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Decision 92-12-023 December 3, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking into natural gas procurement and reliability issues.	R.88-08-018 (Filed August 10, 1988)

ORDER DENYING REHEARING AND MODIFYING DECISION (D.) 92-07-025

In Decision (D.)92-07-025, we adopted final rules for implementing the capacity brokering program for natural gas. These rules were adopted in accordance with D.91-11-025, as modified by D.92-02-042, and with the capacity reallocation rules of the Federal Energy Regulatory Commission ("FERC"). The rules dealt with certain rates and cost allocation matters, capacity curtailments and priority of service, certain operational issues, and core subscription services. It also addressed utility incentive proposals which would promote the efficient use of existing pipeline capacity commitments.

Numerous parties filed applications for rehearing of D.92-07-025, including: (1) California Industrial Group, California Manufacturers Association, and California League of Food Processors ("CIG", collectively); (2) El Paso Natural Gas Company ("El Paso"); (3) Pacific Gas and Electric Company ("PG&E"); (4) Southern California Gas Company ("SoCalGas"); (5) Southern California Edison Company ("Edison"); (6) Sunrise Energy Company and SunPacific Energy Management, Inc. ("Sunrise", collectively); and (7) Southern California Gas Company, Southern California Utility Power Pool, Imperial Irrigation District, and Southern California Edison Company ("Joint Applicants", collectively). Responses to these applications for rehearing were received from California Cogeneration Council ("CCC"); Transwestern Pipeline Company ("Transwestern"); PG&E; Canadian Petroleum Association ("CPA"); Indicated Producers ("IP"); and SoCalGas.

We have carefully reviewed each and every allegation of error raised in the above applications and considered the responses thereto, and are of the opinion that insufficient grounds for granting rehearing have been shown. However, in the course of discussing many of the issues raised by the applications, we provide in today's Order additional discussion and clarification of our new rules for implementing our capacity brokering program, and where appropriate, we make minor modifications to D.92-07-025. Any issues raised by the parties but not discussed in this Order are deemed to be without merit and are denied.

Limitation of the Core's Liability for Stranded Costs

Both CIG and SoCalGas argue that we erred by limiting the core's liability for stranded costs to no more than 110 percent of the capacity reserved for the core. (CIG's Application for Rehearing, pp. 7-10; SoCalGas' Application for Rehearing, pp. 7-11.) CIG argues that limiting the core responsibility to 110% of the capacity reserved for the core based on the "slack factors" adopted in D.90-02-016 was arbitrary and allegedly inconsistent with the weight of the evidence in the hearing. (CIG's Application for Rehearing, pp. 7-8.) SoCalGas asserts that in limiting the liability of the core customers for the stranded costs, we overlooked the extensive evidence that the noncore customers are likely to bypass if forced to bear most of the stranded costs. Such a result would leave the core class holding the burden of these costs in the future. (SoCalGas' Application for Rehearing, pp. 7-11.) Accordingly, SoCalGas requests in its rehearing application that we should require all customers to bear a pro rata share of stranded costs, or at least defer the issue of allocation of stranded costs to SoCalGas' 1993 Biennial Cost Allocation Proceeding ("BCAP"). (SoCalGas' Application for Rehearing, pp. 10-11.) We disagree with these arguments.

In D.92-07-025, we stated that "the core class should share the costs of a program or investment from which it benefits." (D.92-07-025, pp. 16-17 (slip op.).) In the case of capacity brokering, we determined that the benefits of capacity brokering accrue to the noncore customers, and that capacity brokering is likely to increase the risk and cost of gas service to the core. (Id. at p. 17 (slip op.) This determination was supported by the evidence submitted by TURN and DRA. (See Exh. TURN-10, pp. 7-8; and Exhibit DRA-12, pp. 1-9 and 1-17.)

In D.92-07-025, we also determined that no specific class of customers was responsible for stranded costs, and thus allocated some of the costs to all customers. (D.92-07-025, p. 18 (slip op.).) However, because of the substantial benefits to the noncore from capacity brokering, we decided to not allocate the stranded costs on a pro rata basis among noncore and core customers. Rather, we limited the liability of the core class for these stranded costs to 110% of existing capacity held for the core class on each pipeline. (D.92-07-025, pp. 18-19 (slip op.).) This constituted a 10% cap on the liability of core customers for stranded costs. The Commission found this amount to be a beneficial level of slack capacity, and thus, the additional 10% constituted "a reasonable figure for determining the core class' responsibility over and above the capacity held to serve the core during the peak periods." (D.92-07-025, p. 19 (slip op.).) This 10% cap is supported by the evidence in the record. (Exh. TURN-10, p. 10.) The use of the slack factor was derived from D.90-02-016, which used such a mechanism to limit the liability of core customers for new pipeline projects. (Re Interstate Natural Gas Pipeline Supply and Capacity (D.90-02-016) 35 Cal.P.U.C.2d 196, 226 & 260, fn. 12.)

