JRD/sid 11/3/2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SOUTHERN CALIFORNIA GAS COMPANY In Compliance with Resolution G-3334 For a System of Firm, Tradable Receipt Point Capacity Rights and Related Provisions. (U 904 G)	Application 03-06-040 (Filed June 30, 2003)

ADMINISTRATIVE LAW JUDGE'S RULING DENYING IN PART MOTIONS TO STRIKE

Summary

This ruling addresses three motions to strike: (1) the October 16, 2003, motion of El Paso Natural Gas Company (El Paso) and Mohave Pipeline Company (Mohave), and (2) the October 20, 2003, motion of the Southern California Company (SoCalGas), and the October 30, 2003 motion of SoCalGas.

I. El Paso/Mohave October 16, 2003 Motion to Strike

In its motion, El Paso and Mohave move to strike questions four through seven of the prepared testimony of Kirk T. Morgan on behalf of Kern River Gas Transmission Company (Kern) on the grounds that testimony is beyond the scope of this proceeding. In support of its position, El Paso and Mohave cite the September 29, 2003 Scoping Memo and Ruling of the Assigned Commissioner (Scoping Memo) which limited the scope of this proceeding to SoCalGas compliance case. On October 20, 2003, Transwestern Pipeline Company (Transwestern) filed a response in agreement and support of the motion to strike. Transwestern also asserts that litigation of the issues raised by the subject testimony would take substantial time and delay implementation of Decision (D.) 01-12-018.

In SoCalGas' motion to strike dated October 20, 2003, SoCalGas also moves to strike the testimony of Morgan. SoCalGas observes that Morgan admits that the purpose of his testimony is to "expand the scope of the proceeding." SoCalGas also asserts that it and other parties should also be allowed to propose modifications to the CSA, including consideration of SoCalGas' "Preferred Case" if the testimony of Morgan is not stricken.

Kern submitted a response on October 29, 2003, in which it admits that Morgan's testimony is outside the parameters of implementation of the CSA. However, Kern relies on a latter Assigned Commissioner Ruling (ACR) dated October 20, 2003, which stated that the Assigned Commissioner would consider expanding the scope of this proceeding and would also consider modifications to the CSA that are uncontested and sponsored by all parties. Kern argues that the issues raised by Morgan can be litigated within the existing schedule and provide immediate benefit to California consumers.

It is uncontested that the Morgan's testimony is outside the scope of this proceeding as defined in the September 29 Scoping Memo. The issue raised by Kern is whether the subsequent October 20 ACR permits testimony that goes beyond addressing the compliance case. Kern offers a reasonable interpretation of the language its cites in the October 20 ACR. However, I have discussed the wording of October 20 ACR with the Assigned Commissioner. Concerning testimony that makes changes to the CSA, the second ruling paragraph in the October 20 ACR is controlling. The ACR's second ruling paragraph Ruled that "prior to commencement of hearings SoCalGas may submit for Commissioner consideration changes to the CSA that are uncontested." No ruling paragraph appears supporting Kern's position. Moreover, as SoCalGas' response indicates, it and other parties would demand and would be entitled as a matter of fairness to propose competing proposals, like SoCalGas' "Preferred Case," which in turn may significantly delay this proceeding. Consequently, the motion of El Paso and Mohave to strike the testimony of Kern should be granted since the testimony is outside the scope of this proceeding as articulated in the September 29 Scoping Memo.[1]

II. SoCalGas October 20, 2003 Motion to Strike

A. Kern River Testimony

SoCalGas' motion to strike the testimony of Kern River as discussed above is granted.

B. ExxonMobil

SoCalGas contends that the testimony of William E. Nicas on behalf of ExxonMobil Gas and Power Marketing Company (EM) should be stricken because it proposes to modify the CSA. EM responds that Nicas' testimony responds directly to the SoCalGas compliance case by identifying an inconsistency between the language of the CSA and the language of SoCalGas' proposed compliance tariffs.

EM has raised a factual issue concerning the interpretation and implementation of the CSA. EM should be entitled to an opportunity at hearing to show that an inconsistency exists which requires resolution in this

[1] It should be noted that at page 2 of Appendix B of the CSA, the signatories anticipated and addressed issues concerning new or expanded interconnections.

implementation proceeding. Consequently, the motion of SoCalGas to strike the testimony of Nicas should be denied.

