

DEC 23 1991

Decision 91-12-054 December 18, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
 Commission's own motion to change
 the structure of gas utilities'
 procurement practices and to
 propose refinements to regulatory
 framework for gas utilities.

ORIGINAL

R.90-02-008

(Filed February 7, 1990)

OPINION

This decision grants in part the petition to modify Decision (D.) 90-09-089 filed by Southern California Gas Company (SoCalGas) to change certain rules regarding standby charges for noncore customers. We declare that the Commission reserves jurisdiction to take action based on a more specific proposal that SoCalGas is directed to file. Today's decision will apply only to the obligation to pay standby charges on SoCalGas's system for imbalances relating to the months of October through December, 1991, as these standby charges have not yet accrued as of the date of today's decision.

Furthermore, this decision does not now change the obligation to pay those standby charges, but simply reserves jurisdiction to review the obligation to pay those charges, so that the Commission can consider whether or not it should approve alternative methods for customers to eliminate negative imbalances in their accounts. SoCalGas is directed to collect standby charges which shall be held in an interest bearing memorandum account, subject to refund pending further order of the Commission.

SoCalGas' Petition to Modify

On November 1, SoCalGas filed a petition to modify the procurement rules adopted in D.90-09-089. The utility seeks to relieve certain noncore customers of standby procurement charges that have accrued since October 21st, 1991, under its imbalance

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service tariff (G-IMB). Under its imbalance service tariff, SoCalGas provides both "standby service" for negative imbalances and "buy-back service" for positive imbalances. Standby service is provided to noncore customers who, for whatever reason, do not have their own gas supplies delivered to them and thereby realize negative imbalances between their deliveries and their actual usage. Customers who use less gas than they deliver to the system have positive imbalances, subject to a different set of rules under SoCalGas' imbalance service program.

Standby service is provided to noncore customers who use more gas than they have delivered to the system. When noncore customers receive standby service they, in effect, use gas belonging to other noncore customers or from the core portfolio. Pursuant to rules effective August 1, 1991, noncore customers who require standby services must pay 150% of the core weighted average cost of gas (WACOG) as a standby procurement charge.¹ However, this obligation to pay 150% of WACOG only applies to imbalances in excess of the 10% tolerance band and only if the customer does not reduce its negative imbalance to that point, by means of trading or withdrawals from storage, before the end of the applicable imbalance trading period.² SoCalGas proposes that the standby rules be changed to permit noncore customers who have already used gas from the core portfolio to replace it during the winter months, between December 1991 and March 1992. SoCalGas would relieve these customers of standby charges in consideration of these "in kind transfers."

1 The standby service charge also includes a brokerage fee.

2 The imbalance trading period allows, for example, a customer who put more gas into the system than it used (a customer with a positive imbalance) to trade its positive imbalance with a customer who has a negative imbalance for the same month, at a mutually agreeable price.

SoCalGas believes noncore customers have required standby services due to customer and utility inexperience with the new rules. It states that standby services were required because not enough capacity has been available to serve the needs of transportation customers. It also believes that customers chose not to use available capacity on the Transwestern system because it was expensive.

SoCalGas characterizes the revenue from the standby charges as a "windfall" to core customers, stating the core should not benefit from the charges while noncore customers were learning to operate efficiently under the new rules.

SoCalGas also proposes several related provisions, including a change to the existing storage banking program. SoCalGas' petition asked for Commission action by November 20, 1991.

Responses of Parties to SoCalGas' Petition

Southern California Edison Company and Southern California Utility Power Pool and Imperial Irrigation District (together SCE/SCUPP) jointly filed a response to SoCalGas' petition in support of SoCalGas' proposal. SCE/SCUPP believes the standby charges are "unjust and unintended" and were imposed because SoCalGas' core purchases required the use of pipeline capacity which would have otherwise been available to interruptible customers. Broad Street Oil and Gas Company also supports the petition.

The Division of Ratepayer Advocates (DRA) supports the rule change for this year only, and suggests SoCalGas be required to provide information in its next reasonableness review regarding the impact of the program on the core portfolio cost of gas.

Arco Oil and Gas Company, Chevron U.S.A. Inc., Mobil Natural Gas Inc., Shell Western E&P Inc., Texaco Inc., California Industrial Group, California Manufacturers Association and California League of Food Processors (jointly, Large Users), Watson

Cogeneration Company (Watson), and Cogenerators of Southern California (CSC) believe the Commission should provide relief from the standby charges but do not support SoCalGas' proposal. They ask the Commission to change the standby charge for the period in question from 150% of the WACOG to 100% of the WACOG because they doubt whether noncore customers will be able to provide in-kind transfers this winter. Watson makes its request on the basis that the customer imbalances appear to have occurred because (1) SoCalGas failed to notify customers on a timely basis that they would not be receiving gas supplies and (2) SoCalGas improperly stored core gas. Watson believes the standby gas SoCalGas provided to noncore customers would not and could not have been injected into storage for core customers under any circumstances. Philip Morris Management Corporation (Philip Morris) shares Watson's concerns that imbalances have been high due to SoCalGas' 1991 mismanagement.

California Gas Marketers Group (Marketers Group) does not oppose SoCalGas' proposal but states that the Commission should be aware that approval of the proposal will disrupt customers' gas supply arrangements and perpetuate concerns among customers and marketers that the Commission's gas programs cannot be relied upon to allow customers to make rational business decisions. It states that the bailout of some noncore customers sends the wrong signal to customers, marketers, and suppliers who made investments and business adjustments to ensure their gas supplies would be delivered. It comments that SoCalGas has contributed to the imbalance problem by refusing to provide operational information or timely reports on suppliers' deliveries.

The California Cogeneration Council (CCC) expresses similar concerns regarding SoCalGas' management of the new program and the fairness of relieving some customers of imbalance charges considering that others avoided imbalances by investing time and money to that end. CCC argues the Commission should defer action

on the petition until after a workshop is held to explore various imbalances and other program problems.

Discussion

D.90-09-089 provided that customers who require standby gas service from the utilities would pay 150% of the core WACOG for purchasing gas from the core portfolio. The purpose of the charge was to discourage noncore customers from relying on SoCalGas for gas supplies and to assure that core customers would not be harmed by sales to the noncore. The issue of standby service was considered at several junctures in the procurement rulemaking.

We believe that the current imbalance situation may derive from a variety of sources. One among them is the initial administration under our new procurement program. Some problems may be due to administrative or other difficulties of SoCalGas and some may be due to program participants who either are trying to leverage the system to their advantage or did not adequately prepare themselves to comply with our rules. Another allegation is that SoCalGas changed its operational storage plan for the core by purchasing and storing more gas in the summer than the core required for winter. This could have reduced capacity available for noncore transportation customers.

We are also very much aware that SoCalGas' petition and the responses of some parties suggest that SoCalGas may have taken actions which should be the subject of a reasonableness review. For example, SoCalGas suggests it has not moved customer gas as it was required to, and that it drew down cheap core storage supplies in order to serve noncore customers, potentially requiring the core to purchase more expensive supplies at a later time. (SoCalGas' own petition states it was able to provide standby service only because it injected additional core supplies into storage in order to reduce "expensive winter core purchases...to the economic benefit of the core." From this we infer that those economic benefits may have dissipated with the use of that gas to provide

standby service to noncore customers.) We will dispose of any disallowance issues in the appropriate reasonableness review rather than in this proceeding.

We are also concerned because SoCalGas' proposal could, in effect, require the core to purchase gas from noncore customers at 150% of the core WACOG. We have no record now on which to rationalize a requirement that the core pay this price for gas and forego opportunities to purchase gas at a lower price. We are also uncomfortable effectively requiring the core to purchase gas from noncore customers when there is not an emergency. More facts are necessary to make such a determination. We shall proceed to gather the necessary facts and make a final decision on what type of remedy to the negative imbalance standby charges, if any, is appropriate based on that record.

The pleadings suggest that some imbalance charges occurred because core purchases constrained capacity which would have otherwise been available to interruptible customers. We are reluctant to waive standby service charges now for interruptible customers who pay a reduced transportation rate in exchange for a lower priority service. Some interruptible customers could have switched to alternate fuels rather than taking standby service.

The petition also raises several factual issues which may be subject to controversy. For example, did noncore customers forego the use of available capacity in favor of standby service, as SoCalGas suggests? If so, were they taking core gas because 150% of the WACOG was simply cheaper than the gas they could get elsewhere? Was capacity scarcer than could have been anticipated by interruptible customers who have negative imbalances? If some customers are permitted to use firm core capacity to deliver gas to the utility under SoCalGas' proposed in kind transfer program, what effect will this have on other noncore customers? We are seriously concerned about this equity question. The Commission adopted rules in this proceeding which, as a rulemaking, did not rely heavily on

controverted matters of fact. In this petition, SoCalGas asks for rule changes based on complex and potentially controversial matters of fact.

While SoCalGas characterizes the standby charges as a "windfall" to the core, it provides no evidence that existing rates are unreasonable or could not have been expected under the circumstances. We are also concerned that relieving noncore customers of existing charges might provide a windfall to customers who managed their gas purchases poorly or who chose to take standby service rather than other available gas supplies. We cannot now distinguish these customers from those who managed their purchases well and were required to purchase standby services in spite of their best efforts because of SoCalGas' operational problems or other roadblocks. While we are sympathetic to the potentially innocent customers in this dilemma, the present record does not permit us to separate them from purchasers who are at fault for their standby charges.

