

COM/CR6/mef 5/10/2022



FILED

05/10/22

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

PHAM

A2202007

Application of Southern California
Gas Company (U904G) for Authority
to Establish a Memorandum Account
for the Angeles Link Project.

Application 22-02-007

ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING

This Scoping Memo and Ruling (Scoping Memo) sets forth the issues, need for hearing, schedule, category, and other matters necessary to scope this proceeding pursuant to Public Utilities (Pub. Util.) Code Section 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure (Rules).

1. Application

Southern California Gas Company (SoCalGas) files this Application to request authority to establish a memorandum account to record the costs of planning a potential project, the Angeles Link project (Project). The Project aims to build pipelines, including transmission pipelines, to deliver renewable green hydrogen gas into the Los Angeles Basin. Specifically, the Project would develop a green hydrogen energy transport system into the Los Angeles Basin. SoCalGas states that this Project would advance the State's clean energy policy objectives of decarbonization and clean air goals by bringing green hydrogen to the Los Angeles Basin as an energy source for "hard-to-electrify" industries and heavy-duty transportation sector and to replace natural gas supplied by Aliso Canyon.

SoCalGas requests to establish a memorandum account to record the incremental costs it would incur during the planning process of the Project.

Specifically, these costs would be public engagement costs, which are costs the Company would incur to engage stakeholders in the planning process, and Project study costs, which are costs SoCalGas would incur for engineering, design, and environmental work to plan for the Project. According to SoCalGas, the memorandum account would enable it to record Project costs while providing customers and stakeholders with a transparent mechanism to monitor the planning development of the Project.

SoCalGas is not seeking Commission approval of the proposed Project or the recovery of costs in this Application, but will seek these in future filings.

2. Procedural Background

On February 17, 2022, SoCalGas filed this Application.

Timely protests were filed by Environmental Justice League, Air Products and Chemicals, the Public Advocates Office (Cal Advocates), Sierra Club, Agricultural Energy Consumers Association, Indicated Shippers, Utility Consumers' Action Network, and The Utility Reform Network (TURN). Timely responses were filed by Independent Energy Producers Association, Coalition of California Utility Employees, California State Pipe Trades Council, Natural Resources Defense Council, Environmental Defense Fund, Green Hydrogen Coalition, and Bloom Energy Corporation. SoCalGas filed a timely response to the protests and responses.

Party status was also granted to Utility Workers Union of America Local Union 132 (UWUA 132), Utility Workers Union of America

Local Union 463 (UWUA 463), City of Long Beach (Port of Long Beach), Clean Energy Fuels, and California Environmental Defense Fund.¹

A prehearing conference (PHC) was held on April 6, 2022 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. Party status was granted to Clean Energy Fuels and California Environmental Justice Alliance (CEJA) at the PHC.

After considering the protests, responses, reply to protests and responses, and the discussion at the PHC, I have determined the issues and initial schedule of the proceeding to be set forth in this Scoping Memo.

3. Issues

The issues to be determined are:

1. Does the requested memorandum account meet the requirements the Commission has traditionally considered for approval of memorandum accounts?²
 - a. Are expenses caused by an event of an exceptional nature that is not under the Company's control?
 - b. Could the expenses not have been reasonably foreseen in the Company's last general rate case (GRC)?
 - c. Should these expenses be considered in its test year 2024 GRC?
 - d. Are the expenses of a substantial nature?
 - e. Which are the existing ratepayers, if any, who are expected to benefit from the memorandum account treatment? What are the potential benefits to existing

¹ See Email Ruling Granting Party Status to Local Union 132 of the Utility Workers Union of America, Email Ruling Granting Party Status to Local Union 483 of the Utility Workers Union of America, Email Ruling Granting Party Status to the City of Long Beach, Transcript of the PHC at 9-13.

² Decision (D.) 21-05-018 at 8.

ratepayers, if any? If no existing ratepayers will benefit from the activities/costs recorded in the memorandum account, is it reasonable to approve the application?

2. Will the establishment of the requested memorandum account create unfair market competition for nonutility companies and other parties that would stifle innovations and private investments in the developing industry of “clean hydrogen” as an alternative energy source?³
3. If the requested memorandum account meets the standards of approval, what types of costs should be and should not be recorded in the memorandum account, including but not limited to costs incurred within specified time periods, or costs incurred in certain phases of the Project, costs related to certain activities, or a cap on the costs?
4. If the requested memorandum account meets the standards of approval, should the Commission require the following questions to be answered in any request for cost recovery to provide a foundation for minimal standards of reasonableness? Are there other questions not identified below that must be answered in any request for cost recovery to provide a foundation for minimal standards of reasonableness?
 - a. How did the planning process consider the impacts to disadvantaged communities and address environmental justice and affordability concerns in the development of the Project?
 - b. How did the planning process consider California environmental law and policies in the development of the Project?
 - c. How did the planning process gather and address stakeholder concerns, such as source of green hydrogen and water, and the routes of the pipelines, including

³ “Clean Hydrogen” is defined as hydrogen produced with a carbon intensity equal to or less than 2 kilograms of carbon dioxide-equivalent produced at the site of production per kilogram of hydrogen produced. *See* 42 USC 16166.

any proposals from Commission's Energy Division, in the process of developing its Project?

5. Should SoCalGas share all data and analyses gathered throughout the development of the Project with the Commission, other state agencies, stakeholders, and the public? If so, how?
6. What impacts could the Application have on low income and environmental justice communities?

4. Issues regarding Jurisdiction are Outside the Scope of this Proceeding

In the Application, protests, responses, SoCalGas' reply to protests and responses, and the discussions at the PHC, parties identified concerns with the jurisdiction of SoCalGas' proposed Project, specifically whether the proposed Project would provide a regulated public utility service that falls within the Commission's jurisdiction. SoCalGas argues that the proposed Project is within the Commission's jurisdiction under Pub. Util. Code Sections 216 and 221.⁴ SoCalGas states that the Project would deliver hydrogen gas using pipelines dedicated to serving the public and that hydrogen gas is within the Commission's jurisdiction as either a "natural or manufactured" gas specified in Pub. Util. Code Section 221.⁵ Other parties contest that the Commission has jurisdiction over the proposed Project, with some parties arguing that the nature of hydrogen gas is not a "natural or manufactured" gas as defined in Pub. Util. Code Section 221 that is within the Commission's jurisdiction.⁶

⁴ Application at 20-21.

⁵ Southern California Gas Company Reply to Protests and Responses at 2 and 15-17.

⁶ Protest of Sierra Club at 1; Protest of Air Products and Chemicals, Inc. at 5-10; Protest of TURN to the Angeles Link Project Memorandum Account at 3-4; Protest of the Environmental Justice League at 7; Protest of the Agricultural Energy Consumers Association of the Application of Southern California Gas Company for Authority to Establish a Memorandum Account for the Angeles Link Project at 3.

Because the Project is still in the conceptual phase, and details of the Project are not established, it is too early for the Commission to determine whether the Project structure results in Commission jurisdiction over the Project. In this proceeding, which is to evaluate the appropriateness of granting a memorandum account for a specific Applicant, it is not necessary to address the issue of Commission jurisdiction over hydrogen gas pipelines.

Because the proposed Project is still in development and planning stages, the issue of whether the Project is within the Commission's jurisdiction is premature, as resolving the issue may require examining facts that are not determined yet. For example, to determine whether the Project is within the Commission's jurisdiction, the Commission needs to examine facts such as the nature of the hydrogen gas served by the Project, whether the hydrogen gas delivered via the Project qualifies as a "natural or manufactured" gas as defined in Pub. Util. Code Section 221, whether the facilities in the proposed Project would be dedicated to public use, and which end users the Project would serve. These facts will be developed throughout the planning phases of the proposed Project, and may change throughout the course of the development process.

