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Decision 97-12-112 December 16, 1997

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.	Application 93-09-006 (Filed September 1, 1993)

ORIGINAL

ORDER DENYING REHEARING OF DECISION (D.) 95-05-044

I. SUMMARY

This order denies the applications of Southern California Gas Company ("SoCalGas") and San Diego Gas & Electric Company ("SDG&E") for rehearing of Decision (D.) 95-05-044 ("Decision"), which allocates to all SoCalGas customers on an equal cents per therm basis certain hazardous waste clean up costs primarily associated with old "Towne Gas" facilities used until the early decades of this century to manufacture gas used for streetlighting and other purposes.

SoCalGas applied for rehearing, claiming that the Decision: 1) ignores the long run marginal cost ("LRMC") proceeding policy that non-marginal costs should be recovered on an equal percent of marginal cost ("EPMC") basis (*Re Rate Design for Unbundling Gas Utility Services* ("LRMC Decision") [D.92-12-058] (1992) 47 Cal.P.U.C.2d 438); 2) violates provisions in the "Global Settlement" reached in SoCalGas' Biennial Cost Allocation Proceeding ("BCAP"), which requires the LRMC cost allocation method to be used during the five year period covered by the settlement without substantial change (*Re Natural Gas Procurement and System Reliability Issues* ("Global Settlement Decision") [D.94-07-064] (1994) 55 Cal.P.U.C.2d 452); and 3) allocates an unfair share of the clean up costs to noncore customers who were not the primary users of gas produced by

the sites being cleaned up and who will not be the primary beneficiaries of the cleanup effort. SoCalGas argues that the costs of the recently mandated hazardous waste clean up are not "transition" costs associated with the transformation in gas industry regulation, but rather an ongoing part of the utility's operations.

SoCalGas opposes the allocation of significant hazardous waste clean up costs to noncore customers, since that is the market segment where SoCalGas is most at risk for revenue shortfall. SoCalGas contends that EPMC is a fair method for allocating non-marginal costs such as clean up costs, and that EPMC is an effective weapon against bypass because it avoids the undesirable build-up of noncore rates due to excessive costs which in turn cause customers to look for other alternatives.

SDG&E, a customer of SoCalGas, both applied for rehearing and responded to SoCalGas' application. SDG&E argues: 1) hazardous waste clean up costs should be recovered on an EPMC basis; and 2) SDG&E should be exempt from any allocation of SoCalGas' hazardous waste clean up costs because well established Commission precedent exempts SDG&E from paying for SoCalGas costs where SDG&E has a similar program with similar costs.[1] SDG&E claims these cleanup costs are not transition costs because they are not ongoing long-term commitments made before gas restructuring, do not result from a change in Commission or Federal Energy Regulatory Commission regulation, are not all the result of past practices, since they may include costs that may be recovered through the new Hazardous Substance Mechanism, and are not in excess of a currently reasonable level.

The California Industrial Group and the California Manufacturers Association ("CIG/CMA") filed a response supporting SoCalGas' application for

[1] SDG&E refers to "hazardous substance cleanup," while everyone else refers to "hazardous waste cleanup." While SDG&E's reference style has merit, the more commonly used phrase will be used hereafter.

rehearing. CIG/CMA claim that the decision ignores the LRMC policy favoring EPMC allocation of non-marginal costs; contravenes the "Global Settlement;" mischaracterizes the costs as "transition costs" as defined in *Re Rate Design for Unbundled Gas Utility Service* ("*Re Rate Design*") [D.87-12-039] (1987) 26 Cal.P.U.C.2d 213) and D.87-12-039 and *Re Natural Gas Procurement and Reliability Issues* ("Capacity Brokering Decision") [D.92-07-025] (1992) 45 Cal.P.U.C.2d 47), and unfairly skews responsibility to noncore customers for costs associated with cleaning up sites created to manufacture gas for streetlighting and domestic, not industrial, uses. CIG/CMA claim that this inequitable allocation of cleanup costs may result in uneconomic bypass and cross-subsidization - the very evils EPMC allocation is designed to avoid - and needlessly places at risk SoCalGas' ability to recover its cleanup costs from its customers. The Southern California Utility Power Pool and Imperial Irrigation District ("SCUPP/IID") also filed a response supporting SoCalGas' application, for much the same reasons as CIG/CMA.

The Commission's Division of Ratepayer Advocates ("DRA") [now, the Office of Ratepayer Advocacy] asserts that SoCalGas and SDG&E simply reargue their policy positions on an issue where they have clearly lost, and that neither utility has demonstrated legal error. DRA states that while it believes the cleanup costs qualify as transition costs, the issue is irrelevant since the Commission found that, whether or not they are transition costs, equitable considerations dictate that they be allocated on an equal cents per therm basis. (Decision, 60 Cal.P.U.C.2d at 17.) DRA disputes the contention that the Decision changes LRMC policy or violates the Global Settlement, noting that the LRMC Decision rejected EMPC allocation of many nonmarginal costs, such as transition accounts, which are protected by balancing accounts. DRA contends that SoCalGas' argument that core customers are the major beneficiaries of the cleanup

contradicts the Commission's policy of allocating to all customers on an equal cents per therm basis costs, such as Natural Gas Vehicle ("NGV") program costs, which are "vital to improving the quality of the air for all Californians." (*Re Pacific Gas and Electric* [D.91-07-018] 40 Cal.P.U.C.2d 722, 738.)

DRA counters SDG&E's new argument that not all hazardous waste cleanup costs are the result of past utility practices by noting that the vast majority of such costs do result from historic operations and that the primary purpose of the hazardous substance cleanup cost recovery collaborative process set up by *Re Southern California Gas Company* [D.92-11-030] (1992) 46 Cal.P.U.C.2d 242, 247 was to establish an incentive mechanism to replace reasonableness reviews of historic hazardous waste management. Finally, DRA argues that the Decision correctly allocates SDG&E its fair share of cleanup costs.

The Utility Reform Network ("TURN") filed a response stating that the applications for rehearing simply repeat arguments already raised and rejected in this proceeding, and fail to make even a colorable claim of legal error. TURN further argues that since the Decision does not conclude that the cleanup costs are transition costs, SoCalGas' and SDG&E's arguments that the cleanup costs are not transition costs is irrelevant. TURN claims that the Decision properly notes that the allocation of cleanup costs on an equal cents per therm basis is both fair and consistent with LRMC principles regarding cost causation. TURN points out that at the time the activities necessitating the cleanup were performed, customers were not divided into core and noncore classes, and that there is no reasonable way to assign the cleanup costs to particular customer classes. TURN concludes that the Decision correctly finds that because the waste was created in the service of all, the costs of cleaning up the waste should be paid by all.

We have carefully reviewed every allegation of legal error raised in SoCalGas' and SDG&E's applications for rehearing and considered the responses

thereto, and are of the opinion that insufficient grounds for rehearing have been shown. Any issues raised by the parties but not discussed in this Order are deemed denied.

II. DISCUSSION

Long Run Marginal Cost Policy

SoCalGas, SDG&E, CIG/CMA, and SCUPP/IID all claim, in essence, that the Decision ignores the LRMC Decision's determination that non-marginal costs should be recovered on an EPMC basis and violates a provision in the "Global Settlement" adopted in the Global Settlement Decision which requires the LRMC cost allocation method to be used during the five year period covered by the settlement without substantial change.

DRA states that since this is the first time the cost allocation issue has been addressed, it does not qualify as a change in the adopted LRMC procedure. DRA notes that the LRMC Decision allocates many non-marginal costs, such as transition costs, on the basis of equitable principles rather than EPMC. Since the decision does not change the LRMC methodology, DRA argues, SoCalGas' claim that the Decision violates the Global Settlement is spurious.

TURN contends that while SoCalGas and SDG&E continue to argue that the LRMC Decision requires that non-marginal costs be allocated on an EPMC basis, they provide no supporting citation. TURN notes that the record shows that many non-marginal costs are allocated by methods other than EPMC, and that most balancing accounts are allocated on an equal cents per therm basis. TURN also asserts that since neither the Global Settlement Decision nor the LRMC Decision made any determination regarding hazardous substance cleanup cost allocation, it is absurd to argue that this decision violates the Global Settlement.

The LRMC Decision adopts the first long-run marginal cost methodology for California gas utilities. That decision concludes that marginal cost revenues should be scaled to the authorized revenue requirement using an EPMC on total method for natural gas ratemaking in order to best preserve marginal cost signals, but retains equal cents per therm treatment of balancing accounts. (47 Cal.P.U.C.2d at 479 (Conclusions of Law 11 and 19; *see also* Ordering Paragraph 1.)) The LRMC Decision notes that: "Gas ratemaking differs from electric in that we have divided gas customers into a core/noncore grouping and assigned each different cost responsibilities. When the Commission instituted gas restructuring it designated certain costs as 'transition costs" and elected to allocate these costs on an equal cents/therm basis." (47 Cal.P.U.C.2d at 469.)

The Global Settlement Decision adopted a Stipulation and Settlement Agreement ("S&SA") which, among other things, states that "[d]uring the five year period, the LRMC cost allocation methodology will continue to be used." (55 Cal.P.U.C.2d at 773 (S&SA Section II 8).) Neither the LRMC Decision nor the Global Settlement Decision expressly mentions hazardous waste cleanup costs or mandates a specific cost allocation method for such costs. A decision to allocate hazardous waste cleanup costs on an equal cents per therm basis does not conflict with these decisions.

SoCalGas cites *Re Southern California Edison* ("*Re SCE*") [D.92-06-020] (1992) 44 Cal.P.U.C.2d 471, 484-485) for the proposition that the Commission, when applying marginal cost methodologies in the electric industry, was concerned that there should be no retreat from marginal cost principles in the absence of compelling reason for doing otherwise. *Re SCE*, however, more comprehensively states that while "[m]arginal cost principles should be the starting point and central focus of revenue allocation and rate design for setting Edison's rates" (*Id.*, 44 Cal.P.U.C.2d at 551 (Conclusion of Law 1)):

> The use of marginal cost principles ... should be tempered with consideration of other ratemaking principles, including rate stability, avoidance of harsh bill impacts where reasonably possible, the need for customer understanding and acceptance of rate structures, and a recognition that the ability to measure marginal costs should improve over time (*Id.* (Conclusion of Law 2).)

In other words, while marginal cost principles and EPMC policies may be relevant, we have long recognized that they are not dispositive, and must be tempered with other ratemaking considerations. In short, SoCalGas' and SDG&E's references to the LRMC Decision and the Global Settlement Decision fail to demonstrate that the Decision erred in not allocating hazardous waste cleanup costs on an EPMC basis.

The LRMC Decision specifically notes the existence of transition costs which are allocated on a cents per therm basis. The next appropriate question is whether hazardous waste cleanup costs may properly be considered transition costs.

Transition Cost Status of Hazardous Waste Cleanup Costs

With regard to hazardous waste cleanup costs, the Decision states:

> We are persuaded that these hazardous waste cleanup costs, whether or not denominated "transition costs" should be recovered from all ratepayers on an equal cents per therm basis. As the arguments of DRA and TURN show, we are not wedded to handling every cost on a EPMC basis. Not only do DRA and TURN make a strong argument that these costs are real transition costs, but their equitable argument is also persuasive. Certainly, hazardous waste cleanup costs are not to be allocated 90% to the core on any basis of cost causation. Hazardous waste was created at a time when few people knew of the phrase and thought it a problem. The waste was caused by the gas company in

> its endeavor to serve all of its customers. Because the waste was caused in the service of all, its cleanup should be paid for by all. The fairest way to allocate this cost is on an equal cents per therm basis. We believe these costs to be much like GEDA costs and should be apportioned similarly. (60 Cal.P.U.C.2d at 17.)

The Decision further states:

> Transition costs are generally defined as costs resulting from arrangements entered into under a different regulatory environment; which were initiated for the benefit of all ratepayers; which were intended to be recouped from all ratepayers; and which now result in costs in excess of a currently reasonable level. (D.87-12-039, p. 15 26 Cal.P.U.C.2d 213, 230.) (60 Cal.P.U.C.2d at 15.)

SoCalGas argues that the Decision errs in encouraging the conclusion that hazardous waste cleanup costs are really no different from other "transition" costs associated with the ongoing transformation of the regulatory environment applicable to the gas industry. SoCalGas claims that in stating that "transition costs such as those attributable to excess gas costs, stranded interstate capacity costs, and stranded storage costs are all allocated on an equal cents per therm basis" (60 Cal.P.U.C.2d at 15), the Decision reinforces the conclusion that they are not. SoCalGas notes that each of the examples cited in the Decision describe costs uniquely associated with the restructured gas industry, and argues that hazardous waste cleanup costs, on the other hand, are simply a fact of life and an ongoing part of the utility's operations.

SoCalGas contends that if every cost increase associated with the changing regulations of every agency were labeled a "transition cost," the LRMC Decision would be undone in short order. The utility cites postal increases as an extreme example of costs which would under the DRA and TURN logic endorsed

by the Decision have to be allocated as transition costs on a roughly 50/50 basis to the core and noncore markets, even though there are four million core customers and only one thousand noncore.

SDG&E argues that the cleanup costs are not transition costs because they are not ongoing commitments made before the gas industry restructuring from which SDG&E cannot extricate itself; they do not result from a change in Commission or Federal Energy Regulatory Commission ("FERC") regulation; they are not all the result of past practices; and they are not in excess of a currently reasonable level. Like SoCalGas, SDG&E argues that EPMC is the fairest way to allocate nonmarginal costs such as these, and that EPMC allocation is the only method consistent with the Commission's established LRMC method.

CIG/CMA claim that the Decision mischaracterizes the costs as "transition costs" as defined in *Re Rate Design, supra*, and the *Capacity Brokering Decision, supra*, since hazardous waste cleanup responsibilities are an ongoing utility duty and not the product of restructuring; and unfairly shifts costs to noncore customers, since the sites to be cleaned were used primarily to manufacture gas for domestic, not industrial, use. CIG/CMA argue that EPMC reduces the prospects for uneconomic bypass by avoiding the buildup of noncore rates and by reducing interclass subsidies.

SCUPP/IID assert that hazardous waste cleanup costs do not meet two of the four prongs of the "transition costs" test in *Re Rate Design, supra*, since they: 1) were not "costs resulting from arrangements entered into in a different regulatory environment," and 2) were not "the results of past arrangements that caused costs in excess of apparently reasonable levels."

DRA asserts that SoCalGas' argument that core customers are the major beneficiaries of hazardous waste cleanup is new and unsupported. DRA notes that the Commission allocated natural gas vehicle ("NGV") program costs to

all customers on an equal cents per therm basis on the ground that the NGV program was vital to improving the quality of air for all Californians, and argues that because hazardous waste cleanup is also vital to all Californians, the Commission here correctly concluded that all ratepayers should share equally in the cleanup costs. (*Re Pacific Gas and Electric, supra,* 40 Cal.P.U.C.2d at 738.)

DRA further argues that even if Towne Gas sites were primarily used to manufacture gas for domestic purposes, the allocation of a share of cleanup costs to industrial customers would not be error, since the waste was generated decades ago, before the gas industry was restructured into core and noncore classes. DRA contends it would be unfair to burden core customers with 90% of the costs.

Responding to SDG&E's argument that not all hazardous substance cleanup costs are the result of past utility practices, DRA claims that the vast majority of hazardous waste costs result from past utility operations, and that the primary purpose of the hazardous waste collaborative process was to establish an incentive mechanism to replace reasonableness reviews of hazardous waste management of many years ago. DRA further claims that while utilities can seek to recover the costs of cleaning sites contaminated during everyday operations, the fact that utilities may seek such cost recovery is not a good reason for using an EPMC cost allocation for all hazardous waste cleanup costs. DRA further contends that SoCalGas ignores the importance the Commission places on equity. DRA cites as an example *Re Southern California Gas Company* [D.91-12-075] (1991) 42 Cal.P.U.C.2d 566, 591, in which we reaffirmed that economic efficiency is not the sole ratemaking consideration.[2]

[2] "In *Re Rate Design for Unbundled Gas Utility Service* [D.86-12-009] 22 CPUC 2d 444 we said, "Economic efficiency is, of course, not the sole consideration in our choice of a revenue requirement reconciliation methodology. Equity considerations remain paramount." (42 Cal.P.U.C.2d at 591 (emphasis added in that decision).)

As a preliminary matter, it appears that a large portion of the transition cost controversy results from a misinterpretation of the Decision's reference to the first element of the definition of transition costs as "costs resulting from arrangements entered into under a different regulatory environment." (60 Cal.P.U.C.2d at 15.) SoCalGas, SDG&E, CIG/CMA, and SCUPP/IID all contend that since hazardous waste cleanup costs are not necessarily directly related to regulatory changes specific to the gas industry, they do not meet the first prong of the transition cost definition. A look at the actual definition of transition costs in *Re Rate Design for Unbundled Gas Utility Services, supra*, shows that this interpretation is incorrect.

Re Rate Design finds that:

> A cost is defined as a transition cost if it resulted from a gas purchase contract, tariff, or arrangement which:
>
> a) Took effect before the division of the supply portfolio in the December 3, 1986, decisions;
>
> b) Was initiated for the benefit of all ratepayers;
>
> c) Was intended to be recouped from all ratepayers; and
>
> d) Now results in costs in excess of a currently reasonable level. (26 Cal.P.U.C.2d at 286 (Finding of Fact 1).)

Praising the "equitable" concept of transition costs expressed in quotes from the briefs of TURN and the Canadian Producers Group, *Re Rate Design, supra,* states that "[w]e disagree with SoCal and its supporters that a cost item must be directly linked to a specific regulatory action in order to qualify as a transition cost." (*Id.* at 230.) That decision goes on to say:

> Rather than attempting to untangle the past, we prefer a more forward-looking approach to transition costs. We concur with CPG that in exhuming the past, our inquiry should extend no further than whether a

> particular cost was incurred for the benefit of all ratepayers, and was meant to be recovered from all ratepayers. Then in calculating and allocating the transition costs to be borne by today's ratepayers, we will use the equity principle which TURN states simply in the above quote. Our goal is to start all ratepayers off on an even footing in our new regulatory framework, with all customers carrying an equal load of the baggage of the past." (*Id.*)

Viewing hazardous waste cleanup costs in light of *Re Rate Design's* definition and discussion of transition costs, its seems clear that the Decision did not err in finding that DRA and TURN make a strong argument that such costs are real transition costs, and that whether or not such costs are denominated transition costs, they should be recovered from all ratepayers on an equal cents per therm basis. The hazardous waste cleanup costs at issue here are primarily associated with the cleanup of Towne Gas manufacturing sites which have not been operated in decades, and have nothing to do with ongoing utility operations. The gas manufacturing activities giving rise to the costs obviously predate the 1986 division of gas customers into core and noncore classes. Thus, the first element of the transition cost definition is met.

The Towne Gas was manufactured to serve all customers at a time when such costs clearly would have been recovered from all customers. (*See Re Rate Design, supra*, 26 Cal.P.U.C.2d at 234 (discussion of take-or-pay costs as transition costs) Thus, the second and third elements of the definition are met.

Regarding the fourth element of the transition cost definition, the Decision states:

> The last prong of the definition is met because the costs are in excess of a currently reasonable level. They result from projects which, for the most part, are no longer creating any offsetting benefits. Consequently, no one with free choice would

> voluntarily undertake these clean-up obligations. In that sense, the costs are currently excessive. The costs are currently excessive in the same sense that the procurement costs associated with certain California supplies and SoCalGas' contracts with its affiliates PITCO and POPCO are excessive. While the contracts may have been reasonable when they were signed, no one with free choice in today's market would voluntarily purchase this excessively priced gas. However, since these supplies were purchased for the benefit of all customers, the Commission has treated the excessive portion of the costs as transition costs and required all customers to pay their fair share. (60 Cal.P.U.C.2d at 16.)

SoCalGas complains that since the utility does not make it a practice to voluntarily pay for things when it can lawfully avoid doing so, every payment SoCalGas makes to anyone could be considered excessive under the Decision's logic. SDG&E complains that hazardous waste cleanup costs can only be considered excessive if there is evidence that a reasonable utility would spend less for the same work, and states there is no evidence in this proceeding that such is the case here.

The Decision does not find that gas utilities are paying more than a reasonable utility would pay for similar cleanup work, since that issue is not particularly relevant to a finding that the activity giving rise to the putative transition cost now results in costs in excess of a currently reasonable level. In comparing hazardous waste cleanup costs to the above-market gas prices resulting from pre-1986 PITCO and POPCO contracts, the Decision simply highlights the fact that in each instance current gas rates are excessive in the sense that they reflect costs associated with contracts or other activities which occurred before gas customers were divided into core and noncore classes - costs that would not be incorporated in the price a utility would pay for gas unencumbered with such

historical past cost-producing baggage. Thus, the fourth element of the transition cost definition in *Re Rate Design* is met.

As noted earlier, transition costs as defined in *Re Rate Design* are intended to promote equity between customer classes. Therefore, even if hazardous waste cleanup costs had fallen short of meeting an element or two listed in the transition cost definition, the Decision's allocation of costs on the basis of fairness would still be well within the bounds of the transition cost concept outlined in *Re Rate Design*. We could, of course, have given more weight to the arguments of the utilities and large customer groups that "fairness" required an EMPC based allocation, since EMPC has been used in other decisions and cited as a defense against uneconomic bypass, but there is no legal requirement that we exercise our discretion in that manner. Simply put, we did not err in finding that:

> No one class is responsible for hazardous waste cleanup costs. As all ratepayers benefit from their incurrence through a cleaner environment, the costs should be spread equitably among all customer classes, including wholesale customers, on a cents per therm basis. Hazardous waste cleanup costs cannot be allocated 90% to the core on the basis of cost causation. The hazardous waste at issue was created at a time when few people knew of the phrase and though it a problem. The waste was caused by the gas company in its endeavor to serve all of its customers. Because the waste was caused in the service of all, its cleanup should be paid for by all. The fairest way to allocate these costs is on an equal cents per therm basis. We believe these costs to be much like GEDA costs and should be apportioned similarly. (60 Cal.P.U.C.2d at 17 (Finding of Fact 2).)

Allocation of Hazardous Waste Cleanup Costs to SDG&E

SDG&E contends that it should be exempt from any allocation of SoCalGas hazardous waste cleanup costs because it has similar costs. SDG&E

claims the decision misconstrues the nature of the SoCalGas LUAF [lost and unaccounted for fuel] and stranded capacity costs being paid by SDG&E, is contrary to precedent which provides that SDG&E should not pay for SoCalGas costs where SDG&E has a similar program (*e.g., Applications of SoCalGas, Pacific Lighting Gas Supply, and SDG&E* [D.82-04-116] (1992) 9 Cal.P.U.C.2d 26[uncollectible expenses], and *Re Southern California Gas Company* [D.92-01-021] (1992) 43 Cal.P.U.C.2d 104 [Natural Gas Vehicle Program costs]); and would require SDG&E customers to pay twice for hazardous waste cleanup costs while other SoCalGas customers only pay once.

SDG&E claims that while it does pay part of SoCalGas' interstate transportation and storage stranded capacity costs, it does not incur similar costs on its own system. SDG&E states that SoCalGas' transportation stranded capacity costs result from long-term contracts between SoCalGas and interstate pipelines for excess transportation capacity, and that SDG&E itself has no such contracts. SDG&E also asserts it has no storage capacity of its own, but merely offers customers SoCalGas' transportation and storage capacity which has been allocated to SDG&E.

SDG&E further complains that the Decision misleads in stating that SDG&E pays SoCalGas LUAF costs even though it incurs similar costs, since it does not pay those costs on an equal cents per therm basis. SDG&E claims that SoCalGas; LUAF costs are allocated according to whether customers take transmission or distribution level service, and the SDG&E pays only for its own distribution level LUAF costs, not for SoCalGas'. Finally, SDG&E asserts that it is not fair to make it pay SoCalGas' cleanup costs since SDG&E did not benefit from SoCalGas' manufacture of gas at Towne Gas sites, since it had its own Towne Gas facilities and did not receive any manufactured gas from SoCalGas.

Responding to SDG&E's contention that it should not be allocated any of SoCalGas' cleanup costs, DRA points out that the Decision notes that many SoCalGas costs, such as LUAF, stranded interstate capacity and stranded storage costs, are allocated to SDG&E despite the fact that SDG&E incurs its own costs for these items. DRA challenges SDG&E's assertion that it has no storage capacity of its own, noting that SDG&E holds storage capacity pursuant to a contract with SoCalGas. DRA argues that SDG&E also has its own stranded storage capacity costs, citing *Re Southern California Gas Company* [D.94-12-052] (1994) 58 Cal.P.U.C.2d 306, 350, which summarizes a joint recommendation of DRA and SDG&E in SDG&E's BCAP, A.93-09-048: "...SDG&E shareholders will pay 25% of the stranded storage costs allocated to core customers with the understanding that DRA will forego a reasonableness review of SDG&E's stranded storage costs through March 31, 1995."

DRA also counters SDG&E's reiteration that while it does pay a share of SoCalGas' LUAF costs while having its own, such costs are not allocated on an equal cents per therm basis. DRA states that the Decision does not err and is not misleading in simply pointing out that the fact that SDG&E is allocated a portion of SoCalGas' LUAF costs, even though SDG&E has its own LUAF costs, undercuts SDG&E's argument that its is not allocated any SoCalGas costs whenever it incurs its own similar costs. DRA further notes that some LUAF costs are indeed allocated on an equal cents per therm basis. (*Id.*, 58 Cal.P.U.C.2d at 347-348.)

Finally, DRA objects to SDG&E's complaint that it would be unfair to require the utility to pay a portion of SoCalGas cleanup costs, since other customers only pay for one set of utility hazardous substance cleanup costs. DRA argues than many other SoCalGas customers, particularly noncore customers, likely have their own hazardous waste costs just as does SDG&E. DRA notes that

these customers are being allocated a portion of SoCalGas' hazardous waste cleanup costs, and that SDG&E's attempt to get preferential treatment should be rejected.

As SDG&E points out, we have exempted SDG&E from an allocation of a portion of SoCalGas costs in certain circumstances in which SDG&E incurred similar costs of its own. This fact, in itself does not dictate an identical result here. *Re Southern California Gas Company* [D.92-01-021] (1992) 43 Cal.P.U.C.2d 104, 109, notes that we will "continue our practice of deciding such cost allocation issues on a case-by-case basis rather than following a rule that simply does not take into account rate impacts or the equity of such allocation." In allocating to SDG&E a portion of SoCalGas' hazardous waste cleanup costs, the Decision created an outcome SDG&E does not like. SDG&E's unhappiness with the policy call we made in this particular instance, however, does not demonstrate legal error.

III. CONCLUSION

While SoCalGas, SDG&E, CIG/CMA, and SCUPP/IID point out a number of areas in which the Decision might have reached different policy-based outcomes, they fail to demonstrate clear legal error requiring rehearing. For this reason, we will deny rehearing of the Decision.

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THEREFORE, for good cause shown, **IT IS HEREBY ORDERED** that:

The applications of SoCalGas and SDG&E for rehearing are denied.

This order is effective today.

Dated December 16, 1997, at San Francisco, California.

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