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Decision 83 04 087 APR 20 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SAN DIEGO GAS & ELECTRIC COMPANY, for Authority to revise its Energy Cost Adjustment Clause Rate, and to revise its Electric Base Rates in Accordance with the Electrical Revenue Adjustment Mechanism established by Decision 93892.	Application 82-08-14 (Filed August 5, 1982)

ORDER MODIFYING D.82-12-056
AND DENYING REHEARING

A petition for rehearing of Decision (D.) 82-12-056 has been filed by San Diego Gas & Electric Company (SDG&E). We have carefully reviewed each and every allegation in said petition and are of the opinion that good cause for granting rehearing has not been shown.

However, after reviewing SDG&E's petition and its various allegations, we are of the opinion that additional discussion and an additional finding of fact and conclusion of law are required. Also, SDG&E has pointed out several misstatements in the decision. Finally, a typographical error is corrected.

Before proceeding to amend D.82-12-056, it should be noted that one of the additions concerns the recovery of approximately $1.6 million in transportation underlifts payable by SDG&E. These underlifts result from a transportation agreement between the Hawaiian Independent Refinery, Inc. (HIRI) and Chevron, U.S.A., Inc. (Chevron), due to HIRI's production having been reduced below the transportation contract minimums. There was no opposition to allowing recovery of this $1.6 underlift

expense and the failure of D.82-12-056 to address this point was inadvertent.

Our review of the record in this case also has convinced us that we should clarify and reaffirm our rule concerning the burden of proof in reasonableness proceedings. In D.92496, wherein we instituted an annual review of reasonableness of energy and fuel costs, we stated the following:

> "Of course, the burden of proof is on the utility applicant to establish the reasonableness of energy expenses sought to be recovered through ECAC. We expect an affirmative showing by each utility with percipient witnesses in support of all elements of its application, including fuel costs and plant reliability."

This statement conforms to the fundamental principle of public utility regulation that the burden rests heavily upon a utility to prove it is entitled to rate relief. It is not the job of the Commission, its staff, any interested party, or protestant to prove the contrary. (Suburban Water Co., 60 CPUC 768 (1962) rev. denied; SoCal Gas, 58 CPUC 57 (1960); So. Counties Gas Co., 58 CPUC 27 (CPUC); Citizens Utilities Co., 52 CPUC 637 (1953)). Unless SDG&E meets the burden of proving, with clear and convincing evidence, the reasonableness of all the expenses it seeks to have reflected in rate adjustments, those costs will be disallowed (In re Southern Counties Gas Co., 51 CPUC 533 (1952)).

IT IS ORDERED that D.82-12-056 is amended as follows:

1. The decision is modified to provide recovery of HIRI transportation underlifts as follows:

(a) The following sentences are added to the second full paragraph on Page 2:

> "In addition this decision allows transportation underlifts of $1,605,474 payable to Hawaiian Independent Refinery,

Inc. (HIPI), to be recovered under ECAC rates and subject to further review and refund as above. This allowance shall be a component in the formulation of SDG&E's ECAC rate at its next ECAC proceeding, including any interest that may be deemed reasonable.."

(b) The first paragraph on Page 28 is amended by the addition of the following:

"In addition, transportation underlifts will be incurred under the HIPI transportation agreement with Chevron because of a reduction of HIPI's production below the transportation contract minimums. These underlifts, figured on a total of 686,113 barrels for the period November 1, 1982 through October 31, 1983, will result in an underlift penalty of $1,605,474 based on $2.16 per barrel in 1982 and $2.50 per barrel in 1983. This allowance will be recovered through ECAC and will be subject to adjustment as above. This allowance shall be calculated as a component of SDG&E's ECAC rate at its next ECAC proceeding, including any interest that may be deemed reasonable."

(c) The following ordering paragraph is added to Page 44:

"3. An allowance of transportation underlifts of $1,605,474 payable to HIPI is authorized for SDG&E. This allowance shall be recovered under ECAC rates and shall be subject to further reasonableness review and refund. This allowance shall be a component in the formulation of SDG&E's ECAC rate at its next ECAC proceeding, including any interest that interest that may be deemed reasonable..

2. The decision's discussion of the $6.98 million disallowance of fuel oil sale losses is amended by the following additions:

(a) The following paragraph is added after the first paragraph on Page 31:

"In making this disallowance, we remind SDG&E of our discussion of its fuel oil inventory in D.82-04-115 in A.60865. After noting that SDG&E provided insufficient evidence to support its requested oil inventory level and expressing dissatisfaction with SDG&E's analysis in the area of oil inventory, we went on to state the following:

> 'In adopting staff's recommended level of fuel oil in inventory, we will also accept staff's suggestion that the cost of each barrel of excess oil over the allowed inventory be shared between the ratepayers and the shareholders. We will allocate the excess oil burden equally between the ratepayers and the shareholders.'

"Further, while the excess oil inventory allowance was an estimate set forth in the AER and was technically a part of base rates, the allowance nonetheless was rendered as a part of an ECAC fuel offset proceeding."

(b) The following finding of fact is added:

"Unless there is an ECAC disallowance of $6.88 million in fuel oil sale losses, SDG&E will on the one hand receive a dollar-for-dollar recovery in the ECAC balancing account for all such losses, while also reaping a $6.88 million allowance in the AER for excess fuel oil inventory expenses that, due to the combined level of its oil sales and oil burn, it actually did not incur."

(c) The following conclusion of law is added:
"D.82-04-115, in A.60865--a fuel offset proceeding--held that the cost of each barrel of excess oil over the allowed inventory should be shared between SDG&E's ratepayers and its shareholders. It is not reasonable when SDG&E fuel oil sale losses are subject to a dollar-for-dollar ECAC recovery, to charge ratepayers for excess oil in inventory expenses that SDG&E does not incur."

3. The decision is modified by the deletion of statements

incorrectly indicating that SDG&E fuel oil sale losses were higher than had been estimated in D.82-04-115, as follows:

(a) The last sentence on Page 30 is amended to read as follows:

> "This resulted from the burning of fuel oil while rejecting natural gas."

(b) The first two sentences on Page 31 are amended to read as follows:

> "Fuel oil sales were not included in the AER in D.82-04-115, contrary to what was originally intended as regards the AER. Because SDG&E was in the midst of negotiations with it suppliers, we instead allowed ECAC treatment of fuel oil sale losses in order not to prejudice such negotiations."

4. The decision is amended to show what estimates of Tesoro's per barrel oil losses were presented by SDG&E and to clarify that the $7.50 per barrel loss estimate was presented by Tesoro and not SDG&E. Also, the level of SDG&E's contract obligation to Tesoro is revised from 12,500 bbl./day to 15,056 bbl./day, as follows:

(a) The first paragraph on page 29 is amended to read as follows:

> "During the hearings, SDG&E stated what its estimates were of Tesoro's possible loss in the event that SDG&E had refused to take or pay for oil deliveries. These estimates ranged from $9.17-$12.17 per barrel to a low of $7.17 per barrel (Ex. 8, p. 7). Tesoro stated that its loss estimate was $7.50 per barrel (TR. 726). Using these figures, SDG&E could have calculated during the course of negotiations with Tesoro what its maximum and minimum per barrel exposure would be in the event of litigation. SDG&E chose to accept--in place of the uncertainties of litigation--

> the certainty of a $6.55 per barrel underlift fee, plus other underlift fees, totaling some $46 million. Assuming an obligation of 15,056 bbl./day (which is the contract obligation set forth in Staff Exhibit 12, p. 3-11) over the remaining life of the contract (October 1, 1982 through December 31, 1983, i.e., 455 days), the range of SDG&E's possible exposure in the event of litigation can be calculated. The question is whether in light of these estimated parameters and other considerations that possibly could bear on an estimate of a Tesoro suit for damages, SDG&E settled for an underlift fee that was reasonable."

(b) The last sentence of the paragraph that ends at the top of Page 30 is amended to read as follows:

> "This is important because knowledge of the exact terms of the Amerada sale may help us weigh the reasonableness of SDG&E's estimates of the loss that Tesoro would face if it sold the underlifted oil to a third party, as well as to judge the reasonableness of Tesoro's loss estimate of $7.50 per barrel."

(c) The first sentence of the first complete paragraph on Page 30 is amended to read as follows:

> "We need to know much more about how SDG&E's negotiations with Tesoro actually proceeded; how SDG&E arrived at its estimates of loss for Tesoro, as well as how Tesoro reached its own loss estimate; what terms Tesoro negotiated in its sale agreement with Amerada; and what efforts SDG&E made to locate buyers for Tesoro."

5. The decision is amended to show that the evergreening provision in the Tesoro-Amerada contract is not enforceable at Amerada's sole option but rather is a provision that allows the contract to be cancelled after the first year on 90 days notice from either party, as follows:

(a) The last full sentence on Page 29 is amended to

read as follows:

> "The contract has a continuous evergreening provision which allows the contract to be cancelled after the first year, on 90 days notice from either party."

5. The decision is modified to correct the following typographical error, namely, the phrase "the discovery" in the second sentence of the second full paragraph on Page 30 is amended to read "the discovery process."

Rehearing of D.82-12-056, as modified herein, is denied.

This order is effective today.

Dated APR 20, 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
DONALD VIAL
Commissioners

Commissioner Priscilla C. Grew, being necessarily absent, did not participate in the disposition of this proceeding.

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

Joseph E. Bodovitz, Executive Director

expense and the failure of D.82-12-056 to address this point was inadvertent.

IT IS ORDERED that D.82-12-056 is amended as follows:

1. The decision is modified to provide recovery of HIRI transportation underlifts as follows:

(a) The following sentences are added to the second full paragraph on Page 2:

> "In addition this decision allows transportation underlifts of $1,605,474 payable to Hawaiian Independent Refinery, Inc. (HIRI), to be recovered under ECAC rates and subject to further review and refund as above. This allowance shall be a component in the formulation of SDG&E's ECAC rate at its next ECAC proceeding, including any interest that may be deemed reasonable."

(b) The first paragraph on Page 28 is amended by the addition of the following:

> "In addition, transportation underlifts will be incurred under the HIRI transportation agreement with Chevron because of a reduction of HIRI's production below the transportation contract minimums. These underlifts, figured on a total of 686,112 barrels for the period November 1, 1982 through October 31, 1983, will result in an underlift penalty of $1,605,474 based on $2.16 per barrel in 1982 and $2.50 per barrel in 1983. This allowance will be recovered through ECAC and will be subject to adjustment as above. This allowance shall be calculated as a component of SDG&E's ECAC rate at its next ECAC proceeding, including any interest that may be deemed reasonable."

(c) The following ordering paragraph is added to Page 44:

> "3. An allowance of transportation underlifts of $1,605,474 payable to HIRI is authorized for SDG&E. This allowance shall be recovered under ECAC rates and shall be subject to further reasonableness review and refund. This allowance shall be a component

in the formulation of SDG&E's ECAC rate at its next ECAC proceeding, including any interest that may be deemed reasonable."

2. The decision's discussion of the $6.88 million disallowance of fuel oil sale losses is amended by the following additions:

(a) The following paragraph is added after the first paragraph on Page 31:

"In making this disallowance, we remind SDG&E of our discussion of its fuel oil inventory in D.82-04-115 in A.60865. After noting that SDG&E provided insufficient evidence to support its requested oil inventory level and expressing dissatisfaction with SDG&E's analysis in the area of oil inventory, we went on to state the following:

> 'In adopting staff's recommended level of fuel oil in inventory, we will also accept staff's suggestion that the cost of each barrel of excess oil over the allowed inventory be shared between the ratepayers and the shareholders. We will allocate the excess oil burden equally between the ratepayers and the shareholders.'

"Further, while the excess oil inventory allowance was an estimate set forth in the AER and was technically a part of base rates, the allowance nonetheless was rendered as a part of an ECAC fuel offset proceeding."

(b) The following finding of fact is added:

"Unless there is an ECAC disallowance of $6.88 million in fuel oil sale losses, SDG&E will on the one hand receive a dollar-for-dollar recovery in the ECAC balancing account for all such losses, while also reaping a $6.88 million allowance in the AER for excess fuel oil inventory expenses that, due to the combined level of its oil sales and oil burn, it actually did not incur."

(c) The following conclusion of law is added: "D.82-04-115, in A.60865--a fuel offset proceeding--held that the cost of each barrel of excess oil over the allowed inventory should be shared between SDG&E's ratepayers and its shareholders. It is not reasonable when SDG&E fuel oil sale losses are subject to a dollar-for-dollar ECAC recovery, to charge ratepayers for excess oil in inventory expenses that SDG&E does not incur."

3. The decision is modified by the deletion of statements incorrectly indicating that SDG&E fuel oil sale losses were higher than had been estimated in D.82-04-115, as follows:

(a) The last sentence on Page 30 is amended to read as follows:

"This resulted from the burning of fuel oil while rejecting natural gas."

(b) The first two sentences on Page 31 are amended to read as follows:

"Fuel oil sales were not included in the AER in D.82-04-115, contrary to what was originally intended as regards the AER. Because SDG&E was in the midst of negotiations with it suppliers, we instead allowed ECAC treatment of fuel oil sale losses in order not to prejudice such negotiations."

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