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Decision 84 07 069 JUL 5 1984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SOUTHERN CALIFORNIA GAS COMPANY and PACIFIC LIGHTING GAS SUPPLY COMPANY to Increase Revenue Under the Consolidated Adjustment Mechanism to Offset Changed Gas Costs Resulting From Increases in the Price of Natural Gas Purchased from EL PASO NATURAL GAS COMPANY, TRANSWESTERN PIPELINE COMPANY, PACIFIC INTERSTATE TRANSMISSION COMPANY, and California sources; and to Adjust Revenues to Recover the Undercollection in the CAM Balancing Account.

ORIGINAL

Application 82-09-12
(Filed September 8, 1982)

OPINION AFTER LIMITED REHEARING OF DECISION 83-10-001

Decision (D.) 83-12-062 permitted the parties to file additional briefs limited to the issue of whether the evidence in the matter supports Southern California Gas Company's (SoCal) contention that without the Pacific Gas and Electric Company (PG&E) supply there was a potential shortfall in gas to serve P1-P4 customers in a cold year. SoCal raised this argument for the first time in its reply brief to support its position that in December of 1981 it was reasonable to extend its firm gas supply contract with PG&E for an additional 38 days.

Toward Utility Rate Normalization (TURN) was the only party to file an additional brief. TURN argues:

"SoCal's reply brief adopted a creative approach to justifying the PG&E contract, arguing as follows:

"The P1-P4 cold year requirements forecast for January was 110 Bcf or 3569 MMcfd. (Ex. No. 29, p.17). Total primary supply, excluding PGandE, was forecasted in the record to be 2495 MMcfd. (Ex. No. 29, p. 35). Projected storage withdrawals during January were 20.5 Bcf or 661 MMcfd. (Ex. No. 29, p. 44). Thus, only 3156 MMcfd of gas was projected to be available, absent the PGandE contract, to serve the P1-P4 cold weather January requirements of 3569 MMcfd. The resulting 413 MMcfd shortfall could therefore have been supplied in part by the PGandE gas under the contract extension. While storage could have been used to supply this market in January, 1982, without the PGandE gas, to do so would leave storage at a dangerously low level in the event of additional cold weather later in the winter of 1982. The PGandE gas substantially reduced this potential danger and at a price previously approved by the Commission. Id. at 12.)"

TURN then notes:

"If the first sentence of the quoted paragraph were correct, SoCal might have a case."

According to TURN, "SoCal's reply brief had misinterpreted or misrepresented the figures used to develop the 413 MMcf 'theoretical shortfall.'"

The controversy centers on the 110 Bcf or 3,569 MMcfd figure, which surfaced for the first time in SoCal's reply brief. SoCal cited the 110 Bcf by reading the value from a graph which has the heading - "Use of Storage for Seasonal Load Equation (Cold Year)" (Figure 1-6, p. 17, Exhibit 29).

TURN argues that:

"A careful review of the company's argument (quoted above) convincingly demonstrates that (figure 1-6 at) page 17 of Exhibit 29 has been misused. That figure shows primary supply availability for a 'typical' January of less than 70 BCF, compared to requirements of 110 BCF. Yet page 35 of the same exhibit (cited by SoCal) reveals anticipated January 1982 primary supplies of 2495 MMcf per day or 77 BCF excluding the PG&E supply. If page 17 does not portray the correct January supply forecast, why should this Commission assume that it shows an accurate demand forecast?"

Because of TURN'S allegations, we had our staff check the filings and workpapers submitted by SoCal in other proceedings which covered the same period of time to determine whether there was any inconsistency. Staff finds that SoCal's workpapers for its October 1981 CAM proceeding (A.60867) contain a Cold Year Gas Balance dated August 5, 6 and 7, 1981 which supports the P1-P4 January 1982 Cold Year Requirement Forecast of 110 Bcf. This gas balance has the heading: "Gas Balance Purpose: 1981 Cal Gas Report" and "Temperature Conditions - Cold".

While we are satisfied that SoCal's cold year requirement forecast for January 1982 was 110 Bcf and have no doubt about its authenticity, there are serious shortcomings in SoCal's evidentiary showing related to this item.

TURN points out correctly that Figure 1-6 is nothing more than a typical representation of storage operation in a cold year. TURN argues:

"Unfortunately for the company, page 17 (Figure 1-6) of Exhibit 29 does not present a January 1982 cold year requirements forecast. Rather, as the accompanying text on page 10 states: 'Figure 1-6 illustrates a typical planned use of storage for seasonal load balancing.' Nowhere does the exhibit characterize the data depicted in the figure as a current forecast for January, 1982. Indeed, this

> page appears in the 'Overview of System Complexities' chapter, not the 'Requirements Forecasts' chapter."

We agree with TURN that Figure 1-6 was intended to illustrate typical use of storage. The primary supply shown is not the supply for the review period; the supply forecast for the review period is at page 35. Also the withdrawal shown is erroneous. Apart from not reflecting the review period (p. 44), it does not correctly depict storage operation even for a typical year.

However, we are satisfied that the problems are limited to Figure 1-6 and do not impact the primary supply forecast (p. 35) and the storage withdrawal plan (p. 44). Accordingly, we confirm the adopted January 1982 supply of 2,495 MMcfd and the projected withdrawal of 20.5 Bcf. Also, we reject TURN's argument (p. 4 of its brief) which relies on the erroneous withdrawal of over 40 Bcf depicted on Figure 1-6.

Returning to the issue, which is the evidentiary support, or more correctly the lack of it, for the January 1982 P1-P4 cold year requirement of 110 Bcf, we find that, rather surprisingly, the controversial Figure 1-6 correctly depicts the 1981/82 Cold Year P1-P4 Requirements set forth in the gas balance mentioned previously. However, as we previously noted, Figure 1-6 represents a typical year. Nowhere is there any notation on Figure 1-6 that 1981/82 data was used to prepare it. The 110 Bcf figure is not available anywhere else in the record of this proceeding and it appears fortuitous that SoCal's reading of the graph in Figure 1-6 turns out to be factually correct.

We have carefully considered TURN's question: "If page 17 (Figure 1-6) does not portray the correct January supply forecast, why should this Commission assume that it shows an accurate demand forecast?"

While we are far from satisfied with SoCal's evidentiary showing in this proceeding, we are nevertheless satisfied about the authenticity of the 110 Bcf number and consider it unnecessary to reopen this proceeding to receive in evidence the gas balance which SoCal previously furnished the staff in 1981.

In summary, while we agree with TURN that SoCal's witness did nothing more than utter "vague ruminations - which amount to little more than 'it gets cold in the winter'," we conclude that the numbers which make up the theoretical shortfall of 413 MMcf noted in Finding 3 of D.83-10-001 are in fact correct.

We caution SoCal that the bootstrap approach used to justify its position in this proceeding is unacceptable for the future. We decline to pursue the matter further in this proceeding not because we are satisfied with SoCal's showing but because it serves no point to argue about figures which were fortuitously, for SoCal, correct as a matter of fact.

Findings of Fact

1. SoCal's primary supply forecast, excluding PG&E gas, for January 1982 was 2,495 MMcf per day.

2. SoCal's projected storage withdrawal for January 1982 was 20.5 Bcf or 661 MMcf per day.

3. SoCal's cold year P1-P4 requirements forecast for January 1982 was 110 Bcf or 3,569 MMcf per day.

4. The numbers which make up the theoretical P1-P4 shortfall of 413 MMcf per day (2,495+661-3,569) in SoCal's primary supplies are factually correct.

Conclusions of Law

1. The evidence supports Finding of Fact:

> "3. There was a theoretical shortfall of 413 MMcf per day in SoCal's primary supplies for the 1981/82 winter based on a cold year scenario. This shortfall was reduced by the PG&E contract extension." (D.83-10-001, p. 24.)

2. D.83-10-001 should be affirmed.

ORDER

IT IS ORDERED that for the reasons stated in this decision and in D.83-10-001 no adjustment be made to Southern California Gas Company's Consolidated Adjustment Mechanism Balancing Account for the period October 1, 1981 through June 30, 1982.

This order is effective today.

Dated JUL 5 1984, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
WILLIAM T. BAGLEY
Commissioners

I will file a written concurrence.
LEONARD M. GRIMES, JR.
Commissioner

I will file a written concurrence.
VICTOR CALVO
Commissioner

I will file a written dissent.
PRISCILLA C. GREW
Commissioner

I will file a written dissent.
DONALD VIAL
Commissioner

I CERTIFY THAT THIS DECISION WAS APPROVED BY THE ABOVE COMMISSIONERS TODAY.

Joseph E. Bodovitz, Executive Director

COMMISSIONER LEONARD M. GRIMES, JR., Concurring:

It is the solemn responsibility of this Commission to regulate the rates charged and the services rendered by monopoly utility companies in a manner that insures that they are reasonable. The only way that we have to accomplish this task is a careful examination of the facts, issues, and conditions impacting these rates and services, and after weighing the evidence apply our best judgment and decide in a timely manner. In this case and others that have come before us and will come before us in the future, the evidence we receive is not perfect nor even good, especially since we get a chance to "tear" everything apart for examination for "foul play" just like a "county coroner". In this "autopsy" there is no evidence of "foul play", and none was found. Our order states the fact that "we conclude that the numbers which make up the theoretical shortfall of 413 MMCF noted in Finding 3 of D.83-10-001 are in fact correct". I am supporting this "luck of the draw" for the fact torturously drawn is nonetheless a fact.

I further join with our staff in scolding SoCal for a very poor performance and there is no excuse for incompetence on their part.

LEONARD M. GRIMES, JR., Commissioner

July 5, 1984
San Francisco, California

A.82-09-12
D.84-07-069

VICTOR CALVO, Commissioner, Concurring:

I agree with the majority that no disallowance should be assessed against Southern California Gas Company's (SoCal's) CAM balancing account due to its 38-day extension of the Pacific Gas and Electric Company (PG&E) supply contract in the winter of 1981-1982. However, I had a difficult time arriving at my decision in this case.

The reasonableness review process requires this Commission to place itself in the shoes of utility management and to assess whether management acted prudently in making supply acquisition and utilization decisions. We often do this months, and sometimes years, after those decisions have been made. It is difficult in such a process to capture all the facts, opinions and motivations which led to the utility's decisions which we are called upon to adjudge as prudent or imprudent.

In this case, SoCal extended an existing supply contract in order to meet its goal of having supplies to meet P1-to-P4 cold-year requirements. No one has contended that either this motive or this goal are imprudent. SoCal's witness testified that SoCal believed PG&E would release SoCal from the minimum obligations which were accruing under the contract extension when the final contract, which was negotiated in fact as a fully discretionary supply, was executed. SoCal was wrong and we are asked to penalize SoCal as a result. While it is quite evident that SoCal misjudged what PG&E might do, the reasonableness procedure requires us to place ourselves in SoCal's position and say, unflinchingly, "We would have done it differently." I cannot do that in this case. Neither could staff's own witness. TURN presented no testimony on this point. Although by our own established procedures SoCal bears the burden of proof, SoCal

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is not required to exercise perfect judgment, just reasonable judgment and I am hesitant to declare SoCal's judgment to have been unreasonable based upon the record before us.

The dissenting Commissioners in this matter reach a different, and more emphatic, conclusion. They criticize the majority for departing from our reasonableness review procedures, shifting more risks to ratepayers. I reiterate that, in my opinion, reasonableness and prudence issues are inherently difficult. I for one make my decisions on a case-by-case basis looking at all the arguments before us. My vote does not, therefore, signal any intent on my part to depart from our procedures or evidentiary requirements in these types of cases. Rather, it means only that I cannot support a disallowance in this case. For these reasons, I concur with the majority.

Victor Calvo

VICTOR CALVO, Commissioner

July 6, 1984
San Francisco, California

A.82-09-12
D.84-07-069

DONALD VIAL, Commissioner and
PRISCILLA C. GREW, Commissioner, Dissenting:

We dissent from the majority's refusal to disallow from SoCal's CAM balancing account those amounts associated with the 38 day extension of the PG&E supply contract. Instead we supported the alternate order, rejected by the majority, which would have imposed a $3,641,000 disallowance, based on SoCal's failure to meet the requisite burden of proof. A copy of that alternate order fully outlining the grounds for the disallowance is attached to this dissent.

We are unable to agree with the majority that SoCal sustained its burden of proving that the contract extension was motivated by cold year planning. In its decision today the majority allows recovery of the costs associated with the extension essentially because our staff reviewed SoCal's workpapers in another proceeding, and found them consistent with the claimed cold year requirement forecast in this proceeding. Even assuming (and we do not) that the utility is only required to produce "some evidence" or "any evidence" in support of its position, we are unable to square this decision with the fundamental regulatory principle that the burden is on the utility to prove that the rates which it seeks are reasonable and not upon the Commission, the staff, or any other party to prove the contrary (in re Suburban Water Co. (1963) 60 CPUC 768 rev. denied; in re SoCal Gas Co. (1960) 58 CPUC 57).

Finally, and most significantly, we think the majority errs in attaching no probative value to SoCal's testimony in this proceeding that it extended the PG&E contract because it believed PG&E would release it from the associated minimum obligations retroactive to January 1, 1982, once a fully discretionary contract was negotiated. Such testimony indicates that cold year planning was not a motivation for the extension. Thus the evidence contradicts SoCal's position.

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At the time it issued D.92496 in OII 56, this Commission stated that an appropriate balance of risks and incentives is created by permitting the inclusion of 98% of otherwise recoverable fuel expenses in ECAC, on a forward looking basis, subject to annual reasonable reviews. In discussing the evidentiary standard applicable to the reasonableness review, the Commission stated: "Of course, the burden of proof is on the utility applicant to establish the reasonableness of energy expenses sought to be recovered through ECAC. We expect a substantial affirmative showing by each utility with percipient witnesses in support of all elements of its application, including fuel costs and plant reliability." (D.92496, 4 CPUC 2d 693, 701). That test has neither been met by SoCal nor applied by the majority in this case.

Given the clarity of the standard we see no reason why utilities subject to our jurisdiction should not be able to structure evidentiary showings to meet it. The reasonableness review is the adjunct to the ECAC procedure and is part of the "appropriate" balance of risks and incentives envisioned by the Commission in D.92496. Erosion of the established evidentiary standard by decisions such as that adopted today can only undercut this balance of risks and incentives by shifting more risk to ratepayers. In our view, such a unilateral shift is inappropriate.

Donald Vial

DONALD VIAL, Commissioner

Priscilla C. Grew

PRISCILLA C. GREW, Commissioner

July 5, 1984
San Francisco, California

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Decision ________________

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SOUTHERN CALIFORNIA GAS COMPANY and PACIFIC LIGHTING GAS SUPPLY COMPANY to Increase Revenue Under the Consolidated Adjustment Mechanism to Offset Changed Gas Costs Resulting From Increases in the Price of Natural Gas Purchased from EL PASO NATURAL GAS COMPANY, TRANSWESTERN PIPELINE COMPANY, PACIFIC INTERSTATE TRANSMISSION COMPANY, and California sources; and to Adjust Revenues to Recover the Undercollection in the CAM Balancing Account.	Application 82-09-12 (Filed September 8, 1982)

OPINION AFTER LIMITED REHEARING OF DECISION 83-10-001

Procedural Background

In September 1982 Southern California Gas Company (SoCal) filed A.82-09-12 to increase revenues under its Consolidated Adjustment Mechanism (1982 CAM proceeding). In Decision (D.) 82-10-040 and D.82-12-047 this Commission disposed of the first two phases of the 1982 CAM proceeding, dealing with revenue requirements and rate design issues. The third phase of the 1982 CAM proceeding involved a reasonableness review of SoCal's gas operations for the nine-month period October 1, 1981 to June 30, 1982. During the reasonableness review Toward Utility Rate Normalization (TURN) and the Commission staff (staff) raised two issues relative to SoCal's purchase and storage practices during the review period. TURN and staff argued that (1) SoCal was imprudent in extending its contract with PG&E for a brief period of time and (2) SoCal was imprudent in not timely seeking an alternate pipeline route for Pan Alberta gas; the lack of an alternate route led to a capacity constraint problem which caused SoCal to reject cheaper El Paso sources in order to meet its Pan Alberta minimum obligations.

In D.83-10-001 the Commission rejected these arguments, finding that the evidentiary record would not support findings and conclusions of imprudence in connection with the PG&E contract extension and the capacity constraint problem. TURN requested rehearing of both issues. In D.83-12-062 the Commission declined rehearing of the capacity constraint issue, but granted limited rehearing permitting the parties to file briefs on the issue of "...whether the evidence supports SoCal's contention that without the PG&E supply there was a potential shortfall in gas to serve P1 - P4 customers in a cold year." (D.83-12-062, mimeo p. 2). TURN was the only party to file an additional brief.

Factual Background

The facts of the PG&E contract extension are discussed at length in D.83-10-001 (mimeo pp. 5-8) and need be summarized only briefly at this point. On December 8, 1978 SoCal entered into a gas purchase contract with PG&E to purchase 75 MMcfd of gas on a firm basis and an additional 75 MMcfd on a discretionary basis. The contract was to expire December 31, 1981. In October 1981 SoCal and PG&E began negotiations for a new purchase agreement. On December 23, 1981, SoCal and PG&E agreed to an indefinite extension of the existing contract, with its firm 75 MMcfd obligation, while SoCal pursued negotiations for a new purchase agreement with PG&E which would be strictly discretionary as of January 1, 1982. When it became obvious that PG&E would not agree to the January 1, 1982 effective date, the utilities cancelled the extension of the existing contract effective February 7, 1982. However, at this point SoCal had accumulated obligations to take almost three billion cubic feet of gas. That gas was taken between February 4 and February 7, 1982, and because it was not needed to meet customer demand, was injected into storage. Meanwhile the new contract with PG&E, providing for purchase of up to 150 MMcfd on an "all discretionary" basis, was signed, March 26, 1982, to become effective upon CPUC approval, rather than January 1, 1982.

During the reasonableness proceeding TURN and staff argued for the disallowance of the additional gas costs of $3,641,000 which SoCal incurred by extending the PG&E contract with its firm obligation of 75 MMcfd, in view of the cheaper El Paso supplies available to SoCal to meet storage requirements. In its Reply Brief SoCal argued that certain figures from the record demonstrated that, absent the PG&E gas (150 MMcfd), SoCal would have been unable to serve all of the P1 - P4 market in January 1982, from its primary storage supplies, given certain "cold year" assumptions (SoCal Reply Brief, p. 12).

In D.83-10-001 the Commission concluded that SoCal's cold year scenario was dispositive of the issue.[1/] However in reviewing TURN's Application for Rehearing, the Commission, in D.83-12-063 (mimeo, p. 2) reconsidered its conclusion, stating:

> "As TURN points out, and as we acknowledged in D.83-10-001, one of SoCal's arguments in support of the reasonableness of its decision to extend its firm contract with Pacific Gas and Electric Company (PG&E) was made for the first time in its reply brief. One obvious result of this is that the other parties had no opportunity to reply prior to our decision being issued. Although TURN does not allege this constitutes legal error, we believe it would be helpful to a full consideration of this issue if the other parties are permitted to file additional briefs, limited to the issue of whether the evidence supports SoCal's contention that, without the PG&E supply there was a potential shortfall in gas to serve P1 - P4 customers in a cold year."

1/ Finding of Fact 3 stated: "There was a theoretical shortfall of 413 MMcf per day in SoCal's primary supplies for the 1981/82 winter based on a cold year scenario. This shortfall was reduced by the PG&E contract extensions."

Conclusion of Law 2 stated: "Since the Commission in D.93368 stated that its goal was to protect deliveries to P1 - P4 customers in a cold year, it was prudent for Socal to extend its PG&E contract to maximize service to P-1 - P-4 customers in a cold year."

In its Rehearing Brief TURN renews its argument that there is a total lack of evidentiary support in the record for SoCal's contention that in January 1982 it faced a theoretical shortfall of 413 MMcfd in cold year service to its P1 - P4 customers. TURN then argues that even assuming the existence of such a theoretical shortfall, SoCal failed to sustain its burden of showing that the contract extension was its most cost effective option. Therefore, TURN argues the Commission should rescind Finding of Fact No. 3 and Conclusion of Law No. 2 of D.83-10-001, and disallow $3,641,000 from SoCal's CAM balancing account. We now proceed to a discussion of these issues.

Discussion

The argument in support of SoCal's theoretical shortfall is found at page 12 of its Reply Brief.

> "The P1-P4 cold year requirements forecast for January was 110 Bcf or 3569 MMcfd. (Ex. No. 29, p. 17). Total primary supply, excluding PGandE, was forecasted in the record to be 2495 MMcfd. (Ex. No. 29, p. 35). Projected storage withdrawals during January were 20.5 Bcf or 661 MMcfd. (Ex. No. 29, p. 44). Thus, only 3156 MMcfd of gas was projected to be available, absent the PGandE contract, to serve the P1-P4 cold weather January requirements of 3569 MMcfd. The resulting 413 MMcfd shortfall could therefore have been supplied in part by the PGandE gas under the contract extension. While storage could have been used to supply this market in January 1982, without PGandE gas, to do so would leave storage at a dangerously low level in the event of additional cold weather later in the winter of 1982. The PGandE gas substantially reduced this potential danger and at a price previously approved by the Commission." (Id. at 12.)

As TURN notes, if the first sentence in the quoted paragraph were correct, SoCal might have a case. However, review of page 17 of Exhibit 29 reveals that the source of the 3569 MMcfd figure is a graph entitled "Use of Storage for Seasonal Load Equation (Cold Year)" which is described by SoCal as illustrative of typical planned use of storage for seasonal load balancing (Exh. 29, p. 10). The 3569 MMcfd figure is presented, not in the Requirements Forecast section of the exhibit, but in the chapter entitled "Overview of System Complexities." Contrary to the argument presented in SoCal's Reply Brief, this number could not have been intended to represent forecasted requirements, which appear in an entirely different chapter of Exhibit 29.

The second cold year figure cited by SoCal, 2495 MMcfd, is found in the Supply Forecast chapter (Exh. 29, p. 35); as such it is an appropriate figure for use in analysis of SoCal's cold year argument.

The third cold year figure cited by SoCal, 20.5 Bcf, or 661 MMcfd (Table 4-2, Exh. No. 29, p. 44) represents projected storage withdrawals during January 1982. An examination of Table 4-2 does indicate the correctness of the figure, but the accompanying text (Exh. 29, p. 40) explains that Table 4-2 represents an average temperature year scenario, not the cold year scenario argued in SoCal's Reply Brief.

Thus two of the three figures crucial to SoCal's calculation of the 413 MMcfd theoretical cold year shortfall are wholly unrelated to SoCal's cold year planning. It would be an abuse of the record to permit SoCal to use either the 3569 MMcfd typical year demand figure or Table 4-2's January storage figure to represent projected cold year activity. A careful review of the record evidence demonstrates unequivocally the defects in SoCal's theoretical shortage argument and militates against SoCal's contention that, without the PG&E supply, there was a potential shortfall in gas to serve its P1-P4 customers in a cold year.

The Commission has previously endorsed SoCal's stated supply acquisition policy of meeting forecasted cold year high priority requirements. Extending the PG&E contract could be viewed as consistent with that policy. But, having addressed and rejected SoCal's Reply Brief recitation of the theoretical shortfall evidence, it is apparent to this Commission that none of SoCal's other actions or testimony conclusively support its Reply Brief contention that this was the reason for taking additional volumes of gas pursuant to the contract extension. Indeed SoCal witness Hohne insisted that the utility only entered into the contract extension with its minimum obligations because SoCal thought PG&E would retroactively release it from those obligations for the entire extension period. This hardly demonstrates an enthusiastic pursuit of a supply vitally needed to meet cold year requirements. In a cold year, supply shortfalls are typically made up with a more extensive use of storage inventories. Hohne essentially concedes this.

As we noted in D.83-10-001, it is a fundamental principle that the burden is on the utility to prove that the rates which it seeks are reasonable and not upon the Commission, the staff, or any other party to prove the contrary (<u>In re Suburban Water Co</u>. (1963) 60 CPUC 786 rev. denied; <u>In re SoCal Gas Co.</u> (1960) 58 CPUC 57). Citing earlier Commission authorities, we reiterated the requirement that a utility which seeks to establish the reasonableness of energy expenses subject to ECAC, must make a substantial affirmative showing with percipient witnesses in support of all elements of its application (D.83-10-001, mimeo, p. 3). We also stated:...

> "We realize the decision-making process in making a gas purchase or contract is complex. We also realize that reasonableness does not require perfect foresight. We only require that SoCal make prudent decisions based on the information available at the time. As we stated in D.82-09-105, mimeo, p. 7, SoCal is not subjected to arbitrary judgment by hindsight. However, SoCal is required to make a <u>clear and convincing</u> showing that its gas purchases were reasonable, otherwise these costs will be disallowed." (D.83-10-001, mimeo p. 5). (Emphasis added).

TURN argues in its Rehearing Brief that even if there were evidence of a theoretical shortfall, the reasonableness of SoCal's actions would still not be established by clear and convincing evidence. TURN analogizes the contract extension to an insurance policy. The potential benefit of contract renewal (assuming the need for the additional supply) was the availability of less expensive PG&E gas if the winter was cold. According to TURN that potential cost saving must be discounted by the probability of cold winter occurrence. The countervailing risk of contract renewal was the possibility of having to take the firm PG&E gas and reject cheaper El Paso supplies. According to TURN a true economic analysis (which SoCal did not perform) would have weighed the cost of the PG&E "insurance" against the discounted benefit of that supply in a cold year (TURN Rehearing Brief, pp. 6-7).

Our previous discussion can only be taken as an indication that we are far from satisfied with SoCal's evidentiary showing in this proceeding. Since we have determined SoCal's argument on the theoretical shortfall issue is wholly without evidentiary support, we need not address TURN's arguments that SoCal's lack of economic analysis is relevant to a determination of the reasonableness issue. The disallowance we make is premised on the fact that the record is totally devoid of evidence supporting SoCal's theory. Rather SoCal witness Hohne's testimony underscores that the contract extension was premised on SoCal's hope that once the new agreement was negotiated, PG&E would release it from the 75 MMcfd mimimum, retroactive to January 1, 1982.

The measure of damages asserted by staff and TURN in this case represents the price difference between the PG&E gas taken in February and injected to storage and El Paso gas with which it could have done the same thing, either in February or a few months thereafter. As such this is an appropriate measure of damages.

Findings of Fact

1. SoCal's 3569 MMcfd figure for January 1982 represents P1-P4 cold year requirements on a typical planned use basis, rather than a forecast basis.

2. SoCal's primary supply forecast, excluding PG&E gas, for January 1982, was 2,495 MMcdf.

3. Table 4-2 of Exhibit 29 does not reflect SoCal's projected storage withdrawals during January 1982.

4. The numbers which comprise SoCal's theoretical P1-P4 shortfall of 413 MMcfd (2,495 + 661 - 3,569) are not comparable, since they are a mixture of average year and cold year scenarios.

5. SoCal agreed to extend its PG&E contract with associated minimum take requirements in December 1981, because it thought PG&E would release it from those obligations retroactive to January 1, 1982, once a new "all discretionary" contract had been negotiated.

6. When it became obvious that PG&E would not agree to the January 1, 1982 effective date, the utilities cancelled the extension of the existing contract, effective February 7, 1982, at a point when SoCal had accumulated obligations to take almost three billion cubic feet of gas.

7. SoCal took the accumulated volumes between February 4 and February 7, 1982, and because it was not needed to meet customer demand, it was injected into storage.

8. The difference between the PG&E gas taken in February and injected to storage and El Paso gas which could have been taken and injected to storage in February or thereafter is $3,641,000.

Conclusions of Law

1. The evidence of record does not support Finding of Fact:

> "3. There was a theoretical shortfall of 413 MMcf per day in SoCal's primary supplies for the 1981/82 winter based on a cold year scenario. This shortfall was reduced by the PG&E contract extension." (D.83-01-001, p. 24).

2. The utility has the burden of proving by clear and convincing evidence that its expenditures are reasonable.

3. SoCal has failed to meet its burden of proving that it acted reasonably in extending its PG&E gas contract, with its minimum take requirement, for an indefinite period beyond December 31, 1981.

4. To the extent D.83-10-001 is inconsistent with the discussion, findings and conclusions in this order, it should be rescinded.

5. The amount of $3,641,000 should be disallowed from the CAM balancing account for the period October 1, 1981 through June 30, 1982.

<u>O R D E R</u>

IT IS ORDERED that:

1. D.83-10-001 is hereby rescinded to the extent it is inconsistent with the discussion, findings and conclusions in this order.

2. For the reasons stated in this decision, a disallowance of $3,641,000 shall be made to Southern California Gas Company's Consolidated Adjustment Mechanism Balancing Account for the period October 1, 1981 through June 30, 1982.

This order is effective today.

Dated ______________________, at San Francisco, California.