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Decision 96-01-014

January 10, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
SOUTHERN CALIFORNIA GAS COMPANY)
For Authority To Revise Its Rates)
Effective April 1, 1994, In its)
Biennial Cost Allocation Proceeding.)

A.93-09-006

And Related Matters.)

A.93-08-022
A.93-09-048

ORIGINAL

ORDER DENYING REHEARING OF DECISION 95-07-012

I. SUMMARY

This decision denies the applications of Southern California Utility Power Pool and the Imperial Irrigation District (SCUPP/IID) and The Indicated Producers, Canwest Gas Supply U.S.A., Inc. and Petro-Canada Hydrocarbons, Inc. (Joint Parties) for rehearing of Decision (D.) 95-07-012. The Commission's denial of refunds of the Wheeler Ridge interconnection access service charge to interstate shippers was not error, because SCUPP/IID and the Joint Parties requested and benefitted from the access service provided over the Wheeler Ridge interconnection, which was constructed by Southern California Gas Company (SoCalGas) to serve their stated demand. These interstate shippers owe SoCalGas compensation for that benefit, and the interconnection access service charge is the proper measure of restitution owed. Federal law does not preempt the Commission from authorizing a charge for access onto the interstate facilities of a local distribution company.

II. BACKGROUND

SoCalGas has constructed and placed in service natural gas transport facilities at Wheeler Ridge to interconnect its existing system with the Kern River/Mojave Pipeline (Kern/Mojave) and the PG&E terminous of the PGT/PG&E Pipeline Expansion (PG&E Expansion). These facilities enable interstate gas shippers to access the local distribution system of SoCalGas. The Commission's objective in this proceeding has been to assess the proper party for the cost of the interconnection facilities.

A. The Challenged Decision

The challenged decision, D.95-07-012, was issued after evidentiary hearing to determine whether charges paid by interstate shippers pursuant to the G-INT tariff of SoCalGas should be refunded. The ultimate question framed by the decision ordering hearing is whether interstate shippers on the Kern/Mojave and PG&E Expansion were also interconnection shippers in their intrastate role. If so, they would have paid the interconnection rate had a narrower G-INT tariff been in place. Refunds would not be appropriate in that case.

On the basis of evidence gathered during two days of hearing in December, 1994, the Commission found that the interstate shippers seeking refunds were customers of SoCalGas, that they were intrastate shippers within the meaning of the tariff, and that the G-INT tariff approved by Resolution G-3072 was a valid tariff applicable to those shippers. Accordingly, the refund order was annulled. (___ CPUC 2d ___; D.95-07-012).

B. Issues Presented

Applications for rehearing of D.95-07-012 have been filed by SCUPP/IID¹, and the Joint Parties. A response in opposition to the applications for rehearing was filed by SoCalGas. Applicants for rehearing assert the Commission committed the following error in its refund decision:

1. Erroneously concluded that interstate shippers became SoCalGas "customers" by nominating deliveries at Wheeler Ridge on Behalf of SoCalGas' end-use customers,
2. Erroneously concluded that the price an interstate shipper receives from its downstream customer is a "bundled" price that reimburses the interstate shipper for the Wheeler Ridge surcharge,
3. Acted in excess of its jurisdiction by:
 - a. Imposing terms and conditions on the interstate transportation of natural gas,
 - b. Authorizing a surcharge which impermissibly burdens interstate commerce, and
 - c. Authorizing a surcharge that is preempted by the Natural Gas Act.

SoCalGas makes the following arguments in support of D.95-07-012:

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1. SCUPP/IID had attempted to file its application for rehearing on August 7, 1995, the deadline for such filing. That day, the Los Angeles office of the PUC was closed due to a bomb threat. The pleading was tendered for filing on August 8, 1995. The Motion of SCUPP/IID for acceptance of the late-filed pleading is granted.

1. Federal law permits a local distribution company (LDC) such as SoCalGas to determine the terms and conditions by which access to its system will be permitted.
2. The facilities were constructed in response to the express demand of interstate shippers.

C. Standard of Review

Judicial review of the Commission's orders "...shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the Constitution of the United States or of this State." (Pub. Util. Code sec. 1757.) "If there is evidence to support the commission's factual findings and conclusions, and those findings and conclusions are the basis for the commission's order or decision, further review by this court is foreclosed. We may not substitute our judgment as to the weight to be accorded the evidence or the factual findings of the commission." (citations omitted, Camp Meeker Water System, Inc. v. Public Utilities Com. (1990) 51 Cal.3d 845,864.)

