

Decision 04-04-015 April 1, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SOUTHERN
CALIFORNIA GAS COMPANY In Compliance
with Resolution G-3334 For a System of Firm,
Tradable Receipt Point Capacity Rights and
Related Provisions. (U 904 G)

Application 03-06-040
(Filed June 30, 2003)

(See Appendix A for a list of appearances.)

OPINION IMPLEMENTING DECISION 01-12-018

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APPENDIX B – Tariffs and Rules

OPINION IMPLEMENTING DECISION 01-12-018

I. Summary

This decision adopts tariffs that implement Decision (D.) 01-12-018.

In D.01-12-018, the Commission adopted a comprehensive settlement agreement (CSA) that modified the market and regulatory framework for regulating the transportation and storage of natural gas on Southern California Gas Company's (SoCalGas) system. This decision does not establish new policies and does not modify either the CSA or D.01-12-018. However, we stay this order pending the issuance of a decision in Phase I of Order Instituting Rulemaking 04-01-025.

II. Background

In Order Instituting Rulemaking (R.) 98-01-011, the Commission assessed the market and regulatory framework of California's natural gas industry and considered reforms that might foster competition and benefit all California natural gas consumers. In D.99-07-015, the Commission identified the most promising options for changes to the regulatory and market structure of the natural gas industry. Order Instituting Investigation (I.) 99-07-003 was issued the same day and asked parties to prepare more detailed analysis of the costs and benefits of the promising options, and allowed time for exploring the possibility of settlement before testimony and hearings. Various parties agreed to a "Comprehensive Settlement Agreement" (CSA). The CSA settled the issues raised by the most promising options being investigated in I. 99-07-003.

In D.01-12-018, the Commission approved the CSA with modifications. D.01-12-018 authorized customer access to firm tradable transmission rights on SoCalGas' system and ordered the unbundling from transportation rates of the costs associated with intrastate backbone transmission. D.01-12-018 also allowed

noncore customers to acquire intrastate backbone transmission capacity through an open season, or purchase gas at the city gate. D.01-12-018 provided that the utilities' retail core procurement department would continue to reserve interstate capacity, intrastate backbone transmission capacity, and storage capacity to meet the requirements of retail core procurement customers. D.01-12-018 anticipated that the availability of firm tradable transmission rights would allow customers to place an increased reliance on long-term contracts.

D.01-12-018 ordered SoCalGas to file advice letters to implement the CSA. SoCalGas filed nine Advice Letters (ALs) to establish an implementation schedule, tariffs and rules to implement D.01-12-018. Eight of the nine ALs were protested. Protests were received from both signatories and non-signatories to the CSA.

On February 27 2003, the Commission issued Resolution G-3334 which consolidated and denied the ALs without prejudice.¹ Since no hearings were held or record developed, Resolution G-3334 did not modify D.01-12-018 or establish any new policies. Resolution G-3334 simply ordered SoCalGas to file an application to implement D.01-12-018.²

On June 30, 2003, SoCalGas filed Application (A.) 03-06-040, and on July 15, 2003, SoCalGas served its testimony. In its application, SoCalGas proposed two options. SoCalGas refers to option 1 or the "Compliance Case" as

¹ For a description of the ALs filed and the protests received, see Resolution G-3334.

² SoCalGas filed a petition to modify Ordering Paragraph 3 of Resolution G-3334 which directed SoCalGas to file an implementation application by April 14, 2002. SoCalGas requested a filing date of October 15, 2003. In D.03-06-045, the Commission denied SoCalGas' petition and further ordered SoCalGas to file its implementation application on or before June 30, 2003.

implementing the tariff provisions that are in compliance with the regulatory framework adopted by D.01-12-018. Option 2 is described as the preferred case which contains recommended changes to D.01-12-018.

On August 6, 2003, protests and responses were filed.³ On August 8 and 19, 2003, Administrative Law Judge (ALJ) DeUlloa held prehearing conferences.⁴ On August 18, SoCalGas filed a response to the protests. On September 29, 2003, Commissioner Brown issued a scoping memo that limited the scope of this proceeding to addressing SoCalGas' first option, i.e., the compliance case filing. Further, the scoping memo indicated that the Assigned Commissioner planned to explore with the Commission staff the:

“possibility of initiating a new proceeding to evaluate parties’ proposals for modification to the CSA in a comprehensive manner that identifies for parties the Commission’s policy goals, organizes issues, and also takes into consideration the experiences gleaned from implementation of the compliance case.” (Scoping Memo at p. 4.)

An evidentiary hearing was held on November 3, 4, and 5, 2003. Opening briefs were filed on November 17 and reply briefs were filed on November 24, 2003. This matter was submitted on November 24, 2003.

³ The following parties filed protests: California Utility Buyers JPA, Coral Energy Resources, L.P., Indicated Producers (IP), Marathon Oil Company, Southern California Edison Company (Edison), Southern California Generation Coalition (SCGC), The Utility Reform Network (TURN), Watson Cogeneration Company (Watson), and Wild Goose Storage Inc. (Wild Goose).

⁴ Prehearing Conference Statements were filed by Kern River Transmission Company, Pacific Gas and Electric Company, and Questar Southern Trails Pipeline.

III. Discussion

In D.01-12-018, the Commission adopted a CSA that modified the market and regulatory framework for regulating the transportation and storage of natural gas on SoCalGas' system. This decision adopts tariffs that implement D.01-12-018. This decision does not establish new policies and does not modify either the CSA or D.01-12-018.

The tariffs SoCalGas filed on July 15, 2003, as modified by the changes contained in Appendix B implement D.01-12-018 and should be approved. SoCalGas is ordered to file an advice letter within 10 days that should become effective the first day of the month at least three and one-half months after the effective date of this decision. SoCalGas should take steps to implement such tariffs by the first day of the month at least three and one-half months after the effective date of this decision.

Although we have reviewed all the tariffs filed by SoCalGas, this decision does not explicitly review and discuss each tariff page. Instead, we limit our discussion to contested tariffs. We have reviewed the uncontested tariff sheets, we find such tariffs to reasonably implement D.01-12-018.⁵ Below we address the implementation issues raised by parties.

⁵ Some tariffs were contested in parties' protests and testimony, but in negotiations with SoCalGas the concerns were resolved. In these instances, where parties were able to meet with SoCalGas and resolve concerns prior to the start of evidentiary hearing, we also omit discussion.

A. Issues

1. Storage Service Issues

a) Timing of Implementation for Storage Services

SCGC contends that SoCalGas' tariffs⁶ evade the "timetable for phasing-in" of storage rates and revenues. SCGC states that the CSA provides a three-year phase-in of storage rates and revenue retention. Edison similarly opposes SoCalGas' proposal to be at 100% risk for the difference between unbundled storage costs and revenues from unbundled storage service. Edison states the purpose of the dates in the CSA was to provide a phased implementation of the risk during the implementation of unbundling, in order to give markets a chance to mature.

SoCalGas responds that the CSA contemplated that SoCalGas would be 100% at risk/reward for unbundled storage by April 1, 2003, through the remainder of the CSA period (until August 31, 2006). SoCalGas argues that its tariffs provide for storage rates and revenues consistent with the schedule contained in the CSA.

The issues raised by the parties arise from the fact that implementation of D.01-12-018 has been delayed. SCGC relies on language describing a "transition period" of rates and revenues. SoCalGas relies on a literal reading of dates contained in the CSA. In deciding which approach to follow, we examine the merits of each approach.

⁶ Schedules G-BSS, G-CGS, G-LTS, G-PAC, and G-TBS.

The CSA states that:

“SoCalGas will be placed at 100% shareholder risk for unbundled storage after a two-year transition period with partial and increasing shareholder risk, as described in Section 2.3 below.”

The analyses of SCGC and Edison are silent on the fact that approximately two years and eight months remain before the CSA expires on August 31, 2006. SCGC does not address how SoCalGas will receive the benefits it may have envisioned from the last four years of implementation of the CSA. At the same time, SoCalGas’ analysis does not mention the two-year “transition period,” and instead follows the literal language of CSA Section 2.3.3 which states that:

“For the period from April 1, 2003, through the remainder of the term of this Settlement Agreement, SoCalGas shall be 100% at risk/reward for any difference between unbundled storage costs and revenues from unbundled storage service.”

We believe that given the delay in implementation, the approach proffered by SoCalGas makes the most sense and is the most consistent with the intent of the CSA. SCGC’s protest may have carried more weight had it proposed to extend the CSA or even prorate the transition period. However, neither of these proposals was presented and we will not pursue them. The intent of the CSA is to place SoCalGas at 100% risk/reward. In achieving that end, the CSA provided for a “transition period.” Under SCGC approach greater emphasis is placed on transitioning rather than achieving the goal of placing SoCalGas at 100% risk/reward. We consider the CSA’s intent to shield ratepayers from risk after a two-year transition period. Under SoCalGas’ approach, ratepayers are shielded from risk whereas under SCGC’s approach ratepayers are exposed to revenue shortfall risk for two years. Moreover, other

than relying on the phrase concerning a “phase-in,” SCGC and Edison did not demonstrate how signatories to the CSA or ratepayers would be harmed by moving to 100% risk/reward as envisioned and intended by the CSA. For all the foregoing reasons, we agree with SoCalGas’ schedule for implementing storage services.

b) Schedule G-PAL

SCGC raises concerns about schedule G-PAL similar to the concerns raised above about timing of implementation of storage services. SCGC argues that schedule G-Pal offers services (gas parking and loaning services) that are “effectively storage related.” Consequently, SCGC contends that the three-year schedule for deregulating rates and for permitting 100% revenue retention should apply to schedule G-PAL. Since we rejected SCGC’s implementation timing proposal for implementation of gas storage services, we similarly deny SCGC’s proposal for the treatment of schedule G-PAL.

c) Variable Charges for Storage Services

SCGC contends that SoCalGas’ proposed storage tariffs for implementing the CSA would impose variable charges for off-peak storage injection and withdrawal services that are not authorized by the CSA. Section 2.1.3.4 of the CSA addresses, among other matters, variable charges for storage capacity sold during the “open season” and Section 2.1.3.5 addresses, among other matters, variable charges for storage capacity not committed during the open season.

With regards to storage capacity not committed during the open season, SCGC believes that CSA Section 2.1.3.5 requires SoCalGas to apply the same terms as “existing” tariff schedules for unbundled storage capacity

sold. Further, SCGC argues that the “proposed” tariffs of SoCalGas conflict with “existing tariffs.” The “proposed” tariffs of SoCalGas permit variable charges for off-peak storage injection withdrawal services whereas “existing” tariffs do not.

We agree with SCGC concerning the application of variable charges for storage capacity not committed during the open season. CSA Section 2.1.3.5 clearly requires SoCalGas to apply the same terms as “existing” tariff schedules for unbundled storage capacity sold. CSA Section 2.1.3.5, in relevant part, unambiguously states that:

“Unbundled storage capacity not committed during open seasons may be sold by SoCalGas under the terms of Schedules G-TBS and G-BSS *existing as of the filing of this Settlement Agreement*, subject to the price floors and ceilings set forth above.”
(Emphasis added.)

Consequently, SoCalGas may not charge variable charges for storage services during off-peak consistent with existing schedules G-TBS, G-LTS and G-BSS.

With regards to storage capacity sold during the open season, no explicit language concerning the application of existing tariffs is found in Section 2.1.3.4 of the CSA. Instead, CSA relies upon a single word, “continue,” in Section 2.1.3.4 for the proposition that tariffs existing at the time the CSA was executed should govern charges for storage capacity sold during the open season. We disagree. The signatories to the CSA clearly possessed the ability to articulate such a result as discussed above for storage services not committed during the open seasons and did not do so. Rather, Section 2.1.2.4 in relevant part, contains language that permit the imposition of variable charges.

“This rate [for unbundled storage service] is to be paid as a fixed reservation charge without regard to actual usage of the capacity reserved, and billed in 12 monthly installments. In-kind fuel charge and **variable rates would continue to be charged for actual usage** in addition to this rate.” (Emphasis added.)

Pursuant to Section 2.1.3.4 of the CSA, SoCalGas may impose variable charges for off-peak storage injection withdrawal services for capacity sold during the open season.

2. Information Disclosure Issues

In their comments, both SCGC and Edison raise concerns about the sufficiency of information SoCalGas proposes to disclose concerning covered transactions.

a) Negotiated Storage Contracts

(1) Schedules G-BSS and G-LTS

SCGC contends that Section 6.2.3.2 of the CSA requires SoCalGas to post on its electronic bulletin board a quarterly report that includes the quantity, price and term (but not contracting party) of all negotiated storage contracts. SCGC argues that SoCalGas fails to comply with Section 6.2.3.2 because in Schedules G-BSS and G-LTS, SoCalGas does not report on negotiated storage contracts.

SoCalGas does not believe it is required to post storage contract information pursuant to Schedules G-BSS and G-LTS because these two storage contracts will be closed to new customers upon CSA implementation. However, in its reply brief, SoCalGas states that it is willing to accommodate the request of SCGC to report information concerning Schedules G-BSS and G-LTS.

SCGC raises the issue of whether information should be disclosed for existing negotiated contracts when the schedules will be closed to new customers. We observe that the CSA acknowledged prior Commission concerns (D.99-07-015) that “disclosure of transaction-specific details about storage contracts is basic and fundamental to an efficient market.” (CSA at Section 6.2.1.) Given that the Commission and the signatories to the CSA expressed an intent that transactional information should be disclosed, we are inclined to find that such information should be disclosed. We will accept SoCalGas’ offer in its reply brief to report information for contracts under Schedules G-BSS and G-LTS and do not need to pursue this matter further.

(2) Disclosure of Price Information

SCGC complains that SoCalGas does not intend to comply with the posting requirements of Section 6.2.3.2. SCGC asserts that the CSA requires SoCalGas to post information about price, quantity and term, but that SoCalGas proposes to omit information about price.

