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Decision 91-09-075 September 25, 1991 **OD M**ay I, 1988, Frankličiča

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Miller Brewing Company, Car 200)

Complainant,

vs.

Southern California Gas (1989) Company Angleson to see the company of the company of the company and the comp

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McKenna, Conner & Cuneo, by Lisa D. Norlander of brank of the Attorney at Law, for Miller Brewing Company, complainant.

Steven D. Patrick, Attorney at Law, for good or as a second Southern California Gas Company, defendant.

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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 Alemany of wid provide a colly where we will in the following the colling of the GN-46.

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需要性的现在形式。 编码

On May 1, 1988, regulation of the gas industry was restructured, resulting, among other things, in the revision of all tariffs and many terms of service. Prior to this date, SoCalGas advised complainant that gas service could no longer be negotiated under GN-46 or GN-8. Instead, the parties negotiated a gas service contract under a new tariff, Schedule GN-30 (GN-30).

GN-30 imposed three types of demand charges. The calculation of one of these demand charges depended on whether the customer either had a prior usage history or was one "with no prior usage history" or "on a rate schedule where no demand charges were ... applicable." A customer with a prior usage history would have its demand charge calculated using a 12-month average method. One with no prior usage history or on a rate schedule where no demand charges were applicable would have its demand charges calculated using a moving monthly average. The dispute between the parties centered on the characterization of complainant in light of its receipt of gas service under GN-8. Complainant maintained that as a customer obtaining service under GN-46, a tariff imposing demand charges, it had a prior usage history. SoCalGas maintained that since complainant had received the greater portion of its gas service under GN-8, the auction procedure, it was a customer on a rate schedule where no demand charges were applicable.

On July 3, 1989, Miller filed a complaint against defendant alleging that SoCalGas had improperly billed it for past gas service. Complainant deposited \$190,619.78 with the

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¹ D-1 demand charge. Rate Schedule GN-30 specifies in part that: "The D-1 demand charge is established from the average monthly throughput for the most recent 12 months' service. However, for customers initiating service with no prior usage history or who previously were on a rate schedule where no demand charges were applicable, the D-1 demand charge will be based on a moving monthly average of actual throughput until 12 month's (sic) usage is accumulated."

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 Rather, Commission's Executive Director under Resolution A-4638. 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, 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 And to this opinion.

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Rule 51-1(e), of the Commission's Rules of Practice and Procedure, states: / project lending with a problement of the procedure and procedure.

"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, 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 the second complainant. الراسوم والمرابع الرام والمرابع

^{3 30} CPUC 2d 189, 221 (1988). TTO SEAM TO ARECTIONE OUT TO AGAIN A ST

During the PHC convened in this proceeding, the assigned ALJ briefly identified the central issue of the Settlement affecting the public interest. He characterized it as: "the risks to the utility of settling when recovery of those settled amounts is uncertain." (PHC Transcript, p. 12, 11, 19-21.) In the Joint Motion, SoCalGas "represents that the...funds are not subject to balancing account treatment." We interpret this statement to mean, and so hold, that any foregone revenues billed by SoCalGas but not received from Miller as a result of this Settlement shall not be recovered from other ratepayers. Consequently, we find the Settlement to be in the public interest.

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<u>Findings of Fact</u>

- 1. Miller deposited \$190,619.78 with the Commission.
- 2. On July 3, 1989, Miller filed a complaint against SoCalGas.
- 3. Following notice and completion of a Settlement Conference, as required by Rule 51.1, on December 21, 1990, Miller and SoCalGas filed a joint motion to approve the Settlement and disburse the deposited funds.
- 4. SoCalGas represents that the deposited funds of \$190,619.78, are not subject to balancing account treatment.
- 5. The Settlement disposes of all issues existing between the parties in this proceeding.

Conclusions of Law

- 1. The Settlement is reasonable in light of the whole record, consistent with law and in the public interest.
 - 2. The Settlement should be approved.
- 3. The following order should be effective the date of signature because only the involved parties are affected and a substantial sum of money is on deposit.

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- 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. The first the second of the second
 - 4. This proceeding is closed. This order is effective today. Dated September 25, 1991, at San Francisco, California.

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I abstain.

