to rules in their respective tariffs regarding the cost recovery of interconnections to their pipeline systems by biomethane producers. The utilities' requests are denied without prejudice.

By Advice Letters (AL) SDG&E 1760-G and SoCalGas AL 3847, both filed on March 26, 2008.

SUMMARY

SDG&E and SoCalGas request that their ratepayers pay for the costs of interconnections involving qualifying biomethane projects.¹ The subject matter of the utilities' proposals are not suitable for an advice letter per General Order (GO) 96-B. Also, in D.04-09-022, the Commission determined that project developers should pay the costs of interconnections. The proper venue for their proposals is an application.

- 1) SDG&E and SoCalGas propose that all ratepayers pay the interconnection costs for projects that are contracted and expected to deliver, for at least 5 years, biomethane volumes exceeding an average of 500 thousand cubic feet per day (Mcf/d) into a utility's pipeline system.
- 2) The utilities' proposals are controversial and raise important policy questions that are not suitable for an advice letter, per GO 96-B.

¹ Biomethane refers to biogas that has been suitably processed to meet applicable utility gas quality standards. Biogas consists primarily of methane and is gas that has not been processed to remove impurities. Biogas is considered a renewable resource as it is made from organic sources such as animal waste from dairy cows.

3) In D.04-09-022, the Commission determined that the cost of interconnection facilities should be paid by the interconnecting suppliers in all circumstances. In addition, the Commission found that LNG project developers should pay for the costs of infrastructure improvements on the utility system which are required to take deliveries from an LNG project. However, requests for deviations from the policy for LNG-related upgrades can be made through an application.

4) In Application (A.) 07-08-031, SDG&E and SoCalGas made similar proposals to those made in ALs 1760-G and 3847 (among various additional proposals). The utilities filed a motion to withdraw the application. In D.08-09-011, the Commission granted the utilities' motion and also stipulated that the Commission's Energy Division (ED) shall reject any pending advice letters which are associated with the subject of the application.

5) The ALs are denied without prejudice.

BACKGROUND

GO 96-B contains rules that govern the nature and processing of advice letters. Advice letters may be filed for non-controversial and non-policy setting matters. The Commission may authorize a departure from the rules if warranted.

GO 96-B contains rules and procedures regarding the treatment of advice letters. Advice letters are intended to be used by utilities to seek changes to their tariffs that are either non-controversial or do not raise important policy issues.² The GO also defines situations where a utility is required to file its request through an application rather than an advice letter. In particular, an application is to be used if the Commission has not specifically authorized the utility to present its proposal in an advice letter.³ However, the Commission may authorize a departure from these rules if appropriate.⁴

² GO 96-B, Rule 5.1.

³ GO 96-B, Rule 5.2(2).

⁴ GO 96-B, Rule 1.3.

In D. 04-09-022, the Commission determined that the cost of interconnection facilities should be paid by the interconnecting suppliers in all circumstances. LNG project developers bear the cost for any needed utility infrastructure improvements, but requests to deviate from this policy can be considered on a case-by-case basis through the application process.

In 2004, the Commission opened a rulemaking proceeding (R. 04-01-025) to establish policies and rules to ensure reliable, long-term supplies of natural gas to California. Among the items under consideration were the ratemaking treatment of the costs of interconnection facilities needed by interconnecting suppliers to deliver gas into the utility pipeline systems, and the costs of additional utility infrastructure improvements required for deliveries from liquefied natural gas (LNG) projects.

Existing utility tariff rules required entities seeking to gain access and deliver natural gas supplies into their pipelines to pay for such upgrades. The decision upheld these tariff provisions. SDG&E's and SoCalGas' proposal involves essentially the same situation that was addressed in the rulemaking. Like LNG, biomethane also represents a new gas supply source.

