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ORIGINAL

Decision No. 82414

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SOUTHERN CALIFORNIA GAS COMPANY for (a) A General Increase in Its Gas Rates, and (b) For Authority to Include a Purchased Gas Adjustment Provision in Its Tariffs.	Application No. 53797 (Filed January 19, 1973)

(List of Appearances in Appendix A)

OPINION ON MOTIONS RELATED TO POSSIBLE CHANGES IN GAS DELIVERIES TO CERTAIN CUSTOMERS OF SOUTHERN CALIFORNIA GAS COMPANY

During the course of hearings on this application Southern California Edison Company (Edison) filed a motion on September 28, 1973[1/] requesting the Commission to consider evidence relating to alternate arrangements for deliveries of gas by Southern California Gas Company (SoCal) to its retail steam electric customers, to San Diego Gas & Electric Company (SDG&E) for use in SDG&E's steam plants, and to SoCal's A-block customers. Responses to the Edison motion were filed by several parties.

A motion was filed by SDG&E requesting that if consideration of reallocation of gas supplies to its detriment was to be made that Edison supply detailed information concerning all of its gas supplies of energy from 1960 through 1972 recorded, 1973

1/ SoCal's G-58 customers had previously indicated a desire to have deliveries for SDG&E's steam plants governed by parity rather than the floor authorized in Decision No. 80430. The Edison motion, a more detailed exposition of an earlier verbal request and written motion, was made in response to a request by Examiner Levander to advise the parties fully of the relief sought.

and 1974 estimated, together with all assumptions underlying its 1974 gas requirements estimate.

The city of San Diego (San Diego) filed a motion to require an environmental impact report in the event that the Commission considers the reallocation of gas supplies to be to the detriment of SDG&E, because such a reallocation will result in the substitution of fuel oil for gas in SDG&E's generating stations, which would have an adverse effect upon the San Diego area environment.

SDG&E filed a motion requesting that Edison be required to sustain the burden of proof on all contested issues.

Written responses were filed by various parties to the several motions and rebuttal replies were filed. Examiner Levander granted Edison's motion in part and SDG&E filed a petition requesting this Commission to review the ruling. The details of the ruling are set forth in this opinion. It is appropriate for us to review the various arguments presented by the parties and to rule upon the motions and petition.

Edison Motion

Edison moved that SoCal be directed to supply evidence in this proceeding showing the anticipated gas supplies, gas requirements, and levels of gas service for 1973 and for SoCal's test year 1974 under hot-year, average-year, and cold-year conditions for each of the retail electric generating customers (G-58) of SoCal, for the steam plants of SDG&E, and for the A-block regular interruptible customers supplied by SoCal to the extent that such A-block customers utilize the gas for similar end uses[2/] under

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2/ Edison's original written motion did not limit the A-block utilization for similar end uses (i.e., uses with the same Federal Power Commission (FPC) curtailment priority).

the following separate assumptions of fact:

(a) SoCal's annual deliveries to SDG&E were not less than 221,000 Mcf per day times the number of days per year under existing curtailment priorities.

(b) SoCal's deliveries would result in approximately equal percentages of satisfaction of the requirements of its G-58 customers and of the supply to SDG&E's steam plants.

(c) SoCal's deliveries would result in approximately equal levels of satisfaction of the A and S-1 requirements of each of its G-58 customers, of SDG&E's steam plants, and of its A-block regular interruptible customers.

Edison stated that such evidence would enable the Commission to be in a position to establish just, reasonable, and nondiscriminatory rates and conditions of service, and to correct the unreasonable differences in rates and service which this evidence would disclose.

Edison's motion relied in part on excerpts from Decision No. 80430 dated August 29, 1972 in Application No. 52696 and upon Decision No. 81802 dated August 28, 1973 in Case No. 9474. Decision No. 81802 indicates that the issues of making a determination of parity relationships between interruptible customers or if the floor level concept should be retained may be properly raised in this proceeding. Edison contends that:

(a) Conditions of inadequate gas supply referred to in Decision No. 80430 have significantly changed and further deteriorated because of unanticipated actions of the Federal Power Commission as well as accelerated deficiencies in the nation's supplies in relation to demand (e.g. projected deliveries to G-58 customers and to that portion of G-61 deliveries to SDG&E used by SDG&E for its utilities electric generation for 1974 would be 82.5 billion cubic feet of gas resulting in a 12.7 percent level of service as compared to 300.8 billion cubic feet resulting in a 59.1 percent level of service for 1972);

(b) SoCal still believes that equitable levels of supply to its interruptible customers continues to be an important issue and that SoCal still supports a parity concept for electric generation service;

(c) To avoid unjust discrimination in rates or service there should be an examination in depth of the relative levels of service of customer groups.

Edison supported consideration of the parity issues in separate proceedings after evidence had been taken on SoCal's rate case in chief if the parties could agree to a procedure in which the nonprevailing party or parties would pay indemnification to the prevailing party for costs incurred substituting fuel oil for any excess of gas deliveries based upon current priority arrangements as opposed to delivery made under the authorized basis in the decision on Phase II proceedings.

The Department of Water and Power of the city of Los Angeles (DWP) supports the Edison motion. DWP pointed out that:

(a) The price of alternate fuels have skyrocketed;

(b) All major utilities in the State with the exception of SDG&E are presently unable to contract for major portions of their low sulfur fuel oil supplies to meet their generating requirements for the years 1974, 1975, and 1976 (citing Decision No. 81921 in Case No. 9581 and particularly Appendix A attached thereto).

SoCal did not object to supplying the data requested by Edison. However, it requested that the Commission issue an order in its rate case in chief, and that the parity gas allocation issues be handled in a separate set of hearings to prevent delay and loss of earnings to SoCal. SoCal pointed out that:

(a) Placing the requirements of its A-block customers into a pool with the requirements of electric generation customers would be a major departure from the segregation among interruptible customers authorized in Decision No. 62260 dated July 11, 1961 in Case No. 5924;

(b) In view of the present and prospective curtailment rules of the FPC, any reallocation or adjustment of levels of service between A-block regular interruptible and electric generation customers could possibly have a negative impact on the volumes of gas available to SoCal from its out-of-state suppliers, depending upon which A-block interruptible customers are to be included as utilizing the gas for similar end uses.

SoCal opposes the indemnification concept proposed by Edison because rates and levels of service authorized in a decision are set prospectively and not retroactively and Section 734 of the Public Utilities Code authorizes the Commission to order reparations, but in limited and specific circumstances which are not applicable in this proceeding.

