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Decision 92-11-030 November 23, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

1991 Hazardous Substance Reasonableness Review Application of Southern California Gas Company. (U 904 G)	Application 91-04-044 (Filed April 30, 1991)

Glen J. Sullivan, Attorney at Law, for Southern California Gas Company, applicant.
Barbara S. Benson, Attorney at Law, for Pacific Gas and Electric Company; Vicki Thompson, Attorney at Law, for San Diego Gas & Electric Company; and Bernard B. McNair, for Southern California Edison Company; interested parties.
Kathleen Maloney, Attorney at Law, for the Division of Ratepayer Advocates.

I N D E X

OPINION

Summary of Decision

We conclude that Southern California Gas Company (SoCal) has failed to demonstrate by clear and convincing evidence the reasonableness of hazardous waste (Hazwaste) cleanup expenses under review for rate recovery in this proceeding. We do not disallow recovery of the expenses, but rather defer recovery at this time.

We also conclude that the reasonableness review procedure may not be appropriate for recovery of Hazwaste expenses. We invite comments from interested parties and potential interested parties on the appropriate ratemaking treatment for Hazwaste cleanup expenses. We particularly welcome comments on potential alternatives to reasonableness review, including but not limited to proposals based upon incentive mechanisms or which contain elements of cost sharing. We anticipate that the Commission will then establish a suitable vehicle for recovery of Hazwaste cleanup expenses, and if necessary, order evidentiary hearings based on that procedure to determine what expenses, if any, should be recovered from ratepayers. A final decision will address actual recovery. Parties should be on notice that the standard adopted in this proceeding may be used in similar cases. Our goal is to fashion a pragmatic, manageable mechanism for dealing with Hazwaste cleanup expenses, one fair both to ratepayers and utility shareholders and fully consistent with our duties of regulatory oversight.

We authorize SoCal to book into a subaccount up to $50,000 in imminent endangerment cleanup expenses. The imminent endangerment cleanup expenses shall be subject to review before being allowed in rates.

We find that SoCal's polychlorinated biphenyls (PCBs) cleanup expenses through December 31, 1988 were reasonable and prudent. We also find that SoCal's settlement with Transwestern

Pipeline Company (Transwestern) regarding recovery of PCBs cleanup expenses was reasonable.

Background

On September 23, 1987, the Commission issued Decision (D.) 87-09-078 which adopted, among other things, a procedure to allow SoCal to book its Hazwaste cleanup program expenses in a memorandum account. D.87-09-078 required SoCal to file an annual report by March 1 of each year starting in 1989, describing its Hazwaste cleanup activities during the previous calendar year as well as projected activities for the next 12 months. D.87-09-078 also required SoCal to file an application for a reasonableness review of Hazwaste cleanup expenses incurred during the previous year no later than 60 days after the filing of its annual report.

The Commission later modified D.87-09-078 by D.89-09-032 which revised the schedule for filing applications for reasonableness review. D.89-09-032 required SoCal to file an application for a reasonableness review of its Hazwaste cleanup expenses when the balance in the memorandum account exceeded $5 million and to file such an application at least every three years regardless of the balance in the memorandum account.

The procedure for recovery of Hazwaste cleanup expenses was further modified in D.90-01-016 in SoCal's Test Year 1990 general rate case. D.90-01-016 provided for base rate funding of Hazwaste investigatory expenses as of January 15, 1990 and excluded any investigatory expenses from the memorandum account on or after that date.

In accordance with the modified procedure, SoCal, on April 30, 1991, filed its first reasonableness review application (Application (A.) 91-04-044). A.91-04-044 seeks reasonableness review of SoCal's Hazwaste remediation expenses from September 23, 1987 through December 1990, and Hazwaste investigatory expenses from September 23, 1987 through January 15, 1990.

A.91-04-044 also seeks recovery of expenses related to the handling and cleanup of PCBs in SoCal's pipeline system. The PCBs issue, which is discussed in detail in this order, also involves a review of SoCal's arbitration and settlement with Transwestern regarding recovery of PCBs expenses.

Specifically, A.91-04-044 seeks a Commission order which would:

1. Find SoCal's Hazwaste cleanup expenses booked in the memorandum account to be prudently incurred and reasonable;

2. Authorize SoCal to recover in rates effective January 1, 1993, expenses booked in the Hazwaste memorandum account in the amount of $1,067,090 plus interest and allowance for franchise fees and uncollectibles;

3. Find SoCal's PCBs expenses incurred through the review period ending December 31, 1988, to be reasonable and prudent, and find SoCal's settlement of PCBs arbitration with Transwestern to be reasonable and prudent.

In addition A.91-04-044 seeks certain modifications to the procedure for recovery of its Hazwaste cleanup expenses.

Hearings

Hearings in A.91-04-044 were held in Los Angeles on April 7 and 8, 1992 before Administrative Law Judge (ALJ) Garde. The matter was submitted on June 5, 1992 upon receipt of concurrent reply briefs.

Comments on the ALJ's Proposed Decision

The ALJ's proposed decision was filed and mailed to the parties on September 3, 1992. The proposed decision recommends an incentive mechanism which contains elements of the Division of Ratepayer Advocates' (DRA) cost sharing proposal but attempts to correct deficiencies, which in the ALJ's view, cause that proposal to be flawed. SoCal, Pacific Gas and Electric Company (PG&E), San

Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (Edison) have filed comments on the proposed decision.

