PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

September 15, 2003

Agenda ID #2722
Ratesetting

TO: PARTIES OF RECORD IN APPLICATIONS 02-03-061 AND 02-03-062

This is the draft decision of Administrative Law Judge (ALJ) Fukutome. It will appear on the Commission's October 2, 2003 Agenda. The Commission may act then, or it may postpone action until later.

Pursuant to Rule 77.7(f)(9), comments on the draft decision must be filed within seven days of its mailing and no reply comments will be accepted.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at http://www.cpuc.ca.gov. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:jva

Attachment

Decision **DRAFT DECISION OF ALJ FUKUTOME (Mailed 9/15/03)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application of Southern California Gas Company for Authority to Offer a New Service At Tariffed Rates, Terms, and Conditions Allowing Carriers to Place Fiber Optic Cable in Gas Pipelines. (U 904 G)	Application 02-03-061 (Filed March 29, 2002)
In the Matter of Application of San Diego Gas & Electric Company for Authority to Offer a New Service At Tariffed Rates, Terms, and Conditions Allowing Carriers to Place Fiber Optic Cable in Gas Pipelines. (U 902 G)	Application 02-03-062 (Filed March 29, 2002)

O P I N I O N

1. Summary

This decision grants the requests of Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E) for authority to implement a new service allowing telecommunications carriers and cable TV companies (Carriers) to place fiber optic cable in the utilities' active gas pipelines at tariffed rates, terms and conditions. The decision also certifies the associated Program Environmental Impact Report (EIR) and conditions the new fiber optic cable in gas pipeline (FIG) service on mitigation measures, notification requirements and reporting requirements as set forth in the Program EIR.

2. The Request

Under this new service, SoCalGas and SDG&E (jointly "Utilities") will allow Carriers to place fiber optic cable in the Utilities' active gas pipelines. The Utilities will install and own all facilities in and on the gas pipelines necessary to place fiber optic cable in its pipelines using technology provided by the Carrier that meets the Utilities' criteria. The Utilities will not install the fiber optic cable itself. The installation of the fiber optic cable will be the responsibility of the Carrier, who will also own the cable. The Utilities will not provide a technology for the placement of fiber optic cable in its gas pipelines. Such technology must be provided by the Carrier, either through its ownership of the rights to such technology, or by having obtained a license to use such technology. In their showing, the Utilities have presented criteria they will apply to determine whether a technology is safe and reliable. The Utilities have also prepared tariff terms and conditions that address nondiscriminatory offering of service, pricing, capacity concerns, provision of information to potential Carriers, contracts for service, liabilities for third party damages, and dispute resolution.

3. Procedural Background

On July 13, 2001, SoCalGas filed Advice Letter 3040 requesting Commission authorization to implement a new category of tariffed service that would allow Carriers to place fiber optic cable in SoCalGas' active gas pipelines. On January 9, 2002, the Commission issued Resolution G-3320, which denied Advice Letter 3040 without prejudice, and stated that if SoCalGas desired to offer the proposed service, it must file an application with the Commission to do so. On March 29, 2002, SoCalGas filed Application (A.) 02-03-061 as required by Resolution G-3320. At the same time, SDG&E filed A.02-03-062 requesting approval of the same service on its system under essentially the same terms and conditions as proposed by SoCalGas in A.02-03-061.

On May 13, 2002, the California Cable & Telecommunications Association (CCTA), the Utility Reform Network (TURN) and Sempra Fiber Links (SFL) filed responses to the applications. SFL supported the applications. TURN protested the applications as discussed below. CCTA did not protest the applications and agreed that regulatory treatment of the proposed new service should be consistent with the Commission's treatment of the use of electrical conduit contained in the Commission's right-of way decisions. CCTA stated that if the Commission grants the applications, it must likewise affirm that the nature of the proposed service requires the same protections and requirements embodied in the Commission's investor-owned-utility Right-Of-Way Rules set forth in the Commission's Order Instituting Rulemaking on Competition for Local Exchange service Decision (D.) 98-10-058 as modified by D.00-04-061. Since Sempra Communications, an affiliate of both SoCalGas and SDG&E, is in the telecommunications business, CCTA emphasized the need for cost based pricing to prevent potential cross subsidization and preferential self dealing.

TURN raised the issue of system capacity stating that the Commission should be able to quantify potential impacts of fiber optic conduit on pipeline capacities and that SoCalGas needs to clarify the pipeline eligibility for installation. Regarding load growth and system planning, TURN noted SoCalGas' proposal to install cable unless the utility determines that their load growth forecast within a one-year time frame would create insufficient pipeline capacity to accommodate the cable. TURN stated that planning, for capacity additions, normally occurs on a five year planning horizon and that a one-year horizon may be too short to adequately anticipate system constraints. TURN also expressed concerns regarding the ratemaking aspect where the costs would be included in SoCalGas' 2004 general rate case (GRC), but developing a forecast of revenues will be problematic and speculative. TURN also noted the potential problem of affiliate abuse.