The California Manufacturers Association (CMA) stated that:

(a) The information requested of SoCal would be insufficient to effect a reallocation of gas as requested by Edison;

(b) The Edison motion was not made on a timely basis;

(c) A-block customers relied on SoCal's estimates in securing alternate fuel supplies;

(d) The A-block customers' problems in securing alternate fuel supplies with an estimated 38 percent level of service would increase if the Edison motion was granted. Oil refinery output would be reduced as a consequence of adopting the Edison proposal;

(e) Rates and levels of service are inseparable and cannot be modified in the time span contemplated by the Edison proposals. Therefore CMA opposed phasing the rate and supply issues;

(f) Edison should bear the burden of proof as to allegedly discriminatory treatment and as to the effect of its proposals on the environment, (even though Edison's proposal is not a project within the meaning of the California Environmental Quality Act or of Rule 17.1 of the Commission's Rules of Practice and Procedure);

(g) Edison should make a full disclosure of all of its fuel and energy resources;

(h) Edison should show the comparative availability and cost of alternate fuels to A-block customers and their ability to absorb such cost increases;

(i) There is no basis for Edison's idemnification proposals.

SDG&E objected to the granting of the Edison motion because:

(a) The parity issue had been decided as to SDG&E in Decision No. 80430 and there are no new matters of substance alleged by Edison not previously considered by the Commission which would warrant reopening and reconsideration of the Commission's earlier determination;

(b) San Diego was a firm wholesale customer and its level of service should not be equated with SoCal retail interruptible and steam plant customers;

(c) In Decision No. 80430 the only matter remaining to be considered on the subject of parity related to the A-block regular interruptible customers and Edison's request for evidence goes beyond what the Commission wanted to be considered in this proceeding;

(d) Edison should be required to make its own evidentiary presentation on relevant issues in this proceeding through its own witnesses;

(e) Phasing of the proceeding would be prejudicial to SoCal's customers if the Commission is going to consider a reallocation of SoCal's gas supply between its firm and interruptible customers. A new design of rates would be required after the initial decision if the hearings were phased.

(f) SDG&E and its customers should not be required to idemnify Edison on a basis of complying with prior orders of this Commission, or on any other basis.

SDG&E states that it paid and continues to pay substantial demand charges pursuant to its gas service agreement with SoCal in order to assure itself of the right to make such demands for volumes of gas; that the G-58 customers have no demand rights; and that it has no intention of reimbursing or subsidizing Edison or its customers for fuel oil or gas costs which result from Edison's failure to contract in advance for necessary oil and gas supplies.

SDG&E also requests a denial of Edison's motion in full or a denial of the Edison request to reopen the parity issue as to SDG&E which would affect the floor level of its contract; that if the Commission grants the motion of Edison, that it be granted only as to the effect of parity restrictions on the A-block customers in light of the discussion in Decision No. 80430; that the Commission postpone issuance of any order granting the Edison motion in whole or in part pending resolution of its petition for rehearing of Decision No. 81802[3/]; that if the Edison motion is granted with respect to SDG&E that Edison be required to provide the evidentiary record with the information contained in SDG&E's motion of October 12, 1973.

The Commission staff stated that Edison based its motion on the language of Decision No. 80430 but did not recognize subsequent decisions of the Commission regarding relationships for priority of service between steam plants and large interruptible customers, (such as SoCal's G-53-T (A-block) customers), namely, Decision No. 80878 in Application No. 53118 of Pacific Gas and Electric Company (PG&E) and Decision No. 81931 in Case No. 9581, the investigation on the Commission's own motion into the adequacy and reliability of the energy and fuel requirements and supply

3/ Decision No. 82214 dated December 4, 1973 denied the petition for rehearing. SDG&E filed a petition for stay of the effective date of Decision No. 81802 as corrected by Decision No. 81914 pending review by the California Supreme Court on December 27, 1973. Decision No. 82327 dated January 8, 1974 granted the stay.

of the electric public utilities in the State of California, as follows:

(a) In Decision No. 80878 the Commission found that, "...PG&E's proposal to place curtailment of its steam-electric plant on an equal basis with large interruptible customers should not be adopted."

(b) Decision No. 81931 made recommendations to all electric utilities, including municipally owned utilities, and required certain things of utilities under Commission jurisdiction. These recommendations did not refer to changing the priority of service provided by the gas utilities with regard to steam plant service even though SoCal presented evidence regarding the gas supply situation.

The staff contends that in view of these decisions it may be inappropriate to consider a proposal which the Commission did not consider in Decision No. 81931 and one which was actually rejected in Decision No. 80878 and that the issue Edison raised regarding priority of service could possibly be more properly explored in a statewide investigation expanded to include not only priority of service for similar end uses but whether the entire price priority concept presently used in the State is appropriate in view of the actions at the federal level concerning end use of gas.

All of SoCal's A-block customers were supplied with a copy of the Edison motion. Several sent written responses to the Commission in opposition to the Edison motion covering arguments previously discussed in this opinion and pointing out that certain of their gas uses have a higher FPC curtailment priority than boiler fuel usage.

Decision No. 80430 evaluated the requirements of the various utility electric generating customers served by SoCal and the requirements of SDG&E for utility electric generation. The decision established Daily Contract Quantities (DCQ) to be used for purposes of curtailment classification of utility electric generation service on a parity basis, which includes a DCQ of 157.1 M^2 cfd for SDG&E, and also established the floor concept of minimum annual deliveries to SDG&E. As a result of declines in the gas supply the floor would override parity considerations for deliveries destined for SDG&E's steam plants in 1974. In connection with the DCQ's we stated:

> "The establishment of the above DCQ's is consistent with their application in arriving at our adopted operational results for test year 1972 and provides a fair basis from which to determine henceforth curtailment classification for utility electric generation service. In addition, such establishment of DCQ's makes it neither necessary nor constructive, so long as there is minimal or no 'S-2' gas availability, to settle the controversy which developed during the course of the proceeding as to whether or not the gas requirements input for such curtailment classification should be based on annual forecasts of such requirements or on the most recent annual requirements actually experienced, problem areas being involved with either basis. Commission approval must be sought to change these daily contract quantities."

In this proceeding test year sales volumes are estimated at approximately 783 billion cubic feet as compared to test year sales of approximately 979 billion cubic feet for 1972. In test year 1972 we excluded special contract deliveries of 44 billion cubic feet of gas which were sold for utility electric generation by SDG&E and SoCal's retail steam electric customers. In 1974 SoCal estimates that in addition to its sales it must make a net injection into storage of approximately 39 billion cubic feet to insure adequate supplies for meeting its peak firm requirements.

Utility electric requirements on SoCal's system of G-58 or G-61 customers is the sum of potential deliveries under three curtailment priorities, S-2, S-1, and A. SoCal's G-53-T customers also obtain gas deliveries under the A-block priority. The DCQ for a utility electric customer consists of the sum of its potential daily S-1 and A block entitlements. SoCal endeavors to equalize the curtailments for each priority block.

The contemplated estimated potential requirements on SoCal's system for a utility electric generation customer depend in part on the availability of outside sources of fuel, hydro-electric resources, or purchases of electricity by that customer. Changes in each of these factors and changes in electricity sales result in revisions of estimated potential requirements on SoCal's system for each customer (e.g. SDG&E deferred taking delivery of a portion of its special contract gas deliveries from 1972 to 1973).

