

SEP 26 1991

Decision 91-09-075 September 25, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Miller Brewing Company,)
Complainant,)

ORIGINAL

vs.

Case 89-07-008
(Filed July 3, 1989)

Southern California Gas)
Company,)
Defendant.)

McKenna, Conner & Cuneo, by Lisa D. Norlander,
Attorney at Law, for Miller Brewing Company,
complainant.
Steven D. Patrick, Attorney at Law, for
Southern California Gas Company, defendant.

OPINION

Background

From May 1987 to April 30, 1988, Miller Brewing Company (Miller or complainant) received Southern California Gas Company's (SoCalGas or defendant) gas service in its Irwindale facility under two tariff schedules. Complainant's basic service was billed under Schedule GN-46 (GN-46). However, complainant also obtained gas service under Schedule GN-8B (GN-8), a tariff which provided incremental gas service under an auction procedure. Schedule GN-46 included a demand charge, among other charges. GN-8, on the other hand, did not impose a demand charge. Under GN-8, Miller had the option to submit monthly bids for gas by stating the price it was willing to pay. If Miller's bid was within SoCalGas' acceptable range, the bid was accepted and Miller received gas accordingly. If the bid was not accepted, Miller relied upon gas service under GN-46.

Commission. A prehearing conference (PHC) was convened on May 25, 1990. After the PHC, contrary to Rule 51.1 of the Commission's Rules of Practice and Procedure, the parties initially informed the Commission of their Compromise and Settlement Agreement (Settlement) through letters to the Docket Office and the Commission's Consumer Affairs Branch. On August 1, 1990, the assigned administrative law judge (ALJ) issued a ruling in which he advised the parties that since this complaint involves deposited funds and other complicating issues regarding the ratemaking treatment of the "forgiven amount," it should not be dismissed at the written request of a complainant and by order of the Commission's Executive Director under Resolution A-4638. Rather, the ALJ determined that given the deposit of funds and the outstanding complicating issue, the Settlement in this proceeding should be treated in accordance with Rule 51. Consequently, he ordered that the proceeding remain open so that the reasonableness of the Settlement, which turns on the interests of other ratepayers, might be considered. In addition, he held that the Settlement would only be entertained further through written motion of the settling parties.

On October 1, 1990, under Rule 51.1(b), the parties gave notice that a Settlement Conference was being convened on October 8. Pursuant to Rule 51.1(c), on December 21, 1990, Miller and SoCalGas filed with the Commission a joint motion to accept the executed Settlement. According to the terms of the Settlement,² SoCalGas would receive \$118,559.83 plus accrued interest, from the \$190,619.78 of deposited funds, and the balance would be returned to Miller. Therefore, Miller would receive \$72,059.95 plus accrued interest.

² A copy of the Settlement Agreement is set forth in Appendix A to this opinion.

Discussion

Rule 51.1(e) of the Commission's Rules of Practice and Procedure states:

"The Commission will not approve stipulations or settlements, whether contested or uncontested, unless the stipulation or settlement is reasonable in light of the whole record, consistent with law, and in the public interest."

While the parties have not specifically addressed this Rule, we have reviewed the Settlement in accordance with its precepts.

Further, in Decision 88-12-083,³ regarding Pacific Gas and Electric Company's Diablo Canyon nuclear power plant, the Commission discussed numerous factors that should be considered and balanced in approving a settlement. Among them:

"The most important element in determining the fairness of a settlement is the relationship of the amount agreed upon to the risk of obtaining the desired result."

To that end, the Settlement appears to reflect a solid compromise of the original positions of the parties. The settled amount falls between complainant's most desired result, to have the demand charge calculated using the 12-month average of its basic service (GN-46) usage, and defendant's position that the demand charge should be calculated on the basis of a moving monthly average. Both parties faced substantial risks in seeking to obtain their desired results through the formal hearing process. Considering the record as a whole, the Settlement appears to be a fair and reasonable resolution of a situation peculiar, among defendant's industrial and commercial (noncore) customers, to complainant.

³ 30 CPUC 2d 189, 221 (1988).

ORDER

IT IS ORDERED that:

1. The Compromise and Settlement Agreement filed December 21, 1990 by Miller Brewing Company (Miller) and Southern California Gas Company (SoCalGas) is approved.
2. Of complainant's deposit of \$190,619.78, the sum of \$118,559.83, with any interest accrued, shall be disbursed to SoCalGas with the remainder being refunded to complainant, Miller, within 5 days of the effective date of this order.
3. SoCalGas shall not recover the amount refunded to Miller from other ratepayers, through debiting of any balancing or memorandum accounts or other means.
4. This proceeding is closed.

This order is effective today.

Dated September 25, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President

JOHN B. MOHANIAN

DANIEL Wm. FESSLER

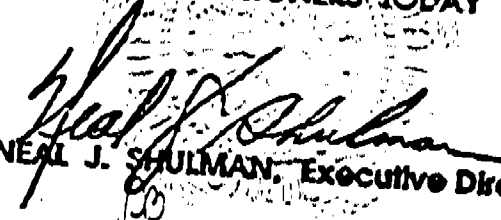
NORMAN D. SHUMWAY

Commissioners

I abstain.

/s/ G. Mitchell Wilk
Commissioner

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


NEAL J. SHULMAN, Executive Director

BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA

MILLER BREWING COMPANY
Complainant,

vs.

Case No. C.89-07-008

SOUTHERN CALIFORNIA GAS COMPANY,
Defendant
(U 904 G)

COMPROMISE AND SETTLEMENT AGREEMENT

In accordance with Rule 51 of the California Public Utilities Commission ("Commission") Rules of Practice and Procedure, Miller Brewing Company, 15801 East First Street, Irwindale, California, hereinafter referred to as "Complainant", and Southern California Gas Company, 810 South Flower Street, Los Angeles, California 90017, hereinafter referred to as "SoCalGas", in consideration of the promises made herein, submit this Compromise and Settlement Agreement under which they and each of them agree as follows:

Nature And Effect of Agreement

1. This Agreement consists of a compromise and settlement by the parties of Complainant's claim against SoCalGas arising from the dispute described in Paragraph 2 below, and a release given by Complainant to SoCalGas relinquishing Complainant's claim against SoCalGas. By executing this Agreement, each of the parties intends to and does hereby

1 extinguish the obligations heretofore existing between them and
2 arising from that dispute. This Agreement is not and shall not
3 be treated as an admission of liability of either party for any
4 purpose.

5 Nature And Status of Dispute

6 2. On July 3, 1989, Complainant filed a complaint
7 against SoCalGas before the Commission designated as Complaint
8 No. C-89-07-008, alleging that SoCalGas had improperly billed
9 Complainant for past gas service by SoCalGas.

10 Compromise Agreement

11 3. In consideration of the payment of \$118,559.83
12 with interest by Complainant to SoCalGas, which payment will be
13 made out of the funds on deposit with the Commission with the
14 balance being refunded to Complainant,

15 a. Complainant hereby compromises and settles
16 any and all claims, demands, obligations, or causes of action for
17 compensatory or punitive damages, costs, losses, expenses, and
18 compensation, whether based on tort, contract, or other theories
19 of recovery, which Complainant has against SoCalGas, SoCalGas'
20 predecessors and successors in interest, heirs, and assigns and
21 SoCalGas' past, present, and future officers, directors,
22 shareholders, agents, employees, parent and subsidiary
23 organizations, affiliates, and partners arising from the subject
24 matter of the complaint described in Paragraph 2, and agrees that
25 this compromise and settlement shall constitute a bar to all such
26 claims.

27 b. Complainant agrees to dismiss with prejudice
28 the complaint against SoCalGas described in Paragraph 2.

1 c. Complainant and SoCalGas agree that this
2 compromise and settlement shall constitute a bar to all claims
3 arising out of the subject matter of the action described in
4 Paragraph 2.

5 Release and Discharge

6 4. Complainant hereby releases and discharges
7 SoCalGas, SoCalGas' predecessors and successors in interest,
8 heirs and assigns, and SoCalGas' past, present, and future
9 officers, directors, shareholders, agents, employees, parent and
10 subsidiary organizations, affiliates, and partners from, and
11 relinquishes, any and all claims, demands, obligations, or causes
12 of action for compensatory or punitive damages, costs, losses,
13 expenses, and compensation, whether based on tort, contract, or
14 other theories of recovery which Complainant has or which may
15 later accrue to or be acquired by Complainant against SoCalGas
16 arising from the subject of the complaint described in Paragraph
17 2, above.

18 Advice of Attorney

19 5. Each party warrants and represents that in
20 executing this Agreement, such party has relied upon legal advice
21 from the attorney of choice; that the terms of this Agreement
22 have been read and its consequences (including risks,
23 complications, and costs) have been completely explained to such
24 party by that attorney; and that such party fully understands the
25 terms of this Agreement. Complainant further acknowledges and
26 represents that, in executing this release, Complainant has not
27 relied on any inducements, promises, or representations made by
28 SoCalGas or any party representing or serving SoCalGas.

Conditions of Execution

6. Each party acknowledges and warrants that such party's execution of this release is free and voluntary.

Execution of Other Documents

7. a. Complainant shall execute the letter of withdrawal of the complaint (Exhibit "A" hereto) described in Paragraph 2, and deliver an executed copy to counsel for SoCalGas.

b. Each party to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

Attorney's Fees

8. Each party to this Agreement shall bear all attorneys' fees and costs arising from that party's own counsel in connection with the complaint, this Agreement, and the matters referred to herein; the withdrawal of the complaint, and all related matters. This paragraph shall be applicable to this entire Agreement.

Entire Agreement

9. This Agreement contains the entire agreement between the parties.

Effective Date

10. This Agreement shall become effective upon execution by Complainant and SoCalGas and approval of this Commission.

Governing Law

11. This Agreement is entered into, and shall be construed and interpreted in accordance with, the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives

EXECUTED at Los Angeles, California, on December 20,

1990.

COMPLAINANT
MILLER BREWING COMPANY

By William S. [Signature]

Title SECRETARY

SOUTHERN CALIFORNIA GAS COMPANY

By [Signature]

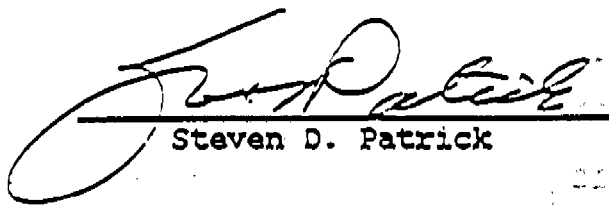
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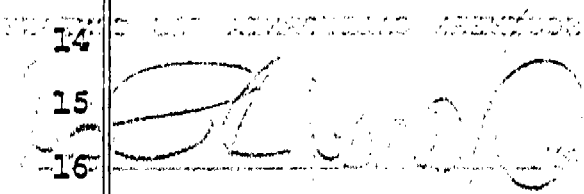
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all known parties of record in this proceeding by mailing by first-class mail a copy thereof properly addressed to each such party.

DATED at Los Angeles, California this 21st day of December, 1990.



Steven D. Patrick



(END OF APPENDIX A)