
PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**01/21/22
01:26 PM

January 21, 2022

Agenda ID #20274
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 21-05-010:

This is the proposed decision of Administrative Law Judge Mathews. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's February 24, 2022 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, ex parte communications are prohibited pursuant to Rule 8.2(c)(4).

/s/ ANNE E SIMONAnne E. Simon
Chief Administrative Law Judge

AES:smt

Attachment

Decision **PROPOSED DECISION OF ALJ MATHEWS** (Mailed 1/21/2022)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SOUTHERN CALIFORNIA GAS COMPANY (U904G) and SAN DIEGO GAS & ELECTRIC COMPANY (U902G) for Authority to Establish a Gas Rules and Regulations Memorandum Account.

Application 21-05-010

DECISION DISMISSING WITHOUT PREJUDICE THE ESTABLISHMENT OF A GAS RULES AND REGULATIONS MEMORANDUM ACCOUNT

Summary

This decision dismisses, without prejudice, the request of Southern California Gas Company and San Diego Gas & Electric Company for authority to establish a gas rules and regulations memorandum account. This decision closes the proceeding.

1. Background

On May 14, 2021, Southern California Gas Company and San Diego Gas & Electric Company (Applicants) filed Application (A.) 21-05-010 (Application) for authority to establish a Gas Rules and Regulations Memorandum Account (GRRMA). The Application seeks authorization to establish the GRRMA to record incremental costs imposed by, directly or indirectly, the Pipeline Hazardous Materials Safety Administration’s (PHMSA) amendments to 49 Code of Federal Regulations (C.F.R.) Part 191 and 192, Pipeline Safety: Safety of Gas

Transmission and Gathering Pipelines (GTGS Rulemaking).¹ At the time the Application was filed, PHMSA had issued the first final rule of the overall GTGS Rulemaking, entitled “Pipeline Safety: Safety of Gas Transmission Pipelines: MAOP [Maximum Allowable Operating Pressure] Reconfirmation, Expansion of Assessment Requirements, and Other Related Amendments” (GTGS Rulemaking Part 1), on October 1, 2019, with an effective date of July 1, 2020, and mandating certain compliance obligations starting July 1, 2021.² Applicants allege that the GTGS Rulemaking Part 1 was not considered in their general rate case (GRC) applications for Test Year 2019 filed in October 2017 because the GTGS Rulemaking Part 1 was published two years later on October 1, 2019.³

The Application states that PHMSA is anticipated to publish Part 2 and Part 3 of the GTGS Rulemaking, along with their respective requirements, in January 2022 and December 2021, respectively.⁴ The Application also states that both the timing, and final requirements, of the GTGS Rulemaking Part 2 and Part 3 remain uncertain.⁵ However, Applicants believe that a memorandum account is appropriate for GTGS Rulemaking Parts 1, 2, and 3 to “allow for Applicants to execute any new safety and compliance requirements expeditiously by providing for a mechanism to track incremental costs for a reasonableness showing at a later time.”⁶

¹ Application at 1.

² Application at 1-2; See also <https://www.federalregister.gov/documents/2019/10/01/2019-20306/pipeline-safety-safety-of-gas-transmission-pipelines-maop-reconfirmation-expansion-of-assessment>.

³ Application at 3.

⁴ Application at 2.

⁵ Application at 3.

⁶ Application at 3-4.

Applicants also state that the Protecting Our Infrastructure of Pipelines and Enhancing Safety (PIPES) Act of 2020 was signed on December 27, 2020⁷ and request that a memorandum account be set up to cover any additional compliance obligations associated with the new law. At the time of the filing of the Application, Applicants were unable to specify whether any additional compliance obligations would be imposed by this new law “because the comprehensive set of corresponding regulations have not been issued and may continue to emerge and evolve.”⁸ However, Applicants request that the memorandum account be established to track the costs associated with the Pipes Act of 2020 and the GTGS Rulemaking (including Part 1, which is currently in effect, and Parts 2 and 3, which are not yet in effect) since “it is likely that Applicants may be subjected to new regulatory compliance requirements.”⁹

Applicants request that the GRRMA be made effective as of May 14, 2021, the date the Application was filed, or no later than July 1, 2021, the date that the GTGS Rulemaking Part 1 went into effect.¹⁰

The Utility Reform Network (TURN) and Southern California Generation Coalition (SCGC) each timely filed timely protests to the Application on June 21, 2021. TURN’s Protest centers around three main arguments:

- 1) Applicants have failed to demonstrate that the adopted GTGS Rulemaking Part 1 regulations are incremental to existing California statutes and regulations;
- 2) any future costs due to future regulations are entirely speculative and do not

⁷ Application at 4; *See also* <https://www.phmsa.dot.gov/legislative-mandates/pipes-act-2020-overview>.

⁸ Application at 4.

⁹ *Ibid.*

¹⁰ Application at 6.

warrant memorandum account treatment; and 3) the Commission should reject the creation of unnecessary memorandum accounts.¹¹ SCGC's Protest primarily argues that the scope of the proposed memorandum account should be limited to only the scope of GTGS Rulemaking Part 1 issued on October 1, 2019, and not to any other future regulations not yet issued or in effect.¹²

Applicants timely filed their Reply to the protests on July 1, 2021. In response to TURN's protest, Applicants argue that TURN misinterpreted the purpose of memorandum accounts and misapplied the standard for establishing them.¹³ Applicants argue that that the new federal regulations will result in anticipated costs that are incremental, not speculative, and foreseeably substantial.¹⁴ Applicants also argue that their only option is to recover compliance costs associated with the new federal regulations through the GRRMA because seeking recovery in a future general rate case would amount to retroactive ratemaking.¹⁵

In response to SCGC's protest, Applicants argue that the GRRMA should not be limited to recording costs associated with GTGS Rulemaking Part 1.¹⁶ Applicants contend that memorandum accounts may track expenses relating to any future regulations that are issued between funding cycles and which are not recorded in an account.¹⁷ As such, Applicants believe that the GRRMA should

¹¹ TURN Protest at 2-7.

¹² SCGC Protest at 7-8.

¹³ Reply at 5.

¹⁴ Reply at 8-13.

¹⁵ Reply at 13.

¹⁶ Reply at 14.

¹⁷ *Ibid.*

also record costs associated with GTGS Rulemaking Parts 2 and 3 even though those regulations have not yet been published.¹⁸

A telephonic prehearing conference (PHC) was held on September 21, 2021, to address the issues of law and fact, determine the need for hearing, set the schedule for resolving the matter, and address other matters as necessary.

On January 20, 2022, a Scoping Memo was issued which identified the following issue for the proceeding:

1. Whether Applicants have met their burden to present sufficient evidence to make a prima facie case to support their position that they meet the requirements for establishing a gas rules and regulations memorandum account to record incremental costs imposed directly or indirectly by the PHMSA amendments to C.F.R. Parts 191 and 192, Pipeline Safety: Safety of Gas Transmission and Gathering Pipelines, referred to as the "GTGS Rulemaking"?

2. Discussion

There is one issue currently before the Commission. This issue is whether Applicants have met their burden to present evidence sufficient to make a prima facie case for establishing a gas rules and regulations memorandum account to record incremental costs imposed directly or indirectly by the PHMSA amendments to C.F.R. Parts 191 and 192, Pipeline Safety: Safety of Gas Transmission and Gathering Pipelines, referred to as the "GTGS Rulemaking." This threshold issue calls for a determination as to whether Applicants have met their burden of proof in presenting an application before the Commission. The

¹⁸ Reply at 15.

Commission finds that the applicants have not met their burden of proof in presenting the application before the Commission.

The Application requested authority to establish a GRRMA for GTGS Rulemaking Parts 1, 2, and 3, as well as the PIPES Act. As previously noted, at the time the Application was filed, only GTGS Rulemaking Part 1 was final and in effect; GTGS Rulemaking Parts 2 and 3, as well as the PIPES Act, were neither final nor in effect. Our past decisions are clear that a memorandum account may be established if the activities and/or compliance obligations are 1) incremental to the activities already funded by utilities' GRC or other ratemaking applications; 2) substantial; and 3) non-speculative. (Decision (D.) 21-04-015). Here, Applicants have not met their burden of proof in showing that the compliance obligations associated with the new set of federal regulations are incremental, substantial, and/or non-speculative. With regard to GTGS Rulemaking Part 1, which is currently in effect, the Application does not provide evidence of all the different and/or additional compliance obligations imposed by these federal regulations let alone whether they are incremental to the activities already funded by utilities' GRC or other ratemaking applications, substantial, and non-speculative. Instead, Applicants provide vague assertions of what those additional requirements may be by stating that they "will necessarily incur costs, which have been preliminarily identified but are subject to change as scoping and operational impacts are assessed."¹⁹ The Application is also vague as to what expenses are associated with GTGS Rulemaking Part 1. Applicants state that expenses "may include, but are not limited to, the following activities..."²⁰

¹⁹ Application at 3.

²⁰ *Ibid.*

This language indicates that Applicants do not yet know with certainty what are all the additional requirements imposed by GTGS Rulemaking Part 1. It logically follows that if Applicants are not yet certain as to all the compliance obligations associated with GTGS Rulemaking Part 1, they cannot present sufficient evidence to support their request to establish memorandum account. Applicants have simply not met their burden of proof in showing that the new regulations associated with GTGS Rulemaking Part 1 will impose different and/or additional compliance obligations that are incremental, substantial, and non-speculative.

Similarly, Applicants have not met their burden of proof in showing that the new regulations associated with GTGS Rulemaking Parts 2 and 3 and the PIPES Act will impose different or additional compliance obligations that are incremental, substantial, and/or non-speculative. In fact, the Application does not, and cannot, state with any certainty what are the additional requirements imposed by those new federal regulations because they are not yet in effect. Therefore, it is not possible to know yet whether the new regulations associated with GTGS Rulemaking Parts 2 and 3 and the PIPES Act will impose different or additional compliance obligations that warrant the establishment of a memorandum account.

Overall, Applicants provide too many vague assertions, like they “must perform substantial new work- work not already required by existing rules and regulations- in order to comply with these new safety regulations,”²¹ without presenting evidence of all the compliance obligations contemplated by the new federal regulations and showing how those compliance obligations are

²¹ Reply at 1.

incremental, substantial, and non-speculative, thereby warranting the establishment of a memorandum account. In sum, Applicants do not meet their burden of proof in presenting evidence sufficient to make a prima facie case to support their position that they meet the requirements for establishing a gas rules and regulations memorandum account.

Applicants had an opportunity to prepare and file a complete and sufficient application. The Application filed with the Commission, however, was not complete or sufficient.

3. The Application Should Be Dismissed Without Prejudice

We conclude that this application is deficient and should be dismissed without prejudice. Applicants in A.21-05-010 do not meet their burden of proof to make a prima facie case to support their position that they meet the requirements for establishing a gas rules and regulations memorandum account. The Commission therefore dismisses Applicant's request for authority to establish a gas rules and regulations memorandum account.

Applicants are not precluded from refileing the Application and presenting sufficient evidence to support their position that the Commission should authorize the requested gas rules and regulations memorandum account.

4. Comments on Proposed Decision

The proposed decision of Administrative Law Judge (ALJ) Suman Mathews in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

5. Assignment of Proceeding

Darcie L. Houck is the assigned Commissioner and Suman Mathews is the assigned ALJ in this proceeding.

Findings of Fact

1. Southern California Gas Company and San Diego Gas & Electric Company seek authorization to establish a gas rules and regulations memorandum account for the “Pipeline Safety: Safety of Gas Transmission Pipelines: MAOP [Maximum Allowable Operating Pressure] Reconfirmation, Expansion of Assessment Requirements, and Other Related Amendments” (GTGS Rulemaking Part 1), which became effective on July 1, 2020 and mandated certain compliance obligations starting July 1, 2021.

2. GTGS Rulemaking Parts 2 and 3 and their respective final requirements were anticipated to be published in January 2022 and December 2021, respectively.

3. The PIPES Act of 2020 was signed on December 27, 2020, but Applicants were unable to specify whether any additional compliance obligations would be imposed by this new law because the comprehensive set of corresponding regulations have not been issued and are unknown at this time.

Conclusions of Law

1. Southern California Gas Company and San Diego Gas & Electric Company have not met their burden of proof to make a prima facie case to support their position that they meet the requirements for establishing a gas rules and regulations memorandum account.

2. The Application should be dismissed without prejudice.

3. Southern California Gas Company and San Diego Gas & Electric Company are not precluded from refiling their application at a later date when more information is available to support such a request.

O R D E R

IT IS ORDERED that:

1. Southern California Gas Company and San Diego Gas & Electric Company are not authorized to establish the requested Gas Rules and Regulations Memorandum Account.

2. The Application is dismissed without prejudice.

3. Application 21-05-010 is closed.

This order is effective today.

Dated January _____ , 2022, at San Francisco, California.