

Decision 89 11 053 NOV 2 2 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution G-2886 Order Authorizing )  
Southern California Gas Company to )  
Record up to \$265,000 in a )  
Memorandum Account for Remedial )  
Investigative/Feasibility Study )  
Work Costs Associated with the )  
Dinuba Base Site in Dinuba. )

**ORIGINAL**

Application 89-09-014  
(Filed September 5, 1989)

OPINION MODIFYING RESOLUTION G-2886

Summary of Decision

This decision corrects an inadvertent error in Ordering Paragraph 1 of Resolution G-2886 which authorized Southern California Gas Company (SoCal) to record up to \$265,000 in a memorandum account for costs associated with remedial investigative work at the Dinuba Base Site (Dinuba Site).

Background

On June 13, 1989, SoCal filed Advice Letter No. 1878-G (AL 1878) requesting authorization to book up to \$265,000 into memorandum account remedial investigative costs associated with the cleanup of hazardous waste at its Dinuba Site. SoCal made this request pursuant to a Remedial Action Order issued by the California Department of Health Services (DHS).

AL 1878 and the documents attached to it specifically referred to the costs to be incurred at the Dinuba Site as "remedial investigative work costs." The Division of Ratepayer Advocates (DRA) in its comments on AL 1878, filed on July 11, 1989, also referred to the costs as "remedial investigative costs." Resolution G-2886 also describes the work to be performed as "the activities in the remedial investigation work plan." However, Ordering Paragraph 1 of G-2886 authorizes SoCal to book into a

memorandum account "remedial costs" not "remedial investigative costs" associated with the cleanup of hazardous waste at the Dinuba Site.

The difference between "remedial costs" mentioned in Ordering Paragraph 1 and "remedial investigative costs" described elsewhere in the resolution and in DHS' order is a significant one. Remedial costs are the costs of conducting cleanup work. Remedial investigative costs described in AL 1878 and supporting documents, include the costs of conducting a full-scale investigation of the potential problems associated with the site pursuant to the work plan approved by the DHS. Therefore, on September 5, 1989, SoCal filed Application (A.) 89-09-014 requesting that Ordering Paragraph 1 of Resolution G-2886 be modified to authorize SoCal to book into a memorandum account "remedial investigative costs" associated with the cleanup of the Dinuba Site.

The Energy Branch of the Commission Advisory and Compliance Division has reviewed the application and recommends that Ordering Paragraph 1 of Resolution G-2886 be modified as requested.

#### Discussion

Based on our review of the pertinent documents, it is clear that Resolution G-2886 intended to authorize SoCal to record in a memorandum account "remedial investigative costs" associated with the cleanup at the Dinuba Site. Accordingly, we will modify Ordering Paragraph 1 of Resolution G-2886 as follows:

"Southern California Gas Company (SoCal) is authorized to implement a memorandum account not to exceed \$265,000 for remedial investigative costs associated with the cleanup of hazardous waste at the Dinuba Base site in Dinuba. No expenses paid or incurred prior to the date of this order shall be included in the account."

Findings of Fact

1. On June 13, 1989, SoCal filed AL 1878 requesting authorization to book up to \$265,000 into a memorandum account "remedial investigative costs" associated with the cleanup of hazardous waste at the Dinuba Site.

2. The Commission approved AL 1878 by Resolution G-2886 dated August 3, 1989.

3. Ordering Paragraph 1 of Resolution G-2886 authorized SoCal to book up to \$265,000 into a memorandum account "remedial costs," not "remedial investigative costs," associated with the cleanup of hazardous waste at the Dinuba Site.

4. On September 5, 1989, SoCal filed A.89-09-014 requesting that Ordering Paragraph 1 of Resolution G-2886 be modified to authorize SoCal to book into a memorandum account "remedial investigative costs," as opposed to "remedial costs," associated with the cleanup of hazardous waste at the Dinuba Site.

5. Resolution G-2886 intended to authorize SoCal to book into a memorandum account "remedial investigative costs," not "remedial costs," associated with the cleanup of hazardous waste at the Dinuba Site.

6. Ordering Paragraph 1 of Resolution G-2886 is in error.

7. The complete ordering paragraphs as amended by this decisions are set forth in Appendix A.

Conclusion of Law

Ordering Paragraph 1 of Resolution G-2886 should be modified as follows:

"Southern California Gas Company (SoCal) is authorized to implement a memorandum account not to exceed \$265,000 for remedial investigative costs associated with the cleanup of hazardous waste at the Dinuba Base site in Dinuba. No expenses paid or incurred prior to the date of this order shall be included in the account."