Based on the record before us, we cannot separate the innocent players from those whose imbalances are of their own doing. The ultimate relief we may grant, if any, should be tailored to refuse relief to those not deserving of it. But, due to the newness of the program, the potentially large dollar amounts of the imbalances and the possibility that there may be no potential trading partners with positive imbalances (due to lack of available capacity), we wish to establish a record and have the opportunity to provide appropriate relief as to the remainder of the unaccrued 1991 imbalances, as long as the core is held indifferent.

We believe there are affected customers who took all reasonable steps to assure delivery of their gas supplies and are nevertheless subject to substantial imbalance standby charges. However, we are unable at this time to provide relief to these customers as SoCalGas and other parties suggest. The rules adopted

in D.90-09-089 presented new opportunities for noncore customers by improving supply security and providing more options for gas purchasing. With these new opportunities, the rules presented new risks. SoCalGas' petition alone does not demonstrate that the risks associated with the standby charges are either unreasonable or could not have been anticipated as a result of implementing the new rules or existing capacity constraints.

In sum, the limited record we now have before us demonstrates that there may be problems which need solutions with regard to the initial operations of the SoCalGas procurement program. On the other hand, the limited record also demonstrates that there may be problems with the specific remedy SoCalGas is proposing or indeed with any other general remedy available. Numerous policy considerations also weigh heavily in our determination today, especially considering the many unanswered questions raised by SoCalGas' proposal. But to the extent we may properly rectify inequitable treatment of customers in our new program, we wish to be responsive. Therefore, we will investigate the allegations in the SoCalGas petition further and preserve our option to take action, including but not limited to a revision of length of the trading period, the amount of the standby charge or adoption of an in-kind transfer program, if further hearings provide us with substantial justification for fashioning a remedy.

SoCalGas' petition raises several policy issues which we will consider in our final decision on the propriety of providing relief. Retrospectively changing our rules for imbalances might send the wrong signal to customers and competitors. Businesses have planned their gas purchases and operations with a reasonable expectation that the Commission will not change its rules retroactively. While we cannot be certain whether SoCalGas' request in this case might harm some customers, our willingness on this one-time, extraordinary basis to examine whether some relief is warranted should not be construed as a willingness on our part

to make retrospective changes to rules in the future and create additional uncertainty for market participants. We believe providing predictable rules on which business persons can plan for their company's purchases is important. We recognize that by opening up the possibility of corrective measures by the Commission, we may create additional market uncertainty. It is our intent that uncertainty be kept to a minimum and that our staff will work through problems with affected parties. It is also our intent that the final relief we may fashion will not undo any trades or withdrawals from or injections into storage.

SoCalGas' petition asks the Commission to change its rules both as to standby charges that have already accrued and as to standby charges that have not yet accrued to some noncore customers. Standby charges for a month's imbalances do not accrue until the end of the applicable imbalance trading period. We note that under Schedule G-IMB, Sheet 21232-G, Item 3, customers are permitted to trade imbalances based on a trading period which begins at 7:00 a.m. on the 5th day of the month after the month in which the customer is notified of an imbalance, and ends on the 20th day of that month (or the first business day thereafter if the 20th is a weekend or holiday), at 4:00 p.m. Customers were notified of imbalances for the month of October during November 1991. Therefore, the trading period for October imbalances is December 5 through December 20, 1991. No standby charges will accrue as to October 1991 imbalances until after 4:00 p.m. on December 20th. Standby charges have already accrued as to August and September 1991 imbalances.

SoCalGas' petition asks us to change its procurement program, in part for periods that have already passed. The request therefore raises questions about the rule against retroactive ratemaking. Even where a retrospective change may not be barred by the rule against retroactive ratemaking, the Commission's general policy is not to authorize rate changes relating to a past period.

unless the Commission has previously authorized later changes. For example, the Commission often permits previously incurred costs to be recovered in later rates, but only costs incurred from and after the date the utility was authorized to book those costs into a memorandum or balancing account. For another example, the Commission on occasion will make a utility's rates subject to refund for a specified purpose, but the refund provision will only apply from and after the date of the order making the rates subject to refund.