On May 23, 2002 the Utilities filed replies to the responses of the CCTA and TURN. Regarding the CCTA, the Utilities stated that they have proposed to charge for the new services on the cost-of-service basis that CCTA advocates. In addressing TURN's concerns on system capacity, the Utilities emphasized that the proposed service provides access to distribution lines and not transmission lines and that any impact on capacity will only be on a very local area served by a particular distribution pipeline in which fiber is placed. There would be no effect on capacity to serve customers who receive gas through distribution pipeline in which cable is not installed. If the applications were approved, only a tiny fraction of the distribution pipeline mileage could have fiber optic cable installed in the first few years of availability of the service. The Utilities asserted that there would be plenty of time to assess, in practice, the impact of the service on gas capacity and for the Commission to approve changes in the terms and conditions, before any significant impact on system capacity could occur. On the issue of load growth and system planning, the Utilities stated that they would not object if the Commission were to require a five-year horizon, rather than the 12-month horizon in the proposed tariffs, noting the expectation that the most interest for this service would be for installation in built-up areas where there is not likely to be much difference in the projected growth in gas demand over five years vs. over 12 months. Regarding the ratemaking aspect, the Utilities did not agree with TURN's characterization of the costs and revenues, stating that the charges for the new service are designed to offset the incremental out-of-pocket expenses; make-ready charges are to be billed on actual hours of labor and pass through of actual costs of materials and equipment; and the annual recurring charge is intended to generate revenue in addition to out-of-pocket costs, thereby reducing the cost of already-installed pipeline that is otherwise already included in gas rates. The utilities also noted that they are not seeking a permanent resolution of the ratemaking treatment of cost and revenues in these applications, but that the issue should be addressed in the upcoming Test Year 2004 Performance Based Ratemaking (PBR)/Cost-of-Service (COS) applications, which would address miscellaneous revenues in general. Regarding potential affiliate abuse, the utilities stated that its proposed tariff provisions fully protect against any potential for favoritism of affiliates in how the new service is offered.

By an Administrative Law Judge (ALJ) ruling dated June 19, 2002, the applications were consolidated pursuant to Rule 55 of the Commission's Rules of Practice and Procedure.

On July 10, 2002, a prehearing conference was held in San Francisco. At that time, it was indicated that there was a good potential that the parties could reach a settlement on the issues that had been identified. A schedule for settlement discussions and the filing of a settlement document was set.

The initial settlement conference was held telephonically on July 25, 2002. It was indicated that progress was made, there were a few outstanding issues and further discussion among the parties would be useful.[1]

[1] July 25, 2002 e-mail note from Jeffrey Parrott, attorney for Sempra, to ALJ Ryerson.

On August 23, 2002, the Utilities sent a letter to the assigned ALJ documenting several changes to their testimonies and proposed tariff language. The revised testimonies and revised proposed tariffs were also served on all parties in the proceeding. The revisions consisted of the following:

1. The Utilities would not allow installation of fiber optic cable in any pipeline if they estimate that installation would result in insufficient gas capacity in the line in the next 60 months, not 12 months as originally proposed, unless arrangements were made for the carrier to pay to increase the gas capacity to avoid this situation.

2. The utilities would not offer installation in pipelines or service other than those proposed in their amended applications without seeking further approval of the Commission, but the utilities recognize that some adjustment in fees might be appropriate if additional facilities were made available.

3. The Utilities would use a forecast of annual average revenue and costs for the first 36 months of this service in any showing on miscellaneous revenues they make in their next PBR or GRC-type proceeding.

4. The Utilities agreed that it might be appropriate to adjust the amount of the monthly customer charge after operating experience is gained to assure it is cost-based.

5. The Utilities proposed to limit the mileage they would install in the first 36 months of the service, unless they sought and received Commission approval to install larger amounts.

6. The Utilities would provide annual reports on the service for the first 36 months of service and would not oppose the Commission reconsidering the existence or terms of this service after 36 months of experience with it.

On August 27, 2002, TURN sent a letter to the assigned ALJ stating that it had engaged in several settlement discussions with the parties in the proceeding and based on those negotiations, SoCalGas and SDG&E had agreed to modify certain portions of their proposals. Those modifications adequately addressed its issues in this proceeding and TURN indicated its intention to withdraw its protest to the revised applications. On August 29, 2002, TURN filed a motion to withdraw its protest to the applications.

On September 6, 2002, the CCTA sent a letter to the assigned ALJ indicating its concern that the rates for service proposed by SoCalGas and SDG&E are not cost based in a manner that is consistent with D.98-10-058. Its comments focused on the $3,000 monthly charge to recover incremental operation and maintenance costs. Because the service is new, the Utilities did not provide any detailed cost information to support the cost estimate. Additionally, CCTA questioned whether some of the costs are fixed, as contended by the utilities, or variable in nature. Also, since the utilities claimed that they could not provide a forecast of customers and revenues for the new service, CCTA stated that it was impossible to determine whether the $3,000 charge is likely to generate revenues that are sufficient to recover the utilities' Operation & Maintenance expenses or whether the monthly charge will generate revenues that will be well in excess of cost. CCTA also expressed concern regarding justification for continuing, or potentially modifying, this charge in the future. It indicated that the proposed $3,000 rate might have a significant anticompetitive effect even before it can be adjusted, since the magnitude of the charge may deter carriers from using the service before Sempra Communications occupies the limited capacity available along the commercially lucrative pipeline routes. To address this potential problem, CCTA suggested that, for example, the

Commission could limit its grant of authority to provide the service on a limited market trial basis. Notwithstanding its concerns, CCTA stated it did not intend to participate further in this proceeding and that it believed the Commission, on its own, is fully capable of discerning the public interest at stake here.

On April 1, 2003, the Utilities filed amendments to A.02-03-061 and A.02-03-062. The Utilities proposed to make pipelines of 2 inches in diameter or greater operating at a pressure of 60 psig or less available under Schedule G-FIG. The Utilities initially proposed to make service available only in pipelines of four inches in diameter or greater. The Utilities also revised their proposed recurring annual charges to reflect the changes in eligible facilities and certain other developments. The prepared testimony and tariff sheets attached to the April 1, 2003 filings also reflected revisions in the proposals of the Utilities that were incorporated in the revised testimony and proposed tariff sheets that were served on the ALJ and parties on August 23, 2002. There were no responses to the April 1, 2003 amendments.