ORDER

IT IS ORDERED that:

1. Ordering Paragraph 1 of Resolution G-2886 is modified as follows:

"Southern California Gas Company (SoCal) is authorized to implement a memorandum account not to exceed \$265,000 for remedial investigative costs associated with the cleanup of hazardous waste at the Dinuba Base site in Dinuba. No expenses paid or incurred prior to the date of this order shall be included in the account."

2. This proceeding is closed.

This order is effective today.

Dated NOV 22 1989, at San Francisco, California.

G. MITCHELL WILK  
President  
FREDERICK R. DUDA  
STANLEY W. HULETT  
JOHN B. OHANIAN  
PATRICIA M. ECKERT  
Commissioners

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

*Wesley Franklin*

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WESLEY FRANKLIN, Acting Executive Director

APPENDIX A

Complete Ordering Paragraphs  
as Amended by D. 89 11 053

ORDER

IT IS ORDERED that:

1. Southern California Gas Company (SoCal) is authorized to implement a memorandum account not to exceed \$265,000 for remedial investigative costs associated with the cleanup of the Dinuba Base site in Dinuba. No expenses paid or incurred prior to the date of this order shall be included in the account.
2. Expenses recorded in the account shall be consistent with documents submitted in Advice Letter 1878-G filed by SoCal June 13, 1989, and supporting documents, included herein by reference.
3. These costs shall be subject to a reasonableness review, as ordered in Decision 88-07-059, and shall not be placed into rates until ordered by the Commission after the review.
4. SoCal is authorized to accrue interest at the three-month commercial paper rate on amounts booked into the memorandum account.
5. The total amount spent on Stage II remedial investigation activities from the \$127,000 previously authorized by the Commission will reduce the amount booked under this Advice Letter filing.
6. This resolution is effective today.

(END OF APPENDIX A)

view, force majeure provisions excuse performance under a contract during the period of the force majeure event, and are not intended to create an affirmative right to vary other terms of the contract. In addition, both PG&E and SCE argue that the Guidelines explicitly require a finding of project viability, before any modification to the contract can be negotiated. SCE asserts that granting this type of change would turn a nonviable ISO4 project into a wholly new project, which is contrary to established Commission policy.

#### IV. Discussion

The threshold issue for our consideration is whether or not a petition for modification is the appropriate vehicle to address Harwood's claim. Rule 43 of the Commission's Rules of Practice and Procedure provides in pertinent part that:

"Petitions for modification, other than in highway carrier tariff matters, shall only be filed to make minor changes in a Commission decision or order. Other desired changes shall be by application for rehearing or by a new application."

As we recently explained in D.88-01-044:

"We use several criteria to judge the propriety of a petition as a procedural vehicle under Rule 43. For example, is the petition 'minor' in the sense that it addresses a discrete issue, or does it cause us to rethink all elements of a complex decision or program? A petition is probably the correct vehicle in the former situation, while we would tend to require a new application in the latter....Also, a petition should target a generic issue, not a particular adversary. A complaint, rather than a petition, is proper where we are asked to adjudicate a dispute turning on the facts in a particular case." (D.88-01-044, mimeo. at pp. 11-12.)

We agree with Protestants that Harwood's petition seeks to include into general guidelines a specific set of circumstances

Findings of Fact

1. On June 27, 1985, Harwood executed an Interim Standard Offer 4 with PG&E for a 10 MW woodwaste-burning cogeneration facility located in Willits, California.
2. Interim Standard Offer 4 contains a five-year deadline for project operation.
3. In May, 1989, the City of Willits voted to deny the conditional permit for Harwood's project.
4. On August 4, 1989, Harwood filed a Petition for Modification of D.88-10-032, the Commission's guidelines on the administration of standard offer contracts.
5. In its petition, Harwood seeks (1) modification of D.88-10-032 to recognize its project specific experience as a force majeure; (2) approval to relocate the project to an unspecified location; and (3) approval of a delay in operation beyond the five-year deadline.
6. Under Rule 43 of the Commission's Rules of Practice and Procedure, petitions for modification are appropriate for making minor changes in a Commission decision or order.
7. In D.88-01-044, the Commission clarified that petitions should be used for addressing discrete, generic issues, and not for targeting a particular adversary.
8. D.88-01-044 states that a complaint, rather than a petition, is proper where the Commission is asked to adjudicate a dispute turning on the facts in a particular case.
9. The guidelines adopted in D.88-10-032 state that decisions about the applicability of the force majeure clause will be made on a case-by-case basis.
10. In developing its Guidelines, the Commission considered, but rejected, recommendations to identify additional specific circumstances under which a QF may (or may not) invoke the force majeure clause.