

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Gas Company Regarding Year Six (1999-2000) Under Its Experimental Gas Cost Incentive Mechanism and Related Gas Supply Matters. (U 904 G)

Application 00-06-023

**ADMINISTRATIVE LAW JUDGE'S RULING
DENYING DISCOVERY MOTION IN PART
AND GRANTING IN PART**

1. Summary

By motion dated September 21, 2001, Southern California Edison Company (SCE) seeks an order that would void a nondisclosure agreement that SCE entered into with Southern California Gas Company (SoCalGas) and compel SoCalGas to respond more fully to discovery requests. SCE also seeks a 30-day extension of time in which to serve its testimony prior to hearing on November 27. This ruling grants the motion in part, requiring SoCalGas to deliver certain data in electronic form and to respond more fully to certain data requests. This ruling also modifies the procedural schedule to give all parties an additional week to serve their testimony. In all other respects, SCE's motion is denied.

2. SCE's Discovery Motion

SCE asks the Commission to relieve it of restrictions in a nondisclosure agreement it entered into with SoCalGas on August 17, 2001; to require further response by SoCalGas (including delivery of data in electronic form) to 25 of

37 data requests submitted to SoCalGas on July 3, 2001; and to grant a 30-day extension in the time for SCE to serve its testimony.

SoCalGas responded to SCE's motion on October 5, 2001. SoCalGas contends that SCE has failed to show why it should not be bound by the nondisclosure agreement it negotiated and signed. It states that the nondisclosure agreement covers the same confidential material and is virtually identical to the nondisclosure agreement enforced by the Federal Energy Regulatory Commission (FERC) in California Public Utilities Commission v. El Paso Natural Gas Company, et al., RP00-214-000. SoCalGas argues that it and SCE are competitors in electric and gas service, and that SCE is using the discovery process here to seek to obtain competitive data it could not obtain in the FERC proceeding.

The Office of Ratepayer Advocates (ORA) filed comments opposing any delay in hearing on this matter. ORA argues that the Gas Cost Incentive Mechanism was developed based upon market conditions that existed at the time, not on the reasonableness of SoCalGas action in any particular year.

3. Discussion

The nondisclosure agreement signed by the parties on August 17 limits access to the SoCalGas data to one attorney of an outside law firm (the same attorney identified in the FERC nondisclosure agreement) and to three senior staff members of the Brattle Group, SCE's outside consultants and witnesses for this proceeding. SCE asks the Commission to require that the data be made available to SCE's in-house attorneys and to analyst staff of the Brattle Group if those individuals execute a standard nondisclosure agreement that SCE has attached to its motion.

SCE argues that the three Brattle Group executives cannot properly analyze the data supplied by SoCalGas without the help of their support employees, and that the restriction on lawyer access to the data is compounded by the fact that SCE has not retained outside counsel in this proceeding.

What SCE does not explain adequately is why it agreed on August 17 to the limitations on access if it did not intend to be bound by those limitations. SoCalGas has provided what SCE acknowledges is a substantial amount of data, and it did so in reliance on the August 17 agreement. SCE has not presented an adequate justification for now changing the ground rules upon which both parties agreed.

SCE does not claim that the limitation on access makes SCE's preparation of testimony virtually impossible – just that it makes it more difficult. Yet SCE litigated with virtually the same restrictions in the FERC proceeding. Moreover, Phase 2 of this proceeding has been open since May 3, 2001. Had SCE come to us earlier, before signing the August 17 agreement, its arguments for broader access to discovery would have been more compelling. If SCE did not want to use the FERC protective order as the basis for a nondisclosure agreement, SCE could have filed a motion asking this Commission to exercise its authority to rule on the appropriate form of a nondisclosure agreement here. Instead, SCE chose to wait until September 21, 2001, essentially a month before its testimony is due, to make its motion and to seek a change in the procedural schedule.

However, there is merit in SCE's request that certain voluminous data provided in hard copy by SoCalGas also be provided in electronic form so that the Brattle Group can do computer analysis. SCE states that core operations data supplied in response to one question is comprised of 250 pages, each containing rows of data with multiple columns. Computer analysis of this data may assist

the Commission in its evaluation of the terms of the proposed settlement agreement in this proceeding. Moreover, the parties' nondisclosure agreement does not preclude submission of data in electronic form,¹ and the FERC order contemplated that some data would be provided in an electronic format.² This ruling instructs SoCalGas to supply SCE with an electronic version of certain data where such electronic data in fact exists and is available without additional compilation by SoCalGas. This ruling denies SCE's request that its consultants be permitted to copy all or part of the electronic data.

SCE seeks further response by SoCalGas to a number of data requests, but much of this request is framed in terms of making information available to in-house counsel and to other individuals under a separate nondisclosure agreement proposed by SCE. For the reasons stated above, this ruling declines to substitute SCE's proposed nondisclosure agreement for the existing agreement that the parties have negotiated and signed. Nevertheless, after review of the data requests and the SoCalGas responses, this ruling directs SoCalGas to respond further to a limited number of questions.

Finally, SCE has not justified a 30-day extension in time to file its prepared testimony. Granting that request would push the hearing dates, now set for November 27-30, 2001, into the holiday period and would delay resolution of

¹ The nondisclosure agreement provides: "Respondent [SoCalGas] may elect to provide Protected Materials in paper form only, as a further safeguard against electronic copying, provided, however, that Respondent shall provide Protected Materials in electronic format to the extent Respondent provided such Protected Materials electronically to Requester [SCE] in Docket No. RP00-241-000 before the Federal Energy Regulatory Commission."

² See Appendix C1 of the SoCalGas Response to Motion to Compel.

Phase 2 of this proceeding well into next year. Nevertheless, SCE's consultants will need additional time to do computer analysis of electronic data supplied to them. For that reason, this ruling extends the time for submission of SCE's testimony, and the testimony of all other parties, by one week. Testimony of nonsettling parties will now be due on November 2, 2001, instead of October 26, and service of settling parties' rebuttal testimony will now be due on November 21, 2001, instead of November 16. The hearing will take place as scheduled, beginning at 10:00 a.m., November 27, in the Commission's Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California.

In all other respects, the motion of SCE is denied.

IT IS RULED that:

1. Where an electronic version currently exists for data supplied by Southern California Gas Company (SoCalGas) to Southern California Edison Company (SCE), and where such electronic data does not require further compilation by SoCalGas, that electronic version shall be transmitted to SCE within five business days of the date of this ruling with respect to the following SCE data requests: Question 3; Question 4; Question 9; Question 22. The request for electronic data in response to Questions 1(b), 15, 16, and 27 is denied, in that SCE's July 3 data requests did not seek responses in electronic form. Electronic data supplied by SoCalGas shall be subject to the nondisclosure agreement of the parties dated August 17, 2001. SCE shall neither download nor otherwise make copies of all or part of the electronic data supplied.
2. SoCalGas is directed within five business days of the date of this ruling to provide SCE with a further response to the following SCE data requests: Question 18; Question 31.

3. An extension of time of one week for submission of prepared testimony is granted to all parties. The new procedural schedule is as follows:

Nonsettling Parties' testimony	November 2, 2001
Settling Parties' rebuttal testimony	November 21, 2001
Hearing	November 27 through November 30, 2001, in the Commission's Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco

Dated October 11, 2001, at San Francisco, California.

 /s/ GLEN WALKER
Glen Walker
Administrative Law Judge