As explained more fully below, the record supports findings that interstate shippers requested and received access to SoCalGas' local distribution system through the Wheeler Ridge facilities, that they benefitted from the use of that pipeline access, that the G-INT tariff rate has not been challenged as unreasonable, that interstate shippers have a contractual obligation to reimburse SoCalGas for that benefit, and that refund of rates charged under the G-ITC tariff for interconnection access service would result in the unjust enrichment of the interstate shippers. Moreover, the claims of Federal preemption lack merit. Therefore, the Commission's annulment of the refund order and the consequent denial of refunds was not in error.

III. DISCUSSION

A. The Interstate Shippers Properly Paid the Access Charges Pursuant to Both Express Contract and Quasi-Contract.

Applicants' contentions attempt to divert our attention away from shipper liability by assigning the responsibility for the construction of the access upgrades to end users. The question is not whether the SoCalGas end user should be charged for the cost of the Wheeler Ridge upgrade. The paramount issue is whether or not the interstate shippers should be refunded rates that they paid for service they requested, and received, from the owner of the interconnection facilities, SoCalGas.²

1. The Commission Did Not Err in Concluding that Interstate Pipeline Customers Became SoCalGas Customers and Used the Facilities.

The Commission considered whether the interstate shipper became a SoCalGas "customer" either because the shipper nominated deliveries into SoCalGas' system or owned the gas as it flowed through the interconnection facility. The Commission concluded, "All of the interstate shippers who nominated gas to

2. SoCalGas correctly notes that shippers with upstream commitments on the new interstate pipelines were intent on the construction of facilities which would allow them firm access to the California gas market. These shippers executed reservation letters expressing their demand for firm access capacity (See, Ex. WR-18, A.93-09-006, "Letters Received from Kern/Mojave and PG&E Expansion Shippers Requesting Firm Wheeler Ridge Interconnect Capacity"). Because the facilities were built, these shippers have been able to pursue otherwise unattainable business opportunities (See, Ex. WR-21, A.93-09-006, SoCalGas' list of gas moved each day through the Wheeler Ridge Interconnect facilities).

be shipped over the Wheeler Ridge interconnection used the interconnection facilities and were customers of SoCalGas."

The applicants for rehearing claim they were not customers of SoCalGas in order to avoid contractual liability for the interconnection access charge. As stated by the California Supreme Court, "If there is evidence to support the commission's factual findings and conclusions, and those findings and conclusions are the basis for the commission's order or decision, further review by this court is foreclosed." (Southern Pac. Co. v. Public Utilities Com. (1953) 41 Cal.2d 354, 362.) Applicants do not challenge the evidentiary basis of the Commission's finding that the interstate shippers were in fact customers of SoCalGas. Instead, SCUPP/IID asserts that the Wheeler Ridge facilities were constructed to serve end users, and therefore, SoCalGas' end users should pay the cost. SCUPP/IID has failed to demonstrate that the Commission committed legal error by finding that interstate shippers were customers of SoCalGas.

The Joint Parties deny that interstate shippers became SoCalGas customers by nominating deliveries at Wheeler Ridge on behalf of end use customers because they did not "use" the facilities. This claim has no bearing on the fact that a customer - utility relationship, and hence, contractual relationship, existed between the interstate shippers and SoCalGas.

In D.94-09-038, the Commission reiterated that "shippers who use the Interconnection Facilities are SoCalGas customers by virtue of their use of those facilities, not because they may also be end-users." (D.94-09-038, p.5.) The Joint Parties claim that "use" of a tangible facility connotes some physical interface between a user and the facility being used, that no interface occurred between interstate shippers and the

interconnection facilities, so the interstate shippers were not customers within the contemplation of D.94-09-038.³

Joint Parties cite no authority for their proposition that a physical interface between the offeror's service and the offeree's commodity must exist to support a contract. In the context of the Interconnection Decisions, the "use" of the interconnection facility is relevant because the term describes the beneficial enjoyment of the facilities. The shippers are liable for the interconnection access service charge because they had the beneficial enjoyment of the access facilities.