C. Coral Energy

SoCalGas moves to strike testimony (page 2, line 13) concerning statements expressing opposition to the CSA by Amy Gold on behalf of Coral Energy Resources L.P. (Coral). In addition, SoCalGas moves to strike language opposing imposition of separate balancing for the core and noncore customer classes (page 8, lines 12-13). In response, Coral states that the statements in question represent introductory remarks intended to place in context Coral’s objections to specific provisions of the CSA.

Based on Coral’s representation that the language in question (page 2, line 13 and page 8, lines 12-13) is only intended as introductory remarks and not specific proposals, I agree with Coral that the language is appropriate to provide a context for its testimony. Consequently, the motion of SoCalGas to strike the testimony of Gold at page 2, line 13 and page 8, lines 12-13 should be denied.

SoCalGas objects to language at page 4, lines 5-13, of Gold’s testimony. SoCalGas asserts that Coral proposes to modify the CSA by proposing that SoCalGas refund any reservation charges or volumetric charges it receives during a diversion event. Coral responds that the CSA is silent on the above implementation issue. However, Coral contends that SoCalGas treatment of backbone transmission charges during a diversion event (Rule 23(e), sheet 6, paragraph 4) is not found in the CSA. Coral believes that SoCalGas interpretation of the CSA on this issue is in error and should be corrected.

Given Coral’s allegation that the CSA is silent on the issue of reservation charges or volumetric charges SoCalGas receives during a diversion event, Coral should be permitted to explore SoCalGas’ treatment of the issue in its tariffs and offer an alternative approach. Consequently, the motion of SoCalGas to strike language at page 4, lines 5-13 of Gold's testimony should be denied.

SoCalGas objects to language at page 6, lines 5-7 of Gold's testimony in which Gold states that "prompt notification must be a precondition for the imposition of any penalty for the unauthorized use of involuntary diverted supply." SoCalGas asserts that Coral proposes to modify the CSA by imposing a new "precondition" to the imposition of penalties for unauthorized use of gas. Coral agrees that the CSA does not state how or under what procedures SoCalGas must notify balancing entities in the event of a supply diversion. Coral contends that notification provisions are implementation details.

Coral raises an issue concerning what constitutes an implementation detail versus a change to the CSA. The CSA did not contain tariffs for implementing the CSA, consequently SoCalGas was left the task of proposing tariffs to implement the CSA. The issue raised by Coral is factual in nature. Coral should be given an opportunity to demonstrate whether its notification requirement proposal constitutes an implementation detail and if such burden is met, SoCalGas should have an opportunity to argue that Coral's proposal is really a change to the CSA. Accordingly, the motion of SoCalGas to strike language at page 6, lines 5-7, of Gold's testimony should be denied.

SoCalGas moves to strike the language from page 8, line 13 to page 9, line 15, of Gold's testimony in which Gold addresses SoCalGas' actions in Stage 1 OFOs. SoCalGas contends that the obligations imposed by Coral's proposed tariff language is unsupported by the CSA or D.01-12-018. Coral agrees with SoCalGas that the CSA does not include the provisions proposed by Coral. Instead, Coral argues that the scope of the proceeding should be expanded to "flesh-out SoCalGas' obligation to minimize the number of OFOs."

Coral's proposals concerning SoCalGas' actions in Stage 1 OFOs go beyond mere implementation details and impose new obligations not contained in the CSA. Consequently, the motion of SoCalGas to strike language at page 8, line 13 to page 9, line 15, of Gold's testimony should be granted.

D. Edison

SoCalGas moves to strike testimony of Michael S. Alexander on behalf of Southern California Edison Company (Edison) concerning reservations about the CSA and need for changes (page 5, lines 12-15 and page 5, line 17 to page 6, line 3). SoCalGas observes that Edison does not proceed to propose any changes to the CSA, but nonetheless SoCalGas contends that it is improper to express an opinion as to whether the CSA should be changed.

Edison responds that the testimony in question provides an explanation as to the limited scope of Alexander's testimony. Edison states that the questions and answers in dispute do not propose any specific changes or modifications to D.01-12-048.

I agree with Edison that it should be allowed to provide an explanation concerning the scope of its testimony. Based on Edison's representation that the testimony in question is not intended to propose any changes or modifications to the CSA, the motion of SoCalGas to strike Edison's testimony at page 5, lines 12-15 and page 5, line 17 to page 6, line 3 should be denied.

