

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



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Application of SOUTHERN CALIFORNIA GAS COMPANY (U 904 G) and SAN DIEGO GAS & ELECTRIC COMPANY (U 902 G) for authority to revise their natural gas rates and implement storage proposals effective January 1, 2024 in this Cost Allocation Proceeding

A.22-09-015  
(Filed September 30, 2022)

**JOINT REPLY OF SOUTHERN CALIFORNIA GAS COMPANY (U 904 G), SAN DIEGO GAS & ELECTRIC COMPANY (U 902 G), AND CLEAN ENERGY FOR APPROVAL OF SETTLEMENT AGREEMENT**

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Pursuant to Rule 12.2 of the California Public Utilities Commission’s (“CPUC” or “Commission”) Rules of Practice and Procedure, Southern California Gas Company (“SoCalGas”), San Diego Gas & Electric Company (“SDG&E”) and Clean Energy (collectively with SoCalGas and SDG&E, the “Settling Parties”)<sup>1</sup> hereby timely<sup>2</sup> submit these Reply Comments regarding their December 14, 2023 Joint Motion for Approval of Settlement of Southern California Gas Company, San Diego Gas & Electric Company, and Clean Energy (the “Motion”). As presented in the Motion, the Settling Parties requested that the Commission approve the Settlement Agreement Amongst Southern California Gas Company, San Diego Gas & Electric Company, and Clean Energy (“Settlement Agreement”) attached as Attachment A to the Motion. The Settlement Agreement, if approved by the Commission, would resolve all disputed issues as they relate to the hydrogen fueling rate proposal of SoCalGas and SDG&E (the “Applicants”) in the proceeding and issues related to SoCalGas’s Low Carbon Fuel Standard (“LCFS”) program raised in Clean Energy’s testimony.

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<sup>1</sup> In accordance with Rule 1.8(d), counsel for Applicants has been authorized by Clean Energy to file this Joint Reply on its behalf.

<sup>2</sup> Rule 12.2 provides that parties to a proceeding “may file comments contesting all or part of the settlement within 30 days of the date that the motion for adoption of settlement was served” – in this case, by January 16, 2024 (accounting for weekends and holidays) – and that “[p]arties may file reply comments within 15 days after the last day for filing comments” – in this case, by January 31, 2024.

These Reply Comments address (1) the Comments of The Utility Reform Network (“TURN”) and Southern California Generation Coalition (“SCGC”) (hereafter, the “TURN/SCGC Comments”) and (2) the Comments of Air Products and Chemicals, Inc. (“Air Products”) (hereafter, the “Air Products Comments”)

As set forth below, the Settling Parties maintain that the Settlement Agreement is reasonable in light of the whole record, consistent with the law, and in the public interest, and should be approved by the Commission.

**I. PLEADINGS AND FILINGS FROM OTHER PROCEEDINGS ARE NOT RELEVANT TO EVALUATING WHETHER THE SETTLEMENT SHOULD BE APPROVED**

Through its comments, Air Products cites several motions filed in the general rate case (GRC) of SoCalGas and SDG&E (A.22-05-015 and A.22-05-016)<sup>3</sup> in an apparent attempt to relitigate arguments that are ongoing in another proceeding (but are not at issue in this cost allocation proceeding). This is not the GRC and, hence, this is not the proceeding to be discussing the merits of filings that are not in the record of this proceeding.

Instead, the analysis is whether the Settlement Agreement satisfies the criteria of Rule 12.1(d), specifically, if the settlement “is reasonable in light of the whole record, consistent with law, and in the public interest.”<sup>4</sup> Citing pending motions in other proceedings is not only out of scope for this proceeding, but these motions certainly are not in the record when evaluating the Settlement Agreement under Rule 12.1(d). As such, the Commission should only base its determination as to whether this Settlement should be approved by evaluating the record of this cost allocation proceeding, whether it is consistent with the law, and in the public interest.

**II. THE ARGUMENTS OF TURN/SCGC AND AIR PRODUCTS IN OPPOSITION TO THE SETTLEMENT SHOULD BE REJECTED**

As a threshold matter, it is important to review the terms of the Settlement Agreement, as the opposing parties, at times mischaracterize the scope of the Settlement Agreement to build up a strawman against which to argue. To be clear, contrary to the argument of Air Products, the Settlement Agreement is not “putting the cart before the horse.” As set forth in the Motion,

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<sup>3</sup> Air Products Comments at 2.

<sup>4</sup> Rule 12.1(d).

“**If** Applicants are granted authorization to own and operate hydrogen fueling stations in the Test Year 2024 General Rate Case final decision, **then** SoCalGas may submit a Tier 2 Advice Letter to establish a hydrogen fueling rate.”<sup>5</sup> In short, the settlement of the hydrogen fueling rate is expressly based on Applicants **first** being granted authorization to own and operate hydrogen fueling stations in the GRC. As such, this not an issue of “putting the cart before the horse.”

Putting aside the mischaracterizations of the terms of the Settlement Agreement, the remaining arguments of TURN/SCGC and Air Products should be rejected, for the reasons set forth below.

**A. TURN/SCGC’s New Argument Against a Tier 2 Advice Letter, Never Raised in Testimony, Is Misplaced**

Although establishing the hydrogen fueling rate via Tier 2 advice letter was part of SoCalGas’s proposal through witness Harte’s (Chapter 12) testimony, through their testimony, neither TURN nor SCGC raised any issues with establishing a hydrogen fueling rate via a Tier 2 advice letter.<sup>6</sup>

TURN/SCGC argue in their comments, without citations to the record for support, that a Tier 2 advice letter is not appropriate for establishing a hydrogen rate because it must reach appropriate findings in a formal decision or resolution.<sup>7</sup> In this context, TURN/SCGC argue that it is inappropriate where there are overages or shortfalls balanced with a Tier 2 advice letter and where the costs were not necessarily forecasted or reviewed by the Commission beforehand.<sup>8</sup> However, as TURN/SCGC acknowledge, the Settlement Agreement modifies SoCalGas’s initial proposed hydrogen rate to recover 100% of the illustrative capital costs,<sup>9</sup> which reduces the likelihood of the rate resulting in an overage or shortfall.

Nonetheless, there are examples with other tariffs where the overage or shortfall is balanced annually with a Tier 2 advice letter and the costs were not necessarily forecasted or reviewed by the Commission beforehand. SoCalGas Advice letter 6210-G, the Annual Regulatory Account Balance Update for Rates, which includes the Percentage of Income

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<sup>5</sup> Motion at 6 (emphasis added).

<sup>6</sup> See, Ex. TURN-02-E (McGovern) and Ex. SCGC-01 (Yap).

<sup>7</sup> TURN/SCGC Comments at 5.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 2.

Payment Plan Balancing Account and the Biomethane Procurement and Pilot Costs Balancing Account, all of which are situations where the overage or shortfall is balanced annually with a Tier 2 advice letter and where the costs were not necessarily forecasted by the Commission or reviewed by the Commission beforehand. Hence, contrary to the new argument of TURN/SCGC, there is precedent for establishing the hydrogen rate by Tier 2 advice letter.

It is also important to note that this process is only established once there is GRC approval for hydrogen fueling stations, and that in a separate all-party settlement, the parties have agreed to have the next cost allocation proceeding to be filed in 2025 for rates effective January 1, 2027. Furthermore, under the terms of the Settlement Agreement, if the Applicants are granted authorization to own and operate a hydrogen fueling station in the GRC, then in that next cost allocation proceeding, SoCalGas shall provide a study for a cost-based hydrogen fueling rate in its application based on the actual hydrogen station capital and O&M costs and LCFS revenues associated with the operation of SoCalGas's approved hydrogen refueling stations.<sup>10</sup> In sum, not only are there examples where the overage or shortfall is balanced with a Tier 2 advice letter and where the costs were not necessarily forecasted or reviewed beforehand, but for the short period of time where the stations are in operation before the next cost allocation proceeding, SoCalGas will provide a study for a cost-based hydrogen fueling rate in its application.

**B. TURN/SCGC's Argument That the Settlement Is "Anti-Competitive" Is Unavailing**

TURN/SCGC further argue that the Settlement Agreement does not address the "anti-competitive concerns raised by SCGC," specifically, the capital-related costs for the stations would be embedded in SoCalGas's base margin revenue requirement and that Applicants proposed to collect any hydrogen refueling station operating cost in a balancing account, with SoCalGas envisioning that revenues credited to the (Hydrogen Refueling Station Balancing Account) HRSBA will be returned to ratepayers if the revenues exceed O&M costs.<sup>11</sup>

SoCalGas addressed these arguments in the rebuttal testimony of witness Harte (Chapter 20). As set forth in that testimony:

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<sup>10</sup> Motion at 6; *see also*, Settlement Agreement at 2.

<sup>11</sup> TURN/SCGC Comments at 8-9.

The Commission has established precedent of authorizing ratepayer subsidies for other types of zero emission vehicle infrastructure. As stated in direct testimony (Ch. 12, Harte), “SoCalGas proposes to set the G-FCEV rate at the level required to collect the total estimated incremental operating costs (less LCFS credit revenue) as well as 50% of the illustrative capital costs” and “[n]otably, this approach is more conservative than the treatment of capital costs for similar electric vehicle charging infrastructure projects authorized under Decision (D.) 18-01-024. D.18-01-024 authorized utilities to rate-base the capital costs of electrical vehicle charging infrastructure projects and recover those costs from all ratepayers.” SCGC’s position is inconsistent with Commission precedent and should be rejected.<sup>12</sup>

In addition, TURN/SCGC’s arguments about the policy not supporting the hydrogen fueling rate settlement are those arguments SoCalGas addressed in rebuttal testimony. For example, TURN/SCGC state that “using ratepayers as a backstop to protect SoCalGas shareholders ‘would undermine the competitive viability of independent fueling stations,’ which already number over 30 in the SoCalGas service territory with more than 20 currently undergoing development.”<sup>13</sup> This is incorrect. As stated in testimony (Ch. 12, Harte), in 2018 the state of California directed “that all State entities work with the private sector and all appropriate levels of government to spur the construction and installation of 200 hydrogen fueling stations...by 2025.”<sup>14</sup> This hydrogen fueling station goal supported the state’s goal to “to put at least 5 million zero-emission vehicles on California roads.”<sup>15</sup>

Further, “meeting this goal will be extremely challenging” since “As of September 12, 2022, there were only fifty-five (55) retail, public access hydrogen fueling stations operating in the state of California.”<sup>16</sup> In a recent hydrogen fueling station update from the California Fuel Cell Partnership, it is indicated that there are fifty-eight (58) retail, public access hydrogen fueling stations operating in the state of California and thirty-one (31) of those within the

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<sup>12</sup> Ex. APP-20 (Harte) at 4.

<sup>13</sup> TURN/SCGC Comments at 9.

<sup>14</sup> Ex. APP-12 (Harte) at 1-2.

<sup>15</sup> Ex. APP-20 (Harte) at 5 (*quoting* State of California, *Executive Order B-48-18* (January 26, 2018), *available at*: <https://www.library.ca.gov/wp-content/uploads/GovernmentPublications/executive-order-proclamation/39-B-48-18.pdf>).

<sup>16</sup> Ex. APP-12 (Harte) 2-3.

SoCalGas service territory.<sup>17</sup> These stations are simply not sufficient to meet California hydrogen refueling infrastructure goals and serve the growing demand for hydrogen fuel.<sup>18</sup> As described in SoCalGas’s testimony, the 2021 California Energy Commission (CEC) AB 8 report on hydrogen fueling stations states, “The need for a reliable hydrogen supply and reliable stations also presents a barrier to widespread FCEV commercialization and deployment, as does expanded geographic coverage of the stations. FCEV adoption may increase at a higher pace when these barriers are addressed.”<sup>19</sup>

Furthermore, as noted in witness Harte’s rebuttal testimony, the U.S. Department of Energy (DOE) recognizes that increased hydrogen refueling infrastructure is needed to accelerate adoption of FCEVs.<sup>20</sup> Specifically, DOE states, “The availability of stations providing reasonably priced hydrogen in places where vehicles will be deployed remains a key challenge to the adoption of this technology.”<sup>21</sup> In addition, the SoCalGas service territory covers an area of around 24,000 square miles.<sup>22</sup> Adding utility-owned hydrogen fueling stations to augment 30+ stations serving such a large geographic area is urgently needed to provide the general public with greater access to refueling infrastructure.<sup>23</sup> This can help accelerate adoption of FCEVs and the growth of the zero-emission vehicle market, not cause a competitive disadvantage.

Because the state is unlikely to meet the 200 hydrogen fueling station goal by 2025 and the goals for transitioning to and fueling zero emission vehicles have already increased dramatically, it is critical that, if the Commission grants SoCalGas authorization to own and operate hydrogen fueling stations in the GRC, that the Commission allow for those stations to be available to the public as quickly as possible by approving the new, pilot hydrogen fueling

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<sup>17</sup> Ex. APP-20 (Harte) at 5 (*citing* California Fuel Cell Partnership, *California Fuel Cell Partnership Hydrogen Station List* (May 22, 2023), available at: [https://cafcp.org/sites/default/files/h2\\_station\\_list.pdf](https://cafcp.org/sites/default/files/h2_station_list.pdf)).

<sup>18</sup> Ex. APP-20 (Harte) at 5.

<sup>19</sup> Ex. APP-12 (Harte) at 4.

<sup>20</sup> Ex. APP-20 (Harte) at 5.

<sup>21</sup> *Id.* at 5-6 (*quoting* U.S. Department of Energy, *Alternative Fuels Data Center*, available at: [https://afdc.energy.gov/fuels/hydrogen\\_infrastructure.html](https://afdc.energy.gov/fuels/hydrogen_infrastructure.html)).

<sup>22</sup> Ex. APP-20 (Harte) at 6 (*citing* SoCalGas, *Company Profile*, available at: <https://www.socalgas.com/about-us/company-profile>).

<sup>23</sup> Ex. APP-20 (Harte) at 6.

station rate proposed in the Settlement Agreement. This would increase the number of zero emission vehicle fueling station options available to the public, including hydrogen fueling stations, in order to meet the state’s ambitious air pollution and climate change goals. Accordingly, the settlement is in the public interest and certainly is not “anti-competitive” as argued by TURN/SCGC.

**C. Air Products Raises a Number of Arguments, All of Which Are Devoid of Evidence; Accordingly, Its Arguments Should Be Rejected**

Air Products did not submit testimony in this proceeding and did not move any evidence into the record. Against this backdrop, it is not surprising that the arguments it advances against the Settlement Agreement are devoid of citations to the evidentiary record.<sup>24</sup>

For example, Air Products argues that a delay in implementing the hydrogen rate is not unacceptable because “that delay would only impact SoCalGas’s ability to offer fueling services to third parties” and “the fueling station would still be able to fulfill what should be its primary purpose of refueling utility vehicles, even without an approved hydrogen fueling tariff.”<sup>25</sup> Yet notably missing from this argument is any citation to the record – it is simply unsupported conjecture.