SoCalGas responds that SCGC is seeking information beyond what is required by the CSA. In support of its position, SoCalGas cites Section 6.2.3.2 of the CSA which states in relevant part that:

“For negotiated storage contracts in effect between April 1, 2001 and March 31, 2003, SoCalGas will file with the Commission and post on its GasSelect system a quarterly report

open to the public on negotiated storage contracts in effect that lists the quantity, price and term (but not any contracting party name) of all negotiated storage contracts. For negotiated contracts in effect on and after April 1, 2003, SoCalGas will file and post on GasSelect the same information, but excluding price.” (Emphasis added.)

SoCalGas believes that the above language makes clear that for “contracts in effect on or after April 1, 2003,” SoCalGas is not required to post information concerning price. SCGC responds that SoCalGas is ignoring the two-year phase-in schedule adopted in the CSA and should report quantity, price and term.

The issue raised by SCGC is a timing issue that arises from the fact that implementation of the CSA has been delayed. We find that both parties are in part correct. SCGC correctly observes that SoCalGas is bypassing the phase-in anticipated in the CSA. However, under SCGC’s approach, Section 6.2.3.2 is only half implemented because time will run out prior to SoCalGas being excused from having to report prices. SCGC does not address this inequity. SoCalGas is also correct in that it is following the explicit reporting instructions for negotiated contracts in effect on and after April 1, 2003.

In this instance, we find that the intention of the parties pursuant to the CSA was to promote an efficient market. In doing so it appears that the parties balanced the need for information in a marketplace with confidentiality concerns. In this instance, withholding price information as proposed by SoCalGas may have a detrimental effect in promoting an efficient marketplace. We are guided by the principle that disclosure of transaction specific details about contracts is basic and fundamental to an efficient market. Unlike our resolution of timing for implementing storage services, here we find

the phase-in period anticipated in the CSA may be essential for the development of an efficient marketplace. Since the CSA does not explicitly state why the posting of price information is not necessary after two years, we can only infer that once information for existing negotiated contracts is published the contribution of such information in the future to the development of an efficient marketplace may diminish. Consequently, we reject SoCalGas' proposal to withhold price information concerning negotiated storage contracts. Pursuant to Section 6.2.3.2 of the CSA, SoCalGas should post information about price, quantity and term of storage contracts.

b) Storage Transactions in the Secondary Market

With respect to storage transactions in the secondary market, SCGC argues that SoCalGas should post the price but not the names of participants. In support of its position, SCGC cites Section 6.3.3.4 of the CSA which states that "transaction price" will be posted but that "customer names will not be provided." Edison also believes that SoCalGas should post all the information required by Section 6.3.3.4 of the CSA.

SoCalGas agrees with SCGC's interpretation of Section 6.3.3.4 of the CSA, but contends that D.01-12-018 modified the CSA. The relevant passage from D.01-12-018 is as follows:

This system of firm tradable storage rights would be established together with a secondary market for the trading of those rights. In Section 2.2.3, the CSA provides that customers who have purchased SoCalGas' unbundled storage may assign any portions of their storage contract (inventory, injection, and withdrawal rights may be assigned independently) for any period up to the remaining term of their contracts. SoCalGas will facilitate a

voluntary and anonymous secondary market trading system via an electronic bulletin board for the storage contract trading. However, the bulletin board need not be used for trading – traders can contact each other. While price is not disclosed without approval of the parties, the parties and term of the assignment will be public. The SoCalGas GasSelect System is the interim trading mechanism under the CS. (D.01-12-018 at 57-58, emphasis added.)

SCGC disagrees that the Commission was attempting to modify the CSA. Instead SCGC believes that in the passage quoted above the Commission was reciting the contents of the CSA. In support of its position, SCGC argues that the CSA consistently requires that SoCalGas keep names, not price, confidential.

SCGC recommends that the Commission direct SoCalGas to publish the amount, price, and term of secondary storage transactions while keeping the names of parties confidential, absent approval of publication of names by the involved parties.

We agree with SCGC that the paragraph cited by SoCalGas represents an erroneous recital of the CSA's intent. In viewing D.01-12-018 as a whole document, it is clear that the Commission made efforts to highlight changes it was making to the CSA and further reflected most of these changes in the findings of fact or conclusions of law. In the instant situation, the paragraph cited does not explicitly inform the reader the Commission is making a modification to the CSA, clearly explain the modification or discuss a rationale for making the modification. In this instance, a discussion concerning the policy basis for disclosing names but not price should have been included in light of the fact that such a change would have created an inconsistency. Moreover,

D.01-12-018 contains no finding of fact or conclusion of law that indicate that the Commission modified the CSA concerning disclosures for storage transactions in the secondary market. Read as a whole document, we disagree with SoCalGas' interpretation and modify SoCalGas' tariffs so that price but not names of parties are disclosed for storage transactions in the secondary market.

c) Tariffed Rate Storage Contracts

SCGC requests that the Commission require SoCalGas to post information about amount, price, term and names for storage services at tariffed rates under Schedules G-CGS or G-PAC. SCGC states that neither the CSA or SoCalGas' tariff sheets provide for disclosure of such information and that such a step would go beyond the CSA and scope of this proceeding. However SCGC contends that such a change is warranted as a matter of policy.

We do not address the merits of SCGC's request. We deny SCGC's request on the ground that it goes beyond what is required by the CSA and is also outside the scope of this proceeding as acknowledged by SCGC itself.

3. Tariff Schedule G-BR

SoCalGas' proposed Schedule G-BR implements some of the main features of the CSA such as the unbundling of the SoCalGas backbone transmission service from local transmission and distribution service and the establishment of firm receipt point rights. Under Schedule G-BR, SoCalGas would provide firm and interruptible receipt point rights and transmission service on its backbone transmission system.

a) Set-Aside Rights

Prior to conducting an initial open season for firm receipt point capacity, Sections 1.1.3.5 and 1.9 of the CSA require SoCalGas to "set-aside" capacity for certain customers. In its testimony, Edison proposes that it

receive set-aside rights based on forecasted usage due to concerns about its ability to acquire sufficient gas given its new responsibilities for obtaining gas for electric generator facilities.

SCGC opposes Edison's request as outside the scope of this proceeding. SCGC contends that it would be patently unfair to consider Edison's allegations of changed circumstances while denying other parties the opportunity to address issues that go beyond implementing the CSA.

The CSA is clear concerning set-aside rights. The CSA provides no exemption for Edison to receive set-aside rights based on forecasted usage. Edison's request for set-aside rights should be denied.

However, Edison raises a concern about its ability to acquire sufficient bidding rights to administer contracts on behalf of the State Department of Water Resources (DWR). At hearing a witness for SoCalGas offered a simple solution. The SoCalGas witness testified that under the CSA an end-use facility could assign its rights based upon historic use to the entity supplying the gas.⁷ Further, SoCalGas witness stated that it expected that such arrangements would be part of normal commercial agreements between parties.⁸ Although both Department of General Services (DGS) and Edison raise concerns about Edison's ability to acquire sufficient bidding rights to administer CDWR contracts, neither party introduced such contracts or relevant portions of such contracts to show that an actual conflict with the CSA existed. Since neither DGS nor Edison submitted any evidence concerning what rights, if any, were acquired

⁷ Rt. Volume 1, p. 65 (cross-examination of Rodger Schwecke).

⁸ *Id.*

from generators it is difficult to address Edison's situation. Edison's request in its opening comments that historic tolling rights be considered a reassignment of bidding rights is reasonable and consistent with the manner SoCalGas indicated it would implement the CSA. Since a witness for SoCalGas testified that SoCalGas would implement the CSA in a manner that would allow Edison to receive assignment of historic bidding rights from generators it intends to serve we see no need to modify the CSA at this point in time.

b) ExxonMobil Request for Set-Aside Rights on the North Coastal System

ExxonMobil Gas & Power Marketing Company (ExxonMobil) asserts that it should receive set-aside rights of up to 68.8 MMcf/ day at the North Coastal receipt point, but that SoCalGas has excluded ExxonMobil from receiving such set-aside rights. ExxonMobil states that its gas is delivered directly from the Pacific Offshore Pipeline Company (POPCO) facility into the SoCalGas system through the North Coastal line. In support of its position, ExxonMobil relies upon Section 1.1.3.6 and Appendix B of the CSA.

Section 1.1.3.6 of the CSA provides in relevant part for

"Special rights for existing on-system California gas producers to obtain backbone transmission rights for Line 85 and North Coastal receipt points are described in Appendix B."

Appendix B of the CSA provides in relevant part as follows:

"Existing on-system California producers can obtain up to 100% of the North Coastal and Line 85 receipt point capacity rights based on their historic deliveries."

ExxonMobil contends that its "historic deliveries" to the North Coastal receipt point are 68.8 MMcf/ day. ExxonMobil complains that Schedule G-BR, Special

Condition 28, Sheet 10, which describes set-aside rights for “California Producers connected directly to Line 85, North Costal (excluding ExxonMobil Corp.)” improperly excludes ExxonMobil from receiving set-aside rights. ExxonMobil contends that the CSA provides all California on-system producers, including ExxonMobil with set-aside rights equal to their historic deliveries and nothing in the CSA excludes ExxonMobil from receiving set-aside rights as proposed by SoCalGas.

In response, SoCalGas states that insufficient capacity rights exist to grant ExxonMobil the firm set-aside rights it claims without reducing the set-aside rights of core customer and other California producers. SoCalGas asserts that 120 MMcf/ d of firm capacity rights exists on the North Coastal system under the CSA and since the CSA grants 73 MMcf/ d of firm set-aside rights to core customers, it is impossible to grant ExxonMobil set-aside rights for 68.8 MMcf/ d.

The Office of Ratepayer Advocates (ORA) states that the North Coastal line has a capacity of 120 MMcf/ d and that D.01-12-038 reserved 73 MMcf/ d for the core. ORA observes that at the time the CSA was negotiated SoCalGas had a contractual agreement with Pacific Offshore Pipeline Company (POPCO) for purchase of core gas supplies. ORA states the POPCO contract had a December 31, 2003 termination date and that in recognition that the POPCO contract was terminating, the CSA reserved 70 MMcf/ d of North Coastal capacity for core customers.⁹ ORA has no objection to ExxonMobil receiving a set-aside of 68 MMcf/ d and eliminating the core’s set aside of North Coastal

⁹ The CSA itself provide for 70 MMcf/ d of North Coastal capacity for core customers, but D.01-12-018 modified the amount to 73 MMcf/ d.

capacity as long as the CSA is modified to permit the core to receive 73 MMcf/ d set-aside capacity at Wheeler Ridge.

The issue raised by ExxonMobil is whether the CSA grants it set-aside rights of 68 MMcf/ d. We agree with SoCalGas and ORA that the CSA is unambiguous concerning the set-aside of 73 MMcf/ d of North Coastal capacity for core customers. The CSA also clearly defines firm capacity available at each receipt point; in the case of North Coastal, that amount is 120 MMcf/ d. ExxonMobil's interpretation of the CSA creates a clear conflict in assigning 73 MMcf/ d of North Coastal capacity to core customers. Since backbone transmission rights are defined as the firm right to have SoCalGas redeliver gas at a specific receipt point path, the total aggregate of backbone transmission rights cannot exceed the capacity available at each receipt point. Under ExxonMobil interpretation of the CSA insufficient capacity exists at North Coastal to provide ExxonMobil with the 68 MMcf/ d of capacity it requests.

ExxonMobil's request for a set-aside is not supported by the CSA and should be denied. However, ExxonMobil may bid for capacity in the open season consistent with this decision and the open season process described in the CSA.

c) Market Concentration Limits

Edison requests an exemption from the CSA requirement concerning the maximum limit of 30% of receipt point capacity that an end-use customer may hold at any given receipt point at the end of an open season. Edison asserts that it needs an exemption to obtain sufficient full access rights in the open season to meet its demands. In support of its position, Edison argues that absent the exemption it might have to buy receipt point capacity in the secondary market, capacity from SoCalGas, gas at city gate or interruptible

capacity at a cost substantially higher than meeting demand through set-aside rights. Edison asserts that this exemption is warranted because (1) such higher costs would harm its customers and (2) there are changed circumstances pertaining to Edison's duty to administer California Department of Water Resources (CDWR) contracts.

SCGC and California Manufacturers and Technology Association (CMTA) oppose Edison's proposed exemption from market concentration limits. SCGC believes that Edison's request for an exemption from the 30% market concentration limit is unnecessary, unsupported, and inconsistent with the CSA. CMTA emphasizes that customers who require more capacity than their historic rights can obtain it through the secondary market. SoCalGas takes no position, but believes that the exemption requested by Edison is unsupported by the CSA and may detrimentally affect other customers by decreasing the amount of backbone capacity that is available to other customers at desirable receipt points

In deciding whether to grant an exemption to Edison, we observe the purpose of the market concentration limit is to prevent market power abuse. In D.01-12-018, we stated that:

"We support the adoption of a market concentration limit, but we agree ... that the 40% limit is too generous. ... We acknowledge that the cap represents less than 40% of the total capacity at each receipt point, but we believe that the limit should be set slightly lower to prevent any abuse of market power. Therefore, we will modify the market concentration limit such that no person can hold more than 30% of the capacity at each receipt point that has not been awarded to the [SoCalGas] Gas Acquisition Department, CTAs, or wholesale customers using their reservations. ... We decline

to adopt a market concentration limit to capacity acquired through the secondary market at this time. Instead we caution parties that if we find that secondary market transactions result in a concentration of capacity held by individuals entities or marketers, we will open an investigation to revisit the market structure adopted in this decision.” (D.01-12-018, mimeo. at p. 45.)

We agree with SCGC that Edison’s request for an exemption from the 30% market concentration limits adopted is unsupported and inconsistent with the CSA. We also see no inconsistency as suggested by Edison. On its face, the CSA as modified by D.01-12-018, is clear about the market concentration limits imposed and the basis for such limits. As CMTA points out, to the extent Edison is unable to procure sufficient capacity through set-aside rights, the secondary market exists to meet demand. Lastly, the main basis for implementing market concentration limits as described in D.01-12-038 was to protect against any abuse of market power. In fact, after careful consideration, the Commission actually reduced the 40% limitation set forth in the CSA to 30%. Edison has not adequately addressed how its proposed exemption would affect the policy of protecting against market abuse that underlies the market concentration limit.

d) Open Season Bidding Rights

Edison seeks bidding rights in excess of historical usage. In Tariff Schedule G-BR, Sheet 11, SoCalGas has proposed to define bidding rights based on the use of forecasted demand when the customer can justify a load change from historical demand. In Schedule G-BR, SoCalGas as an “accommodation” allows a customer such as Edison to attain bidding rights

based on forecasted usage. In its opening brief, Edison states that it agrees with the proposed language.

CMTA, Watson Cogeneration Company (Watson), and SCGC oppose granting bidding rights based on forecasted usage as inconsistent with the CSA. CMTA states that neither Edison nor electric generators are entitled to bidding rights based on forecasted demand.

In its reply brief, SoCalGas acknowledges that:

“Only existing noncore customers are entitled to bid for backbone capacity in the open season, and only to the extent of their historical load. These customers are permitted to assign their bidding rights to a third party.” (SoCalGas reply brief at p. 39.)

Nonetheless, as an “accommodation to the parties, SoCalGas proposes to allow certain, limited adjustments to bidding rights when a customer’s historical load does not properly reflect future needs.” With respect to Edison’s request to obtain additional bidding rights, SoCalGas states that the CSA does not afford Edison these rights. Although SoCalGas agrees with other parties that Edison does not qualify under the CSA for additional bidding rights, SoCalGas takes no position on this issue. In addition, SoCalGas provides the disclaimer that any accommodation for Edison will decrease the amount of backbone capacity that is available to other customers at desirable receipt points.

Although SoCalGas takes no position on granting bidding rights for Edison and other customers based on forecasted usage, we agree with SoCalGas’ analysis of the CSA and concerns of SCGC and CMTA. The scope of this proceeding has been limited to implementing the CSA while concerns about changed circumstances have been deferred to a future proceeding. It would be patently unfair if we were to entertain changes to the CSA for some parties and not for others. Consequently, we reject SoCalGas’ proposal to determine bidding rights based on forecasted usage or any other manner not consistent with the CSA. We will modify schedule G-BR so that bidding rights are established based on historical consumption and not on forecasted usage.

e) Seasonal Usage

SCGC raises concerns about how SoCalGas has implemented Section 1.1.3.6.1 of the CSA which addresses the first stage of the initial open season and in relevant part states:

“Customers’ maximum bidding rights shall be determined by a formula that fairly balances seasonal and annual usage.”

In response to these concerns, SoCalGas proposed a formula that assigns bidding rights to customers that have seasonal usage. At hearing, parties cross-examined SoCalGas’s witness who on the stand accepted a small revision proposed by SCGC’s attorney.¹⁰

SCGC also objects to SoCalGas process for evaluating bids in which seasonal bids receive fourth priority. SCGC contends that:

“The priority schedule assigning a fourth priority to seasonal bids should be rejected as violative of the CSA requirement that ‘customer’s maximum bidding right shall be determined by a formula that fairly balances seasonal and annual usage.’
SoCalGas should award capacity for each month on

¹⁰ Upon cross-examination by SCGC’s attorney, SoCalGas agreed to strike the word “substantially” from Subparagraph 1.2 of Schedule G-BR, Special Condition 29, Sheet 11.

For months the customer uses ~~substantially~~ more than their average base load, customer’s monthly maximum bidding rights will be set equal to their historical usage in those particular months during the specified period.

In the attached tariffs in Appendix B, Special Condition 29 has been renumbered as Special Condition 30.

the basis of the bids for that month without giving priority to annual bids.”¹¹

SCGC’s concern stems from a belief that “in all likelihood, only bids for capacity on an annual basis will be awarded for preferred receipt points.” SCGC did not present an alternative proposal addressing seasonal usage in their testimony.

In its opening brief, Edison proposes a clarification to Schedule G-BR Special Condition 29 to include a reference to “seasonal bids” where the term “monthly bids” appears to clarify that a seasonal bid may extend beyond one month and represent several contiguous months. In its reply, SCGC did not object to Edison’s proposal, but emphasized instead that Edison’s proposal did not resolve the priority issue SCGC raised in its opening brief.

SCGC’s uncontested proposal to delete the word “substantially” from Schedule G-BR in Subsection 2 of Special Condition 29 on Sheet 11 is reasonable as it clarifies the tariff and should be adopted. We will also clarify Special Condition 29 of Schedule G-BR as proposed by Edison and include a reference to seasonal bids. [In the attached tariffs in Appendix B, Special Condition 29 has been renumbered as Special Condition 30.]

We find that SoCalGas fairly balances seasonal and annual usage by permitting both types of customers to participate in the open season. SoCalGas also proposes a reasonable method for evaluating bids during open season. SCGC speculates in its opening brief that seasonal bidders will be harmed because they may not receive capacity, but SCGC has not offered any convincing concrete evidence of the likelihood of such harm. Moreover, SCGC

¹¹ SCGC Opening Brief at p. 25.

has not offered any alternative tariff sheets for the Commission to consider. In the Scoping Memo issued in this proceeding, the assigned Commissioner placed parties on notice that:

“The issues to be considered in this proceeding are limited to the adoption of tariffs, as proposed in the compliance case of SoCalGas, for implementing D.01-12-018. In the near term, the issues raised in the preferred case of SoCalGas and by other parties at the second meet-and-confer will be considered as part of the informal efforts described above. Intervenor testimony should be limited to responding to SoCalGas’ compliance case. Intervenors should also include in their testimony alternate proposed tariff sheets when disputing the tariff sheets proposed by SoCalGas.” (Scoping Memo at p. 4. Emphasis added.)

Although SCGC raises some potential problems with SoCalGas’ approach, we have no alternative proposal from SCGC to consider and are unwilling to reject SoCalGas’ proposed approach on a belief of the “likelihood” of an occurrence. Except for the changes described above, SoCalGas’ proposal for seasonal usage customers should be adopted.

f) Disclosure of Terms for Set-Aside and Open Season Capacity

SoCalGas has not proposed to disclose any information about set-aside or open season capacity. SCGC requests that the Commission direct SoCalGas to disclose information about set-aside capacity and contracts awarded through the open season. SCGC cites no provision in the CSA or D.01-12-018 that explicitly requires the disclosure of such information on SoCalGas’ electronic bulletin board. Instead, SCGC makes public policy arguments for why such information should be disclosed.

SCGC's proposal would modify the CSA by imposing new disclosure requirements not contained in the CSA. It would be patently unfair and prejudicial to other parties if we were to consider SCGC's proposal to modify the CSA. SCGC's proposal to require SoCalGas to disclose information about set-aside capacity and contracts awarded through the open season should be rejected as outside the scope of this proceeding.

g) Long-Term Firm Contracts

Section 1.9 of the CSA addresses the effect of the CSA on existing contracts for services by SoCalGas. The CSA does not alter existing contracts with SoCalGas. Section 1.9 in relevant part states:

“With respect to long-term transportation contracts with SoCalGas existing as of the filing of this Settlement Agreement, customers under any such contracts that have provisions that provide specific treatment for deliveries at particular SoCalGas receipt points shall have the right to elect prior to the initial open season for backbone transmission service to receive firm backbone capacity at those receipt points sufficient to prevent the customers from losing the benefit of the bargain in such contracts.”

Based on the above provision, CCC requests on behalf of three of its members (Oxnard 3) that the Commission make the following findings concerning long-term transportation contracts (Oxnard 3 contracts) approved in D.93-11-021:

- SoCalGas must implement the CSA in a manner that preserves the benefit of the bargain struck in the Oxnard 3 contracts;
- The benefit of the bargain struck in the long-term contracts requires SoCalGas to provide firm-transportation service at a volumetric rate for all of

the volumes of gas moved under the Oxnard 3 contracts; and

- To the extent that the Oxnard 3 elect not to use the Oxnard 3 contracts, SoCalGas must allow the Oxnard 3 to exercise the same rights as other SoCalGas noncore customers during the open season.

SoCalGas proposes to implement Section 1.9 of the CSA by doing the following:

- offer set-aside rights at specific receipt points to customers who currently receive firm delivery service through specific receipt points under their long-term contracts;
- offer bidding rights in the open season for firm-backbone rights to customers who currently receive firm delivery service under their long-term contracts; and
- offer interruptible backbone rights to customers who currently receive interruptible delivery service under their long-term contracts.

For Oxnard 3 contracts that currently allow customers to take firm deliveries of gas through the Wheeler Ridge receipt point, SoCalGas proposes to preserve the benefit of the bargain for these customers by offering them set-aside rights at Wheeler Ridge for an amount of capacity equal to their firm contract volumes. We observe from the testimony of CCC that some contract terms terminate but provide for annual renewal options for a specified amount of time. So long as the renewal options continue to confer the right to receive gas at the specific receipt point, SoCalGas' approach is reasonable. SoCalGas should not implement Section 1.9 of the CSA in a manner that confers

greater benefits than those bargained for in the contracts subject to Section 1.9 of the CSA.

For contracts that provide parties the option to take service under SoCalGas' tariff rather than under their contracts, SoCalGas proposes to allow such parties to reduce their set-aside rights at Wheeler Ridge so that they can bid the difference in the open season at any receipt point, just like any other customer may use bidding rights at any receipt point. CCC does not protest this approach and we find that SoCalGas' approach is reasonable.

SoCalGas further proposes that the Oxnard 3 customers' total bill under CSA implementation be no higher than under their long-term contracts, regardless of whether these customers obtain backbone rights through set-asides or the open season. SoCalGas will ensure this result through a crediting process. SCGC objects to the crediting system, in section 3.j below. We address this issue separately.

Pursuant to CCC's request, we reaffirm that SoCalGas should implement the CSA in a manner sufficient to prevent Oxnard 3 customers from losing the benefit of the bargain in the Oxnard 3 contracts. The Oxnard 3 contracts have not been subject to examination in this proceeding; consequently we refrain from making specific findings concerning such contracts.

h) Long-Term Interruptible Contracts

SoCalGas believes that different levels of service currently exist on SoCalGas' system. SoCalGas states that although all customers have equal access into SoCalGas' system under the current bundled environment, customers pay for varying levels of certainty, firm and interruptible, for their deliveries of gas. SoCalGas contends that customers who currently pay for and receive interruptible service under their contracts are not entitled under the CSA

to a free upgrade to firm backbone rights. SoCalGas also states that customers who currently have only interruptible service could, like any other customer, bid for and pay for firm backbone capacity.

SoCalGas proposes that customers with interruptible long-term contracts should have the opportunity to purchase interruptible backbone capacity to match their needs. SoCalGas proposes to credit all purchases of interruptible backbone capacity against these customers' otherwise-applicable contract bill. Under its proposed treatment, SoCalGas states customers of long-term interruptible contracts would pay no more than they would otherwise pay under their long-term contracts, thus preventing such customers from losing the benefit of the bargain of their long-term contracts.

IP states that the Commission should announce clear principles in its decision upholding the benefit of the bargain for all long-term contracts.

IP does not appear to contest the treatment SoCalGas proposes for interruptible long-term contracts. Nor does IP appear to claim that SoCalGas' proposed treatment for long-term interruptible contracts fails to maintain the benefit of the bargain for interruptible contracts.

We reaffirm the CSA's stated policy that customers should not lose the benefit of the bargain contained in their long-term contracts. Consistent with this policy, SoCalGas has stated that it intends to apply its tariffs in a manner that maintains the benefit of the bargain for interruptible customers. SoCalGas' proposed treatment of holders of interruptible long-term contracts is reasonable and consistent with the CSA.

i) Contract Determination

SoCalGas takes no position as to which of its long-term contracts are firm contracts and which are interruptible contracts. SoCalGas states that no party proffered its contract in this proceeding and opposes using this proceeding to decide the status of contracts. Consequently, SoCalGas objects to CCC's request for a determination that volumes that qualify for "Tier 2" rates under the Oxnard 3 contracts are firm and should be treated like "Tier 1" volumes (for which the Oxnard 3 will receive set-asides and / or bidding rights). SoCalGas believes the request is inappropriate since CCC did not place the terms of its Tier 2 volumes at issue in this proceeding.

Similarly, SoCalGas objects to the extensive argument in the IP opening brief addressing the question of whether enhanced oil recovery (EOR) contracts are firm. SoCalGas supports the request of IP to establish a Commission forum for expeditiously reviewing long-term contracts to determine whether the holder of the contract qualifies for interruptible or firm service.

IP is concerned that the record is unclear concerning the criteria that SoCalGas uses to distinguish between "firm" and "interruptible" long-term contracts. IP asserts that that the ALJ sustained an objection by SoCalGas' counsel that precluded the Indicated Producers from exploring the basis for how SoCalGas differentiates between firm and interruptible long-term contracts.

IP also provides a "guess" at SoCalGas' rationale for distinguishing between firm and interruptible contracts and further provides a discussion aimed at disproving its "guess" of SoCalGas' rationale. Lastly, IP requests that the Commission provide a forum for expedited resolution of contract interpretation disputes to ensure that all customers are prepared to

participate in any upcoming open seasons for backbone transmission receipt point rights.

IP appears to argue that no basis exists to distinguish between long-term contracts. IP also appears to claim that it was denied a fair opportunity at hearing to explore through cross-examination the basis for SoCalGas distinction between “firm” and “interruptible” long-term contracts.

We are sympathetic to IP’s desire for swift resolution concerning its dispute with SoCalGas about the classification of its contracts. However, this proceeding was intended as a proceeding to implement D.01-12-018 by adopting tariffs. This proceeding was not intended to resolve contract specific issues. At hearing, the ALJ provided ample opportunity to IP to explore how firm versus interruptible contracts would be treated.

We also support in principle, IP’s proposal for the Commission to establish a forum for expedited review and resolution of disputes concerning whether a long-term contract is firm or interruptible. We invite IP and SoCalGas to submit to the Commission proposals for informal or formal resolutions of their contract disputes.

j) Credit Payments for Backbone Capacity

As discussed above, SoCalGas proposes to offer bidding rights in the open season to customers that currently have long-term contracts for firm delivery service. The granting of bidding rights will enable these customers to obtain firm backbone transmission rights. SoCalGas proposes to credit payments for backbone capacity against monthly bills for discount long-term contracts to ensure that these customers pay no more for their new backbone

capacity than they otherwise would have paid for similar service under their long-term contracts.

If a customer is receiving gas transportation service at a discounted rate under a long-term contract, SoCalGas currently records the shortfall in its Noncore Fixed Cost Account (NFCA). SCGC alleges that SoCalGas' proposed credit would exacerbate the shortfall that is recorded in the NFCA. The basis for SCGC concern is a hypothetical question posed to SoCalGas' witness that would result in SoCalGas crediting a customer for two units of service (based on two units of backbone capacity being reserved) when in fact the customer only used one unit of service (50% load). In its reply brief, DGS also echoes the concern raised by SCGC.

In its reply brief, SoCalGas states that SCGC's hypothetical is flawed because SCGC wrongly assumes that SoCalGas would credit the hypothetical customer for two units of reserved backbone capacity when the hypothetical customer only consumed one unit of capacity.

We agree with SoCalGas that SCGC's hypothetical improperly provides the customer with more benefit due under the customer's long-term contract. SCGC has not demonstrated how SoCalGas' proposal to credit payments for backbone capacity against monthly bills for discounted long-term contracts prejudices ratepayers or exacerbates shortfalls recorded in the NFCA. Based on its representation that its crediting approach will not exacerbate existing NFCA shortfalls, SoCalGas' proposal to credit payments for backbone capacity against monthly bills for discounted long-term contracts is reasonable.

4. Tariff Schedule G-IMB, Rule 23 and Rule 40

a) 2.44% In-Kind Fuel Charge

SoCalGas' proposed Schedule G-IMB and Rule No. 40 together describe the terms and conditions under which SoCalGas will provide imbalance services for customers when their usage differs from their transportation deliveries to SoCalGas' local transmission system. Under Tariff Schedule G-IMB, SoCalGas will calculate and inform customers of imbalances, provide opportunities to avoid and minimize imbalances, and charge for or cash out imbalances exceeding tolerances.

In Tariff Schedule G-IMB at Sheet 2 under the heading "In-Kind Fuel Charge," SoCalGas proposes to levy a charge on the net increase on noncore customer's imbalances as follows:

"An in-kind fuel charge shall be levied on the net increase (if any) in every noncore customer's imbalance account after each monthly imbalance trading period relative to the previous monthly trading period. This charge shall be applicable only during months with net overall system injection.

In-kind fuel charge for a positive imbalance.....2.44%"

In Rule 40 at Sheet 1, the tariff states that:

"For providing the default noncore balancing service, an in-kind fuel charge of 2.44% shall be levied on the gas remaining in a noncore customer's imbalance account immediately after each monthly imbalance trading period."

SoCalGas believes the 2.44% in-kind fuel charge for balancing services reflects the costs that customers cause SoCalGas to incur when they use balancing services. Specifically, SoCalGas states that the charge reflects the

“actual variable cost incurred at the storage compressor stations as they inject gas into the storage fields to accommodate positive imbalances for balancing customers as those injection requirements are incurred.” SoCalGas asserts that the proposed charge properly assigns actual costs to the customers who cause them. SoCalGas also contends that such an approach to assigning costs is consistent with various provisions in the CSA that separately state the costs that are associated with specific services. Moreover, SoCalGas believes its approach will send accurate price signals to customers.

SoCalGas also argues that D.01-12-018 supports SoCalGas’ interpretation the CSA. The relevant part of D.01-12-018 that SoCalGas relies on is a statement that:

Section 3.2.3.3 of the CS states that the costs for noncore default balancing will be included in the bundled transportation rate for local transmission and distribution, not the unbundled backbone transmission rate or any rate for unbundled storage service. We agree that it is appropriate to remove the costs of default balancing from the costs of other unbundled services, but we are concerned that bundling these costs with the transportation rate for local transmission and distribution will cause the core to pay for some portion of the costs of default noncore balancing. We therefore direct SoCalGas to present a detailed description of how they will ensure that the costs of noncore default balancing will be allocated only to those noncore customers using default balancing services in the advice letter(s) filed to implement this order. (D.01-12-018, mimeo., p. 66, emphasis added.)

Consequently, SoCalGas argues that with respect to the storage injection costs incurred to provide default balancing service, SoCalGas’

proposed 2.44% in-kind fuel balancing charge complies with the statement in D.01-12-018 to “ensure that the costs of noncore default balancing will be allocated only to those noncore customers using default balancing services.” SoCalGas argues that the Commission should “unbundle the variable fuel costs associated with storage injections necessary to provide default balancing service from the bundled local transportation / distribution rate in accordance with D.01-12-018.”

IP opposes the imposition of an in-kind fuel charge for transportation services because the proposed charge could result in significant costs for customers. IP argues that the Commission should reject SoCalGas’ proposal for an in-kind fuel charge for transportation services since the charge was not part of the bargain reached in the CSA or adopted by D.01-12-018.

IP also contends that SoCalGas late in the process unilaterally added to its tariffs the in-kind fuel charge. IP argues that the in-kind fuel charge first appeared in AL 3146 on May 1, 2002. IP observes that after the Commission issued D.01-12-018 SoCalGas held a series of workshops for interested parties and customers to discuss implementation of D.01-12-018. At evidentiary hearing, IP introduced Exhibit 3 which represented handouts entitled “Gas Industry Strategy Implementation Meeting” distributed by SoCalGas at a presentation it made on January 9, 2002. The handouts reference “Default Balancing (Revised Rules)” and IP contends that the handout shows that default balancing did not change in comparison to current procedures, noted as “+/- 10% monthly and OFO daily tolerances.” IP also observes that at a subsequent workshop held on April 11, 2002, SoCalGas also discussed balancing rules and circulated proposed tariffs that purported to incorporate the major changes required by the CSA and D.01-12-018. Exhibit 4, which IP sponsored, contains

the proposed tariff G-IMB and Rule 40 that SoCalGas circulated at the April 11 workshop. Neither tariff contained a reference to an in-kind fuel charge.

IP also rejects SoCalGas' argument that Section 2.1.3.2 of the CSA authorizes SoCalGas to impose an in-kind fuel charge for all balancing services. IP argues that Section 2.1.3.2 applies only to storage services.

Coral also opposes SoCalGas' proposal to impose a 2.44% in-kind fuel charge. In describing how the CSA addressed balancing, Coral asserts that Section 3.2.3 CSA established a "self-balancing option." Further, Coral contends that customers that decline the self-balancing option will receive, pursuant Section 3.2.3.1 of the CSA, the same default balancing service that is provided today. Coral cites Section 3.2.3.1 of the CSA for the proposition that:

"[t]he intent of the Parties is that the offering by SoCalGas and the election by customers of the Self-Balancing option will not adversely affect the availability, reliability or cost of default balancing" (Emphasis added.)

Coral states that under "default balancing" that is provided today, a customer's usage that stays within 10% of its scheduled gas deliveries over the course of a month avoids separate balancing charges. Coral states that SoCalGas' current G-IMB tariff provides as follows:

"Balancing Service will be provided without charge if the cumulative imbalance at the end of the monthly imbalance trading period is within 10 percent of the customer's usage (Tolerance Band) for the billing period" (emphasis added).

Consequently, Coral reasons that SoCalGas' proposal for "default" noncore monthly balancing of an in-kind 2.44% fuel charge has no basis in the CSA.

Coral also rejects SoCalGas argument that the 2.44% in-kind fuel charge is analogous to other provisions of the CSA. Coral asserts that in the absence of an express provision of the CSA, the Commission should reject SoCalGas' efforts to introduce a change to the CSA thought its compliance tariffs. DGS also argues that the in-kind 2.44% fuel charge has no basis in the CSA.

We are persuaded by IP and Coral that SoCalGas' proposed 2.44% in-kind fuel charge for balancing is inappropriate. SoCalGas cites no express provision to support the imposition of such a charge. We reject SoCalGas' interpretation that Section 3.2.3.3 of the CSA authorizes such a charge since this provision of the CSA deals with storage services and not balancing. Moreover, SoCalGas' interpretation would create an inconsistency with Section 3.2.3.1 which expressly states that the cost of default balancing will not be adversely affected. Since existing default balancing service is provided without charge (if the cumulative imbalance at the end of the monthly imbalance trading period is within 10%), we are unable to endorse SoCalGas' interpretation that Section 3.2.3.3 of the CSA authorizes a 2.44% in-kind fuel charge for balancing. IP and Coral have both shown that imposition of a 2.44% in-kind fuel charge for balancing may adversely affect the cost of default balancing.

In addition, since the CSA is silent concerning the imposition of a 2.44% in-kind fuel charge for balancing we may look to the parties conduct to determine whether the signatories to the CSA intended that a 2.44% in-kind fuel charge be imposed for balancing. As evidenced by SoCalGas' own documents and proposed tariffs in discussions with other parties immediately following the issuance of D.01-12-018, SoCalGas was silent concerning the imposition of a 2.44% in-kind fuel charge for balancing. The conduct of SoCalGas subsequent to the adoption of the CSA reflected an intent consistent

with IP and Coral's position that the CSA did not authorize a 2.44% in-kind fuel charge for balancing.

Although, SoCalGas has offered some colorable argument about cost allocation in this proceeding for why a 2.44% in-kind fuel charge for balancing should be imposed, the purpose of this proceeding is not to adjudicate the CSA issues a second time, but to implement the terms of the CSA.

Consequently, we give little weight to SoCalGas' costs allocation argument.

IP has demonstrated that SoCalGas' conduct subsequent to the adoption of the CSA reflected an intent consistent with IP and Coral's position that the CSA did not authorize a 2.44% in-kind fuel charge for balancing. Although, SoCalGas has offered valid argument in this proceeding for why such a charge should be imposed, the purpose of this proceeding is not to adjudicate the issue a second time, but to implement the terms of the CSA. As evidenced by SoCalGas' own documents and proposed tariffs in discussions with other parties after the CSA was implemented, SoCalGas manifested an intent consistent with the positions of IP and Coral that the CSA did not authorize 2.44% in-kind fuel charge for balancing.

We are also persuaded by Coral's analysis that neither the CSA nor D.01-12-018 authorizes SoCalGas to impose a 2.44% in-kind fuel charge for balancing. We agree with Coral that the cost of default balancing should not be adversely affected by the CSA. Since existing default balancing service is provided without charge (if the cumulative imbalance at the end of the monthly imbalance trading period is within 10%), we are unable to endorse the proposal of SoCalGas to impose a 2.44% in-kind fuel charge for balancing.

b) Involuntary Diversion of Noncore Supplies

In the event service is threatened for core customers, SoCalGas proposes in Rule 23 to divert noncore supplies for the benefit of core customers. Proposed Rule 23 states in relevant part:

“In the event insufficient gas supply or capacity is available on its backbone transmission system for the Utility to meet the requirements of its core customers, the Utility may effectuate involuntary diversions of supply originally intended for the Utility’s noncore customers.”

Rule 23 also provides compensation, in the form of an involuntary diversion credit, for affected noncore customers in an amount equal to \$25 per decatherm when noncore supplies are diverted.

In response to criticisms that its tariffs should define the precise circumstances under which SoCalGas will divert supply and the precise actions that it will take to avoid a diversion, SoCalGas asserts that it needs the ability to exercise discretion when faced with specific facts and circumstances. SoCalGas also states that it has refined Rule 23 to take all reasonable steps to avoid a diversion. Specifically, SoCalGas has modified Rule 23 to call a Stage 2 OFO and eliminate all IT storage withdrawals before diverting noncore supplies. Additionally, SoCalGas Gas states that its gas acquisition department is willing to: (1) use all of its own firm backbone capacity to the extent gas is available; (2) use any interruptible backbone capacity at any receipt point to the extent gas is available; and (3) use all other reasonable market opportunities, including buying gas.

Coral contends that an involuntary supply diversion constitutes a draconian measure that represents an expropriation of gas and

transportation that belongs to noncore customers. Coral believes that SoCalGas should only divert noncore supplies when severe “operational” conditions prevent SoCalGas from purchasing and transporting gas supplies for its core customers.

Even though Rule 23 provides that the gas acquisition department of SoCalGas will use all other reasonable market opportunities, including buying gas, Coral is concerned that SoCalGas may impose an involuntary supply diversion at a time when SoCalGas’ gas acquisition department is otherwise able to purchase gas supplies from other sources. While Coral supports the language contained in Rule 23, Coral does not support an interpretation that may allow for an involuntary supply diversion for economic reasons, i.e., in order to “avoid the purchase of relatively more expensive core gas supplies.” To the extent the tariffs must be amended to provide this clarification, Coral urges the Commission to amend Rule 23.

SCGC echoes many of the same concerns raised by Coral. In addition, SCGC requests that the Commission strike the word “reasonable” from the following language in Rule 23:

“Use all ~~reasonable~~ market opportunities, including buying on the open market to alleviate the problem.”

SCGC asserts that elimination of the word “reasonable” will require SoCalGas to buy gas on the open market to alleviate a problem that may otherwise give rise to an involuntary diversion of noncore gas.

In its reply brief, Indicated Producers expresses support for Coral’s position in its opening brief and argues that the use of the word

reasonable in Rule 23 leaves open the possibility that SoCalGas may divert noncore supply rather than purchase gas on the open market.

We believe that the issue raised is whether SoCalGas must *always* purchase supply on the open market to alleviate problems that may lead to an involuntary supply diversion.

Section 1.5.4 of the CSA clearly envisioned the possibility that involuntary supply diversions might occur. Section 1.5.4 of the CSA states in relevant part that:

“When operational conditions exist such that supply is insufficient to meet demand and delivery to end-users is threatened, the diversion of supply may be used to ensure continued gas delivery to core end-users.”

In response to concerns raised by Coral and others to a previous version of Rule 23, SoCalGas took steps to modify Rule 23 to alleviate such concerns by indicating in Rule 23 specific steps that SoCalGas would take to alleviate problems that may lead to an involuntary supply diversion. In fact, Coral states that it supports the language of Rule 23 but it seeks a clarification that SoCalGas will always buy supply in the open market prior to instituting an involuntary supply diversion.

We agree in principle with Coral, SCGC and Indicated Producers that diversions should not occur for solely economic reasons. However, we also agree with SoCalGas that it is difficult to envision every situation in which an involuntary supply diversion may occur.

SoCalGas’ proposed Rule 23 implements Section 1.5.4 in a manner that strikes a reasonable balance between parties’ concerns and SoCalGas’ ability to operate its system. SoCalGas’ Proposed Rule 23 responds to

parties concerns by setting forth reasonable steps that SoCalGas will take prior to resorting to an involuntary supply diversion of non-core gas. At hearing concerning problems that may lead to a diversion, SoCalGas stated that it will use all “reasonable market opportunities, including buying on the open market to alleviate the problem.” We are reluctant, and find it unreasonable, to limit the options available to SoCalGas concerning unknown situations. Consequently, we find that SoCalGas’ proposed language in Rule 23 for imposing involuntary diversions of noncore gas supplies is reasonable and should be adopted.

c) Involuntary Supply Diversion and Backbone Reservation Charges

In the event of an involuntary supply diversion, SoCalGas proposes to limit its cost responsibility to an involuntary diversion credit (IDC). Proposed Rule 23(E) provides that:

“[i]n the event the Utility diverts gas supply, the Utility shall not be responsible for any interstate or intrastate pipeline transmission charges associated with diverted gas. The Utility’s total cost responsibility for the diverted gas supply shall be equal to the Involuntary Diversion Credit times the volume of gas diverted.”

Coral contends that in the event of an involuntary supply diversion, SoCalGas should relieve a backbone shipper of its backbone reservation charges for the duration of the diversion event. In support of its position, Coral makes several arguments. It contends that an involuntary supply diversion is a force majeure event that relieves shippers of their duty to pay backbone reservations charges. Coral also argues that the \$25.00 per dth IDC may not fully compensate a customer that incurs a diversion. Lastly, Coral believes that SoCalGas should not require a customer to pay backbone

reservation charges since a customer that is subject to a supply diversion is denied the right to use its firm receipt point capacity.

In response to Coral, SoCalGas states that the IDC is the exclusive means identified in the CSA for compensating noncore customers whose supplies have been diverted. SoCalGas states that Coral provides no reference to the CSA for its proposed waiver of the reservation charges. SoCalGas believes that Coral is trying to impose a new requirement not contained in the CSA and that the Commission should reject such an attempt to modify the CSA.

The issue raised by Coral is whether a noncore customer's duty to pay backbone reservation charges is suspended during a diversion event. We believe the answer is no. Coral's arguments assume that this is a matter of first impression. However, the CSA at Section 1.5.4 acknowledges that "operational conditions" may exist that require the diversion of supply. Further, the CSA provides that customers subject to a diversion will be compensated \$25/dth. The CSA is straightforward in describing the consequences that follow "operational conditions" that threaten end-users. The signatories to the CSA, including Coral, agreed that:

"If a noncore end-user's supply is diverted to prevent a curtailment of core customers, then that end-user must curtail its use of natural gas. Similar to the PG&E system, there will be an additional \$25/dth diversion charge assessed to any customer receiving involuntary diverted gas supply. The revenues from the diversion charge will be credited to the customers who had their gas diverted. The institution of this involuntary supply diversion charge eliminates the need for SoCalGas' existing Service Interruption Credit." (CSA Section 1.5.4.)

Pursuant to the CSA, Coral as signatory agreed to be subject to a involuntary supply diversion and to receive the compensation set forth in the CSA. We agree with SoCalGas that no provision exists that relieves customers of the backbone reservation charges. Signatories to the CSA agreed to a \$25/dth credit in compensation, regardless of the actual cost to the customer. Section 1.5 of the Settlement Agreement states that it is a “negotiated compromise” and that the:

“Settlement Agreement is to be treated as a complete package and not as a collection of separate agreements on discrete issues or proceedings.”

Coral’s proposal to suspend the payment of backbone reservation charges during a supply diversion event should be rejected.

d) Involuntary Diversion Credit and Force Majeure

SoCalGas proposes that:

“The Involuntary Diversion Credit does not apply when the diversion is the result of Force Majeure. However the Involuntary Diversion Credit will apply for a diversion resulting from high demand due to weather conditions.” (Rule 23.E at Sheet 6.)

Coral opposes SoCalGas’ proposal. Coral argues that SoCalGas has not demonstrated why it should not have to pay an IDC in a force majeure situation. Coral contends that involuntary supply diversion is most likely to occur in a force majeure situation. The parties to the CSA did not agree to excuse SoCalGas from providing an involuntary diversion credit when a force majeure event occurs.

Coral cites Section 1.5.4 of the CSA, for the proposition that a supply diversion will only occur when “operational conditions” prevent SoCalGas from serving its core customers. Coral argues that “operational conditions” include gas supply, pipeline and storage conditions that can arise as a result of force majeure. Coral contends that to deny a diversion credit under these circumstances would diminish the value of the credit, and would diminish the value of firm receipt point capacity rights.

SCGC also argues that IDC should apply when involuntary supply diversions are caused by force majeure events. SCGC argues that SoCalGas proposal is unsupported by the CSA. SCGS believes that Section 1.5.4 of the CSA provides that if a noncore customer’s gas supply is involuntarily diverted to prevent curtailment of core customers, a \$25 / dth diversion charge will be assessed to core customers. The revenues derived from assessing the

diversion charge will be credited to the noncore customers who had their gas diverted. SCGC argues that there are no exceptions. SCGC believes that the diversion charge should be assessed against core customers whenever gas is involuntarily diverted from noncore customers for their benefit, and the diversion credit will be given to noncore customers whenever their gas is involuntarily diverted.

SCGC argues that the exception for force majeure events represents a substantial departure from the diversion credit provision of the CSA. SCGC agrees with Coral that creating an exception for force majeure would render the IDC largely worthless.

SCGC also dismisses SoCalGas' claim that the IDC should not apply during force majeure situations because it is "common industry practice" not to give credits in force majeure situations. SCGC disputes SoCalGas' argument as untrue and cites a recent Federal Energy Regulatory Commission (FERC) action requiring El Paso Natural Gas Company (El Paso) to give partial demand charge credits for force majeure events.¹² SCGC concludes that the IDC should be given to customers that have their gas diverted, as contemplated by the CSA.

Although SoCalGas believes that its proposal is reasonable and consistent with industry practices, it has agreed to withdraw its proposed IDC exemption for force majeure events in response to concerns raised by parties.

¹² *El Paso Natural Gas Company, et al.*, 104 FERC ¶ 61,045 (2003). Also, *Florida Gas Transmission Company*, 105 FERC ¶ 61,171 (2003); *Tennessee Gas Pipeline Company*, 76 FERC ¶ 61,022 (1996).

We will accept SoCalGas' proposed change and modify SoCalGas proposed Rule 23 to eliminate the IDC exemption for force majeure events.

e) Notification to End-Use Customers of an Imminent Supply Diversion

In response to concerns raised by Coral and others, SoCalGas has agreed to make best efforts to notify balancing entities and end-use customers, through its electronic bulletin board and through other means, of an involuntary supply diversion.

Coral believes that the Commission should modify SoCalGas' proposed tariffs so that SoCalGas faces economic penalties if it fails to provide notice to all balancing entities, and all noncore end-use customers of an involuntary supply diversion. In support of its position, Coral appears to make an equity argument. Coral states in its opening brief that since under the CSA balancing entities face charges if they fail to comply with a supply diversion, SoCalGas also must face charges if it fails to provide notice.

Coral requests that the Commission modify Rule 23(E) to impose an affirmative responsibility on SoCalGas to notify all balancing entities, and all noncore end-use customers, of any involuntary supply diversion. Further, that prompt notification must be a precondition for the imposition of any charge for the unauthorized use of involuntarily diverted supply. Coral argues that unless this provision is adopted, SoCalGas will bear no actual responsibility for notifying its customers of a supply diversion.

In reviewing Coral's concern, we are not convinced that the CSA imposes a duty upon SoCalGas to notify end-users of an imminent supply diversion. Moreover, Coral cites no provision in the CSA that imposes a

financial charge on SoCalGas if it does not notify an end-use customer of a supply diversion. At hearing, SoCalGas' witnesses Schwecke and Watson also pointed out that balancing entities are in a better position than SoCalGas to know when their customers' supplies are being diverted and that it is the balancing entities that are responsible for meeting the demands of end-use customers on a daily basis regardless of whether a diversion is occurring. Absent some specific authority in the CSA, we refuse to impose new conditions upon SoCalGas via its tariffs in this proceeding.

5. SoCalGas' November 24, 2003 Motion to Strike

In its opening brief, PG&E alleged that SoCalGas' proposed Schedule G-BR is unduly discriminatory because it does not treat all pipeline interconnections equally. PG&E states that Schedule G-BR excludes the Kramer Junction interconnect as a secondary receipt point for the North Needles receipt point and North Needles (expansion) Receipt Point. Further, PG&E argues that no lawful or rational basis exists for this treatment and that such treatment would result in undue discrimination against gas supplies from the Kern River Pipeline into SoCalGas' system as compared to gas flowing from other pipelines in the Southwest. PG&E believes that the issue of whether Kramer Junction should be made a secondary receipt point is within the scope of this proceeding since SoCalGas inserted Kramer Junction into its Schedule G-BR as a primary right receipt point.

PG&E also requests in its opening brief that the Commission amend schedule G-BR to clarify that interruptible or secondary firm nominations on the SoCalGas system will be scheduled up to the maximum operating capacity available each day, at each receipt point.

On November 24, 2003, SoCalGas filed a motion to strike the opening brief of PG&E on the basis that the brief addresses issues that are outside the scope of this proceeding. SoCalGas states that PG&E's opening brief proposes to aggregate receipt points in a manner not authorized either by the CSA or D.01-10-018. SoCalGas also complains that PG&E's approach of raising new issues in its opening brief denies other parties a fair opportunity to address PG&E's proposal in rebuttal testimony.

We agree with SoCalGas' criticism of PG&E's tactic of raising a factual issue and presenting a new proposal in its opening brief. Although counsel for PG&E was present at evidentiary hearing, PG&E did not conduct any cross-examination or present testimony in support of its modification. PG&E alleges discrimination, but without a factual record concerning the circumstances surrounding SoCalGas' proposed treatment for Kramer Junction, we have no basis for finding that a discriminatory situation exists. It would be grossly unfair to other parties to consider PG&E's proposed modification without a factual record or an opportunity for other parties to respond with rebuttal testimony. Consequently, PG&E's proposal should be denied. Since we have addressed PG&E's proposal we will deny the motion of SoCalGas to strike PG&E's opening brief.

6. Petition to Modify

On October 23, 2003, SCGC, IP, Coral, Cabrillo I, LLC, Cabrillo II, LLC, El Segundo Power, LLC, Long Beach Generation, LLC, DGS, and TURN (Joint Parties) filed a petition to modify D.01-12-018 (petition). The petition requests that the Commission vacate D.01-12-018 and Resolution G-3334. Further, the Joint Parties request that the Commission solicit input on new policy objectives and direct SoCalGas to file a new application by January 1, 2005,

proposing a regulatory framework that reflects the current and anticipated market conditions. In the interim, Joint Parties state that SoCalGas should continue to provide service under existing tariffs.

Joint parties contend that circumstances in the Southern California Market have changed since the execution of the CSA and that the CSA is no longer directly responsive to the circumstances existing on the SoCalGas system. Joint Parties petition is broken down into three parts: (1) key issues that the CSA sought to address but have already been addressed; (2) changes that have altered the envisioned use of receipt point capacity; and (3) effects of price volatility in the market. Based on these changes, Joint Parties conclude that the Commission has a legal duty to vacate D.01-12-018 because its implementation would not be in the public interest.

a) Key Issues Have Been Addressed

Joint Parties believe that the D.01-12-018 should be vacated because certain issues that the CSA sought to address have been resolved. In particular, Joint Parties state that the allocation of capacity on the El Paso Natural Gas Company (EPNG) system has changed. Joint Parties state the FERC has ordered EPNG to convert from full requirement contracts to contract demand contracts effective September 1, 2003. Joint Parties conclude that these “reforms” to the EPNG system have diminished the need for the receipt point capacity provisions of the CSA. Joint Parties also state that SoCalGas system expansions have added flexibility to the system. Joint Parties also believe that SoCalGas actions to eliminate “windowing” – a process that restricted shipper nomination on the SoCalGas system – and the institution of new procedures have improved the operation of SoCalGas’ system. Some members of Joint Parties assert that elimination of windowing may have eliminated the need for a system of firm

tradeable receipt point rights while other members believe that elimination of windowing should delay the implementation of firm tradeable receipt point rights for further consideration.

Watson opposes the petition and asserts that the passage of time has not changed the benefits of the CSA. Watson criticizes the petition for citing changes but then not making a serious attempt to explain whether these changes undermine the expected benefits of the CSA. Watson states that while capacity allocation on the EPNG system may be operating more smoothly there is no guarantee that the system will continue to do so in the future. Watson also believes that it is important for the Commission to retain and exercise control over the energy delivery system that it has jurisdiction over rather than rely on FERC to do the right thing during a crisis.

Watson also asserts that system expansions will benefit California consumers just as much, if not more, under the CSA than under today's regulatory structure. Watson observes that under the CSA, SoCalGas will have the incentive to sell the new capacity to the market and the incentive to maximize sales because SoCalGas is at 100% risk for recovery.

**b) Changes that Affect the Envisioned
Use of Receipt Point Capacity**

Joint Parties believe that D.01-12-018 should be vacated because changes in intrastate delivery capabilities and core upstream commitments have and will continue to alter the use of receipt point capacity as envisioned by the CSA. Specifically, Joint Parties state that upstream pipelines have expanded capacity to serve California and thus the need for capacity at various receipt points has changed. Joint Parties assert that allocation of receipt point capacity rights will change as the upstream capacity rights expand and

such changes alter the assumptions made about the value of receipt point rights. Joint Parties believe the Commission should consider these changes in developing a regulatory structure for the SoCalGas system. Joint Parties also believe that “potential liquefied natural gas (LNG) projects, if built” will alter the need and use of receipt point capacity. Joint Parties also believe that the core class must receive a set-aside for the North Coastal set-aside that was displaced by the ExxonMobil set-aside.

In response to the Joint Petition, SoCalGas supports vacating D.01-12-018 because subsequent to the adoption of the CSA, the Commission has adopted policies in favor of increasing conservation whereas the CSA encourages SoCalGas to maximize throughput on its system. SoCalGas also believes the interchangeability of receipt point access rights should be allowed to accommodate new gas supplies on a non-discriminatory basis.

In response to the Joint Petition, Marathon Oil Company (Marathon) seeks resolution of this proceeding so that the consolidated BCAP proceedings can proceed and address the issue of providing firm tradeable rights for re-gasified LNG.

Watson states that the expansion of upstream capacity actually highlights the benefits of the CSA. Under the CSA, Watson asserts that customers can indicate the value they place on receipt point rights by the bids they place in the open season and subsequent transactions in the secondary market. Watson believes that the CSA in fact considers the value customers place on receipt points and enhances customers’ ability to acquire exactly the set of receipt points they value most in response to whatever is happening on the upstream interstate pipelines.

Watson acknowledges the need to accommodate LNG as a potential new source of gas. However, Watson argues that it is unlikely that any announced LNG project will be online prior to 2006 or 2007 at the earliest. Thus, sufficient time exists to implement the CSA and to also explore modifications to accommodate LNG projects that will become operational in the future. Watson argues that the Commission should implement the CSA and gain several years of valuable experience prior to modifying the CSA to accommodate LNG supplies.

c) Price Volatility

Joint Parties believe that the D.01-12-018 should be vacated because “material changes in tariffs and rules bring a period of transition and uncertainty.” Joint Parties assert that natural gas price volatility combined with gas demand volatility creates significant risks for California ratepayers and the change the CSA would introduce would increase market risks for customers. Consequently, Joint Parties believe the most prudent course of action is to defer material changes to the existing regulatory framework.

Watson states that the CSA applies only to the intrastate transportation of gas and thus is largely independent of factors that cause volatility. Based on data from the PG&E system, Watson disputes the assertion that implementation of the CSA will add volatility in the delivered cost of gas for California consumers. Rather, Watson asserts that the CSA may in a modest way moderate volatility in delivered gas prices for gas bought at the border because the CSA allows customers to purchase backbone capacity on the SoCalGas system at cost-based rate that is fixed through August 2006.

Lastly, Watson contends that the Commission should look to the success of the Gas Accord structure on the PG&E system as evidence of the benefits of the CSA. Watson states the CSA in many ways is modeled after the

Gas Accord which has worked well under “stress tested” conditions in a range of markets. Additionally, Watson criticizes the petition for aiming to perpetuate the current uncertainty concerning the natural gas market structure for SoCalGas.

d) Discussion

An allegation of “change” or “changed circumstance” in the regulatory market place alone does not constitute sufficient grounds to vacate a Commission decision. The regulatory and market landscape is constantly changing and the Commission would suffer paralysis if it were bound to constantly reconsider every decision it made. However, an assertion of “change” or “changed circumstances” together with a meaningful explanation of how such changes would detrimentally affect the public may constitute grounds for vacating a Commission decision.

In the petition before us, Joint Parties claim an occurrence of “changed circumstances” but provide no meaningful discussion of how such changed circumstances detrimentally affect the public. Instead, Joint Parties merely speculate about detrimental consequences. We agree with Watson that the petition lacks meaningful explanation of how the changes cited would justify abandoning the CSA and vacating D.01-12-018.

Moreover, in response to the changes alleged by Joint Parties to have undermined the CSA’s benefits, Watson provides counter argument for how the CSA will bring increased benefit to California consumers. For instance, with regards to the expansion of upstream capacity, Watson states that open season and secondary market benefits customers by allowing them to indicate the value they place on receipt point rights by the bids they place in the open season and subsequent transactions in the secondary market. Contrary to Joint

Parties' position, the CSA, in fact appears to anticipate some of the changes cited by Joint Parties.

In this instance, Joint Parties' speculation about detrimental consequences does not constitute sufficient grounds to vacate a decision adopted by the majority of the Commission. Consequently, the petition to vacate D.01-12-018 of Joint Parties should be denied.

However, in response to concerns that the regulatory market structure the PD implements for SoCalGas may not be consistent with the apparent direction the Commission may take in a recently issued Order Instituting Rulemaking (R.) R.04-01-025 (2004 Gas OIR), we find that this decision should be suspended pending the issuance of a decision in Phase I of the 2004 Gas OIR. This approach should provide an opportunity to reconcile any impacts the 2004 Gas OIR might have on a firm tradeable rights system or the market structure this decision implements for SoCalGas. Although we are suspending the CSA, we fully support a market structure that includes firm tradeable rights.

We anticipate that after a decision is issued in Phase I of the 2004 Gas OIR, the Assigned Commissioner will hold at least one PHC and subsequently issue a scoping memo that addresses the necessary changes, if any, to the SoCalGas market structure this decision implements. In general, we anticipate that the 2004 Gas OIR will address statewide issues whereas, we may reconsider specific impacts upon SoCalGas in a SoCalGas specific proceeding. In addition to considering the impacts the phase I decision in the 2004 Gas OIR may have on the market structure this decision implements, we may also consider extending or eliminating the CSA's expiration date.

IV. Comments on Proposed Decision

The proposed decision (PD) of the ALJ in this matter was mailed to the parties on January 12, 2004, in accordance with Pub. Util. Code § 311(d) and Rule 77.1 of the Rules of Practice and Procedure. Comments were filed on February 2, 2004, and reply comments were filed on February 9, 2004.

A. PG&E

Except for one issue, PG&E states that it supports the PD so that consumers may realize the benefits of unbundling and competition. PG&E believes that the exclusion in Schedule G-BR of Kramer Junction interconnect as a secondary receipt point for the North Needles receipt point and North Needles (expansion) receipt point is discriminatory. PG&E states that:

“there is no lawful or rational basis for this treatment, which would result in undue discrimination against gas supplies from the Kern River Pipeline into SoCalGas’ system, as compared to gas flowing from other pipelines in the Southwest.”

PG&E proposes that Schedule G-BR be modified to include Kramer Junction as a secondary receipt point.

PG&E’s concern may have merit. Unfortunately, PG&E did not explore this issue at evidentiary hearing (or at least has not identified in the record where this matter was explored). Consequently, we lack an evidentiary record to reach PG&E’s conclusion that no rational basis exists for this treatment. No changes to the PD are necessary in response to PG&E’s comments.

B. El Paso Natural Gas Company and Mojave Pipeline Company

EPNG and Mojave both support the PD and implementation of the CSA. However, in response to an ACR dated January 20, 2004 that would permit

SoCalGas to submit proposed changes to the CSA in this docket, EPNG and Mojave both raise objections to changing the CSA based on unilateral proposals.

EPNG and Mojave's concerns address an issue beyond the scope of this PD. The ACR addressed ex parte communications in which SoCalGas indicated that it planned to file a new application. In response, the ACR indicated that this docket may provide an expedited forum. Consistent with our rules and procedures, EPNG, Mojave, and other interested parties would have an opportunity to object to and submit alternate proposals to any new SoCalGas proposal the Commission may consider in the future. It is premature to address a proposal not yet before the Commission in this decision. EPNG and Mojave's comments do not require any change to the PD.

C. Watson Cogeneration Company and Calpine Corporation

Watson and Calpine Corporation (Calpine) filed joint comments in support of the PD. Watson and Calpine assert that most parties, including SoCalGas, agree that a need exists for a system of firm tradeable capacity rights on the SoCalGas system. Although parties agree on the need for such a system, Watson and Calpine argue that the problem is that parties do not agree on ancillary issues. Watson and Calpine argue that the record in this case presents a perfect example of how contentious the ancillary issues can become. In order to avoid the time-consuming re-litigation of such issues, Watson and Calpine assert that the Commission should implement the CSA now and modify it as necessary in the future.

Watson and Calpine also observe that the CSA is modeled on PG&E's Gas Accord structure which has performed well in California since 1998. Although the Gas Accord has been modified since it was implemented in 1998,

Watson and Calpine argue there is no reason that the CSA cannot be modified incrementally as well.

Concerning Edison's request for bidding rights to serve electric generation facilities, Watson and Calpine support Edison receiving the assignment of bidding rights for those electric generation facilities based on historical use, just as do all other generators on the SoCalGas system.

D. SoCalGas

1. Implementation Date

SoCalGas states that it cannot implement the CSA by April 1, 2004. We modify the PD, consistent with the request of SoCalGas to provide three and one-half months lead time from the effective date of this order to implement the CSA.

2. 2.44% In-Kind Fuel Charge

In its comments, SoCalGas concedes that neither the CSA nor D.01-12-018 explicitly authorizes a 2.44% in-kind fuel charge. However, SoCalGas reargues that Section 3.2.3.3 of the CSA concerning storage services supports its position. We make no substantive changes to the PD, but modify the text of the PD to respond more clearly to SoCalGas' argument.

SoCalGas also objects to the evidence offered by IP concerning communications with stakeholders "immediately following the issuance of D.01-12-018." SoCalGas implies that it was denied a fair hearing because it did not have notice prior to hearing that IP would take the position that SoCalGas never discussed the 2.44 in-kind fuel charge with stakeholders. Consequently, SoCalGas states it was denied an opportunity to review all communications to rebut IP's selected cross-examination exhibit. SoCalGas also contends that discussions with stakeholders have nothing to do with whether the 2.44% in-

kind fuel charge is appropriate. SoCalGas also states that the PD would set a bad precedent that a utility's failure to discuss a particular item with stakeholders could impede implementation of a Commission decision.

SoCalGas misconstrues the weight given to the evidence presented by IP. First, a Commission directive can never be annulled by the fact that a utility may not discuss a particular decision directive with stakeholders following the issuance of a Commission decision (in fact, unless ordered to do so, a utility has no burden to discuss Commission decisions with stakeholders). In this instance, as SoCalGas admits, the proposed directive - the 2.44% in-kind fuel charge - was not explicitly authorized in the CSA or D.01-12-018. Consequently, an interpretation issue arose about the CSA. A cardinal principle of contract interpretation is that the intention of the parties be effectuated. Normally, the parties' intentions are clearly stated within the four corners of the document representing the agreement. In this instance, since the 2.44% in-kind fuel charge was not explicitly authorized in the CSA or D.01-12-018, IP's exhibits represented evidence concerning SoCalGas' intention. Given that IP's evidence of communication occurred "immediately following the issuance of D.01-12-018" the evidence carried more weight than what SoCalGas states years later was its intention or interpretation of the CSA. At hearing, SoCalGas had an opportunity during re-direct examination to rebut IP's evidence; therefore, SoCalGas was not prejudiced or denied a fair hearing.

3. Set-Aside Rights on North Coastal System For California Gas Producers

SoCalGas as well as IP, ExxonMobil, and California Independent Petroleum Association all comment that the PD erred in reaching the conclusion that the CSA does not provide California gas producers set-aside rights. No

party submitted an opposition to the position of the above parties in their reply comments.

In this proceeding, no party objected to the proposal of SoCalGas to provide set-aside capacity rights to California gas producers (ExxonMobil claimed it was entitled to such set-aside rights and we discuss its objections below). In this proceeding, the ALJ independently concluded that California gas producers were not entitled to set-asides as proposed by SoCalGas. We have reviewed the comments and agree that the PD erred in concluding that the CSA did not provide California gas producers set-aside capacity rights. We have modified the text of the PD and deleted language that indicated that California gas producers should not receive capacity set-aside rights.

However, the PD was correct in concluding that ExxonMobil's interpretation of the CSA provided a clear conflict with physical limitations of SoCalGas'. We leave unchanged the PD's conclusion denying ExxonMobil's request for set-aside rights.

4. Petition to Modify

SoCalGas reiterates its policy arguments for granting the Petition to Modify and also adds two speculative arguments. We address only SoCalGas' two new speculative arguments.

SoCalGas contends that the Commission may reexamine some of the terms and conditions and or some of the policies adopted in the CSA in future proceedings. In essence, SoCalGas argues that the Commission should reject the CSA based on what the Commission may decide to do in the future. Should the Commission decide to improve the terms and conditions of the CSA adopted in D.01-12-018 in an OIR or other future proceeding, the Commission will address such issues and any potential modifications to the CSA at that time. It is not

legal or factual error to claim that a future Commission decision may necessitate changes to the CSA. SoCalGas also claims that the CSA no longer has the same amount of support as when it was originally adopted. Given the number of protests filed in response to SoCalGas ALs implementing the CSA and the amount of discord expressed at hearing, we believe this is a regulatory area that is difficult to obtain consensus. Consequently, in this instance and others, the popularity of a proposal does not constitute a legitimate claim of factual or legal error.

E. SCGC

1. Timing of Storage Services

SCGC appears to argue that the PD is factually incorrect by ignoring “the clear intent of the CSA to provide some modicum of protection for customers for at least the two-year transition period before SoCalGas shareholders would get the full benefit of no rate cap and 100 percent storage revenue retention.” The PD did consider the intent of the signatories to the CSA contrary to SCGS’ assertion. Moreover, the PD found that SCGS has not demonstrated how signatories or ratepayers would be harmed by moving to 100% risk / reward as envisioned and intended by the CSA. SCGC does not directly respond to this issue but rather refers to “positions that would be in the customers’ interest” that SCGC has argued. Such generalities are insufficient to support a finding of legal or factual error. No changes are necessary in response to the comments of SCGC.