Here, SoCalGas and the parties responding to its proposal are recommending alternative methods, other than payment of 150% of WACOG, for eliminating a customer's negative imbalance in excess of its 10% tolerance band. The obligation to pay 150% of WACOG as a standby charge for excess negative imbalances does not accrue until the end of the imbalance trading period. Based on our above-stated policy, we will not grant any relief with regard to standby charges that have already become due because the corresponding imbalance trading period has already passed. However, the trading period for October imbalances does not expire until the 20th of December at 4:00 p.m. Therefore, customers who have not yet eliminated their excess negative imbalances from the month of October do not yet owe SoCalGas 150% of WACOG as of the date of today's decision. Accordingly, today's decision will authorize further review of, and possible changes to, the methods for eliminating excess negative imbalances from the months of October, November, and December, 1991.³

We are limiting our potential revisions to the end of December because the need for relief allegedly arises from problems

3. If any party nevertheless believes that such relief would violate the rule against retroactive ratemaking, it is free to make that argument in the further proceedings to be conducted on SoCalGas's petition for modification.

associated with the start-up of SoCalGas's procurement program and because of our desire to limit the uncertainty that the potential for such changes may cause. Pending our resolution of whether to authorize alternative methods for eliminating excess negative imbalances for those three months, customers should pay the existing standby charge (150% of WACOG) at the end of the corresponding imbalance trading period. If we authorize alternative methods for eliminating excess imbalances for those three months, we will order a refund of those standby charges (with interest) to those customers who are authorized and able to take advantage of an alternative method. For months after December 1991, the existing program of standby charges will continue in place without change.⁴

After conducting hearings on the October through December, 1991 imbalances, we will determine what, if any, appropriate steps need be taken. We direct SoCalGas to file a specific proposal to deal with the October through December 1991 imbalances. In order for us to adopt the proposal, it must demonstrate that core customers will not be harmed by the program because of reduced operational flexibility. Finally, if customers believe they have been unreasonably harmed by SoCalGas's actions causing imbalances, they may file complaints or propose or demand disallowances in SoCalGas' reasonableness review.

Findings of Fact

1. D.90-09-089 provided that customers who require standby service will be charged 150% of the core WACOG, once the imbalance trading period for a specific month expires, if negative imbalances

⁴ The Commission, of course, may at some time choose to change that program prospectively, but does not intend to do so in response to SoCalGas's current petition for modification.

greater than the 10% tolerance band remain in the customer's suspense account.

2. SoCalGas proposes that customers who incurred standby charges in Fall 1991 be permitted to provide gas to SoCalGas during winter months in lieu of paying standby charges.

3. SoCalGas' petition raises several policy concerns and unanswered questions regarding its recent operations and the reasons that noncore customers may have large negative imbalances.

4. SoCal Gas should file a specific proposal to remedy the alleged problems arising from the negative imbalances for the months from October 1991 through December 1991. This proposal should demonstrate that core customers will not be harmed by its operation and should not undo trades or storage transactions which have already occurred. Hearings and briefs should explore the issues raised in this opinion as to the legality and fairness in fashioning a remedy as to allegedly excessive standby charges for this period.

Conclusions of Law

1. Consistent with the rule against retroactive ratemaking and our policies, we will now authorize potential relief only from standby procurement charges that have not yet accrued and that relate to imbalances from the months of October through December, 1991.

2. The Commission should grant in part SoCalGas' petition to modify D.90-09-089 by directing SoCalGas to file a specific proposal for equitable relief from standby charges.

3. Until hearings are held and an order, if any, is granted as a result thereof, noncore customers should pay standby charges associated with October through December 1991 imbalances to SoCalGas which shall hold them in an interest bearing memorandum account subject to refund if so ordered by this Commission.

4. Any disallowances associated with the August 1, 1991 through December 31, 1991 procurement program should be assessed in SoCalGas' relevant 1991-1992 year reasonableness review.

ORDER

ORDER

IT IS HEREBY ORDERED that:

1. The Southern California Gas Company (SoCalGas) petition to modify the procurement rules adopted in Decision (D.) 90-09-089 is granted in part. SoCalGas shall submit in this docket, no later than January 20, 1992, a specific proposal to equitably utilize alternative methods (other than the existing 150% of WACOG payment) for customers to eliminate excess negative imbalances in their accounts arising from underdeliveries in October, November, and December 1991. Such proposal shall address whether and the extent to which core customers will be affected by the proposal and shall be consistent with Finding of Fact 4. Parties who wish to comment shall file and serve reply comments on the SoCalGas proposal no later than February 15, 1992.

2. SoCalGas shall collect standby charges for imbalances from the months of October, November, and December, 1991 under Schedule G-IMB, and place those charges in an interest bearing memorandum account, subject to refund upon further order of the Commission.

3. In its reasonableness review relating to relevant 1991-1992 period, SoCalGas shall provide information regarding the impact of the management of the imbalance trading program during 1991 on the core portfolio cost of gas.

4. In all other respects the petition to modify is denied, without prejudice.

This order is effective today.

Dated December 18, 1991, at San Francisco, California.

R.90-02-008

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

PATRICIA M. ECKERT
President
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

NEAL J. SHULMAN, Executive Director

PS