

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION G-3428
NOVEMBER 21, 2008

R E S O L U T I O N

Resolution G-3428. Southern California Gas Company ("SoCalGas") requests approval of the establishment of a memorandum account to track increased Pacific Gas and Electric Company ("PG&E") exchange fee expenses related to the provision of wholesale service to Southwest Gas Company ("SWG"). SoCalGas's request is denied.

By Advice Letter 3882 ("AL 3882") filed on July 16, 2008.

SUMMARY

This Resolution denies SoCalGas's request for the establishment of the Southwest Gas Exchange Fees Memorandum Account ("SGEFMA"). SoCalGas failed to justify its request for approval of a memo account to track an increase in the exchange fee it pays to PG&E as part of the provision of wholesale gas transportation service to Southwest Gas.

SoCalGas, PG&E, and SWG are directed to continue operating under the old SWG wholesale and exchange fee agreements until Commission approval of new agreements, amendments or termination.

The Division of Ratepayer Advocates ("DRA") timely protested AL 3882 on the grounds that SoCalGas: a) had not established a basis for the exchange fee increase and; b) provided no basis for PG&E's authority to increase the exchange fee. DRA's protest is granted.

BACKGROUND

SoCalGas has provided wholesale gas transportation services to Southwest Gas ("SWG") for the last fifteen (15) years under the California Wholesale Gas Transportation and Storage Services Agreement ("SWG Agreement"). This

service is made possible in part due to the Southwest Exchange Gas Delivery Agreement (“SEGDA”) between SoCalGas and PG&E. Under the SEGDA, some of the gas volumes under the SWG Agreement are physically delivered to SWG via PG&E pipelines. SoCalGas pays PG&E an exchange fee for the use of PG&E’s pipelines.

The Commission approved the original SWG Agreement and SEGDA in Decision No. (D.) 93-07-052. The first term of the SWG Agreement was to expire after fifteen (15) years, on July 31, 2008, but roll over for an additional year, on the same terms, in the absence of termination or amendment. The term of the SWG Agreement controls the term of the SEGDA; Section 2.2 of the SEGDA states that the SEGDA ends “coterminously” with the SWG Agreement.

Parties had been negotiating the terms of a new wholesale and exchange agreement in the months prior to July 31, 2008. On January 29, 2008, SoCalGas provided written notice of termination to SWG of the SWG Agreement, apparently in the midst of negotiations of a new agreement.

At the time AL 3882 was filed, July 16, 2008, SoCalGas and PG&E had not yet signed a written agreement to extend the SEGDA. SoCalGas stated that PG&E was “willing” to provide exchange service until the Commission acts on the new SWG Agreement and SEGDA that were being negotiated, but only if the existing SEGDA exchange fee was increased from \$0.25/Dth to \$0.4172/Dth.

SoCalGas subsequently rescinded its termination on July 31, 2008 without objection from SWG, and on that same day, SoCalGas and SWG executed an amendment to the SWG Agreement in which they agreed to allow the SWG Agreement to remain effective until the earlier of a) September 30, 2008 and month-to-month thereafter or b) Commission approval of a new SWG Agreement. The same day, PG&E and SoCalGas executed an amendment to the SEGDA in which PG&E agreed to continue to provide interim exchange service for SoCalGas effective August 1, 2008, expiring at the earlier of either: a) July 31, 2009 or b) Commission approval of a new SEGDA contract. PG&E would charge higher exchange fees during the interim period (\$0.4172/Dth from August 1, 2008 to December 31, 2008 and an estimated \$0.4233/Dth thereafter) than it charged prior to the amendment to the SEGDA (\$0.25/Dth). In its comments on the draft

of this resolution, PG&E states that it was unaware of both the original SoCalGas notice of termination and the subsequent rescission of termination.

It is our understanding that SWG has continued to receive gas service under the amended wholesale agreement and PG&E has continued to provide exchange service for SoCalGas, consistent with those agreements and with lack of objection by SWG to SoCalGas's rescission of termination.

In order to track the difference between the old and interim SEGDA rates, SoCalGas is requesting in AL 3882 that the CPUC approve the establishment of the Southwest Gas Exchange Fees Memorandum Account ("SGEFMA"), an interest-bearing memorandum account recorded on SoCalGas's financial statements. SoCalGas would like the SGEFMA to be established effective August 1, 2008. SoCalGas presumes that the disposition of the accumulated SGEFMA amount will be determined in its future application before the Commission seeking approval of the amendments and new contracts, or in another proceeding as the Commission deems appropriate.

NOTICE

Notice of AL 3882 was made by publication in the Commission's Daily Calendar. SoCalGas states that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

PROTESTS

SoCalGas's Advice Letter AL 3882 was timely protested by DRA on the grounds that, at the time, SoCalGas a) had not established a basis for the exchange fee increase and b) provided no basis for PG&E's authority to increase the exchange fee.

SoCalGas responded to DRA's protest on August 1, 2008. SoCalGas provided a document in which PG&E provided an explanation for the higher exchange fees and claimed authority to charge such fees. SoCalGas claimed that PG&E would not continue to provide exchange service absent the higher fees. SoCalGas claimed that while the increased fees were refundable if the Commission determined that PG&E did not have authority to charge them, failure to establish

the SGEFMA could cause harm a) to SoCalGas if it could not recover costs that could have been tracked in the SGEFMA and b) to SWG if SoCalGas discontinued service.

SoCalGas later provided Energy Division with copies of the amendments to the old SEGDA and SWG Agreement, which were executed by SoCalGas and PG&E on July 31, 2008.

DISCUSSION

SoCalGas's request for the establishment of the SGEFMA should be denied.

SoCalGas argues that establishing the SGEFMA is reasonable and that such a memorandum account would merely track the difference between the current exchange fee and a new amount that SoCalGas and PG&E would propose for approval in a future application. SoCalGas argues that establishment of the SGEFMA does not necessarily entitle SoCalGas to collect the amount accumulated therein. It simply tracks costs that may be recoverable if the Commission later approves such costs. SoCalGas argues that failure to establish the SGEFMA could jeopardize SoCalGas's ability to recover possibly justifiable costs incurred to provide service to SWG.

There are several reasons why we will deny SoCalGas's request for a memo account:

First, memo account treatment should not be authorized by the Commission to record increased exchange fees when the utility has not yet requested approval, in either an application or an advice letter, of the amendment providing for the increased exchange fees. Neither SoCalGas, PG&E nor SWG has yet filed an application or an advice letter for approval from the Commission of any of the recent amendments to the SEGDA or the SWG Agreement. All previous amendments to the agreements have been approved by the Commission. In AL 3882, SoCalGas, and indirectly PG&E, is seeking authority to establish a memo account to track costs pursuant to an amendment that hasn't even been presented to the Commission for approval. In addition, even if SoCalGas had presented the amendment for approval with the AL and requested memo

account treatment pending the approval of the amendment, SoCalGas would need to provide a compelling need for the memo account. Second, as DRA pointed out, SoCalGas failed to file a complete advice letter and did not adequately justify the rate amount or explain the need for a memo account. At the time of filing AL 3882, SoCalGas had terminated the SWG Agreement yet failed to include documentation regarding the termination. Furthermore, SoCalGas failed to file any justification for the proposed higher rate beyond a proposed rate table from PG&E, and the amendments to the SWG Agreement and SEGDA were not executed until two weeks *after* SoCalGas filed AL 3882. SoCalGas did not provide any documentation of: the original SWG Agreement or SEGDA; the original termination or the rescission of the termination; the amended SWG Agreement or the amended SEGDA. It would set bad precedent if the Commission were to establish a forward-looking memorandum account for a rate increase that has not yet been requested based on agreements that have not yet been approved, or even executed at the time of the request. Furthermore, as a general matter, Commission approval of incomplete or vague ALs would set bad precedent for future AL filings. SoCalGas is strongly encouraged to file future advice letters in a timely fashion with all supporting documents and justifications included.

Third, SoCalGas improperly argues that the situation presented in the AL deserves special consideration because failure to establish the SGEFMA could cause irrevocable financial harm to SoCalGas. However, SoCalGas's situation was reasonably foreseeable. The parties knew since 1993 that the initial term of the SWG Agreement and SEGDA would expire in July 2008. New agreements or amendments could require lengthy negotiations and approval processes. SoCalGas filed an incomplete AL 3882 and, along with PG&E and SWG, waited until the day that the SWG Agreement was to expire before cobbling together interim amendments.

Fourth, while SoCalGas argues that PG&E would not be willing to provide exchange service if PG&E does not receive a higher, interim exchange rate, it is our understanding PG&E has never threatened to actually terminate or curtail service to SWG, and PG&E, in its comments to the draft resolution, denied making any threat to cut off exchange service. PG&E's comments emphasize that any implication that it was threatening to cut off service to SoCalGas or

delivering an ultimatum to SoCalGas to accept whatever higher exchange fee PG&E was proposing is inaccurate and unfair. PG&E had never unilaterally threatened to cut off exchange service because agreement on the exchange fee had long ago been reached. Further, in phone conversations with the Energy Division, PG&E assured that SWG service would not be interrupted. Finally, as we read the terms of the SEGDA, PG&E must continue providing exchange service until the SWG Agreement between SoCalGas and SWG ends. PG&E has limited veto power in that it must approve amendments to the SEGDA that would extend the term of the SEGDA longer than “coterminously” with the SWG Agreement, but the SWG Agreement as written provides for a one-year automatic extension if it is not terminated or amended—a provision that was not amended and therefore does not trigger PG&E’s veto power.

Fifth, PG&E has dubious authority to charge the increased exchange fee in this context, and SoCalGas itself made no assertion that it had such authority. SoCalGas repeats PG&E’s claims that it has the authorization to negotiate contracts of less than five years duration without prior Commission approval, but PG&E cites to decisions that do not necessarily support that conclusion: D.86-12-009 dealt with enhanced oil recovery contracts, and D.03-12-061 does not explicitly grant PG&E authority to negotiate short term contracts without prior Commission approval. Even if PG&E had such authority, it is inapplicable to amending an existing contract with an original term of 15 years, especially when amendments to that contract must be approved by the Commission. SoCalGas likewise provided no justification for the authority for the new exchange fee rate—beyond citing to PG&E’s cited decisions—for PG&E authority to enter into contracts of less than five years duration without prior Commission approval.

Sixth, the SWG Agreement was never ultimately terminated by any party, and although section 2.2 of the SEGDA states that no amendment may extend the term of the SEGDA without PG&E approval, that is irrelevant in this case. There has been no termination of or Commission-approved amendment to the SWG Agreement. Therefore the SWG Agreement automatically extends to July 31, 2009. The approved SEGDA ends coterminously with the SWG Agreement and therefore also extends to July 31, 2009 under the old terms. (The SW Agreement and SEGDA annually roll-over under the same terms for another year in the absence of amendment or termination.)

SoCalGas, PG&E, and SWG shall continue to operate under the terms of the old SWG Agreement and SEGDA at the old exchange rates since no party has sought approval from the Commission of any amendments and no party ultimately terminated the SWG Agreement. The terms of the SWG Agreement and SEGDA automatically extend for an additional year until July 31, 2009, unless otherwise modified by Commission-approved amendments.

The parties should file an application for approval of new agreements as soon as possible, and should make every effort to adequately justify the agreements and any new or increased exchange fees. If parties have not filed the application by December 15, 2008, the parties (SoCalGas, PG&E, and SW Gas) should jointly send a letter to the Director of the Energy Division explaining the delay, starting with the 15th of December and on the 15th every month thereafter until the application is filed.

COMMENTS

A draft resolution considering AL 3882 was earlier mailed for comments on September 2, 2008. Based on comments on that draft resolution by DRA and additional information received by the Energy Division since then, the Commission substantively revised the draft resolution and re-mailed it for comments on October 22, 2008.

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.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments on October 22, 2008.

On November 12, 2008, PG&E filed comments in which it requested a final decision on this resolution to be stayed pending PG&E's plans to submit an advice letter. In PG&E's anticipated advice letter, PG&E would seek

Commission approval of the amendment to the SEGDA executed July 31, 2008 by PG&E and SoCalGas. Such an amendment would act as an interim SEGDA that would expire no later than July 2009 rather than tether the SEGDA to the term of the SWG Agreement, which automatically renews each year.

On November 18, 2008, DRA filed comments opposing PG&E's request to stay this resolution. DRA stated that there is no factual or legal basis to stay this resolution and that PG&E's comments further justify the findings of the draft resolution. DRA also stated that PG&E's comments "imply that the three utilities can merely cut deals without any consideration to the appropriate regulatory approval processes." DRA recommended that the draft resolution be adopted without modifications.

PG&E's request is denied. PG&E stated that its anticipated advice letter would "assist PG&E and SoCalGas in implementing their original intent." However, issuing this resolution today and evaluating a potential advice letter filing later would provide greater certainty to the parties involved than tying this resolution to the outcome of an advice letter that PG&E claims it will file but has not filed yet. We do not know the full range of issues that may need to be considered, or whether protests would be submitted. Furthermore, PG&E did not argue that issuing this resolution today would harm any parties, and PG&E did not give an estimate for when it would file its advice letter. Finally, even if we approved such an advice letter, SoCalGas might believe it needed to protect its interests and would need to file a new advice letter to establish a memo account, since we could not simply approve the original advice letter as filed. We believe expeditiously proceeding to file an application is the best course of action at this point.

PG&E also requested further clarification that a) PG&E was not aware of SoCalGas's termination and rescission of termination of the SWG Agreement; and b) PG&E never threatened to curtail or terminate service to SWG. We acknowledge and appreciate these clarifications.

FINDINGS

1. SoCalGas has not justified the establishment of the SGEFMA in AL 3882.
2. A memo account is not justified on the basis of special circumstances because these circumstances were reasonably foreseeable.
3. SoCalGas, SWG, and PG&E have not received nor sought Commission approval of any amendments to the SWG Agreement or the SEGDA.
4. PG&E does not have authority to charge a higher exchange rate as it has never received approval from the Commission for the amendment under which it would charge the higher fee.
5. The SWG Agreement was never ultimately terminated by any party.
6. SWG should continue to receive wholesale transportation service from SoCalGas under the terms and conditions of the SW Agreement prior to July 31, 2008 until Commission approval of a new wholesale agreement or amendment, or approval of termination.
7. PG&E shall charge SoCalGas the exchange rate of \$0.25/Dth from August 1, 2008 until Commission approval of a new wholesale agreement or amendment, or approval of termination.
8. DRA's protest is granted.

THEREFORE IT IS ORDERED THAT:

1. SoCalGas's request to establish the SGEFMA is denied.
2. SoCalGas, PG&E, and SWG shall continue to operate under the terms of the old SWG Agreement and SEGDA (in existence prior to July 31, 2008) at the old exchange rate of \$0.25/Dth but may file for Commission approval of new agreements and amendments or termination.
3. SoCalGas, PG&E, and SWG are strongly encouraged to finalize the new SWG Agreement and SEGDA as soon as possible. If parties have not filed the application for approval of new agreements by December 15, 2008, the parties should jointly send a letter to the Director of the Energy Division explaining the delay, starting with the 15th of December and on the 15th of every month thereafter until the application is filed.

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 November 21, 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