2. Variable Charges for Storage Services

SCGC asserts that the PD errs by allowing SoCalGas to charge variable charges for storage services. In support of its position, SCGC argues that the PD’s reliance on Section 2.1.3.4 of the CSA is misplaced and

Section 2.1.3.5 of the CSA should control. SCGC is correct in part and we modify the PD to reflect that SoCalGas may not impose variable charges for storage capacity not committed during the open season.

3. Seasonal Bids

SCGC reargues and amplifies on arguments previously made concerning seasonal bids. No changes to the PD are necessary.

4. Credit Payments for Backbone Capacity

We edit Conclusion of Law 39 to reflect SCGC's clarification consistent with SoCalGas' proposal.

5. Pooling Schedule G-POOL

SCGC points out that schedule G-POOL attached to the PD, inaccurately reflects SoCalGas' proposal to create only one pool, the citygate pool, on its system. We modify Schedule G-Pool to accurately reflect SoCalGas' proposal. We also add a new finding submitted by SoCalGas.

6. Petition to Modify

SCGC complains that the exclusion of consideration of issues concerning changed circumstances is legal error. As discussed below in response to concerns of DGS, the Assigned Commissioner has discretion to define the scope of a proceeding. In this instance, the Assigned Commissioner determined that an incremental approach should be taken to address changed circumstances. In many of our proceeding we have phased the consideration of issues. Such an approach is not legal error. SCGC also reargues issues previously raised in briefs and no change to the PD is necessary.

F. Coral

Coral offers "five reasons" for why the Commission should not implement the CSA. Coral's five reasons are premised on the belief that the PD

does not meaningfully address the central policy question in this case which Coral articulates as “[d]oes the CSA continue to provide a reasonable market structure for the SoCalGas system.”

We dismiss Coral’s concerns as outside of the scope of comments per Rule 77.3 which requires comments to focus on factual, legal, technical errors. Coral’s characterization of the purpose of this proceeding is erroneous. The scoping memo in this proceeding stated that:

“The issues to be considered in this proceeding are limited to the adoption of tariffs, as proposed in the compliance case of SoCalGas, for implementing D.01-12-018.” (Scoping Memo at p. 4.)

Moreover, Coral admits that its five reasons are premised on evidence not even considered in this proceeding. Coral indicates that its “five reasons” are premised on what “the evidence would have shown” if a record had been developed to consider Coral’s issue which was outside the scope of this proceeding.

Coral also argues that the PD fails to comply with Resolution G-3334. Again, Coral’s characterization of this proceeding is erroneous. The scoping memo considered Resolution G-3334, the parties’ proposals, resource and time constraints. The Scoping Memo opted to consider some of the issues raised by Coral in a separate track.

Lastly, Coral reargues its position that the Commission should grant the Petition for Modification of D.01-12-018. Coral cites no factual, legal or technical errors in its comments that need to be addressed or that would require a change to the PD.

G. Indicated Producers

1. California Producer Set-Asides

IP requests that the Commission reinstate the undisputed tariff provision establishing California producer set-asides. IP acknowledges that some general language in the CSA may have led to confusion concerning set-aside rights for California producers. However, IP identifies specific language in the CSA, which should be controlling, that specifically provides for set-aside rights for California producers. Language in the PD has been deleted that would have eliminated set aside rights for California Producers and tariff pages in Appendix B have been modified to provide set-asides for California producers. However, we disagree with IP that ExxonMobil should receive set-aside rights based on the conflict with physical capacity limitations on the SoCalGas system that would arise from IP's interpretation of the CSA.

2. Rights of Long-Term Contract Holders

IP's position concerning long-term contract holders is not clear.

IP states that some "Enhanced Oil Recovery contracts were entered into many years ago, well in advance of the CSA and the concepts and rights created by that document." Further, IP contests the PD's classification of IP's concerns as a contractual issues and the statement that this proceeding was not intended to resolve contract specific issues. IP states that:

"[t]his is not a contractual issue. Were it not for CSA implementation, the issue would not have arisen. ... Thus, this is an issue that is squarely and appropriately before the Commission."

It is not clear from IP's formulation what "issue" it is concerned about. It is not clear whether the issue IP raises is that the PD failed to classify certain contracts as "firm" versus "interruptible" or whether IP is claiming that

the PD implements the CSA in a manner that improperly abrogates a contractual right bargained for by holders of Enhanced Oil Recovery contracts. We address both issues.

The PD properly stated that that this proceeding was not intended to resolve issues as to whether a specific contract is firm or interruptible. SoCalGas in its reply correctly observed that without examining the terms of a particular contract, the Commission cannot determine whether the contract contemplates firm or interruptible service. IP's potential claim that the PD failed to classify contracts is without merit.

IP's implied assertion that the PD abrogates the rights of existing Enhanced Oil Recovery contract holders is also without merit. Although this appears to be a new argument, a threshold failure of IP's argument is that it fails to clearly articulate what rights have been abrogated. Instead, IP emphasizes that "many of these contracts have rates that are higher than tariffed rates..." , consequently IP argues that such contract holders should have greater rights. IP cites no statute, case law or Commission decision for the premise that paying contract rates higher than tariff rates entitles a contract holder to rights greater than tariff customers. IP appears to ignore the possibility that a party to a contract may have entered into a bad or non-profitable agreement. Instead, IP appears to assert that "equity demands" that the Commission impose a limit on what Enhanced Oil Recovery contract holders pay for the "total cost" per unit of transportation that does not exceed the contract rates. Again, IP cites no statute, case law, or Commission decision for rewriting the terms and conditions of an existing contract not before the Commission. We are unable to grant IP the relief sought.

Lastly, in the alternative, IP requests that the Commission establish a forum for expeditiously resolving disputes. IP requests that SoCalGas notify all contract holders in writing of their contract rights in the open season within ten days of the effective date of the decision. Further, the Commission should permit the filing by the customer of an AL notice to the Commission's Energy Division (ED) of the dispute and provide SoCalGas with a five-day response period. The ED should then meet with the parties and rule on the dispute not later than 20-days following the response by SoCalGas. IP asserts that this process is necessary to ensure that contract holders know with finality their rights not fewer than 30-days preceding the first day of backbone transmission open season. SoCalGas has no objection to IP's proposal for resolving whether or not a long-term contract is "firm" or "interruptible" service.

Although SoCalGas has no objection to IP's proposal, we are concerned about creating a dispute resolution proceeding in such a hasty fashion. For instance, neither party has commented on the legality of transferring a substantive decision making process to the ED. Moreover, neither party has indicated whether it believes such a process should be binding without appeal. We decline to adopt IP's proposal absent such details. The PD invites SoCalGas to submit a proposal for resolution of contract disputes. We encourage IP and SoCalGas to jointly submit an advice letter that establishes a detailed proposal for resolving contract disputes.

3. Petition to Modify

IP also cites a "public interest" standard for reconsidering granting the petition to modify. IP cites no legal error or factual error in support of its position. Instead, IP takes issue with a single statement in the PD that the Commission is not "bound to constantly reconsider every decision it made."

However, IP cites no statute, case law or Commission decision for the proposition that the Commission must “constantly reconsider” every decision it makes. Nonetheless, we will slightly modify the PD to make clear that an assertion of “change” alone in the regulatory market place does not constitute sufficient grounds to vacate a Commission decision.

H. ExxonMobil

ExxonMobil contends that the PD improperly denies set-asides to all California Gas producers. We agree and as discussed above, reverse this portion of the PD. Concerning ExxonMobil’s claim that it should be entitled to set-asides we disagree for the primary reason set forth in the PD that ExxonMobil’s interpretation is impossible to implement given physical capacity limitations.

I. Edison

Edison claims that the PD commits legal error by applying the wrong standard in rejecting Edison’s proposal to use forecasted demand for determining bidding rights. Edison also claims that the PD commits legal error by failing to address the allocation of bidding rights in instances where CDWR tolling agreements are in place.

Concerning Edison’s first claim of error, the PD denies Edison’s request for the use of forecasted demand because it is inconsistent with the CSA. The PD observes that the “CSA provides no exemption for Edison to receive set-aside rights.” Edison does not appear to dispute this interpretation of the CSA. Consequently, no legal or factual error has occurred.

Edison’s second concern about allocation of bidding rights in instances where CDWR tolling agreements are in place warrant greater discussion. We have modified the PD to address Edison’s concern consistent with testimony that was presented at evidentiary hearing by SoCalGas.

J. Department of General Services

DGS submitted comments that focused on the PD's rejection of the Petition to Modify. DGS asserts that the rejection of the petition is legally and factually flawed. The basis for such concerns however is not clear. Below we attempt to address the concerns of DGS.

DGS cites Resolution G-3334 for the proposition that SoCalGas submit a "comprehensive proposal on how to implement the GIR decision [D.01-12-018]." [In this proceeding, SoCalGas submitted a "compliance case" which implemented D.01-12-018 and was the subject of this proceeding.] Further, DGS also cites two other directives that were to describe new issues resulting from delay in implementing the CSA and for SoCalGas to present any other issue that SoCalGas deems relevant. DGS appears to assert that legal error occurred because the scope of this proceeding did not include the latter two.

The concerns of DGS are misplaced. The ALJ in this proceeding directed the parties in this proceeding to participate in two meet-and-confer meetings for the purpose of surveying potential issues prior to the submission of testimony by intervenors. Further, the ALJ advised parties that the assigned Commissioner would consider such issues.

Rule 6.3 of the Commission's Rules of Practice and Procedure specifically authorizes the assigned Commissioner to issue a scoping memo setting forth issues to be considered in a proceeding. The purpose of such a scoping memo is to manage proceedings. No legal error occurred in managing the issues to be considered in this proceeding.

DGS also believes that the potential for modification to the CSA from a recently issued OIR warrants vacating D.01-12-018. Although some modification

to the CSA may occur after consideration of issues in the Commission's new gas OIR, R.04-01-025, the PD is neither legally nor factually flawed.

However, in response to the assertion that the regulatory market structure the PD implements for SoCalGas may not be consistent with the apparent direction the Commission may take in a recently issued Order Instituting Rulemaking (R.) 04-01-025 (2004 Gas OIR), we will issue a stay of this order until a decision has been issued in Phase I of the 2004 Gas OIR. This approach should provide an opportunity to reconcile any impacts the 2004 Gas OIR might have on a firm tradeable rights system or the market structure this decision implements for SoCalGas. Although we are staying implementation of this decision, we fully support a market structure that includes firm tradeable rights.

V. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Joseph R. DeUlloa is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. In D.01-12-018, the Commission adopted a CSA that modified the market and regulatory framework for regulating the transportation and storage of natural gas on SoCalGas' system.
2. This decision does not establish new policies and does not modify either the CSA or D.01-12-018.
3. This decision adopts tariffs that implement D.01-12-018.
4. The analyses of SCGC and Edison concerning the timetable for implementing storage services are silent on the fact that approximately two years and seven months remain before the CSA expires on August 31, 2006.

5. SCGC's proposal for phasing-in storage services does not address the impact from the delay that has occurred in implementing the CSA.

6. SoCalGas' proposal for implementing storage services follows the literal language of Section 2.3.3 of the CSA.

7. SGCG's proposal for implementing storage services places greater emphasis on transitioning rather than achieving the goal of placing SoCalGas at 100% risk/reward.

8. SoCalGas' proposed tariffs for implementing storage services shield ratepayers from risk, whereas under SCGC's approach ratepayers are exposed to revenue shortfall risk for two years.

9. The proposal of SoCalGas to withhold price information for negotiated storage contracts may have a detrimental effect in promoting an efficient marketplace.

10. Disclosure of transaction-specific details about storage contracts is basic and fundamental to an efficient market.

11. The CSA grants a set-aside of 73 MMcf/d of North Coastal capacity for core customers.

12. The CSA does not grant ExxonMobil set-aside rights of 68 MMcf/d.

13. The purpose of the market concentration limit imposed by the CSA is to prevent market power abuse.

14. Edison's request for an exemption from market concentration limits may detrimentally affect other customers by decreasing the amount of backbone capacity that is available to other customers at desirable receipt points.

15. Only existing noncore customers are entitled to bid for backbone capacity in the open season, and only to the extent of their historical load.

16. Edison's proposal for additional bidding rights will decrease the amount of backbone capacity that is available to other customers at desirable receipt points.

17. SCGC did not establish that only bids for capacity on an annual basis would be successful to the exclusion of bids for seasonal capacity.

18. SCGC did not present an alternative proposal addressing seasonal usage in its testimony.

19. SCGC's proposal to require SoCalGas to disclose information about set-aside capacity and contracts awarded through the open season would modify the CSA by imposing new disclosure requirements not contained in the CSA.

20. The Oxnard 3 contracts have not been subject to examination in this proceeding.

21. Different levels of service currently exist on SoCalGas' gas transportation system.

22. Under the current bundled environment for gas transportation service, customers have equal access into SoCalGas' system, but pay for varying levels of certainty, firm and interruptible, for their deliveries of gas.

23. This proceeding was not intended to resolve contract specific issues.

24. At hearing, IP had ample opportunity to explore how firm versus interruptible contracts would be treated.

25. SCGC has not demonstrated how SoCalGas' proposal to credit payments for backbone capacity against monthly bills for discounted long-term contracts prejudices ratepayers or exacerbates shortfalls recorded in the NFCA.

26. SoCalGas' conduct subsequent to the adoption of the CSA reflected an intent that the CSA did not authorize a 2.44% in-kind fuel charge for balancing.

27. SoCalGas' own workshop documents and proposed tariffs in discussions with other parties after the CSA was implemented manifest an intent that indicates that the CSA did not authorize 2.44% in-kind fuel charge for balancing.

28. Section 1.5.4 of the CSA clearly envisioned the possibility that involuntary supply diversions might occur.

29. No provision exists in the CSA that relieves customers of the backbone reservation charges in a supply diversion event.

30. A supply diversion should only occur when operational conditions prevent SoCalGas from serving its core customers. Operational conditions may include gas supply, pipeline and storage conditions that can arise as a result of force majeure.

31. Noncore customers should receive the Involuntary Diversion Credit (IDC) whenever their gas is involuntarily diverted.

32. Creating an exception for force majeure may render the IDC largely worthless.

33. Balancing entities are in a better position than SoCalGas to know when their customers' supplies are being diverted.

34. Balancing entities should be responsible for meeting the demands of end-use customers on a daily basis regardless of whether a diversion is occurring.

35. PG&E did not conduct any cross-examination or present any testimony in support of its position that Schedule G-BR is unduly discriminatory.

36. PG&E did not conduct any cross-examination or present any testimony in support of its position that no lawful or rational basis exists for excluding the Kramer Junction interconnect as a secondary receipt point for the North Needles receipt point and North Needles (expansion) Receipt Point.

37. PG&E did not conduct any cross-examination or present any testimony in support of its position that excluding the Kramer Junction interconnect as a secondary receipt point for the North Needles receipt point and North Needles (expansion) Receipt Point would result in undue discrimination against gas supplies from the Kern River Pipeline into SoCalGas' system as compared to gas flowing from other pipelines in the Southwest.

38. SoCalGas withdrew its proposal to create multiple receipt point pools and SoCalGas proposes to create only one pool on its system: the citygate pool.

39. On October 23, 2003, SCGC, IP, Coral, Cabrillo I, LLC, Cabrillo II, LLC, El Segundo Power, LLC, Long Beach Generation, LLC, DGS, and TURN (Joint Parties) filed a petition to modify D.01-12-018 (petition).

40. The Petition of Joint Parties to vacate D.01-12-018 does not demonstrate that the CSA is no longer responsive to the circumstances existing on the SoCalGas system.

41. The Petition of Joint Parties to vacate D.01-12-018 does not demonstrate that the passage of time has changed or undermined the expected benefits of the CSA.

42. The Petition of Joint Parties to vacate D.01-12-018 does not demonstrate that system expansions erode the CSA's benefits to California consumers.

43. The Petition of Joint Parties to vacate D.01-12-018 does not demonstrate that implementation of the CSA will add volatility in the delivered cost of gas for California consumers.

44. The Petition of Joint Parties to vacate D.01-12-018 lacks meaningful explanation of how the changes cited would justify abandoning the CSA and vacating D.01-12-018.

45. Granting the Petition of Joint Parties to vacate D.01-12-018 would perpetuate the current uncertainty concerning the natural gas market structure for SoCalGas.

46. Implementation of the CSA will allow the Commission to gain valuable experience prior to accommodating Liquified Natural Gas (LNG) suppliers.

47. Staying implementation of this order will allow the Commission to consider and reconcile any impacts Order Instituting Rulemaking 04-01-025 may have on a firm tradeable rights system or the market structure this decision implements for SoCalGas.

Conclusions of Law

1. Given the delay in implementation, the approach proffered by SoCalGas for implementing storage services is the most consistent with the intent of the CSA.

2. The CSA reflects an intent to place SoCalGas at 100% risk / reward with regards to rates and revenues for storage services.

3. SoCalGas' schedule for implementing storage services should be adopted.

4. SCGC's implementation proposal for schedule G-PAL should be denied.

5. Section 2.1.3.4 of the CSA authorizes SoCalGas to impose variable charges for actual usage in the provision of storage services during Open Season.

6. Section 2.1.3.5 of the CSA does not authorize SoCalGas to impose variable charges for actual usage in the provision of storage services for capacity not committed during Open Season.

7. Disclosure of transaction-specific details about storage contracts is basic and fundamental to an efficient market.

8. The CSA favors disclosure of transactional information for storage contracts.

9. Information about storage contracts under closed schedules G-BSS and G-LTS should be disclosed.

10. Section 6.2.3.2 of the CSA requires SoCalGas to post information about price, quantity and term of storage contracts.

11. D.01-12-018 did not modify the disclosure requirements of Section 6.3.3.4 of the CSA regarding storage transactions in the secondary market.

12. Section 6.3.3.4 of the CSA requires SoCalGas to publish the amount, price, and term of secondary storage transactions while keeping the names of parties confidential, absent approval of publication of names by the involved parties for storage transactions in the secondary market.

13. The CSA does not require SoCalGas to post information about amount, price, term and names for storage services at tariffed rates under Schedules G-CGS or G-PAC.

14. The CSA provides no exemption for Edison to receive set-aside rights.

15. ExxonMobil's request for a set-aside is not supported by the CSA.

16. ExxonMobil's request for a set-aside should be denied.

17. Edison's request for an exemption from the 30% market concentration limit is unsupported and inconsistent with the CSA.

18. The CSA does not provide for bidding rights based on forecasted usage.

19. To the extent Edison is unable to procure sufficient capacity through set-aside rights to meet its needs, Edison may acquire capacity in the secondary market to meet demand.

20. SoCalGas' proposal in tariff Schedule G-BR, Sheet 11, to define bidding rights based on the use of forecasted demand is inconsistent with the CSA.

21. Edison is not entitled to additional bidding rights based on forecasted demand.

22. SoCalGas proposed Schedule G-BR should be modified so that bidding rights are established based on historical consumption and not on forecasted usage.

23. The “Bid and Evaluation” in Schedule G-BR should be modified to include a reference to “seasonal bids” to clarify that a seasonal bid may extend beyond one month and represent several contiguous months.

24. SCGC’s uncontested proposal to delete the word “substantially” from SoCalGas’ proposed Schedule G-BR in Subsection 2 of Special Condition 29 on Sheet 11 is reasonable as it clarifies the tariff and should be adopted.

25. SoCalGas’ Proposed Schedule G-BR Special Condition 29 fairly balances seasonal and annual usage by permitting both types of customers to participate in the open season.

26. SoCalGas’ Proposed Schedule G-BR Special Condition 29 is consistent with Section 1.1.3.6.1 of the CSA.

27. Neither the CSA nor D.01-12-018 requires SoCalGas to disclose information about set-aside capacity and contracts awarded through the open season.

28. SoCalGas’ Proposed Schedule G-BR Special Condition 29 fairly evaluates bids during open season.

29. SCGC’s proposal to require SoCalGas to disclose information about set-aside capacity and contracts awarded through the open season should be rejected as unsupported by either the CSA or D.01-12-018 and also as outside the scope of this proceeding.

30. It is reasonable for SoCalGas to offer interruptible backbone rights to customers who currently receive interruptible delivery service under their long-term contracts.

31. SoCalGas should not implement Section 1.9 of the CSA in a manner that confers greater benefits than what was bargained for in the contracts subject to Section 1.9 of the CSA.

32. For contracts that provide the option to take service under SoCalGas' tariff rather than under their contracts, SoCalGas' proposal to allow such contract holders the ability to reduce their set-aside rights at Wheeler Ridge so that they can bid the difference in the open at any receipt point is reasonable.

33. SoCalGas should implement the CSA in a manner sufficient to prevent Oxnard 3 customers from losing the benefit of the bargain in the Oxnard 3 contracts.

34. Customers who currently pay for and receive interruptible service under their contracts are not entitled under the CSA to firm backbone rights.

35. Customers should not lose the benefit of the bargain contained in their interruptible long-term contracts.

36. SoCalGas should apply its tariffs in a manner that maintains the benefit of the bargain for interruptible long-term contract customers.

37. SoCalGas proposed treatment of holders of interruptible long-term contracts is reasonable and consistent with the CSA.

38. SoCalGas' proposal to credit payments for backbone capacity against monthly bills on a unit basis to the extent of actual usage for discounted long-term contracts is reasonable.

39. Neither the CSA nor D.01-12-018 authorizes SoCalGas to impose a 2.44% in-kind fuel charge for balancing.

40. The cost of default balancing should not be adversely affected by the CSA.

41. Supply diversions should not occur for solely economic reasons.

42. SoCalGas should use all reasonable market opportunities, including buying on the open market to alleviate a potential supply diversion.

43. SoCalGas' proposed language in Rule 23 for imposing involuntary diversions of noncore gas supplies is reasonable and should be adopted.

44. A noncore customer's duty to pay backbone reservation charges is not suspended during a supply diversion event.

45. Coral's proposal to suspend the payment of backbone reservation charges during a supply diversion event should be rejected.

46. It is unreasonable to eliminate the IDC exemption for force majeure events.

47. SoCalGas' request to withdraw its proposal to eliminate the IDC exemption for force majeure events should be accepted.

48. Neither the CSA nor D.01-12-018 impose an affirmative requirement on SoCalGas to notify end-use customers of an involuntary supply diversion.

49. Neither the CSA nor D.01-12-018 prevent SoCalGas from voluntarily making best efforts to notify balancing entities and end-use customers of an involuntary supply diversion.

50. Neither the CSA nor D.01-12-018 require the imposition of a financial charge or economic penalty upon SoCalGas if it fails to provide notice to all balancing entities and noncore end-use customers of an involuntary supply diversion.

51. PG&E's proposal to aggregate receipt points in a manner not authorized either by the CSA or D.01-10-018 is outside the scope of this proceeding.

52. The motion of SoCalGas to strike PG&E's opening brief should be denied.

53. Joint Parties interim proposal for SoCalGas to continue to provide service under existing tariffs is unreasonable.

54. Joint Parties have not demonstrated that D.01-12-018 and Resolution G-3334 should be vacated.

55. The Petition of Joint Parties to vacate D.01-12-018 based on the recitation of changed circumstances without meaningful discussion and the postulation of volatility that may occur are insufficient grounds to vacate D.01-12-018, a decision adopted by the majority of the Commission.

56. The Petition of Joint Parties to vacate D.01-12-018 should be denied.

57. SoCalGas should make the tariffs changes contained in Appendix B.

58. This order should be stayed pending the issuance of a decision in Phase I of Order Instituting Rulemaking 04-01-025.

O R D E R

IT IS ORDERED that:

1. Southern California Gas Company (SoCalGas) shall file an advice letter within 10 days from the date of this decision that includes the tariffs filed in this proceeding on July 15, 2003, as modified by the tariff and rule language adopted in Appendix B. Unless suspended by the Energy Division, these tariffs and rules shall become effective the first day of the month at least three and one-half months after the effective date of this decision.

2. The motion of SoCalGas to strike Pacific Gas and Electric Company's opening brief is denied.
3. The Petition to modify Decision 01-12-018 is denied.
4. This order is stayed pending the issuance of a decision in Phase I of Order Instituting Rulemaking 04-01-025.
5. This proceeding is closed.

This order is effective today.

Dated April 1, 2004, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

I reserve the right to file a dissent.

/s/ CARL W. WOOD
Commissioner

I reserve the right to file a dissent.

/s/ LORETTA M. LYNCH
Commissioner

APPENDIX A

List of Appearances

Applicant: David J. Gilmore and Stacy Van Goor, Attorneys at Law, and Leslie Katz, for San Diego Gas & Electric Company and Southern California Gas Company.

Interested Parties: Alcantar & Kahl, LLP, by Michael Alcantar, Attorney at Law, for Cogeneration Association of California; Matthew V. Brady, Special Counsel, for the Department of General Services; Avis Clark, for Calpine Corporation; Goodin, MacBride, Squeri, Ritchie & Day, LLP, by Brian Cragg, Attorney at Law, for Dynegy, Duke Energy North American, Duke Energy Trading & Marketing; Goodin, MacBride, Squeri, Ritchie & Day, LLP, by Michael B. Day, Attorney at Law, for Kern River Gas Transmission Co., Questar Southern Trails Pipeline Co., and Wild Goose Storage, Inc.; Eric Eisenman, Director, Governmental Relations, for PG&E GT-NW / North Baja Pipeline; Ned Greenwood, for Questar Southern Trails Pipeline; Morrison & Foerster, LLP, by Peter Hanschen, Attorney at Law, for El Paso Natural Gas Company, Mojave Pipeline Company, and Agricultural Energy Consumers Association; Gloria M. Ing, Attorney at Law, for Southern California Edison Company; Alcantar & Kahl, LLP, Evelyn Kahl; Attorney at Law, for Indicated Producers; White & Case, LLP, by Joseph M. Karp, Attorney at Law, for California Cogeneration Council; Luce, Forward, Hamilton & Scripps, LLP, by John W. Leslie, Attorney at Law, for Coral Energy Resources, LP; Sutherland, Asbill & Brennan, by Keith McCrea, Attorney at Law, for California Manufacturers & Technology Association; Patrick G. McGuire, Crossborder Energy, for Watson Cogeneration Company; Davis, Wright, Tremaine, LLP, by Edward W. O'Neill, Attorney at Law, for InterGen North America, Inc.; Hanna and Morton, LLP, by Norman A. Pedersen, Attorney at Law, for Southern California Generation Coalition; Patrick J. Power, Attorney at Law, for City of Long Beach; Douglas W. Rasch, Attorney at Law, for Exxon Mobil Corporation; Michael Rochman, Attorney at Law, for California Utility Buyers JPA; and Elizabeth Wesby, for Midway Sunset Cogeneration Company.

Intervenors: Bridget Branigan, Attorney at Law, for Southwest Gas Corporation; Marcel Hawiger, Staff Attorney, for The Utility Reform Network; Law Offices of Daniel W. Douglass, by Gregory Klatt, Attorney at Law, for Transwestern Pipeline Company; and Frank R. Lindh, Attorney at Law, for Pacific Gas and Electric Company.

Protestants: Bright and Brown, by Maureen J. Bright, Attorney at Law and Hogan & Hartson, LLP, by Karollyn Newman, Attorney at Law, for Marathon Oil Company.

State Service: Darwin Farrar, Attorney at Law, and Jacqueline Greig, for the Office of Ratepayer Advocates.

(END OF APPENDIX A)