Decision 07-08-029 August 23, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Gas Company to Establish Regulatory Authority Over the Access for Natural Gas Provided by California Gas Producers.	Application 04-08-018 (Filed August 16, 2004)

OPINION REGARDING ACCESS TO THE GAS TRANSMISSION SYSTEM OF SOUTHERN CALIFORNIA GAS COMPANY BY CALIFORNIA PRODUCERS

Table of Contents

Title **Page**

OPINION REGARDING ACCESS TO THE GAS TRANSMISSION SYSTEM OF SOUTHERN CALIFORNIA GAS COMPANY BY CALIFORNIA PRODUCERS

1. Summary

Today's decision addresses the terms and conditions by which natural gas produced by gas producers located in California will be granted access to the gas transmission system of the Southern California Gas Company (SoCalGas).

We adopt SoCalGas' Interconnection Agreement and the Operational Balancing Agreement as the templates for the terms and conditions of access. SoCalGas shall incorporate and reflect our modifications and clarifications to both of these agreements as discussed in today's decision.

The adopted agreements balance the competing interests of the California producers, SoCalGas, and the other parties. The adopted terms and conditions of access will help maximize the production of natural gas in southern California, while promoting the safe and reliable operation of SoCalGas' transmission system.

2. Background

As a result of the California gas producers'[1] concern with SoCalGas' plans to produce the native gas in and around its gas storage fields as requested in Application (A.) 04-01-034,[2] SoCalGas and the producers reached a stipulation whereby SoCalGas agreed to file the application that is before us today. SoCalGas' application requests that the Commission establish and approve the terms and conditions under which natural gas produced within California will be granted access to SoCalGas' transmission system. Protests to the application were filed by several parties.

After unsuccessful attempts to reach a stipulation or settlement, a scoping memo and ruling was issued on August 30, 2005. The scoping memo originally scheduled evidentiary hearings for December 2005. The procedural schedule was revised in a November 2, 2005 ruling, and four days of evidentiary hearings were held in March 2006. This proceeding was submitted on April 26, 2006.

Corrections to the March 9, 2006 reporter's transcript were filed by Exxon Mobil Corporation (Exxon Mobil) on April 7, 2006. No one objected to the

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[1] Our reference to the "California gas producers," "California producers," or to "producers" refers to the members of the Indicated Producers (IP), the Western States Petroleum Association (WSPA), and the California Independent Petroleum Association (CIPA). These three organizations sponsored testimony in support of their proposals in this proceeding.

[2] A.04-01-034 addressed SoCalGas' application for authority to produce native gas located at or near its existing natural gas storage facilities. (*See* Decision (D.) 06-06-065.) Due to the concerns of the California producers regarding the potential for cross subsidies from ratepayers to shareholders, discrimination, and anticompetitive behavior, the stipulation in A.04-01-034 resulted in the filing of this application to address the standardized terms and conditions of access to the SoCalGas system by the California producers.

transcript corrections. Those proposed corrections have been reviewed and are adopted.

3. Issues to Be Resolved

The August 30, 2005 scoping memo identified the following issues:

- What should be the terms and conditions of access to SoCalGas' transmission system for California natural gas producers?
- Should the Commission approve the standard access agreement that SoCalGas has proposed in its application?
- Should all of the existing California access agreements with SoCalGas be replaced with a standard access agreement as the existing agreements expire or are terminated under their existing terms?
- Should the standard access agreement replace Exxon Mobil's existing agreement with SoCalGas regarding supplies of gas from Pacific Offshore Pipeline Company (POPCO) entering SoCalGas' system?

The parties to this proceeding have provided the Commission with two proposed access and balancing agreements to consider. SoCalGas recommends that its proposed Operational Balancing Agreement (OBA) and Interconnection Agreement (IA) be adopted.[3] The OBA and the IA are patterned after the OBA and IA that SoCalGas proposed in Order Instituting Rulemaking (R.) 04-01-025 for the interstate suppliers of gas. SoCalGas also recommends that its proposed

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[3] SoCalGas' proposed OBA and IA are attached to Exhibit 9 as Appendix A and Appendix B, respectively.

Interconnect Collectible System Upgrade Agreement (ICSUA) be adopted as part of the IA.[4]

The California producers recommend that their Pro Forma California Gas Producer Access Agreement (Pro Forma Agreement) be adopted. The Pro Forma Agreement is patterned after the agreement that SoCalGas executed with Chevron U.S.A., Inc. (Chevron), which was approved by the Commission on April 19, 1996 in Resolution G-3181.[5] The Pro Forma Agreement makes a number of changes to the Chevron agreement as described by the producers in Exhibit 40 and as shown in Attachment D of Exhibit 40.

4. The Interconnection and Balancing Agreements

4.1. Introduction

In 2005, more than 330.9 billion cubic feet (Bcf) of natural gas was produced in California. This gas production met approximately 13% of the state's demand for natural gas.

Currently, SoCalGas has about 30 access agreements with gas producers located in southern California regarding access to the SoCalGas transmission system. These access agreements establish the terms and conditions for the entry of this gas into the SoCalGas transmission system. These access agreements were entered into in the late 1980s to mid-1990s. Most of these agreements have similar terms and conditions, while others are different because of negotiated

[4] The ICSUA is referred to in the IA as Exhibit D and is attached to Exhibit 9 as Appendix C.

[5] A copy of the producers' proposed Pro Forma Agreement is found in Attachment C of Exhibit 40, and Chevron's agreement is found in Attachment B of Exhibit 40.

changes or the market or regulatory changes that were in existence when the access agreements were entered into.

Most of these access agreements contain references to firm interconnection access rights that are referred to as "Maximum Daily Volume" (MDV) access rights.[6] The MDV defines the maximum volume of natural gas that a producer is contractually entitled to deliver to SoCalGas on a given day.[7] The MDV does not confer transportation rights on SoCalGas' system.[8] Historically, SoCalGas determined and allocated MDV so that the total MDV did not exceed the total firm take away capacity on a particular transmission line. Thus, under the existing system, it is relatively certain that these gas producers will be able to deliver their gas into the SoCalGas system.

These access agreements are subject to the utility's right to terminate without cause.[9] According to the producers, SoCalGas has invoked its termination rights more frequently in recent years, and has incorporated additional or revised requirements as part of the new access agreements. This

[6] Under SoCalGas' proposed IA, the term "interconnect quantity" is used instead of the term MDV. The interconnect quantity is equivalent to the California producer's current MDV.

[7] The operative agreements between SoCalGas, Exxon Mobil, and Exxon Mobil's affiliate (POPCO) do not refer to an MDV amount. Instead, the agreements provide for delivery of a volume of not less than 70 million cubic feet per day (MMcfd). In D.06-06-065, we found that SoCalGas has treated Exxon Mobil and its affiliate as though they have MDV-like rights. (*See* D.06-06-065, Finding of Fact 18, pp. 40-41, 54.)

[8] Under the existing system, and until the firm access rights (FAR) system adopted in D.06-12-031 goes into effect, end-use customers are the only ones permitted to hold transportation rights.

[9] SoCalGas contends that most of the current access agreements with the producers can be terminated on six to 18 months' notice.

has led to producer uncertainty about the use of ongoing facilities and future capital investment. The producers are also concerned that the access agreements have not been enforced in an even-handed manner from producer to producer.

SoCalGas points out that these access agreements with the California producers are different from the balancing agreements with the interstate gas suppliers, particularly with respect to the imbalance and cash-out provisions. In order to establish regulatory and commercial consistency among and between the California gas producers and the interstate gas suppliers regarding access to the SoCalGas system, SoCalGas proposes to replace all of the California access agreements, as they expire or are terminated under their existing terms, with the standardized OBA and IA. According to SoCalGas, the OBA and IA will treat California producers and all other gas suppliers alike in terms of access to the SoCalGas system.[10]

The proposed OBA of SoCalGas addresses the terms and conditions regarding gas imbalances that result from the producer's delivery of natural gas to the SoCalGas system.

The proposed IA of SoCalGas addresses the agreement between a California producer who wants to interconnect to the SoCalGas transmission system. The IA sets forth the terms and conditions under which SoCalGas agrees to provide the facilities needed to accept the interconnect capacity from the producer's pipeline facilities to the SoCalGas system. The terms and conditions

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[10] SoCalGas' proposed OBA and IA are similar to the interconnection agreement and balancing agreement that was proposed by SoCalGas in R.04-01-025 and adopted in D.06-09-039 for the liquefied natural gas (LNG) suppliers. In footnote 72 at p. 84 of D.06-09-039, we stated that this proceeding would address the issue of standardized interconnection and balancing agreements for the California gas producers.

address, among others, such subjects as: operations and maintenance (O&M) fees for metering equipment and other related facilities; gas quality; uniform flow of gas; meter installation, meter maintenance and accuracy; suspension of gas deliveries or receipts; indemnity; dispute resolution; and creditworthiness.

SoCalGas also proposes that its ICSUA be adopted as part of the IA and used whenever an interconnection to the SoCalGas system requires the design, engineering, and construction of gas facilities to provide interconnect capacity.

SoCalGas contends that the adoption of the OBA and IA will protect the safety of ratepayers, customers, employees, and the public. In addition, SoCalGas contends that these agreements will ensure that the producers do not shift unnecessary costs or risks to SoCalGas' ratepayers, and will end or minimize the subsidies of providing the California producers with free storage and balancing services. SoCalGas asserts the OBA will promote the public interest by making available California gas supplies which meet the required specifications of the gas marketplace, and which will ensure the operational integrity of the SoCalGas system. SoCalGas also contends that the adoption of its proposals will place California gas production and the interstate gas supplies on an equal, competitive footing for entry into the SoCalGas system, which will enhance gas on gas competition.

The producers contend that SoCalGas has failed to justify why all of the producer access agreements should be replaced by the standardized IA and OBA. The producers assert that the IA and OBA are untested agreements with terms and conditions that have never been applied to any in-state producer, interstate supplier, or end-use customer. SoCalGas' proposals also assume that the producers are similar to the interstate pipelines and the proposed LNG suppliers. The producers contend that treating them in the same manner as the interstate pipelines and the LNG suppliers will discourage the in state production of oil and gas in violation of Pub. Util. Code § 785(a).[11]

The producers point out that because most of the natural gas in southern California is produced in association with crude oil, *i.e.*, associated gas, the applicable access agreements need to recognize the unique circumstances and challenges that California producers face.[12] In addition, the producers contend they are different from the interstate pipelines and LNG suppliers, and that these differences must be taken into account. The producers further assert that the interstate pipelines are more like transporters of gas, while the California producers produce, deliver and sell natural gas as a byproduct of oil production. In addition, the production facilities of most of the producers are connected directly to the SoCalGas system, and that access is the only means of making their gas available for sale to the marketplace. If this access to the SoCalGas system is limited or denied, the producers' operations will be impacted. Another difference is that most of the California producers are much smaller than the interstate pipelines and potential LNG suppliers in terms of size and their ability to affect the SoCalGas system.

For all of the above reasons, the California producers propose that the Pro Forma Agreement be adopted to govern the terms and conditions of access by the California producers, including SoCalGas' native gas production, to the SoCalGas transmission system. The producers recommend that SoCalGas be

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[11] Unless otherwise noted, all code references are to the Public Utilities Code.

[12] According to the producers, associated gas is typically higher in British thermal unit (Btu) content and contains more hydrocarbons. The producers contend that the removal or treatment of these hydrocarbons at the production point can be difficult and expensive.

directed to transition the producers to the new Pro Forma Agreement over the next 12 months following a final decision, and that the existing MDVs be carried over to the new Pro Forma Agreement.

The Pro Forma Agreement is patterned after the access agreement between SoCalGas and Chevron, which was approved in Resolution G-3181, and which has been in use for more than a decade.[13] In that resolution, we stated in part that the Commission's Advisory and Compliance Division "believes that the Agreement as a whole is balanced because its provisions ensure that Chevron will pay for the services required from SoCalGas." (Ex. 38, Resolution G-3181, p. 4.) The producers contend that because the Chevron agreement has been widely used as the template for many of the California access agreements, the Pro Forma Agreement better reflects the nature of the relationship that has developed between SoCalGas and the producers over the years.

The producers recommend that if deviations from the Pro Forma Agreement are needed, SoCalGas and the affected producer should file an advice letter requesting deviation as quickly as possible and propose a plan to implement a timely transition. In the event of a protest, the producers

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[13] Following the approval of the Chevron agreement with SoCalGas on April 19, 1996, the Commission approved a standardized charge structure for future California producer access agreements in Resolution G-3194 on September 4, 1996. In Resolution G-3194, the Commission noted that the pro forma contract appendices were based on the Chevron access agreement approved in Resolution G-3181. On July 16, 1997 in Resolution G-3214, the Commission stated that "Access Agreements are no longer needed to be filed and approved by Commission since a proforma agreement and standard charge structure were approved by Resolution G-3194 of September 4, 1996." (Ex. 38, Resolution G-3214, p. 5.) The producers assert that these series of resolutions support their contention that the Commission expected that the Chevron agreement and the standard charge structure adopted in Resolution G-3194 would govern future access agreements absent a request by SoCalGas for modification.

recommend that the Commission elevate the advice letter to an application to ensure full public review of the issues.

The producers contend that Commission oversight of the access agreements is important because SoCalGas' transmission system is the only means of accessing consumer markets for some producers. In addition, since the Commission has historically engaged in the oversight of typical producer access arrangements, including the review and approval of access fees and other terms and conditions, the producers contend that the Commission must continue its supervision of the California producer access agreements.

In the sections which follow, we provide a summary of the access terms and conditions that we adopt for the interconnection between the California producers and SoCalGas, describe the effect of the FAR decision on this proceeding, and discuss the differences between the access agreement proposals of SoCalGas and the California producers and related issues.

4.2. Summary of Adopted Agreements

We adopt SoCalGas' IA and OBA as the templates for the terms and conditions of access to the SoCalGas transmission system by the California gas producers.[14] The IA and the OBA templates shall incorporate and reflect our adoption of the following issues, as well as the other issues discussed in today's decision.

- Balancing requirements.

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[14] We provide a summary of the adopted agreement at this point to assist the reader in understanding how the various differences between the competing proposals and the factors that we considered went into our deliberations. These differences and the factors we considered are discussed in the sections which follow.

- Gas monitoring for non-hydrogen sulfide constituents shall be enforced on a 24-hour interval, except for those producers directly connected to the SoCalGas distribution system.
- Arbitration of any disputes concerning the terms and conditions of the IA and OBA shall be brought to the Commission.
- A producer requesting that SoCalGas prepare a capacity study shall pay the actual cost.
- Split metering shall be allowed to continue with the producer providing the split meter allocation to SoCalGas within 10 days, except on an Operational Flow Order (OFO) day when the split meter allocation shall be provided one business day after the OFO event.
- If the delivery pressure to the SoCalGas system is to be increased, SoCalGas shall provide the producer with 90 days' notice. If the delivery pressure to the SoCalGas system is to be decreased, SoCalGas shall provide the producer with 45 days' notice.
- Creditworthiness requirements.

The adopted interconnection agreement and balancing agreement balances all of the competing interests. The adopted terms and conditions of access will help maximize the production of natural gas in southern California, while promoting the safe and reliable operation of SoCalGas' transmission system.

In deciding what should be the terms and conditions of access to the SoCalGas transmission system by the California gas producers, we need to first decide on the form of the template that should be used as the access agreement. The parties have presented us with two choices. The producers propose that the Pro Forma Agreement be used, while SoCalGas proposes that the IA and the OBA be used.

Although the Pro Forma Agreement is patterned after the Chevron access agreement and is similar to many of the California access agreements, the producers have made a number of changes to the Chevron agreement. A comparison of the differences between the Pro Forma Agreement and the Chevron agreement are shown in Attachment D of Exhibit 40. Many of the changes to the Pro Forma Agreement involve the disputed issues that we discuss later in this decision.

Instead of using a template patterned after the Chevron access agreement, SoCalGas proposes that two separate agreements be used. The IA sets forth the terms and conditions of access for a California producer to interconnect to the SoCalGas system. A separate OBA sets forth the terms and conditions regarding the balancing requirements that the producer must comply with. The IA and the OBA also contain language which supports SoCalGas' positions on the disputed issues.

We adopt the IA and the OBA as the templates for establishing the terms and conditions of access by the California gas producers to the SoCalGas transmission system. The IA and the OBA are better templates to reflect the resolution of the issues we address in this decision. As discussed later in this decision, due to the tightening of the balancing requirements for the California producers, separate interconnection agreements and separate balancing agreements are more appropriate. SoCalGas shall file a Tier 3 advice letter to modify their IA and the OBA to incorporate and reflect the resolution of the disputed issues as discussed in this decision. The California producers and other interested parties may protest the advice letter as provided for in General Order (GO) 96-B. Before the advice letter filing is made, SoCalGas shall convene a workshop to discuss the implementation details of the advice letter filing with interested parties.

4.3. The Effect of the Adoption of D.06-12-031

Recently, in D.06-12-031 the Commission adopted a system of FAR for the integrated gas transmission systems of SoCalGas and San Diego Gas & Electric Company (SDG&E). Under the adopted FAR system, the California gas producers who are connected to the SoCalGas and SDG&E systems, are provided with a set-aside option in step one of the three-step open season process. This set-aside option allows the gas producer to receive a set-aside of capacity up to the producer's peak month production delivered into the SoCalGas system over the most recent three-year period. (D.06-12-031, pp. 14-16, 99-100.) This set-aside of capacity allows the producer's gas to enter the SoCalGas system and for it to be transported to the delivery point. Once the FAR system becomes operational, this system will determine who has the right to deliver gas to the interconnection point with SoCalGas.[15]

As several of the witnesses acknowledged during the hearings, to the extent there are provisions in the IA or OBA of SoCalGas or in the Pro Forma Agreement of the producers which address access by the California producers to the transmission system of SoCalGas, those provisions would be replaced by the step one set-aside described in D.06-12-031. Since D.06-12-031 did not address the specifics of what should be in the interconnection agreement, the balancing agreement, or the interconnection work authorization, those issues are properly before us in this proceeding and are addressed in this decision.

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[15] The FAR system is to go into effect no later than 365 days after the implementing tariffs for the FAR system and related services are approved.

4.4. Differences Between the Proposals

Before deciding whether we should adopt the proposals of SoCalGas, the California producers, or other proposals, we need to understand the difference between the competing proposals and how the proposals might affect California gas production.

The differences between the proposals revolve around how each of them perceive the daily operations of the producers. The producers view themselves to be in circumstances that are significantly different from the interstate gas pipelines and suppliers. The producers assert that, unlike the interstate pipelines and suppliers, they lack the upstream tools to balance their gas deliveries that flow into the SoCalGas system. These upstream tools include storage facilities, line pack, the ability to blend gas, and being able to sell their gas into other markets.

The California producers also contend that their operations are different because many of them can only access SoCalGas' transmission system in order to move their gas to the end user. The producers contend that if they are denied access to the SoCalGas system, they will either have to shut-in their production or flare the gas. The flaring of gas may not be an option in certain areas because of air quality restrictions. Since most of the natural gas produced in southern California is associated gas, a shut-in of gas production will also curtail oil production.[16]

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[16] According to the California producers, the shut-in of gas production increases the backpressure on the oil wells, which inhibits the flow from the oil reservoir. This results in a longer time for oil production to resume. In addition, if oil production is curtailed, this will cause a fluctuation in the production of the associated gas.

Another operational difference between the California producers and the interstate sources of gas supply is the small size of most of the California producers, as compared to the interstate pipelines and the proposed LNG terminals. The average interconnection size of a California producer on the SoCalGas system is seven MMcfd, which is ten to 100 times smaller than the interstate pipeline interconnections.

SoCalGas believes that due to the differences in the terms of access for the California producers and the interstate gas suppliers, and because of the significant subsidies that the California producers receive at the expense of SoCalGas' ratepayers, the IA and OBA should be adopted as the term and conditions of access to the SoCalGas transmission system for the California producers. According to SoCalGas, the IA and OBA will remove the subsidies and ensure that all of the gas entering the system will have the opportunity to do so on a consistent and nondiscriminatory basis.

The different proposals before us are a result of the differences between the California producers and the interstate gas suppliers. The most dramatic differences between the proposals of the producers and SoCalGas have to do with balancing the actual daily gas deliveries with what is scheduled, and the measurement of gas quality. SoCalGas believes that the producers' proposal is more lenient in its approach to the gas balancing and gas quality issues, while the producers believe that SoCalGas' proposal is much stricter.

The other major differences between the competing proposals concern the following: creditworthiness; where the arbitration of disputes concerning the access agreements should be handled; the cost of the capacity studies; notifying the producers of a change in delivery pressure; split metering; design and build procedures; and the length of the term for the agreements.

Due to these competing differences, the parties have decided to support their respective proposal and to oppose each other's proposal. None of the parties have discussed whether the IA and OBA, or the Pro Forma Agreement, can be revised and used as the template to incorporate an outcome on a contested issue that is different from what the party has proposed. The form of the template for an access agreement, whether it is the IA and OBA, or the Pro Forma Agreement, may not make a difference so long as the issues important to the parties are addressed in this decision and incorporated into some form of an access agreement. Accordingly, we resolve the contested issues in the sections which follow, and the templates which should be used.

4.5. Gas Balancing

4.5.1. Background and Positions

Gas balancing keeps track of the amount of gas that is scheduled by the gas supplier and what is actually delivered into the transmission system. In the event of an underdelivery or overdelivery of gas, resulting in an imbalance, monetary penalties may apply. Gas balancing is needed to ensure reliability and the safe operation of the gas transmission system.

The typical access agreements with the California producers currently require the producers to deliver within ten percent of their scheduled amount on a monthly basis without any imbalance penalties. In addition, the California producers are not subject to the much stricter balancing requirement that apply to end users in the event an OFO is called by SoCalGas pursuant to its Rule 30.[17]

[17] Section F of SoCalGas' Rule 30 provides that in the event an operational flow order is called, the end use customer will be charged the buy-back rate in SoCalGas' Schedule No. G-IMB for all customer deliveries in excess of 10% of the end use customer's actual usage.

The producers propose to retain the current balancing requirements as part of the Pro Forma Agreement.

SoCalGas proposes in its OBA that the balancing provisions be revised as follows. SoCalGas proposes a cumulative daily imbalance tolerance of plus or minus ten percent of the producer's interconnect capacity, and that the producers have seven days in which to pay back the total cumulative imbalance. If there is a negative imbalance at the end of the pay back period, *i.e.*, an under delivery of gas, the producer would be required to pay a cash-out rate of 150% of the highest California/Arizona border spot price for delivery into SoCalGas as reported by Gas Daily during the imbalance period. If at the end of the pay back period there is a positive imbalance, *i.e.*, an over delivery of gas, the gas is subject to a cash-out rate of 50% of the lowest California/Arizona border spot price for delivery into SoCalGas as reported by Gas Daily during the imbalance period. SoCalGas believes that the seven-day pay back period is more than sufficient time to allow the producers to balance their over and under deliveries.

SoCalGas also proposes to reserve the right to install flow controls, at the producer's expense, on a producer who over delivers significant quantities of non-scheduled gas into its system on more than three OFO days within a 12-month period. SoCalGas contends that the reservation of this right will deter over deliveries from occurring. In the event the Commission rejects SoCalGas' proposal to install flow controls, SoCalGas recommends that the Commission order the OBA to include a provision that the California producers will be subject to SoCalGas' Rule 30 overnomination provisions on an OFO day. SoCalGas, however, opposes using its Rule 30 overnomination provisions in conjunction with the Pro Forma Agreement.

SoCalGas contends that its balancing proposal will maintain system reliability, remove the incentives for producers and marketers from taking undue advantage of SoCalGas' storage services, and eliminate the storage subsidies provided to the producers. SoCalGas contends that these highly profitable producers should have to pay for their own balancing services instead of using the storage services that end use customers have paid for.

SoCalGas contends that its balancing recommendations are consistent with the balancing agreements that are in effect for the interstate pipelines, and with the balancing agreement that SoCalGas proposed for use with potential LNG suppliers in R.04-01-025. SoCalGas also notes that the Division of Ratepayer Advocates (DRA) and the Southern California Generation Coalition (SCGC) support a tightening of the gas balancing provisions so that the ratepayer subsidies of the California producers are minimized.

As for the producers' Pro Forma Agreement, SoCalGas asserts that those proposed balancing rules are too lenient and would continue the subsidization of free storage for the producers.[18] SoCalGas also contends that under the Pro Forma Agreement, the producers would not be subject to SoCalGas' winter balancing rules as set forth in section G of SoCalGas' Rule 30.[19] SoCalGas

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[18] SoCalGas asserts that the producers' proposal to retain the current balancing requirements would result in the free use of storage services by the producers which is worth approximately $3.5 million per year. Under SoCalGas' proposed OBA, the use of storage services by the producers would be significantly reduced and worth approximately $375,000 per year. SoCalGas contends that if the amount of storage services allocated to the producers is reduced, more unbundled storage can be sold at market prices for the benefit of ratepayers.

[19] SoCalGas' ability to withdraw gas from storage diminishes as more gas is taken out of storage during the winter season. As SoCalGas' total gas storage declines through the winter, the winter balancing rules require customers to deliver higher amounts of

Footnote continued on next page

believes that the producers who need storage to stay in balance should have to purchase storage services at market rates. SoCalGas is opposed to allocating storage assets at cost, as mentioned in the producers' testimony, for balancing the deliveries of the producers.

The producers note in their testimony that the Commission could choose to implement a producer balancing service, similar to the balancing service that is provided to and paid for by the end user customers. The producers, however, oppose a separate unbundled charge for a producer balancing service. The producers contend that this would result in two charges for transporting California produced gas across the SoCalGas system from the point of receipt to the point of end use. There would be a charge for the producer balancing charge, and the regular transportation rate would be paid for by end use customers. In contrast, the producers point out that interstate gas suppliers moving gas over the SoCalGas system only have to pay the end use transportation rate. The producers contend that the higher total transportation rate for California gas appears to violate Section 785.7.

To fix this problem, the producers recommend a zero-cost option. Under this option, the California producers should be allowed to use the monthly balancing rights of their end use customers so that a producer can deliver into the SoCalGas system within 10% of the producer's end use customer's consumption in each month without having to pay a separate producer balancing charge. The producers also recommend that this zero-cost option be available to those producers who elect to use a contracted marketer on the

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gas in relationship to the customers' gas usage. If the total delivery of gas by the customer is less than the required percentage, a daily balancing standby charge applies.

SoCalGas system. Contracted marketers are allowed to pool the nominations and imbalances of their end use customers. The contracted marketers could also provide the same function for their affiliated California production. Under the zero-cost option, the imbalances arising from the end-use load and the producer deliveries could be offset in the contracted marketer's pool with no cost to or impact on other ratepayers.

The producers also contend that the unbundled producer balancing service presumes that specific storage resources will need to be allocated for producer balancing. The producers assert that with the exception of the OFO problem, SoCalGas has not shown that such a need exists.