Likewise, Air Products states that “the hydrogen fueling rate tariff set forth in the Settlement Agreement will likely significantly undermine those state policies by adversely impacting the existing competitive market that is currently fostering those state policies by adversely impacting the existing competitive market that is currently fostering hydrogen fueling station development.”<sup>26</sup> Again, Air Products does not have any evidentiary cite for this argument.

Finally, Air Products states that “the record demonstrates that the tariff would likely result in ratepayers subsidizing hydrogen fueling services for third parties for which they do not receive a benefit.”<sup>27</sup> Yet again, Air Products fails to cite evidence in the record for this argument.

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<sup>24</sup> Certain of the arguments are tangentially related to those raised by TURN/SCGC and those are addressed above.

<sup>25</sup> Air Products Comments at 6.

<sup>26</sup> *Id.* at 8.

<sup>27</sup> *Id.*

In sum, the arguments asserted by Air Products are not supported by the record (as required by Rule 12.1(d)) and, as a result, those arguments must not be considered. Moreover, to the extent those arguments overlap with those asserted by TURN/SCGC, which are addressed above, Air Products' arguments should be rejected for the same reasons identified above.

### **III. NO PARTY OPPOSES THE SETTLEMENT AGREEMENT'S PROPOSED EXPANSION OF SOCALGAS' LOW CARBON FUEL STANDARD PROGRAM**

In addition to resolving disputed issues concerning the Applicants' hydrogen fueling rate proposal, the Settlement Agreement also resolves issues related to SoCalGas's LCFS program raised in Clean Energy's testimony. As set forth in SoCalGas advice letter 4779-G, SoCalGas is authorized to return the net revenues from the sale of natural gas LCFS credits to all customers by applying a G-NGV LCFS rate credit to the pump price posted at all SoCalGas public access compressed natural gas (CNG) stations. To increase the return of SoCalGas's LCFS credit revenues, SoCalGas advice letter 6024-G updated SoCalGas's LCFS Program Implementation Plan to return 50% of LCFS credit revenues by providing customers with a utility station fuel card for each new Renewable Natural Gas (RNG) or Hydrogen truck they purchase. In its direct testimony, Clean Energy raised concerns with SoCalGas' LCFS credit program's competitive impact on non-utility owned Natural Gas Vehicle (NGV) refueling stations.<sup>28</sup>

The Settlement Agreement represents Settling Parties' intent to mitigate Clean Energy's competitive concerns by modifying SoCalGas's LCFS Fuel Card Program to include third-party NGV fueling stations in addition to SoCalGas NGV fueling stations.<sup>29</sup> If the Settlement Agreement is approved, the expansion would occur regardless of whether SoCalGas' hydrogen station proposal is approved in the GRC. Notably, neither TURN/SCGC nor Air Products oppose this element of the Settlement Agreement in their comments. Thus, in addition to approving the hydrogen rate design as proposed in the Settlement Agreement, the Commission should find that the Settlement Agreement's proposed expansion of SoCalGas's LCFS Fuel Card Program is reasonable in light of the whole record, consistent with the law, and in the public interest.

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<sup>28</sup> Ex. Clean Energy-01 (Pratt) at 23-25.

<sup>29</sup> Motion at 6; *see also*, Settlement Agreement at 2.

#### IV. CONCLUSION

As set forth in Settling Parties' Motion, the Settlement Agreement is reasonable in light of the whole record, is consistent with law, is in the public interest, and should be approved by the Commission. Furthermore, the Settlement Agreement represents a mutually acceptable outcome in a pending regulatory proceeding. It avoids the time, expense, uncertainty, and burden of litigating these issues.

Accordingly, the Settling Parties respectfully request that the Commission grant the Settling Parties' Motion, approve the Settlement Agreement without modification, and find that (1) the Settlement Agreement is reasonable in light of the whole record, consistent with the law, and in the public interest; and (2) the Settlement Agreement should be adopted in its entirety without modifications by the Commission and should be approved.

Respectfully submitted,

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