In the Phase 1 decision, D.04-09-022, issued in the rulemaking, the Commission determined the following:

“The SoCalGas and SDG&E proposal that interconnection facilities should be paid for by the interconnecting suppliers in all circumstances should be adopted and should be applied to PG&E [Pacific Gas and Electric Company] as well.” (D.04-09-022, pg. 91)

The Commission also found in that same decision:

“We will therefore adopt a policy that presumes LNG suppliers will pay the actual system infrastructure costs associated with their projects. However, requests for rolled-in, or any alternative ratemaking treatment, can be filed through the application process, with appropriate notice to customers. Those proposals, including the costs and cost recovery

mechanisms, can then be evaluated on a case-by-case basis.” (D.04-09-022, *mimeo*, p. 66)⁵

This policy is also consistent with the Commission’s treatment of electric generation projects. In D. 93-10-039, the Commission prohibited PG&E from collecting any costs from its ratepayers associated with the construction of a transmission line connecting a new non-utility owned power plant to its grid.⁶ This decision was issued in a major Commission proceeding regarding jurisdictional issues about interconnection facilities. The treatment of electric transmission interconnection costs adopted in D.93-10-039 has been recently affirmed in D.07-11-042 and D.08-03-007.

In A.07-08-031, SDG&E and SoCalGas requested approval of their Joint Climate Action Initiative (JCAI). Included in their application was a request that all ratepayers pay for the cost of interconnections involving biomethane projects.

The JCAI, filed as A.07-08-031, contained various proposals intended to accelerate the development and deployment of cost-effective, technologically-feasible greenhouse gas (GHG) emission reduction measures. Among these proposals was providing a subsidy to biomethane project developers in the form of an interconnection allowance. Under the proposal, all ratepayers would pay the interconnection costs involving projects that would deliver over 500 Mcf of biomethane per day. The developer would be responsible for the costs of collecting the biomethane and transporting it to the interconnection. SoCalGas would consider seeking recovery of these costs through an application if the funding exceeded an aggregate of \$10 million for biomethane-related interconnection costs or in extraordinary cases. The utilities thought that the interconnection allowance would encourage developers to “think big” and would promote the development of substantial and cost-effective biomethane supplies.⁷

⁵ See also D.04-09-022, Finding of Fact 45.

⁶ D.93-10-039, Volume 51 CPUC 2d, p. 598.

⁷ A.07-08-031, p. III-20.

A Proposed Decision (PD) in A.07-08-031 was mailed for comment on January 29, 2008. The PD dismissed the application without prejudice. The PD reasoned that dismissal was appropriate because the proposals were generally found to be within the scope of other ongoing proceedings. The PD was subsequently removed from the Commission's Meeting Agenda.

On June 27, 2008, SDG&E and SoCalGas filed a motion to withdraw A. 07-08-031.

On June 27, 2008, SDG&E and SoCalGas filed a motion asking the Commission if they can withdraw the JCAI without prejudice. The utilities' request is due to the recommendations of the PD, lack of recent activity in the proceeding, and the existence of other on-going climate related proceedings.

On September 4, 2008, the Commission granted SDG&E's and SoCalGas' motion to withdraw A.07-08-031 and ordered ED to reject any pending ALs which are associated with the subject of the application.

In D.08-09-011, the Commission granted the utilities' motion to withdraw A.07-08-031 and dismissed the application without prejudice. Ordering Paragraph 3 of the decision specifies the following with regard to the filing and treatment of ALs that involve proposals that were filed in the application:

"SDG&E and SoCalGas shall not file for recovery of any of the withdrawn projects, or their component parts, by an advice letter without specific authority from a Commission decision in a related matter. The Commission's Energy Division shall reject any pending advice letters which are associated with the subjects of this application" (D.08-09-011, Ordering Paragraph 3)

State policy is directed at increasing the production of biofuels as a way to reduce GHG emissions.

The State has adopted various policies with the goal of increasing the supply and use of renewable resources as a substitute for fossil fuel. Significant environmental benefits will result from the implementation of these policies, particularly the reduction of GHG emissions.

With regard to biofuels,⁸ Governor Schwarzenegger issued Executive Order S-06-06 on April 25, 2006. The Order established targets to increase the production and use of biofuels. The state's goal is to produce a minimum of 20 percent of the state's biofuel consumption within California by 2010 with the ultimate goal of achieving 75 percent by 2050. The Order also directed various state agencies to continue to work together on the previously formed Bioenergy Interagency Working Group (BIWG).

The Commission is a member of the BIWG, which is chaired by the California Energy Commission. The working group is tasked with developing an integrated and comprehensive state policy on the use of biomass for electricity generation, as well as natural gas and petroleum substitution. In July 2006, the BIWG issued the Bioenergy Action Plan for California containing objectives and strategies in support of its mission.

On March 26, 2008, SDG&E filed AL 1760-G and SoCalGas filed AL 3847. Both utilities seek revisions to their respective gas tariff rules so that all ratepayers would pay for the interconnection costs involving qualifying biomethane projects.

SDG&E and SoCalGas seek identical changes to rules, included in each respective utility's tariff, which govern access to the utilities' pipeline system. Currently, Gas Rule 39 in both utilities' tariffs specify that the party seeking to deliver gas into a utility's pipeline system must pay for the interconnection. Under the proposed revisions, all ratepayers would pay the interconnection costs for projects that are contracted and expected to deliver, for at least 5 years, biomethane volumes exceeding an average of 500 Mcf/d into a utility's pipeline system. The project developer would be responsible for all the costs associated with transporting the biomethane to the interconnection point as well as for any equipment that is unique and necessary in order for the utilities to receive the supplies.

The utilities state that there are more than 1.7 million dairy cows in California, with about 40 percent of them located within the combined SDG&E/SoCalGas service territory. Collectively, the dairies in the utilities' service territories have

⁸ This term includes biomethane and biogas.

the potential to produce up to 18 billion cubic feet of methane per year (approximately 50 million cubic feet per day). Although this represents less than 2 percent of average system demand, biomethane offers significant potential as a resource because it is renewable.

Although SDG&E and SoCalGas say that biomethane projects are attracting significant private support, they believe that the subsidy is needed to further the development of this resource. They also state that the subsidy will support the goals of existing state policy and cite the Governor's Executive Order S-06-06, the mission of the BIWG and recent legislation designed to achieve GHG emission reductions.

The utilities acknowledge that they filed a similar request in A. 07-08-031, but filed the ALs because that proceeding apparently stalled. They claim this action is consistent with A.07-08-031, wherein they said that the Rule 39 tariff provisions would be filed via an advice letter filing (presuming that the subsidy would be approved in the proceeding).

The utilities would seek to recover from their ratepayers the costs resulting from their proposal through current rates. Any incremental costs would not be recovered during the current rate case period.

The ALs were categorized as Tier 2 and the utilities request expeditious treatment of their proposals.

NOTICE

Notice of SDG&E AL 1760-G and SoCalGas AL 3847 was made by publication in the Commission's Daily Calendar. SDG&E and SoCalGas state that a copy of the Advice Letter was mailed and distributed in accordance with Section IV of General Order 96-B.

PROTESTS

The Division of Ratepayer Advocates (DRA) protested SDG&E AL 1760-G and SoCalGas AL 3847 on April 15, 2008.

DRA recommends that the ALs be denied on three grounds. First, DRA claims that the subsidy is inappropriate and unjustified. It points out that natural gas prices are currently high making biomethane projects more financially viable.

Second, there was no indication of the potential cost of the interconnections that would be recovered from ratepayers. DRA suggests that if the Commission is willing to consider such a tariff deviation, it should do so on a case-by-case basis with the costs to ratepayers identified. Third, potential gas quality problems about receiving biomethane into the utilities' systems were not discussed. DRA referenced problems resulting from landfill gas and recommend that the Commission's Consumer Protection and Safety Division should review this issue.