SoCal's estimated 1974 deliveries to G-58 customers and to SDG&E for its steam plants are 64,355 M^2cf and 21,063 M^2cf, respectively. SoCal estimates no S-2 deliveries, no S-1 deliveries to retail steam plants, and 53 M^2cf of S-1 deliveries (0.25 percent of the gas to be supplied) to SDG&E's steam plants for test year 1974. Essentially all 1974 steam plant deliveries will be under A priority. Exhibit 25, the gas balance underlying SoCal's 1974 estimate, shows estimated retail steam plant annual A-block requirements and total requirements of 171,728 M^2cf and 568,349 M^2cf, respectively, a ratio of 30.2 percent. The corresponding estimates for SDG&E's steam plants are 26,573 M^2cf and 87,427 M^2cf, a ratio of 30.4 percent. G-58 deliveries in test year 1972 were 207,275 M^2cf.

SoCal's rate design witness and the staff's rate design witness did not recommend modification of the G-58 DCQ's in view of the changes in G-58 requirements.

SoCal's rate design witness was familiar with the procedure for reporting in regard to curtailments by SoCal's out-of-state gas supplier. He stated that:

(a) The requirements of its G-58 customers and of SDG&E for its G-54, steam plant deliveries, are in priority 5, the lowest priority;

(b) A-block customers requirements were split between priorities 2, 3, 4, and 5;

(c) Sixty-one percent of the A-block requirements were priority 2 and about 36 percent of the requirements were in priority 5 and the remainder was spread between priorities 3 and 4;

(d) If the entire A-block consumption was put into a common pool with the G-58 and San Diego steam plant supply there would be additional curtailment of out-of-state gas when higher priority gas in A-block is curtailed and deliveries are made in priority 5;

(e) Regular interruptible rate schedules are based on price volume priority arrangements;

(f) There is no element of end use in the present regular interruptible rate design comparable to the out-of-state priority;

(g) If the San Diego steam plant supply was put into common pool with G-58 customers and the reallocation was made as suggested under the Edison motion there would be no change in curtailment of the out-of-state supply.

Examiner Levander's ruling on the Edison motion was as follows:

(a) There would be no evidence taken on the question of indemnification or reparation.

(b) There would be no evidence taken on the inclusion of A-block customers requirements in a common pool with (A plus S-1)

retail or wholesale steam requirements. If the entire A block requirements were in a pool there might be further curtailment of out-of-state supplies. If the requirements of that portion of the A block with the same end use as the steam electric plants were included in the steam electric pool there would be a splitting of the A-block and a differential treatment of customers within that block.

(c) A shift in A-block priorities from a price volume priority relationship to an end use priority should be brought up on a state-wide basis rather than on a single company basis if desired by the Commission.[4/]

(d) Evidence would be taken on the question of the floor versus parity as between the G-58 customers and the SoCal deliveries to SDG&E used for steam electric generation.

(e) The record demonstrates a need for some rate relief to applicant and it would be appropriate to separate the proceedings to deal with the Edison motion separately in a Phase II proceeding.

(f) In addition to evidence on the Edison motion, environmental effects and further modification of rates would also be considered.

The examiner stated that the parties should be prepared to go forward on the basis of his rulings and that if the Commission modified or reversed his rulings they would be advised and the parties could then proceed on the basis of such changes; SoCal

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4/ The examiner stated that he is opposed to such an investigation because the Commission is in litigation in opposition to federal curtailment procedures because of their detrimental effects on California supplies and that it would be prejudicial to California to shift to an end use type of curtailment while it was fighting the same issue in the federal courts.

was to prepare a restructured rate form to go along with the changes in deliveries using these assumptions together with certain information necessary for preparing an environmental exhibit; Edison was to prepare an exhibit; and the exhibits were to be mailed by December 17, 1973.

A prehearing conference on Phase II, scheduled for January 4, 1974, was postponed to permit issuance of this order.

SDG&E's Petition for Reversal of the Examiners' Ruling

SDG&E requests reversal of the examiner's ruling because:

(a) The ruling discriminates against SDG&E (and its customers) as a firm wholesale customer of SoCal which could result in a windfall benefit to retail interruptible customers of SoCal;

(b) The ruling is contrary to the Commission's directives in Decision No. 80430;

(c) The examiner, by his ruling, proposes to take evidence and decide issues determined by the Commission in Decision No. 80430;

(d) The ruling failed to certify to the Commission matters raised by the staff which could only be considered and decided by this Commission, (i.e. the end use order of investigation);

(e) The examiner, in effect, decided a major issue designated by the Commission in this case which he is not empowered to decide;

(f) The examiner, in effect, determined that some regular interruptible customers are to receive preferential service over firm wholesale customers;

(g) The proceeding should not be phased and it should be submitted on a basis of the issues pertaining to the general rate increase application as filed; and

(h) The examiner's ruling to phase the general rate increase apart from the allocation of gas supply has adopted a procedure prejudicial to the customer classes.

SoCal requests that the Commission deny SDG&E's petition for the following reasons:

(a) The hearings on the general ratemaking portion of their application, designated Phase I, have been submitted and they should not be denied timely rate relief;

(b) The issue of parity and its impact on A-block customers and on deliveries of out-of-state gas to SoCal should be the subject of phased hearings; and

(c) Rate relief should be accorded SoCal on the basis of the level of service proposed in its rate design. The proposed rates reflect the recent Decision No. 80430 which exhaustively analyzed service to interruptible customers and which included the adoption of SoCal's present Rule 23.

SoCal points out that the issues raised in Edison's motion will effect relatively few classes of service and a limited and identifiable number of customers; that rates could be adjusted when necessary pursuant to evidence in the Phase II proceedings if the Commission decides to alter the pattern of service between customers; that modification proposals now being asserted by the parties are in response to the increasing intensity of the energy shortage and its impact on alternate fuel availability and price; that if the A-block regular interruptible customers were placed in a common gas pool with the steam electric utilities pursuant to Edison's motion there are potential adverse consequences which could effect pipeline deliveries to California because of federal curtailment priorities.

We would be burying our heads on the sand if we adopt SDG&E's contention that nothing has changed since the record used

to prepare Decision No. 80430 was completed. The proceeding discussion in this opinion particularly as to the sharp decline in deliveries and in levels of satisfaction to steam electric customers and of curtailments of gas supplies available to SoCal in meeting the needs of its customers and our investigation into natural gas supply and requirements of gas public utilities, Case No. 9642, all indicate the need for us to review the reasonableness of our allocation procedures with respect to gas supplies to the electric utilities supplied by SoCal.

The contractural arrangements between SoCal and SDG&E are subject to our continuing authority and jurisdiction and this includes our authority to direct and/or authorize contract modifications. Decision No. 80430 established the annual floor. The gas service agreement between SoCal and SDG&E contained no reference to the annual floor when Decision No. 80430 became effective. In Decision No. 81802 we authorized the filing by SoCal of amendments to the contract (see footnote 3) which included language spelling out that peaking gas deliveries were part of the annual floor. SDG&E ignores Decision No. 81802 which authorized the parties to raise questions contained in the Edison motion. This is an appropriate record to determine if any unreasonable discrimination exists between deliveries to G-58 customers and deliveries to SDG&E's steam plants.

If the courts sustain the end-use classifications promulgated by the FPC, a change in our present curtailment classifications, on a state-wide basis, may be appropriate. End use classifications will not be considered in Phase II of this proceeding.

In Decision No. 80430 we indicated a 78.7 percent level of service for A-block regular interruptible customers in 1972. SoCal estimates that in 1974 deliveries would be 29,261 M^2cf, a 37.9 percent level of service. It would not be appropriate to

either split up the A-block as contemplated in the Edison motion or to reallocate all of the A-block gas between regular interruptible A-block customers and the steam plants, the alternative requested by SDG&E. In the latter instance we wish to avoid the undesirable result of causing a further net reduction of the gas supply coming into California. Therefore, we will not require the presentation regarding the reasonableness of levels of service of A-block regular interruptible customers vis-a-vis utility electric customers indicated in Decision No. 80430. We will make an allowance in rate spread for the disparity in service levels between A-block regular interruptible and G-58 customers.

We adopt Examiner Levander's ruling on the Edison motion with the following modifications which will require additional evidence:

(a) Show the effect of limiting parity treatment so that gas deliveries to A-block regular interruptible customers would not be modified, (within the limitations of the gas balance). This would mean that the A-block pool would be broken into two pools, one for regular interruptible, G-53-T customers and the other based on the present G-58 and G-61 A-block priorities.

(b) Evaluate if there should be a freeze of the G-53-T A-block priorities at 1974 levels.

(c) Evaluate whether or not the ratio of G-53-T deliveries as compared to steam plants under situation (a), above, should be frozen at 1974 levels.

The examiner did not exceed his authority in that his ruling did not involve a final determination of this proceeding. His ruling would have been before us in our disposition of the issues in this proceeding.

SDG&E would continue to receive gas to enable it to fully meet its firm requirements and its regular interruptible customers would receive parallel treatment to SoCal's regular interruptible customers if its steam plant deliveries were on a parity basis.

SoCal is in need of rate relief. SoCal reasonably preceeded on the basis of priorities set forth in Decision No. 80430 in preparing its presentation and rate design.

SDG&E Information Request Motion

For the years 1960 to 1972, inclusive, 1973 estimated, and 1974 estimated the SDG&E motion of October 12, 1973 would require Edison to supply:

(a) a detailed listing of the level of natural gas service from whatever source to each and every electric generating unit owned and/or operated in whole or in part by Edison;

(b) type of gas service (interruptible, regular interruptible, or firm) supplied to each plant;

(c) the names of every supplier of natural gas to Edison's generating units, volumes delivered by each supplier and total Edison requirements placed on each supplier, total interruptible, regular interruptible, and firm gas supplies received by Edison from all sources for electric generation purposes;

(d) a list of all 100% natural gas requirements for each of Edison's electric generating units and a detailed description of the procedure followed by Edison in deriving its estimated fossil fuel requirements for electric generation;

(e) cost of gas, by source, for each supply of gas.

The SDG&E motion also called for a list of all assumptions utilized by Edison in establishing its 1974 requirements including assumptions of hydroelectric conditions, temperature conditions, and any other influencing factors.

SDG&E wishes the Commission to review all of Edison's gas supplies, requirements, and levels of service on a past and prospective basis to ensure an adequate record.

Edison argues that the matters raised in the SDG&E motion are irrelevant and immaterial; that this information has no place

in SoCal's rate proceeding; that the only issue is whether SoCal's proposed rates and conditions of service are just, reasonable, and non-discriminatory; and that the motion should be denied.

In Phase II our area of concern relating to SDG&E's motion goes the reasonableness of SoCal's levels of deliveries to G-58 steam plants and SDG&E's steam plants not to alternate supplies, (or costs), used by SoCal's customers for electric generation.

The relationships of steam plant A-block requirements to total requirements do not warrant review of these requirements[5/] at this time. The SDG&E motion is discriminatory in that only one customer would be required to supply data regarding its operations. Even if this material were relevant it would furnish us with an incomplete basis upon which to make any type of determination.

We do not consider these issues raised in the SDG&E motion of October 12, 1973 to be relevant to the Phase II proceedings and the motion is denied.

San Diego Motion for an Environmental Impact Report

San Diego made a verbal request that if the Commission considered parity as contemplated by Edison that an environmental impact report (EIR) be required because the reduction of natural gas to the San Diego area will require greater use of low sulfur fuel oil and other fossil fuels which will affect the atmospheric environment in San Diego.

Examiner Levander stated that he could see that there would be some environmental effects caused by such a shift but that he did not see that this would be a project requiring an EIR;

5/ Curtailments in demand due to the energy shortage are affecting estimated requirements of all electric utilities in California. This situation is being considered in Case No. 9581 and will not be explored in this proceeding.

that it would be necessary to have certain evidence in the record so as to make findings on environmental effects; that there needs to be a showing, by air basin, of the effect of shifting these volumes on the constituents which pose a problem in meeting air quality requirements; that SoCal could ascertain the discharge limitations for these constituents when burning gas and when burning fuel oil, together with the amounts of these constituents in each basin (based upon 1974 G-53-T and steam plant gas deliveries and the fuel oil substitution); that Edison would have to take this data and go forward with its presentation (e.g. the total emissions in each of these air basins for the test year 1974); that the Commission's Rule 17.1 provides that the Commission shall make findings in rate proceedings where matters of environmental concern are raised; that San Diego should file a written motion containing points and authorities in support of its request.

The San Diego motion requested that:

(a) The Commission direct its staff to prepare and present an EIR in this proceeding as required by the California Environmental Quality Act (CEQA) and Rule 17.1 of the Commission's rules of procedure if the Commission examined the issue of a reallocation of gas supplies between SDG&E and certain of SoCal's other customers. The purpose of the EIR was to inform the Commission, the parties hereto, and the public of the environmental impact of a geographic reallocation of natural gas supplies from the San Diego area.

(b) Prepare a study on the socio-economic impact on the San Diego area of such a reallocation of natural gas supplies now firmly committed to the San Diego area by contract.

San Diego stated that the Edison motion would divert supplies of natural gas from the San Diego area to retail interruptible customers of applicant located primarily in the south coast air basin area and also to other areas of SoCal's gas service territory.

(c) The adverse impact on the San Diego area must be determined as provided by California law by means of an EIR, because:

(1) The legislature has directed the Commission to protect the environment in performing its regulatory function. (See Public Resources Code Sections 21000 et seq., specifically Sections 21000 (a) and (g), 21001 (d), (f), and (g), Section 21100 which requires an EIR on any project which may have a significant effect on the environment.)

(2) Section 21065 (c) defines project as "Activities involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies."

(3) Legislative intent is expressed in the Resources Agency Guidelines for implementing CEQA in Section 15080 which requires an EIR before approval is granted.

"If the project is not part of a class of projects that qualifies for a Categorical Exemption and there is a possibility that the project may have a significant effect on the environment, the responsible[6/] agency should conduct an initial study to determine if the project may have a significant effect on the environment. If any of the effects of a project may have a substantial adverse impact on the environment, regardless of whether the overall effect of the project is adverse or beneficial, then an environmental impact report must be prepared where discretionary governmental action is involved. (Emphasis added.)"

6/ Guidelines revision of December 12, 1973 changed "responsible" to "lead".

(4) A mere general rate increase proceeding with no extraordinary issues would not require an EIR (See Decisions Nos. 81237, 81484, and 81590) because a public utility rate proceeding is not a project within the meaning of CEQA because there are no physical effects on the environment. These proceedings deal almost exclusively with economic matters. This case involves reallocation of gas supplies between geographic areas. It is not an ordinary rate proceeding to which the following language of Decision No. 81237 (Adopting Rule 17.1) is applicable:

"In the light of the foregoing analysis the Commission concludes that the policy provisions of CEQA (Sec. 21000, 21001) apply to rate proceedings but the EIR provisions (Sec. 21100 et seq.) do not. The Commission will consider potential environmental impact in rate matters. When such issues are brought to light by the staff or other parties, appropriate findings will be made thereon. (Pub. Util. Code Sec. 1705.)"

(5) In FPC Docket No. RP 72-6 the testimony of the Chief Air Pollution analyst of the Los Angeles County Air Pollution District was that severe air pollution problems could potentially result from curtailment of natural gas to the San Diego area.

(6) The reallocation of gas is not a ministerial project, an emergency project, or an activity covered under a categorical exemption.

(d) The Commission should review:

(1) Arizona Public Service Company v Federal Power Commission (1973) 483 F 2d 1275, 1282. The FPC was required to give consideration to environmental considerations involving the impact of natural gas supplies on a geographic area.

(2) Desert Environment Consery. Assoc. v PUC (1973) 8 Cal 3d 739, 743, regarding court review of our rules on CEQA.

(3) Environmental Defense Fund, Inc. v Coastside County Water Dist. (1972) 27 Cal App 3d 695, 701, and Keith v Volpe (1973) 352 F Supp 1324, 1336-37 (C.D. Cal), regarding the similarity of NEPA and CEQA in challenges to a freeway project.

SDG&E supported the San Diego motion because of the continuing economic impact of such a reallocation and because of the adverse environmental effect on the San Diego area.

SDG&E contends that:

(a) An environmental impact statement (EIS) is required by the National Environmental Policy Act (NEPA) (42 USC Sec. 4321 et seq.) before a federal regulatory agency curtails the supply of natural gas to one geographic area and requires the burning of alternate fuels in that area.

(b) Edison as the proponent and moving party in a phased proceeding has the burden of preparing an environmental data statement from which the staff can prepare the EIR pursuant to Rule 17.1 of the Commission's Rules of Practice and Procedure and Edison should pay and deposit any and all fees pursuant to that rule.

(c) The grounds by which the Commission held in Decision No. 81237 that a rate case does not require preparation and submission of an EIR are not appropriate for the Phase II proceeding involving reallocation of gas supplies between firm and interruptible customers operating in different geographic areas.

(d) Any authority granted by the Commission directing SoCal to alter longstanding and existing contractual relationships for wholesale natural gas service must be considered to be equivalent to an entitlement for use or a licensing action not a rate-setting action.

(e) The cost of an EIR can't be considered substantial in comparison to the potential cost involved in utilizing more costly alternate fuels and initiating use of expensive pollution control devices not now required with the use of natural gas.

(f) The parties in this proceeding, including the Commission, have all concurred that an EIS is required under NEPA in a case such as this and no different reason exists here to achieve a different result under CEQA. The word project in CEQA, for which an EIR is required, and the term major federal action in NEPA for which an EIS is required, are broad enough to include the alteration of contractual rights and obligations to effect a reallocation of natural gas supply from one geographic area to another.

SoCal stated that the only environmental issue would be a showing by basin of the effect on the air constituents of the shifting of these volumes. SoCal requested that it not bear the responsibility for the preparation of all or any part of an EIR if the Commission deemed one necessary.

The Commission staff's position is that it does not believe that the question of whether or not the floor of deliveries to San Diego established in Decision No. 80430 is maintained would require an EIR for the following reasons:

(a) Section 21100 of CEQA provides in part that:

> "All state agencies, boards, and commissions shall prepare, or cause to be prepared by contract, and certify the completion of an environmental impact report on any project they propose to carry out or approve which may have a significant effect on the environment ..."

(b) The definition of projects under Section 21065 were considered in Case No. 9452 wherein the Commission considered the requirements of CEQA.

(c) The staff disagreed with San Diego in that the language of Decision No. 81237 does apply because we are involved in a rate proceeding and consideration of elimination the floor for deliveries to SDG&E is only one of the many issues which may have some effect on the environment and that the examiner's recognition of the potential effect on the environment and his request that evidence on the environmental impact be submitted is in accord with Decision No. 81237.

In Decision No. 81484, a supplemental order modifying Rule 17.1 we stated in part: "In our decision adopting Rule 17.1 we discussed in some detail the specific definition provided in A.B. 889 for the term 'project'. We indicated there that our belief that the legislature did not intend the EIR requirements to apply to all activities of private persons subject to Commission approval, but merely to those physical objects subject to Commission approval by the issuance of a lease, permit, license, certificate, or other entitlement for use. Ratemaking proceedings do not fall within this definition."

A modification of Decision No. 80430 which would eliminate the floor governing deliveries to SDG&E and which would provide for deliveries on a parity basis to SDG&E's steam plants and those of SoCal's G-58 customers is not a physical object as defined above. There is an important difference between major action as defined in NEPA and a project under CEQA.

It is appropriate for us to separate the proceeding into two phases in balancing SoCal's need for rate relief and the request of Edison that we consider reallocation of gas supplies to avoid preferential treatment and unjust discrimination.

These hearings will include rate considerations. Different rates and different levels of interruptible service may appropriately be considered in two separate phases.

SoCal's curtailments of deliveries to its interruptible customers especially to G-58 customers and parallel curtailments of the interruptible load of its wholesale customers are greatest in the winter months in order to enable SoCal to meet firm load requirements. The indicated magnitude of 1974 curtailments to steam electric plants is such that allocation procedures could reasonably be considered to be a rationing device. Appendix A attached to Decision No. 81921 shows that SDG&E is the only major electric utility in California with sufficient low sulfur fuel oil under contract to meet its requirements through 1976.

The combination of out-of-state gas curtailments mandated by the FPC, domestic oil shortages coupled with the recent cutoff of mideastern oil supplies, and the resultant energy crisis faced by California utilities would justify considering a reallocation, if authorized, as an emergency demanding immediate action to prevent or mitigate loss or damage to life, health, property, or essential public services. We take official notice of the actions taken by the Air Pollution Hearing Board of the County of Los Angeles in authorizing emergency use of high sulfur fuel oil by Glendale in its steam plant and the county of Los Angeles for its central heating plant and similar pending requests by Burbank, Pasadena, and DWP, because of the shortage of gas and low sulfur fuel oil.

If the evidence warranted a reallocation of gas supplies, there would be an undue delay and irreparable loss of gas supplies to G-58 and possibly G-53-T customers in following the EIR procedure.

The EIS procedure is the FPC procedure to be used in evaluating environmental impacts of major actions. The EIR is the method we must use for a physical project authorization. We do not require an EIR to evaluate the possible environmental effects of a gas reallocation in a rate proceeding. However, we intend to consider these effects in this rate proceeding.

The presiding examiner correctly assessed the nature of the presentation to be made on environmental matters in Phase II of this proceeding. Edison should also submit evidence evaluating the effects of the changes in air quality which would result from reallocation of gas supplies. The San Diego motion is denied.

SDG&E Motion that Edison Carry the Burden of Proof

SDG&E request that Edison be required to carry the burden of proof in the evidentiary phase of the hearings on its motion. SDG&E states that:

(a) None of the matters proposed by Edison were contained in SoCal's application nor has SoCal proposed any of the matters covered in Edison's motion during the hearing;

(b) Edison is the only party formally proposing that quantities of gas now delivered by SoCal to SDG&E be diverted to SoCal's retail interruptible customers and that DWP was the only party supporting Edison's proposal on a formal basis;

(c) SoCal has not proposed or supported Edison's proposal;

(d) SDG&E does not oppose SoCal's preparing and responding to Edison's data requests but it does oppose any attempt by Edison to utilize witnesses of SoCal to sponsor exhibits for Edison or for Edison to put on its showing through the vehicle of cross-examination of SoCal's witnesses;

(e) Edison as the moving party in this proceeding, involving the level of service and rates for interruptible customers and for the firm service rendered to SDG&E as a wholesale customer, is similarly situated as a complainant;

(f) This reallocation of gas supplies will constitute a substantial departure from the Commission approved price-priority concept for allocating gas supplies;

(g) If the proponent of a motion does not carry his burden of presenting evidence and burden of proof the motion must be dismissed;

(h) It is an unsatisfactory procedure for SoCal to be required to present exhibits on priorities and parity which it may not sponsor except as to the correctness of the figures because of the assumptions behind them. Other parties should be allowed to review Edison's proposal, its position on parity relationships, priorities of service, SDG&E's floor, and any other matters at issue; to review, test, and evaluate the evidence behind it, and to dissect them. All interested parties should have the opportunity to present their own showings, through their own witnesses, and evidence in response to Edison's proposal;

(i) In Application No. 52696 parity was proposed and the proponent carried the burden of proof.

Edison's response to the motion of the burden of proof was as follows:

(a) The level of deliveries to interruptible customers and to G-58 and to SDG&E for utility electric generation was referred to in the application and Exhibit B attached thereto. This exhibit showed that although levels of service provided for Edison and SDG&E steam plants are anticipated to be approximately equal in 1973 that SDG&E steam plants will have a level of service which is more than twice as high as that anticipated for Edison in 1974.

(b) SoCal's policy witness stated that in his view the issue of equitable levels of service continues to be an important issue; that it is still the policy of applicant to continue to offer electric generating agency users an opportunity for approximately equal satisfaction of their requirements; and that parity for electric generation service is appropriate.

(c) SDG&E ignored the support of the parity principle by the cities of Glendale, Burbank, and Pasadena.

(d) In seeking to shift the burden of proof to Edison SDG&E has attempted to ignore the established general principles regarding

the burden of proof which apply in a general rate increase proceeding since this is still an application for general increase in SoCal's rates; that the burden of proof in a rate increase proceeding rests upon the applicant and not on an interested party; that this is not changed because of the fact that the presiding examiner, at the urging of applicant, phased the proceeding so as to delay consideration as to the possible shifts of gas delivered together with the rate effects of such shifts; and that levels of service to be provided in 1974 to retail electric generating agencies and to the SDG&E steam plants is a vital consideration in SoCal's own application.

(e) If a change in mix of sales is effected between the classes of service the revenue increase required from each of the classes affected can be changed. These matters and their effect on rate design are clearly an issue in this rate proceeding, where SoCal bears the burden of proof if the Commission is to make the necessary finding of just and reasonable rates and conditions of service.

(f) That SoCal's responsibility arises under Public Utilities Code Section 454 which states in part:

> "No public utility shall raise any rate...except upon a showing before the Commission and the finding by the Commission that such an increase is justified."

(g) That SoCal did not seek to maintain continuing parity in levels of service among electric generating users although its Application No. 53797 showed a marked disparity in such levels of service would develop in 1974 and its own past position and those enunciated in Decisions Nos. 80430 and 81802 show the need for such a showing.

(h) SoCal has the obligation of submitting the information requested in Edison's September 28 motion and should also be obligated to provide evidence showing why the gas deliveries for

electric generating service are declining so much more than was anticipated during the hearings in Application No. 52696. Such information and data are clearly within the knowledge of SoCal and its officials and can most readily and expeditiously be made part of the record by those officials who are responsible for such activities. The data has been supplied informally.

(i) The SoCal showing will demonstrate a significant 1974 disparity in levels of gas service among steam plant users and the reasons therefor and in light of the Commission's decisions concerning equitable levels of gas service being an important issue in SoCal's proceedings that SoCal has the burden of proof of justifying why such disparity should be permitted to result.

Edison anticipates that its showing on the parity-floor phase of the proceeding may extend to appropriate rate adjustments in light of conditions of service under parity but that the burden of proof with respect to whether or not rates and conditions of service proposed by SoCal are just and reasonable which include environmental impact matters cannot lawfully be shifted to a party other than the applicant for a rate increase.

SoCal agreed to furnish pertinent information for the record if directed to do so on the basis that some of the data can only be supplied by it. In addition SoCal wishes to reserve the right to participate in the proceedings to the extent their interest dictates as the case develops and SoCal indicates that it does not necessarily accept all of the contentions raised by SDG&E in its motion regarding the offer of proof.

SDG&E's rebuttal covered many of the same points raised in its motion. SDG&E pointed out that the presentations of both SoCal and the staff used the basis of deliveries set forth in Decision No. 80430. SDG&E attacked Edison's construction of Decision No. 80430 and requested the Commission to enforce its holding in that decision by reversing the ruling of the presiding

examiner to phase the proceeding. SDG&E further argues that Edison did not discuss its offer of proof on the information request motion; that this information would show that deliveries made by SoCal to the city of Long Beach gas department were in turn delivered to Edison.

Certain of the information requested by Edison can only be prepared by SoCal. The presiding examiner has directed SoCal to put in certain information requested in the Edison motion along with rate design information based upon deliveries embodied in that motion. He has directed Edison to make the basic showing as to whether or not the reallocation should be made. Edison would have the burden of showing that unreasonable discrimination exists.

The revenue requirements of SoCal for 1974 will be ascertained in the decision in Phase I of this proceeding. The total revenue requirement will be essentially unchanged in Phase II. If a reallocation of gas is approved then the evidence on revenues should involve changes in costs to those customer classes affected by the reallocation in arriving at the same total revenue for the affected classes. We concur with the presiding examiner's determination as to which parties should produce the evidence. The additional information called for in this opinion should be supplied by SoCal and Edison on the same basis as the other information called for. SoCal or any of the parties may present any other pertinent information to develop the record in Phase II.

Edison is the largest G-58 customer and would be the principle beneficiary of increased volumes of gas delivered if a reallocation of gas supplies is effectuated. SoCal itself would not receive any benefit from such a shift under the parameters we have enunciated. Consequently, we affirm the presiding examiner's initial determination that the basic information on emissions should be prepared by SoCal and that Edison would have to take this information to determine the quantitative effects of

these changes in each basin and evaluate the effects of the changes. This environmental evidence should evaluate the additional delivery condition that we directed be supplied for this proceeding.

Findings

1. Decision No. 80430 evaluated the requirements of the various utility electric generating customers served by SoCal and the requirements of SDG&E for utility electric generation. The decision established DCQ's to be used for purposes of curtailment of utility electric generating service on a parity basis, which includes a DCQ of 157.1 M^2cfd for SDG&E, and also established the floor concept of minimum annual deliveries to SDG&E.

2. Test year 1972 is embodied in Decision No. 80430. Estimated 1972 sales were approximately 979 M^3cf, which excluded special contract deliveries of 44 M^3cf sold for utility electric generation by SDG&E and SoCal's G-58 customers. Test year 1972 regular G-58 deliveries were 207.275 M^3cf.

3. As a result of declines in SoCal's gas supply the floor would override parity consideration for deliveries destined for SDG&E steam plants in 1974.

4. SoCal's test year 1974 sales volumes total approximately 783 M^3cf. SoCal's estimated 1974 deliveries to G-58 customers and to SDG&E for its steam plants are 64.355 M^3cf and 21.063 M^3cf, respectively. In addition, SoCal estimates that it must make a net injection into storage of approximately 39 M^3cf to insure adequate supplies for meeting its peak firm requirements.

5. Phase II hearings should be held in accordance with Examiner Levander's ruling on the Edison motion with the modifications described in the opinion.

6. Application No. 53797 is a rate increase application. There are issues as to rates and levels of service between classes of customers in Phase I and Phase II of this proceeding. If a modification of Phase I delivery levels is authorized in our Phase II decision there will be changes in rates and a shift of revenues between the affected classes of customers but there will be the same total revenue requirement for SoCal.

7. Environmental effects and further modification of rates related to possible shifts in gas volumes should be considered in the Phase II hearing. SoCal and Edison should be directed to prepare evidence in these areas in accordance with our directions as set forth in the opinion.

8. SDG&E's information request motion and its petition for reversal of Examiner Levander's ruling on the Edison motion should be denied.

9. Edison would be the principal beneficiary of a shift in gas volumes in the event a shift is authorized.

10. SDG&E's motion as to the burden of proof should be denied except for that information which we stated should be supplied by Edison.

11. The motion of San Diego for an EIR should be denied. CEQA does not require an EIR in a rate proceeding.

Conclusions

1. There has been a drastic decline in gas volumes available to SoCal, most of which was absorbed by increased steam plant curtailments.

2. Phase II hearings should be held in SoCal's rate increase application in accordance with Examiner Levander's ruling on the Edison motion with the modifications described in the opinion. Environmental effects and further modification of rates related to

possible shifts in gas volumes should be considered in the Phase II hearing. SoCal and Edison should be directed to prepare evidence in accordance with the directions set forth in this opinion.

3. SDG&E's information request motion and its petition for reversal of Examiner Levander's ruling on the Edison motion should be denied.

4. SDG&E's motion as to the burden of proof is denied except for that information which we stated should be supplied by Edison.

5. The motion of San Diego for an EIR should be denied. CEQA does not require an EIR in a rate proceeding.

O R D E R

IT IS ORDERED that:

1. Phase II hearings shall be held in this proceeding as to a possible reallocation of gas supplies between Southern California Gas Company's G-53-T, G-58, and G-61 customers.

2. Southern California Gas Company shall supply evidence on its estimated gas supplies, gas requirements, and levels of gas service for 1973 and 1974 under hot year, average year, and cold year conditions for each of its G-58 customers, for the steam plants of San Diego Gas and Electric Company, and for all of its G-53-T customers showing:

(a) The assumptions used in the application;

(b) A modification of these assumptions to eliminate the annual floor of deliveries to San Diego Gas and Electric Company and to base deliveries to San Diego Gas and Electric Company's steam plants on its Daily Contract Quantity;

(c) A modification of (b) so that deliveries to G-53-T customers would not be modified (within the limitations of the gas balance);

(d) The rate and revenue changes appropriate to the changes in deliveries under conditions (a), (b), and (c) above for average year 1974;

(e) The discharge limits for the constituents which pose a problem in meeting air quality requirements when burning gas and when burning fuel oil, by air basin, together with the amounts of these constituents in each basin (based upon 1974 average year G-53-T and steam plant gas deliveries and fuel oil substitution) under assumptions (a), (b), and (c), above;

(f) If a decision in Applications Nos. 53945, 53946, and 53970 modifies San Diego Gas & Electric Company's 1974 test year requirements on Southern California Gas Company's system, these changes shall be used in revising the 1974 average year evidence under assumptions (a) to (e), above.

(g) An evaluation of freezing G-53-T A-block priorities at 1974 levels; and

(h) An evaluation of whether or not the ratio of G-53-T deliveries as compared to steam plants under situation (c) above should be frozen at 1974 levels.

3. Southern California Edison Company shall supply evidence:

(a) As to whether or not a reallocation of gas should be made by changing the basis of deliveries from that set forth in condition (a) of ordering paragraph 2 to conditions (b) and (c). This would include a showing that unreasonable discrimination exists;

(b) To determine the quantitative effects of the changes in air quality in each basin as the result of such reallocations of gas and evaluate the effects of these changes; and

(c) On ordering paragraph 2 (g) and (h).

IT IS FURTHER ORDERED that a prehearing conference on Phase II in this application shall be held at 10:00 a.m. on February 14, 1974, in the Commission Courtroom at Los Angeles to discuss the scope of participation of the parties, dates for the preparation of evidence, and to set an initial hearing date.

The Secretary is hereby directed to cause copies of this order to be served upon all appearances in this proceeding and to the A-Block regular interruptible customers of Southern California Gas Company.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 29th day of JANUARY, 1974.

President

Commissioners

I will file a dissent.

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A

List of Appearances

Robert Salter and E. R. Island, Attorneys at Law, for applicant.

Arthur T. Devine, Deputy City Attorney, for Department of Water and Power, City of Los Angeles; Burt Pines, City Attorney, by Charles W. Sullivan, Attorney at Law, for the City of Los Angeles; Robert W. Russell, Chief Engineer and General Manager, by Kenneth E. Cude, for Department of Public Utilities and Transportation, City of Los Angeles; Robert J. Logan, Attorney at Law, and Manley W. Edwards, Utility Rate Consultant, for the City of San Diego; A. W. Schafer, for the City of Burbank, Public Service Department; John T. Healy, for Pasadena Water and Power Department; K. L. Parker, Principal Mechanical Engineer, for the City of Glendale, Public Service Department; Rollin E. Woodbury, Robert J. Cahall, H. Robert Barnes, Attorneys at Law, Larry R. Cope, Engineer, for Southern California Edison Company; Renn C. Fowler, Attorney at Law, for Office of General Counsel, Regulatory Law Division, General Services Administration; Chickering & Gregory, Sherman Chickering, C. Hayden Ames, Donald J. Richardson, Jr., by Donald J. Richardson, Jr., and David A. Lawson, and Gordon Pearce, Attorneys at Law, for San Diego Gas & Electric Company; William L. Knecht, Attorney at Law, for California Farm Bureau Federation; Henry F. Lippitt, II, Attorney at Law, for California Gas Producers Association; Brobeck, Phleger & Harrison, by Robert N. Lowry, Attorney at Law, for California Manufacturers Association; John B. Brewer, for Hospital Council of Southern California; Roy A. Wehe, Consulting Engineer, Edward C. Wright, General Manager, Leonard L. Putnam, City Attorney, by Harold A. Lingle, Deputy City Attorney, for the City of Long Beach; C. H. Fuller, Jr., for California Coin Laundry and Dry Cleaning Owners; Edward A. Boehler, for California Ammonia Company, interested parties.

Janice E. Kerr, Attorney at Law, Colin Garrity and Kenneth K. Chew, for the Commission staff.

A. 53797
D. 82414

THOMAS MORAN, COMMISSIONER, dissenting.

I dissent for the following grave reasons:

The Commission majority by this Decision adds on to this case (which was originally an application by Southern California Gas Company for a general rate increase) a hearing of requests for an order of this Commission which, if granted, would seize valuable property rights of certain utilities in respect to natural gas supplies and give the same to other utilities, WITHOUT any consideration as to how much compensation should be paid to that utility and its ratepayers from whom said natural gas supplies are taken, by the utility and its ratepayers to whom said natural gas supplies are given. Without payment of "fair" compensation the result will be simply confiscation of valuable property rights from ratepayers of one utility company and the award of windfall benefits to the ratepayers of another utility, thereby unjustly enriching them.

There is no question of the power of this State or the Federal government to take property of any kind, whether real estate, vested contract rights or any other at any time for any purpose when it is shown that such seizure is in the overall public interest. In fields other than that of utility fuel supplies this governmental power has always been recognized and referred to as the power of "eminent domain". Thus far the traditional legal term "eminent domain" has not ordinarily been used in respect to utility company fuel supplies because, prior to the present energy shortage and consequent day-to-day and month-to-

month fuel cost increases, (1) governmental action was rare and (2) any contract rights in respect to fuel had little if any value in themselves in that fuel seized or diverted could be readily replaced at virtually the same cost as that at which it had been contracted for, and (3) the utility companies themselves have no substantial fear of ultimate detriment because they can rely upon the regulatory commission involved to grant them authorization to raise rates sufficiently to recoup from their ratepayers for the utility company's stockholders amounts sufficient to make the stockholders whole. Ratepayers until recent years have rarely been organized to protect themselves and furthermore the impact upon them was insignificant.

This matter of fair compensation for utility company ratepayers is therefore something new in the history of this nation, and, because of its rapidly growing magnitude must be faced and dealt with by this Commission, other state and federal regulatory commissions, and the courts, if we are going to preserve the rights of ratepayers guaranteed to them as citizens by the Constitution of the State of California as well as by the Constitution of the United States.

Instead of going into this problem involving fundamental constitutional rights and hundreds of millions of dollars simply by tacking on what this Commission calls a "PHASE II" to a single utility company's application for a general increase in rates, this Commission should instead institute forthwith on its own motion an investigation of the entire problem as it affects <u>all</u> ratepayers of <u>all</u> utility companies in California as among themselves (and also vis-a-vis

ratepayers in the other 49 states) who are likely otherwise to be deprived of property without compensation through action of the Federal Power Commission and/or a Federal "Energy Czar".

The fact that when this exercise of inherent governmental power to seize and/or transfer valuable property rights first came under consideration recently in respect to fuel utility industry phraseology such as "curtailment", "volumetric re-allocation," etc., was adopted as common usage must not be permitted to conceal the fact that in law it involves an exercise of eminent domain power, and therefore entitles its victims to the protection of the Fifth Amendment of the United States Constitution which declares in clear English that "no person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." The California Constitution similarly prescribes, "Private property shall not be taken or damaged for public use without just compensation having first been made to, or paid into court for, the owner, and no right of way or lands to be used for reservoir purposes shall be appropriated to the use of any corporation . . . until full compensation therefor be first made in money or ascertained and paid into court for the owner . . . ."

If this Commission is to discharge its duties to the people of California who are the ratepayers of the utility companies which it regulates, this Commission should forthwith institute an investigation which should consider all of the following aspects of the matter:

1. Rules and procedures to be followed in determining fair market value of natural gas, oil or other fuel taken from one utility and its ratepayers and given to another utility and its ratepayers when there is shown to be a substantial difference between the replacement cost of said fuel as of the date upon which it is "reallocated" or seized, and the price paid or which would have had to be paid for such fuel pursuant to contractural commitment by the utility from which such fuel is taken.

2. Whether or not such rules or procedures found to be fair and constitutional when one type of fuel can as a practical matter be replaced by an equivalent amount of the same kind of fuel, should be applicable in cases wherein one type of fuel such as natural gas for electric generation perhaps cannot be replaced by natural gas but must be replaced by much higher cost oil.

3. Whether or not an environmental impact report must or should be required when one type of fuel must be replaced by a different type of fuel, the burning of which may have a far more adverse effect upon the environment of the service territory and the ratepayers therein from whom it is taken.

Dated: January 29, 1974
San Francisco, California

Thomas Moran

Thomas Moran, Commissioner