

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
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December 21, 2023

Agenda ID #22191
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 23-01-004:

This is the proposed decision of Administrative Law Judge Bemederfer. 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 January 25, 2024, 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/ MICHELLE COOKE

Michelle Cooke

Chief Administrative Law Judge

MLC:mph

Attachment

Decision PROPOSED DECISION OF ALJ BEMESDERFER (Mailed 12/21/2023)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Gas Company (U904G), to Establish Gas Demand Response Pilot Programs.

Application 23-01-004

DECISION DENYING APPLICATION

Summary

This decision denies Southern California Gas Company's application seeking approval of the proposed gas demand response pilot programs and recovery of the costs associated with their proposed implementation for the years 2023-2025. This proceeding is closed.

1. Procedural Background

In 2018, Southern California Gas Company (SoCalGas or Applicant) filed an application to fund and implement a \$50 million set of gas demand response (DR) programs beginning in 2019 and running through 2022 (2018 Application).¹ Decision (D.) 20-02-043 denied, without prejudice, the 2018 Application citing insufficient evidence that the proposed DR programs would provide significant ratepayer benefits.² That decision also ordered SoCalGas to hold a public workshop on the need for gas DR programs and consider other alternatives that

¹ Application (A.) 18-11-005, Application of Southern California Gas Company (U904G) to Establish a Demand Response Program.

² D.20-02-043 at 2, 55-56, Ordering Paragraphs (OP) 1-4.

could be more effective in addressing the natural gas curtailments and reliability issues that the DR programs proposed in the 2018 Application aimed to address.³ The Commission also directed SoCalGas to hold at least one public workshop seeking public input and participation and to develop needed information on the design and implementation of a Commercial and Industrial (C&I) load reduction pilot program before refiling an application for such a program.⁴ SoCalGas held the required workshop remotely on June 24, 2020.

On April 15, 2022, SoCalGas received a conditional commitment of \$2.5 million from the United States Department of Energy (DOE) for the development of gas DR pilot programs. This award was issued in response to SoCalGas's proposal to DOE to develop gas DR pilot programs with a total project cost of \$7.5 million. With the \$2.5 million in DOE conditional commitment, SoCalGas would still need additional \$5 million for the development of those proposed gas DR pilot programs.

On August 18, 2022, SoCalGas informed the Commission's Energy Division of this conditional award and met with Energy Division staff and raised the issue of possibly seeking matching funds through increased rates. At that meeting, SoCalGas informed Energy Division staff that it planned to file an application for approval of gas DR pilot programs with a total cost of \$15 million (double the figure presented before DOE), ultimately requiring \$12.5 million in ratepayer matching funds, rather than the \$7.5 million gas DR pilot programs requiring \$5 million in ratepayer matching funds, as reflected in its proposal to the DOE.

³ *Id.* at 57, OP 7.

⁴ *Id.*

On September 13, 2022, Energy Division staff sent an email to SoCalGas commenting on the proposed application. After noting that the DOE solicitation required the collaboration of the Commission, staff commented that the request to seek \$12.5 million in ratepayer matching funds was excessive and SoCalGas should consider reducing it to \$2.5 million. Staff also made other specific recommendations including specifying how much of any proposed budget would go to each of SoCalGas's contractors, explaining how hard-to-electrify customers can be targeted and participate in the load reduction program, and specifying proposed penalties for non-compliance by both core and non-core customers, among other recommendations.⁵

On October 16, 2022, SoCalGas held a public workshop seeking input on a potential commercial and industrial (C&I) pilot program and other potential gas DR pilot programs.

On January 6, 2023, SoCalGas filed the instant application (Application) for authorization of gas DR pilot programs with a total cost of \$15 million and seeking \$12.5 million in ratepayer matching funds. The application was protested by The Utility Reform Network (TURN) and the Center for Accessible Technology (CforAT). It also drew responses from Small Business Utility Advocates, Alliance for Retail Energy Markets, California Efficiency + Demand Management Council Google, LLC and the Environmental Defense fund. On February 21, 2023, SoCalGas filed a reply to the protests and responses.

A prehearing conference (PHC) was held on March 20, 2023. On April 10, 2023, California Efficiency + Demand Management Council, the Public Advocates Office of the Commission (Cal Advocates), Center for Accessible

⁵ E-mail from Renee Guild to Brian Prusnek dated September 13, 2022, included as Exhibit H to the response of SoCalGas to ALJ's September 12, 2023, Ruling seeking additional information.

Technology, Small Business Utility Advocates, Southern California Gas Company, Google LLC, Environmental Defense Fund, and Alliance for Retail Energy Markets filed a joint post-PHC statement.

On June 20, 2023, the Administrative Law Judge (ALJ) issued a ruling seeking additional information to which SoCalGas responded on July 5, 2023. On September 12, 2023, the ALJ issued a second ruling seeking further information, to which SoCalGas responded on September 27, 2023.

2. Issues Before the Commission

The issues to be determined in this proceeding are:

1. Whether the DR programs proposed in this Application should be approved?
2. Whether Applicant should be authorized to recover its costs for implementing its proposed DR programs for the years 2023-2025?

3. Discussion

The Application seeks to establish four DR pilot programs, including three for C&I customers and one for low-income residential customers, as well as a research initiative.⁶ The Application also proposes to charge SoCalGas residential customers 79.8% of the \$12.5 million in requested ratepayer matching funds even though 67% of the spending would be on the three pilots targeting C&I customers, and 78% of the forecast incentives would flow to C&I customers.⁷

⁶ SoCalGas's Testimony in Support of its Application for Approval of its Demand Response Pilot Programs (Application Chapter 2) filed January 6, 2023, at 3-4.

⁷ See Protest of The Utility Reform Network to SoCalGas' Application for Approval of Gas Demand Response Pilot Programs filed February 9, 2023, at 2-3, Table 1 and FN 3.

The Application also states that the DOE grant (\$2.5 million) must be utilized by the winter of 2023 or California ratepayers will lose the opportunity to use this funding source.⁸

Both TURN and CforAT protested the proposed allocation of costs and benefits in the Application as too one-sided, providing most of the benefits to C&I customers while imposing most of the costs on residential customers. In addition, CforAt protested the exclusive focus of the proposed residential pilot programs on low-income customers while TURN objected to the cost assignment methodology employed by SoCalGas.

In its reply to the protests and responses filed on February 21, 2023, SoCalGas stated: “The U.S. Department of Energy (“DOE”) also supports the DR Pilots and has awarded \$2.5 million in funding, conditioned upon SoCalGas implementing the DR Pilots in the winter of 2023.”⁹

At the PHC, SoCalGas counsel stated that contrary to the terms of Application, only \$2.5 million in ratepayer matching funds was necessary to secure the DOE grant:

Mr. TRAN: SoCalGas and its partners have been awarded this 2.5-million grant if we get a -- if we meet all the requirements that is laid out as part of the grants. One of which is to get a matching funding of the 2.5 million. And that's part of the application, to get that 2.5 million funding. If we don't provide a matching grant, then the award -- then we will not get the award.”¹⁰

⁸ SoCalGas’s Testimony in Support of its Application for Approval of its Demand Response Pilot Programs filed January 6, 2023 (Chapter 1: Policy) at 3

⁹ SoCalGas Reply to Protests and Responses filed February 21, 2023, at 1

¹⁰ Transcript at 6-7

However, counsel then confirmed that although only \$2.5 million in ratepayer matching funds was needed to secure the DOE grant, the application was seeking \$12.5 million of ratepayer matching funds:

ALJ BEMESDERFER: And when you say, "a matching grant," the grant from DOE, should you get it, would be 2.5 million. You're asking for 12.5 million in ratepayer funds.

MR. TRAN: Correct.¹¹

At the PHC, the ALJ directed SoCalGas to explain its request for an expedited timetable for processing the Application:

ALJ BEMESDERFER: Could you explain why you request an expedited decision by October 2023? What is the Department of Energy requirement? Where is it memorialized? Is it possible for the funds to be carried over if we don't issue a decision by October?

MR. TRAN: So, your Honor, I -- first off, I will apologize. We were actually notified by the DOE, and per the discussions after we filed the application, that the DOE wants to sign a contract -- the award contract by the end of their fiscal year. The end of their fiscal year is actually September 30th of 2023. So, they're requesting the matching funds letter by early August. So, it's actually even more expedited than what we proposed in the application. That was discovered after we filed the application.¹²

The June 20, 2023 ruling directed SoCalGas to provide (a) an explanation of the nine-month delay between receipt of the DOE conditional grant and the filing of the Application; (b) a reduced project scope that would require only \$2.5 million in ratepayer matching funds; (c) an explanation of the "matching funds letter" including from whom it must come and what it must say to satisfy

¹¹ *Ibid.* at 7

¹² *Ibid.* at 13-14

DOE requirements; and (d) a statement of whether it would be possible to use a portion of funds from SoCalGas' 2023 Research and Development (R&D) Program to provide matching funds for the proposed pilots.

On July 5, 2023, SoCalGas responded to the June 20 ruling as follows:

(a) the delay in submitting the application was due to various external issues such as negotiating the terms of the agreement with DOE; (b) at the PHC, Counsel mis-stated the amount of matching funds needed to secure the DOE grant, the actual minimum amount is \$5 million so it is not possible to produce the reduced scope of work referred to by the ALJ; (c) "until the Commission approves this Application, SoCalGas will not have the requested funds to commit to the cost sharing for the DOE funding"; and (d) SoCalGas does not believe R&D funds are appropriate sources for co-funding the pilot programs.

In D.20-02-043, the Commission expressed its dissatisfaction with SoCalGas's previously proposed DR pilot programs and laid out in detail what it expected to see in any future application for approval of DR pilot programs. In addition to discussion in the text of the opinion of the shortcomings of SoCalGas's proposed pilot programs and requirements for future applications, the Commission issued a specific set of instructions regarding any future gas demand reduction pilot programs that SoCalGas might propose. These instructions were summarized in Ordering Paragraphs (OPs) 5, 6 and 7 of the decision:

5. Within 120 days of this decision, Southern California Gas Company shall hold at least one public workshop to seek public input and participation and develop needed information on the design and implementation of the Commercial and Industrial (C&I) Load Reduction Pilot; and may refile an application for the approval of the C&I Load Reduction Pilot with adequate information and

- details regarding the design and implementation of the Load Reduction Pilot within 60 days of the workshop.
6. The Energy Division of the California Public Utilities Commission (ED) is authorized to direct Southern California Gas Company to file an application proposing a pilot if ED determines after the workshop that doing so would be in best interest of the ratepayers.
 7. Prior to filing a new application for the approval of any of the gas winter season Demand Response Programs (DR Programs) rejected in this Application, Southern California Gas Company must reevaluate the designs and the incentive structures of such DR Program and hold at least one workshop to evaluate the need for the DR Program and consider other alternatives that could be more effective in addressing the natural gas curtailments and reliability issues that these DR Pilot Programs aimed to address, among others. Such new application shall be based on a redesigned, modified and updated DR program(s) based on the feedbacks provided in this decision.

The September 12, 2023 ruling directed SoCalGas to explain in detail the steps that it took to comply with OP 7 of D.20-02-043 and to provide details of any pre-filing feedback it received from workshop participants or the Commission's Energy Division staff regarding the current application. On September 27, 2023, SoCalGas filed a response providing the requested details.

In view of D.20-02-043 and the record of this proceeding, this Application must be denied as it fails to meet the requirements of OPs 5, 6 and 7 of D. 20-02-043.

Although SoCalGas held the workshop called for in OP 5 within 120 days of that decision, it did not file a new application within 60 days of the workshop.

The Application similarly fails to meet the requirements of OP 6. We find that filing an application for \$12.5 million in ratepayer matching funds would not

be in the interest of ratepayers. In fact, as proposed, \$12.5 million in ratepayer matching funds is excessive and not supported.

The Application also failed to comply with the requirements of OP 7. Not only does the Application fail to discuss alternatives that could be more effective in addressing the natural gas curtailments and reliability issues that the earlier DR pilot programs aimed to address, it also fails to take account of the extensive feedback to the earlier application presented in D. 20-02-043. This specific failing was pointed in detail out by the ALJ at the PHC:

ALJ BEMESDERFER: Ordering Paragraph 7 of the prior decision requires SoCalGas to base any new demand response pilot application on feedbacks from Decision 20-02-043. The current application only partially complies with that requirement. It does not include, for example -- and here I will quote from the decision: "A description of how many customers SoCalGas intends to target in each sector, for example, schools, retail, warehouses, office buildings, with a table showing the customer's average daily natural gas consumption and end uses, and data about whether an interruptible rate program, either alone or in combination with a proposed commercial and industrial demand response program, would be beneficial to the system by avoiding the curtailment of one peaking turbine, or approximately a million cubic feet per hour." That's from Decision 20-02-043, at page 26, Footnote 25. While SoCalGas's application mentions that it will "examine" an interruptible rate program, either alone or together with a future industrial load reduction program, it provides no data or other proposed parameters, such as the size of target industrial customers or customer sectors, of such a curtailment program for consideration in this demand response pilot. Nor does it include any analysis of whether an interruptible rate program would benefit the system by avoiding the curtailment of a peaking turbine, or

any explanation as to why it has not included such an analysis.¹³

In addition to failing to comply with the directives in D.20-02-043, the Application and the ensuing proceeding have left us in the dark concerning the actual status of the DOE grant. At times, SoCalGas has stated that it has been awarded a \$2.5 million grant; at other times, SoCalGas has stated that the award is conditional upon Commission approval of some level of matching funds, though the amount required has varied from \$2.5 million to \$12.5 million.¹⁴

Equally concerning is the fact that SoCalGas has never made clear if DOE has imposed an actual deadline after which the funds will no longer be available, nor has SoCalGas made clear what event, if any, triggers the loss of the DOE grant. It was not until it filed its response to the ALJ's June 20, 2023 ruling that SoCalGas explained that Commission approval of the proposed pilots was necessary in August 2023 to enable SoCalGas to write a "cost share letter" to DOE confirming the existence of \$5 million in non-federal funds for the DR pilot programs contained in its submission to DOE. The response indicated that if DOE received such a cost share letter by the end of August, it could fund the DR pilots prior to the end of the federal fiscal year on September 30, 2023. But the response did not indicate whether the funds would roll over into the following fiscal year or simply expire if the Commission had not approved the application

¹³ *Ibid.* at 10-11

¹⁴ The Application has never been amended so that the only amount of ratepayer matching funds formally requested is \$12.5 million. However, as detailed above, SoCalGas indicated orally at the PHC that \$2.5 million would be sufficient to secure the DOE funding and later amended that number to \$5 million in the response to the June 20, 2023 ruling. Based on that response, it appears that \$5 million is the correct number. To enable the Commission to consider approving that amount, SoCalGas had to have filed an amended application with a scaled-down set of DR programs matching the programs contained in its proposal to the DOE.

by the end of August. In any case, an August 31, 2023, deadline for Commission approval of the DR pilots was impossible to meet given the many outstanding questions surrounding the Application.

Though both TURN and CforAT made serious, substantive objections to the proposed DR pilot proposals, SoCalGas's responses to them consist of little more than a repetition of its original request. Though the Commission's Energy Division staff made it clear early on that it could not support a request for a \$12.5 million cost share and though both the DOE award and D.20-04-043 required SoCalGas to work cooperatively with the Commission before filing any new DR application, SoCalGas proceeded with the unmodified Application in spite of the serious reservations of Energy Division staff.

The result of these actions is a record that leaves us no option but to deny the Application. We reach this conclusion with reluctance, recognizing that (1) demand reduction strategies have a potentially significant role to play in relieving strain on the gas system during periods of stress, and (2) that SoCalGas may not secure the \$2.5 million grant from DOE through this Application. The Commission remains open to the consideration of future applications regarding the use of ratepayer funds to support gas DR programs, especially where opportunities to leverage federal or other non-ratepayer funding opportunities are available. We encourage SoCalGas to continue to pursue these initiatives to the extent practicable.

In light of this conclusion, it is unnecessary to consider whether SoCalGas should be authorized to recover its costs for implementing its proposed DR programs for the years 2023-2025.

The instant Application is denied, and this proceeding is closed.

4. Categorization

This proceeding was initially characterized as ratesetting. We confirm the initial categorization.

5. Comments on Proposed Decision

The proposed decision of the ALJ 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 _____.

6. Assignment of Proceeding

Karen Douglas is the assigned Commissioner and Karl Bemesderfer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. D.20-02-043 denied, without prejudice, SoCalGas's earlier application for DR pilot programs.
2. OPs 5, 6 and 7 of D.20-02-043 imposed numerous requirements on any future DR pilot program application(s) that might be filed by SoCalGas.
3. SoCalGas held the workshop required by OP5 of D.20-02-043 on June 24, 2020.
4. SoCalGas did not meet the other requirements of OPs 5,6, and 7 of D.20-02-0433.
5. For purposes of DOE funding, to secure the \$2.5 million grant from DOE, SoCalGas must provide at least \$5 million in non-federal matching funds.
6. A.23-01-004 requests \$12.5 million in ratepayer-provided matching funds for the proposed DR pilot programs.

7. A.23-01-004 requests \$5 million to meet the matching funds requirement from DOE and support the DR pilot programs that SoCalGas proposed to DOE and requests an additional \$7.5 million to support DR pilot programs not included in SoCalGas's proposal to DOE.

8. A.23-01-04 states that the DOE grant must be utilized by the winter of 2023.

9. On August 18, 2022, SoCalGas representatives met with Energy Division staff and presented a proposed \$15 million program of gas DR pilots, including \$12.5 million in ratepayer matching funds.

10. On September 13, 2022, Energy Division staff advised SoCalGas that it believed the request for \$12.5 million in ratepayer matching funds was excessive.

11. A.23-01-004 proposes three DR pilot programs for C&I customers and one for low-income residential customers.

12. A.23-01-004 proposes charging residential customers 79.8% of the \$12.5 million in ratepayer matching funds.

13. A.23-01-004 proposes spending 67% of the \$15 million budget on the three pilots targeting C&I customers.

14. A.23-01-004 proposes awarding 78% of the forecast incentives to C&I customers.

15. On July 5, 2023, SoCalGas informed the Commission that, contrary to its statement at the pre-hearing conference, a minimum of \$5 million in ratepayer funds was necessary to secure the DOE grant.

16. On July 5, 2023, SoCalGas advised the Commission that it required Commission approval of the A.23-04-001 by or before August 2023, to secure the DOE grant prior to the end of the federal fiscal year on September 30, 2023.

17. SoCalGas did not file an amended application in this proceeding requesting \$5 million in ratepayer funds and matching the pilot programs

proposed in the A.23-01-004 with the pilot programs proposed in its submission to the DOE.

18. It is unclear whether the DOE funds will be available to SoCalGas after September 30, 2023.

Conclusions of Law

1. Application 23-01-004 should be denied.
2. Application 23-01-004 does not comply with the requirements of OPs 5, 6 and 7 of D.20-02-043.
3. The proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. Application 20-01-004 is denied.
2. Application 20-01-004 is closed.
3. This order is effective today.

Dated _____, at Sacramento, California.