The Southern California Generation Coalition (SCGC) protested SoCalGas AL 3847 on April 15, 2008.

SCGC recommends that the AL be rejected without prejudice. It says that SoCalGas' proposal conflicts with the Commission's well-established policy that interconnection costs are to be borne by the project developer on an incremental basis instead of being recovered from all ratepayers. It contends that such matters should be dealt with through an application or rulemaking rather than an advice letter. In support of this argument, SCGC cites D.04-09-022 wherein the Commission determined that requested deviations from this policy can be filed through an application and would be dealt with on a case-by-case basis.

On the merits of the proposal, SCGC argues that it would tend to discourage the cost effective design of interconnections for biomethane. If a project developer is responsible for these costs, they would have a direct financial incentive to keep interconnection costs low.

Environmental Power Systems (EPS) filed comments on April 11, 2008 in support of SoCalGas AL 3847.

EPS supports SoCalGas AL 3847. It says that it is one of largest developers, owners and operators of biogas projects in the nation. EPS asserts that interconnection costs represent a substantial portion of project costs and that approval of the AL will speed the development of these systems.

BioEnergy Solutions (BES) filed comments on April 15, 2008 in support of SoCalGas AL 3847.

BES supports SoCalGas AL 3847. It says that it is the first entity to develop a system in California which captures biogas from a dairy farm for injection into a

major utility pipeline system. BES asserts that interconnection costs represent a substantial portion of project costs and that approval of the AL will speed the development of these systems.

SDG&E and SoCalGas jointly replied to the DRA and SCGC protests on April 22, 2008.

SDG&E and SoCalGas generally contend that granting the protests will hinder the development of biomethane resources in southern California and they should be rejected.

In response to DRA, the utilities explain that the subsidy is needed because California only just started to receive its first pipeline receipts of biomethane despite the fact the state has the most dairy cows in the nation. Although SDG&E and SoCalGas cannot prove that waiving the interconnection costs would increase biomethane supplies, they state that the subsidy would serve as an incentive to biomethane suppliers given the costs of these projects. They also maintain that their proposal will not substantially affect rates; however they are willing to impose a \$10 million cap on the amount of the total biomethane interconnection subsidy.

On the issue of gas quality, the utilities say that the biomethane supplies are expected to meet tariff Rule 30. This rule specifically addresses biomethane quality and expressly prohibits the receipt of landfill gas. The utilities are also working with the Gas Technology Institute on identifying analytical requirements to ensure safe biomethane usage among other related activities.

In response to SCGC, the utilities argue that their proposal does not reverse current Commission policy but is a narrow exception. Pursuing a rulemaking or other formal process would delay the development of biomethane projects and resulting benefits. The utilities dispute the notion that its proposal would cause the construction of less economic interconnections because the developer must follow provisions in tariff Rule 39 that would remain unaffected by their proposal. That is, the developer would pay for any equipment that is unique for receiving the biomethane at the interconnection point and for the facilities to transport the biomethane to the interconnection point.

DISCUSSION

The Commission fully endorses the State's renewable energy policies. To make sound public policy decisions, the Commission considers utility proposals using the proper administrative procedures.

We fully support the State's policies aimed at increasing the production of renewable energy and have worked hard to implement these directives. This objective is also part of our Energy Action Plan and we have taken a number of actions in this area on our own initiative. To implement these efforts, it is important that the appropriate administrative procedures are used so that sound public policy decisions are made. The issue here is whether an advice letter is the proper vehicle to consider the utilities' proposals.

GO 96-B contains rules regarding the use of advice letters. The utilities' proposals do not conform to these rules.

GO 96-B is specific with regard to the circumstances under which an advice letter is appropriate for the consideration of a utility request. First, the matter must be non-controversial and must not raise important policy questions. Second, the rules state that a utility should have specific authorization to file its request via an advice letter. Third, a utility must file an application, application for rehearing, or petition for modification when the utility requests modification of a decision issued in a formal proceeding or otherwise seeks relief that the Commission can grant only after holding an evidentiary hearing, or by decision in a formal proceeding. The Commission may also depart from these rules upon good cause.

As further discussed below, we find that the nature of the utilities' requests are both controversial and involve policy issues, and essentially request a modification of a Commission decision. In addition, the utilities have not received authorization to file such a request.

An important issue was raised by DRA. It questions the need for the subsidy and claims that the ALs lack evidence showing that the proposal would increase biomethane supplies. Also, DRA notes that developers gaining access to the utilities' systems will be able to sell their gas at existing high prices, improving a project's financial viability. In response, SDG&E and SoCalGas generally

reiterated statements made in the ALs. They also point to the comments submitted by the BES and EPS in support of their proposal.

To gain further insights on this argument, the Commission's Energy Division (ED) issued a data request to the utilities. Information referencing various studies was provided to ED indicating that financial assistance would help develop these resources. The response also discussed revenue streams available to developers to help defray project costs (e.g., gas and GHG emission offset sales).⁹ Resolving an issue of this nature is not suited to the informal procedures of an advice letter.

The dispute discussed above focuses only on whether there is a demonstrable need for the subsidy. Whether the need can be demonstrated in general or for particular projects is a matter best left to a formal proceeding.

The utilities' proposal also touches on other important issues as well which raise some concern. Among these are as follows.

- Should the subsidy be limited to projects above a certain minimum delivery level excluding smaller projects as proposed by the utilities here?
- Should the subsidy be capped as proposed by the utilities here and if so what an appropriate level of capping is? Does this represent a significant rate increase?
- The policy analysis supporting recovery of such interconnection costs from ratepayers.

ED also sought information on these and other similar issues in its data request. SDG&E and SoCalGas were responsive and provided useful material. However, the scope of these matters is typically beyond that of an advice letter. In a formal proceeding, the Commission and public would benefit from the more thorough vetting of these issues. Additionally, SDG&E and SoCalGas were not instructed by the Commission to file their proposal by advice letter as the GO 96-

⁹ ED notes that there also subsidies available to qualifying electricity generators using renewable fuels and also PG&E's ClimateSmart program.

B rules dictate. While this indicates that ALs should be rejected, we will also consider other information before us.

In D.04-09-022, the Commission determined that the costs of interconnections should be paid for by the interconnecting suppliers in all circumstances, and that LNG project developers should also pay the costs of required infrastructure upgrades. Deviations to the LNG upgrade policy can be filed by an application.

In D.04-09-022, we determined that the costs of interconnections should be paid for by the interconnecting suppliers in all circumstances, and that developers of LNG projects should pay for infrastructure improvements to deliver gas into utility pipeline systems. This position is consistent with our treatment of projects involving electric generation projects. The decision also states that a utility can file an application if it seeks a deviation to the LNG upgrade policy.

SCGC refers to the application procedure in D.04-09-022 and advocates that the subject matter of the ALs should be addressed in either an application or rulemaking. In response, SDG&E and SoCalGas say that their proposal does not overturn the interconnection policy but is a narrow exception. The utilities also contend that a more formal process would cause delays and hinder the state's goal of rapidly developing biomethane resources.

SDG&E and SoCalGas initially used the proper administrative procedures and filed their interconnection subsidy proposal in an application (A.07-08-031). Because that proceeding was not advancing at the pace they prefer, the ALs were filed. Also to justify the use of an AL, the utilities asserted that the subsidy represents only a slight deviation to the D.04-09-022 policy. Nevertheless, the proposal essentially seeks a modification of an interconnection policy adopted in a formal proceeding, and should be made in an application. In addition, as we explained above, this matter raises significant policy questions.

In D.08-09-011, the Commission granted SDG&E's and SoCalGas' request to withdraw A.07-08-031. The decision also specified that ED is to reject any pending ALs involving the subject matter of the application.

In D.08-09-011, the Commission approved SDG&E's and SoCalGas' request and dismissed A.07-08-031 without prejudice. The decision also directed ED to reject any pending ALs related to the proposals filed in the application.¹⁰

SDG&E AL 1760-G and SoCalGas AL 3847 contain proposals that were submitted in A.07-08-031 and thus fall under the provisions of Ordering Paragraph 3 in D.08-09-011 and must be rejected.

SDG&E and SoCalGas' ALs are denied without prejudice.

In consideration of the above discussion, we find that an advice letter is not the proper vehicle to present the requested interconnection subsidy. Furthermore, the ALs are to be rejected pursuant to Ordering Paragraph 3 of D.08-09-011. Accordingly, we deny SDG&E AL 1760-G and SoCalGas AL 3847 without prejudice. The utilities may file their requests via an application. If such application(s) are filed, DRA and SCGC may, of course, raise any concerns (including those presented in their AL protests) they have regarding such ratepayer funded subsidies.

The action taken in this Resolution should not be interpreted as having any bearing on the merits of the proposals filed in SDG&E AL 1760-G and SoCalGas AL 3847. DRA's and SCGC's protests are granted to the extent that they assert that the proposals should be filed by application or support the finding that the scope and nature of the proposals are not appropriate to be presented for Commission consideration via an AL.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

¹⁰ D.08-09-011, Ordering Paragraph 3.

The 30-day comment period for the draft of this resolution was neither waived or reduced. Accordingly, this draft resolution was mailed to parties for comments, on August 19, 2008.

On September 9, 2008, SCGC, SDG&E and SoCalGas filed comments on the Draft Resolution.

SCGC urged the Commission to adopt the Draft Resolution without change.

In their joint comments, SDG&E and SoCalGas did not contest the dismissal of their proposals without prejudice. However, the utilities requested that the Draft Resolution be edited to ensure that it is neutral on the merits of the proposals. In specific, they recommended that the Draft Resolution be revised to so that it does not appear to favor DRA's protest. The Draft Resolution was changed to address SDG&E's and SoCalGas' concerns.

The Draft Resolution was also revised to reflect the issuance of D.08-09-011, which was adopted after the Draft Resolution was mailed for comment.

FINDINGS

1. SDG&E and SoCalGas filed AL 1760-G and 3847 respectively seeking authority to recover the interconnection costs involving qualifying biomethane projects from all of their ratepayers.
2. SDG&E and SoCalGas filed a similar proposal to that contained in their ALs in A.07-08-031.
3. A.07-08-031 was dismissed without prejudice in D.08-09-011.
4. The issues raised in the utilities' ALs are controversial and raise policy questions which are not suitable for the advice letter process.
5. The utilities' proposal entails a modification of D.04-09-022.
6. The Commission did not previously authorize SDG&E or SoCalGas to file their proposed interconnection subsidy by an advice letter.
7. The subject matter utilities' proposals are beyond the scope of GO 96-B regarding the suitability for advice letter consideration.
8. D.08-09-011 directed ED to reject any pending ALs associated with the subjects of A.07-08-031.

9. SDG&E AL 1760-G and SoCalGas AL 3847 should be rejected by ED per D.08-09-011.
10. The protests of DRA and SCGC should be granted to the extent that they assert that the utilities' proposals should be filed by application or demonstrate that the subject matter of the proposals is not appropriate for consideration by AL.
11. The merits of SDG&E's and SoCalGas' proposals are not addressed in this Resolution nor are the merits of the protests, except to the extent granted herein.
12. The ALs should be denied without prejudice.

THEREFORE IT IS ORDERED THAT:

1. SDG&E AL 1760-G and SoCalGas AL 3847 are denied without prejudice.
2. The protests of DRA and SCGC are granted to the extent discussed herein.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on September 18, 2008; the following Commissioners voting favorably thereon:

/s/ Paul Clanon
Paul Clanon
Executive Director

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