If the Commission decides to adopt an unbundled producer balancing service, despite the producers' objections, the producers recommend that they be charged a cost-based rate for the storage resources that are actually needed to provide the balancing service, and that the 10% monthly balancing provision be retained. The witness for the producers, using the methodology described in Exhibit 42, developed a producer balancing charge of one cent per decatherm, for an annual cost of about $1.15 million. If this producer balancing charge is adopted, the producers recommend that they be allowed to trade the imbalances as end user customers are allowed to do.

SoCalGas contends that an unbundled producer balancing charge is a bad idea, especially if the balancing charge is cost-based. SoCalGas contends that ratepayers will benefit more from the sale of the storage services to the producers at market rates, rather than allocating these storage assets to the producers at cost.

In the event the Commission decides to adopt a producer balancing charge, SoCalGas recommends that it be a "bundled" producer balancing charge.

A bundled balancing charge would apply to all producers. SoCalGas contends that an unbundled balancing charge suggests that some producers could opt out of the producer balancing program. SoCalGas estimates the cost of a producer balancing service to be about $2 million per year, or $0.0125 per decatherm. This is about twice as large as the producers' cost estimate due to the higher amount of storage assets that SoCalGas uses in its cost estimate.

SoCalGas is also opposed to the producers' zero-cost option proposal. SoCalGas points out that noncore end use customers are assigned storage assets to provide them with balancing services, and every noncore customer pays for this in the transportation rate. SoCalGas contends that under the producers' zero-cost option, the producers avoid having to pay for the storage assets to support the balancing of the producers' deliveries by relying on the storage assets paid for by the end users.

4.5.2. Discussion

The positions of the California producers and SoCalGas on the gas balancing issues are reflected in their respective Pro Forma Agreement and the OBA. If the producers' position is adopted, the producers will have more time to balance their gas nominations and deliveries, and the balancing services that they use will be paid for by the end use customers on the SoCalGas system. If SoCalGas' position is adopted, the producers will need to balance their gas nominations and deliveries in a much shorter time frame, and the producers will have to pay for the balancing services they may need.

The producers contend that the balancing requirements should remain the same as contained in the current access agreements with the California producers.[20] These access agreements call for balancing within 10% on a monthly basis with no separate balancing charge. The producers assert that maintaining the status quo is justified because their gas production and operations are quite different from the interstate suppliers of gas, and SoCalGas has not justified the need for the much stricter balancing requirements.

As testified to in this proceeding, these differences include a much smaller interconnection with SoCalGas, that SoCalGas may be the only outlet in which the producers can use to get their gas to market, the producers lack the upstream balancing tools to balance and manage their loads, and the gas production of the producers fluctuates as compared to the interstate gas supplies. These fluctuations make it more difficult to balance on a daily basis. Unlike the interstate gas suppliers, the California producers contend that all of these factors affect their ability to readily respond to imbalances. For those reasons, the California producers favor different balancing requirements.

In D.06-09-039, we noted the differences between the California gas producers and the interstate gas suppliers, and how those differences may warrant different terms and conditions of access to the SoCalGas system. In D.06-09-039 at page 84, we stated that "there appear to be significant differences between in-state producers and other suppliers," and that the differences with the in-state producers "include smaller average size of contract capacity, greater hour-to-hour flow fluctuations, and less control over those fluctuations." Due to these differences, the balancing agreement for the interstate suppliers of gas was to be addressed in R.04-01-025, and the balancing agreement for the in-state

[20] As we discuss later, the producers are willing to have SoCalGas' Rule 30 OFO rules apply to them.

producers is to be developed in this proceeding. (*See* D.06-09-039, p. 84; A.04-08-018, June 27, 2005 ALJ Ruling, fn. 3, p. 3.)

We recognize that the operations of the California gas producers are different from the operations of the interstate gas suppliers, and historically SoCalGas has allowed the California producers to balance on a monthly basis. SoCalGas, however, estimates that the current balancing requirement results in a subsidy to the California producers by SoCalGas' ratepayers of about $3.5 million per year in the use of storage assets.

SoCalGas' OBA proposal is based on the balancing proposal that it proposed for the LNG suppliers in R.04-01-025 and which was approved in D.06-09-039. SoCalGas estimates that the OBA's proposal for balancing on a daily basis, with a seven-day payback, would reduce the ratepayer subsidy to an annual cost of about $375,000 by allocating significantly less storage assets for use by the producers to balance their loads.

The differences between the operations of the California producers and the interstate gas suppliers, our recognition in D.06-09-039 that tighter balancing provisions are needed,[21] and the statutory provisions to encourage the production of California gas, are all factors which we have considered and balanced in deciding on what the appropriate balancing requirements should be for the California producers. Based on these considerations, we will modify SoCalGas' proposal by requiring the California gas producers to balance within ten percent on a weekly basis (defined as a seven-day rolling period x MDV x 10%) and that the payback period be for 14 days instead of the seven days that

[21] *See* D.06-09-039 at pp. 88 to 91.

SoCalGas proposed. The producers will pay back the imbalance to bring their balance within the 10% tolerance band. If the imbalance is not paid back in 14 days, the under delivery and over delivery "cash-out rate" as described in section 2.2 of the OBA shall apply, averaged over the relevant seven-day imbalance period. The adoption of these modified balancing requirements will ensure the safety and reliability of SoCalGas' transmission system, maximize the utilization of that capacity to the benefit of the ratepayers, and reduce the storage subsidies of the producers by SoCalGas' ratepayers. These reasons are consistent with the reasons we tightened the balancing requirements in D.06-09-039 for potential LNG suppliers. In addition, these balancing requirements will not discourage or restrict the production of California gas or make it more difficult for the California producers to deliver their gas supplies to the market. Since we are tightening the imbalance rules, we do not adopt a producer balancing charge. The producers will be permitted to engage in imbalance trading to resolve any imbalances.

The gas balancing and interconnection procedures are two separate activities, and because the OBA more closely reflects our outcome on the balancing issues, the OBA shall serve as the template for the adopted balancing agreement between SoCalGas and the California producers.

We now turn to SoCalGas' proposal to reserve the right to install flow controls on California producers if they deliver significant quantities of non-scheduled gas into the SoCalGas system on more than three OFO days within a 12-month period. Related to this issue is whether the California producers should be required to adhere to SoCalGas' Rule 30 overnomination rule provisions just like end-users are required to do. SoCalGas recommends that if its proposal to install flow controls is not adopted, that the balancing agreement with the producers should require the application of SoCalGas' Rule 30 rules on OFO days. The California producers acknowledge that the only change that should be made to the balancing agreement is to apply SoCalGas' Rule 30 rules to the producers on OFO days.

We first address the proposal of SoCalGas that it have the right to install flow controls on the California producers. SoCalGas asserts that the right to install flow controls is needed to prevent the producers from using storage assets that they do not pay for. The producers oppose the flow control proposal because of the production problems that could result if the flow control shuts off access to the SoCalGas transmission system. The producers contend that the shut off will cause a shut down in gas production. In order to resume gas production, the gas may have to be flared (if air quality regulations permit this to be done) or evacuated from the producer's system before gas production can resume. In addition, because most of the gas in southern California is produced in association with oil production, the shut down and restart will affect both gas and oil production.

Due to the shut in effect that flow controls could have on gas and oil production, we do not adopt SoCalGas' proposal that it have the right to install flow controls on a producer if the producer delivers significant quantities of gas on more than three OFO days within a 12-month period. However, we do adopt the recommendation of both SoCalGas and the producers to impose SoCalGas' Rule 30 on the California producers on OFO days. Due to the monetary penalties in Rule 30, these rules will discourage the producers from delivering gas in excess of their nominations on OFO days. Accordingly, SoCalGas shall include the Rule 30 OFO provisions in the balancing agreement with the California producers.

Another balancing agreement issue involves the language in section 2.2 of SoCalGas' OBA that the producer's gas deliveries occur on a "uniform hourly basis." The producers oppose the inclusion of this language. The producers contend that a uniform hourly flow may be reasonable for a large interstate pipeline, but this concept is not transferable to the in-state production of natural gas that varies with the production of oil. The producers recommend that the following language in section 3.2 of the Chevron agreement, which has been carried over into section 3.02 of the Pro Forma Agreement, be used instead: "Producer shall to the extent feasible make deliveries of Gas at each of the Point(s) of Receipt at substantially uniform rates of flow during a particular Month." (*See* Ex. 40, Att. C, pp. C-7 to C-8.)

We agree with the producers' concerns but also understand the utility's operational needs. We will replace the reference in the OBA to "uniform hourly basis" with the following phrase based on section 3.02 of the Pro Forma Agreement: "Producer shall to the extent feasible make deliveries of Gas at each of the Point(s) of Receipt at substantially uniform rates of flow during a particular Day." This phrase better reflects the gas deliveries by the California producers into the SoCalGas system due to the size differences and the production fluctuations of the California producers as compared to the gas deliveries by the interstate gas suppliers. SoCalGas shall reflect this change in section 2.2 of the OBA.

4.6. The Gas Quality Proposals

4.6.1. Monitoring of Gas Quality

4.6.1.1. Background and Positions

Section I.1. of SoCalGas' Rule 30 provides that if the gas quality specifications are set forth in a separate agreement, contract, service contract or tariff schedule, the gas is to conform to those specifications. If there is no existing agreement, section I.2. of Rule 30 provides that the gas quality is to conform to the minimum gas quality specifications set forth in section I.2. of Rule 30. The gas quality provision is referenced in section 4 of the IA, and in Article VI of the Pro Forma Agreement.

A major point of disagreement concerns the protocols for the monitoring of gas quality. At the time of the hearings, there were 45 points of interconnection with California gas producers. All of these points are subject to the monitoring of gas quality by SoCalGas.

Composite samplers are used at all of these sites, except for two, to monitor gas quality. The composite samplers tests for constituents other than hydrogen sulfide, by pulling a sample from the gas stream. The majority of the composite samplers are sampled on a monthly basis, and some are sampled weekly or on a spot basis. If the results of the test indicate a gas quality problem at the site, then access to the SoCalGas system may be denied and additional monitoring equipment installed.

In recent years, the use of gas chromatographs to measure gas quality has increased. At the time of the hearings, 32 of the 45 sampling sites have or are expected to have gas chromatographs. The gas chromatographs allow gas quality to be monitored and measured on a real time basis. The gas chromatographs are set to alarm and shut-in the gas production when two consecutive analyses fail to meet the gas quality specifications. Each sample analysis takes from four to eight minutes. The alarm which shuts in the production usually occurs after eight to sixteen minutes. With the increasing use of gas chromatographs, the monitoring of gas quality has significantly reduced the monitoring interval. Instead of monthly samples, SoCalGas' monitoring of gas quality for many of the interconnections now takes place at four to eight minute intervals.

Monthly spot testing is also performed at the producers' meters to control liquids and other contaminants. If the oxygen, water, or hydrocarbon dew point exceeds the gas quality specification, verbal notification will be given to the producer and access to the SoCalGas system will be denied.

In addition, on-line hydrogen sulfide analyzers are installed at certain producer meters to ensure compliance with the Commission's GO 58A. Section 7.d of that GO provides that when hydrogen sulfide or total sulfur exceeds the limits set forth in Sections 7.a and 7.b. of the GO, the gas utility is to notify the Commission and to commence remedial action immediately. If the hydrogen sulfide reaches 4 parts per million, access to the SoCalGas system will be denied automatically. This is referred to as a "single alarm" or the "one-hit" rule. That is, if SoCalGas detects a single instance of gas with hydrogen sulfide above the stated standard, immediate action is taken to shut-in the producer's flowing gas supplies. In order for gas deliveries to resume, the control system and shutdown valve have to be reset by SoCalGas personnel. The California producers agree that this is a reasonable enforcement protocol so long as the measurement equipment is reliable and well maintained.

The test frequency that SoCalGas employs is dependent on the potential for gas quality problems. These problems are affected by a change in gas production, a change in the source of gas or in the quality of the gas, and historical gas quality problems. SoCalGas contends that gas quality monitoring is needed to ensure pipeline integrity, for the safety of its employees, customers, and the public, for the merchantability of the gas, and to meet federal, state and local regulations.

The California producers oppose the adoption of SoCalGas' shortened monitoring intervals for gas quality. The producers contend that historically, SoCalGas used monthly composite sampling to test the gas deliveries of the California producers. The producers contend that SoCalGas has not demonstrated that it is necessary to go from an enforcement interval of 30 days to a four to eight minute interval, or that the shorter interval is the most effective method of balancing safety and pipeline integrity with the goal of encouraging California gas production.

The producers also contend that the proposed gas quality enforcement protocols of SoCalGas are overly restrictive and unreasonable as applied to the California producers. For example, under SoCalGas' monitoring of gas quality, one producer could be tested monthly, while others could be tested every four to eight minutes. In addition, although the California producers have much smaller average interconnections (7 MMcfd) than the interstate pipelines, the enforcement protocols for the California producers are more stringent than what the interstate pipelines are faced with. The producers contend that another example of the unreasonableness of the gas monitoring protocols is when gas is withdrawn from storage, the quality of the withdrawn gas is not tested. Thus, the producers contend that the gas quality specifications will be enforced against them in an unreasonable and discriminatory manner.

The producers contend that denying access after a second sample of non-conforming gas has been detected, a period of eight to sixteen minutes, is insufficient time to allow a producer to adjust the gas stream. Once access has been denied, in order to restore access, the producer's delivery pipeline would have to be depressurized by flaring the gas in the delivery pipeline. Flaring may not be possible in all circumstances due to air quality restrictions. In addition, the short monitoring interval and alarm protocol of SoCalGas could result in the shut in of oil and gas production for immaterial exceedances.[22] The producers contend that lengthening the enforcement interval to a 24-hour interval will help to minimize the risk of denying access to the California producers for immaterial exceedances.

The producers propose a 24-hour averaging tolerance for non-hydrogen sulfide constituents,[23] instead of the eight to sixteen minute frequency that SoCalGas employs. Under the producers' proposal, access would be denied at the first instance when the 24-hour average rises above the limit for non-hydrogen sulfide constituents. The producers contend that short excursions of carbon dioxide and oxygen will not increase the corrosion rate of the steel pipelines or adversely affect pipeline integrity. The producers also note that in the past, these non-hydrogen sulfide constituents were sampled on a monthly basis.

One of the reasons for SoCalGas' opposition to the producers' 24-hour interval proposal for constituents other than hydrogen sulfide is because of the danger of flame lifting and flame out for the entire 24-hour averaging period. The producers contend that this problem of flame lifting and flame out only applies to the producers who are directly connected to SoCalGas' distribution

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[22] As shown in Attachment D of Exh. 39, the producers contend that the gas delivered by the producers could be well below the Rule 30 gas quality specification on average over the course of days or weeks, but it could temporarily exceed the specification on a limited basis. This temporary exceedance under SoCalGas' approach could result in the flaring of the entire gas stream for this immaterial exceedance.

[23] Non-hydrogen sulfide constituents include carbon dioxide, oxygen, total inerts, and Btu content.

mains, of which there are very few.[24] The producers agree with SoCalGas that when the producer connects directly to a distribution main, stricter enforcement rules may be required. The producers also point out that flame lifting can be the result of gas supply pressure or improper tuning or adjustments to end user equipment rather than gas quality.

If the producers' 24-hour interval proposal is not adopted, the producers recommend that SoCalGas be instructed to present actual system gas quality system data and blending calculations to develop a program to reasonably establish enforcement intervals, such as two to four hour intervals, to avoid unnecessary limitations on California production or any other source of supply.

SoCalGas opposes the producers' 24-hour enforcement proposal. SoCalGas contends that such a proposal will allow a producer to average its delivery of non-compliant gas with its delivery of compliant gas so that there will be no violation of the gas quality specifications during that 24-hour period. SoCalGas also contends that the proposal could result in an unacceptable situation of flame lifting and flame out for that 24-hour period. SoCalGas contends that its existing gas quality enforcement protocol is working well and should not be changed.

4.6.1.2. Discussion

No one disputes that the monitoring of gas quality is needed to maintain the safety and integrity of SoCalGas' transmission system. The parties, however, disagree on how frequent the testing should be. As the producers note in their

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[24] A producer who is directly connected to a distribution main lacks the opportunity to blend its gas with other gas. The lack of blending increases the potential for flame lifting and flame out in the end user's equipment.

testimony, we have an obligation to balance the interests of the safety and integrity of the transmission system with the statutory goal in Section 785 of encouraging the increased production of California gas. With these interests in mind, we address how frequently the gas quality of the California produced gas should be tested by SoCalGas.

The evidence in this proceeding suggests that an appropriate test frequency depends on the time that it takes for problem concentrations in the gas stream to accumulate. In deciding the appropriate test frequency, other factors to consider are the source and size of the gas supply, gas production and operational constraints, and historical gas quality problems.

In deciding what the appropriate testing frequency should be, we need to keep in mind that the monitoring of gas quality used to occur on a monthly basis. With the increased use of gas chromatographs, most of the California producer interconnection points are monitored at four to eight minute intervals.

For the monitoring and enforcement of the non-hydrogen sulfide constituents, the producers recommend a 24-hour average enforcement interval, instead of enforcing the non-hydrogen sulfide standard after a second consecutive alarm. Since some of the California producers continue to be monitored under the monthly sampling method, the producers contend that a 24-hour interval is a reasonable enforcement interval.

Evidence was presented in this proceeding that suggests that short term exceedances of non-hydrogen sulfide constituents do not present any immediate risk to pipeline integrity or to safety. If the carbon dioxide specification is exceeded, in order for corrosion to occur, water needs to be present as well.[25] According to the producers' testimony, even several days out of compliance with the carbon dioxide specification will have no measurable effect on the corrosion or the integrity of the pipeline.

The use of a four to eight minute testing interval, and enforcement after a second consecutive alarm poses problems for California producers. Reducing the testing and enforcement frequency from one month to four to sixteen minutes reduces the producer's opportunity to blend non-compliant gas with compliant gas, and will restrict the production of California gas. If the second alarm denies access to the SoCalGas system, the California producers will be forced to shut in their oil and gas production, or to flare the gas, even if the exceedances are an immaterial amount. This will reduce the amount of gas and oil produced in California, and may cause problems in the restart of its oil and gas operations.

In balancing the pipeline safety and integrity concerns with the goal of encouraging California gas production, we agree with the producers that the testing frequency for non-hydrogen sulfide constituents should be enforced on a 24-hour interval. The 24 hours is reasonable in that it encourages California gas production by flowing more gas while ensuring that the non-hydrogen sulfide constituents do not pose a problem to SoCalGas' transmission system. In addition, monthly testing for non-hydrogen sulfide constituents continues to take place at some interconnection points, and has occurred regularly in the past. Although the gas chromatographs have the capability to test and enforce

[25] The water specification is monitored using monthly testing.

specifications at very short intervals, a testing and enforcement interval for non-hydrogen sulfide constituents of four to sixteen minutes is unnecessary and will restrict the production of California gas. The 24-hour enforcement interval for non-hydrogen sulfide constituents provides the flexibility needed to encourage California gas production while ensuring that the safety and integrity of SoCalGas' transmission system is not compromised.

Except for the California gas producers who are connected directly to the SoCalGas distribution system, SoCalGas shall take steps to adjust the gas chromatographs to enforce the non-hydrogen sulfide specifications on a 24-hour interval. The testing and enforcement frequency for hydrogen sulfide, and liquids and other contaminants shall remain unchanged.

For those California gas producers who are directly connected to the SoCalGas distribution system, stricter monitoring and enforcement of the carbon dioxide specification is needed. According to SoCalGas' testimony, gas delivered by a producer into a SoCalGas distribution main, which contains more than four percent carbon dioxide by volume, may result in flame lifting and flame out. The California producers acknowledge that stricter enforcement protocols could be justified in such circumstances.

The flame lifting and flame out problem is a safety problem for the SoCalGas system and to end use customers who receive this non-compliant gas. To prevent this problem from occurring, stricter controls over the quality of the gas stream entering the SoCalGas distribution system is required. We will require SoCalGas to monitor the non-hydrogen sulfide constituents of those California gas producers who are directly connected to SoCalGas' distribution main at four to eight minute intervals, and that access be denied after a second consecutive alarm for gas which exceeds the non-hydrogen sulfide specifications.

This monitoring and enforcement requirement is not a burden when the safety concerns are balanced against the very small number of California producers who are likely to be impacted by this requirement.

SoCalGas shall incorporate the adopted outcomes from the above discussion into the IA.

4.6.2. California Air Resources Board Standard

4.6.2.1. Background and Positions

Another gas quality issue deals with the California Air Resources Board (CARB) vehicle fuel standard for compressed natural gas, the latest of which is referred to as the CARB 6 standard.[26] SoCalGas is not proposing to incorporate a separate CARB standard into its gas quality tariff provisions at this time. However, for new California gas production without an MDV, and gas production above and beyond the MDV level that uses interruptible gas transportation, SoCalGas proposes that the gas comply with the CARB 6 standard at the interconnection point with SoCalGas. According to SoCalGas, this requirement will ensure that current blending costs do not increase.[27]

The producers note that the natural gas vehicle fuel specification is being reviewed by the CARB, with the expectation that the standard will be modified

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[26] The CARB 6 standard contains a six percent maximum limit on the amount of ethane that compressed natural gas can have. (*See* Title 13, California Code of Regulations, § 2292.5.) According to SoCalGas, this ethane limitation can cause problems for the California producers because of the lack of opportunity to blend the ethane into the gas stream. The CARB standard is currently undergoing review.

[27] SoCalGas does not apply the CARB 6 standard for natural gas vehicle fuel supplied by the interstate gas pipelines because of the blending that takes place on the system. SoCalGas will continue to blend existing California gas production up to the current MDV levels. Those blending costs are recovered from the California producers.

to reflect changing natural gas vehicle engine technology. The producers recommend that until the CARB reviews its specifications and issues a final decision in R.04-01-025 on this issue, the Commission should not require the CARB specifications to apply to the California gas producers at the interconnection point with SoCalGas. The producers point out that because SoCalGas does not apply the CARB standard to the interstate interconnections, it would be discriminatory for SoCalGas to impose the CARB standard on new gas supplies. In addition, imposing the CARB standard would disadvantage California gas production, which is contrary to Section 785.

About five percent of the gas produced in California meets the CARB 6 standard. SoCalGas contends that the producers' proposal would essentially allow the California producers to dump their excess ethane production into SoCalGas' system. SoCalGas contends that the processing of the natural gas stream is the producers' responsibility and is part of the producers' cost of doing business. SoCalGas contends it should not be required by the Commission to accept very high Btu gas which may compromise customer safety and system reliability. Also, ratepayers should not be required to bear the costs of removing the ethane. SoCalGas cautions that adopting the producers' proposal will shift more risk to ratepayers, and the already highly profitable producers will reap the economic benefit.

4.6.2.2. Discussion

The CARB standard was an issue in R.04-01-025 as well. We did not adopt the CARB standard as part of the gas quality specifications addressed in D.06-09-039. Two of the reasons for not adopting the CARB standard were because of the testimony that only five percent of the California gas production could meet the current CARB standard, and such a requirement could limit the entry of LNG supplies.

In the situation before us, the issue is whether the CARB standard should apply to the new gas supplies using interruptible service. If we do not require the new gas supplies to meet the CARB standard, more blending of California gas will be required. If we adopt the CARB standard for these new supplies, the producers will have to bear the cost to make this gas compliant with the CARB standard.

To be consistent with the outcome in D.06-09-039, we do not adopt SoCalGas' proposal to require the interruptible gas volumes to meet the CARB standard. The review of the CARB standard is still underway and that standard may change. To impose the CARB standard at this point is premature. In addition, the imposition of such a requirement on the interruptible volumes is likely to cause the California producers to incur more costs so that the new volumes of gas can meet the CARB standard, or it will discourage the production of new gas volumes because of the additional costs the producers would have to incur. Consistent with the intent of Section 785, we should encourage more California gas production, instead of discouraging production. Since revisions to the CARB standard are currently being considered, we decline to impose the CARB standard on natural gas produced in California that uses SoCalGas' interruptible transportation.

4.6.3. Other Gas Quality Issues

The California producers propose five clarifications or modifications to SoCalGas' current metering protocols. The producers contend that these changes in protocols will minimize the financial impact of meter error on ratepayers and producers. The first is that meter maintenance, testing and correction are to comply with the American Gas Association Report 4A, Sample Contract Measurement Clause, Meter Facilities. The second is that SoCalGas be required to preserve meter maintenance records for a period of time of at least three years. Third, in the event of a combined (meter and transmitter) error in the measurement of greater than one percent, SoCalGas will adjust all periods back to the period that is mutually agreed upon by the parties as the start of the error period. If the parties cannot reach agreement, then SoCalGas will estimate the gas deliveries and make appropriate adjustments for the period during which the meter was in use, not to exceed three years. Fourth, in all cases of meter error, prior period adjustments for meter error may not exceed three years prior to the date on which the discovering party provides notice to the other party. And fifth, the producers propose that when a meter is recalibrated, the utility should be required to calibrate the accuracy of the meter to the meter vendor's specifications. The producers contend that the impact of an imprecise calibration can be significant, both for ratepayers and producers.

Since these clarifications or modifications were not opposed by SoCalGas in its testimony, the producers contend the Commission should adopt all five of these meter clarifications or proposals. The producers assert that it is in the best interest of both the California producers and SoCalGas to meter accurately and correct the meters to function as correctly as is possible.

We adopt these five clarifications or modifications to the metering protocols. These clarifications or modifications shall be incorporated into the IA template.

4.7. Creditworthiness Proposals

4.7.1. Background and Positions

SoCalGas contends that strict creditworthiness standards are required for the California producers because SoCalGas and its ratepayers are at risk for transportation fees and for the full commodity cost of the gas. SoCalGas' creditworthiness proposal is described in section 10(g) of the IA as follows:

> "Credit – SoCalGas reserves the right to require the Interconnector from time to time to demonstrate creditworthiness. Creditworthiness may be demonstrated by providing audited financial statements of recent date and, if necessary, other adequate assurances of performance as requested by SoCalGas." (Ex. 9, Att. B, p. 12.)

The California producers contend that SoCalGas' creditworthiness standards and security requirements are not transparent, and that greater clarity and certainty are needed. The producers propose that their creditworthiness proposal be adopted, which reflects SoCalGas' credit concerns and how the small gas producers' operations are structured and operated. The producers' creditworthiness proposal is described at pages 18 to 24 of Exhibit 40.

There are two major differences between the creditworthiness proposals of SoCalGas and the producers. First, the California producers propose that any producer operating under an existing producer access agreement, or its replacement, should be presumed creditworthy unless there is a clear pattern of problems with the producer which have made SoCalGas and its ratepayers financially vulnerable. The producers propose that "SoCalGas should be allowed to review creditworthiness (1) if a producer fails to pay two cashout amounts by the due date for payments within a 12-month period or (2) if SoCalGas demonstrates good cause to believe that the financial condition of the producer upon which the prior creditworthiness determination was made has materially changed." (Ex. 40, p. 20.) A re-evaluation of creditworthiness could also take place if there were ownership changes, requests for substantial increases in MDV allotments, or established patterns of underdelivery. The producers contend that a reevaluation of credit is likely to occur before any producer default.

The second major difference is how creditworthiness should be evaluated for the California producers. The producers propose that an unaudited financial statement, together with a sworn statement about the accuracy of the financial statement, be used to determine the creditworthiness of the smaller gas producers. The producers assert that many small producers do not have audited financial statements because many of them are family-owned businesses. For the large producers, creditworthiness could be determined using the producer's most recent annual report and the latest Securities and Exchange Commission (SEC) form 10-K or financial statements audited by a certified public accountant (CPA).

The producers agree with SoCalGas that a creditworthiness evaluation may be conducted by an outside credit analysis agency, which can be selected by SoCalGas, and final credit approval is by SoCalGas.

The producers contend that SoCalGas' creditworthiness standards and security requirements should be clarified and made more certain by taking the following steps and incorporating the following standards and guidelines into a tariff. First, in the event SoCalGas denies a producer unsecured credit, SoCalGas should provide a detailed explanation of the method used to evaluate credit and the key factors which led SoCalGas to deny credit. Second, SoCalGas' evaluation of credit should consider the credit facilities that are already in place with a producer or its affiliate to avoid duplicative credit coverage. Third, other acceptable forms of security should include cash deposits, letters of credit, corporate guarantee, security bond, or any combination of these items. Fourth, the amount of the security should not exceed an amount equal to the producer's current MDV multiplied by 40 days, and then multiplied by the average Gas Daily's Daily Price Survey-SoCalGas, Midpoint index for the immediately preceding month. Fifth, the producers should be allowed to meet any security requirement with a guaranteed monthly delivery contract or with storage collateral.[28] The producers contend that these two forms of security are currently used in dealings between SoCalGas and contracted marketers. And sixth, the small producers should be permitted to have their contracted marketers assume credit responsibility for their accounts.

The producers contend that if excessive guarantees or demonstrations of credit are required, this may force the smaller producers to tie up their capital, instead of using the money for further gas exploration and production activities.

SoCalGas contends that the producers' proposals concerning creditworthiness are unreasonable and should not be adopted. SoCalGas asserts that the producers' proposed presumption of creditworthiness and the use of unaudited financial statements could expose ratepayers to about $3 million of bad debt every year.[29] SoCalGas contends that most gas suppliers have no problem demonstrating their creditworthiness through audited financial statements, and that unaudited financial statements should not be used to establish creditworthiness.

SoCalGas is willing to accept a security deposit in the following form as suggested by the producers: "The producers' current MDV multiplied by 40 days, and then multiplied by the average Gas Daily price survey -- SoCalGas, Midpoint index for the immediately preceding calendar month." (*See* Ex. 10, p. 20; Ex. 40, p. 22.) SoCalGas is also willing to consider credit facilities that are already in place with the producer or the producer's affiliate to ensure that credit

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[28] The details of how these two forms of security would work are described at pp. 22 and 23 of Exhibit 40.

[29] The $3 million in bad debt assumes a default by a producer of 10 million cubic feet per day for one month.

coverage is not duplicative. SoCalGas is also willing to allow a producer's contracted marketer to assume creditworthiness on behalf of a producer.

4.7.2. Discussion

SoCalGas' credit language in Section 10(g) of SoCalGas' IA states in part that "SoCalGas reserves the right to require the Interconnector from time to time to demonstrate creditworthiness." We agree with the producers that this portion of SoCalGas' credit language needs greater clarity and certainty. The language, as written, is unclear as to what the California gas producer must do to demonstrate creditworthiness.

To clarify the creditworthiness standard, the producers recommend that if a California producer is currently delivering gas into SoCalGas' system under an existing access agreement, that the producer should be deemed creditworthy unless there have been problems with the producer which have made SoCalGas and its ratepayers financially vulnerable. The producers propose that SoCalGas should be allowed to review creditworthiness if (1) a producer fails to pay two cashout amounts by the due date for payments within a 12-month period, or (2) if SoCalGas demonstrates good cause to believe that the financial condition of the producer upon which the prior creditworthiness determination was made has materially changed.

We adopt the producers' position to clarify SoCalGas' creditworthiness standard. We shall adopt the following language, which SoCalGas shall use instead of the first sentence of Section 10(g) that currently appears in its IA as shown in Exhibit 9: "A producer who is currently delivering gas into the SoCalGas system under an existing access agreement shall be deemed creditworthy unless there have been problems with the producer which have made SoCalGas and its ratepayers financially vulnerable." The adoption of this replacement language makes sense because it clarifies and allows an existing California producer, who has not caused SoCalGas or its ratepayers any financial exposure, to be deemed creditworthy. This language also allows SoCalGas to require the producer to provide additional credit support if the producer experienced financial problems in the past.

Instead of adopting the producers' proposal as to when SoCalGas should be allowed to review the producers' creditworthiness, we adopt the following language, which shall replace the second sentence of Section 10(g) that currently appears in its IA as shown in Exhibit 9: "SoCalGas shall be permitted to reevaluate the creditworthiness of the interconnector whenever the interconnector fails to fulfill its financial obligations under the access agreement, or whenever the financial condition of the interconnector has materially changed, such as a change or transition in ownership, a request for a substantial increase in the amount of gas to be delivered to SoCalGas has been made, or significant underdeliveries have occurred." The adoption of this replacement language allows SoCalGas to require additional credit support whenever financial or operational changes affect a producer.

If a reevaluation of credit is needed, the next issue to address is the type of information that should be provided to SoCalGas to establish creditworthiness. The producers propose that they be allowed to provide the producer's most recent annual report, and the producer's most recent SEC Form 10-K or a copy of the producer's CPA - audited financial statement. For those producers who do not have audited financial statements, the producers propose they be allowed to provide a copy of the producer's unaudited financial statement along with a sworn statement from the company's Chief Financial Officer that the information is true, correct and a fair representation of the producer's current and foreseeable future condition.

SoCalGas opposes the use of an unaudited financial statement. However, SoCalGas is willing to accept as security, the form of security that the producers propose be adopted.

In the event a reevaluation of credit is needed of an existing California producer, or if a credit evaluation of a new California producer is needed, we shall require the producer to provide SoCalGas with the producer's most recent annual report and the producer's most recent SEC Form 10-K or a copy of the producer's audited financial statement. We agree with SoCalGas that the producer's unaudited financial statement, with a sworn statement from the company's Chief Financial Officer regarding the financial statement, is not an acceptable substitute to establish creditworthiness. We shall also adopt the recommendation of both SoCalGas and the producers that a creditworthiness evaluation may be performed by an outside credit analysis agency selected by SoCalGas, with final credit approval granted by SoCalGas. Also, the creditworthiness evaluation should consider the credit facilities that are already in place between SoCalGas and the producer and the producer's affiliate so that the credit coverage is not duplicative. Also, a producer's contracted marketer should be allowed to assume creditworthiness on behalf of the producer. These various options will allow producers of all sizes to provide the necessary information to allow SoCalGas to evaluate the creditworthiness of a producer.

If the evaluation of creditworthiness does not support an unsecured line of credit, the producers propose that SoCalGas provide a detailed explanation of the method used to evaluate credit and the key factors that led to SoCalGas' denial of credit. In addition, the producers propose that they be permitted to provide different forms of security to support a secured line of credit.

In the event SoCalGas denies a producer an unsecured line of credit, SoCalGas shall provide the producer, within seven days of the denial of credit, with an explanation as to why the producer was denied credit.

If a producer is denied an unsecured line of credit, the producers recommend that they be allowed to provide a security deposit as a guarantee of its performance. SoCalGas is willing to accept as a security deposit, for a secured line of credit, a deposit that meets the following criteria as suggested by the producers: "The producers' current MDV multiplied by 40 days, and then multiplied by the average Gas Daily daily price survey – SoCalGas, Midpoint index for the immediately preceding calendar month." Accordingly, a California gas producer that can provide a security deposit that meets the criteria described above shall be entitled to interconnect with SoCalGas.

SoCalGas shall incorporate our resolution of the creditworthiness issues into the IA.

4.8. Arbitration Provisions

4.8.1. Background and Positions

Another difference between SoCalGas' IA and the Pro Forma Agreement concerns the arbitration of disputes. Under Section 9 of the IA, arbitration of the terms and conditions of access to the SoCalGas system is to be submitted to the Commission for resolution. Under Section 18.01 of the Pro Forma Agreement, disputes concerning the terms and conditions of access, except for the capacity studies, are to be resolved by arbitration outside of the Commission. The existing California producer access agreements provide for arbitration outside of the Commission.

SoCalGas is opposed to the arbitration provision in the producers' Pro Forma Agreement. SoCalGas contends that consistent with the authority granted in Article 12, Section 6 of the California Constitution, the Commission is the proper place to hear these kinds of disputes. SoCalGas contends that civil arbitration is time consuming, costly and inefficient. In addition, a private arbitrator is unlikely to consider ratepayer impacts or public policy issues, which may be important to the interpretation of the terms and conditions of access. SoCalGas also contends that the Pro Forma Agreement's use of outside arbitration suggests that either the producers do not believe that the Commission is competent to adjudicate matters within its jurisdiction, or that the Commission is unable to interpret the terms of the agreement that it has approved.

The producers point out that disputes regarding the access agreements have historically been subject to binding arbitration. The Pro Forma Agreement continues this tradition by proposing that all disputes over the access agreements, except for the capacity studies, be handled outside of the Commission. The producers contend that arbitration has been a satisfactory and proven dispute resolution mechanism in the past. The producers contend that the use of outside arbitration will conserve limited Commission resources by eliminating the need to arbitrate disputes for 35 or more producer access agreements. Outside arbitration may also provide a more expedited means to address both minor and material disputes.

4.8.2. Discussion

We decline to adopt the producers' recommendation that disputes concerning the access agreement, except for the capacity studies, be handled by outside arbitration. The producers' proposal in this regard is contrary to the producers' position that oversight of the access agreements by the Commission is needed to ensure that the terms and conditions of access are applied equally and without discrimination to non-utility producers and to SoCalGas' native gas production.

In addition, the Commission's resolution of any disputes concerning the terms of access to the SoCalGas transmission system is consistent with our constitutional authority to regulate SoCalGas and to establish the rules for the public utilities subject to our jurisdiction. (California Constitution, Art. 12, § 6; Barnett v. Delta Lines, Inc. (1982) 137 Cal.App.3d 674, 681.) These kinds of transmission access issues are to be addressed by the Commission, rather than by outside arbitrators who may have little or limited experience in utility and gas transmission matters.

The producers have not justified why disputes about the capacity studies should be arbitrated by the Commission, while all other transmission issues should be resolved by outside arbitration. The producers themselves acknowledge at page 28 of their reply brief that the Commission is competent to review any and all matters brought before it.

For the above reasons, any disagreement between a California producer and SoCalGas concerning the terms and conditions of access to the SoCalGas transmission system are to be brought to the Commission for resolution, and not to an outside arbitrator. We note that the Commission has various forms of alternate dispute resolution available to assist the parties. (*See* Resolution ALJ-185.)

4.9. The Cost of the Capacity Studies

4.9.1. Background and Positions

Another access-related issue is the charge for a capacity study that SoCalGas may be asked to prepare. Whenever someone plans to interconnect with, or to expand its interconnection with, SoCalGas, a capacity study is usually prepared by SoCalGas at the request of the party seeking the interconnection. The capacity study analyzes the cost of the equipment and facilities needed to provide a certain amount of capacity at an interconnection to the SoCalGas system. SoCalGas proposes that anyone requesting a capacity study pay for the actual cost of the study.

The producers propose in Section 4.06 of the Pro Forma Agreement that the requesting party pay a fixed cost of $3,600 for the capacity study. The producers' proposal is based on Resolution G-3295, which allows SoCalGas to charge $3600 for a capacity study. Prior to the adoption of this resolution in 2001, SoCalGas was allowed to charge $1,000 for the capacity study.

SoCalGas is opposed to the producers' proposal to fix the cost of the capacity study at $3,600. SoCalGas contends that this fixed sum does not bear any relationship to the actual cost of preparing such a study, which usually exceeds $3,600. If a fixed fee of $3,600 is adopted, SoCalGas contends that ratepayers could end up subsidizing the California producers at a cost of up to $25,000 per study. SoCalGas asserts that the producers should have to pay the actual cost for such a study, which the producer can deduct as a business expense. SoCalGas points out that a potential interstate gas supplier is required to pay the full cost of the capacity study.

The producers contend that the $3,600 fee was approved in Resolution G-3295, and that this amount was supported by a cost study. The producers contend that SoCalGas has not provided any study or presented any other data to justify an increase in the cost of the capacity study. In addition, SoCalGas' use of the cost of a capacity study for a potential LNG supplier is an unreasonable comparison to what California producers need. The average

California producer interconnection size is 7 MMcfd, while the LNG studies have examined interconnections that range in size from 400 MMcfd to 1.6 Bcf per day. The producers contend that the cost of the capacity study should remain at $3,600 unless SoCalGas can demonstrate that this amount fails to recover the cost of the capacity study.

If an actual cost approach is adopted, the producers recommend that SoCalGas be required to justify the cost with supporting data, and that SoCalGas be required to develop a plus or minus 20% estimate for the cost study. In addition, to ensure timely processing of the capacity study, the producers recommend that SoCalGas be required to adopt and comply with the milestone procedures in the Capacity Study Protocol, which is contained in Attachment F of Exhibit 40.