The Utilities' applications have also been subjected to environmental review, which is discussed in Section 5 of this decision.

4. Discussion

During the course of this proceeding, the two parties that provided substantive responses to the filing of the applications have essentially withdrawn any opposition to the utilities' requests. As indicated previously, on August 29, 2002, TURN withdrew its protest to the application after SoCalGas and SDG&E made certain modifications to its proposals, and on September 6, 2002, CCTA sent a letter to the assigned ALJ expressing some concern regarding the derivation of certain of the charges, but also indicating that it did not intend to participate further in the proceeding. Neither party responded to the Utilities' April 1, 2003 amendments. With this in mind, we have reviewed the Utilities' proposals and, with clarification of two matters as discussed below, conclude that the proposed tariff rates, terms and conditions, as amended on April 1, 2003, are reasonable and should be adopted.

A. Monthly Charge to Recover Incremental Operation and Maintenance Costs.

SoCalGas/SDG&E propose a monthly charge of $3,000 per Carrier to recover incremental operation and maintenance costs. The Utilities explain this charge includes costs for activities such as increased leak surveys of pipeline containing fiber optic cable, mapping and tracking requirements, emergency response procedures and call-out coordination, training of crews and supervision, route design and analysis, and risk and safety management. Administrative and general expenses, including contract execution and administration and legal review, and customer account expenses including billing and collection processes are also reflected in the monthly charge.

As indicated by CCTA in its September 6, 2002 letter, the $3,000 monthly customer charge does not appear to be derived from a detailed cost analysis. We will agree to the $3,000 monthly charge, noting that in their proposal the Utilities agree not to provide more than a specified number of miles of fiber optic cable in each of the first three 12 month periods after the service becomes available. The limited number of miles in the first three years[2] will mitigate the effects of potential under or over charging. We also note that the FIG proposal and the associated costs and revenues have been reflected in the Utilities' test year 2004 PBR/COS filings.[3] Potentially, adjustments to the charges, if needed, can be made in that consolidated proceeding. While the Utilities have agreed that it might be appropriate to adjust the amount of the monthly customer charge after operating experience is gained to assure it is cost-based, we would rather address this issue more directly by conditioning expansion of the scope of the program on a cost based showing for the monthly customer charge. If either utility makes a further request to raise the mileage limit, we will require that they provide an accompanying detailed cost based showing for the derivation of the monthly customer charge. We will waive that requirement once a decision is issued in the test year 2004 PBR/COS proceeding provided the reasonableness of the monthly customer charge is addressed and the appropriate amount is determined in that decision. At the very least, the determination of a cost based monthly customer charge should be a condition for the Utilities to provide the FIG service beyond the initial 36-month time period.

B. Revenues

Once the test year 2004 GRC decision for SoCalGas and SDG&E is issued, an appropriate revenue amount for the FIG program will be reflected in rates.

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[2] The indicated limit for SoCalGas is 100 miles for the first year, a total of 300 miles for the second year and a total of 500 miles for the third year. The corresponding limit totals for SDG&E are seven miles, 17 miles and 27 miles respectively.

[3] The pending GRC applications for SoCalGas and SDG&E are A.02-12-027 and A.02-12-028, respectively.

This revenue will be used to offset the cost of service to ratepayers. In the meantime, the utilities propose that any net revenues from FIG services flow through the earnings sharing mechanisms of SoCalGas' base rate PBR mechanism adopted in D.97-07-054, and SDG&E's distribution rate PBR mechanism as last adopted in D.99-05-030. The Utilities assert that ratepayers may benefit from such net revenues as the mechanism provides that earnings above a dead band are shared between shareholders and ratepayers.

Revenues for the FIG program are derived from charges that cover incremental costs that the Utilities will incur to provide the associated services. It would be appropriate to subject the net amount of the incremental expenses and the revenues associated with the incremental expenses to the PBR sharing mechanisms. However, FIG charges also cover the capital costs associated with the use of the Utilities' gas distribution system. Those costs are already embedded in rates and are currently being recovered from ratepayers. Any revenue associated with charges that cover the capital costs of the gas distribution system should therefore be directly flowed to the ratepayers through a credit to an appropriate balancing account. The net revenues subject to the PBR sharing mechanisms would therefore be determined by subtracting incremental expenses and the capital cost revenues from the total FIG revenues. This procedure will be superseded by ratemaking determined in the Utilities' current, consolidated PBR/COS proceeding.

5. Environmental Matters

A. Background

As the agency responsible for regulation of public utilities in the State of California, the California Public Utilities Commission is the lead agency responsible for California Environmental Quality Act (CEQA) compliance in evaluation of the proposed program. CEQA requires that before a decision can be made to approve a project with potentially significant environmental effects, an EIR must be prepared that fully describes the environmental effects of the project. The EIR is a public informational document for use by governmental agencies and the public to identify and evaluate potential environmental consequences of a proposed project, to recommend mitigation measures to lessen or eliminate adverse impacts, and to examine feasible alternatives to the project. The information contained in the EIR is reviewed and considered by the governing agency prior to the ultimate decision to approve, disapprove, or modify the proposed project. Under CEQA requirements, the Commission will determine the adequacy of the EIR once it is finalized and, if adequate, will certify the document as complying with CEQA.

An Initial Study was prepared by the Commission to assess which environmental issues would potentially be affected by the Applicants' proposal. The Initial Study evaluated potentially significant impacts associated with implementation of the proposed program and identified mitigation measures which, when incorporated into the program, would reduce impacts to less than significant levels. Therefore, the Commission initially determined that a mitigated Negative Declaration (MND) was the appropriate document for the proposed program under Section 15070 of the CEQA Guidelines. An MND was prepared and circulated for public and agency comment from November 7, 2002 to December 9, 2002.

However, following circulation and prior to adoption of the MND, the Commission determined that although potentially significant impacts identified as consequences of the FIG proposal could be reduced to levels of insignificance, the size of the study area and also the conceptual nature of the new service and technology warranted preparation of a Draft Program EIR. In addition the Commission revisited issues and concerns regarding public safety. Additional information on the required testing and development of safety standards for the FIG technology that was not available at the time of the MND was circulated, was disclosed in the Draft Program EIR. The Draft Program EIR identified the environmental consequences associated with the construction, operation and implementation of the program and recommended mitigation measures to reduce significant and potentially significant impacts. It was circulated for public and agency comment from May 2, 2003 to June 16, 2003.

Concerns expressed in comments to the Draft Program EIR have been addressed in the Final Program EIR, which was released on September 6, 2003. The Final Program EIR consists of the Draft Program EIR as well as the Responses to Comments Document. It is identified as Exhibit 1 and received as of September 8, 2003 for the Commission to consider in determining whether to approve the Utilities' request.

B. Potentially Significant Environmental Impacts

As a result of the FIG program, the Draft Program EIR identified potential effects on aesthetics, air quality, biological and cultural resources, hazards and public safety, traffic and transportation, and utilities and services that may occur. The majority of the program impacts result from construction activities. They are temporary impacts that can be mitigated to less than significant levels with the mitigation measures identified in the Draft Program EIR. Operational impacts were also identified as potentially significant effects to public safety and operational pipeline capacity. These operational impacts were also determined to be mitigable. Mitigation proposed as part of the program, as well as measures identified in the Final Program EIR, would avoid or reduce all of the impacts to a less than significant level.

C. Cumulative Impacts

CEQA defines cumulative impacts as two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts. A cumulative impact is created as a result of the combination of the project evaluated together with other projects causing related impacts. The purpose of this analysis is to disclose potential significant cumulative impacts resulting from the new service and FIG installation in combination with other comparable projects. The Draft Program EIR states that it is anticipated that the construction associated with FIG installation could potentially overlap with other public or private utility projects during the same timeframe. Such overlap would likely be identified during the Utilities' process of obtaining encroachment permits for proposed FIG installations and would be properly addressed by the local planning agency at that time. The Draft Program EIR analyzed potential cumulative impacts specifically related to aesthetics, air quality, biological resources, cultural resources, noise, public safety, transportation and public services, and utilities and service systems and determined that the program would not result in any significant cumulative impact for any of the categories.

D. Growth Inducing Impacts

The Draft Program EIR determined that there are no distinguishable effects caused by the FIG regarding population growth, new demand for public services and new demand for utilities and service systems. The report also indicates that indirect impacts on growth, such as the availability of high speed, high volume communications as a factor in the decision by people and businesses to locate in California, are highly speculative and concludes that a less than significant impact to growth inducement would occur.

E. Alternatives

In accordance with CEQA and the CEQA guidelines (Section 15126.6(a)), an EIR must describe a range of reasonable alternatives to the project, or to the location of the project that would feasibly attain most of the basic objectives of the project. The Utilities' primary objective is to request Commission authorization to implement a new service allowing any Carriers to place fiber optic cable in conduit installed in the Utilities' active gas pipelines in compliance with tariffed rates and terms and conditions under new Schedule No. G-FIG. Secondary objectives would be to provide a less environmentally invasive method for the installation of fiber optic cable for commercial and residential consumers and to deploy fiber optic cable and networks more rapidly, thereby reducing costs.

The Draft Program EIR discusses three alternatives to the proposed program: (1) a No Project Alternative; (2) standard Fiber Optic Cable Installation Alternative; and (3) Use of Existing Infrastructure Alternative. As gas corporations and not telecommunications carriers, SoCalGas and SDG&E would not currently be in a position to implement Alternatives Two and Three. However, these alternatives were included because the Carriers that would utilize the new service as proposed by the Utilities could potentially employ these alternative approaches to install fiber optic cable not using the FIG technology or the Utilities' gas pipelines for fiber optic cable deployment.

The Draft Program EIR concluded that the alternatives analyzed do in some cases either reduce impacts or result in impacts greater than those associated with the proposed program. However, none of the proposed alternatives would meet the basic objectives of the program as proposed by the Utilities.

F. Comments on the Draft Program EIR

As described in the Responses to Comments Document, certain modifications have been made to the program and project description. The Draft Program EIR analyzed potentially significant impacts associated with implementation of the proposed project to install fiber optic cable in the existing conduit of the Utilities' active gas pipelines. As a programmatic document, it established a process by which all subsequent activities that fall under the scope of the Draft Program EIR may be submitted for approval by the CPUC. Several comment letters expressed concerns that they would not have the opportunity to review the specific details of individual activities as they are submitted to the CPUC, and the proposed project would thereby require local CEQA review prior to implementation. To respond to theses concerns, the process proposed in the Draft Program EIR has been revisited and revised to include a notification process whereby agencies are informed of the Utilities' planned construction and may provide comment on the scope of the specific fiber in gas installation activities proposed by the utilities' in compliance with the Program EIR.

The Utilities are not requesting to provide telecommunications services or to become a licensed telecommunications provider; therefore, the fiber optic cable would be owned by the Carrier for whom the conduit is installed. The Carrier would be responsible for installation of the fiber optic cable within the conduit and constructing the handholes used for installation and future access to its fiber optic network or cable system. Although the handholes would be installed and owned by the Carrier, because the conduit system would not be complete without handhole access for installation of fiber optic cable, the project as proposed in the Final Program EIR now includes handhole installation under the purview of the program proposed by the Utilities. The potential environmental effects of the handhole installation was therefore analyzed to ensure the severity of impacts would not increase and that no new mitigation measures would be required to lessen any potential impacts of significance. As discussed in the Responses to Comments Document, no new potential impacts are anticipated and therefore no new mitigation measures are proposed at this time.

A number of comments addressed two specific issues and were addressed in master responses. The first master response clarified the applicability of a program EIR. The second response indicated that franchise agreements are not environmental issues required for evaluation or review under CEQA.

Other verbal and written comments were received and addressed as described in the Responses to Comments Document. Where appropriate changes to the text of the Draft Program EIR were made.

Attachment A to this decision presents a summary of the impacts and mitigation measures identified for the FIG program, as a result of the program EIR process.

G. Certification of the EIR

The Commission must conclude that the EIR is in compliance with CEQA before any final approval can be given to the application. This is to ensure that the environmental document is a comprehensive, accurate, and unbiased tool that the lead agency and other decisionmakers can use in addressing the merits of the project.

We find that this EIR has been completed in compliance with CEQA and that it reflects the Commission's independent judgment and analysis. We will therefore certify the Final Program EIR.

We have reviewed and considered the information in the Final Program EIR in formulating today's decision. The FIG program, as proposed by the Utilities and conditioned with the Final Program EIR mitigation measures, notification requirements and reporting requirements, will not have a significant effect on the environment.

6. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(2) and Rule 77.7 of the Commission's Rules of Practice and Procedure. SDG&E and SoCalGas, as the only active parties, requested a shortened comment period whereby comments would be due within seven days of the issuance of the draft decision and no reply comments would be filed. That request was granted and comments were filed on ___________.

7. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and David Fukutome is the assigned ALJ in these proceedings.

Findings of Fact

1. The Utilities' proposed FIG program will provide a cost effective alternative for Carriers to connect the premises of end users to main trunk lines, typically fiber optic cable, established for long distance and data transmission purposes.

2. No parties are actively opposing the Utilities' FIG program proposals, as reflected in the April 1, 2003 amendments to the applications.

3. The determination of the monthly customer charge is not based on detailed cost information.

4. Ratepayers are currently paying the capital costs for gas distribution pipeline facilities that Carriers will use for the installation of fiber cable under the FIG program.

5. Ratemaking for FIG revenues will ultimately be determined in the Utilities' test year 2004 PBR/COS proceeding.

6. The Final Program EIR reflects the independent judgment of this Commission.

7. The contents of the Final program EIR conform to the requirements of CEQA.

8. The Final Program EIR identified no significant environmental effects of the FIG program that could not be avoided or reduced to non-significant levels by changes to the program that have been accepted by SoCalGas and SDG&E.

9. The Commission has considered the Final Program EIR in its determination to approve the FIG program.

Conclusions of Law

1. Since this is a new service and data for the related customer charge is not available, it is reasonable to require the detailed determination of a cost based customer charge to be a condition for continuing the FIG program beyond the initial 36-month time period or for expanding the installation mileage limits for the program beyond that reflected in the April 1, 2003 amended applications.

2. It would not be appropriate to flow FIG revenues collected for the capital costs associated with the use of the gas distribution system through the current PBR sharing mechanisms, since those costs are embedded in current rates and are already being paid for by ratepayers. The revenues associated with capital cost recovery should instead be flowed directly to ratepayers through a credit to an appropriate balancing account.

3. In all other respects the Utilities' FIG program proposals, as amended on April 1, 2003, are reasonable and should be adopted.

4. The program EIR has been processed and completed in compliance with the requirements of CEQA.

5. Because of the need for timely action, today's decision should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. The Final Program Environmental Impact Report (EIR), which consists of two separate documents, the Draft Program EIR and the Responses to Comments Document, is identified as Exhibit 1 and is received into evidence on September 8, 2003.

2. The Final Program EIR is certified pursuant to the requirements of the California Environmental Quality Act.

3. The mitigation measures, notification requirements and reporting requirements included in the Final Program EIR are adopted.

4. Subject to the mitigation measures and requirements described in the Final Program EIR, Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E) are granted authority to implement new services allowing telecommunications carriers and cable TV companies to place fiber optic cable in the utilities' active gas pipelines at tariffed rates, terms and conditions, as amended on April 1, 2003.

5. The presentation of a detailed cost based study for the determination of the customer charge shall be a condition for either continuing the fiber optic cable in gas pipeline (FIG) program beyond the initial 36 month period or expanding the installation mileage limits beyond that reflected in the April 1, 2003 amended applications.

6. Net revenues from the FIG program shall, in part, be subject to the Performance Based Ratemaking (PBR) sharing mechanisms as currently authorized in Decision (D.) 97-07-054 for SoCalGas and D.99-05-030 for SDG&E. The net revenues subject to sharing shall be determined by subtracting the incremental expenses and revenues collected for the capital costs associated with the use of the gas distribution system from the total FIG program revenues. Revenues collected for the capital costs associated with the use of the gas distribution system shall be flowed directly to ratepayers through a credit to an appropriate balancing account. These procedures shall be superseded by ratemaking adopted in the current consolidated test year 2004 PBR/Cost of Service proceeding for SoCalGas in Application (A.) 02-12-027 and SDG&E in A.02-12-028.