/s/ G. Mitchell Wilk Commissioner នេះស្រាស់ នៅ នាស្សាស្រាស់ ស្រាស់ ស្រាស់

CERTIFY THAT THIS DECISION WAS APPROVED BY THE ABOVE COMMISSIONERS TODAY

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Executive Director

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APPENDIX A C-89-07-008 Page 1 BEFORE THE PUBLIC UTILITIES COMMISSION CONTINUES l OF THE STATE OF CALIFORNIA TOTAL OF LULTE - S 2 اً الأميان المستقدة والإنتشارين الراب المستقد الإنتقاء والدائمة والمستقد المستقد المس 3 Pubotist i 4 MILLER BREWING COMPANY (12 01 4 1 0 100 10) Complainant, Case No. C.89-07-008 ೦ ಎ - ಎಂದಲ್ಲಿಯಾವಲ ೧೯೯೮ ಕಂಗಾಮ್ ಯಾದಲ್ಲಿ ಕಾರ್ಯ 5ರ ಜಲ್ಲಾಗಿಕೊಂಡಲ್ಲಿ ಆಡುಕ್ಕಿತಿಯಾಗಿ SOUTHERN CALIFORNIA GAS COMPANY, Defendant (U 904 G) ြည်းသည်။ သို့ အသည် တာသို့သည် အသည် သည်တည်းသည်တွေကာကြာသည် 9 10 اً بودور العباهم الجنوبية بمهورين من يعني الأقتاد معيود المعرف بعد عدد الما المدالة المراكب الأفاد الما المعاد الأماري أبعد المعادل من أن معرف الما المعادل المعادلة المعادلة المعادلة الما المعادلة المعادلة المعادلة المعاد COMPROMISE AND SETTLEMENT AGREEMENT the control of the co 13 In accordance with Rule 51 of the California Public and the control of th 14 Utilities Commission ("Commission") Rules of Practice and 15 Procedure, Miller Brewing Company, 15801 East First Street, The second of th 1.5 Irwindale, California, hereinafter referred to as "Complainant", Brown Land College Col 17 and Southern California Gas Company, 810 South Flower Street, Los នាល់ទី ២០ ខ្លែង ខណៈ ១២ ២០១២១២ ១៣២២២២ 18 Angeles, California 90017, hereinafter referred to as "SoCalGas", 19 الله المحلول المحلول المحلول المحلول والمحلول والمحلول المحلول المحلو in consideration of the promises made herein, submit this 20 Company of the compan Compromise and Settlement Agreement under which they and each of 21 కారణాడు. ఇద్ద కామార్జుకు కార్స్ చారకుడ్డి కాటికించిన స్థామం them agree as follows: 22 Nature And Effect of Agreement 23 1 ్. సమాఖం ఎమ్మకుకు ఇచ్చారు.హింద్రమ్యాచ్చి స్త్ This Agreement consists of a compromise and 24 AND THE REAL PROPERTY OF THE P settlement by the parties of Complainant's claim against SoCalGas --- 25 (A) the Court of the control of t arising from the dispute described in Paragraph 2 below, and a 26 release given by Complainant to SoCalGas relinquishing 27 Complainant's claim against SoCalGas. By executing this

Agreement, each of the parties intends to and does hereby

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

Nature And Status of Dispute

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

Compromise Agreement

- 3. In consideration of the payment of \$118,559.83 with interest by Complainant to SoCalGas, which payment will be made out of the funds on deposit with the Commission with the balance being refunded to Complainant,
- Complainant hereby compromises and settles a. any and all claims, demands, obligations, or causes of action for compensatory or punitive damages, costs, losses, expenses, and compensation, whether based on tort, contract, or other theories of recovery, which Complainant has against SoCalGas, SoCalGas' predecessors and successors in interest, heirs, and assigns and SoCalGas' past, present, and future officers, directors, shareholders, agents, employees, parent and subsidiary organizations, affiliates, and partners arising from the subject matter of the complaint described in Paragraph 2, and agrees that and the second s this compromise and settlement shall constitute a bar to all such claims. m_{i} , the parameter m_{i} to m_{i} . When m_{i} is a parameter m_{i} is the m_{i} to m_{i} the m_{i} to m_{i}
- b. Complainant agrees to dismiss with prejudice the complaint against SoCalGas described in Paragraph 2-0

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

Release and Discharge

SocalGas, SocalGas' predecessors and successors in interest, heirs and assigns, and SocalGas' past, present, and future officers, directors, shareholders, agents, employees, parent and subsidiary organizations, affiliates, and partners from, and relinquishes, any and all claims, demands obligations; or causes of action for compensatory or punitive damages, costs, losses, expenses, and compensation, whether based on tort, contract, or other theories of recovery which Complainant has or which may later accrue to or be acquired by Complainant against SocalGas arising from the subject of the complaint described in Paragraph 2, above.

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executing this Agreement, such party has relied uponalegal advice from the attorney of choice; that the terms of this Agreement have been read and its consequences (including risks, complications, and costs) have been completely explained to such party by that attorney; and that such party fully understands the terms of this Agreement. Complainant further acknowledges and represents that, in executing this release, Complainant has not relied on any inducements, promises, or representations made by SoCalGas or any party representing or serving SoCalGas.

A The Theory

1	conditions of Execution
2	6. Each party acknowledges and warrants that such
., 3	party's execution of this release is free and voluntary.
4	Execution of Other Documents
5	7. a. Complainant shall execute the letter of
6.	withdrawal of the complaint (Exhibit "A" hereto) described in
. 75	Paragraph 2, and deliver an executed copy to counsel for
8 .	rSoCalGas 2 1
. • . <u></u> . 9 .	b. Each party to this Agreement shall cooperate
10	fully in the execution of any and all other documents and in the
	completion of any additional actions that may be necessary or
İ	appropriate to give full force and effect to the terms and inten-
	of:this:Agreement_ : The control of
: 14:	in the same of the contract of Attorney's Fees pages with medito 100
15	8. Each party to this Agreement shall bear all
15	attorneys' fees and costs arising from that party's own counsel
17	in connection with the complaint, this Agreement, and the matter
18	referred to herein, the withdrawal of the complaint, and all
19.	related matters. This paragraph shall be applicable to this
20	entire Agreement.
g = 21	Entire Agreement was what were 100
22	9. This Agreement contains the entire agreement
23	petween the parties 2000 control of the control of
24	Effective Date part will writing the
357 , 25 ,	10. This Agreement shall become effective upon
<i>3</i> > .:26	execution by Complainant and SoCalGas and approval of this
ja 27	u Commission. The commission of the commission
28	ఎ.ఎ.మ మందర్ గుండాగు గుండి అంది. అంది. అందు అంది. కారణ మండి అంది. మంది. మంది. మంది. అంది. అంది. అంది. అంది.

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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. Be the second of the sec

COMPLAINANT

MILLER BREWING COMPANY

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SOUTHERN CALIFORNIA GAS COMPANY

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APPENDIX A Page 6

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