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Decision 92-05-053 May 20, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of SOUTHERN CALIFORNIA GAS COMPANY)
(U 904 G) for authority to increase)
rates charged for gas service based)
on test year 1990 and to include an)
attrition allowance for 1991 and)
1992.)

ORIGINAL

Application 88-12-047
(Petition to Modify
Decision 90-10-035
filed January 24, 1992)

(See Decision 90-01-016 for List of Appearances.)

ORDER DISMISSING PETITION FOR MODIFICATION

Southern California Gas Company's (SoCalGas) petition for modification of Decision (D.) 90-10-035 is dismissed. SoCalGas is authorized to file an application to request an extension of supplemental funding for specific Research, Development and Demonstration (RD&D) programs.

Background

In SoCalGas's test year 1990 general rate case decision the Commission stated:

"In addition, recent developments, related primarily to SCAQMD's new air quality plan and President Bush's environmental initiatives, may have created an increased need for research programs related to conservation and to improving air quality in southern California. We believe that there may be a need to develop low NOx burners, to develop heavy duty CNG vehicles and related technology, to develop technology designed to reduce emissions from gas burning equipment, and to develop new conservation technologies. Since these areas of research were not addressed by SoCalGas or DRA, we will hold open this proceeding to receive further testimony on such a RD&D program. Accordingly, we direct SoCalGas to submit additional testimony and funding proposals for appropriate RD&D projects related to increasing environmental quality and

conservation efforts. This testimony should be served on all parties no later than March 30, 1990. All parties will have an opportunity to submit testimony. Evidentiary hearing will be scheduled thereafter in a separate phase of this proceeding." (D.90-01-016, 35 CPUC 2d 80, 135.)

As directed, SoCalGas filed testimony responding to the Commission's interest in establishing RD&D programs that addressed southern California's environmental protection and air pollution control needs. In D.90-10-035, 38 CPUC 2d 15, we granted SoCalGas' request for supplemental funding to implement RD&D programs for improvements in emission control, new vehicle technologies to use cleaner burning fuels, and development of new environmentally benign energy technologies. SoCalGas was authorized to recover \$4.1 million for 1990, \$4.9 million for 1991, and \$5.8 million for 1992.

We did not authorize supplemental funding for 1993, because we anticipated that SoCalGas would request appropriate funding in its next general rate case application, then scheduled for a 1993 test year.

On April 3, 1991, SoCalGas petitioned for an extension of its next general rate case to test year 1994. We granted SoCalGas' petition in D.91-07-057, ___ CPUC 2d ___. Although SoCalGas requested an extension through 1993 of RD&D funding authorized within base rates by D.90-01-016, SoCalGas did not request an extension through 1993 of the supplemental RD&D funding authorized by D.90-10-035. As a consequence, no funds for these supplemental RD&D programs are authorized for 1993.

SoCalGas therefore proposes that D.90-10-035 be modified to authorize \$5.8 million (in 1990 dollars) for supplemental RD&D in 1993. SoCalGas further proposes that this authorized amount be inflated for one year at the appropriate 1993 inflation rate.

On March 2, 1992, the Division of Ratepayer Advocates (DRA) filed a response to SoCalGas' petition.¹ DRA protests \$1,980,000 of SoCalGas' \$5,800,000 request. DRA believes that additional RD&D funding for natural gas vehicle technology is neither necessary nor appropriate in 1993.

SoCalGas filed a reply to DRA's protest on March 17, 1992.²

Discussion

As we stated in D.90-10-035, we believe that air quality improvement is one of the most significant issues facing southern California today. The supplemental RD&D funding authorized by D.90-10-035 can provide important support to the South Coast Air Quality Management District's (SCAQMD) formally adopted Air Quality Management Plan. Continued supplemental RD&D funding may be required in 1993.

However, a petition for modification is not the appropriate procedural vehicle to request further supplemental RD&D

1 Rule 8.3 of the Commission's Rules of Practice and Procedure requires protests to be filed within 30 days of the date a petition is served or the date notice of the filing of the petition first appears in the Daily Calendar, whichever is latest. SoCalGas' petition was filed and served on January 24. Notice of the filing was first published in the Daily Calendar on February 6. DRA's protest was timely filed on March 2, well within 30 days of the date the notice of filing was first published. However, DRA mistakenly thought that its protest was due by February 24. Accordingly, DRA requested leave to file a late protest. SoCalGas, also mistakenly believing that the protest was due by February 24, urged us to dismiss the protest simply because it is eight days late. SoCalGas' argument is misplaced. DRA's protest was timely filed.

2 The certificate of service attached to SoCalGas' reply indicates that it did not serve its reply on the DRA counsel who filed DRA's protest. In the future, SoCalGas should ensure that each reply to a protest is served on the attorney who filed the protest.

funds. In D.90-10-035 we expressly denied SoCalGas' request for open-ended RD&D funding authorization:

"We appreciate the need for SoCalGas to be able to respond to emerging developments both in the air quality research area and the air quality regulatory area, but we do not wish to provide SoCalGas with a 'blank check'...

"....[W]e see no need to adopt an interim procedure in order to allow SoCalGas to obtain additional funding prior to its next general rate case. Thus, if SoCalGas requests authorization for supplemental funding for air quality improvement projects not already covered by the funding granted in this decision, it already has the ability to ask for authorization by submitting an application to the Commission for approval. The application must include all information necessary to evaluate the supplemental funding, including an explanation why SoCalGas believes ratepayers should provide supplemental funding. If the utility application is complete and non-controversial, the Commission would hope to expedite project funding through ex parte treatment of the utility request."
(D.90-10-035, 38 CPUC 2d 15, emphasis in original.)

Despite our explicit instructions to SoCalGas to file an application to request further supplemental funding, SoCalGas filed a petition for modification. Moreover, the petition failed to include any of the information necessary to evaluate the supplemental funding.

The inadequacies of SoCalGas' petition are underscored by DRA's protest and SoCalGas' reply to the protest. DRA's protest questions the need for further ratepayer funding of RD&D for natural gas vehicles. SoCalGas' reply argues that DRA's protest

lacks evidentiary factual support.³ SoCalGas argues that further RD&D funding for natural gas vehicle technology is worthwhile. To lend some measure of evidentiary support to its arguments, SoCalGas takes the unusual step of attaching a verification to its reply.

It is not appropriate for the Commission to resolve contested factual issues based on these pleadings, whether or not they are verified. Instead, the matters argued as "fact" in SoCalGas' verified reply represent the type of information which should have been set forth in a proper application.

Findings of Fact

1. SoCalGas has filed a petition to modify D.90-10-035. The petition requests supplemental funding in 1993 to implement RD&D programs for improvements in emission control, new vehicle technologies to use cleaner burning fuels, and development of new and environmentally benign energy technologies.

2. DRA filed a timely protest to SoCalGas' petition.

3. D.90-10-035 stated that if SoCalGas requests further supplemental RD&D funding prior to its next general rate case, it must do so by filing an application with the Commission.

Conclusion of Law

SoCalGas' petition to modify D.90-10-035 should be dismissed.

3 SoCalGas' complaint that DRA's protest contains "unsupported claims" is without merit. The purpose of a protest is to put the Commission and others on notice as to the facts constituting grounds for the protest. (Rule 8.4(b).) The protest need not contain all supporting evidence. Instead, the protest must only state the facts the protestant would develop at public hearing. (Rule 8.4(c).)

O R D E R

IT IS ORDERED that Southern California Gas Company's (SoCalGas) petition to modify Decision (D.) 90-10-035 is dismissed. SoCalGas may seek recovery of supplemental Research, Development and Demonstration program funds in 1993 by filing an application.

This order is effective today.

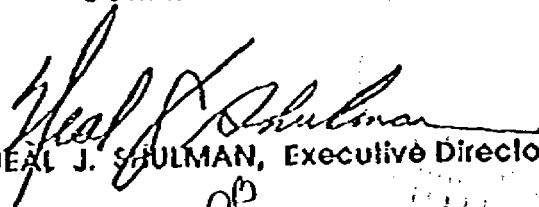
Dated May 20, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President

JOHN B. OHANIAN
NORMAN D. SHUMWAY
Commissioners

Commissioner Patricia M. Eckert,
being necessarily absent, did
not participate.

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


NEAL J. SCHULMAN, Executive Director