

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

In the Matter of the Application of Southern California Gas Company (U904 G) For Authority to Revise its Rates Effective January 1, 2005, in its Biennial Cost Allocation Proceeding.

Application 03-09-008  
(Filed September 3, 2003)

In the Matter of the Application of San Diego Gas & Electric Company (U904 G) For Authority to Revise its Rates Effective January 1, 2005, in its Biennial Cost Allocation Proceeding.

Application 03-09-031  
(Filed September 17, 2003)

**ASSIGNED COMMISSIONER'S RULING  
GRANTING MOTION FOR CONTINUANCE  
PLUS  
FIRST SCOPING MEMO AND RULING  
OF ASSIGNED COMMISSIONER**

**1. Summary**

This Ruling grants the October 29, 2003 motion of Marathon Oil Company (Marathon) to continue these proceedings as provided herein, and denies the motion in all other respects. It also provides scoping, pursuant to Article 2.5 of the Commission's Rules of Practice and Procedure (Rules).<sup>1</sup> This scoping

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<sup>1</sup> The Rules are accessible on the Commission's web page at <http://www.cpuc.ca.gov> by clicking on "Laws, Rules, Procedures."

addresses the preliminary schedule, consolidation, preliminary identification of issues, categorization, applicable ex parte communication rules, service list, electronic service, final oral argument (FOA), intervenor compensation, and the designation of the Principal Hearing Officer.<sup>2</sup> It also affirms certain matters addressed at the November 5, 2003 prehearing conference (PHC).

## **2. Motion for Continuance and Preliminary Schedule**

### **2.1. Background**

On October 9, 2003, Marathon protested the biennial cost allocation proceeding (BCAP) application of Southern California Gas Company (SoCalGas). Marathon asked that the application be rejected, and requested that the Commission order applicant to immediately refile the application on a basis that corrected deficiencies alleged by Marathon (e.g., initial application used embedded costs rather than long run marginal costs (LRMC), and used applicant's "preferred case" rather than the "compliance case" at issue in the gas industry restructuring (GIR) proceeding.<sup>3</sup>) On October 22, 2003, Marathon protested the application of San Diego Gas & Electric Company (SDG&E) on essentially the same bases and asked for the same relief.

On October 29, 2003, Marathon moved for a continuance of these BCAP applications until such time as the Commission adopts a decision in the GIR

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<sup>2</sup> See, for example, Rule 5(l) (Principal Hearing Officer), Rule 6.1 (categorization and need for hearing), Rule 6.3 (schedule and issues), Rule 8(d) (FOA), and Pub. Util. Code § 1804(a)(1) (notices of intent for intervenor compensation).

<sup>3</sup> The GIR proceeding is Application (A.) 03-06-040. According to the Office of Ratepayer Advocates, the most significant difference between the two cases is that the "compliance case" unbundles both transmission and storage costs, while the "preferred case" unbundles only storage costs.

implementation proceeding. On November 4, 2003, Clean Energy responded in opposition to the motion and recommended no delay. A PHC was held on November 5, 2003, at which time several parties stated support for the motion, and Southern California Generation Coalition (SCGC) stated opposition to the motion and delay.

## **2.2. Discussion**

The motion is granted as provided herein for the reasons generally stated by Marathon, applicants and others. Applicants filed their applications on the assumption that the Commission will adopt the “preferred case” in the upcoming GIR decision. The GIR matter, however, is proceeding on the basis of the “compliance case.” Thus, applicants need to update their showings here using the compliance case, the status quo, or some other basis.<sup>4</sup>

The decision in the GIR proceeding is scheduled to be adopted reasonably soon (e.g., within about 10 weeks). The GIR decision is likely to modify the customer base, customer classes and services to be provided by applicants. This will in turn affect the allocation of costs to be determined in these proceedings.

A number of updates may be needed over the course of these proceedings. The number of updates should be minimized, however, to moderate the burden on applicants, parties and the Commission. Thus, rather than update the applications now on the basis of the compliance case and/or the status quo, and potentially again when the GIR decision is adopted, a more reasonable use of

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<sup>4</sup> SCGC argued at the PHC that an update would also need to include a status quo case. (Reporter’s Transcript (RT), page 9.) On November 13, 2003, SCGC filed a response in opposition to Marathon’s motion, and ask that the Commission order applicants to refile the applications including both a base (status quo) case and a compliance case.

limited resources is to delay processing of these consolidated proceedings until the GIR decision is adopted.

Opponents of delay contend that these matters have already been delayed too long, there will always be pending changes that might justify delay, and potential benefits to some customers (which will result at the end of these proceedings) should not be postponed. Opponents' concerns can be reasonably addressed by directing applicants to amend and update their BCAP applications more quickly after the GIR decision than applicants otherwise propose.<sup>5</sup> Also, the Commission will encourage applicants and parties to conduct efficient discovery and hearings, and to pursue reasonable settlements where possible, to move these proceedings along.

Thus, applicant SoCalGas should amend its BCAP application within 21 days of the mailing date of the Commission-adopted GIR decision. Applicant SDG&E should amend its BCAP application within 7 days of the date of SoCalGas's amended BCAP application.<sup>6</sup> To the fullest extent feasible, discovery should begin now. In this way, perhaps some data responses can be provided now, some provided with the amended applications in mid-February 2004 (shortly after the GIR decision), and a reduced number (i.e., less than might normally be the case) provided after the amended applications are thoroughly reviewed by parties.

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<sup>5</sup> At the PHC, applicants identified the need for 60 to 90 days after the GIR decision to update their BCAP applications. (RT., page 15.)

<sup>6</sup> Applicants indicated on a handout at the PHC that the SDG&E amended application could be filed 7 days after the SoCalGas amended application. ("Alternate Procedural Schedule (Compliance Case)" distributed November 5, 2003.)

Moreover, applicants' amendments should include additional information described below under "Issues." In particular, applicants should include showings that further address LRMC and competition.

### **2.3. Preliminary Schedule**

A preliminary schedule following the amended applications is included in Attachment A. Shortly after applicants file and serve their amended applications, a second PHC will be held to hear from parties regarding issues, schedule and anything else needed in order to conduct an efficient proceeding.

Parties may file and serve PHC statements in advance of the second PHC. Those PHC statements shall be filed and served by 5:00 p.m. two days before the date of the second PHC, and may address issues, schedule and anything else necessary to promote an efficient proceeding. A final Scoping Memo will then be issued that affirms or modifies, as necessary, the preliminary determination of issues, schedule and other matters addressed herein, or that need to be addressed at that time.

A third PHC will be held, if necessary, shortly before hearings begin to address the order and schedule of witnesses and other hearing-related administrative matters. Parties may file and serve PHC statements in advance of the third PHC. Those PHC statements shall be filed and served by 5:00 p.m. two days before the date of the third PHC, and may address issues, schedule and anything else necessary to promote an efficient proceeding.

In addition, each applicant and party shall file and serve a "Statement of Case" by 5:00 p.m. 7 days before the start of evidentiary hearings (e.g., two days before the date for the third PHC identified in Attachment A). The statement shall summarize the case to be presented by that party as far as it is known at that time. The statement shall identify the major issues addressed in the

proposed testimony and exhibits of the party, state the position on each major issue, summarize the requested relief or proposed outcomes, and report anything else necessary to summarize the party's case.

Applicants stated their belief that these proceedings require evidentiary hearing. The Commission preliminarily determined that these proceedings require evidentiary hearing. (Resolution ALJ 176-3119 (September 18, 2003) and Resolution ALJ 176-3120 (October 2, 2003).) Several parties stated concurrence with the requirement for evidentiary hearing, and no party stated any objection. (Rule 6(a)(2).)

The probable disputes of fact or expert opinion are likely to be tested best by cross-examination at evidentiary hearing.<sup>7</sup> As a result, the preliminary schedule includes evidentiary hearing. The record will be composed of all filed and served documents, exhibits received at hearing, and hearing transcripts.

The goal is to complete this proceeding within 18 months of the date the final Scoping Memo is filed and served. In no event should the proceeding take longer than 18 months from the date of the final Scoping Memo (e.g., September 10, 2005, assuming PHC-2 is held March 3, 2004, and the final Scoping Memo is filed on March 10, 2004). (Senate Bill 960 and Assembly Bill (AB) 1735.)

### **3. Consolidated proceedings**

Applicants proposed that these proceedings be consolidated for processing and decision. The only comments on this proposal were in favor, and no

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<sup>7</sup> Cross-examination, however, is not to be used for discovery, absent good reason that discovery could not be completed before the hearing.

opposition to consolidation was stated. By ruling at the PHC, these two matters are consolidated. (Reporter's Transcript, PHC-1, page 2; Rule 55.)

#### **4. Issues**

Applicants and parties identified issues in the applications, protests, PHC statements, and at the November 5, 2003 PHC. The issues are preliminarily determined to be:

- a. Forecasts (for the purpose of allocations and rate design):
  1. Gas prices;
  2. Gas demand;
  3. Liquefied natural gas (LNG) and competition during the period of the service offerings (e.g., 15 years); and
  4. Regulatory account balances that will be reflected in rates.
- b. Allocations: Allocations among customers of non-gas costs of service, including whether to use marginal or embedded costs for allocations.
- c. Rates and Tariffs: Proposed revisions to rates (e.g., rate levels, rate design), proposed simplification of various tariffs, and proposed implementation of new service offerings, including, but not limited to, whether or not to:
  1. Base rates on LRMC or embedded costs,
  2. Core:
    - a. phase out the remaining "core averaging cost subsidy" in core rates over two years (SoCalGas) or three years (SDG&E),
    - b. adopt a tier closure proposal for residential service,
    - c. revise customer charges for core non-residential service,
    - d. revise discount for master meter customers who submeter (Pub. Util. Code § 739.5).
  3. Non-core:

- a. adopt non-core service offerings that segment firm non-core service into large and small customer classifications and, for each segment, offer new firm service options to replace current firm service offerings,
  - b. revise tariff rules and rate schedules that pertain to firm non-core service,
  - c. adopt differentiated volumetric rates for non-core interruptible and firm service as required by D.01-11-073,
  - d. revise method of allocating the costs of the self-generation program mandated by AB 970 consistent with D.01-03-073,
  - e. adopt a new peaking service tariff,
  - f. refund curtailment violation charges to certain non-core customers,
  - g. require contracts for firm transmission service (e.g., 5 year contract for “small” non-core customers, 15 year contract for “large” non-core customers), which may also include a 60% annual take-or-pay requirement,<sup>8</sup>
  - h. continue the equalized Sempra-wide transportation rates for electric generation customers,
  - i. adopt a levelized natural gas vehicle rate.
- d. Transmission Resource Plans: Issues related to transmission resource plans and storage, as required by D.92-12-058.

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<sup>8</sup> Electric Generator Alliance (EGA) protests SDG&E’s proposal for 15-year contracts. EGA argues that the Commission decided this issue less than one year ago when it declined to adopt SDG&E’s proposal, citing D.02-11-073 in Investigation 00-11-002. EGA says the “Commission should not let SDG&E’s refusal to take no for an answer force the Commission and other parties to expend time and money relitigating an issue the Commission ruled on less than a year ago.” (EGA Protest dated October 22, 2003, pages 10-11.) The issue is included in this list of issues in the Preliminary Scoping Memo. Parties, however, may address in further pleadings, PHC statements and at the second PHC whether or not this issue should be included as an issue in the final Scoping Memo.

- e. NFCA Balancing Account: For SoCalGas, whether or not to continue 100% balancing account treatment of the non-core fixed cost account (NFCA) such that non-core transportation revenues subject to NFCA are treated in a manner that is the same as core transportation revenues subject to core fixed cost account (CFCA).
- f. Other: Anything else reasonably necessary to consider and dispose of these applications in order to provide just and reasonable allocations and rate design.

#### **4.1. LRMC**

Applicants provide LRMC data, but largely base their proposals on embedded costs. Protestants argue that applicants must offer showings that present rates based on LRMC, and ask that applicants be directed to present such showings. The request is granted.

Each applicant may continue to propose allocations and/or rates based on embedded costs or any other cost methodology. At the same time, however, each applicant shall include a showing with its amended application in February 2004 that presents both reasonable allocations and rates based on LRMC.

#### **4.2. LNG and Competition**

Several protestants object to applicants failing to address the role of LNG supplies in each applicant's gas resource plan. Protestants generally request that each applicant discuss this issue, and related competitive effects, in their applications. The request is granted.

Each applicant shall include a showing with its amended application in February 2004 that presents and discusses at least the following for the longest time period covered by any one or more of applicants' proposals (e.g., 15 year contracts for firm transmission service), or, in the alternative, explains why these

matters are not relevant to the instant applications and proposals over that period:

1. additional facilities that will be required on each applicant's gas transmission system to accommodate the receipt of re-gasified LNG delivered to each applicant's service territory;
2. establishment of one or more receipt points on each applicant's system for the receipt of re-gasified LNG;
3. the terms and conditions under which these supplies will be received on each applicant's system;
4. each applicant's plans to replace Transwestern and El Paso capacity contracts which are due to expire before the end of the two year BCAP period;
5. competitive effects, if any, with respect to the gas market and other gas suppliers resulting from each applicant's proposed allocations, rates, rate designs and tariff conditions; and
6. resulting effects in these BCAPs on services offered, customer base, customer classes, gas prices, and gas demand for the purposes of allocation and rate design.

#### **4.3. Same Outline for Briefs**

To the fullest extent reasonably possible, parties should use the same outline for briefs. This practice promotes understandability, consistency and completeness. Parties shall agree on a common briefing outline, or bring disputes to the attention of the Principal Hearing Officer, no later than the last day of hearings.

#### **5. Categorization**

Applicants propose that this proceeding be categorized as ratesetting. The Commission preliminarily categorized this proceeding as ratesetting.

(Resolution ALJ 176-3119 (September 18, 2003) and Resolution ALJ 176-3120 (October 2, 2003).) No party objected to this categorization in protests, PHC statements or at the PHC.

I find that the categorization of this proceeding is ratesetting. (Rule 6(a)(3).) Appeals, if any, of this category determination must be filed and served within 10 days. (Rule 6.4.)

## **6. Ex Parte Communication**

Ex parte communications in a ratesetting proceeding are prohibited unless they occur under very narrowly tailored parameters, subject to advance notice and reporting requirements outlined in Pub. Util. Code § 1701.3(c). (See also Rules 7(c) and 7.1.)

## **7. Service List**

The official service list is now on the Commission's web page. The service list may be viewed by accessing the following link:

<http://www.cpuc.ca.gov/proceedings/A0309008.htm>

A paper copy of the service list may be obtained by contacting the Commission's Process Office (phone 415-703-2021.) Parties should confirm the accuracy of the entries on the service list, and seek correction of simple errors by letter to the Process Office (serving a copy on the service list to help facilitate future service).

An addition or substantive change to the appearance portion of the list must be sought by the filing and service of a written motion (or oral request at a subsequent PHC or hearing). Responses to any such written motion shall be filed and served within 2 days of the date the motion is filed. An addition or change to the "state service" or "information only" portions of the list may be sought by mailing a letter directly to Process Office (with a copy on the service list to help facilitate future service). Parties should access and use the most current official service list on the Commission's web page at the time each document or pleading is filed and served.

## **8. Electronic Service**

An electronic service protocol was adopted at the PHC. As a result, service of all pleadings and documents in this proceeding will be by electronic mail, with limited exceptions. (Rule 2.3(b).)

First, service of a paper copy is required on any party who does not have an electronic mail address or who also requests paper service in addition to electronic service. Second, service of a paper copy in addition to an electronic copy shall be performed on the Assigned Commissioner's Office (Brian Prusnek), and the Principal Hearing Officer. Third, electronic service shall be performed on those in the information only category. While service on persons in the information only category is generally not a requirement, the administrative convenience and cost savings by the use of electronic service permit such service without creating an unreasonable burden.<sup>9</sup>

## **9. Final Oral Argument**

A party in a ratesetting proceeding has the right to make an FOA before the Commission, if the FOA is requested within the time and manner specified in the Scoping Memo or later ruling. (Rule 8(d).) Parties shall use the following procedure for requesting FOA.

Any party seeking to present FOA shall file and serve a motion by the date specified in the attached schedule. The motion shall state the request, the subject(s) to be addressed, the amount of time requested, recommended procedure and order of presentations, and anything else relevant to the motion. The motion shall contain all the information necessary for the Commission to

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<sup>9</sup> Service of a paper copy is not required on anyone in the information only category even if that person does not have an electronic mail address.

make an informed ruling on the motion, providing for an efficient, fair, equitable, and reasonable FOA. If more than one party plans to move for FOA, parties shall use their best efforts to present a joint motion, including a joint recommendation on procedure, order of presentations, and anything else relevant to the motion. A response to the motion may be filed, and shall be filed and served by the date in the adopted schedule.

#### **10. Intervenor Compensation**

A customer who intends to seek an award for intervenor compensation must file and serve a Notice of Intent to Claim Compensation within 30 days after the PHC. (Pub. Util. Code § 1804(a)(1).) As a result, a customer who intends to seek an award of compensation must file and serve a Notice of Intent to Claim Compensation no later than 30 days from November 5, 2003.

#### **11. Principal Hearing Officer**

The Principal Hearing Officer is Administrative Law Judge Burton W. Mattson. (Rule 5(l).)

#### **IT IS RULED** that:

1. The October 20, 2003 motion of Marathon Oil Company to continue these proceedings is granted as provided herein, and denied in all other respects.
2. Applicant Southern California Gas Company shall file and serve an amended Biennial Cost Allocation Proceeding (BCAP) application within 21 days of the date that the Commission mails its decision in the Gas Industry Restructuring (GIR) proceeding (Application (A.) 03-06-040.) Applicant San Diego Gas & Electric Company shall file and serve an amended BCAP application within 28 days of the date that the Commission mails its decision in the GIR proceeding. Each amendment shall be based on the Commission's adopted results in A.03-06-040 (e.g., compliance case, status quo, other case).

Each amendment shall also include a showing that addresses long run marginal cost, liquefied natural gas and competition as described in the body of this Ruling.

3. The preliminary schedule is as set forth in the body of this Ruling and Attachment A.

4. A second Prehearing Conference (PHC) shall be held at 10:00 a.m. on March 3, 2004 in the Commission's Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California. Parties may file and serve PHC statements. Such PHC statements shall be filed and served by 5:00 p.m. on March 1, 2004.

5. Each party shall file and serve a Statement of Case as described in the body of this Ruling no later than seven days before evidentiary hearings are to begin.

6. The record shall be composed of all filed and served documents, exhibits received at hearing, and hearing transcripts.

7. These two BCAP applications are consolidated for processing and decision.

8. The preliminary identification of issues is as stated in the body of this Ruling.

9. Parties shall use the same outline for briefs, and shall bring disputes, if any, to the attention of the Principal Hearing Officer no later than the last day of hearing.

10. The categorization of this proceeding is ratesetting for the purpose of Article 2.5 of the Commission's Rules of Practice and Procedure. Appeals of this category determination must be filed and served within 10 days. Ex parte communications and reporting requirements are govern by rules for ratesetting matters.

11. Substantive changes to the appearance portion of the service list shall be made by the filing and service of a written motion (or oral motion at PHC or hearing). Responses to any such written motion shall be filed and served within 2 days of the date such motion is filed.

12. Electronic service shall be used for service of all documents and pleadings in this consolidated proceeding with the exceptions noted in the body of this Ruling.

13. Any party seeking to present Final Oral Argument shall file and serve a motion no later than 14 days after the date the proposed decision is filed and served. The motion shall contain the information described in the body of this Ruling. Responses may be filed and served no later than 6 days after the date of such motion.

14. A customer who intends to seek an award of intervenor compensation shall file and serve a Notice of Intent to Claim Compensation no later than 30 days from November 5, 2003.

15. The Principal Hearing Officer is Administrative Law Judge Burton W. Mattson.

Dated November 17, 2003, at San Francisco, California.

/s/ SUSAN P. KENNEDY

Susan P. Kennedy  
Assigned Commissioner

**ATTACHMENT A****PRELIMINARY SCHEDULE  
R.03-09-008 and R.03-09-031**

LINE NO.	EVENT	PRELIMINARY SCHEDULE			
		SoCalGas		SDG&E	
1	Applications filed	9/3/03		9/17/03	
2	PHC-1	11/5		11/5	
3	First Scoping Memo	11/17		11/17	
4	Intervenor Compensation NOIs filed and served	12/5		12/5	
5	GIR Decision (A.03-06-040) adopted	1/22/04		1/22/04	
6	GIR Decision mailed	1/26		1/26	
7		Days	Date	Days	Date
8	Applicants file and serve updates	21	2/16	28	2/23
9	PHC statements filed and served	14	3/1	7	3/1
10	PHC-2	2	3/3	2	3/3
11	Final Scoping Memo	7	3/10	7	3/10
12	ORA testimony served	68	5/17	75	5/24
13	Parties testimony served	21	6/7	21	6/14
14	Rebuttal testimony served	14	6/21	14	6/28
15	Statement of Case and PHC statements filed and served	14	7/5	7	7/5
16		Days		Date	
17	PHC-3	2		7/7	
18	Hearings begin	5		7/12	
19	Hearings end	21		7/30	
20	Opening Briefs filed and served	21		8/20	
21	Reply Briefs file and served; Projected Submission Date	10		8/30	
22	Proposed Decision filed and served	78		11/16	
23	Motion for FOA filed and served	14		11/30	
24	Comments on PD filed and served; Replies to Motion for FOA filed and served	6		12/6	
25	Reply comments on PD filed and served; Final Oral Argument	7		12/13	
26	Commission Decision	3		12/16	
27	Advice Letter	5		12/22	
28	Tariffs Effective	10		1/1/05	

**(END OF ATTACHMENT A)**

**CERTIFICATE OF SERVICE**

I certify that I have by mail and by electronic mail this day served a true copy of the original attached Assigned Commissioner’s Ruling Granting Motion for Continuance Plus First Scoping Memo and Ruling of Assigned Commissioner on all parties of record in this proceeding or their attorneys of record.

Dated November 17, 2003, at San Francisco, California.

/s/ TERESITA C. GALLARDO  
Teresita C. Gallardo

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission’s policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.