4.9.2. Discussion

We adopt SoCalGas' proposal that anyone requesting a capacity study should have to pay the actual cost of the study. This is an appropriate outcome for two reasons. First, the $3,600 fee that the producers recommend be used was adopted by the Commission on March 27, 2001, over six years ago. The $3,600 fee was based on a review of SoCalGas' actual costs of performing capacity studies during the period of 1998 to 1999. (*See* Ex. 38, Resolution G-3295, pp. 2-3.) Second, anyone requesting a capacity study should have to pay for the actual cost of such a study. SoCalGas and its ratepayers should not be required to subsidize the cost of the capacity study. Given the number of years since the fee in Resolution G-3295 was adopted, it would be unfair to cap the cost of all capacity studies at $3,600. Instead, anyone who requests that SoCalGas perform a capacity study should pay the actual cost of the study.

We also adopt the producers' recommendation that SoCalGas be required to justify the actual cost of the capacity study with supporting data, and that SoCalGas be required to develop a plus or minus 20% estimate for the cost of the capacity study. All of this should be done by SoCalGas in a timely manner. We do not adopt the producers' recommendation that the milestone procedures in the Capacity Study Protocol be adhered to. Instead of requiring SoCalGas to meet specific milestones, we believe that the milestones and scope of each capacity study should be left to SoCalGas and the requesting party to work out on a case-by-case basis.

4.10. Split Metering

4.10.1. Background and Positions

Another access issue is "split metering." Split metering occurs when gas produced by more than one producer, under more than one access agreement, flows through a single meter at an interconnection point on the SoCalGas system. Split metering eliminates the need for having to build duplicate and redundant metering and testing facilities for deliveries from a single gathering or processing facility. The split metering issue that needs to be resolved is when the producers should be required to provide the split meter allocation to SoCalGas.

SoCalGas' historical practice has allowed the producers 10 days following the close of each calendar month to allocate the actual deliveries into the SoCalGas system among the multiple access agreements. This allows the producers time to determine the split meter allocation based on the wells delivering to the access point, producer agreements, shrinkage due to processing, and other factors. In the event an OFO is called, the producers have one day to provide the allocation split.

SoCalGas originally proposed to eliminate split metering unless all the connected producers agree in advance on a predetermined allocation split that is to be applied to the volumes flowing through the single meter. SoCalGas altered its position in Exhibit 10, and is now willing to continue the use of split meters so long as the producers provide the split meter allocation one day after the flow day.

In Section 7.07 of the Pro Forma Agreement, the producers propose that the historical method of determining the split meter allocation be continued. The producers also propose that once an allocation split has been made, that each producer shall not be responsible for the imbalances of the other producers who flow gas through that meter under separate access agreements.

The producers oppose SoCalGas' original proposal as unreasonable and impracticable. The producers point out that in split meter situations, the producers cannot realistically agree to a predetermined split, either by volume or percentage, because the amount of gas delivered by each producer may vary depending upon reservoir and well fluctuations and each producer's gas production operations. The producers contend that split metering should be allowed so long as it does not compromise utility system safety and reliability or impose an undue hardship on the utility.

4.10.2. Discussion

We first address SoCalGas' original split metering proposal of providing the allocation split one day in advance of the flow day. SoCalGas has not provided a good reason for eliminating the use of split metering. Such a proposal may not be workable because gas production can vary from hour to hour. Providing an allocation split in advance of the flow day is likely to result in an allocation which is not accurate and may disadvantage one producer over another.

SoCalGas' alternate position is to allow the producers to provide the allocation split one day after the flow day. In deciding whether we should adopt SoCalGas' alternate position, maintain the current process, or shorten the time for providing an allocation split, we must weigh whether a shorter time for providing the split is warranted.

Split metering with the allocation occurring ten days after the end of the month appears to have operated successfully in the past. However, the current process may lead to a lag time of up to 40 days before the producers provide an allocation split to SoCalGas. SoCalGas' proposal to provide the allocation split one day after the flow day is unlikely to give the producers sufficient time to develop an accurate allocation. In order to develop an accurate allocation split for a non-OFO event, the producers shall have seven days after the flow day to provide SoCalGas with the allocation split. This seven-day period should give the producers sufficient time to review their production records and the factors that impact gas production, to develop an accurate allocation split. In the event of an OFO event, the producers shall provide SoCalGas with the allocation split one business day after the OFO event.

Regarding the responsibility for any resulting imbalance, cash out payments, and credit requirements relating to the other producer's gas delivered under the split meter process, we agree with the producers' position that these financial responsibilities shall belong to the producer who uses the split metering arrangement of the producer with the metering and testing equipment. The 14-day payback period for an imbalance resulting from a split meter shall begin the day after the date the imbalance is finalized by SoCalGas.

SoCalGas shall reflect the resolution of the split metering issues into the relevant documents.

4.11. Operations and Maintenance Expenses

4.11.1. Background and Positions

The producers are charged by SoCalGas for O&M fees relating to the metering equipment and facilities at the producer's interconnection with the SoCalGas system. The O&M fees are based on fixed and variable cost components. Fixed cost fees have been established for standard scheduled maintenance activities as described in Exhibit 7. Variable costs include any site specific costs incurred by SoCalGas that are not defined in the fixed cost category.

The producers seek to clarify or change five elements of SoCalGas' O&M fees.[30] First, the producers recommend that SoCalGas address on-site remediation in the most efficient manner possible so as to avoid multiple visits when a single visit could have repaired the problem.

Second, the producers recommend that SoCalGas provide a detailed invoice describing the specific O&M activities, including unplanned or unscheduled visits, so that the producer can verify these activities.

Third, the producers recommend there must be an agreement in place that provides if SoCalGas visits the site and performs O&M activities, that SoCalGas shall be responsible for the equipment repair or replacement in the event of any damage or malfunction that results from SoCalGas' O&M activities.

The fourth change to the O&M fees is that SoCalGas should verify that the variable O&M fees charged to a producer do not duplicate the costs embedded in the fixed O&M charge.

And fifth, the producers recommend that they retain the right to review and to propose reasonable changes to any SoCalGas proposal or request to upgrade, replace, or enhance existing equipment when the facilities are functioning reliably and are meeting industry standards.

4.11.2. Discussion

Turning to the producers' first recommendation that any O&M services should be remedied in the most efficient and cost effective manner so as to avoid multiple visits, the witness for SoCalGas testified he was not aware of any

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[30] The producers acknowledge at p. 30 of their reply brief that they will be responsible, through the term of the access agreement, for all of the costs required to construct, operate, and maintain all piping, valves, metering, control, odorization and gas quality measurement devices for interconnection to deliver gas into the SoCalGas system.

instances where the producers were unnecessarily invoiced for multiple site visits. SoCalGas also takes steps to ensure that equipment problems are remedied with as few visits as possible. When multiple visits are needed to remedy an equipment problem, SoCalGas reviews each visit to determine if the billing for multiple visits is warranted. Due to SoCalGas' procedures, no further action is required regarding this particular recommendation.

On the producers' recommendation that SoCalGas provide a detailed description of its O&M activities on the invoice, SoCalGas acknowledges that its billing practices could be improved to provide a more detailed description of its O&M activities. SoCalGas contends that this additional detail would require additional resources and add additional costs to the process. In order to allow the producers to substantiate SoCalGas' O&M activities, SoCalGas shall be required to provide on its invoice additional detail on the type of O&M activity that occurred.

We do not adopt the producers' recommendation that SoCalGas be held responsible for all equipment repair or replacement that may be needed in the event damage or malfunction occurs from O&M activities performed by SoCalGas. Such a requirement could predetermine SoCalGas' fault in advance of its O&M activities, and provide the producers with more leverage in resolving equipment failure problems. Instead of determining what caused the equipment failure, the producers' provision would shift the focus on whether SoCalGas' O&M activities were the cause of the equipment failure. For those reasons, we do not adopt this recommendation.

Regarding the producers' recommendation that SoCalGas should verify that the variable O&M fees should not duplicate the costs embedded in the fixed O&M charge, the witness for SoCalGas testified that the variable O&M fees did not duplicate any the fixed O&M costs. Since the producers have not been able to point to any specific instance, nothing further regarding the producers' recommendation needs to be pursued.

SoCalGas is receptive to the producers' recommendation that they should have the right to review and to propose reasonable changes to any SoCalGas proposal or request to upgrade, replace, or enhance existing equipment. SoCalGas points out that the producer is provided with a Collectible Work Agreement before any proposed changes are undertaken so that the producer is aware of the scope of work and the cost. We agree with SoCalGas that the producers can propose changes so long as the changes meet industry and SoCalGas' standards and applicable codes. SoCalGas' caveat is appropriate to ensure that the producers' proposed changes preserve the safety and reliability of the SoCalGas system.

4.12. Delivery Pressure

4.12.1. Background and Positions

Another access issue is delivery pressure. SoCalGas proposes to retain the right to modify the delivery pressure to ensure efficient system operation.

The producers are willing to respond to increases or decreases in delivery pressure so long as SoCalGas provides the producers with reasonable notice before the change in delivery pressure occurs. In Section 3.01 of the Pro Forma Agreement, the producers propose at least six months' notice before delivery pressure is decreased, and at least 12 months' notice before delivery pressure is increased.[31] The producers contend that adequate notice is needed because changes in delivery pressure (and increases in particular) require changes to air quality permits and possibly the installation of new equipment and facilities. The producers also propose that these delivery pressure conditions not apply in the event of force majeure or emergency situations on the utility system.

SoCalGas opposes the proposal of the producers because it would prevent SoCalGas from timely increasing or decreasing the delivery pressure, which is contrary to the safe operation of the system. SoCalGas contends that the Pro Forma Agreement's notice requirement for increasing the delivery pressure would reduce the producers' costs but would harm end use customers.

4.12.2. Discussion

We recognize that some time is needed to accommodate a change in the delivery pressure. However, the six and 12 months' notice that the producers propose is excessive, and will not allow SoCalGas to make timely changes to the gas pressure on its system. A shorter notice period will allow SoCalGas to maintain safe control over its system, while allowing some time for the producers to make changes to their production to accommodate the change in pressure.

SoCalGas shall be permitted make changes to the producers' effective gas delivery pressure requirements to enter its system so long as the change in

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[31] The producers also propose that if a producer can reasonably demonstrate an inability to obtain the necessary air quality permits or compression equipment or arrange an alternate disposition of the gas displaced by the proposed pressure increase within the 12 months, that SoCalGas not implement the increase in delivery pressure for a reasonable period not to exceed an additional six months.

pressure is needed to provide safe, reliable, cost-effective operation and services. Due to the time in which it may take a producer to obtain any necessary permit and equipment, SoCalGas shall provide the producers with 90 days' notice for an increase in producer's maximum delivery pressure requirement, and 45 days' notice for a decrease in minimum delivery pressure requirement. Changes in producer delivery pressure requirements resulting from force majeure events, emergency situations, or as a result of pipeline integrity inspections shall be exempt from these notification requirements. These notice periods balance the producers' concerns of obtaining the necessary permits or equipment or making modifications to their production, with SoCalGas' concern of making timely changes to its system so that the system can continue operating in a safe manner.

In the event the producer cannot comply with the change in delivery pressure within the notice period, SoCalGas should be informed ahead of time by the producer of the reason for the delay. If the reason for the delay in complying with the change in delivery pressure is reasonable, SoCalGas may extend the date for complying with the change in delivery pressure. If the reason for the delay is unreasonable, SoCalGas may take action to terminate access to its system. Any dispute concerning SoCalGas' action concerning the notice period may be brought to the Commission's attention pursuant to the access agreement.

4.13. Design and Build

4.13.1. Background and Positions

Another access issue is who should be allowed to build the facilities to the point of interconnection.

The producers contend that the terms and conditions for adding facilities to a point of interconnection differ among the producers. Some of the producer access agreements allow the producer to construct the facilities, while others do not. The producers point out that SoCalGas has conducted successful pilot projects with producers who have chosen the self-build route. The producers propose in Section 4.08 of the Pro Forma Agreement that they be allowed to self-build or use non-utility contractors to design or construct the facilities. The producers also recommend that to streamline implementation, the utility should issue a formal set of guidelines to ensure that the producers have notice of its requirements.

SoCalGas agrees that, under certain conditions, a producer should be allowed to design and build the facilities needed at a receipt point instead of SoCalGas.

4.13.2. Discussion

We will allow a producer to design and build the facilities that interconnect with SoCalGas' system, so long as the design of the facilities and the facilities are built to meet all applicable standards, specifications, and codes as may be required. The self-build option may save a producer time and money, while SoCalGas is assured that the facilities will be designed and built to meet all of its building and safety concerns.

SoCalGas is directed to include this self-build option into all applicable documents concerning the design and construction of facilities that interconnect to the SoCalGas system.

4.14. Indemnification

4.14.1. Background and Positions

The current provision in paragraph three of SoCalGas' Collectible Work Authorization (CWA) provides that the producer will indemnify, defend and hold harmless the gas company from and against any and all liability of every kind and nature for four broad categories of potential liability. The only exception to the producer's obligation is if the liability arises "from the sole negligence or willful misconduct of The Gas Company or its agents compared to any other person."[32]

The producers contend that this provision, as written, would relieve SoCalGas of any liability except if SoCalGas was 100% at fault. The producers contend that if SoCalGas was 95% negligent, but the producer's contractor was 5% negligent in the case of some injury, the producer would be required under SoCalGas' CWA to completely indemnify SoCalGas for any claims related to the injury. The producers are concerned that SoCalGas' indemnity provision is one-sided and will result in the producers having to indemnify SoCalGas from all harm flowing from the operation of the CWA except for SoCalGas' sole negligence. The producers propose to revise the CWA by removing the word "sole" from the indemnity provision in the CWA, and to use the revised version of the CWA in their Pro Forma Agreement.

The producers contend that the deletion of the word "sole" from the CWA is consistent with the indemnity provisions that are in the Chevron access agreement and the Pro Forma Agreement.[33] The producers contend that the

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[32] *See* the SoCalGas "Collectible Work Authorization" that is at the end of the generic "California Gas Producer Access Agreement" which is attached to Appendix C of Exhibit 6 in Response 6 of the "1st Data Request of the Southern California Generation Coalition, The Utility Reform Network, and the Office of Ratepayer Advocates to Southern California Gas Company," as described at Volume 3 of the Reporter's Transcript at pages 374-377. A copy of the agreement is also found in Appendix A to Attachment C of Exhibit 40 and Attachment D of Exhibit 40, and the producers' explanation of the proposed revision is found in Volume 3 of the Reporter's Transcript at pp. 399-400.

[33] The indemnity provisions in the Chevron access agreement and in the Pro Forma Agreement are found in Article X of each agreement in Attachments B and C to Exhibit 40.

Commission should use its oversight authority to prevent SoCalGas from retaining this provision as part of the CWA.

SoCalGas contends that if the Pro Forma Agreement is to be adopted, the current CWA with the word "sole" should be used.[34] SoCalGas contends that because the activities performed pursuant to the CWA are for the producer's sole economic benefit, it is only fair that all of the producer access costs, including all potential damages flowing from the CWA, except for those caused by SoCalGas' sole negligence, should be borne by the producer. SoCalGas contends it is unreasonable to request SoCalGas and its ratepayers to bear these risks and potential costs when they can be more properly foreseen and borne by the producer. SoCalGas contends that this indemnity provision is fair because under California's framework of comparative negligence, if SoCalGas is found to be one percent negligent in an action flowing from the CWA, and the primarily negligent party, whether or not a producer, would be found to be 99% negligent, but is judgment proof, SoCalGas would be liable for 100% of the damages.

As for SoCalGas' argument that SoCalGas would be liable for 100% of the damages, the producers contend that under California law, a plaintiff's contributory negligence reduces damages in proportion to his or her fault. This type of negligence is designed to compensate an injured party for all of the harm attributable to the wrongdoing of the defendant. When multiple defendants are involved, all are liable to the plaintiff for their respective shares of loss, even though some may have been less negligent than the plaintiff. Thus, the

[34] SoCalGas proposes to use the ISCUA, instead of the CWA, in its IA.

producers assert that SoCalGas' contention that it would be 100% liable for the damages is incorrect.

4.14.2. Discussion

Since we are adopting the IA as the template for the interconnection agreement, the issue of whether the word "sole" should be removed from the CWA is moot. The ISCUA is to replace the CWA that is currently in use. The indemnity language in Section 8 of the IA, and Section 3 of the ISCUA, is different from the indemnity language that appears in the CWA. Since no one has challenged the indemnity language in the ISCUA, the ISCUA shall remain unchanged.

4.15. Term of the IA and OBA

4.15.1. Background and Positions

Three issues have been raised regarding the term of the access agreement. The first is the length of the term for the access agreement. The second issue is whether SoCalGas can terminate the access agreement without cause. The third issue is after the initial term ends, how much notice must be given before the access agreement can be terminated.

SoCalGas proposes that the IA and OBA be for a term of 15 years, instead of the current six-months to one-year term. SoCalGas contends that this lengthier term will ensure full recovery of the interconnection costs over time, and will assure both parties of a long-term stable relationship.

The producers propose that the Pro Forma Agreement be for a term of 10 years. The producers contend that the ten year term accommodates the long term stability of gas production operations. Although the producers have proposed a 10-year initial term, the producers are willing to consider a 15-year term so long as the utility's right to terminate the agreement without clause is removed.

4.15.2. Discussion

We agree with the producers that the utility's right to terminate without cause should be removed from the access agreement. The retention of such a right would allow SoCalGas to terminate the access agreement for whatever reason, and could provide SoCalGas with leverage to extract concessions from a producer. Accordingly, SoCalGas' right to terminate the access agreement without cause shall be removed from the access agreement, and the term of the access agreement shall be 15 years.

On the issue about how much notice must be given to terminate the access agreement once the initial term expires, the producers propose six months while SoCalGas proposes 30 days. Given that the initial term of the access agreement is to be for 15 years, both the producer and SoCalGas can make adequate plans in advance of the expiration of the initial term. The six months notice of the producers is too lengthy, while SoCalGas' 30 days notice may not be enough. In order to give the producers sufficient time to make plans, a 60-day notice period shall be adopted. Accordingly, upon the expiration of the 15-year term of the access agreement, in order to terminate the access agreement, either party is to provide 60 days' notice to the other party.

The provision which provides for termination in the event of nonperformance shall remain as part of the access agreement.

With the adoption of today's decision, and as SoCalGas transitions the California producers to the access agreements, it may be appropriate for the replacement access agreements to incorporate terms and conditions that may be unique to each California producer and which is reflected in the existing agreements. SoCalGas and the producers should have the flexibility to negotiate mutually acceptable deviations to the IA and OBA through the filing on an advice letter.

SoCalGas should also hold an informal workshop in advance of the advice letter requesting approval of the IA and OBA, as discussed and adopted in this decision, so that SoCalGas and interested parties can discuss implementation details in an effort to streamline this process.

4.16. The Relationship to the Exxon Mobil Agreements

4.16.1. Background and Positions

Exxon Mobil has been producing natural gas offshore of Santa Barbara for over 20 years and delivering that gas to the interconnection point between the SoCalGas system and the treatment and processing facilities of its POPCO affiliate. According to Exxon Mobil, the delivery of that gas is made pursuant to the following agreements: the 1994 Settlement Agreement among Exxon,[35] SoCalGas, POPCO, and other SoCalGas affiliates; the May 1, 1999 Operational Agreement between Exxon and SoCalGas; and the May 1, 1999 Operational Agreement between POPCO and SoCalGas. In addition, in letters dated October 26, 1999 and November 3, 1999 between SoCalGas and Exxon and POPCO, a limit on the quantity of gas to be nominated and delivered by Exxon and POPCO under the May 1999 Operational Agreements was established.

Exxon Mobil contends that these agreements with SoCalGas contain the mutually agreed upon terms and conditions of access to the SoCalGas system. These terms and conditions include, but are not limited to, SoCalGas'

[35] Exxon was the predecessor of Exxon Mobil.

commitment to accept deliveries of Exxon Mobil's gas supplies, gas quality specifications for Exxon Mobil's deliveries, a point of receipt for Exxon Mobil's deliveries, a nomination/confirmation process, imbalance provisions, and an agreed upon maximum total daily quantity for Exxon Mobil and POPCO's nominations and deliveries to the SoCalGas system. Exxon Mobil contends that there is no specific term or termination date in its access agreements. Although the Operational Agreements contain a provision that allows unilateral termination by either of the parties upon the occurrence of specified events, Exxon Mobil contends that a decision in this proceeding will not trigger that termination provision nor invalidate or modify the gas quality specifications contained in those agreements.

SoCalGas has proposed to replace all of the California access agreements with the standardized IA and OBA. Exxon Mobil contends that if the IA and OBA are adopted, they will have no bearing on the existing rights and obligations between SoCalGas and Exxon Mobil because the Commission does not have jurisdiction over Exxon Mobil. Exxon Mobil agrees that the Commission has broad authority to regulate SoCalGas, but that authority does not allow the Commission to modify the terms of Exxon Mobil's contract with SoCalGas.

SoCalGas disagrees with Exxon Mobil. SoCalGas contends that the Commission has jurisdiction over the quality of gas that Exxon Mobil delivers into the SoCalGas system because that gas must meet the gas quality specifications contained in SoCalGas' rules.[36] SoCalGas contends that the

[36] SCGC supports SoCalGas' position that any gas specifications adopted in this proceeding apply to Exxon Mobil as well.

Commission's jurisdiction is derived from its authority over public utilities pursuant to Sections 5 and 6 of Article XII of the California Constitution and Section 700, and the terms contained in the agreements between SoCalGas and Exxon Mobil.

4.16.2. Discussion

In the August 30, 2005 scoping memo and ruling, we stated that one of the issues to be considered in this proceeding is whether the standardized access agreements proposed by SoCalGas should replace Exxon Mobil's existing agreements with SoCalGas. This is an issue in this proceeding because SoCalGas proposes to replace all of the access agreements with the California gas producers with the IA and OBA as the access agreements expire or are terminated.

Another related issue is whether the changes that we adopt in this decision regarding the gas quality specifications should apply to Exxon Mobil's agreements with SoCalGas.

Exxon Mobil contends that its existing agreements concerning the terms and conditions of access to the SoCalGas system cannot be replaced by the access and balancing agreements adopted in this proceeding unless Exxon Mobil agrees to replace its existing arrangements. Exxon Mobil contends that the existing agreements that it has with SoCalGas do not specify the length of the term for the agreements. In addition, Exxon Mobil's existing agreements with SoCalGas do not provide for replacement or modification of the agreement in the event of changes in Commission rules or policies.

We agree with Exxon Mobil that the existing access agreements that it has with SoCalGas cannot be replaced in their entirety with the access and balancing agreements that we adopt in today's decision unless Exxon Mobil agrees. Unlike the access agreements that SoCalGas has with the other California gas producers, the agreements with Exxon Mobil do not specify a term for the length of the agreements. Therefore, SoCalGas cannot replace the existing Exxon Mobil agreements with the new access and balancing agreements as they expire because there is no specified expiration date in the Exxon Mobil agreements.

In addition, there is no provision in the agreements that allows SoCalGas to unilaterally terminate the agreements. The only termination provision in Exxon Mobil's agreements with SoCalGas is found in the paragraph heading entitled "Reopener/Termination" in the May 1999 Operational Agreements. (*See* Ex. 41, Appendices B and C.) That provision states in part:

> "In the event that a change in either party's operating systems necessitates a modification in the above described operating procedures, such party shall notify the other party of such changes and shall submit, for such party's review and consideration, a proposed amendment to address such changes. If the parties are unable to agree on an amendment within sixty (60) days after the receipt by the second party of such proposed amendment, either party may terminate this Operational Agreement. Such termination shall be effective on the first day of the month immediately following such sixty (60) day period; provided that at least fifteen (15) days prior written notice of termination is given by the terminating party."

Unless this termination procedure is followed, Exxon Mobil's agreements with SoCalGas would continue in existence.

Based on our review of the contractual language in the agreements between Exxon Mobil and SoCalGas, we conclude that the existing agreements cannot be replaced in their entirety with the access and balancing agreements adopted in today's decision unless Exxon Mobil agrees to their replacement.

However, the issue of whether the gas quality specifications adopted in today's decision should apply to Exxon Mobil's agreements with SoCalGas is a different matter.[37] We are not persuaded by Exxon Mobil's argument that the Commission has no jurisdiction to impose gas quality specifications to Exxon Mobil's existing agreements with SoCalGas. First of all, this Commission has regulatory jurisdiction over the safety and integrity of SoCalGas' utility operations. Section 451 provides that each public utility is to "furnish and maintain such adequate, efficient, just, and reasonable service … as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public." In regulating a public utility, this Commission can determine the facilities, service and method of service in order to ensure that the service provided is adequate. (Pub. Util. Code § 761; Camp Meeker Water System, Inc. v. California Public Utilities Commission (1990) 51 Cal.3d 845, 862.) Thus, the gas quality specifications can be applied to Exxon Mobil's agreements with SoCalGas.

To answer the question of whether the adopted gas quality specifications should apply to Exxon Mobil, we need to determine whether Exxon Mobil's agreements with SoCalGas contain any gas quality specifications. As Exxon Mobil correctly points out, if the gas specifications are specified in an agreement, then those specifications will control over the gas quality specifications contained in SoCalGas' Rule 30.

Exxon Mobil takes the position that the gas quality specifications that it must meet are contained in Article XVII of the 1994 Settlement Agreement. The gas quality specifications in that article refer to those "set forth in Article VIII of

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[37] Since today's decision adopts only limited changes to the gas quality issues, proposals which the producers advocated for, the adopted changes may have little impact on the operations of Exxon Mobil.

the Resale Agreement as currently in force, which are being met by existing operations, and is not injurious to SoCalGas' pipelines or other facilities." (*See* Ex. 41, App. A, p. 10; Ex. 28, pp. 9-10.) Although the Resale Agreement was terminated as of October 2000, Exxon Mobil contends that the gas quality specifications set forth in the 1994 Settlement Agreement continue in effect.

SoCalGas takes the position that the gas quality specifications in Article VIII of the Resale Agreement no longer apply because Article XVII of the 1994 Settlement Agreement only guaranteed acceptance of the gas meeting the Article VIII specifications of the Resale Agreement until the end of 2003. SoCalGas contends that after 2003, the Commission can require Exxon Mobil's gas to meet the gas quality specifications set forth in SoCalGas' Rule 30.

Based on the arguments of the parties, and our review of the 1994 Settlement Agreement and the Resale Agreement, we find that the gas quality specifications referred to in Article XVII (which refer to the gas quality specifications in Article VIII of the Resale Agreement) control over the gas quality specifications in SoCalGas' Rule 30. However, the gas quality specifications in Article XVII of the 1994 Settlement Agreement also provide that in addition to meeting the gas quality specifications in the Resale Agreement, the gas cannot be "injurious to SoCalGas' pipelines or other facilities." In today's decision, we adopt a 24-hour enforcement interval for non-hydrogen sulfide constituents. Part of the reasoning for a 24-hour enforcement interval is to ensure that these constituents do not pose a safety problem to SoCalGas' transmission system. Since non-hydrogen sulfide constituents can be injurious to SoCalGas' pipeline system, this gas quality change affects Exxon Mobil's agreements.[38] To reflect this change, Exxon Mobil and SoCalGas can mutually agree to the change, or the Reopener/Termination procedure set forth in the May 1999 operational agreements can be used.