2. Shipper Objections to an Express Contract Do Not Relieve Shippers of Liability for the Access Charge.

The applicants for rehearing assert that since they paid the Interconnection Access Service rate under protest, there was no acceptance of SoCalGas' offer and no contract arose between the shippers and SoCalGas. Specifically, Joint Parties claim that their acceptance of G-INT service was subject to protests made here and at the FERC; in other words, it was a qualified acceptance. "An acceptance must be absolute and unqualified, or must include in itself an acceptance of that character which the proposer can separate from the rest, and which will conclude the person accepting. ...A qualified

3. Applicants argue that the point at which their product comes into contact with facilities additions covered by the Wheeler Ridge access charge is downstream of the point of interconnection with interstate pipelines, that is, on the intrastate portion of the line. SoCalGas' intrastate transportation tariff provides for the movement of customer-owned gas and the interstate shipper is referred to as the "agent" or "designee" under the tariff. According to the applicants, this means that there has been no "physical interface" between the interstate shipper and the facility; the end-user made use of the Wheeler Ridge interconnection facility.

acceptance or a counteroffer constitutes a rejection of the original offer, and the original offer cannot thereafter be accepted by the offeree." (1 Witkin, Summary of California Law, Contracts, secs. 189, 190.)

Obviously, the interstate shippers did not counterpropose a variant of G-INT service; the shippers accepted G-INT service as offered by SoCalGas. Their acceptance could not be construed as an acceptance of only a portion of the service offered, and was unqualified, despite the pending protests.

The interstate shippers may have intended to withhold their assent to a contract with SoCalGas, but, "By the modern law of contract, the mere state of mind of the parties -- with reference to the 'meeting of the minds' -- is not the essential object of inquiry, the terms of the promise-act being determinable by an external and not by an internal standard...or by what distinguished writers have termed the objective rather than the subjective test. (cit.om.) ...Ordinarily (in the absence of fraud, mistake, etc.), the outward manifestation or expression of assent is controlling. ...Rest.2d, Contracts Sec. 19, points out that assent may be manifested by conduct as well as words: ... (3) The conduct of a party may manifest assent even though he does not in fact assent. In such cases a resulting contract may be voidable because of fraud, duress, mistake, or other invalidating cause." (1 Witkin, supra, sec. 119.)

Applicants for rehearing also argue, "If mere communication with the utility were deemed to create a customer relationship with SoCalGas, all marketers nominating on behalf of their end-use customers into other points of interconnection likewise would become SoCalGas customers -- a preposterous

result."⁴

The result may not fit under SoCalGas' preexisting tariffs for the intrastate transportation of customer owned gas. However, it is precisely the right result for nominations made at the Wheeler Ridge interconnection because those facilities were constructed to serve the incremental demand of interstate shippers. Marketers are, indeed, SoCalGas intrastate access customers at the Wheeler Ridge point of interconnection.

It is undisputed that SoCalGas, through its G-ITC tariff, offered the shippers access to its local distribution facilities; it is undisputed that the shippers availed themselves of the service and paid the tariffed rate. Therefore, a contract existed between the interstate shippers and SoCalGas. The protests, if successful, might void the contract, but they did not prevent the formation of the contract. The decision to deny refunds is supported by a contract for access service between the interstate shippers and SoCalGas.

3. Free Access Service Would Result in the Unjust Enrichment of Interstate Shippers Who Benefited from the Access Provided by the Interconnection Facilities.

Applicants for rehearing admit that the Wheeler Ridge interconnection facilities enabled them to satisfy their contractual obligations to end-users who purchased gas from them. "If the interstate shippers failed to make the payment, SoCalGas

4. The interstate shippers did more than simply notify SoCalGas of loads to be delivered; shippers notified SoCalGas of volumes of gas they planned to deliver to the interconnection point and indicated which end-use customers were to receive the gas. Upon each shipper's initial nomination, the shipper was notified of the tariff fee and asked to provide a billing address for payment. SoCalGas billed the interstate shipper for the gas it nominated for access. The access charges were paid. (___ CPUC 2d ___, D.95-07-012, mimeo, pp. 7 and 8.)

would deny these shippers the ability to deliver gas to their customers at the interconnect; the shippers thus risked defaulting on their supply contracts with end-use customers." (Application of the Indicated Producers, etc., for Rehearing of D.95-07-012 (Wheeler Ridge Access Charge), p.12.)

In addition to liability under express contract for the charge for G-INT service, the shippers also have a quasi-contractual obligation to reimburse SoCalGas for the reasonable value of the service provided.⁵ The doctrine of unjust enrichment recognizes an obligation imposed by law regardless of the intent of the parties upon the person benefitted to make reimbursement. Under the circumstances, the reasonable worth of the access service is the interconnection access fee set out in the G-INT tariff.