We are persuaded by the comments that additional information is required to make a final determination on the recovery of Hazwaste cleanup expenses.

Summary of Parties' Proposals

DRA's report, prepared in response to SoCal's application, proposes a cost sharing mechanism by which 90% of all prudently incurred and reasonable Hazwaste cleanup expenses be charged to ratepayers and 10% to SoCal's shareholders. DRA also proposes a ratemaking adjustment for recovery of Hazwaste cleanup expenses at certain Towne gas sites, where SoCal no longer owns the entire site but has sold a portion for a gain-on-sale to its shareholders. In addition to these two major policy proposals, DRA has expressed certain other disagreements with SoCal's request.

Central to the position DRA has developed is its view that unique circumstances surrounding Hazwaste cleanup support cost sharing between ratepayers and shareholders. According to DRA, where cleanup sites involve several Potentially Responsible Parties (PRPs), as do sites under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund), it is very difficult for the Commission to assess SoCal's negotiation strategy and efforts to minimize the utility's share of cleanup expenses. DRA argues that if SoCal's shareholders have a monetary stake in the responsibility for the outcome of the negotiations, SoCal will have an incentive to minimize its share of expenses.

Further, DRA points out that under CERCLA, waste generators remain potentially liable for cleanup and other associated costs even though waste generation and disposal may have occurred many years ago, and despite the fact the waste may not have been deemed hazardous at the time of the disposal. The enforcing agency, such as the United States Environmental

Protection Agency, can require the responsible parties or PRPs to share in the cost of cleanup. Liability under CERCLA is joint and several; therefore, even if a PRP contributed only 2% of the wastes, it can be required to pay for 100% of the costs of cleanup if no other silent PRPs are located and obliged to contribute.

Following the issuance of DRA's report, SoCal filed its rebuttal testimony opposing DRA's policy proposals. SoCal argues that the cost sharing proposal is wholly unjustified, is totally in conflict with regulatory principles and is unfair. SoCal has characterized DRA's proposal as an automatic 10% disallowance or penalty. With respect to the Towne gas sites, SoCal argues that cost sharing between ratepayers and shareholders would violate the rule against retroactive ratemaking, since retention of the gain-on-sale for shareholders did not violate any Commission decision or rule at the time of sale and was consistent with the then existing accounting procedures.

PG&E and SDG&E also filed testimony which opposes DRA's policy proposals on essentially the same grounds alleged by SoCal. In addition, PG&E argues that to the extent DRA's cost sharing proposal has been characterized as an incentive mechanism to encourage SoCal to pursue insurance recovery, its design is flawed. PG&E points out that the DRA proposal lacks a means to make SoCal whole and refund the shareholders' 10% responsibility even if, in fact, SoCal diligently pursues its insurance carriers and other liable third parties.

Reasonableness

The first issue at hand, which has not been squarely addressed in the record, is whether SoCal has met its burden to demonstrate through clear and convincing evidence the reasonableness of all expenses it seeks to recover in rates in this proceeding. SoCal's evidence consists of a description of how the cleanup effort was performed and the amounts expended in the process. In essence, it appears to be SoCal's claim that, because

it has properly followed Commission-adopted procedures for booking to a memorandum account expenses attributable to various categories of Hazwaste cleanup activities, the expenses are reasonable and thus are recoverable in rates. SoCal has not offered evidence as to the reasonableness of its waste generation, storage, transportation or disposal practices in light of standards applicable at the time. SoCal also has not offered adequate evidence as to the reasonableness of any acts or omissions with respect to remedial action to mitigate the environmental damage during the intervening years. SoCal has not adequately demonstrated that it has borne only its fair share of the cleanup expenses or that it has adequately pursued claims against insurance policies to recover cleanup costs. SoCal has not demonstrated that it took the least-cost approach to cleanup, nor has it shown that it took all reasonable steps to minimize legal and economic liability for the cleanup costs. A reasonableness review is not limited to an exercise in accounting; it necessarily entails consideration of the underlying actions which gave rise to the expenses. SoCal has failed to demonstrate the reasonableness of the expenses at issue.

In support of its claim that the expenses under review are reasonable, SoCal points out that DRA has not challenged any expense booked to the memorandum account as being unreasonable or imprudent. SoCal's contention is misplaced. As discussed above, the mere recording of expenses in a memorandum account does not denonstrate the reasonableness of the expenses nor does it imply that ratepayers are automatically liable for those expenses. The inescapable fact is that, without an affirmative showing by the applicant of the reasonableness of the expenses under review, even in the absence of a showing to the contrary by DRA or any other party, the expenses cannot be recovered in rates. (Southern Counties Gas Co., 51 Cal. P.U.C. 533, 534 (1952); Application of

P.T. & T. Co., 2 Cal. P.U.C. 2d 89, 98-99 (1979); In re Pacific Bell, 27 Cal. P.U.C. 2d 1, 21, 22 (1987).)

While we find that SoCal has failed to make an affirmative showing of reasonableness, we realize that this burden may be very difficult given the time frame involved, the fact that the sites typically take years to clean up, and the difficulty in assessing whether SoCal has adequately pursued other PRPs or insurance coverage, among other things. We believe it would be unfair to deny recovery of all expenses booked in the Hazwaste memorandum account because SoCal has made an insufficient showing. However, it would be equally unfair to require ratepayers to assume that SoCal acted prudently at all times and pay for such expenses.

Because the complexities associated with Hazwaste cleanup activities may make it very difficult to establish, so many years after the fact, that all expenses were prudently or imprudently incurred, the reasonableness review procedure may not be the best vehicle for determining rate recovery of Hazwaste cleanup expenses. Accordingly, we invite comments on the appropriateness of reasonableness review and on alternative methods of recovery of Hazwaste cleanup expenses. We believe that consideration should be given to instituting a fair and balanced incentive mechanism (which might include elements of cost sharing between ratepayers and shareholders) for recovery of Hazwaste cleanup expenses which would eliminate the need for future reasonableness review proceedings. An incentive and/or cost sharing mechanism may be an appropriate way to assure that SoCal will have a stake in minimizing Hazwaste cleanup expenses. Therefore, we ask that SoCal and DRA, as well as other interested parties and potential interested parties (e.g. persons and entities not now parties to this proceeding) file written comments on these issues within 90 days of the effective date of this order. If necessary, the Commission will conduct hearings on the merits of the proposals put forward. The Commission will then issue a decision establishing the appropriate

ratemaking treatment for recovery of Hazwaste expenses. Finally, rate recovery under this mechanism will be authorized, following hearings to further develop the record in this proceeding, as necessary.

In order to provide those not now parties to this proceeding with an opportunity to participate, and pursuant to Rules 54 and 87 of our Rules of Practice and Procedure, we direct that potential interested parties file a Notice of Participation with our Docket Office within 30 days from the effective date of this decision. The notice shall set forth the interest of the person or entity in this proceeding, contain a brief, preliminary statement of the issue or issues to be addressed in the comments, and shall identify the name, address, and telephone number of the person designated to accept service. The assigned ALJ will compile a new service list for this proceeding and mail it to all parties prior to the time comments are due.

The Towne Gas Sites

Before the widespread availability of natural gas in the 1920s, synthetic gas was manufactured from fossil fuel (predominantly coal and oil) for heating, cooking, and lighting. Typically, each town had its own gas-manufacturing plant. SoCal had several of these gas-manufacturing plants which were called Towne gas plants. These early Towne gas plants were the forerunners of the natural gas industry today. The former Towne gas plant sites contain residues of the gas-manufacturing process, and in recent years have become a focus of environmental concern.

SoCal has identified 42 Towne gas sites for which it may have an obligation for Hazwaste cleanup. Of those 42 sites, SoCal has already sold all or portions of 38 sites over the course of several decades. Three such sites are at issue in this application: Dinuba, Visalia, and Ventura. SoCal requests memorandum account recovery from ratepayers for cleanup costs recorded for the three sites. In selling these sites, SoCal realized a gain-on-sale which was credited to its shareholders but

which is dwarfed by the amount of the Hazwaste cleanup costs. With respect to the Ventura Station Site (Ventura Site), SoCal has some shared responsibility with Edison for Hazwaste cleanup.

The fundamental issue raised here is whether ratemaking treatment for Hazwaste expenses associated with these sites should be the same as or different from the ratemaking treatment applicable to sites not sold for gain-on-sale to shareholders. Since we do not propose to recoup or redistribute the gain-on-sale, we are not persuaded that this issue is settled by the rule against retroactive ratemaking, as SoCal and certain other parties have claimed in their briefs and comments. Rather, the appropriate analysis must squarely address whether shareholders assumed any risk concurrent with their retention of gain-on-sale in light of the law and practice of the time. We ask that SoCal and DRA as well as other interested parties and potential interested parties, address this issue in written comments. We also request comments on the appropriate ratemaking treatment for any Hazwaste expenses appropriately recoverable from ratepayers, including incentive and/or cost sharing proposals.

Finally, we specifically consider rate recovery for the Ventura Site. As mentioned above, SoCal and Edison both have responsibilities for cleanup of this site, a "mutual interest" site. As stated in the application (pp. 104-106), SoCal and Edison intend to work together in a coordinated manner to complete a cost-effective cleanup of mutual interest sites. SoCal and Edison have an agreement for another site, the Venice Site, on how to share the work and costs in a coordinated manner, and expect to reach a similar agreement for other mutual interest sites. In the past, the Commission has authorized SoCal and Edison to record certain amounts associated with the Venice Site in a memorandum account for future recovery once the overall cleanup costs are "allocated equitably between the two utilities." (See Resolution G-2983.) It is only logical that the equitable allocation of the costs be

determined once all cleanup work is complete, and the total cost of cleanup is known. We see no reason to treat the Ventura Site differently than other mutual-interest sites. Accordingly, we will defer rate recovery for the Ventura Site until all the cleanup work at the site is complete and the total cost of cleanup is known.

PCBs Cleanup Expenses

SoCal first detected PCBs contamination in its pipeline system in 1981. SoCal informed the Commission about the PCBs contamination and that the source of the contamination was Transwestern's interstate pipeline which delivers natural gas to SoCal at the California border. SoCal also provided the Commission a plan for handling, marking, storing, and disposing of the PCBs in accordance with applicable regulations. The plan contained detailed procedures for removing potentially contaminated liquids and solids from the system, sampling for PCBs, temporary storage, and labeling, transportation for disposal, and recordkeeping.

The rate recovery for PCBs cleanup activity was initially authorized in SoCal's Test Year 1983 general rate case. In that proceeding, the Commission issued D.82-12-054 which authorized $2.463 million in 1983, and $2.531 in 1984 to cover PCBs cleanup expenses for the respective years. Since it was difficult to forecast PCBs cleanup expenses, D.82-12-054 also ordered SoCal to establish a balancing account for PCBs cleanup expenses.

In SoCal's Test Year 1985 general rate case proceeding, the Commission issued D.84-12-069 which continued the PCBs balancing account. However, because of overcollection in the PCBs balancing account, SoCal was ordered to refund $2.056 million to ratepayers and to use the remaining $2.086 million to fund future PCBs cleanup expenses.

In 1986, SoCal sought recovery for the expenditures made for removal and disposal of the material containing the PCBs. The Commission directed SoCal to pursue the recovery of costs from those responsible for the contamination. Accordingly, SoCal sent

Transwestern an invoice for its expenses of $4.8 million. SoCal also sent a demand for arbitration to Transwestern, since the service agreement for the sale and purchase of natural gas between SoCal and Transwestern specified that disputes arising under the agreement were to be settled by arbitration.

The Commission subsequently addressed the PCBs cleanup issue in SoCal's Test Year 1990 general rate case. In that proceeding, the Commission issued D.90-01-016 which deferred amortization in rates of the undercollection in the PCBs balancing account, made that account noninterest-bearing, and deferred recovery of forecast expenses until resolution of SoCal's pending arbitration against Transwestern for PCBs expenses.

D.90-01-016 also ordered a Hazwaste reasonableness review proceeding after resolution of the Transwestern PCBs arbitration. We also directed SoCal to present the results of the arbitration and recommend a course of action with respect to the PCBs expenses not covered by the arbitration award.

SoCal and Transwestern negotiated a settlement for all of SoCal's PCBs damage claims from 1981 through 1988. The arbitration panel found that the settlement agreement between SoCal and Transwestern was fair and reasonable, and in the best interests of the natural gas consumers in SoCal's service territory. The agreement addressed damages for the period through December 31, 1988, for PCBs entering Transwestern's system at Transwestern's Corona, New Mexico compressor station. The agreement had no effect on any future claims for the period beginning on January 1, 1989, for damages attributable to the PCBs entering Transwestern's pipeline system at its Corona, New Mexico compressor station.

The settlement agreement contained several terms including:

- Transwestern shall pay SoCal $7,100,000 as complete payment for SoCal's claims for PCBs damages through December 31, 1988;

- The entire record of the proceeding may be used in any future PCBs claims; and
- SoCal shall have no responsibility other than reasonable cooperation with Transwestern's effort to seek damages from any third party related to the operation of Transwestern's compressor station.

Since SoCal has resolved its arbitration with Transwestern regarding PCBs cleanup expenses for the 1981 - 1988 period, SoCal in compliance with D.91-01-012 has raised the PCBs issue in this reasonableness review proceeding.

SoCal's total PCBs cleanup costs through December 31, 1988 were $8,289,000. Thus, by recovery of $7,100,000 from Transwestern, SoCal was able to recover 86% of its total PCBs cleanup costs from Transwestern. SoCal is not seeking any rate recovery for its PCBs cleanup program in this proceeding. However, SoCal is seeking a finding from the Commission that its settlement with Transwestern regarding PCBs cleanup costs for the period ending December 31, 1988 was fair and reasonable, and that its PCBs cleanup expenses were reasonable.

It should be noted that in addition to the recovery of the settlement amount, SoCal has recovered $2,983,000 in rates for PCBs cleanup expenses. Accordingly, the PCBs account has an overcollection.

SoCal also requests that the PCBs memorandum account which was made noninterest-bearing by D.91-01-016 be made interest-bearing henceforth. According to SoCal, such accounts are typically interest-bearing. SoCal argues that the Commission removed interest coverage on the account to give SoCal an incentive to quickly resolve its claims against Transwestern. SoCal asserts that since it has settled with Transwestern not only for the period 1981 - 1988, but for 1989 - 1990, the reason for keeping the PCBs memorandum account noninterest-bearing no longer exists. In addition, SoCal argues that the memorandum account is currently

overcollected and thus it is the ratepayer who is being adversely affected by the noninterest-bearing feature of the PCBs memorandum account.

While DRA is concerned that SoCal was able to recover only 86% of its PCBs expenses from Transwestern, DRA recommends that the Commission approve the settlement between SoCal and Transwestern and limit SoCal's rate recovery for pre-1989 PCBs cleanup expenses to $8,289,000. DRA, recommends, however, that the Commission defer ruling that the expenses incurred for PCBs cleanup through December 31, 1988 were prudent and reasonable. DRA also opposes SoCal's proposal to make the PCBs memorandum account interest-bearing henceforth, alleging that to do so would remove any incentive for SoCal to pursue recovery of PCBs cleanup costs from Transwestern.

We approve SoCal's settlement with Transwestern. We note that the settlement appropriately permits SoCal to recover 86% of its PCBs cleanup expenses for the period 1981 - 1988 without prejudice to resolution of recovery of subsequently incurred costs and that other provisions of the settlement also appear to be reasonable.

We reject DRA's recommendation that the Commission not issue a finding that SoCal's PCBs cleanup expenses through December 31, 1988 are prudent and reasonable, until SoCal submits the expenses for rate recovery in a subsequent reasonableness proceeding. While DRA is correct in asserting that SoCal is not seeking rate recovery for its PCBs cleanup expenses, DRA has overlooked the fact that SoCal has provided all the necessary details about its PCBs cleanup expenses. DRA has not provided any reason to support its recommendation to delay review of SoCal's PCBs cleanup costs. In addition, D.90-01-016 directed that both the settlement with Transwestern and the PCBs cleanup cost not recovered through the settlement be resolved in this proceeding. There is no good reason to delay the resolution of the matter.

SoCal has provided adequate justification for the 14% of its PCBs cleanup expenses it did not recover through the settlement. We find SoCal's PCBs cleanup expenses for the period 1981 through 1988 to be reasonable.

Finally, we will consider SoCal's request to make the PCBs memorandum account interest-bearing henceforth. While DRA opposes SoCal's request, it demands that overcollections in the PCBs memorandum account be credited to ratepayers with interest. The only way to ensure that ratepayers receive interest on the overcollections is to make the PCBs memorandum account interest-bearing. In addition, since the PCBs memorandum account could be over- or undercollected, it would be fair to both shareholders and ratepayers to make the account interest-bearing. SoCal has settled with Transwestern, and the reason for keeping the memorandum account noninterest-bearing as an incentive for SoCal to negotiate no longer exists. We will make the PCBs memorandum account interest-bearing henceforth. The interest rate for the PCBs memorandum account will be the same rate which applies to SoCal's Consolidated Adjustment Mechanism Account.

Imminent Endangerment Cleanup Expenses

On occasion during the investigation phase at a site, SoCal may discover a condition that presents an immediate danger of public exposure to hazardous substances that must be cleaned up immediately. Such activities constitute remediation, the cost of which can be booked to the memorandum account under the existing procedure only after issuance of a resolution approving an advice letter. However, in imminent endangerment cases, SoCal is not able to wait the 60 or more days typically required for the processing of an advice letter and must expend funds without an opportunity for rate recovery. In recent years, SoCal has had to conduct two such imminent endangerment cleanups.

In its next general rate case for Test Year 1994, SoCal intends to request a forecast allowance in base rates for imminent

endangerment costs that could supersede recovery through the memorandum account. In the interim, SoCal is seeking a practical mechanism that would allow it to recover in rates the cost of imminent endangerment cleanups. SoCal proposes the establishment of an expedited advice letter process. SoCal believes the best approach would be for the Commission to authorize a special subaccount of the hazardous substance memorandum account for imminent endangerment cleanups. According to the proposal, SoCal would not have to file an advice letter and obtain a further resolution relating to any specific site before booking costs to this subaccount. Rather, SoCal would only be required to report to the Commission within 30 days that it had incurred and booked costs for a particular imminent endangerment site.

According to SoCal, this treatment is analogous to the preapproval to book costs for nonspecific, governmental-declared disaster costs (such as earthquakes) authorized in Resolution E-3238 issued in July 1991. SoCal argues that the Commission would not have to worry about "writing a blank check" for such activity. SoCal would agree to capping the costs that could be recovered for any imminent endangerment occurrence to $50,000. SoCal contends the recovery of this cost would still be subject to reasonableness review before being reflected in rates.

Initially, DRA opposed the proposal. However, during the hearings, SoCal's witness Madriaga clarified that the proposed amount of imminent endangerment cleanup expense is $50,000 per site, not per occurrence. In addition, Madriaga testified that the expedited procedure being sought pertains only to Towne gas sites, not all potential Hazwaste cleanup sites. According to Madriaga, if SoCal anticipates that cleanup expenses at a site will exceed $50,000 during the time the emergency cleanup is being performed, SoCal will file an advice letter to capture expenses in excess of $50,000. After receiving clarification of SoCal's proposal, DRA withdrew its objections.

We adopt SoCal's proposal to book up to $50,000 per Towne gas site in imminent endangerment cleanup expenses in a subaccount. We will require SoCal to report to the Commission within 30 days that it has incurred and booked expenses for a particular Towne gas site. The imminent endangerment cleanup expenses will not be reflected in rates without a reasonable review of the expenses unless we order an alternative ratemaking treatment for Hazwaste expenses, as discussed elsewhere in this decision.

In its comments on the ALJ's proposed decision, SoCal contends that the proposed decision incorrectly states witness Madriaga's position. According to SoCal, while Madriaga recommended that SoCal be allowed to book into the subaccount up to $50,000 per occurrence in imminent endangerment cleanup expenses, the proposed decision allows SoCal to book only $50,000 per site regardless of the number of such occurrences at a given site.

After reviewing the record, we find that Madriaga had initially testified that the $50,000 limit in imminent endangerment cleanup expenses was per site not per occurrence. In his redirect testimony he modified his position to place the $50,000 limit per occurrence. DRA agreed to the $50,000 limit per site based on Madriaga's original testimony. By this decision we authorize SoCal to book into a subaccount up to $50,000 per site in imminent endangerment cleanup expenses.

Recovery of Long-Term Operation and Maintenance Expenses

SoCal proposes to transfer recovery of long-term operation and maintenance (O&M) expenses for remediation of Towne gas sites from memorandum account to base rates adopted in a general rate case. According to the proposal, the initial O&M expenses for remediation that are incurred between SoCal's general rate cases will be recovered through the advice letter/memorandum account procedure. After the primary cleanup is completed, all subsequent long-term O&M expenses may be incurred for activities

such as monitoring conditions where the regulatory agency has allowed some waste to remain on the site, or where there is long-term groundwater monitoring or treatment. SoCal contends that such expenses are likely to be fairly predictable, and therefore are appropriate to be included in base rates. According to SoCal, an advantage of its proposal would be that the exclusion of these expenses from the memorandum account would make it less likely that the $5 million trigger amount requiring filing of a reasonableness review application would be reached.

DRA opposes SoCal's request to place ongoing O&M expenses in base rates, contending that such action would drastically reduce the protection available to ratepayers under the reasonableness review process. DRA argues that if the ongoing O&M expenses are included in base rates, the Commission will not be able to review the reasonableness of such expenses. According to DRA, the need for a reasonableness review become very obvious when one considers the case of SoCal's Olympic Site where the Department of Health Services has approved a plan which requires O&M activities for at least 30 years. DRA argues that under the current procedure, SoCal will have to justify these costs in at least ten reasonableness reviews. DRA claims that the magnitude of dollars involved in such ongoing O&M expenses makes it necessary to continue the current reasonableness review process. In addition, DRA asserts that the current procedure is in no way unfair to SoCal.

While we agree with SoCal that including the ongoing O&M expenses at a Towne gas site may reduce the number of filings for reasonableness reviews, we share DRA's concern for protection for ratepayers. Resolution of this issue must necessarily be deferred until we have determined whether reasonableness review, or some other rate treatment, is appropriate for determining rate recovery of Hazwaste expenses. In the interim, we reject SoCal's proposal and authorize the continuation of the current advice

letter/memorandum account procedure for recovery of ongoing O&M expenses at SoCal's Towne gas sites.

Rate Recovery

We defer authorization of rate recovery for the Hazwaste expenses at issue in this proceeding until further Commission order, as described herein.

Findings of Fact

1. SoCal filed A.91-04-044 seeking a reasonableness review of certain Hazwaste cleanup program expenses.

2. SoCal seeks to recover in rates effective January 1, 1993, expenses booked in the Hazwaste memorandum account in the amount of $1,067,090 plus interest and allowance for franchise fees and uncollectibles.

3. DRA recommends that SoCal be allowed to recover in rates $729,639 plus interest and allowance for franchise fees and uncollectibles.

4. DRA's cost sharing proposal does not adequately balance the risks faced by shareholders and ratepayers.

5. SoCal has failed to demonstrate through clear and convincing evidence the reasonableness of the expenses it seeks to recover in rates.

6. It would not be fair to deny SoCal recovery of all expenses booked in the Hazwaste memorandum account on the basis of its insufficient showing because it may be difficult if not impossible for SoCal to demonstrate the reasonableness of the Hazwaste expenses and the actions which led to the incurring of those expenses, and therefore reasonableness review may not be the most appropriate ratemaking treatment for such expenses.

7. It would also be unfair to assume that SoCal acted prudently at all times and to require ratepayers to pay for all Hazwaste cleanup expenses.

8. Recovery of Hazwaste expenses through incentive mechanisms or other ratemaking treatment based on cost sharing may be more appropriate than reasonableness review.

9. An incentive and/or cost sharing mechanism may be appropriate in light of the complexities associated with the burden of proof of reasonableness and to assure that SoCal will have a stake in minimizing Hazwaste cleanup expenses and pursuing recovery from other PRPs and insurance carriers.

10. The record in this proceeding does not provide a basis for adopting a specific incentive or cost sharing mechanism.

11. Any ratemaking alternative to reasonableness review should be developed after parties and interested persons are allowed an opportunity for comment.

12. SoCal has sold several Towne gas sites or portions of Towne gas sites and retained the gain-on-sale for its shareholders.

13. When SoCal sold its Towne gas sites, the existing accounting procedures allowed it to retain the gain-on-sale for its shareholders.

14. For the three sites at issue in this proceeding, the retained gain-on-sale is dwarfed by the amount of the Hazwaste cleanup costs.

15. SoCal has a mutual interest with Edison for cleanup of the Ventura Site.

16. Rate recovery for other mutual-interest sites has been deferred until cleanup at these sites is complete and the total cost of cleanup is known.

17. SoCal has incurred $8,289,000 in PCBs cleanup expenses through December 31, 1988.

18. SoCal has negotiated a settlement with Transwestern which requires Transwestern to pay SoCal $7,100,000 for PCBs cleanup costs through December 31, 1988.

19. The provisions of the settlement between SoCal and Transwestern are fair and reasonable and in the best interest of ratepayers.

20. SoCal has provided adequate justification of its PCBs cleanup expenses incurred through December 31, 1988.

21. SoCal proposes a procedure for recovery of imminent endangerment cleanup expenses which will allow SoCal to book up to $50,00 per Towne gas site in remedial cleanup expenses in a subaccount without seeking prior Commission approval through an advice letter filing. The procedure will require SoCal to report to the Commission that it has incurred and booked the expenses in the subaccount for a particular imminent endangerment site.