Based on the above discussion, we find no merit to CIG's argument that it was arbitrary to adopt the 10% cap from D.90-02-016. Although we applied the reasoning in D.90-02-016 for using the slack factors to limit the liability of core customers -- namely, that the core should pay only for that which

it benefits (see id. at pp. 245 & 249), the 10% figure was proposed by TURN. Thus, the evidence supports the adoption of the 10% cap.

It is noted that CIG in discussing this issue pointed out the need to modify the following statement on page 17 of D.92-07-025: "However, we have no evidence that the core will benefit from capacity brokering." There is evidence in the record alleging such benefits. However, we find this evidence unconvincing. Thus, we will modify this sentence to read as follows: "However, we are unconvinced by the evidence that the core will benefit from capacity brokering." We will also modify the next sentence to explain why the evidence is unconvincing. It shall read as follows: "Indeed, the weight of the evidence suggests that capacity brokering by itself is likely to increase the risk and cost of gas service to the core."

SoCalGas' argument on this issue constituted no more than a request that we reconsider our decision to limit the core class' liability for stranded costs based on the assertion that noncore customers will bypass the LDC's system if the liability for stranded costs is not borne on a pro rata basis by core and noncore customers. Essentially, SoCalGas' rehearing application raises no legal error on this issue.

PG&E's Federal Preemption Arguments

In our decision adopting the capacity brokering rules, we determined that PG&E could not set aside 400 mmcf/d of interstate capacity for its own electric department. (D.91-11-025, pp. 39-41 (slip op.).) PG&E now claims that D.92-07-025, which implements this determination, is unlawful on grounds of federal preemption. Specifically, PG&E argues that our determination to prohibit PG&E from setting aside interstate capacity for its own electric department constitutes a direct intrusion into the field of regulation reserved to the FERC and

also precludes uniformity of regulation by the FERC. (PG&E's Application for Rehearing, pp. 7-10.)

Before discussing the merits of these preemption arguments, we note that PG&E should have raised these arguments in its application for rehearing of D.91-11-025, and not now, because we rejected the set aside for PG&E's electric department in that decision, and not in D.92-07-025. Public Utilities Code Section 1709 precludes a collateral attack on D.91-11-025, which has become final. (Pub. Util. Code, §1709.) However, PG&E has crafted an argument relying on Order 636, which was issued by the FERC after the Commission decided its capacity brokering rules in D.91-11-025 and D.92-02-042. (See Pipeline Service Obligations and Revisions to Regulations, Etc. ("Order 636") (1992) 59 F.E.R.C. ¶61,030, 57 Fed.Reg. 13267 (April 16, 1992), pp. 207-208 & 215 (slip op.).) Thus, the merits of the preemption arguments are addressed.

In D.91-11-025, we rejected this reservation of capacity for PG&E's electric department in advance of offering it to others on the grounds that "reserving capacity for PG&E's electric department would be contrary to our stated policy objectives of protecting core ratepayers and promoting competitive gas markets." (D.91-11-025, p. 42 (slip op.).) It was also to "ensure that all noncore market participants have equal access to capacity." (Id.) Thus, we consistently have treated PG&E's electric department like any other noncore customer. (See Re Interstate Natural Gas Pipeline Supply and Capacity [D.89-02-071] 31 Cal.P.U.C.2d 222, 229, in which we refer to PG&E's electric department as a customer of the gas distribution utilities; see also, Re Rate Design for Unbundled Gas Utility Services [D.88-03-085] (1988) 27 Cal.P.U.C.2d 591, 597; Re New Regulatory Framework for Gas Utilities [D.86-12-010] (1986) 22 Cal.P.U.C.2d 491, 505.)