The refunds were properly denied. The decision denying refunds should be modified to specify that the application of the doctrine of unjust enrichment to these facts gave rise to the shippers' quasi-contractual obligation to pay the interconnection access charge, and that this obligation exists along with the shippers' duty under an express contract to pay the interconnection access charge.

4. The Access Charge is Just and Reasonable Because It Imposes Costs on the Entities for Which the Cost of Construction Were Incurred.

SCUPP/IID assert that the interconnection facilities were constructed to serve SoCalGas end users, and that the application of the access charge to interstate shippers renders

5. "A quasi-contractual obligation is created by law for reasons of justice, without any expression of assent and sometimes even against a clear expression of dissent. 1 A. Corbin, Contracts sec. 19 (1963)." United States v. Neidorf (C.A.9th 1975) 522 F.2d 916.

it "unjust and unreasonable." This assertion is not supported by the record.

SoCalGas began construction of the Wheeler Ridge facilities "in reliance on reservation letters from the Kern/Mojave and PG&E expansion shippers which in total reserve 450 MMcf/d and 350 MMcf/d, respectively of firm capacity into the SoCalGas system. (Interconnection Decisions, finding of fact 4.)

Shippers continue to protest that they should not pay for interconnection service because in the course of the Kern/Mojave Interconnection decision we stated, "Should existing customers have a need to deliver gas from Mojave/Kern into the SoCalGas system, they will have to bear the cost of doing so, including the cost of any additional new facilities necessary to meet their incremental needs." The Commission added, "However, that question is not before us now." (48 CPUC 2d 251, 258.)

When read in their entirety, the Interconnection Decisions reveal the Commission's anticipation that interstate shippers would be the primary beneficiaries of the pipeline capacity upgrade. We defined the "overriding issue" in the Interconnection Decisions as follows:

... "whether the revenue requirement for SoCalGas' newly-installed interconnection and compression facilities should be recovered through incremental ratemaking (i.e., whether the Kern/Mojave shippers should be liable for the entire revenue requirement with SoCalGas' shareholders responsible for any shortfall) or through rolled-in ratemaking (i.e., whether the cost of the facilities should be included in the transmission rate base and cost of service for SoCalGas' entire system to be recovered from all ratepayers). For the reasons stated below, we adopt an incremental approach." (Kern/Mojave Interconnection Decision, 48 CPUC 2d at 258.)

The incremental approach imposes liability upon the interstate shippers for the entire revenue requirement and holds shareholders responsible for any shortfall. Incremental rates for the interconnection facilities DO NOT assign costs to

existing SoCalGas ratepayers. This approach was rationalized in the following passage:

"These facilities additions are economically justified only to the extent that Kern/Mojave shippers have determined that they need the capacity the additions afford to move their gas on a firm basis into the SoCalGas system and have committed themselves to bearing the cost. But for the requirements of such shippers, the new facilities would not be needed. We have often said that the cost of new facilities should be borne by those customers for whose benefit the facilities are constructed." (Kern/Mojave Interconnection 48 CPUC 2d 251, 258; and PG&E Interconnection 49 CPUC 2d 182, 190.)

Collection of the cost of interconnection facilities from interstate shippers is entirely consistent with the Commission's rationale for approving the construction of the Wheeler Ridge facilities. The applicants' claim that it is "unjust and unreasonable" to do so lacks merit.

- B. Although the Record Does Not Demonstrate that Every Interstate Shipper Bundled the Access Charge into End-User Rates, the Commission Did Not Err by Forestalling an Inequity that May Occur in Some, but Not Every Case.

In D.95-07-012, the Commission found that interstate shippers have already collected the access charge from the end user in a bundled rate, and that a refund of the access charge would be inequitable for the following reasons: shippers who were not end users would receive a windfall, while shippers who were also end users would receive free access service.⁶ We also concluded that if the charges disbursed as refunds were to be recovered prospectively from end users paid to shippers during that delivery period (in order to compensate SoCalGas for the

6. D.95-07-012, Findings of Fact 14, 15, 16, and 17.

cost of the facilities), those customers would pay twice for Wheeler Ridge access during the July 1993 through January 1994 period -- once through the "bundled rate" and once through the prospective recovery rate. This inequity was identified as another reason to deny the refund of access charges.

Joint Parties assert that there is no evidence to support the conclusion that interstate shippers uniformly passed on the surcharge to their customers during the refund period. No such finding was expressly made. Instead, the Commission stated, "The shippers who testified were candid. They testified that the contract price was a bundled price which included the interconnect facility surcharge." (D.95-07-012, mimeo, p. 16, emphasis added.)

Joint Parties admit that the record evidence supports the conclusion that most interstate shippers, including one of its members, sold their gas to end-use customers at a 'bundled' sales price that was negotiated between the parties based upon market conditions that prevailed at the time.⁷

The record does not disclose whether every interstate shipper who accessed the SoCalGas intrastate system via Wheeler Ridge rolled the access charge into its end user rates. D.95-07-012 should be corrected to reflect this fact. However, the fact that some interstate shippers would receive free access service or a windfall in the form of a rebate of a charge already collected from the end user is enough to create an inequity.

In matters of ratemaking, the Commission functions in a

7. (Citing Tr.24/2503; MacPherson, Petro-Canada, and Tr. 24/2494; Pickering, CanWest.)

quasi-legislative manner⁸. In that role, the Commission may exercise its discretion to conclude that the receipt of free service or a windfall by some interstate shippers is so repugnant that it should foreclose that possibility. Therefore, we conclude that no error has occurred. However, D.95-07-012 should be clarified to indicate that the shippers who testified before the Commission would receive either a windfall or free access service if refunds were ordered and the resultant inequity for some shippers supports the denial of refunds in general.

C. Federal Law Does Not Preempt the Commission's Authorization of Charges for Access to Interstate Facilities.

SCUPP/IID disagree with the Commission's finding that the interstate shippers acted in an intrastate role when they sent gas through the facilities of the local distribution company. The applicants for rehearing hope to shield themselves from the CPUC authorized access charge by characterizing the entire transaction as interstate.

Joint Parties argue unconvincingly that since the interstate-intrastate interconnection point is upstream of the Wheeler Ridge facilities, the facilities are intrastate in nature and the access charge for the facilities cannot be levied upon interstate shippers. Responsibility for the cost of those facilities cannot be avoided just because engineering constraints have separated the function of the interstate pipeline with

8. "Public utility regulation, historically, has been a function of the legislature; and the prescription of public utility rates by a regulatory commission, as the authorized representative of the legislature, is recognized to be essentially a legislative act." Public Utilities Com'n of State of Cal. v. United States (9th Cir. 1966) 356 F.2d 236, 241, cert. den. 385 U.S. 816.)

SoCalGas' pipeline from the line looping (installation of pipe parallel to existing line 8103) by a few miles.

The applicants for rehearing assert that several federal laws and principles prohibit the Commission from authorizing the collection of access charges from interstate shippers of natural gas.⁹

A recent decision of the United States Court of Appeals, D.C. Circuit, holds that a local distribution company has complete control over the access it may grant to parties shipping gas from an interstate pipeline to its system. The Court of Appeals stated,

"El Paso is prohibited from transporting the expansion shippers' gas through the two Topock delivery points utilized by Southwest (a local distribution company) unless the expansion shippers contract with Southwest for access to those delivery points. Because Southwest has complete control over whether to permit the expansion shippers to receive delivery at the two Topock delivery points, Southwest's gas requirements can be fully met by simply restricting access to the delivery points."
(Southwest Gas Corporation v. Federal Energy Regulatory Commission (D.C.Cir. 1994) 40 F.3d 464, 467.)

The Court of Appeals held that a local distribution company has the power to exclude interstate gas from its local distribution system at the delivery point.¹⁰ Logically, the authority to subject deliveries of interstate gas to a lesser

9. These include the Interstate Commerce Clause, the Natural Gas Act, FERC jurisdiction over the wholesale price of natural gas in interstate commerce, and FERC's Open and Equal Access Transportation Regulations.

10. "...Southwest retains the right to refuse downstream transportation rights to the expansion shippers,..." (*Ibid*, at p. 468.)

form of control, such as the payment of an access charge, is encompassed within that power. Thus, the federal principles espoused by the applicants for rehearing are not violated by levying a charge upon the interstate shippers for access to the SoCalGas local distribution system.

The Joint Parties warn that the FERC will not tolerate SoCalGas placing an arbitrary surcharge on certain interstate shippers competing for the California market. As explained above and in the previous decisions concerning SoCalGas' interconnection facilities, the access charge is imposed by this Commission and is not arbitrary.¹¹

Joint Parties claim that the SoCalGas charge does not affect interstate commerce in an even-handed or incidental manner, so it creates an impermissible burden on interstate commerce.¹² Since the access charge is admittedly cost-based, its burden on interstate commerce is not "clearly excessive in relation to the putative local benefits." Moreover, all shippers who nominate deliveries into the SoCalGas system at Wheeler Ridge are subject to the surcharge, so it is even-handed.

11. See, the Interconnection Decisions, Re Southern California Gas Company (Kern/Mojave Interconnection), (48 CPUC 2d 251; D.93-02-055 Re Southern California Gas Company (PG&E Interconnection), 49 CPUC 2d 182; D.93-05-009 and subsequent decisions on validity of the interconnection access service charge -- Order Withdrawing Resolution G-3072 (___ CPUC 2d ___, D.94-01-048), Order Reopening A.93-08-022 for Further Hearings (___ CPUC 2d ___, D.94-09-038), and decision denying refund of access charge, Opinion on Phase 3 Issues (___ CPUC 2d ___, D.95-07-012.)

12. The Supreme Court's test for evaluating when a state action creates an impermissible burden on interstate commerce is set out in Pike v. Bruce Church, Inc., 397 U.S. 137, 143 (1970), which states, "Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits."

Joint Parties also fault SoCalGas' tariff provisions which would refund excess payments for transportation to the intrastate end-user through the zone credit¹³, and not to the interstate shipper who paid for fuel as part of the Wheeler Ridge surcharge. According to Joint Parties, this discriminates against interstate commerce by providing a direct commercial advantage to local business. The "local business" in this case is the end-user, who would compete against the interstate shipper only if the end user was itself an interstate shipper. We conclude that improper discrimination against interstate commerce will not occur. In any event, if Joint Parties were truly aggrieved by the zone rate credit, they should have sought rehearing of the decision in which it was adopted.¹⁴

13. Shippers that use SoCalGas' interconnect facilities at Wheeler Ridge and Kern River Station do not rely upon SoCalGas' intrastate "eastern zone" facilities. (See D.93-02-055, mimeo. p. 12.) Requiring a customer to pay for both SoCalGas' eastern zone facilities (as an embedded part of its intrastate rate), as well as the interconnect access charge (for deliveries over SoCalGas' northern zone facilities), would force the customer to pay twice for backbone transmission service. Thus, the Commission implemented the zone rate credit to protect shippers that deliver their gas into the SoCalGas system at Wheeler Ridge or Kern River Station from "duplicative transmission charges". (See D.94-04-081, and D.93-02-055, mimeo. pp. 12-13.)

14. The Commission first addressed the issue in Resolution G-3072. In protests to SoCalGas' advice letter filing, Indicated Producers (parties with interests similar to those of the Joint Parties) argued that the transmission zone credit should be provided to the shipper that actually pays the interconnect surcharge. SoCalGas recommended that this should be resolved between the shippers, the marketers, and the end-users to ensure that the final product is appropriately priced. SoCalGas also agreed to include fuel costs in the Wheeler Ridge rate, and to refund any duplicative costs to end-users on whose behalf the gas is delivered into SoCalGas' system.

CONCLUSION

A refund of the charges was properly denied because the interstate shippers are obligated by express contract and quasi-contract to compensate SoCalGas for intrastate access service, and such compensation is not contrary to the FERC's jurisdiction. The applications for rehearing filed by SCUPP/IID and the Joint Parties fail to demonstrate any legal error by the Commission. However, D.95-07-012 should be modified in minor respects to reflect equitable considerations.

IT IS ORDERED that:

1. The Motion of Southern California Utility Power Pool and the Imperial Irrigation District for acceptance of its late-filed Application for Rehearing of D.95-07-012 is granted.
2. D.95-07-012 is modified to include the following:

Finding of Fact 19. The record does not disclose whether every interstate shipper who accessed the SoCal Gas intrastate system through the Wheeler Ridge interconnection facilities rolled the access charge into its end user rates.

Finding of Fact 20. A refund of the Wheeler Ridge access charge would result in inequities in the case of the interstate shippers who testified before the Commission.

Finding of Fact 21. The Commission may deny refunds to the entire class of customers if it determines, in the exercise of its quasi-legislative discretion, that some of the class would receive an inequitable windfall from the refund.

Finding of Fact 22. The interstate shippers' use of the interconnection facilities which were constructed to serve their demand created an obligation under quasi-contract to reimburse SoCalGas for the reasonable value of the service received even though a contractual obligation also existed at law.

Finding of Fact 23. Since the reasonable value of the interconnection access service is the G-INT tariff

rate, the refund of tariff charges would be arbitrary and unreasonable.

3. Rehearing of D.95-07-012, as modified, is denied.
This order is effective today.

Dated January 10, 1996, at San Francisco, California.

DANIEL Wm. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners