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Decision 92-03-091 March 31, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the Western Liquid Gas Association for Application for Rehearing of Resolution G-2948 to consider Economic Impact of Economic Practicality, Alternate Fuels, Non-core and Curtailment Penalty issues.	ORIGINAL Application 91-06-045 (Filed June 21, 1991)
And Related Matters.	Application 91-06-063 R.90-02-008 R.86-06-006

O P I N I O N

This decision addresses rules adopted in Resolution G-2948 and Resolution G-2959. Additionally, we propose to eliminate the alternate fuel requirement for noncore customers and to increase penalties imposed on noncore customers who fail to curtail gas use when directed to do so by the utilities in a limited scope proceeding under Rulemaking (R.) 86-06-006. In the interim, customers who have been designated noncore in reliance upon either Resolution G-2948 or G-2959 may retain their noncore status.

I. Background

On May 22, 1991, we issued Resolution G-2948 to implement new gas procurement rules adopted in Decision (D.) 90-09-089. That resolution eliminated a requirement that noncore customers must retain alternate fuel capability. Subsequently, on July 24, 1991 we issued Resolution G-2959 which modified Resolution G-2948, eliminating the alternate fuel requirement only for customers who could no longer use their alternate fuel systems because the systems did not satisfy air quality standards. Such customers

would have to be willing to curtail gas use when requested by the utility.

DMS, Inc. (DMS) on behalf of Western Liquid Natural Gas Association filed an application for rehearing and petition for modification of Resolution G-2948. Its pleadings argued that the Commission had violated Public Utilities Code § 1708 by modifying its rules without providing parties an opportunity to be heard. DMS also argued that the new rules discriminated against industry members who had invested in air quality equipment. In D.91-09-085, we granted DMS' application for rehearing in order to provide a forum for the issues DMS raised.

II. Positions of the Parties

A. DMS

DMS' application for rehearing of Resolution G-2948 argues the Commission eliminated the alternate fuel requirement without providing an opportunity to be heard.

DMS supports the Commission's clarification in Resolution G-2959 that only customers who can demonstrate that they cannot meet air quality standards will be permitted to abandon their alternate fuel systems. DMS suggests the Commission adopt a mechanism for insuring compliance with this requirement. DMS also suggests the Commission should consider requiring customers to replace oil-based alternate fuel systems (which do not comply with air quality standards) with methanol or propane systems. DMS makes this recommendation on the basis that customers with complying systems will be at a competitive disadvantage over those who have non-complying systems and are able to abandon them.

DMS also recommends that customers who install an alternate fuel system after August 1, 1991 be eligible to convert to noncore status. Finally, DMS argues that the Commission should

increase the $1 per therm penalty which is levied on customers who fail to curtail gas use when directed to do so by the utility.

B. Pacific Gas and Electric Company (PG&E)

PG&E recommends the alternate fuel requirement be eliminated for all customers. PG&E argues that customers should be free to decide how they wish to comply with an order to curtail, whether by installing alternate fuel systems or changing their operations. PG&E points out that under the rules adopted in Resolution G-2959 some customers without alternate fuel systems receive the benefit of lower noncore rates while other customers in exactly the same situation must pay higher core rates. The distinction made between complying and non-complying customers, according to PG&E, rewards customers who are not in compliance. Finally, PG&E states it is impossible for it to police compliance with environmental requirements.

PG&E recommends the Commission increase the $1 per therm penalty for failure to curtail to $25 per therm in order to encourage customers to curtail rather than purchase utility service. PG&E adds that reclassification of some customers from core to noncore status will change demand between the two classes of service. For this reason, PG&E recommends related cost allocation issues be resolved in a cost allocation proceeding prior to the implementation of any new rules.

C. Southern California Gas Company (SoCal)

SoCal supports eliminating the alternate fuel requirement generally and, like PG&E, urges the Commission to increase the curtailment penalty to provide the right incentives for customers to curtail. SoCal also recommends that for customers who change from core to noncore status after the August 1, 1991 deadline, the Commission allow a utility to continue to record revenues into the

core account until the utility's subsequent cost allocation proceeding.

SoCal believes the alternate fuel requirement and the associated "economic practicality test" should be retained for small customers. SoCal recommends that customers whose usage exceeds 250,000 therms per year should not be required to maintain alternate fuel capability in order to obtain noncore status.

D. California Industrial Group, California Manufacturers Association, and California League of Food Processors (CIG)

CIG supports the proposals of PG&E and SoCal to eliminate alternate fuel requirements, stating that the requirements are vestiges of an earlier period. CIG believes it is not up to the Commission or the utilities to protect customers from the consequences of their choices. CIG objects to provisions in Resolution G-2959 which require customers with systems permitted under air quality rules to retain those systems.

CIG believes the $1 per therm curtailment penalty is adequate for assuring that curtailment provisions are not abused. It states that the higher penalties might force some customers to invest in alternate fuel systems.

E. Toward Utility Rate Normalization (TURN)

TURN argues that the Commission should not at this time make changes to the rules for noncore status because of the likelihood that large numbers of customers will change from core to noncore status. This migration could, according to TURN, increase core rates. TURN comments that noncore customers face little danger of curtailment under Service Level 2 and little danger of detection if they fail to curtail when directed to do so by the utilities. At this time, according to TURN, the curtailment penalty is too small to effectuate curtailments by noncore customers.

TURN objects to SoCal's proposal to change the end-use priority system as beyond the scope of this proceeding. TURN recommends that hearings be held before the Commission changes the rules for noncore status.

F. Rockwell International (Rockwell)

Rockwell objects to the proposals of PG&E and SoCal to increase the curtailment penalty. Rockwell believes the proposed penalties are punitive, and that curtailment occurs because of the Commission's past policies discouraging additional pipeline construction to California.

G. California Floral Council and Aebi Nursery (CFC)

CFC is troubled by PG&E's proposal because it may advantage large nurseries over small ones. It urges the Commission to retain the ability of customers who have alternate fuel capability to gain noncore status without respect to size. CFC opposes any increases to the curtailment penalty.

III. Discussion

We retained the requirement that noncore customers maintain alternate fuel systems when we adopted rules distinguishing core customers from noncore customers and permitting certain customers to purchase their own gas supplies. We intended that the alternate fuel requirement would protect customers from the effects of possible curtailments during the early years of the program.

Specifically, D.86-12-010 adopted rules distinguishing core customers from noncore customers and permitting certain customers to purchase their own gas supplies. D.86-12-010 defined core customers as customers in end-use Priorities P-1 and P-2A. Noncore customers were customers having end-use Priorities P-3 and below. The decision proposed that P-2B customers be classified as

core, and solicited further comment on whether P-2B customers should be core or noncore.

D.86-12-010 also required that customers in end-use Priorities P-3 through P-5 have alternative fuel capability, that is, an installed and operational alternative fuel facility.

In D.88-03-085, the Commission established requirements that core customers would have to meet to become noncore customers. Core customers using more than an average of 20,800 therms per month had to demonstrate on an annual basis the economic feasibility of installing an alternative fuel facility. Core customers using less than 20,800 therms per month had to install alternative fuel facilities and demonstrate that the cost of using alternative fuel would be lower than the price of core gas service.

Circumstances have changed since we adopted a continuation of the alternate fuel requirement under D.86-12-010. Noncore customers have become accustomed to the types of obligations and opportunities inherent in a more competitive gas industry. In addition, environmental regulations in some areas have grown more stringent, restricting the use of some fuels as back-up to gas supplies during curtailments.

Under the circumstances, we believe that the alternate fuel requirement should be eliminated as a determinant of noncore status. We do so in recognition that customers are capable of determining whether they require an alternate fuel system or would be better off facing curtailment in other ways. Customers are better positioned than the Commission to determine their most economic alternatives.

Although we took this step in Resolution G-2948, we recognize now that we did so without the benefit of a record that would allow us to consider our action in a broader context. The alternative fuel requirement has been central to all of our gas decisions. The core/noncore distinctions rely on the presence of alternate fuel capability or feasibility. The removal of the

alternate fuel requirement from our definitions of core and noncore undermines and confuses the definitions. Its removal affects the end use priority system and curtailment rules, and needs review in accordance with Public Utilities Code Sections 2771, et seq. The removal of the alternate fuel requirement obscures our definition of noncore, impacting all existing noncore customers with alternative fuel systems installed or qualifying under economic feasibility (core to noncore transfers). And finally, the removal of the requirement may shift throughput volumes and, as a consequence, it may affect cost allocations and rate design. Therefore, we will solicit comments under a limited scope proceeding under R.86-06-006 to clarify the definitions of core and noncore classifications and core to noncore transfers under this proposal.

In addition, we are especially concerned about the existing curtailment penalty. According to PG&E, under the existing $1 per therm curtailment penalty, customers can fail to curtail for more than 43 days annually before noncore rates become more expensive than core rates. SoCal estimates a noncore customer can refuse to curtail for ten weeks before noncore status becomes uneconomic. The existing rate obviously does not provide an adequate incentive for customers to concede to a curtailment order.

Based on these comments, we believe the trade-off for eliminating the alternate fuel requirement must be a higher curtailment penalty. Representatives of large customers naturally oppose increasing the penalty. CIG states a larger penalty may "force customers to purchase alternate fuel systems." That is as it should be. Noncore customers pay substantially less than core customers for transportation service. Some noncore customers pay less than others. These rate differentials have been established in part to recognize the level of priority access customers get to the system. By the service they have chosen, some customers effectively have agreed to be curtailed. Some have a lower

priority than others for public policy reasons. We expect lower priority customers to curtail when ordered to do so. The $1 per therm penalty is not an adequate incentive to curtail if customers may, in certain cases, refuse to curtail for several weeks before service becomes uneconomic for them. When noncore customers fail to curtail their gas use, they jeopardize the service of customers who have higher priority service.

By agreeing to provide more flexibility for noncore customers in deciding whether or not to have back-up facilities, we increase the risk to high priority customers that low priority customers may refuse to curtail because they do not have alternate fuel systems. In order to provide the proper incentive for noncore customers to curtail and to offset the increased risk to other customers, the utilities should increase the curtailment penalty. Whether the appropriate level of penalty is $25 or $10 or some other amount is a matter appropriate to each utility. We will initiate an appropriate penalty under R.86-06-006. PG&E, SoCal, and San Diego Gas and Electric Company shall submit appropriate cost estimates for their respective companies in accordance with the discussion above in comments on R.86-06-006.

We next address the reasonableness of Resolution G-2959 which requires some customers to retain alternate fuel systems and relieves others of the requirement. The comments of PG&E convince us that the distinction made in Resolution G-2959 between alternate fuel systems which meet air quality standards is not reasonable. As PG&E points out, it may be difficult if not impossible for utilities to determine customer compliance with environmental regulations. Contrary to DMS' assumption, it is not the role of the gas utilities to ensure compliance with environmental standards such as those governing alternate fuel systems, and we decline to use ratepayer resources to duplicate the efforts of other government agencies charged with that role.

As DMS and PG&E observe, the different treatment set forth in Resolution G-2959 for complying and non-complying systems unjustifiably rewards customers whose systems are out of compliance with environmental regulations, putting them at a competitive advantage over customers whose systems are in compliance. DMS' proposed resolution of this inequity is to require non-complying customers to change their systems to propane or methanol. We are, however, in no position to determine whether customers with oil-based back-up systems should convert to methanol or propane. Such decisions are appropriately made in consideration of environmental regulations and system costs. We will modify G-2959 accordingly.

TURN and the utilities raise concerns regarding the effects of changing the rules between ratemaking proceedings. The utilities are concerned about cost allocation and shareholder risk. TURN is concerned about how core rates may be affected. We share these concerns. To respond to TURN, we do not intend that the rule changes will increase core rates. We believe it appropriate that the revenue requirement allocated between the core and noncore should not change due to migration of customers. This has been addressed by a mechanism adopted under SoCal's BCAP, D.91-12-075 and is an issue in PG&E's BCAP. In consideration of this and the utilities' comments regarding cost allocation and shareholder risk, it is appropriate to defer implementing the adoption of our proposal to eliminate the alternative fuel requirement until a decision in R.86-06-006. The existing rules provide for a deadline of August 1, 1991 for customers to change from core to noncore status. We will retain this deadline until detailed rules and ratemaking issues are resolved. We will modify G-2948 accordingly.

In sum, we propose to eliminate the alternate fuel requirement consistent with the above discussion and to review the current $1 per therm penalty for failure to curtail in a limited

scope proceeding under R.86-06-006. We will also revisit the definitions of core and noncore to clarify the effects of our proposed rules. We note that PG&E has already proposed changing the amount of the curtailment penalty in its pending cost allocation proceeding (Application 91-11-001). In the interim, customers who have been designated noncore in reliance upon either Resolution G-2948 or G-2959 may retain their noncore status.

Findings of Fact

1. In D.91-09-085, the Commission granted the application for rehearing of Resolution G-2948 filed by DMS.

2. Circumstances have changed since we adopted the alternate fuel requirement.

3. The alternate fuel requirement does not permit customers the freedom to determine their most economic responses to curtailment orders by the utilities.

4. The distinction made in Resolution G-2959 between customers' alternate fuel systems that are in compliance with air quality regulations and those that are not unjustifiably rewards customers who are not in compliance with air quality regulations and, to be effective, would require the utilities to police customer compliance with air quality regulations.

5. Customers are in the best position to determine whether to respond to curtailments by using alternate fuel systems or taking other action.

6. The existing $1 per therm penalty for failing to curtail is unlikely to provide an adequate incentive for customers to curtail when ordered to do so by the utilities.

7. Customers who fail to curtail when ordered to do so may jeopardize the services of customers with higher priority services.

8. Changing the rules regarding alternate fuel requirements between ratemaking proceedings may increase risks to shareholders or core ratepayers.

Conclusions of Law

1. SoCal, PG&E, and SDG&E should propose, in R.86-06-006, definitions of the core and noncore as set forth in this decision.

2. SoCal and SDG&E should propose, in R.86-06-006, appropriate increases to the penalty imposed on customers who fail to curtail when ordered to do so. PG&E should propose, in A.91-11-001, appropriate increases to the penalty imposed on customers who fail to curtail when ordered to do so.

3. Changes to the rules anticipated in Conclusions of Law 1 and 2 should be implemented in the utilities' next ratemaking proceedings.

4. The Commission should modify G-2959 to eliminate the distinction between alternate fuel facilities which meet air quality standards and those which do not.

5. The Commission should modify G-2948 to reinstate the alternate fuel requirement pending a decision in R.86-06-006.

6. Customers who obtained noncore status in reliance on Resolution G-2948 or Resolution G-2959 should be able to retain their noncore status.

O R D E R

IT IS ORDERED that:

1. Except as set forth in this decision, the petition for modification of Resolution G-2948 filed by DMS, Inc. is denied.

2. Pacific Gas and Electric Company, Southern California Gas Company, and San Diego Gas and Electric Company shall propose in R.86-06-006 revised definitions of core and noncore customers to eliminate the alternate fuel requirement, and shall propose appropriate increases to the penalty imposed on customers who fail to curtail when ordered to do so as set forth in this decision.

3. Resolution G-2948 is modified to provide that the alternate fuel requirement is retained until the Commission has considered the matter in the context of related issues, as set forth in this decision.

4. Resolution G-2959 is modified to eliminate (1) the distinction between alternate fuel facilities which meet air quality requirements and those which do not, and (2) any provisions which change rules relating to alternate fuel requirements as set forth herein.

5. Because this decision resolves outstanding issues in A.91-06-045 and A.91-06-063, those two dockets are closed.

This order becomes effective 30 days from today.

Dated March 31, 1992, at San Francisco, California.

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

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

NEAL J. SHULMAN, Executive Director