In the FERC's Order 636, there is no special reservation of interstate capacity for an LDC's UEG, such as PG&E's electric department. Rather, Order 636 speaks about

access to all customers on a nondiscriminatory basis. (See Pipeline Service Obligations and Revisions to Regulations, Etc. ("Order 636-A") (1992) 60 F.E.R.C. ¶61,102, 57 Fed.Reg. 36145 (August 12, 1992), pp. 77-79 (slip op.).) It is noted that the FERC itself has noted "the possibility exists that LDCs might favor their own end-users in ways that constitute potential undue discrimination." (Id. at p. 78 (slip op.).) Accordingly, our rejection of the 400 mmcf/d reservation on the basis of equal access neither conflicts with any provision in Order 636, nor directly or indirectly intrudes upon the FERC's jurisdiction. Instead, our refusal to set aside interstate capacity for PG&E's electric department supports, at the state level, the goals of the FERC's capacity reallocation program to provide open access on a nondiscriminatory basis.

Also, an issue of uniformity of regulation does not arise from the rejection of the set aside. In its rehearing application, PG&E portrays our refusal to reserve 400 mmcf/d of interstate capacity to the utility's UEG as an unlawful attempt to control who may or may not participate in the FERC's reallocation program, which allegedly has the effect of destroying the FERC's uniformity of regulation over interstate gas capacity. (PG&E's Application for Rehearing, pp. 8-11.) However, this portrait is simply wrong. No Commission decision precludes the participation of any customer in the FERC's reallocation program. In fact, PG&E's electric department may compete for capacity like any other UEG or noncore customer. (D.91-11-025, pp. 41-43 (slip op.).)

Therefore, for the above reasons, we acted lawfully in rejecting the proposal to set aside interstate capacity for PG&E's electric department. PG&E's federal preemption arguments are without merit.

PG&E's Taking Argument

PG&E once again argues that our rejection of PG&E's attempt to assign interstate capacity to its own electric department is an unconstitutional taking. (PG&E's Application for Rehearing, pp. 10-12.) In revisiting this issue, we again reject this argument for the same reasons that we did in D.91-11-025 and D.92-02-042.

In D.91-11-025, we determined that interstate pipeline transportation service does not constitute a property right of PG&E. (D.91-11-025, p. 41 (slip op.).) As we stated in that decision, "PG&E's rights over the interstate pipelines are rights associated with PG&E's status as a customer of the interstate pipeline companies. Associated rates for transportation services are tariffed. PG&E receives service on behalf of its customers who pay the full tariffed costs of service." (Id.)

In D.92-02-042, the rehearing order for D.91-11-025, we rejected all of PG&E's taking claims including those involving the assignment or reservation of interstate capacity for its electric department. (D.92-02-042, pp. 15-20 (slip op.).) In this order, we also stated that even if, assuming arguendo, there existed a property right, our refusal to allow PG&E to reserve or assign capacity to its UEG did not constitute an unconstitutional taking, and was no more than a proper exercise of the Commission's authority or police power to regulate the allocation of interstate capacity acquired by an LDC, such as PG&E. (D.92-02-042, pp. 15-17 (slip op.).)

PG&E then raised this issue in its Petition for Writ of Review of D.91-11-025, which was denied by the California Supreme Court. (See Commission's Answer to PG&E's Writ of Review in Pacific Gas and Electric Company v. Public Utilities Commission, S025614, filed April 16, 1992, pp. 37-39, and the California Supreme Court's denial of the Petition for Writ of Review on July 22, 1992.)

By raising this issue in its application for rehearing of D.92-07-025, PG&E is asking for the relitigation of a previously decided issue. PG&E attempts to keep the taking issue alive by citing to the following statement in the Commission's Answer to its Petition for Writ of Review (p. 27): "Since no capacity has yet been assigned, there is no need for compensation until such assignment has occurred." PG&E's position assumes that the assignment or reservation of interstate capacity for PG&E's UEG constitutes a property right which can be taken. As discussed above, PG&E has no such property right. Therefore, we find the argument without merit.

Removal of the October 1, 1992 Conversion Requirement

In its rehearing application, El Paso requests that we reinstate the requirement that PG&E convert its sales capacity entitlements to transportation capacity entitlements on the PGT system by October 1, 1992. This requirement had been imposed by D.91-11-025.

However, in D.92-07-025, we determined that the requirement was no longer necessary. That determination is supported by the fact that the FERC in Order 636 has required PG&E to become a firm transportation customer of PGT even if PG&E does not exercise its conversion rights by October 1, 1992, and that the FERC has mandated implementation of capacity reallocation programs prior to the 1993-94 heating season. (Pipeline Service Obligations and Revisions to Regulations, Etc. ["Order 636"] (1992) 59 F.E.R.C. ¶61,030, 57 Fed.Reg. 13267 (April 16, 1992), pp. 207-208 & 215 (slip op.).) Thus, the FERC's action has made it unnecessary to require that PG&E exercise its conversion rights by October 1, 1992. (D.92-07-025, pp. 7-8 (slip op.).) It is noted that Order 636 does not preclude earlier implementation once a pipeline company has an approved program.

Double Demand Charges

In D.92-07-025, we decided to implement capacity brokering as each pipeline received FERC authorization for capacity reallocation rather than wait for all pipelines to receive such authorization. This decision was in response to concerns that delays in capacity brokering would increase the risk of stranded investment. (D.92-07-025, p. 9 (slip op.).) As a result, we implemented a dual program, and adopted transition rules. These transition rules permitted a successful bidder for a utility's firm interstate capacity rights to unbundle its interstate demand charges from its intrastate transmission rate and allowed this bidder to abrogate outstanding commitments for bundled transportation services (such as an SL-2 contract) under the OIR procurement program. (D.92-07-025, pp. 9-10 (slip op.).)

In its rehearing application, Sunrise argues that these transition rules give an unlawful preferential treatment to customers that rely upon utility-owned and brokered firm interstate capacity over those customers who rely upon their own firm interstate capacity. (Sunrise's Application for Rehearing, p. 6.) Sunrise explains that this preferential treatment is the result of the delays in the implementation of capacity brokering at the federal level and in interstate demand charge unbundling in California, which has caused a double demand charge problem. (Sunrise's Application for Rehearing, p. 3.) Sunrise proposes the elimination of such alleged unlawful discriminatory treatment by unbundling the pipeline demand charges from the intrastate rates of customers who rely on non-utility firm interstate capacity rights, and by extending "the contract abrogation rights to <u>all</u> customers that have obtained capacity rights prior to or during the transition period." (Sunrise's Application for Rehearing, p. 7, emphasis in original.) It is noted that Sunrise raised the unbundling proposal in a Petition for Modification of

D.92-07-025, which was rejected and disposed of in D.92-11-014.[1]

In D.92-07-025, we acknowledged the double demand charge problem, and decided to establish an interim tracking account for interstate pipeline demand charges that are embedded in the intrastate transmission rates of customers that receive their gas over interstate capacity that is not owned and controlled by the California LDCs. (D.92-07-025, pp. 45-46 (slip op.).) However, we deferred determining the allocation of dollars among customer classes to each LDC's cost allocation proceeding. (Id. at p. 46 (slip op.).) We also did not remove from the intrastate transmission rates the interstate demand charges for those who obtain their gas over non-utility transportation capacity.

Although Sunrise supports the setting up of a regulatory mechanism to track the pipeline demand charges, Sunrise argues that it is not enough. Sunrise argues that unbundling the interstate double demand charges from the intrastate transmission rate for customers who receive gas over non-utility interstate capacity is necessary to eliminate the unlawful preferential treatment to those who rely upon utility-owned (and brokered) interstate pipeline capacity. (Sunrise's Application for Rehearing, p. 3.)

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1. In D.92-11-014, we clarified the tracking account adopted in D.92-07-025 by renaming it a memorandum account and by specifying what costs could be booked in such an account. (D.92-11-014, p. 5 (slip op.).) We also rejected Sunrise's request to remove the interstate demand charges from intrastate rates for a select group of customers. (Id. at p. 4 (slip op.).)

Sunrise relies on Public Utilities Code Section 453 in arguing the unlawfulness of the discriminatory treatment resulting from the double demand charge. This statute provides, in relevant part:

> "No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service." (Pub. Util. Code, §453, subd. (c).)

In economic regulation, discrimination is not per se illegal. Rather, the law is clear that the Commission has the authority to make economic classifications, in its discretionary exercise of its quasi-legislative function. (California Manufacturers Assn v. Public Utilities Com. (1979) 24 Cal.3d 251, 261.) In fact, the Commission has "wide discretion to make rate classifications that reflect a broad and varied range of economic considerations." (Id. at p. 260.) Therefore, "[h]aving discretion to consider factors other than cost, the [C]ommission must necessarily create some disparity among users." (Id. at p. 261.) These classifications are legal so long as there is "a reasonable relationship between the classifications drawn and the purpose for which they are made." (Wood v. Public Utilities Commission (1971) 4 Cal.3d 288, 294; see also Toward Utility Rate Normalization v. Public Utilities Com. (1978) 22 Cal.3d 529, 544.)

In D.91-11-014, we explained why we rejected the proposal to immediately unbundle the interstate demand charges for all noncore customers. (D.91-11-014, pp. 2 & 4 (slip op.).) We stated that this additional protection requested by Sunrise was "unwarranted given the uncertainty all parties confront surrounding the issue of stranded capacity and transition costs associated with unbundling interstate pipeline demand charges." (Id. at p. 2 (slip op.).) Further, the regulatory mechanism adopted in D.92-07-025 is sufficient to deal with the double

demand charge issue for the moment, and allow "the Commission the discretion to act on this issue in the fullness of time." (Id.) Also, we explained that to begin "the unbundling of the interstate demand charges for a selected group of customers" prior to the implementation of capacity brokering would result in a "piecemeal approach to industry restructuring issues surrounding the unbundling of interstate pipeline capacity and the associated transition costs. . . ." (Id. at p. 4 (slip op.).) Such a piecemeal approach would be poor public policy. (Id.)

Thus, we believe that the effects of the double demand charge are reasonably and effectively minimized by the regulatory mechanism for tracking pipeline demand charges that we established in D.92-02-025, as modified by D.92-11-014. Our rejection of Sunrise's request to unbundle the interstate pipeline demand charges is based on sound public policy grounds. Accordingly, any economic classification drawn between those customers who do rely on utility-owned and brokered interstate pipeline capacity and those customers who do not is justified, and does not constitute undue discrimination.

Further, our transition rules, which relieve successful bidders from double demand charges and permit them to abrogate contractual commitments for bundled transportation services, provide an incentive for noncore customers to acquire utility-owned and brokered interstate capacity, and thus minimize stranded costs for a utility's ratepayers. Reducing stranded costs is an important concern and goal of the Commission. (See D.92-07-025, pp. 9 & 53, Finding of Fact No. 37 (slip op.).) The goal to minimize such costs is not met by unbundling interstate demand charges for customers who do not rely on utility-owned and brokered firm interstate capacity. Thus, there exists a rational basis for the resulting differential treatment in the transition rules between those customers who successfully bid for utility-owned and brokered capacity and those who do not.

We conclude, therefore, that we have exercised our discretion properly and constitutionally. (See Toward Utility Rate Normalization v. Public Utilities Com., supra, 22 Cal.3d at p. 544.)

Due Process

Sunrise also argues that we adopted the transition rules in D.92-070-025 without giving the parties notice and an opportunity to comment on them, and thus, violated its due process rights. (Sunrise's Application of Rehearing, pp. 9-10.) This argument is without merit.

In an Administrative Law Judge's ("ALJ's") ruling of April 8, 1992, the parties were asked to comment on the impact of the FERC's Order 636, which set forth rules and procedures for capacity reallocation which would result in the likelihood that one pipeline would receive authorization prior to another. (See ALJ's Ruling, issued April 8, 1992, R.88-08-018, p. 2.) These comments were solicited prior to the issuance of the ALJ's proposed decision. The comments of the California Gas Marketers Group ("CGMG"), of which Sunrise Energy and SunPacific Energy Management, Inc. are members, recognized that there would be a transition period from the OIR procurement rules to capacity brokering, and urged the Commission to implement capacity brokering only when all the interstate pipelines serving California received FERC authorization. (Comments of the California Gas Marketers Group on the Impact of FERC Order No. 636 Upon Capacity Brokering in California ["CGMG's Comments on FERC Order 636"], filed May 8, 1992, R.88-08-018, pp. 2-3.) Sunrise also discussed the unbundling issues in its comments to this ALJ ruling. (CGMG's Comments on FERC Order 636, pp. 18-19 & 30.)

Further, in its initial comments to the ALJ's proposed decision, CGMG had an opportunity to address what should be done during the interim period before capacity brokering is fully

implemented, and did so by recommending the elimination of the double demand charge by unbundling the interstate pipeline demand charges from all customers' intrastate transportation rates. (Initial Comments of the California Gas Marketers Group on the Presiding Administrative Law Judge's Proposed Decision ("CGMG's Comments to the ALJ's Proposed Decision"), filed May 20, 1992, R.88-08-018, pp. 4-5.) These comments also contained a discussion of the impact of Order 636 on the Commission's capacity brokering program. (See CGMG's Comments to the ALJ's Proposed Decision, pp. 23-25.) Consequently, Sunrise has not been foreclosed from an opportunity to address the issue, and its due process has not been denied.

Thus, for the above reasons, Sunrise was given adequate notice and opportunity to present its views as to what should be done during the interim period between the time when one pipeline received FERC authorization and when all pipelines serving California would receive such approval. In fact, Sunrise presented its comments on this matter on at least two occasions -- before and after the issuance of the proposed decision and D.92-07-025. We did not adopt Sunrise's position but set forth transition rules which minimize any economic impacts resulting from delays in implementing capacity brokering and reduce the risk of stranded investments. (D.92-07-025, p. 9 (slip op.).)

CIG raises a similar due process argument in its application for rehearing. It argues that D.92-07-025 modifies D.90-09-089 "in order to effect implementation of capacity brokering on a partial or pipeline-by-pipeline basis." (CIG's Application for Rehearing, p. 3.) CIG claims that the parties were not provided with notice and opportunity to be heard on the modification of D.89-09-089 resulting from the partial implementation of the capacity brokering program, and thus, the Commission violated Public Utilities Code Section 1708.

CIG's due process claim is without merit. Obviously, CIG was well aware that the capacity brokering rulemaking (R.88-08-018) was aimed toward adopting rules for capacity brokering

which would affect the existing buy-sell program set forth in D.90-08-089. Thus, for CIG to argue that it had no notice that we would be dealing with issues involving the modification of the existing rules or the timing of implementation of capacity brokering is unfounded.

Further, parties had notice and opportunity to discuss the timing question in their comments on the impacts the FERC's Order 636 would have on implementing capacity brokering. Several parties took the opportunity to discuss the issue. For example, in suggesting modifications to the existing schedule for implementation of capacity brokering, Independent Producers ("IP") proposed partial implementation. (Response of the IP to the April 8, 1992 Ruling of ALJ Malcolm, filed May 8, 1992, R.88-08-018, pp. 5-6.) CIG itself also commented on the timing issue by arguing that capacity reallocation should be implemented on the pipelines serving California at the same time, and further recommended that existing buy/sell arrangements should continue even after capacity release programs are implemented. (Comments of the CIG Regarding Impact of Order No. 636, pp. 2-3.) The latter itself implicitly would have constituted a modification of D.89-09-089, which viewed buy-sell arrangements as interim arrangements. (See Re Gas Utility Procurement Practices and Refinements to the Regulatory Framework for Gas Utilities [D.90-09-089] (1990) 37 Cal.P.U.C.2d 583, 626.)

Moreover, the issue of timing and partial implementation was discussed in the comments of several parties to the ALJ's Proposed Decision. CIG in its comments made reference to its position concerning the impacts of Order 636, and reiterated its argument that the restructuring process for all pipelines in California should be accomplished concurrently. (Comments of CIG on Proposed Decision, filed May 20, 1992, R.88-08-018, p. 25.) In its Comments to the ALJ's Proposed Decision, IP asked the Commission to reject CIG's own modification of D.89-09-089 which would have maintained the existing buy/sell arrangements after the implementation of capacity brokering, and

urged partial implementation. (Comments of the IP on the April 20, 1992 Proposed Decision, filed May 20, 1992, R.88-08-018, pp. 7-13.)

In sum, as demonstrated above, the parties did have notice and opportunity to express their positions concerning the modification of D.90-09-089 and the partial implementation of the capacity brokering program resulting from the pipeline-by-pipeline approval procedure mandated by the FERC in Order 636.

Extending the Benefits of Capacity Brokering To Subscribers of Relinquished Capacity

Edison argues that we erred by adding a new provision to the capacity brokering rules which requires participants in an LDC's service level program to actually subscribe to brokered capacity before they can (1) reduce their service level volumes or (2) pay an unbundled intrastate rate." (Edison's Application for Rehearing, p. 2.) Edison claims that this new requirement frustrates the expectations created in D.91-06-026, and is arbitrary and discriminatory in limiting receipt of the benefits associated with the partial implementation of capacity brokering to those who successfully bid for capacity held by the LDCs on existing pipelines. (Edison's Application for Rehearing, pp. 2-3.) Edison further recommends that if this requirement is not deleted, then we should modify D.92-07-025 to provide the same treatment for customers who have subscribed to capacity that was relinquished by an LDC as is given to those who are successful bidders. (Edison's Application for Rehearing, pp. 4-5.)

Edison claims that the new requirement "may frustrate the expectations created in D.91-06-026 by its attempt to lock participants into the service level program for a longer period than they could have reasonably expected." (Edison's Application for Rehearing, p. 3.) Edison bases these expectations on the fact that in D.91-06-026, the Commission clarified its OIR procurement rules to give some certainty to noncore customers who

were in the process of contracting for gas supplies by mandating that "the commitments for SL-2 transportation and core subscription services [would] be two years or until the date capacity brokering [was] implemented in R.88-08-018, whichever occurs sooner," and that "[i]n order to assure a smooth transition to capacity brokering among SL-2 customers, gas utilities should not require SL-2 customers to provide matching two-year supply commitments." (D.91-06-026, p. 5 (slip op.), emphasis in original.) Thus, Edison claims that noncore customers entered into their commitments to the service level program with these expectations. Accordingly, Edison infers that noncore customers expected to end their participation in the service level program once capacity brokering occurred.

However, Edison ignores the fact there will be only partial implementation of capacity brokering. The benefits from capacity brokering, including the ability to reduce service level volumes, should accrue only to those who are participants in capacity brokering, namely, successful bidders of brokered interstate capacity. Therefore, this fact comports with D.91-06-026, and the expectations offered in that decision.

Edison's arguments on arbitrariness and discrimination are akin to those made by Sunrise, except that Edison is advocating on behalf of those customers who subscribed to previously relinquished interstate capacity. Edison argues that these customers, like successful bidders for brokered interstate capacity, should be able to receive unbundled intrastate transportation rates and be allowed to reduce their service level volumes by abrogating outstanding commitments for bundled transportation services. (See D.92-07-025, p. 10 (slip op.).) Edison argues that by not giving customers who subscribed to previously relinquished interstate capacity the same options that have been offered to successful bidders, the Commission has acted arbitrarily and discriminatorily. However, this argument is incorrect.

There are important distinctions between successful bidders for brokered capacity under R.88-08-018 and customers who subscribed to previously relinquished interstate capacity. Namely, successful bidders by their participation further the goal of capacity brokering in minimizing stranded costs. However, this goal is not furthered by unbundling interstate demand charges for customers that have already subscribed to previously relinquished capacity. In fact, it has been argued that unbundling the intrastate transportation rates for such nonparticipants of capacity brokering may "result in the need to redistribute more costs." (Response of the CCC to the Applications for Rehearing and Petitions for Modification, p. 5.)

Thus, eliminating the double demand charges by unbundling of intrastate transportation rates for successful bidders of brokered capacity, and not for customers who subscribed to previously relinquished capacity, is reasonable and justified. The differential treatment is neither arbitrary nor unduly discriminatory (see Toward Utility Rate Normalization v. Public Utilities Com., supra, 22 Cal.3d at p. 544.); rather, it is rationally related to goals for minimizing stranded costs.

Service Interruption Credit ("SIC") & UEG-Cogenerator Parity

In D.91-11-025, we adopted SoCalGas' proposal to offer the SIC, which make shareholders liable if any firm customer suffers more than one intrastate curtailment in any ten-year period. (D.91-11-025, pp. 29 & 31 (slip op.) Also, we stated that the SIC was subject to the rotating block scheme adopted in the decision. (Id. at p. 31 (slip op.). We further explained:

> "the utilities may fulfill [the] directive regarding curtailments of UEGs and cogenerators if they curtail all UEGs once during the ten-year period before curtailing any cogenerator. Once the UEGs have been curtailed one time within the 10-year period, further curtailments must be according to the percentage of default rate. Of course, if

> the gas utility were to withdraw its offer of a Service Interruption Credit, the ten-year curtailment period would be suspended and priorities would be applied during each curtailment. If the credit program were to be suspended, the ten-year period would begin anew with the program's reinstatement. In the absence of a service interruption credit, a cogenerator will be given priority over a UEG during each curtailment period if the cogenerator pays the same or a higher percentage of the default rate than the UEG." (Id. at pp. 30-31 (slip op.).)

In D.92-07-025, we reiterated the directive that "(w)hen the cogenerator pays the same or higher percentage of default rate, the utilities shall curtail all of their UEG volumes ahead of any cogenerator volumes in each curtailment episode." (D.92-07-025, p. 26 (slip op.), emphasis omitted.)

In their rehearing application, the Joint Applicants argue that this directive of curtailment priority between UEG and cogeneration customers in D.92-07-025 is contrary to the SIC adopted for SoCalGas in D.91-11-025. They reason that the Commission held in D.91-11-025 that if SoCalGas offered the SIC, the utility was exempted from such a curtailment requirement. (Joint Applicants' Application for Rehearing, pp. 2-4.)