4.17. SCGC Proposal

4.17.1. Background and Positions

SoCalGas currently grants MDV rights to California gas producers that deliver gas into its transmission system. SoCalGas limits the MDV rights for access into the North Coastal system to the 150 MMcfd of firm take-away capacity. On the Line 85 system, SoCalGas limits the MDV rights to 163.8 MMcfd, which is close to the 160 MMcfd capacity of that system. In contrast, SoCalGas allows the interstate pipeline interconnections to have interconnection capacity which exceeds the take-away capacity. Although SoCalGas proposes to replace the current California producer access agreements with the IA and OBA, each producers' interconnection rights would remain the same.

Due to SoCalGas' plan to continue to limit the amount of interconnection capacity available to California gas producers on the North Coastal system and Line 85 to the take-away capacity of the system, SCGC proposes to adjust the MDV rights every two years to reflect the producer's actual usage of its interconnection with SoCalGas. Under SCGC's proposal, at the end of the two year period, SoCalGas would be required to modify the producer's rights based on historic delivery data, together with any relevant information provided

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[38] The adopted clarifications to SoCalGas' metering protocols do not appear to be capable of causing injury to SoCalGas' pipeline and therefore those clarifications do not apply to Exxon Mobil's agreements with SoCalGas.

by the producer regarding upcoming expansions or foreseeable changes in production levels. SCGC proposes this adjustment because under SoCalGas' proposal, the existing California producers would retain the same level of firm access rights without adjustment for actual usage. The existing producers could then sell their rights to the North Coastal and Line 85 systems at a profit, while the ratepayers, who paid for all of the costs associated with the transmission system, would receive no offsetting compensation.[39] According to SCGC, this places a new gas producer at a disadvantage because that producer would have to purchase an MDV right from an existing producer, or would have to pay to expand the capacity of the transmission system. The new producer could also use capacity on an interruptible basis, but that could result in pro rationing from time to time. SCGC contends that the North Coastal and Line 85 systems are underutilized, and this adjustment process will make this unused capacity available to new California production and prevent the California producers from hoarding the unused capacity. SCGC contends its proposal will result in a more equitable and efficient utilization of the access rights available to the California producers. SCGC asserts that this proposed adjustment is consistent with the policy in D.04-09-022 that new supplies should have equal and open access to the transmission system.

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[39] Under SoCalGas' proposed IA, an interconnecting producer would only be required to pay the cost of the facilities and equipment necessary to receive the producer's gas, plus an O&M fee for the operation and maintenance of the metering equipment and other related facilities at the interconnection point. SCGC contends that it is the ratepayers who bear all of the costs associated with the transmission lines to which the producers interconnect with.

The California producers oppose SCGC's proposal. The producers contend that SCGC has not presented a reasonable basis for its proposal to adjust the amount of MDV that producers can hold. The producers contend that SCGC's proposal would abrogate long standing access rights, and discourage long term exploration and investment by introducing the uncertainty of having a readjustment process every two years with no apparent benefit to anyone.

DRA supports SCGC's proposal to make the unused capacity available to new California gas production. DRA contends that SCGC's proposal is consistent with the Commission's open access policy of placing new supplies on an equal footing with existing supplies. DRA asserts that under SCGC's proposal, the producers would simply be giving up excess or unused MDV access rights, resulting in a more equitable and efficient utilization of the access rights available to California producers.

Exxon Mobil opposes SCGC's proposal because the proposal assumes that Exxon Mobil does not have a right to deliver gas to SoCalGas' system. Exxon Mobil contends that contrary to SCGC's assumption, it does have the right to deliver gas into the SoCalGas system pursuant to the 1994 Settlement Agreement with SoCalGas. Exxon Mobil also contends that in order to apply SCGC's biennial adjustment proposal to Exxon Mobil, that would require a modification of the operational agreement between SoCalGas and Exxon Mobil. Exxon Mobil asserts, however, that a Commission decision in this proceeding will not trigger the provision in the operational agreement that allows a modification to occur.

SoCalGas agrees with SCGC that modifying a California producer's MDV based on historic delivery could lead to a more efficient utilization of access to

SoCalGas' system. However, SoCalGas believes that the issue of access rights should be addressed in A.04-12-004, instead of in this proceeding.

4.17.2. Discussion

We have reviewed SCGC's proposal in light of our adoption of a FAR system for SoCalGas and SDG&E in D.06-12-031. As noted earlier, the adoption of the FAR system in D.06-12-031 affects the various access proposals that the parties advocated in this proceeding.

The adopted FAR system allows the California producers, among others, to obtain a set aside of capacity in Step 1 of the FAR open season process. The set aside of capacity for the California producers is to be based on the "individual producer's peak month production delivered into the SoCalGas system over the most recent three-year period." (D.06-12-031, pp. 99-100.) The FAR open season process is to occur every three years, so the Step 1 set aside for the California producers will be adjusted every three years and will be based on monthly production over the most recent three-year period.

As part of the adopted FAR system, we agreed that the FAR set asides should be used for their intended purpose, instead of being traded or sold. To monitor this kind of activity, we directed SoCalGas and SDG&E to include in the FAR review process their observations of the selling or trading of set aside capacity.

The adoption of the three year open season process, and the monitoring of the selling and trading of set aside capacity, is similar to SCGC's proposal to make the unused capacity available to others. The three-year open season process will adjust the set aside capacity every three years based on the gas production delivered into the SoCalGas system. Due to the adoption of the

Step 1 FAR open season process, SCGC's proposal to adjust the MDV rights every two years is not adopted.

Thus, to the extent there are MDV provisions in the IA, OBA, and Pro Forma Agreement which addresses access by the California producers to the transmission system of SoCalGas, those provisions will cease to be effective upon the implementation of D.06-12-031. Once D.06-12-031 is implemented, the MDV references in the IA, OBA, and Pro Forma Agreement will be replaced by the term Interconnect Capacity.

5. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 and Rule 14.3 of the Rules of Practice and Procedure. Opening and reply comments on the proposed decision were filed. Those comments have been reviewed and considered, and appropriate changes have been made to the decision.

6. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and John S. Wong is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. This proceeding was initiated due to concerns over the terms and conditions of access to the SoCalGas transmission system by the producers of natural gas in California.

2. SoCalGas proposes the adoption of its OBA and IA, while the California producers propose the adoption of the Pro Forma Agreement.

3. Most of the current access agreements with the California producers can be terminated on six to 18 months' notice.

4. Since gas balancing and the interconnection procedures are two separate activities, the IA and the OBA are better templates to reflect the resolution of the issues decided in this decision.

5. D.06-12-031 provides the California producers who are connected to the SoCalGas and SDG&E systems with a set-aside of capacity in step one of the FAR open season process.

6. Gas balancing keeps track of the amount of gas that is scheduled by the gas supplier and what is actually delivered into the transmission system, and in the event of an under delivery or over delivery of gas monetary penalties may apply.

7. Gas balancing is needed to ensure the reliability and safe operation of the gas transmission system.

8. We recognize that the operations of the California gas producers are different from the operations of the interstate gas suppliers, and that SoCalGas has allowed the California producers to balance on a monthly basis.

9. The differences between the operations of the California producers and the interstate gas suppliers, our recognition in D.06-09-039 that tighter balancing provisions are needed, and the statutory provisions to encourage the production of California gas are all factors which we have considered and balanced in deciding on what the appropriate balancing requirements should be for the California producers.

10. Due to the shut in effect that flow controls could have on gas and oil production, SoCalGas' proposal that it have the right to install flow controls on a producer is not adopted, but the recommendation to impose SoCalGas' Rule 30 on the California producers on OFO days is adopted.

11. Due to the size differences and the production fluctuations of the California producers, the "uniform hourly basis" language in section 2.2 of the OBA should be replaced by a phrase based upon section 3.02 of the Pro Forma Agreement.

12. In deciding how frequently the gas quality of the California produced gas should be tested, we balance the interests of the safety and integrity of the transmission system with the statutory goal of encouraging the increased production of California gas.

13. Due to the danger of flame lifting and flame out, stricter monitoring of the gas of those California producers who are directly connected to SoCalGas' distribution main is needed.

14. If the CARB standard is imposed on gas that uses SoCalGas' interruptible transportation, more costs will be incurred by the California producers, which will discourage the production of California gas.

15. SoCalGas did not oppose the producers' proposal to make five changes to SoCalGas' metering protocols.

16. SoCalGas' credit language in section 10(g) of the IA is unclear as to what the California producer must do to demonstrate creditworthiness.

17. The adopted credit language requires a producer to provide additional credit support if the producer experienced financial problems in the past, or whenever financial or operational changes affect a producer.

18. The various adopted credit options will allow producers of all sizes to provide the necessary information to allow SoCalGas to evaluate the creditworthiness of a producer.

19. A security deposit that meets the criteria as suggested by the producers may be used as a guarantee of the producer's performance.

20. Any disagreement between a California producer and SoCalGas concerning the terms and conditions of access to the SoCalGas transmission system are better addressed by this Commission rather than by private arbitration.

21. Given the number of years since the capacity study fee of $3,600 was adopted and because of the costs of such studies, a person requesting such a study should pay the actual cost of the study.

22. SoCalGas has not provided a good reason for eliminating the use of split metering.

23. Except in the event of an OFO day, a seven-day period provides the producers with sufficient time for to review their production records and other factors in order to provide SoCalGas with an accurate allocation split.

24. The adopted changes and clarifications to the O&M fees are appropriate given the evidence that was presented.

25. We recognize that some time is needed to accommodate an increase or decrease in delivery pressure, but the notice requirement proposed by the producers is excessive.

26. The adopted notice periods for a change in delivery pressure balance the producers' operational concerns with SoCalGas' concern of making timely changes to its system so that the system can continue operating in a safe manner.

27. A self-build option is appropriate so long as the facilities are designed and built to meet all of SoCalGas' building and safety concerns.

28. The adopted changes to the term and termination provisions of the IA and OBA are appropriate under the circumstances.

29. Due to the adoption of the three-year open season process in D.06-12-031, the set aside capacity for the California producers will be adjusted every three years based on the producer's gas production over the three-year period.

Conclusions of Law

1. The IA and OBA of SoCalGas should be adopted as the templates for establishing the terms and conditions of access by the California gas producers to the SoCalGas transmission system, subject to the modifications and clarifications set forth in this decision.

2. To the extent there are provisions in the IA and OBA which address access by the California producers to the transmission system of SoCalGas, those provisions would be removed upon implementation of D.06-12-031 and any reference to an MDV will be replaced by describing that quantity as an Interconnect Capacity.

3. Since the ISCUA will replace the CWA as part of the adopted IA, the issue of whether the CWA should be revised as suggested by the producers is moot.

4. SoCalGas and the producers should have the flexibility to negotiate mutually acceptable deviations to the IA and OBA, as adopted in this decision, through the filing on an advice letter.

5. Exxon Mobil's existing agreements concerning the terms and conditions of access to the SoCalGas system cannot be replaced by the adopted access and balancing agreements unless Exxon Mobil agrees to their replacement.

6. The gas quality specifications that have been adopted to ensure that safety problems do not occur on the SoCalGas system can be applied to Exxon Mobil because of the 1994 Settlement Agreement's provision that the gas cannot be injurious to SoCalGas' pipelines or other facilities and pursuant to the

Commission's regulatory jurisdiction over the safety and integrity of SoCalGas' utility operations.

7. All of the adopted modifications and clarifications to the IA and OBA, as discussed in this decision, should be incorporated and reflected by SoCalGas in the IA and OBA templates.

8. SoCalGas should file a Tier 3 advice letter seeking approval of an IA and OBA which incorporates and reflects the resolution of the issues addressed in today's decision, and SoCalGas should convene an informal workshop in advance of the advice letter filing.

ORDER

IT IS ORDERED that:

1. As modified and clarified in this decision, the Interconnection Agreement and the Operational Balancing Agreement proposed for adoption by the Southern California Gas Company (SoCalGas) in this proceeding, and the exhibits to those two agreements, are adopted as the templates for the access agreements that set forth the terms and conditions of access to the SoCalGas transmission system for the producers of natural gas located in California.

2. Within 30 days of the effective date of this decision, SoCalGas shall convene an informal workshop with interested parties to discuss the implementation details, followed by the filing of a Tier 3 advice letter pursuant to General Order 96-B within 60 days of the effective date of this decision.

   a. The advice letter shall request approval of the Interconnection Agreement and Operational Balancing Agreement, which shall incorporate and reflect all of the adopted modifications and clarifications discussed in this decision.

b. Any interested party may protest the advice letter filing as provided for in General Order 96-B.

c. No additional customer notice need be provided pursuant to General Rule 4.2 of General Order 96-B.

3. Upon the approval of the advice letter filing, SoCalGas is authorized to replace the current access agreements with the California gas producers, with the exception of the agreements with Exxon Mobil Corporation and its affiliate, as the access agreements expire or are terminated pursuant to the agreements.

a. SoCalGas and the California producers may negotiate mutually acceptable deviations to the adopted Interconnection Agreement and Operational Balancing Agreement through the filing on an advice letter.

4. Application 04-08-018 is closed.

This order is effective today.

Dated August 23, 2007, at San Francisco, California.

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