22. D.91-01-016 ordered that SoCal's PCBs memorandum account be made nonInterest-bearing as an incentive for SoCal to negotiate a settlement with Transwestern for recovery of PCBs cleanup expenses.

23. Since SoCal has negotiated a settlement with Transwestern, the need to keep the PCBs memorandum account noninterest-bearing no longer exits.

Conclusions of Law

1. Parties and intervenors should address in written comments the appropriateness of reasonableness review and alternative methods of recovery of Hazwaste cleanup expenses, including but not limited to cost sharing and incentive mechanisms.

2. Parties and intervenors should address in written comments whether shareholders assumed any risk concurrent with their retention of gain-on-sale for Towne gas sites, in light of the law and practice at the time of sale.

3. Parties and intervenors should propose in written comments the appropriate ratemaking treatment for recovery from ratepayers of any Hazwaste expenses associated with Towne gas sites, including incentive and/or cost sharing proposals.

4. Rate recovery of the Hazwaste expenses at issue in this proceeding should be deferred until further order.

5. Rate recovery for the Ventura Site should be deferred until the cleanup at the site is complete and the total cost of cleanup is known.

6. SoCal's settlement with Transwestern regarding recovery of PCBs cleanup expenses is reasonable.

7. SoCal's PCBs cleanup expenses through December 31, 1988 were reasonable and prudent.

8. SoCal's PCBs memorandum account should be made interest-bearing henceforth.

9. SoCal's proposed expedited procedure for recovery of imminent endangerment cleanup expenses should be adopted.

10. Resolution of SoCal's request to recover long-term O&M expenses for remediation through base rates should be deferred pending resolution of the appropriate ratemaking treatment for Hazwaste expenses, and in the interim, the current advice letter/memorandum account procedure should be continued.

O R D E R

IT IS ORDERED that:

1. Within 90 days of the effective date of this order, Southern California Gas Company (SoCal) and the Division of Ratepayer Advocates (DRA) shall address in written comments the appropriateness of reasonableness review and alternate methods of recovery of hazardous waste (Hazwaste) cleanup expenses, and shall propose any alternative recovery methods, including but not limited to incentive mechanisms and/or cost sharing. Other interested parties and potential interested parties are urged to file written comments on these issues.

2. Within 90 days of the effective date of this order, SoCal and DRA shall propose in written comments whether shareholders

assumed any risk concurrent with their retention of gain-on-sale of Towne gas sites, in light of the law and practice at the time of sale. SoCal and DRA also should propose the appropriate ratemaking treatment for recovery from ratepayers of any Hazwaste expenses associated with these sites. Proposals may include, but need not be limited to incentive mechanisms and/or cost sharing. Other interested parties and potential interested parties are urged to file written comments on these issues.

3. SoCal is authorized to book into a subaccount up to $50,000 in imminent endangerment cleanup expenses at each of its Towne gas sites. Within 30 days after incurring such expenses, SoCal shall report to the Commission that it has incurred and booked such expenses for a particular Towne gas site. The imminent endangerment cleanup expenses in the subaccount shall be subject to a reasonable review or other authorized rulemaking procedure, before recovery is allowed in rates.

4. SoCal is authorized to accrue interest on the amounts booked into the polychlorinated biphenyls cleanup expense memorandum account. The interest accrual shall not begin until the effective date of this order, and shall be at the interest rate applicable to SoCal's Consolidated Adjustment Mechanism Account.

5. We direct the Executive Director to serve a copy of this decision upon the service list established for this proceeding (Application (A.) 91-04-004), and upon the service lists in the following dockets: Pacific Gas and Electric Company's pending general rate case (A.91-11-036), San Diego Gas & Electric Company's pending general rate case (A.91-11-024), and Southern California Edison Company's most recent general rate case (A.90-12-018).

6. Potential interested parties (e.g. persons or entities not now parties to this proceeding) shall file a Notice of Participation with our Docket Office at 505 Van Ness Avenue, San Francisco, CA 94102, within 30 days from the effective date of this decision. The notice shall set forth the interest of the person or

entity in this proceeding, contain a brief, preliminary statement of the issue or issues to be addressed in the comments, and shall identify the name, address, and telephone number of the person designated to accept service. The assigned administrative law judge will compile a new service list for this proceeding and mail it to all parties prior to the time comments are due.

7. This order becomes effective 30 days from today.

Dated November 23, 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

DESCRIPTION OF HAZARDOUS WASTE CLEANUP SITES UNDER REVIEW IN THIS PROCEEDING

Olympic Base Towne Gas Site

The site is approximately four acres in size and is part of a 14-acre property owned by Southern California Gas Company (SoCal) at 2424 E. Olympic Boulevard, Los Angeles, California. Currently most of the site is undeveloped, but the northern portion is partially covered with asphalt and leased to the City of Los Angeles' Road Department for its asphalt plant operations. SoCal also has buildings and paved roadways on the site which are used for a variety of SoCal's distribution and transmission operations.

The Olympic Base Site investigation was initiated in September 1983 at the request of the Los Angeles Regional Water Quality Control Board and the California Department of Health Services (DHS).

A Consent Order was issued by DHS in December 1986 which specifies the key activities and schedules for the work required at the site.

In addition, SoCal prepared a Remedial Action Plan for the site which was approved by DHS on April 25, 1991. SoCal has since requested Commission approval to book up to $1,191,000 for remediation activities at the site. Not all of the expenses for remedial activities are being recovered in this proceeding. SoCal is seeking to recover $222,532 hazardous waste (Hazwaste) cleanup expenses at the site for the period September 23, 1987 through December 31, 1990. SoCal was authorized to book up to $229,000 in Hazwaste program expenses for the period in question.

Dinuba Base Towne Gas Site

Dinuba Base Towne Gas Site (Dinuba Site) is located on Kern Street in Dinuba, California. SoCal sold the southern portion of the property in 1971 and currently uses the northern portion of the site.

The site investigation began in 1985 when SoCal's research of historical records revealed evidence of a gas plant operation at the present location of the Dinuba Site. Subsequently, an inspection of the base followed by a review of property ownership records revealed that contiguous property occupied by a church/day-care center with an unpaved playground area was once part of the Towne gas plant site. SoCal conducted limited sampling of surface and shallow subsurface soils at the church property and SoCal's base in November 1985.

On January 26, 1986, after learning of contamination at the site, the Tulare County Health Department ordered the day-care center closed indefinitely. Subsurface soil contamination was independently verified by the Fresno District Office of DHS. In March 1986, the Central Valley Regional Water Quality Control Board (CVRWQCB) directed SoCal to submit a workplan for geotechnical investigations at the church and Dinuba Site properties to assess the effects on groundwater of prior disposal of waste.

Since that time, SoCal has been conducting investigations at the site under the direction of CVRWQCB, and responding to DHS' and Tulare County Health Department's concerns as well.

SoCal is seeking to recover $283,385 for its Hazwaste program for this site.

Visalia Towne Gas Site

This site is located at 300 North Tipton Street, Visalia, California. SoCal acquired the site in 1927 and has since sold parts of it to KB Management Company and to Pacific Bell.

The first evidence of contamination was found in 1987 when Pacific Bell discovered a leak in some machinery. Subsequent groundwater analyses showed soil contamination. A formal investigation into the soil contamination showed pollutants commonly associated with gas-manufacturing, and discovered an underground vault of unknown origin. The vault was circular, 25 feet in diameter and six-feet deep.

The Tulare County Department of Health Services then directed the property owner to provide additional information and to comply with the California regulations for underground storage tanks. However, the owner refused to comply and referred the matter to SoCal. SoCal agreed to comply with the directive, but specified that any future remediation not associated with the vault would be discussed as a new matter because SoCal was not accepting responsibility for it.

SoCal is seeking to recover $3,905 of its Hazwaste program expenses which it incurred through December 31, 1990.

Operating Industries, Inc.
Compensation and Liability Act

The site is located near Los Angeles and was operated by Operating Industries, Inc. It was used for disposal of municipal and industrial wastes from 1948 to 1984. It was listed on the Environmental Protection Agency's (EPA) National Priority List in May 1986; it was ranked number 71 out of a total of 1,250 sites nationwide.

SoCal was identified by EPA as a potentially responsible party (PRP) that had disposed of wastes at the site. The site operating records show that SoCal disposed of approximately 4,000,000 gallons of waste at the site. SoCal requested authorization to book $445,393 in cleanup costs to a memorandum account through December 31, 1990. SoCal is seeking to recover this amount in rates.

SoCal joined the other parties in an organization named the Operating Industries, Inc. Site Steering Committee to negotiate with EPA and to develop site information relevant to the cleanup and other matters. The first formal acknowledgment of liability for the site cleanup was made in a partial consent decree in a United States District Court case, United States v. Chevron Chemical Company, et al. Then, the entities acknowledging liability formed a new working group named the Coalition Undertaking Remedial Efforts, Inc. to perform the necessary remedial work.

The United States District Court for the Central District of California issued a Partial Consent Decree in United States v. Chevron Chemical Company, et al., on May 11, 1989. SoCal was one of 115 PRPs signing the decree. The EPA began negotiations on another partial consent decree for further necessary site work.

Ventura Station Site

This 8.5 acre site is located within the City of San Buenaventura in California at Olive Street and McFarlane Drive. The portion of the site that the manufactured gas plant was on was owned by SoCal, Vetco Offshore Industries, Inc., U.S.A. Properties Corp., the State of California, and the City of San Buenaventura when the advice letter was submitted in 1988. SoCal's portion of the site is about half of the original gas-manufacturing plant

site. The remainder of the site is used for industrial and highway purposes.

SoCal sold 52% of the Ventura Station Site (Ventura Site) in 1953, while maintaining ownership of the eastern portion for a transmission compressor station. SoCal has requested $111,875 for cleanup of the portion of the site it currently owns. SoCal is not requesting recovery of any cleanup expenses for the portion of the site which was sold. However, in January 1991, the Regional Water Quality Control Board (RWQCB) directed SoCal to investigate the entire Ventura Site for contamination. SoCal has informed RWQCB that Southern California Edison Company and other buyers of the western portion of the Ventura Site are PRPs for cleanup of the site.

Recovery of any expenses at this site are being deferred since there are other PRPs for cleanup at the site.

(END OF APPENDIX A)