7. A.02-03-061 and A.02-03-062 are closed.

This order is effective today.

Dated ____________________, at San Francisco, California.

ATTACHMENT A
TABLE 1
SUMMARY OF IMPACTS AND MITIGATION MEASURES FOR SCG/SDG&E SCHEDULE NO. G-FIG "FIBER OPTIC CABLE IN GAS PIPELINES"

ENVIRONMENTAL IMPACT	SIGNIFICANCE BEFORE MITIGATION	MITIGATION MEASURES	SIGNIFICANCE AFTER MITIGATION
Aesthetics			
AES-1: Possible temporary, minor changes to the resources visible from a scenic vista or State Scenic Highway might result from construction activities and FIG operation.	Less than Significant	No mitigation required.	
AES-2: Possible minor changes in the existing visual character or quality of a site might result from construction activities and FIG operation.	Potentially Significant	**AES-2a:** SCG/SDG&E would minimize visual impacts of program facilities and comply with local regulations, keep construction and staging areas orderly and free of trash and debris, and restore areas disturbed by construction activities to their pre-construction condition.	Less than Significant
Air Quality			
AIR-1: Introduction of additional emissions sources in a region for which air quality plans have been developed.	Less than Significant	No mitigation is required.	
AIR-2: Increase in local pollutant concentrations.	Potentially Significant	**AIR-2a:** SCG/SDG&E would require the construction contractors to implement a dust abatement program to reduce dust and air emissions.	Less than Significant
AIR-3: FIG and handhole installation could create an increase in local pollutant concentrations.	Potentially Significant	Implement **Mitigation Measure AIR-2a.**	Less than Significant

ATTACHMENT A
TABLE 1
SUMMARY OF IMPACTS AND MITIGATION MEASURES FOR SCG/SDG&E SCHEDULE NO. G-FIG "FIBER OPTIC CABLE IN GAS PIPELINES"

ENVIRONMENTAL IMPACT	SIGNIFICANCE BEFORE MITIGATION	MITIGATION MEASURES	SIGNIFICANCE AFTER MITIGATION
AIR-4: FIG and handhole installation could expose sensitive receptors to substantial pollutant concentrations.	Potentially Significant	Implement **Mitigation Measure AIR-2a.**	Less than Significant
Biology			
BIO-1: FIG and handhole installations located within or adjacent to areas that support natural habitat and special-status species may adversely affect these species.	Potentially Significant	**BIO-1a:** Prior to construction, a qualified biologist will conduct preconstruction surveys of proposed FIG installation locations which, may support special status species habitat. **BIO-1b:** If the qualified biologist determines that FIG installation sites support natural habitat (i.e., wetlands, other water resources, upland communities) that may support special-status species, project activities will be relocated outside of these habitats. Natural habitat will be avoided by subsequent activities that may impact special status species. **BIO-1c**: If the qualified biologist determines that FIG installation sites are adjacent to natural habitat (i.e., wetlands, other water resources, upland communities) that may support special-status species, the following measures will apply:	Less than Significant

ATTACHMENT A
TABLE 1

SUMMARY OF IMPACTS AND MITIGATION MEASURES FOR SCG/SDG&E SCHEDULE NO. G-FIG "FIBER OPTIC CABLE IN GAS PIPELINES"

ENVIRONMENTAL IMPACT	SIGNIFICANCE BEFORE MITIGATION	MITIGATION MEASURES	SIGNIFICANCE AFTER MITIGATION
		• A qualified biological monitor will demarcate the construction zone in the field to ensure that special-status species habitat is not disturbed during construction activities. • A qualified biological monitor will be present for construction activities adjacent to sensitive habitat or areas, which may support special-status species. • If preconstruction surveys determine that special-status wildlife species have the potential to enter the construction zone from adjacent natural habitat, exclusion fencing shall be constructed and maintained in good condition between construction areas and potential habitat for special-status wildlife species. The temporary fence shall be constructed with typical silt fencing, and shall be substantial enough to deter animals from entering the work area and to prevent parking construction vehicles or staging or storage of construction materials on road shoulders adjacent to habitat. The location of the fence shall be determined by the biological monitor.	

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SUMMARY OF IMPACTS AND MITIGATION MEASURES FOR SCG/SDG&E SCHEDULE NO. G-FIG "FIBER OPTIC CABLE IN GAS PIPELINES"

ENVIRONMENTAL IMPACT	SIGNIFICANCE BEFORE MITIGATION	MITIGATION MEASURES	SIGNIFICANCE AFTER MITIGATION
		• If preconstruction surveys identify potential nesting habitat for special-status birds or roosting habitat for special-status bats adjacent to proposed project activities, a no-disturbance buffer zone would be established around active nests and roosts during the breeding season. If construction activities are scheduled to occur during the breeding season of birds (February through August) or bats (March through August), pre-construction surveys will be conducted within 500 feet of project activities. If construction activities are scheduled to occur during the non-nesting season, then no surveys would be required. If surveys indicate that nests/roosts are inactive or potential habitat is unoccupied during the construction period, no further mitigation would be required. If active nests/roosts are found, SCG/SDG&E would establish a no-disturbance buffer acceptable in size to CDFG around the active nest/roost.	
BIO-2: FIG and handhole installation could result in potential short-term disturbance of waters of the U.S. (including wetland communities).	Potentially Significant	Implement Mitigation Measures **BIO-1a**, **BIO-1b**, and **BIO-1c**.	Less than Significant

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SUMMARY OF IMPACTS AND MITIGATION MEASURES FOR SCG/SDG&E SCHEDULE NO. G-FIG "FIBER OPTIC CABLE IN GAS PIPELINES"

ENVIRONMENTAL IMPACT	SIGNIFICANCE BEFORE MITIGATION	MITIGATION MEASURES	SIGNIFICANCE AFTER MITIGATION
BIO-3: FIG and handhole installation could result in impacts to heritage or other significant trees in the project area.	Less than Significant	No mitigation is required.	
Cultural Resources			
CUL-1: Possible substantial effects can occur to known, but unevaluated prehistoric and historic archaeological deposits from ground disturbing construction operations (construction related impact, particularly portals outside of previously excavated areas).	Potentially Significant	**CUL-1a:** For any excavation outside of previously excavated areas, conduct a records search for the proposed study area and the lands within a one-mile radius from the appropriate California Historical Resources Information System (CHRIS).	Less than Significant
		CUL-1b: For any proposed locations that have the potential for buried prehistoric cultural material or fossils, all grading and excavation for fiber in gas installation will be monitored by a qualified archaeologist. Monitoring is required within 500 feet of the boundaries of known cultural resources (including extant architectural features) and within 1,000 feet of the locations of modern and historic stream crossings. Monitors must have 2 years of professional experience and be certified by the CPUC. Monitors will be under the supervision of the cultural resources specialist.	

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SUMMARY OF IMPACTS AND MITIGATION MEASURES FOR SCG/SDG&E SCHEDULE NO. G-FIG "FIBER OPTIC CABLE IN GAS PIPELINES"

ENVIRONMENTAL IMPACT	SIGNIFICANCE BEFORE MITIGATION	MITIGATION MEASURES	SIGNIFICANCE AFTER MITIGATION
CUL-2: Potential discovery or disturbance of unique paleontological resources during construction could constitute an impact. Because significant fossil discoveries can be made in areas designated as low, as well as moderate to high potential, excavation activities could possibly unearth significant paleontological resources. While this in unlikely, should such resources be encountered, this would be a significant impact.	Potentially Significant	**CUL-2a:** In the event that fossil remains are encountered, either by the cultural resources monitor or by construction personnel, qualified paleontological specialists will be contacted. Construction within 50 feet of the find will be temporarily halted or diverted until the discovery is examined by a qualified vertebrate paleontologist. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. Significant fossils will be salvaged through a program of excavation, analysis, and documentation. Fossil remains collected during the salvage program shall be cleaned, sorted, catalogued, and then deposited in a public, non-profit institution with research interests in the materials.	Less than Significant

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SUMMARY OF IMPACTS AND MITIGATION MEASURES FOR SCG/SDG&E SCHEDULE NO. G-FIG "FIBER OPTIC CABLE IN GAS PIPELINES"

ENVIRONMENTAL IMPACT	SIGNIFICANCE BEFORE MITIGATION	MITIGATION MEASURES	SIGNIFICANCE AFTER MITIGATION
CUL-3: Possible substantial effects may occur to human burials from construction operations. Subsurface excavation in the areas known or suspected to contain burials or archaeological sites of the type known to possess burials (occupation sites), could disturb or destroy significant human remains. This could include burials of prehistoric remains or non-Indian pioneers.	Potentially Significant	**CUL-3a:** If human remains are found at any time during site preparation or excavation activities, all work will immediately stop within 100 feet of the find. The project archaeologist will be notified immediately and will, in turn, immediately notify the county coroner for the appropriate county in compliance with Section 7050.5 of the California Health and Safety Code. Upon the completion of compliance with all relevant sections of the California Health and Safety Code, the cultural resources specialist will implement Mitigation Measure **CUL-1b**.	Less than Significant
Hazards and Public Safety			
HAZ-1: Possible temporary exposure to or release of hazardous materials during construction.	Potentially Significant	**HAZ-1a:** Ensure proper labeling, storage, handling, and use of hazardous materials.	Less than Significant
		HAZ-1b: Report all significant releases or threatened releases of hazardous materials.	
		HAZ-1c: Reduce excavation impacts.	
HAZ-2: FIG and handhole installation activities could require disposal of potentially contaminated soils.	Potentially Significant	**HAZ-2a:** Implement an Awareness Training Program to educate field personnel regarding the unexpected discovery of contaminated soil.	Less than Significant

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SUMMARY OF IMPACTS AND MITIGATION MEASURES FOR SCG/SDG&E SCHEDULE NO. G-FIG "FIBER OPTIC CABLE IN GAS PIPELINES"

ENVIRONMENTAL IMPACT	SIGNIFICANCE BEFORE MITIGATION	MITIGATION MEASURES	SIGNIFICANCE AFTER MITIGATION
		HAZ-2b: Characterize excavated materials for disposal if those materials have the odor or appearance of contamination and report all discovery of significant hazardous waste, including soil and groundwater contamination, to the inspector of the local agency.	
HAZ-3: Potential public health hazard associated with a pipeline rupture during FIG installation and operation that could lead to an explosion resulting in property damage or fatalities.	Potentially Significant	**HAZ-3a:** SCG / SDG&E will continue to update safety procedures to address FIG installation procedures in compliance with all federal and state pipeline safety regulations.	Less than Significant
HAZ-4: Possible Exposure of the Public or Environment to Hazardous Materials Sites.	Potentially Significant	Implement Mitigation Measure **HAZ-2a** and **HAZ-2b.**	Less than Significant
HAZ-5: Possible Temporary Limited Emergency Access.	Potentially Significant	Implement **Mitigation Measure TRA-1a.**	Less than Significant

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SUMMARY OF IMPACTS AND MITIGATION MEASURES FOR SCG/SDG&E SCHEDULE NO. G-FIG "FIBER OPTIC CABLE IN GAS PIPELINES"

ENVIRONMENTAL IMPACT	SIGNIFICANCE BEFORE MITIGATION	MITIGATION MEASURES	SIGNIFICANCE AFTER MITIGATION
Noise			
NOI-1: Construction activities could generate noise levels in excess of local standards during construction and FIG operation.	Potentially Significant	**NOI-1a**: SCG/SDG&E would require construction contractors to comply with the construction hours limitations and construction equipment standards set forth in the local general plan noise element and the noise ordinance of all applicable jurisdictions of cities and counties, or in compliance with conditions outlined in acquired permits from those applicable jurisdictions. **NOI-1b:** To reduce daytime noise impacts due to construction, SCG/SDG&E shall require construction contractors to implement the following measures when operating adjacent to sensitive receptors in order to maintain compliance with local noise standards: • Equipment and trucks used for construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible);	Less than Significant

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SUMMARY OF IMPACTS AND MITIGATION MEASURES FOR SCG/SDG&E SCHEDULE NO. G-FIG "FIBER OPTIC CABLE IN GAS PIPELINES"

ENVIRONMENTAL IMPACT	SIGNIFICANCE BEFORE MITIGATION	MITIGATION MEASURES	SIGNIFICANCE AFTER MITIGATION
		• Impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for construction shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used where feasible, and this could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever feasible; and • Construction equipment shall be located as far from sensitive receptors as possible.	
NOI-2: Exposure of sensitive receptors to localized groundborne vibration and groundborne noise during FIG installation.	Less than Significant	No mitigation is required.	
NOI-3: Temporary and intermittent noise increases during FIG installation.	Less than Significant	No mitigation is required.	

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SUMMARY OF IMPACTS AND MITIGATION MEASURES FOR SCG/SDG&E SCHEDULE NO. G-FIG "FIBER OPTIC CABLE IN GAS PIPELINES"

ENVIRONMENTAL IMPACT	SIGNIFICANCE BEFORE MITIGATION	MITIGATION MEASURES	SIGNIFICANCE AFTER MITIGATION
NOI-1: Construction activities could generate noise levels in excess of local standards during construction and FIG operation.	Potentially Significant	**NOI-1a**: SCG/SDG&E would require construction contractors to comply with the construction hours limitations and construction equipment standards set forth in the local general plan noise element and the noise ordinance of all applicable jurisdictions of cities and counties, or in compliance with conditions outlined in acquired permits from those applicable jurisdictions.	Less than Significant
Transportation and Public Services			
TRA-1: Pipeline access points and handholes for FIG installation within streets could reduce the number of, or the available width of, travel lanes on roads, resulting in temporary disruption of traffic flows and increases in traffic congestion.	Potentially Significant	**TRA-1a**: Obtain and comply with local and state road encroachment permits, and railroad encroachment permits.	Less than Significant
TRA-2: FIG and handhole installation within or adjacent to roadways would temporarily increase the potential for accidents.	Potentially Significant	Implement **Mitigation Measure TRA-1a**.	Less than Significant
TRA-3: FIG and handhole installation within or adjacent to streets would affect emergency access.	Potentially Significant	Implement **Mitigation Measure TRA-1a**.	Less than Significant

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SUMMARY OF IMPACTS AND MITIGATION MEASURES FOR SCG/SDG&E SCHEDULE NO. G-FIG "FIBER OPTIC CABLE IN GAS PIPELINES"

ENVIRONMENTAL IMPACT	SIGNIFICANCE BEFORE MITIGATION	MITIGATION MEASURES	SIGNIFICANCE AFTER MITIGATION
TRA-4: Construction required for FIG and handhole installation would generate a temporary demand for parking spaces for construction worker vehicles; in addition, FIG installation would temporarily displace existing on-street parking on a number of streets.	Potentially Significant	Implement **Mitigation Measure TRA-1a**.	Less than Significant
TRA-5: FIG and handhole installation could temporarily disrupt bus service near pipeline access points.	Potentially Significant	Implement **Mitigation Measure TRA-1a**.	Less than Significant
TRA-6: FIG and handhole installation could temporarily disrupt existing transportation and circulation patterns in the vicinity, and impact response times for fire and police emergencies, by disrupting traffic flows and street operations.	Potentially Significant	Implement **Mitigation Measure TRA-1a**.	Less than Significant
Utilities and Service Systems			
UTL-1: The placement of fiber optic cable within existing gas pipelines would reduce the service capacity of the existing gas pipelines.	Potentially Significant	UTL-1a: Application of the Schedule No. G-FIG's Terms and Special Conditions shall address/avoid potentially significant impacts to pipeline service capacity.	Less than Significant
UTL-2: The proposed new form of service will have service implications including potential impacts on operations.	Potentially Significant	UTL-2a: Primary operations and maintenance procedures shall be modified to address potential operational impacts.	Less than Significant

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SUMMARY OF IMPACTS AND MITIGATION MEASURES FOR SCG/SDG&E SCHEDULE NO. G-FIG "FIBER OPTIC CABLE IN GAS PIPELINES"

(END OF ATTACHMENT A)