SoCalGas also moves to strike the testimony of Alexander at page 17, lines 9-14, concerning Edison's request for an "exemption from receipt point concentration limits" adopted in D.01-12-018. SoCalGas also objects to Edison's alternative proposal for "set-aside rights." SoCalGas argues that the CSA as adopted in D.01-12-018 neither exempted or Edison from market concentration limits nor granted Edison "set-aside rights" and consequently Edison's proposal constitutes a modification of the CSA and is outside the scope of this proceeding.

Edison responds that an internal consistency in D.01-12-038 exists that the testimony in question resolves. Edison asserts that its purported "right" to bid may be made illusory due to market concentration limits. Edison argues that its testimony should not be stricken because the testimony in question advances the Commission's ability to fully implement D.01-12-018.

I tend to agree with SoCalGas' position that the testimony in question is outside the scope of this proceeding since it purports to modify the CSA. However, in erring on the side of caution, Edison should be allowed an opportunity to demonstrate at hearing that an inconsistency exists requiring Commission review in this implementation proceeding. Therefore, the motion of SoCalGas to strike Edison's testimony at page 17, lines 9-14 should be denied.

E. Indicated Producers

SoCalGas moves to strike testimony of Jean Marie Zaiontz on behalf of Indicated Producers concerning a statement about reserving the right to amend her testimony if a stipulation is not agreed to concerning issues identified as resolved in SoCalGas' report on the August 18, 2003, meet and confer. SoCalGas argues that it would be prejudicial to it and other parties to allow Indicated Producers to file such additional testimony. Indicated Producers did not file a response.

The request of SoCalGas is premature. Although, SoCalGas makes a compelling argument for why additional testimony should not be allowed, there may a compelling reason for considering the admission of additional testimony. SoCalGas' motion should be made if and when any such additional testimony is filed. Accordingly, the motion of SoCalGas to strike testimony of Indicated Producers should be denied.

III. SoCalGas October 30, 2003 Motion to Strike

In its motion, SoCalGas moves to strike the entirety of the rebuttal testimony of Andrew Safir on behalf of Marathon Oil Company (Marathon) served on October 29, 2003. SoCalGas moves to strike the testimony of Safir on the ground that the testimony is not "rebuttal" to either the direct testimony or intervenor testimony.

I have reviewed the testimony of Marathon and agree with SoCalGas that it is not rebuttal testimony or within the scope of this proceeding and should thus be excluded. The October 30, 2003 motion of SoCalGas to strike the October 29 testimony of Marathon should be granted.

IT IS RULED that:

1. The October 20, 2003 motion of Southern California Company (SoCalGas) and the October 16, 2003 joint motion of El Paso Natural Gas Company and Mohave Pipeline Company to strike the testimony of Kern River Gas Transmission Company (Kern) are granted.

2. The October 20, 2003 motion of SoCalGas to strike the testimony of William E. Nicas on behalf of ExxonMobil Gas and Power Marketing Company is denied.

3. The October 20, 2003 motion of SoCalGas to strike the testimony of Amy Gold on behalf of Coral Energy Resources L.P. (Coral) at page 2, line 13; page 8, lines 12-13; page 4, lines 5-13; and page 6, lines 5-7 is denied.

4. The October 20, 2003 motion of SoCalGas to strike the testimony of Amy Gold on behalf of Coral at page 8, line 13 to page 9, line 15, is granted.

5. The October 20, 2003 motion of SoCalGas to strike the testimony of Michael S. Alexander on behalf of Southern California Edison Company at page 5, lines 12-15; page 5, line 17 to page 6, line 3; and page 17, lines 9-14 is denied.

6. The October 20, 2003 motion of SoCalGas to strike the testimony of Jean Marie Zaiontz on behalf of Indicated Producers is denied.

7. The October 30, 2003 motion of SoCalGas to strike the testimony of Marathon Oil Company is granted.

Dated November 3, 2003, at San Francisco, California.

/s/ JOSEPH R. DEULLOA
Joseph R. DeUlloa
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Denying in Part Motions to Strike on all parties of record in this proceeding or their attorneys of record. In addition, service was also performed by electronic mail.

Dated November 3, 2003, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.