In its protest, Air Products states that it is "premature" to determine jurisdiction now, that "it is simply too soon at this hypothetical stage to determine whether the potential pipelines...would or could be dedicated to public use," and that it is more appropriate to wait until SoCalGas apply for a CPCN to make a determination on issue of jurisdiction.⁷

⁷ Protest of Air Products and Chemicals, Inc. at 9-10.

As the Project develops and the facts of the Project become more certain, the Commission can then examine facts to appropriately determine the issue of jurisdiction. The issue of jurisdiction need not necessarily be resolved at this time for the Commission to grant or deny the establishment of the requested memorandum account. This issue will need to be addressed if and when SoCalGas files a subsequent application to seek authority either for a Certificate of Public Convenience and Necessity (CPCN) for the Project or for recovery of the costs recorded in the memorandum account. If SoCalGas seeks either a CPCN or cost recovery of the memorandum account, the facts of the proposed Project should be established, which is a more appropriate time for the Commission to address the issue of jurisdiction for the Project.

For the Commission to grant the authority requested in the Application, which is for the establishment of a memorandum account, it is not necessary to resolve at this time the issue of whether the proposed Project is within the Commission's jurisdiction. However, the Applicant assumes the risk that all costs recorded in the memorandum account would not be recoverable if Commission jurisdiction cannot be established (e.g. whether the Commission has jurisdiction over hydrogen gas, whether the Project qualifies for public utility status), regardless of whether the Applicant made a good faith effort in establishing the Project to serve as a public utility facility.

For these reasons, I determine that the issue of whether the proposed Project falls under the jurisdiction of the Commission is outside of the scope of this proceeding.

Some parties argue that the Project should, under the Affiliate Transaction Rules, be undertaken by the utility's non-regulated affiliates,⁸ but SoCalGas contends that it, as a public utility, is allowed to provide hydrogen gas as a new utility product or service.^{9,10} The resolution to these contentions depends on how the issue of jurisdiction for the Project is resolved, which I found to be premature at this time. Therefore, it is also premature to address the issue of whether the proposed Project should be carried out by a non-regulated affiliate of the utility. This issue is also outside the scope of this proceeding.

The Commission has a long-standing tradition of upholding a "cost causation" principle when setting rates.¹¹ Under the principle of cost causation, the recovery of costs is assigned to the group of ratepayers that benefit from the services that caused the costs to be incurred. If a memorandum account is authorized, whether an unfair subsidy exists, or whether the principle of cost causation is upheld, remains a standard that the Commission must apply, particularly at the time that SoCalGas seeks recovery of the recorded costs.

5. Need for Evidentiary Hearing

The issues to be considered in this proceeding can be resolved through opening and reply briefs. Because we do not expect that a determination in this proceeding requires resolution of material disputed facts, an evidentiary hearing is not needed.

⁸ Protest of Air Products and Chemicals, Inc. at 11-13; Protest of TURN to the Angeles Link Project Memorandum Account at 3-4; Indicated Shippers at 1-2; Protest of the Environmental Justice League at 6-7; Protest of the Indicated Shippers at 1-2.

⁹ Southern California Gas Company Reply to Protests and Responses at 17-19.

¹⁰ For the Affiliate Transaction Rules, please *see* D.06-12-029, Appendix A-3.

¹¹ D.14-06-029 at 12.

6. Schedule

The following schedule is adopted here and may be modified by the Administrative Law Judge (ALJ) as required to promote the efficient and fair resolution of the application:

Event	Date
Opening briefs	June 29, 2022
Reply briefs [<i>matter submitted</i>]	August 10, 2022
Proposed decision	4 th Quarter of 2022

The opening briefs should address the questions that are issues within the scope of this proceeding.

The proceeding will stand submitted upon the filing of reply briefs, unless the ALJ requires further evidence or argument. Based on this schedule, the proceeding will be resolved within 18 months as required by Pub. Util. Code Section 1701.5.

7. Category of Proceeding and *Ex Parte* Restrictions

This ruling confirms the Commission's preliminary determination¹² that this is a ratesetting proceeding. Accordingly, *ex parte* communications are restricted and must be reported pursuant to Article 8 of the Rules.

8. Public Outreach

Pursuant to Pub. Util. Code Section 1711(a), I hereby report that the Commission sought the participation of those likely to be affected by this matter by noticing it in the Commission's March 2022 monthly newsletter that is served on communities and business that subscribe to it and posted on the Commission's website.

¹² Resolution ALJ 176-3504 at 1.

9. Intervenor Compensation

Pursuant to Pub. Util. Code Section 1804(a)(1), a customer who intends to seek an award of compensation must file and serve a notice of intent to claim compensation by May 9, 2022, the first business day 30 days after the PHC.

10. Response to Public Comments

Parties may, but are not required to, respond to written comments received from the public. Parties may do so by posting such response using the “Add Public Comment” button on the “Public Comment” tab of the online Docket Card for the proceeding.

11. Public Advisor

Any person interested in participating in this proceeding who is unfamiliar with the Commission’s procedures or has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission’s Public Advisor at 1-866-849-8390 or 1-866-836-7825 (TTY), or send an e-mail to public.advisor@cpuc.ca.gov.

12. Filing, Service, and Service List

The official service list has been created and is on the Commission’s website. Parties should confirm that their information on the service list is correct and serve notice of any errors on the Commission’s Process Office, the service list, and the ALJ. Persons may become a party pursuant to Rule 1.4¹³.

When serving any document, each party must ensure that it is using the current official service list on the Commission’s website.

¹³ The form to request additions and changes to the Service list may be found at <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/administrative-law-judge-division/documents/additiontoservicelisttranscriptordercompliant.pdf>

This proceeding will follow the electronic service protocol set forth in Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. Rule 1.10 requires service on the ALJ of both an electronic and a paper copy of filed or served documents. Due to the current pandemic, however, parties should serve the assigned ALJ only electronic copies of served documents, until the assigned ALJ instructs otherwise.

When serving documents on Commissioners or their personal advisors, whether or not they are on the official service list, parties must only provide electronic service. Parties must not send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

Persons who are not parties but wish to receive electronic service of documents filed in the proceeding may contact the Process Office at process_office@cpuc.ca.gov to request addition to the “Information Only” category of the official service list pursuant to Rule 1.9(f).

The Commission encourages those who seek information-only status on the service list to consider the Commission’s subscription service as an alternative. The subscription service sends individual notifications to each subscriber of formal e-filings tendered and accepted by the Commission. Notices sent through subscription service are less likely to be flagged by spam or other filters. Notifications can be for a specific proceeding, a range of documents and daily or weekly digests.

13. Receiving Electronic Service from the Commission

Parties and other persons on the service list are advised that it is the responsibility of each person or entity on the service list for Commission proceedings to ensure their ability to receive e-mails from the Commission. Please add “@cpuc.ca.gov” to your e-mail safe sender list and update your e-mail screening practices, settings and filters to ensure receipt of e-mails from the Commission.

14. Assignment of Proceeding

Clifford Rechtschaffen is the assigned Commissioner and Elaine C. Lau is the assigned ALJ.

IT IS RULED that:

1. The scope of this proceeding is described above and is adopted.
2. The schedule of this proceeding is set forth above and is adopted.
3. Evidentiary hearing is not needed.
4. The category of the proceeding is ratesetting.

This order is effective today.

Dated May 10, 2022, at San Francisco, California.

/s/ CLIFFORD RECHTSCHAFFEN

Clifford Rechtschaffen
Assigned Commissioner