It is understandable how the Joint Applicants came to interpret that D.91-11-025 gave SoCalGas such an exemption. However, such an exemption cannot stand because it is contrary to Sections 454.4 and 454.7 of the Public Utilities Code. Section 454.4 mandates that there be parity between the rate that cogenerators pay for gas and the rate that a UEG customer pays for gas. (Re Rate Design for Unbundled Gas Utility Services [D.86-12-009] (1986) 22 Cal.P.U.C.2d 444, 479.) Section 454.7 provides that "(t)he (C)ommission shall, to the extent permitted by federal law and consistent with Section 2771, provide cogeneration technology projects with the highest possible priority for the purchase of natural gas." (Pub. Util. Code, §454.7.) We have determined that the curtailing of UEGs before

cogeneration customers who pay an equal or higher rate for capacity comports with Section 454.7 (Re Gas Utility Procurement Practices and Refinements to the Regulatory Framework for Gas Utilities [D.90-09-089] (1990) 37 Cal.P.U.C.2d 583, 612-613; see also, Re Natural Gas Procurement and System Reliability [D.88-12-099] 30 Cal.P.U.C.2d 545, 556.)

Thus, in D.91-11-025, we did not intend to exempt SoCalGas from these statutory requirements by allowing the utility to offer the SIC. SoCalGas may offer the SIC so long as it comports with the statutory mandates.

Overpressurization Problems

In its application for rehearing, SoCalGas points out an inadvertent drafting error. (SoCalGas' Application for Rehearing, pp. 5-6.) In the ALJ's Proposed Decision, the reduction of nominations during potential overpressurization episodes would have been "according to the percentage of intrastate default rate paid by the customer." This language supports Ordering Paragraph 11 of the Proposed Decision which stated: "During periods of potential system overpressurization, SoCalGas shall curtail customers on a pro rata basis accordingly to priority on the intrastate system."

In D.92-07-025, we adopted a different method for dealing with overpressurization problems by stating that "overpressurization problems should be resolved by requiring customers who are causing a system imbalance to reduce their deliveries into the system." However, Order Paragraph 11 in the Proposed Decision, which is Ordering Paragraph 16 in D.92-07-025, was not amended to reflect the change. Thus, the second sentence in Ordering Paragraph 16 should be changed to read as follows:

> "During periods of potential system overpressurization, SoCalGas shall require the customers who are causing a system imbalance to reduce their deliveries into the system."

IT IS ORDERED that D.92-07-025 is modified as follows:

1. The following language is be deleted from page 17, lines 5 through 8:

> "However, we have no evidence that the core will benefit from capacity brokering. In fact, the evidence suggests that capacity brokering by itself is likely to increase the risk and cost of gas service to the core."

This language shall be replaced by the following two sentences:

> "However, we are unconvinced by the evidence that the core will benefit from capacity brokering. Indeed, the weight of the evidence suggests that capacity brokering by itself is likely to increase the risk and cost of gas service to the core."

2. The third and fourth full sentence on page 19 shall be a new paragraph. The third full sentence on page 19 is amended to read as follows:

> "The allocation of stranded interstate costs adopted today will apply to all core and noncore transportation customers, including core subscription service customers and contract customers (except those whose contracts have fixed prices), consistent with D.91-11-025."

3. The following sentence in the first full paragraph on page 19 is eliminated:

> "This cost allocation procedure will apply to core subscription service."

4. The following words shall be added to the second sentence of the first full paragraph on page 19, so that it reads as follows:

> "In addition, rates for core subscription service shall also include all stranded costs incurred with a given 2 year reservation period, consistent with D.91-11-025, which

found that core subscription service should be cost-based."

5. The second sentence of Ordering Paragraph 9 shall be amended to read as follows:

"Core subscription rates shall also include all stranded costs incurred within a given 2 year reservation period, consistent with D.91-11-025. An open season will be held every two years, during which time a new core subscription reservation will be established for each utility."

6. The word "associated" on page 31, line 15 shall be replaced by the word "association".

7. The second sentence in Ordering Paragraph 16 all be changed to read as follows:

"During periods of potential system overpressurization, SoCalGas shall require the customers who are causing a system imbalance to reduce their deliveries into the system."

IT IS FURTHER ORDERED that rehearing of D.92-07-025 as modified herein is denied.

This order is effective today.

Date December 3, 1992, 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