Decision 09-09-011 September 10, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U902M) for authority to update its gas and electric revenue requirement and base rates effective on January 1, 2008.	Application 06-12-009 (Filed December 8, 2006)
And Related Matters.	Application 06-12-010 Investigation 07-02-013 (Filed February 15, 2007)

(See Appendix 1 for List of Appearances.)

DECISION ON THE PETITION TO MODIFY DECISION 08-07-046 TO ACCELERATE RECOVERY OF CONTRIBUTIONS FOR PENSION AND POST-RETIREMENT BENEFITS OTHER THAN PENSIONS

1. Summary

San Diego Gas & Electric Company (SDG&E) filed Application (A.) 06-12-009, a general rate case application, and Southern California Gas Company (SoCalGas) filed A.06-12-010, also a general rate case application. They are related companies with some shared services. In Decision (D.) 08-07-046 dated July 31, 2008 the Commission adopted a ratemaking settlement for each company that included a Test Year 2008 revenue requirement, a mechanism for attrition adjustments until the next general rate case, and performance and safety incentive mechanisms, all of which are reasonable and necessary to provide safe and reliable service to ratepayers. In response to a petition filed by SDG&E and SoCalGas to modify D.08-07-046, this decision modifies the settlements to allow both SDG&E and SoCalGas to accelerate the recovery of minimum contributions to (1) the companies' pension funds recorded in the Pension Balancing Accounts and (2) Post-Retirement Benefits Other than Pensions recorded in Post-Retirement Benefits Other than Pensions Balancing Accounts. This decision denies SDG&E's request to record in its Pension Balancing Account any expenses associated with surety bonds or letters of credit. The final cost to ratepayers is unchanged because rate recovery is only accelerated. There is some savings created by reducing compounding interest otherwise accruing in the balancing accounts.

2. Background on Decision 08-07-046

The settlement agreements provided for (1) $53.5 million annual pension funding for SDG&E and $0 for SoCalGas, and (2) annual Post-Retirement Benefits Other than Pensions (other benefits) funding of $15.5 million for SDG&E and $31.4 million for SoCalGas. The forecasts were based on an assessment made at the time of settlement of the funding required to ensure funding each utility's pension in accordance with minimum standards of the Employee Retirement Income Security Act of 1974 as amended by the Pension Protection Act of 2006. Other benefits' funding was the estimated expense for the rate case period. (Petition at 2.) Under the settlement, if actual pension contributions and actual other benefits expenses are greater than the allowances in the settlement then SDG&E and SoCalGas may record the difference in Pension Balancing Accounts and Post-Retirement Benefits Other than Pensions Balancing Accounts (Balancing Accounts), and recover the accrued amounts in a subsequent general rate case.

3. Procedural History

SDG&E and SoCalGas filed the petition to modify D.08-07-046 on May 15, 2009, and a timely reply was filed by the Division of Ratepayer Advocates on June 15, 2009.[1] On June 29, 2009, the assigned Administrative Law Judge (ALJ) directed SDG&E and SoCalGas to file and serve an additional declaration to propose a specific methodology to amortize any incremental expenses and the petitioners replied on July 7, 2009. The entire record consists of the full record of A.06-12-009 et al. as well as the petition, declarations by petitioners, and the one timely reply.

4. Proposed Modification for Pensions and other Benefits

4.1. Background

SDG&E and SoCalGas entered into ratemaking settlements which included specific provisions for the allowable recovery of pension expenses and other benefits. SDG&E and SoCalGas were authorized to record in balancing accounts any differences between the forecast allowances for minimum pension fund contributions and actual contributions and the differences between the forecast allowances for other benefits and the actual costs for other benefits. The differences would be recovered in the companies' next general rate cases. The companies argue that the actual contributions for pensions and other benefits are far in excess of the allowances included in rates and that the Commission should allow the recovery of the contributions in an annual adjustment rather than in the next general rate case.

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[1] There is an unrelated petition to modify D.08-07-046 filed October 15, 2008 which is not addressed in this decision.

4.2. New Expenses Not in the Settlements

Under the Pension Protection Act regulations, pension benefit restrictions occur when the funded ratio falls below 80%. Due to current negative market conditions, SDG&E asserts that the funded ratio of its pension plan was projected to drop below 80% in 2009, which would have forced it to suspend payment of the full amount of lump-sum pension benefits to retirees and other vested terminated participants (benefit restrictions).

As a temporary measure to avoid benefit restrictions, SDG&E states that it purchased two corporate surety bonds with an aggregate face value of $110 million. (Petition at 12.) SDG&E further asserts that the current annual expense of the surety bonds is $742,500. In addition to the surety bonds, SDG&E states that it also procured letters of credit in amounts equal to the face amount of the surety bonds ($110 million), as back-up security to the bonds. The annual interest expense of the letters of credit is approximately $1.5 million. Thus the annual expense is $2,242,500. (Petition at 13.)

4.3. Discussion

Primarily, the settlements only allowed for the specific funding of minimum required pension contributions and actual other benefits' expenses. Thus any new expense, not foreseen in the settlement, which would increase the revenue requirement, may only be approved by the Commission following consideration in an application where the applicant demonstrates that such expenses are reasonable and therefore should be recoverable. A petition to modify the decision that adopted the settlements cannot substitute for a new application where, as here, an evidentiary showing is necessary for the relief requested. Additionally, the risk that actual expenses are more than were forecast is the risk borne by SDG&E or SoCalGas, and the risk that actual expenses are less than were forecast is the risk borne by ratepayers. These forecasting risks are the risks settling parties inherently accept.

SDG&E has no allowance for surety bond or letters of credit expenses in its revenue requirement settlement and thus SDG&E cannot currently recover these expenses without a Commission order to increase rates.

SDG&E cannot seek recovery of expenses already incurred for the surety bonds or the letters of credit because such recovery violates the prohibition on retroactive ratemaking. No expense can be recovered from ratepayers if it is incurred before the Commission approves recovery in subsequent rates.

Therefore, we conclude that SDG&E cannot record any expenses associated with either the surety bond or the letters of credit in the Pension Balancing Account. Although SDG&E may file an application for prospective authority to recover any future expenses of the surety bond or the letters of credit, it cannot seek the retroactive recovery of any expense already incurred.

5. Recovery Mechanism

As filed, the petition to modify did not propose a detailed mechanism for recovery of any increased expenses for pension or other benefits. Pursuant to a request by the assigned ALJ, SDG&E and SoCalGas proposed to use the Annual Regulatory Account Advice Letter filing[2] that each company makes to amortize the balances of various accounts. They indicated that using the mechanism to amortize the incremental costs preserves the relative allocation of the

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[2] See for example, SDG&E's Advice Letter 2037-E, dated October 30, 2008, which addressed balances in eight separate balancing and memorandum accounts. Also see SoCalGas' Advice Letter 3910, dated October 15, 2008.

incremental expenses across all customer classes.
(van de Leeden declaration at § 4.)

Using the Annual Regulatory Account Advice Letter resolves a concern raised by the Division of Ratepayer Advocates that the petition was too vague. We find that the Annual Regulatory Account Advice Letter is a reasonable mechanism to recover any annual increase in expenses for pension or other benefits.

6. Assignment of Proceeding

John A. Bohn is the assigned Commissioner and Douglas M. Long is the assigned ALJ in this proceeding.

7. 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. No comments were filed.

Findings of Fact

1. There is a full and complete record in A.06-12-009 and A.06-12-010 which support the adopted settlements in D.08-07-046.
2. The SDG&E and SoCalGas settlements included allowances for pensions and other benefits. Actual expenses in excess of the allowances are recorded in Pension Balancing Accounts and Post-Retirement Benefits Other than Pensions Balancing Accounts.
3. The value of SDG&E's and SoCalGas' pension funds has significantly declined requiring larger than expected contributions.
4. The expenses for other benefits have risen requiring larger than expected contributions.

5. There were no revenue requirement allowances for surety bonds or letters of credit as a part of the adopted settlements.

6. Any increased expense for pension or other benefits can be recovered in the Annual Regulatory Account Advice Letter which preserves the relative allocation of the incremental costs across all customer classes.

Conclusions of Law

1. The Commission can authorize amortizing the under-collection in a balancing account on an annual basis.

2. An application is required for a proposed increase in rates to recover the expenses associated with surety bonds or letters of credit in the Pension Balancing Account for either SDG&E or SoCalGas.

3. Recovery of already incurred expenses associated with surety bonds or letters of credit related to the decline in value of SDG&E's pension fund would violate the prohibition on retroactive ratemaking.

4. The Annual Regulatory Account Advice Letter preserves the relative allocation of the incremental costs across all customer classes.

O R D E R

IT IS ORDERED that:

1. The Test Year 2008 Settlement for San Diego Gas & Electric Company adopted in Decision (D.) 08-07-046 is modified to allow the annual amortization of pension contributions recorded in the Pension Balancing Account incremental to the contributions included in the settlement revenue requirement.

2. The Test Year 2008 Settlement for San Diego Gas & Electric Company adopted in D.08-07-046 is modified to allow the annual amortization of Post-Retirement Benefits Other than Pensions recorded in Post-Retirement

Benefits Other than Pensions Balancing Account the incremental to the expenses included in the settlement revenue requirement.

3. Within 10 days from the effective date of this order, San Diego Gas & Electric Company shall file a Tier 1 advice letter with revised tariff sheets modifying its preliminary statement to add language describing the mechanism to amortize incremental pension contributions and incremental Post-Retirement Benefits Other than Pensions expenses in the Annual Balancing Account Advice Letter. The revised tariff sheets shall become effective upon filing subject to Energy Division determining that they are in compliance with this order.

4. The Test Year 2008 Settlement for Southern California Gas Company adopted in D.08-07-046 is modified to allow the annual amortization of pension contributions recorded in the Pension Balancing Account incremental to the contributions included in the settlement revenue requirement.

5. The Test Year 2008 Settlement for Southern California Gas Company adopted in D.08-07-046 is modified to allow the annual amortization of Post-Retirement Benefits Other than Pensions recorded in Post-Retirement Benefits Other than Pensions Balancing Account the incremental to the expenses included in the settlement revenue requirement.

6. Within 10 days from the effective date of this order, Southern California Gas Company shall file a Tier 1 advice letter with revised tariff sheets modifying its preliminary statement to add language describing the mechanism to amortize incremental pension contributions and incremental Post-Retirement Benefits Other than Pensions expenses in the Annual Balancing Account Advice Letter. The revised tariff sheets shall become effective upon filing subject to Energy Division determining that they are in compliance with this order.

7. San Diego Gas & Electric Company is prohibited from recording any expenses associated with surety bonds or letters of credit in its Pension Balancing Account.

8. Application (A.) 06-12-009, A.06-12-010, and Investigation 07-02-013 remain open to address an unrelated petition to modify.

This order is effective today.

Dated September 10, 2009, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners