

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

Order Instituting Investigation into the Gas Market Activities of Southern California Gas Company, San Diego Gas and Electric, Southwest Gas, Pacific Gas and Electric, and Southern California Edison and their impact on the Gas Price Spikes experienced at the California Border from March 2000 through May 2001.

FILED  
PUBLIC UTILITIES COMMISSION  
NOVEMBER 21, 2002  
SAN FRANCISCO OFFICE  
INVESTIGATION 02-11-040

**ORDER INSTITUTING INVESTIGATION  
PHASE I****Summary**

The price of natural gas delivered to the California border was extraordinarily high in 2000 and 2001, particularly during the period between December 2000 and May 2001. The Commission has already filed a complaint at the Federal Energy Regulatory Commission (FERC) and litigated against El Paso Natural Gas Company (El Paso) and its marketing affiliate for their manipulation of natural gas supplies to California, which was a substantial cause of the natural gas price spikes. In this investigation, the Commission will examine if there were additional reasons for these price spikes. We will approach this investigation in two phases. In Phase I we name as Respondents the Sempra Energy Companies, Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E). Respondents in Phase II are Southwest Gas (SW Gas), Pacific Gas and Electric Company (PG&E), and Southern California Edison

Company (Edison). Phase II will commence at a time to be set forth in a future Commission Ruling. In each Phase, respondents are ordered to present evidence which supports all gas market activity that may have affected gas prices during the period March 2000 through May 2001, and to submit testimony explaining the reasons for the natural gas price spikes during this same period. Other non-jurisdictional entities and especially affiliate trading entities of the utilities are also encouraged to submit evidence and testimony related to the reasons for the natural gas price spikes that occurred during this period.

The focus of Phase I of this proceeding is investigatory and fact-finding. The Commission will investigate the past conduct of the respondents with regard to gas price spikes at the California Border from March 2000 through May 2001. The proceeding is categorized as ratesetting. If the investigation reveals that the conduct of respondents contributed to the gas price spikes at the California border during the named period, it may modify or eliminate the respondent's Gas Cost Incentive Mechanism (GCIM), reduce the amount of the shareholder award for the period involved, or order respondents to issue a refund to ratepayers to offset the higher rates paid. If the investigation reveals that statutory laws, or rules or orders of the Commission were violated, the Commission may enter into an adjudicatory phase of this investigation.

## **Background**

### **Decision 02-06-023**

On June 6, 2002, the Commission issued Decision (D.) 02-06-023 in the Matter of the Application of Southern California Gas Company Regarding Year Six (1999-2000) under its Experimental GCIM and Related Gas Supply Matters. During the course of that proceeding, some of the parties raised concerns about

causes of the extreme border price spikes of natural gas in 2000 and 2001. The decision approved SoCalGas' application, with modifications, and ordered the Energy Division to prepare an Order Instituting Investigation (OII) into the causes of the extreme border price spikes during the period December 2000 through spring 2001.

During hearings on Application (A.) 00-06-023, the Southern California Generation Coalition (SCGC) argued that the GCIM should be modified to encourage SoCalGas to purchase gas at or below prevailing market prices, rather than relying on hub services and financial trades to reduce overall cost of gas. Edison faulted the GCIM for relying on wholesale physical and financial transactions with noncore customers rather than encouraging the utility to acquire gas at the lowest possible cost on behalf of core customers.<sup>1</sup> Edison's position was that the GCIM, both in its current form and in settlement form, encourages perverse incentives and market manipulation through the utility's monopoly position in its storage services, intrastate transmission, and core procurement. Edison argued that since noncore customers are on the other side of swaps or other ancillary transactions that benefit core customers, consumers ultimately pay for this benefit when electric generators and others pass on the costs to consumers through increased prices. SoCalGas testified in rebuttal that the high price of gas in winter 2000/2001 was caused by factors beyond the control of SoCalGas, in particular, unusually cold weather, reduced supplies of

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<sup>1</sup> Core customers are defined as those who lack alternatives to natural gas service. Most core customers are residential and small commercial customers. Noncore customers are relatively large and are generally capable of switching from natural gas to an alternative fuel, such as oil.

hydroelectric power, increased electric generation gas load, the rupture and shutdown on an El Paso pipeline, and inefficient use of gas storage by generators. SoCalGas testified that it represents only 3% to 4% of the total volumes on which the benchmark indices are based.

**The California Natural Gas Infrastructure Outlook Report**

In November 2001, the Commission issued its “California Natural Gas Infrastructure Outlook Report.”<sup>2</sup> In Chapter 2 of that report, there is a discussion about the “skyrocketing prices experienced in California in 2000 and 2001.” The report concludes that the following four factors were responsible for California’s gas price spikes: (1) anticompetitive actions by El Paso, the owner of an interstate pipeline, drove up gas prices at the California border; (2) low rainfall limited the supply of hydroelectric generation, resulting in increased demand of gas-fired electric generation; (3) noncore customers did not have sufficient gas in storage; and (4) gas prices were higher, not only in California, but across the country, during that period.

**Demand:** The report attributes price spikes at the southern California border to the high demand for gas by electric generators along with the low precipitation in 2000 and 2001 in California and the Pacific Northwest. The report estimates that demand for natural gas in California increased 22 per cent during the period from 1996 to 2000. Low precipitation in 2000 and 2001 in California and the Pacific Northwest limited the amount of hydroelectric generation available to California. The report also states that when California’s restructured electricity market began to collapse in May 2000, gas demand from

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<sup>2</sup> California Public Utilities Commission, 2002-2006, California Natural Gas Infrastructure Outlook, Natural Gas, November 2001.

gas-fired power plants soared. PG&E and SoCalGas' gas deliveries increased nearly 20% over the previous year, and SDG&E was forced to curtail noncore gas customers in the winter of 2000-2001 because of unusually high electric generation demand.

**Storage:** The report notes the neglect of noncore customers to inject enough gas into storage as another reason for the high price spikes. When demand increased, noncore customers could not rely on stored gas to meet their requirements and had to transport gas across the border, further exacerbating escalating prices.

Although the Natural Gas Infrastructure Report identifies factors both external to California (the El Paso contract, dry hydro conditions in the Pacific Northwest and higher gas prices across North America), and internal to California (dry hydro conditions in California, failure of California noncore customers to store adequate gas, and increased demand of California's electric generators) as reasons for high price spikes at the California border, it did not investigate any gas trading activities of regulated utilities or other entities at the border. We open this proceeding because gas trading activities of utilities under California jurisdiction as one possible cause of the gas price spikes experienced at the southern California border in the winter of 2000/2001 remain unexplored.

**FERC Review of Gas Activity at the California Border**

The San Juan and Permian Basins are natural gas reserves located in New Mexico and Texas. The price of gas from these basins was historically used as a benchmark for the Southern California border price. In March 2000, El Paso Merchant Energy contracted for 1,220 million cubic feet per day (MMcfd) of El Paso pipeline capacity. By the summer of 2000, the price of gas at the border began to reflect a substantial mark-up from these southwest producing basins'

prices. On April 4, 2000, the Commission filed a Complaint with the FERC arguing that a 15-month contract between El Paso (the owner of the pipeline) and El Paso Merchant Energy (an affiliate of El Paso) had the potential for market power and affiliate abuse. On March 28, 2001, the FERC dismissed the affiliate abuse aspects of the complaint, but set for hearing the issue of “whether El Paso Pipeline and/or El Paso Merchant Energy had market power and, if so, exercised it.”<sup>3</sup> Shortly after the El Paso Merchant Energy contract expired in May 2001, California border prices again corresponded to San Juan Basin prices. The Commission and others filed requests for rehearing on the affiliate abuse issue and on June 11, 2001, the FERC issued its Order on Rehearing which set for hearing, “the allegations of affiliate abuse and possible violations of the Affiliate Standards raised by the complaint.”<sup>4</sup>

On October 9, 2001, in the Initial Decision on the CPUC v El Paso complaint, the FERC ‘s Chief Administrative Law Judge (Chief Judge) agreed that El Paso violated the FERC affiliate abuse regulations and that El Paso and El Paso Merchant Energy had the ability to exercise market power. This decision, however, ruled that no clear evidence was shown to demonstrate an exercise of market power.<sup>5</sup> The Commission, Edison, and PG&E appealed this finding to the FERC. On December 27, 2001, the FERC subsequently agreed that additional

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<sup>3</sup> Public Utilities Commission of the State of California v. El Paso Natural Gas Company, et al., 94 FERC ¶ 61,338 at 62,255 (2001).

<sup>4</sup> Public Utilities Commission of the State of California v. El Paso Natural Gas Company, et al., 95 FERC ¶ 61,368 at 62,397 (2001).

<sup>5</sup> Public Utilities Commission of the State of California v. El Paso Natural Gas Company, et al., 97 FERC ¶ 63,004 (2001).

hearings were warranted. Additional hearings were held in March and April 2002. The FERC Chief Judge issued a new initial decision on September 23, 2002, this time concluding that El Paso Corporation exercised market power when it withheld large amounts of capacity that it could have flowed to its California delivery points. The ruling states that El Paso's actions significantly increased the price of natural gas flowing to California and substantially tightened the supply of natural gas at the California border.<sup>6</sup>

On February 13, 2002, the FERC issued an Order entitled "Order Directing Staff Investigation."<sup>7</sup> In this Order, FERC directed its Staff to "undertake a fact-finding investigation into whether any entity, including Enron Corporation, manipulated short-term prices in electric energy or natural gas markets in the West or otherwise exercised undue influence over wholesale prices in the West, for the period January 1, 2000 forward."<sup>8</sup> On August 13, 2002, FERC Staff published its *Initial Report on Company-Specific Separate Proceedings and Generic Reevaluations; Published Natural Gas Price Data; And Enron Strategies* ("Initial Report").<sup>9</sup> Among other things, the Initial Report states that, "While Staff is continuing to investigate whether there was actual manipulation of spot gas

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<sup>6</sup> Public Utilities Commission of the State of California v. El Paso Natural Gas Company, et al., 100 FERC ¶ 63,041 (2002)

<sup>7</sup> Public Utilities Commission of the State of California v. El Paso Natural Gas Company, et al., 98 FERC ¶ 61,165 (2002)

<sup>8</sup> Public Utilities Commission of the State of California v. El Paso Natural Gas Company, et al., 98 FERC at 61,614

<sup>9</sup> Docket # PA02-2-000 <http://www.ferc.gov/Electric/bulkpower/PA02-2/Initial-Report-PA02-2-000.pdf>

prices, we have preliminary indications that this may have occurred. Also, market participants had the incentive to manipulate spot prices upward for natural gas at the California delivery points.”<sup>10</sup>

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<sup>10</sup> *Id.*

**Nevada Antitrust Suite**

On November 1, 2002, the Nevada Attorney General filed an antitrust suite through the Nevada Bureau of Consumer Protection, alleging that several interstate gas pipelines and local distribution companies conspired to overcharge Nevada consumers for gas and electricity over the past five years. The suit alleges that the companies including El Paso and Sempra Energy engaged in an elaborate conspiracy to manipulate the supply of natural gas and refrain from competing against each other thereby causing the tremendous natural gas spikes in the Western energy markets. The suit further claims the defendants plotted to exercise market dominance and stifle the construction of competing pipelines serving the southwestern U.S. and northern Mexico beginning in 1996 and lasting through June 2001. The suit alleges that the conspiracy between El Paso and SoCalGas drove up prices in the southern California gas market, which harmed consumers.

**Preliminary Scoping Memo**

The scope of this proceeding shall include all issues raised in this order, but will not be limited to these issues. Any party may suggest related issues for the Commission's consideration.

In D.02-06-023, the Commission ordered the Energy Division to prepare an OII of the cause of border price spikes experienced during the period from December 2000 through spring 2001. We are broadening the specified time period of this investigation back to March 2000 to coincide with the commencement of the El Paso contract with El Paso Merchant Energy.

At a minimum, we are interested in investigating the following questions:

1. Did any of the entities under our regulatory jurisdiction play a role in causing the increase in California border prices between March 2000 and May 2001?

2. Did any of the utilities' affiliates or parent companies play a role in causing the increase in border prices? Did concerns about affiliates or parents' financial position cause utilities to take actions that may have increased gas costs?
3. What were the primary factors that caused the increase in prices? In addition to the increase in gas costs caused by El Paso's actions, what other factors may have caused gas prices to increase to such high levels? Did recently acknowledged inaccurate reporting of gas price information to energy trade publications by energy trading companies have any affect on published index prices?
4. Did the utilities' gas cost incentive mechanisms create perverse incentives to increase or otherwise manipulate natural gas prices at the California border? We shall examine whether SoCalGas' Year 7 and Year 8 operations under the GCIM, enabled them to exercise market power and/or anticompetitive behavior. If so, should these incentive mechanisms be modified or eliminated to prevent such activity?

We now order Phase I of an investigation into the gas transactions of SoCalGas, SDG&E, and Sempra Energy Trading for the period March 2000 through May 2001. We prefer to initially focus on the Sempra Energy Companies to more fully explore the issues raised in SoCalGas' GCIM proceeding, A.00-06-023, as well as other evidence to be obtained in the course of this investigation. Phase II of this Investigation will address the transactions of PG&E, PG&E Energy Trading, SW Gas, Alenco Gas Services Inc., Conwest Exploration, Ltd., Edison, and Edison Mission Energy for the same period. Phase II of this investigation will commence at a time to be set forth in a future Commission Ruling.

We expect cooperation in this investigation from other non-jurisdictional entities, especially from the affiliate trading entities of the utilities.

Discovery in Phase I of this investigation may commence upon issuance of this OII.

This OII is today served on the parties on the service lists of SoCalGas A.00-06-023, and on the service list of SoCalGas' most recent Biennial Cost Allocation Proceeding (BCAP) A.01-09-024, SDG&E BCAP A.01-10-005, PG&E BCAP A.00-04-002, SW Gas General Rate Case (GRC) A.02-02-012, and Edison GRC A.02-05-004.

The rules and procedures implementing many of the reforms contained in Senate Bill (SB 960) are found in Article 2.5 of the Rules of Practice and Procedure (Rules), which are posted on the Commission's website. Pursuant to Rule 4(a) the rules in Article 2.5 shall apply to this proceeding. As per the provisions of SB 960, Phase I of the present investigation is categorized as a Ratesetting proceeding and is expected to require a hearing.

The assigned Commissioner and Administrative Law Judge shall convene a prehearing conference (PHC) within 60 days of this Order to develop a service list for this proceeding and to delineate further issues related to scope and schedule for this proceeding. Notice of the PHC will be provided by a ruling.

Any person who objects to the categorization of this investigation must file an appeal no later than ten days after the date of this OII, pursuant to Rule 6.4(a).

The temporary service list is attached to this order and shall be used for service until a service list for this proceeding is established at the PHC. Persons who want to become a party to this proceeding shall appear at the PHC, or at the formal hearing, and fill out the "Notice of Party/Non-Party Status" form (appearance form).

Those persons who do not want to be parties, and only want notice of the hearings, rulings, proposed decisions, and decisions, may either appear either at the PHC or at the formal hearing and fill out an appearance form, or they may mail a written request to the Process Office requesting that they be added to the service list for information only.

Those persons employed by the State of California who are interested in this proceeding may be added to the “state service” section of the service list by appearing either at the prehearing conference or at the formal hearing and filling out an appearance form, or they may mail a written request to the Process Office requesting that they be added to the state service list. All of the names appearing on the state service list shall be served with all documents that parties may submit or file in connection with this proceeding.

The Process Office shall develop an initial service list based on the appearances at the first PHC. This initial service list shall be posted on the Commission’s website, [www.cpuc.ca.gov](http://www.cpuc.ca.gov), as soon as it is practicable.

Any party interested in participating in this investigation who is unfamiliar with the Commission’s procedures should contact the Commission’s Public Advisor Office in Los Angeles at (213) 649-7055, or in San Francisco at (415) 703 2074.

Consistent with Rule 6(e), we expect this proceeding to be concluded within 18 months.

### **Ex Parte Communications**

This proceeding is subject to Rule 7(c) of the Commission’s Rules of Practice and Procedure. In addition to placing specific requirements on ex parte communications, Rule 7 (c) also requires parties to report ex parte communications pursuant to Rule 7.1.

## **O R D E R**

### **IT IS ORDERED** that:

1. An investigation is instituted into the gas market activity of Southern California Gas Company (SoCalGas), San Diego Gas & Electric Company (SDG&E), Sempra Energy Trading, Southwest Gas (SW Gas), Pacific Gas and Electric Company (PG&E), PG&E Energy Trading, Alenco Gas Services, Conwest Exploration, Ltd., Southern California Edison Company (Edison), and Edison Mission Energy which may have affected prices at the California border during the period from March 2000 through May 2001.

2. SoCalGas, SDG&E, PG&E, SW Gas, and Edison are made respondents to this proceeding.

3. The respondents are required to retain all documents which pertain to transactions affecting gas prices at the California border during the period March 2000 through May 2001.

4. We will approach this Investigation in two phases: Phase I will address the activities of the Sempra Energy Companies of SoCalGas, SDG&E, and Sempra Energy Trading. Phase I will commence immediately.

5. Phase II will focus on the transactions of SW Gas, PG&E, PG&E Energy Trading, Alenco Gas Services, Conwest Exploration, Ltd., Edison, and Edison Mission Energy. Phase II of this investigation will commence at a time set forth in a future Ruling of the Commission in this proceeding.

6. Phase II will focus on the transactions of SW Gas, PG&E, PG&E Energy Trading, Alenco Gas Services, Conwest Exploration, Edison, and Edison Mission Energy. Phase II of this investigation will commence at a time set forth in a future Ruling of the Commission in this proceeding.

7. Discovery in Phase I of this proceeding may commence immediately.

8. At a hearing to be scheduled by the Assigned Commissioner and Administrative Law Judge, Phase I respondents shall appear and show cause demonstrating why gas prices at the California border dramatically increased during the period from March 2000 through May 2001.

9. Respondents in Phase I shall file and serve written testimony in accordance with the schedule set forth in the assigned Commissioner Scoping Memo issued after the first PHC. Other parties may file and serve testimony in accordance with the schedule set forth in the Assigned Commissioner's Scoping Memo.

10. The Executive Director shall cause this Order Instituting Investigation to be served on the respondents and on the service lists of SoCalGas Gas Cost Incentive Mechanism Application (A.) 00-06-023, SoCalGas Biennial Cost Allocation Proceeding (BCAP) A.01-09-024, SDG&E BCAP A.01-10-005, PG&E BCAP A.00-04-002, SW GAS General Rate Case (GRC) A.02-02-012, and Edison GRC A.02-05-004.

11. The temporary service list is attached and shall be used for service of all pleadings until a service list for this proceeding is established. An initial service list for this proceeding shall be created by the Process Office and posted on the Commission's website ([www.cpuc.ca.gov](http://www.cpuc.ca.gov)) as soon as it is practicable after the first prehearing conference. Parties may also obtain the service list by contacting the Commission's Process Office at (415) 703 2021.

12. The category of the investigation is determined to be Ratesetting as that term is defined in Rule 5(c) of the Commission's Rules of Practice and Procedure.

13. Persons interested in this proceeding shall follow the procedures described in this investigation to get on the service list.

This order is effective today.

Dated November 21, 2002, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

CARL W. WOOD

MICHAEL R. PEEVEY

Commissioners

Commissioner Geoffrey F. Brown, being necessarily absent, did not participate.

\*\*\*\*\* ATTACHMENT: TEMPORARY SERVICE LIST \*\*\*\*\*  
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**\*\*\*\*\* ATTACHMENT: TEMPORARY SERVICE LIST \*\*\*\*\***  
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**I0211040 NOPOST**  
**A0006023,A0109024,A0110005,A0004002,A0202012,A0205004,I0011002,R0206041**

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