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Decision 97-04-085 April 23, 1997

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ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company to
Establish an Experimental Performance-Based
Ratemaking Mechanism. (U 902-M)

Application 92-10-017
(Filed October 16, 1992)

**OPINION ON MOTION FOR PARTIAL
SUSPENSION OF THE RATE CASE PLAN**

1. Summary

On January 10, 1997 San Diego Gas & Electric Company (SDG&E) filed a motion to suspend the requirement that it file a test year 1999 general rate case (GRC). This decision grants the motion. The Commission reserves the right to lift the suspension and either reinstate the current GRC requirement or adopt a modified filing requirement.

2. Background

Decision (D.) 89-01-040 dated January 27, 1989 established a modified rate case plan which governs the schedules for processing GRCs and other rate proceedings by energy utilities. Among other things, it requires utilities, including SDG&E, to file GRC applications every three years.

The first step in the GRC filing process is the utility's preparation of a Notice of Intent (NOI) to file a GRC application. Before the NOI can be submitted to the Commission, the utility must advise the Division of Ratepayer Advocates (DRA)¹ of its progress in preparing the rate case as well as its expected date for tendering the NOI, so that DRA can designate a project manager at least 30 days before the NOI is tendered.

¹ Reorganized in 1996 as the Office of Ratepayer Advocates (ORA).

Once the utility tenders the NOI to the Commission, the staff must designate a Staff Counsel and project team within 7 days. In addition, the utility and DRA must begin informal meetings within 7 days of tender of the NOI. Within 25 days, the DRA project manager must notify the utility of deficiencies in the NOI. If the utility disagrees with DRA's statement of deficiencies, it may file a protest with the Executive Director, who makes a final determination on acceptance of the NOI.

When the staff accepts the NOI (or when the Executive Director upholds a utility's protest), the Executive Director notifies the Docket Office, which then files the NOI. The application is filed 60 days after the NOI is filed, and the final decision on all issues except electric rate design is expected on the 384th day after the application is filed.

Because of the length of the GRC processing schedule, and because test year rate changes are scheduled to become effective on January 1 of the test year, utilities must file their GRC applications approximately 13 months before the beginning of the test year, and tender their NOIs several months before then. Preparation of the NOI must be well under way before the middle of the calendar year in which the NOI will be tendered and filed.

D.92-12-019, issued on December 3, 1992 in SDG&E's last GRC proceeding, adopted a 1993 test year. Thus, under the requirements of D.89-01-040, SDG&E was scheduled to file a GRC for a 1996 test year in 1994. However, we waived that requirement by D.94-08-023, issued in this proceeding on August 3, 1994. D.94-08-023 established an experimental performance-based ratemaking (PBR) mechanism for setting SDG&E's gas and electric base rates. The experiment runs from 1994 through 1998. Pursuant to Ordering Paragraph 4 of D.94-08-023, SDG&E must file a GRC for a 1999 test year in accordance with D.89-01-040 unless we provide otherwise by further order.

3. Discussion

3.1 Procedural Matters

Since the GRC filing requirement in D.94-08-023 was explicitly made subject to further order of the Commission, SDG&E's January 10, 1997 motion is an appropriate means of requesting such an order. Responses to the motion were filed by Utility Consumers' Action Network (UCAN), ORA, and Southern California Edison Company (Edison). SDG&E filed a reply to the responses. Southern California Gas Company (SoCalGas) filed a limited reply to Edison's response.

On June 11, 1996 SDG&E filed a similar motion in R.94-04-031/I.94-04-032, the Commission's electric restructuring proceeding. With our action today, the June 11 motion becomes moot.

3.2 The Need for a GRC

In D.94-08-023 we provided for a midterm evaluation to consider whether SDG&E's base rate PBR experiment should continue, be modified, or be terminated at its conclusion. A stated purpose of the midterm evaluation, which is currently in progress, is to identify any need to prepare for a GRC. Notwithstanding this stated purpose, SDG&E now requests that we decide upon the need for a test year 1999 GRC in advance of, and apart from, the midterm evaluation. SDG&E offers four reasons for doing so. First, SDG&E maintains that a GRC is unnecessary because D.96-12-077 approved a cost recovery plan, including a rate freeze, which SDG&E filed in accordance with Assembly Bill (AB) 1890.² Second, SDG&E is undergoing a transition cost audit which will allow a detailed examination of many of its costs. Third, the Commission expressed its preference for PBRs over GRCs in D.96-03-022 (the Roadmap I Decision), and SDG&E states that it is developing a proposal for a

² Stats. 1996, Ch. 854.

distribution PBR for implementation on January 1, 1998.³ Finally, SDG&E maintains that conducting a GRC during this stage of electric industry restructuring would be a poor use of SDG&E's and the Commission's resources given the schedule adopted in D.96-12-088 (the Roadmap II Decision) for proceedings which must be completed for timely implementation of electric industry restructuring.

The argument that the approved cost recovery plan/rate freeze obviates the need for a GRC is unpersuasive. For one thing, the argument has no application to SDG&E's operations as a gas corporation, yet the GRC filing requirement applies to SDG&E's combined gas and electric operations. Moreover, nothing in D.96-12-077 or Section 368⁴ removes the requirement for a GRC filing by SDG&E, and Section 368(e)(1) specifically provides for a general rate case review for PG&E. The Legislature clearly saw no inconsistency in requiring both a rate freeze and a GRC.

As long as SDG&E's cost recovery plan/rate freeze is in effect, neither a GRC nor a PBR can affect its current electric rates. To this extent, it is true that a GRC is not required to set SDG&E's rates. However, under the cost recovery plan, the utility's revenue requirement is an essential component of calculating the amounts to be credited to the interim transition cost balancing account (D.96-12-077, mimeo., p.12, *et seq.*). In addition to setting rates, GRCs establish the level of revenues reasonably required for a utility to deliver service to the public.⁵ SDG&E's experimental base rate

³ SDG&E now plans to propose a distribution PBR for implementation on January 1, 1999. (Workshop in R.94-04-031/I.94-04-032, February 10, 1997, Tr.WS-2, p.162.)

⁴ All section references are to the Public Utilities Code. Section 368, added by AB 1890, requires electrical corporations to propose plans for the recovery of certain uneconomic costs and lists criteria which, if present in a utility's proposed cost recovery plan, require Commission approval of such plans.

⁵ The California Supreme Court described this as follows: "In a general rate setting proceeding, the commission determines for a test period the utility expense, the utility rate base, and the rate of return to be allowed. Using those figures, the commission determines the revenue requirement, and then fixes the rates for the consumers to

Footnote continued on next page

PBR mechanism is an alternative means of determining a revenue requirement that uses the same underlying model of future test year ratemaking used for GRCs (D.94-08-023, mimeo., p. 31); and a replacement PBR mechanism could also provide a means of producing a revenue requirement allowance. We may decide that PBR continues to be the preferred means of determining SDG&E's revenue requirement, but the cost recovery plan/rate freeze does not provide a basis for making that decision. That remains an appropriate question for the midterm evaluation.

As already noted, SDG&E plans to propose a distribution PBR mechanism for implementation on January 1, 1999, when its PBR experiment expires. SDG&E's motion fails to explain why the cost recovery plan/rate freeze does not affect the need for a new distribution PBR even though, in SDG&E's opinion, it renders a GRC unnecessary.

In order to streamline transition cost proceedings before the Commission, an August 1, 1996 Assigned Commissioner's Ruling in the electric restructuring proceeding adopted procedures for an audit of the net book value of the utilities' non-nuclear generating assets and other transition cost elements. SDG&E claims that this transition cost audit constitutes another reason why a GRC is not needed. We disagree. The audit results may be useful for other purposes, but the audit is not sufficiently broad in scope to constitute a substitute for a GRC.

SDG&E's next point--that we should suspend the GRC filing requirement because of our expressed preference for PBRs in the Roadmap I decision—is more problematic. It is true that we generally prefer PBR mechanisms over traditional cost-of-service ratemaking as the means of achieving our regulatory goals. However, SDG&E cannot rely on a decision whose primary purpose was to coordinate and schedule the multiple and interrelated tasks that must be completed on a timely basis for successful electric industry restructuring. The Roadmap I decision does not supersede

produce sufficient income to meet the revenue requirement... [Citation.]" *City and County of San Francisco v. Public Utilities Commission* (1985) 39 Cal.3d 523, 531.

D.94-08-023's provision for determining the need for a GRC in the midterm review of the PBR experiment.

Indeed, PBR's are experimental and we committed to reconsidering the need for a GRC in the midterm review. However, we find no harm in allowing SDG&E to postpone filing its GRC until we definitely resolve the question of the need for one in the midterm review. Therefore, while we do not prejudge the issue of whether a GRC is necessary, we find merit in granting SDG&E a suspension of its filing date until the question is resolved in that forum.

In addition, we find persuasive the argument that pursuing a GRC while implementing electric industry restructuring is a poor use of resources. SDG&E states that unless we suspend the GRC requirement, it must take steps now to prepare the NOI with substantial expenditure of its staff resources.⁶ The schedule for electric industry restructuring is already taxing the resources of the Commission and stakeholders alike. We are concerned that pursuing a GRC now could adversely affect timely completion of restructuring tasks in the critical months to follow. Also, SDG&E is required by D.97-02-012 to file a proposal for a gas procurement PBR by July 31, 1997, which adds to the potential for scheduling conflicts. In addition, Section 368(e)(1) requires a GRC filing by PG&E. Even though this does not affect SDG&E, PG&E's GRC will be based on the same rate case plan schedule that would be required for SDG&E, and will draw upon Commission resources that would also be needed for an SDG&E GRC.

⁶SDG&E alleges that "[s]ome 300 SDG&E employees will need to be fully engaged in NOI preparation." (SDG&E motion, p. 3.) SDG&E does not define "fully engaged," nor does it state how long it expects its employees will be fully engaged. We assume that SDG&E is not alleging that 300 of its employees will be working exclusively on NOI preparation on a full-time basis for an indefinite period of time. Past GRCs have required SDG&E to assign 150 to 200 people including support personnel. (D.94-08-023, mimeo., p. 27.)

We believe we should reserve our resources, as well as those of utilities and other parties, for critical tasks which must be completed to achieve a competitive electric market by January 1, 1998. Accordingly, we will temporarily suspend the GRC filing requirement at this time rather than await the conclusion of the midterm evaluation.

We expect the midterm evaluation, including the question of the need for a GRC filing, to be resolved in the next few weeks. We will make the suspension subject to further order of the Commission. If the midterm evaluation remains unresolved after 120 days, we intend to issue an order lifting the suspension. Also, if the midterm evaluation leads us to conclude that SDG&E should file a GRC despite these scheduling and resource concerns, we will be prepared to lift the suspension. However, it is not our intent to create a risk that SDG&E would be unprepared to make a timely filing in the event we later determine that it should file a GRC. If and when we require a GRC filing, we intend to take today's order of suspension into consideration and make any appropriate modifications to the filing requirement. Such modifications might include changes to the rate case processing schedule, requiring a later test year, or both.

3.3 PBR Starting Point

In the Roadmap II Decision we provided that the distribution revenue requirement determined in the unbundling proceeding will be used to establish benchmarks in the distribution PBRs, which we expected would be implemented at the beginning of 1998. (D.96-12-088, mimeo., p. 29.) We now find we should update our plan for SDG&E's distribution PBR.

While we do not accept UCAN's contention that SDG&E has not undergone a thorough GRC evaluation since 1985 because its last two GRC proceedings were resolved through settlements, we do believe that the combination of (1) forgoing a test year 1996 GRC and (2) the unbundling of utility services into generation, transmission, and distribution components (and the possible further separation of certain distribution services) produces a need for assurance that a new distribution PBR is implemented

with an appropriate starting revenue level. As we stated when we suspended the requirement that SoCalGas file a GRC in anticipation of its then-pending PBR application:

"Despite our interest [in PBR mechanisms] ..., we have little basis for excusing an individual utility from a scheduled GRC review until we can be reasonably assured that an adopted PBR mechanism will yield adequate service at reasonable rates." (D.95-04-072, mimeo., p. 9.)

If we determine in the midterm evaluation that it is unnecessary for SDG&E to file a GRC, we intend to use an approach modeled after the one we took with SoCalGas when we suspended its GRC filing. In particular, we provided that GRC-related issues that had a bearing on SoCalGas' revenue requirement could be addressed in its PBR application without the need for a separate, traditional GRC. (D.95-04-072, mimeo., p. 12.) SDG&E should include with its distribution PBR application an appropriate distribution system cost-of-service showing or an explanation why such a showing is unnecessary and inappropriate. Also, as we provided with respect to SoCalGas in Ordering Paragraph 1.c. of D.95-04-072, the assigned Commissioner or administrative law judge in SDG&E's distribution PBR may direct SDG&E to supplement its application, and SDG&E would have the burden of proof with respect to that supplemental showing.

3.4 Edison's Request for Cost of Service Data

On October 30, 1996 the parent companies of SDG&E, SoCalGas, and related entities filed a joint application (Application (A.) 96-10-038) for approval of a plan for merger of the respective companies. In its response to SDG&E's motion, Edison concurs that it makes no sense for SDG&E to pursue a GRC for the reasons cited by SDG&E. However, Edison recommends that as a condition of granting the motion, we direct the merger applicants to submit updated cost of service for both SDG&E and SoCalGas in the merger proceeding. According to Edison, this is necessary due to the requirements

of Section 854 that at least 50% of a mergers' benefits be allocated to ratepayers. SoCalGas opposes the request.

This is the wrong proceeding, and Edison's response is an inappropriate form of pleading, for the requested relief. Edison should file an appropriate motion in A.96-10-038 if it wants to pursue its request.

Findings of Fact

1. Unless we suspend the GRC filing requirement, SDG&E must begin preparing its NOI for a test year 1999 GRC several months before the application is filed in the latter part of this year.

2. We should reserve our resources, as well as those of utilities and other parties, for critical tasks which must be completed to achieve a competitive electric market by January 1, 1998.

3. Requiring SDG&E to prepare for filing a GRC at this time could adversely affect the timely implementation of electric industry restructuring.

Conclusions of Law

1. SDG&E's motion for partial suspension of the rate case plan should be granted as provided herein.

2. If the GRC filing requirement remains suspended, SDG&E's distribution PBR application proceeding should provide an opportunity to address cost-of-service issues.

3. This order should be made effective on the date it is signed so that SDG&E can immediately suspend preparation of an NOI for a test year 1999 GRC filing.

O R D E R

IT IS ORDERED that:

1. San Diego Gas & Electric Company's (SDG&E) motion for partial suspension of the rate case plan is granted as provided herein.

2. The requirement that SDG&E file a general rate case application for a 1999 test year, set forth in Decision (D.) 89-01-040 and D.94-08-023, is suspended, subject to further order of the Commission.

3. In the absence of a test year 1999 general rate case, SDG&E should include with its distribution performance-based ratemaking (PBR) application an appropriate distribution system cost-of-service showing or an explanation why such a showing is unnecessary and inappropriate. The assigned Commissioner or administrative law judge in SDG&E's distribution PBR proceeding may direct SDG&E to supplement its application, and SDG&E will have the burden of proof with respect to that supplemental showing.

This order is effective today.

Dated April 23, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners