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MAIL DATE
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Decision 98-07-100 July 23, 1998

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Gas Company (U940-G) for Authority to Review its Rates Effective January 1, 1997, in its Biennial Cost Allocation Proceeding.	Application 96-03-031 (Filed March 15, 1996)
In the Matter of the Application of San Diego Gas & Electric Company (U 902-G) for Authority to Revise its Rates Effective January 1, 1997 in its Biennial Cost Allocation Proceeding.	Application 96-04-030 (Filed April 15, 1996)

ORDER GRANTING REHEARING OF DECISION (D.) 97-04-082 IN PART, AND DENYING REHEARING AND MODIFICATION IN PART

I. INTRODUCTION

In Decision (D.) 97-04-082, we adopted rates for the coming period through July 31, 1999 for customers of Southern California Gas Company ("SoCalGas") and San Diego Gas and Electric Company ("SDG&E") based on the utilities' Biennial Cost Allocation Proceeding ("BCAP") applications. (D.97-04-082, p. 2 (slip op.).) In this decision, we also determined that a wholesale customer would be ineligible for the 10 percent cap on its liability for the interstate transportation cost surcharge ("ITCS") if it does not take its full assignment of SoCalGas' interstate pipeline capacity at the full tariff rate. (D.97-04-082, pp. 75-76 (slip op.).)

In D.97-04-082, we also considered SoCalGas' relinquishments of interstate pipeline capacity on both the El Paso and Transwestern pipelines. As a result of these

relinquishments (or step-downs), there were benefits and costs. The relinquishments resulted in a reduction in the pipeline demand charges allocated to SoCalGas' customers, as well as "surcharges" allocated to firm capacity holders through pipeline rate case settlements adopted at the Federal Energy Regulatory Commission ("FERC"). (D.97-04-082, pp. 73-75 (slip op.).) In the decision, we determined that the noncore customers would receive the benefits of the relinquishments, and both the core and noncore would bear responsibility for the surcharges. (D.97-04-082, p. 74 (slip op.).)

Further, in D.97-04-082, we declined to grant the request of The Utility Reform Network ("TURN") to establish a memorandum account to track at this time any alleged excess costs to the core that SoCalGas might incur in meeting minimum supply requirements at Blythe. (D.97-04-082, p. 83 (slip op.).) The Commission also rejected TURN's proposal for a core storage withdrawal reservation of 1,726 MMcf/d, based on a flowing supply assumption of 1,640 MMcf/d, and adopted the recommended reservation of 1, 985 MMcf/d proposed by the Office of Ratepayer Advocates ("ORA"),[1] which uses SoCalGas' estimate of 1,381 MMcf/d flowing supplies in calculating this recommended number. (D.97-04-082, pp. 19-25.)

Two parties, the City of Long Beach ("Long Beach") and TURN, timely filed applications for rehearing. In its application, Long Beach claims legal error on the grounds that D.97-04-082 retroactively eliminates the core cap for SoCalGas' wholesale customers, and that Long Beach was denied due process because the changes in the allocation of the ITCS allegedly occurred in an earlier Commission decision. TURN argues that D.97-04-082: (1) results in the allocation of most surcharges to the core and all benefits to noncore, and thus, the decision is arbitrary, unduly discriminatory, and unsupported by either the record or past Commission decisions; (2) is arbitrary and violates Public Utilities Code Section 451 because it fails to require tracking of excess

[1] Formerly known as the Division of Ratepayer Advocates ("DRA").

core procurement costs; and (3) adopts a core storage withdrawal reservation which is inconsistent with the record and within the decision itself.

The ORA, the California Industrial Group and California Manufacturers Association (jointly, "CIG/CMA"), and Southern California Gas Company ("SoCalGas") filed responses to both applications. Joint responses were filed by Southern California Utility Power Pool and Imperial Irrigation District (jointly, "SCUPP/IID"), in response to Long Beach's application; and by Southern California Edison Company, the Southern California Utility Power Pool and Imperial Irrigation District (jointly, "Edison/SCUPP/IID"), in response to TURN's application.

Also, ORA filed a petition for modification of D.97-04-082, and raises the same arguments on the allocation of the surcharges resulting from the stepdowns as those asserted by TURN in its rehearing application. In its petition, ORA further requests that D.97-04-082 be modified so that these particular costs are allocated in the manner proposed by the Alternate Decision of Commissioner Conlon. Responses to this petition were filed by SoCalGas, CIG/CMA, and Edison/SCUPP/IID. We have disposed of this petition herein.

On February 26, 1998, SoCalGas filed a motion for oral argument. ORA and TURN filed a joint response, which opposed the motion. In a ruling dated March 20, 1998, President Bilas granted SoCalGas' motion for oral argument. In a ruling dated April 9, 1998, Assigned Commissioner Conlon set forth the procedures for an oral argument that was held on April 20, 1998. The oral argument was limited to the legal arguments raised by TURN's rehearing application on the stepdown issues. The following parties appeared for oral argument, and made presentations: ORA, TURN, SoCalGas, Edison/SCUPP/IID, and CIG/CMA. All parties reiterated the positions they had taken in their pleadings on the stepdown issues.

We have reviewed each and every allegation raised in both rehearing applications, and ORA's petition for modification. The arguments raised by Long

Beach's application for rehearing do not demonstrate any legal error warranting a rehearing, and thus, the application should be denied. We believe that the claim raised in TURN's rehearing application and ORA's petition for modification concerning the stepdowns and the allocation of surcharges has merit, and thus will grant a limited rehearing on that claim in the manner specified below. The issue regarding the sufficiency of evidence raised by TURN is made moot by our granting of the limited rehearing. The remaining allegations in TURN's rehearing application have no merit. Finally, we take this opportunity to correct some typographical errors in D.97-04-082, as described in the ordering paragraphs.

II. DISCUSSION

1. The Commission's Determination To Make Wholesale Customers Ineligible For The 10 Percent Cap Unless They Took Full Assignment Of SoCalGas' Interstate Pipeline Capacity At The Full Tariff Rate Does Not Constitute Unlawful Retroactive Ratemaking.

In its rehearing application, Long Beach claims that the Commission has "retroactively eliminated the core cap. . . ." (Long Beach's Application for Rehearing, p. 4.) More specifically, Long Beach is claiming that the allocation to wholesale customers of costs which have been accumulated in the ITCS balancing account prior to the Commission's determination on wholesale customers' eligibility for the 10% ITCS core cap in D.97-04-082 constitutes retroactive ratemaking, and thus is unlawful. (Long Beach's Application for Rehearing, pp. 4-6.) Accordingly, Long Beach argues that it should "receive the benefit of the cap through the period for which the cap applied." (Long Beach's Application for Rehearing, p. 5.)

Long Beach does not dispute the accounting status of the ITCS costs. What it disputes is the Commission's allocation of the costs for 1996, under the eligibility rule set forth in D.97-04-082. (Long Beach's Application for Rehearing, p. 5.)

Long Beach cites City of Los Angeles v. Public Utilities Commission (1972) 7 Cal.3d 331, 358, in support. The California Supreme Court in that case held that changes in rates which are due to changes in accounting principles and accounting evaluations must be prospective, and not retroactive. (Id.) Long Beach argues that the change in the allocation of ITCS costs constitutes a change in the accounting principles, and thus, should be implemented prospectively, and should not be applied to amounts accumulated in the ITCS account. (Long Beach's Application for Rehearing, pp. 5-6.)

Long Beach's reliance is misplaced. The facts in the City of Los Angeles v. Public Utilities Commission, supra, 7 Cal.3d at pp. 355-359, differ from the instant case. The Supreme Court decision there involved the subsequent change of a rate that Commission had previously found reasonable (id.), while D.97-04-082 involved the allocation of the ITCS costs recorded in a balancing account which tracks such costs for future recovery. (See Re Gas Utility Procurement Practice and Refinements to the Regulatory Framework for Gas Utilities ("Capacity Brokering Implementation Decision") [D.92-07-025] (1992) 45 Cal.P.U.C.2d 40, 73; see also, Re Southern California Gas Company [D.94-12-052] (1994) 48 Cal.P.U.C.2d 306, 318.) Thus, in allocating the ITCS costs in the balancing account, we were not changing a previously adopted rate, or even adjusting a previous allocation of the 1996 ITCS costs.

In fact, we did not set a rate for purposes of recovering these costs until the instant BCAP proceeding, which resulted in D.97-04-082. Accordingly, the 1996 accumulated ITCS costs were not reflected in the previously approved rates, and the eligibility rule for qualifying for the 10 percent ITCS cap by wholesale customers was applied on a prospective, rather than retroactive basis. Therefore, in the instant case, there was no ratemaking within the meaning of the law against retroactive ratemaking. (See Southern Cal. Edison Co. v. Public Utilities Com. (1978) 20 Cal.3d 813, 816-817, emphasis in the original.) The fact that the allocation might reflect past undercollections,

namely 1996 ITCS costs which were tracked in the balancing account, does not make it retroactive, ratemaking. (Id. at p. 820, fn. 21.)

2. The Commission Did Not Deny Wholesale Customers Of SoCalGas, Including Long Beach, Of Due Process When It Adopted The Eligibility Rule For The 10 Percent Cap In D.97-04-082.

Long Beach is alleging that the issue was decided in In the Matter of the Application of Pacific Gas and Electric Company, Etc. ("PG&E BCAP Decision") [D.95-12-053] (1995) ___ Cal.P.U.C.2d ___, and thus, Long Beach was denied due process. (Long Beach's Application for Rehearing, p. 3.) This allegation is simply without merit.

In D.95-12-053, we did discuss that "SoCalGas' wholesale customers were granted the 10% ITCS cap in D.92-07-025 without the Commission directly addressing whether all the wholesale load obtained capacity from SoCalGas at 100% of the as-billed rate." (PG&E BCAP Decision [D.95-12-053], supra, at p. 55 (slip op.).) However, when we found Palo Alto and other wholesale customers of PG&E ineligible for the 10% core ITCS cap unless they reserved core capacity in the future at 100 percent of the as-billed rate, we made no determination as to SoCalGas' wholesale customers, including Long Beach, and, in fact, reserved the issue for SoCalGas' next BCAP. (Id.)

In the instant proceeding, namely SoCalGas' 1996 BCAP, the issue was under consideration. ORA raised it as an issue in its testimony, by advocating that circumstances no longer warranted giving SoCalGas' wholesale customers, including SDG&E and Long Beach, the benefits of the 10% core ITCS cap. Further, ORA proposed in its testimony that treatment of SoCalGas' wholesale customers should be consistent with D.95-12-053 on this issue. (See Exhibit 58: DRA's Report on SoCalGas' 1996 BCAP [Testimony of R. Mark Pocta], pp. 9-2 & 9-8; see also, Comments of the DRA on Issues Raised in D.95-12-037, R.90-008 & R.88-08-018 in Exhibit 58, Attachment 9-B, pp. 6-7.)

Long Beach had an opportunity to convince the Commission not to adopt ORA's proposal, and to maintain the 10% core ITCS cap for SoCalGas' wholesale customers. In fact, Long Beach presented testimony, criticizing ORA's proposal. (See Exhibit 101: Prepared Direct Testimony of Christopher J. Garner, Manager of Business Operations and Gas Supply, Long Beach Gas Department, pp. 2-13.) Further, Long Beach's counsel also took the opportunity to cross-examine the ORA witness on this matter during evidentiary hearings. (RT Vol. 14, pp. 1692-1694.)

Based on the above discussion, Long Beach was not denied due process. It had an opportunity to fully litigate the issue in the instant proceedings, and thus, its due process allegation is without merit.

3. The Allocation Of The "Surcharges" From The Stepdown Capacity In D.97-04-092 Is Inconsistent With Previous Commission Decisions.

In D.97-04-082, we stated the following regarding the stepdowns:

> "Despite these new surcharges, we will maintain our established policy framework until we have reviewed our transition cost policy in a generic, statewide proceeding. We should not dismantle our policy in a piece-meal fashion, one utility at a time. Therefore, SoCalGas' core will pay the full costs of its capacity reservation (1044 MMcf/d) including base rates, an allocation of ITCS equal to 10% of its reservation, and surcharges, and the noncore will pay the remaining cost of 406 MMcf/d in capacity, including base rates and surcharges, through the ITCS. Because we differentiate between interstate stranded costs based on their origin in either pipeline demand charges versus surcharges, SoCalGas should account for these costs separately. But despite this separate accounting, core and noncore will pay a share of both types of stranded costs in proportion to the current core and noncore allocations of firm interstate capacity." (D.97-04-082, pp. 74-75 (slip op.), emphasis add.)

We also found that the "allocation of ITCS to core customers in an amount equal to 10% of the core capacity reservation as established in D.92-07-025" should be maintained. (D.97-04-082, p. 174 (Finding of Fact No. 57) (slip op.).)

In its rehearing application, TURN asserts that the allocation of the costs and benefits associated with capacity stepdowns in D.97-04-082 is inconsistent with previous Commission decisions on transition costs, especially D.92-07-025. TURN also claims that the decision to assign costs to the core and benefits to the noncore, as discussed by individual Commissioners, is unsupported by the record. We find merit to TURN's assertion of inconsistency with our previous decisions.

TURN's application for rehearing has prompted us to review our previous decisions, in particular Re Natural Gas Procurement and Reliability Issues ("Capacity Brokering Decision") [D.91-11-025] (1991) 41 Cal.P.U.C.2d 668, and Re Natural Gas Procurement and Reliability Issues ("Capacity Brokering Implementation Decision") [D.92-07-025] (1992) 45 Cal.P.U.C.2d 47, concerning our determination to allocate most of the surcharges to the core. Upon further consideration of these decisions, we believe we have unintentionally erred in concluding that the surcharges constitute new costs which need to be allocated in the instant BCAP proceeding.

In reviewing our capacity brokering decisions, we are convinced that, except as to the costs resulting from the relinquishment of capacity on El Paso by Pacific Gas and Electric Company ("PG&E") and a small amount by others (which will be more fully discussed below), the surcharges constitute the same transition costs which the noncore was responsible for, but in a reduced amount because of the approval of El Paso and Transwestern Settlements at the FERC and the provisions for "turned-back capacity," namely stepdown capacity, in the settlements. In its settlement, El Paso would assume 65 percent of the unsubscribed capacity costs associated with the anticipated contractual step downs and terminations over the first eight years of the Settlement; while the customers assumed 35 percent. (El Paso Natural Gas Company (1997) 79 F.E.R.C. ¶61,084, p.

61,118.) In the Transwestern Settlement, the utility and Current Customers would share the risk of unsubscribed capacity (70 percent assumed by Transwestern and 30 percent assumed by the customers), and then the utility would assume 100 percent of SoCalGas' capacity relinquishment beginning on November 1, 2001, and for each year afterwards for the remaining term of Current Customers' service agreements. (Transwestern Pipeline Company (1995) 72 F.E.R.C. ¶61,085, pp. 61,445-61,446, rehrg. denied, Transwestern Pipeline Company (1995) 73 F.E.R.C. ¶61,089.)

In the Capacity Brokering Decision [D.91-11-025], supra, 41 Cal.P.U.C.2d at p. 698, we observed:

> ". . . . [W]e are uncomfortable allocating costs associated with noncore service to core customers. In the past, we have allocated to core and noncore customers a share of 'transition costs' which result from major program or industry changes. We have done so on the basis that utilities had made certain commitments which were intended to benefit both core and noncore customers. In the case of interstate capacity, however, we are adopting capacity reservations for core customers which are consistent with historic use during peak periods. . . . Remaining capacity has been historically reserved for noncore classes." (Emphasis added.)

This observation was reiterated and adopted in the Capacity Brokering Implementation Decision [D.92-07-025], supra, 45 Cal.P.U.C.2d at pp. 60-61. In this decision, we stated:

> "In D.91-11-025, we established reasonable reservations of interstate capacity for the utilities' core customers. The reservations were, generally, based on peak core demand so that some capacity will be unused during off-peak periods. Remaining capacity is reserved for noncore customers . . . . Capacity for both the core and noncore customers may become stranded because it cannot be brokered at the full as-billed rate.
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> . . . .
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> "No party to this proceeding has proposed that the noncore share costs of 'excess' interstate capacity reserved by the core even though there is ample evidence to suggest that core

> customers will be paying 'excess' costs. The core will pay a premium for reliable service by bearing 100% of the cost of a large reservation of interstate capacity. PG&E's core reservation is about twice the core's average annual demand. SoCalGas' core reservation is about 20% higher than average annual demand.
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> . . . .
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> ". . . . We have stated many times our view that the core class should share the costs of a program or investment from which it benefits. . . . We agree that competition in noncore markets may ultimately benefit the core. However, we have no evidence that the core will benefit from capacity brokering. In fact, the evidence suggests that capacity brokering by itself is likely to increase the risk and cost of gas service to the core.
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> "Capacity brokering is a method of improving the access of noncore customers to firm interstate transportation capacity and to less expensive gas supplies. In order to improve access for the noncore, the core must give up access that it has had in the past.
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> . . . .
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> ". . . . [W]e will direct the utilities to allocate stranded interstate costs on an equal-cents-per-therm basis. The limit of the core class' liability for these stranded costs is the cost of 110% of existing capacity held for the core class on each pipeline. Because we have found that amount to be a beneficial level of slack capacity, we believe 10% is a reasonable figure for determining the core class' responsibility over and above the capacity held to serve the core during peak periods. This cap would limit the core's annual liability to the cost of 107 MMcf/d on SoCalGas' system and 120 MMcf/d on PG&E's system, in addition to the reservations already allocated to the core."

(Id. at pp. 59-61.) Thus, we determined in this decision implementing capacity brokering that the core would be responsible for the stranded costs which was the cost of 110% of existing capacity held for the core class on each pipeline, and accordingly, the noncore was responsible for the transition costs for the remaining capacity, which was the relinquished capacity. With the stepdowns, the noncore benefited in the reduction in the

amount of transition costs for capacity that the noncore had been made responsible for by the Commission in D.92-07-025.

The reduced amount of the transition costs for the noncore (whereby the interstate pipelines now are at risk for 65-70 percent of the unsubscribed capacity) is what constitutes the surcharges. This is more fully understood by looking at the very FERC order discussing the turnback capacity costs, which recognized that Edison would face turnback capacity cost surcharges paid by SoCalGas through its ITCS, which was established in the Commission capacity brokering decisions. The FERC stated:

> "Edison's stated concern is the proper level of [SoCalGas'] federal, interstate rate, primarily the turnback capacity costs under [SoCalGas'] Interstate Transition Cost Surcharge ("ITCS") Account." (El Paso Natural Gas Company, supra, 79 F.E.R.C. ¶61,084, at p. 61,128.)

As the FERC further elaborated in this order on the El Paso Settlement:

> "Edison explains that the CPUC initially established the ITCS in its capacity brokering decisions, D.91-11-025 and D.92-02-025. Under those decisions the CPUC took [SoCalGas'] traditional interstate capacity commitments on El Paso and Transwestern (2200 Mmcf/day total), assigned a portion of that capacity to [SoCalGas'] core customers (1067 Mmcf/day), and required that the remaining capacity (1143 Mmcf/day) be made available for release in the secondary market. The ITCS tracks the costs associated with the capacity available for release (i.e., the full as-billed rate for the capacity) and the revenues associated with any of that capacity released into the secondary market. [SoCalGas] recovers the difference between the as-billed rate and the released price (i.e., the unrecovered costs) from its customers – including Edison – pursuant to a CPUC approved allocation methodology." (Id. at p. 61,128, fn. 21.)

Accordingly, it was those ITCS costs that are affected by the stepdowns, and not some new transition costs that need to be allocated. Thus, we erred in our allocation of these "new surcharges" to the core in the manner we did in D.97-04-082.

In considering TURN's allegations of legal error on the allocation of the stepdowns, we have come to the opinion that it is time to reconsider the allocation method we adopted in D.92-07-025, whereby the core was made responsible for paying the full costs of its capacity reservation, including base rates, and an allocation of ITCS equal to 10 percent of its reservation, while the noncore was assigned the remaining capacity and the ITCS costs. We adopted this cost allocation method almost six years ago. In the interim, the natural gas industry has been rapidly and continuously evolving. We believe that the time is ripe for reconsidering the policies we adopted in D.92-07-025. Although the issues were raised during this proceeding, the record is not adequate to help us consider all aspects, including the important policy implications, of these issues. Thus, we deem it appropriate to grant a limited rehearing for the purposes of providing notice and opportunity for the parties to be heard on this issue. We will grant a limited rehearing so that interested parties can address the following questions:

1. Should the Commission change the method adopted in D.92-07-025 for assigning the ITCS costs between the core and noncore? If yes, what is the underlying basis for this change? If no, what is the reasoning for not making a change?

2. If the Commission were to change the method for assigning the ITCS costs, how should the allocation specifically be changed? What is the basis for this new allocation? What are the benefits and burdens, if any, to the core and noncore with this new allocation?

3. Are there economic and business impacts of allocating the ITCS costs to noncore customers? If so, what specifically are these impacts?

4. Whether the Commission decides to reallocate costs or not, should it consider the amortization of the ITCS account balance for both the core and noncore for a period longer than the full BCAP period? In what ways would a longer amortization help core and noncore customers? In what ways would a longer amortization not be of benefit to these customers?

5. If there was a longer amortization period than the full BCAP period, how long should it be? What is the basis for the period recommended?
6. What are the pros and cons of having an amortization period over about four years, with a goal of a zero balance by December 31, 2001? What impacts, if any, would such an amortization period have on the California economy?

With respect to the portion of the surcharges related to the stepdowns of capacity on El Paso by PG&E and others, we acknowledge that these are arguably new costs. These specific costs were mainly the result of PG&E's relinquishment of a substantial amount of capacity on the El Paso system (71 percent of the capacity stepdowns), whereby SoCalGas' relinquishment represented only 19 percent of the capacity stepdowns. In D.97-04-082, we lumped these particular costs with the other stepdown costs related to SoCalGas' relinquishments of capacity on El Paso and Transwestern. Because we are granting a limited rehearing on the other stepdown costs, we believe it would be reasonable to include, as part of this rehearing, the issues concerning how these new costs should be allocated. We pose the following questions for the parties to address:

1. Should the Commission treat the costs related to the relinquishments of capacity on El Paso by PG&E and others in the same way as the costs resulting from SoCalGas' stepdowns on El Paso and Transwestern, which are collected through the ITCS? If yes, what is the basis for this similar treatment? If no, what is the reasoning for a different treatment?

2. If these costs related to the relinquishments by PG&E and others should be treated differently, how should these costs be allocated? Why should these costs be allocated in this manner? What are the benefits and burdens, if any, to the core and noncore with this different allocation?

Because we are granting a limited rehearing on these allocation issues, we see no need to address the issue raised by TURN concerning the sufficiency of evidence. It is deemed moot.

Further, we note that SoCalGas submitted, by Advice Letter Number 2589, tariff schedules implementing the adopted changes set forth in D.97-04-082. The tariff schedules included the allocation for the "new surcharges," namely the costs related to the stepdowns. The tariff schedules were reviewed by the Energy Division and made effective as of June 1, 1997. Because D.97-04-082 erred in concluding, in D.97-04-082, that all the stepdowns resulted in new costs to be allocated mainly to the core (based on its capacity reservation), and because the allocation of these costs has taken effect, there is a need to consider the possibility of an adjustment (by means of a refund or surcredit and surcharge), as appropriate. (See generally, California Manufacturers Assn. v. Public Utilities Com. (1979) 24 Cal.3d 251, 261-262.) However, because we are granting a limited rehearing to reconsider whether we should change the allocation method, and we do not know what the outcome of this reconsideration will be, we will not order an adjustment at this time. Rather, we will permit SoCalGas to continue allocating and collecting the ITCS costs in the manner set forth in its Advice Letter Number 2589. Further, we will permit the parties during the limited rehearing to propose for our consideration a method for such an adjustment, if needed, and to provide us with a justification as to why their proposed method should be adopted.

The limited rehearing shall be held at such time and place and before such Administrative Law Judge as shall hereafter be designated. Because the limited rehearing involves our consideration of modification to D.92-07-025, today's order should be mailed to all parties to the capacity brokering proceedings, Rulemaking (R.)88-08-018 and R.90-02-008, as well as all parties to this BCAP proceeding, so that they will have notice and opportunity to be heard on the matter, in accordance with Public Utilities Code Section 1708.

4. The Commission Did Not Err By Rejecting TURN's Request To Establish A Memorandum Account To Track, At This Time, Any Alleged Excess Costs To The Core That SoCalGas Might Incur In Meeting Minimum Supply Requirements At Blythe.

In D.97-04-082, we rejected TURN's request to establish a memorandum account to track, at this particular time, any alleged excess costs to the core that SoCalGas might incur in maintaining minimum flow supplies at Blythe. We reserved this issue of cost allocation for the upcoming Natural Gas Strategy proceeding, when it will be examining the dividing line between transmission and distribution. (D.97-04-082, p. 83 (slip op.).)

In its rehearing application, TURN alleges that the record contained sufficient evidence to justify the tracking, and that our refusal to establish a memorandum account was illogical and in violation of Public Utilities Code Section 451, which requires that rates be just and reasonable. (TURN's Application for Rehearing, pp. 5-7.)

In D.97-04-082, we did not reject TURN's assertion regarding any alleged costs to the core in maintaining minimum flowing supplies at Blythe. Rather, we were not persuaded by TURN's testimony to order SoCalGas to establish a memorandum account at the time. We felt that more analysis was needed before we required SoCalGas to engage in much work in tracking any such alleged costs. Thus, it was reasonable that such analysis be conducted during the upcoming Natural Gas Strategy proceeding. (See D.97-04-082, p. 83 (slip op.).) Accordingly, we acted reasonably, and within our discretion, in refusing to grant TURN's request to establish a memorandum account at this time.

5. The Commission Lawfully Adopted A Core Storage Withdrawal Reservation Of 1,985 Mmcf/d, Based On SoCalGas' Estimate Of 1,381 MMcf/d For The Flowing Supplies.

In its rehearing application, TURN argues that the core withdrawal reservation adopted by D.97-04-082 is inconsistent with the record and creates an internal inconsistency in the decision. (TURN's Application for Rehearing, pp. 7-8.) This argument is without merit.

In D.97-04-082, we did not adopted TURN's recommendation of 1,726 MMcf/d, based on a flowing supply assumption of 1,640 MMcf/d, which the ALJ accepted in the proposed decision. We chose to adopt ORA's recommendation of 1,985 MMcf/d, based on SoCalGas' 1,381 flowing supply estimate. This recommendation is supported by the record. In arriving at its number for the retail core withdrawal reservation, ORA used SoCalGas' estimate for flowing supplies for deriving a core withdrawal reservation for allocation purposes in this BCAP. However, ORA suggested that the flowing supplies might be greater "given the current excess interstate capacity to California,: but ORA did state that it was "reasonable estimate . . . ." (See Exhibit 58: DRA's Report on SoCalGas' 1996 BCAP [Testimony of Jacqueline Greig], pp. 5-8 to 5-9.)

Further, the reliance of the 1,381 MMcf/d as a reasonable estimate for the flowing supplies is supported by the testimony of SoCalGas' witness Peter Yu, who testified that "the total flowing supply available on its system will be considerable higher than 1,381 MMcf, [but that the difference will be needed] to meet wholesale core demand and certain level of noncore load[s] that fail[s] to comply with SoCalGas' curtailment order." (D.97-04-082, pp. 19-20 (slip op.), citing to Exhibit 3, Chapter D, p. 8.) We were convinced by this testimony as well as ORA's reliance of this number to support its core storage withdrawal reservation calculation. Thus, this is the record basis for the Commission's statement that: "We agree with ORA that . . . this is the appropriate

estimate for the coming BCAP period of retail flowing supply availability." (D.97-04-082, p. 24 (slip op.).) Therefore, D.97-04-082 adopts a core storage withdrawal reservation which is consistent with the record, as well as supported by the record.

However, we note that the our underlying reasoning for adopting the 1,381 MMcf/d as an appropriate estimate is not clear. Thus, we will modify D97-04-082 to provide this clarification, by adding the following language to the decision:

> "We further note that it is reasonable to adopt ORA's estimate for the flowing supply availability in light of the testimony of SoCalGas Witness Yu , who testified that any amount over 1,381 MMcf/d will be needed to meet wholesale core demand and certain level of noncore loads that do not comply with SoCalGas' curtailment order."

Further, there is no inconsistency in D.97-04-082 merely because the we acknowledge that ORA believed that the 1,381 MMcf/d may be "understated given the current excess interstate capacity to California." (D.97-04-082, p. 21 (slip op.).) As noted above, we discussed in D.97-04-082, pp. 19-20 (slip op.), Yu's testimony, which convinces us to use the lower number. Accordingly, the discussion in the decision is not inconsistent.

III. CONCLUSION

Therefore, we find the challenges alleged in Long Beach's application for rehearing are without merit. However, the claim raised by TURN and ORA concerning the allocation of the surcharges from the stepdown constitutes good cause for granting a limited rehearing in the manner specified in this decision. The issue concerning sufficiency of evidence raised by TURN is made moot by the granting of the limited rehearing. The remaining issues in TURN's application have no merit, and thus, rehearing is denied on these matters. D.97-04-082 will be modified to clarify one issue related to the adoption of 1,381 MMcf/d as an reasonable estimate for the flowing supplies, and to correct some typographical errors.

THEREFORE, IT IS ORDERED that:

1. D.97-04-082 is modified to add a footnote at the end of the first sentence of the second full paragraph on page 24, and the text of the footnote should state:

> "We further note that it is reasonable to adopt ORA's estimate for the flowing supply availability in light of the testimony of SoCalGas Witness Yu, who testified that any amount over 1,381 MMcf/d will be needed to meet wholesale core demand and certain level of noncore loads that do not comply with SoCalGas' curtailment order."

2. D.97-04-082 is modified to correct the following typographical errors:

   a. The second "that" from line 10, on page 24, shall be removed.

   b. The word "cots" on page 73, line 31, shall be replaced by the word "costs."

   c. The word "of" between "Long Beach" and "SDGE," on line 31 of page 77 should be replaced by the word "or."

IT IS FURTHER ORDERED that:

3. The application for rehearing filed by the City of Long Beach is denied.

4. A limited rehearing is granted for purpose of addressing the following questions related to the allocation of ITCS costs between the core and noncore:

   a) Should the Commission change the method adopted in D.92-07-025 for assigning the ITCS costs between the core and noncore? If yes, what is the underlying basis for this change? If no, what is the reasoning for not making a change?

   b) If the Commission were to change the method for assigning the ITCS costs, how should the allocation specifically be changed? What is the basis for this new allocation? What are the benefits and burdens, if any, to the core and noncore with this new allocation?

c) Are there economic and business impacts of allocating the ITCS costs to noncore customers? If so, what specifically are these impacts?

d) Should the Commission treat the costs related to the relinquishments of capacity on El Paso by PG&E and others in the same way as the costs resulting from SoCalGas' stepdowns on El Paso and Transwestern, which are collected through the ITCS? If yes, what is the basis for this similar treatment? If no, what is the reasoning for a different treatment?

e) If these costs related to the relinquishments by PG&E and others should be treated differently, how should these costs be allocated? Why should these costs be allocated in this manner? What are the benefits and burdens, if any, to the core and noncore with this different allocation?

f) Whether the Commission decides to reallocate costs or not, should it consider the amortization of the ITCS account balance for both the core and noncore for a period longer than the full BCAP period? In what ways would a longer amortization help core and noncore customers? In what ways would a longer amortization not be of benefit to these customers?

g) If there was a longer amortization period than the full BCAP period, how long should it be? What is the basis for the period recommended?

h) What are the pros and cons of having an amortization period over about four years, with a goal of a zero balance by December 31, 2001? What impacts, if any, would such an amortization period have on the California economy?

i) If an adjustment is appropriate and necessary for purposes of addressing rates in effect since June 1, 1997, how should the adjustment by means of a refund or surcredit to the core and a surcharge to the noncore be accomplished?

5. This limited rehearing shall be held at such time and place and before such Administrative Law Judge as shall hereafter be designated.

6. The Executive Director shall provide notice of this limited rehearing to all parties in the manner prescribed by Rule 52 of the Commission's Rules of Practice and Procedure. The Executive Director shall provide notice to all parties in the following proceedings: Application 96-03-031, Application 96-04-030, Rulemaking 88-08-018, and Rulemaking 90-02-008.

7. Except as expressly provided in this order, rehearing of D.97-04-082 is denied.

8. Except to the extent that rehearing has been granted on the allocation issues concerning the stepdowns in the manner set forth herein, ORA's petition for modification of D.97-04-082 is denied.

This order is effective today.

Dated July 23, 1998, at San Francisco, California.

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

I will file a dissent.

/s/ P. GREGORY CONLON
Commissioner

I will file a concurrence in part, and
a dissent in part.

/s/ JESSIE J. KNIGHT, JR.
Commissioner

D.98-07-100
A.96-03-031, A.96-04-030

Commissioner P. Gregory Conlon, Dissenting:

I strongly support the conclusion reached in today's decision that the Commission committed legal error in failing to recognize as "interstate transition costs" (also known as ITCS) the costs associated with the FERC-approved settlements of SoCalGas' stepdowns on the El Paso and Transwestern pipeline systems. In both my proposed alternate decision when this issue first came before the Commission in April, 1997, and in my written dissent to the adopted BCAP decision (D.97-04-082), I stated my belief that the FERC settlement costs should have been classified as interstate transition costs and therefore should have been allocated according to the ITCS formulas contained in our capacity brokering decisions (D.91-11-025 and D.92-07-025).

While I am pleased that my colleagues have now recognized that the adopted decision committed legal error in its method of allocating step-down costs, I strongly disagree with their recommended solution to resolve the legal error. In my opinion, having found that legal error was committed, we should fix it and move on. Instead, my colleagues have chosen to send this one issue (the allocation of step-down costs) back for further hearings.

I find this approach troubling for three reasons. First, it violates the fundamental principles which the Commission relied upon in resolving this issue in the original BCAP decision. Second, it creates additional inconsistencies in the original BCAP decision. Finally, it puts the Commission in the position of choosing to relitigate and reopen a proceeding that was resolved in 1997 at the same time that the Commission is trying to move forward and adopt significant changes to the regulation of the gas industry in our Natural Gas Strategy proceeding

Sending the step-down issue back for rehearing violates the fundamental principles the Commission used to originally decide this issue.

The original BCAP decision is quite clear as to why and how the Commission decided the step-down issue the way it did. The Commission's stated rationale was:

> We will maintain our established policy framework until we have reviewed our transition cost policy in a generic, statewide proceeding. We should not dismantle our policy in a piece-meal fashion, one utility at a time." (D.97-04-082, page 74, emphasis added)

By its adoption of the rehearing order, the Commission will be doing exactly the opposite of what its stated rationale was. We will now be examining a significant change to our "established policy framework" in a "piece-meal fashion" applicable to "one utility" only, and not as part of a "generic statewide proceeding."

While it may be legally defensible to send this one issue back for limited rehearing, it is clearly inconsistent with the Commission's stated rationale for deciding this issue the way it originally did. Both the original BCAP decision, and almost all of the parties involved in the debate over the allocation of step-down costs, argued that we should retain the existing methodology for allocating transition costs that the Commission established in the capacity brokering decision. 1

Sending the step-down issue back for rehearing creates additional inconsistencies in the BCAP decision.

In many respects the BCAP decision was a "stay-the-course" decision For many issues, the Commission stated that it would not be making any major policy changes but would continue previous policies established by the Commission in the Global Settlement (D.94-04-088 and D.94-07-064) and capacity brokering decisions (D.91-11-025 and D.92-07-025). By now deciding to send the issue of step-down costs back for rehearing, the Commission is now creating new inconsistencies within the BCAP decision.

1 The parties arguing that the Commission should retain the existing methodology for allocating ITCS costs included SoCalGas, CIG/CMA, Edison, and SCUPP/IID See SoCalGas Comparison Exhibit (October, 1996), page 13

For example, the Commission used almost the identical language that it used to resolve the step-down issue to decide that it would not make any changes to the "10% Cap" on ITCS payments by Core customers:

> We will maintain our current policy and not eliminate the allocation of ITCS to the core as ORA suggests. In our view a policy change of this magnitude is not appropriate for a utility specific cost allocation proceeding and should only be undertaken in the context of a statewide generic rulemaking. (D.97-04-082, page 69-70, emphasis added)

The issue of the 10% cap on Core ITCS involved a potential shift of approximately $13 million per year between the core and non-core classes. The allocation of step-down costs involved approximately $150 million in costs over 5 years. In deciding to send the issue of step-down costs back for rehearing, there is now no justification given as to why a potential shift in costs of $13 million is a "policy change" of such "magnitude" that it is inappropriate to be considered within the BCAP decision but that a "policy change" involving $150 million is.

Relationship to our Natural Gas Strategy

Finally, I am concerned over how sending back for rehearing the allocation of step-down costs will affect the Commission's attempts to restructure the natural gas industry (R.98-01-011). The rehearing decision now reopens a decision that the Commission originally decided over 14 months ago while at the same time the

Commission is trying to move forward as expeditiously as possible to implement a new regulatory structure. I am not sure what purpose this serves, and fear that revisiting the BCAP decision at this late date can only detract the Commission from its efforts to move forward.

/s/ P. Gregory Conlon
P. GREGORY CONLON

San Francisco, California
August 11, 1998

A.96-03-031, A.96-04-030
D.98-07-100

Commissioner Jessie J. Knight, Jr., Concurring in Part, Dissenting in Part:

Although written dissents by Commissioners are rare in re-hearings, many times they are submitted when a dissenting voice feels that a majority decision threatens fundamental principles that may negatively impact future policy considerations. This case clearly fits into this category of submission to my way of thinking. I do not agree with the portion of this rehearing order pertaining to the allocation of surcharges resulting from the volumetric stepdowns in interstate pipeline capacity on the El Paso and Transwestern pipelines. I disagree with the assessment that the Southern California Gas Company Biennial Cost Allocation Proceeding (SoCalGas BCAP) decision (D.97-04-082) contained legal error. Furthermore, I am troubled that this rehearing order resurrects consideration of a longer amortization of the Interstate Transition Cost Surcharge (ITCS) account balance for a period longer than the full BCAP period. This last idea was specifically addressed and specifically dismissed during the public deliberation of the five Commissioners on the original order. This misstep is not just a second bite at the apple on an issue, it is a misapplication of the rehearing process, a process that is strictly designed for the determination of legal error.

The only reason that I have voted to support this particular order is because it was better than all the other options presented to me. Since I find no legal error, I could not support a proposed reversal of the original order. Such a reversal by way of rehearing would have almost completely negated the purpose of the alternate I authored, which gained the support of the Commission's majority. Indeed, a reversal at this juncture would have an unknown rate effect on both core and noncore customers, an effect which a purely legal analysis on this rehearing does not capture.

My only hope to maintain fidelity and achieve the intent of the original order is that a closer examination of the surcharge allocation issues during rehearing will decisively indicate that benefits accrue both to core and noncore customers from the allocation used in D.97-04-082, thereby affirming the outcome contained in the original order.

TURN asserts in its rehearing request that 1) the allocation of the costs and benefits associated with capacity stepdowns in the BCAP decision is inconsistent with previous Commission decisions on transition costs, especially the Capacity Brokering Implementation decision (D.92-07-025); and 2) the BCAP decision on

this issue is not supported by the record. In my judgment, the issues raised for rehearing by TURN hinge on policy interpretation of prior orders and re-litigate the advocacy position taken by TURN during this case with which the majority of Commissioners did not agree when they voted for D.97-04-082. Furthermore, and most importantly, TURN's allegations that the record was inadequate sets a dangerous precedent. This claim precludes the Commission from drawing reasonable inferences from the evidence presented during the course of the case about second and third order economic effects of policy. Moreover, this discussion happened in full view of the public and interested stakeholders. To accept TURN's argument here will certainly become more problematic over time as the Commission must grapple with more complex and challenging issues in the future, particularly as competition becomes more mature in ever-evolving monopoly industries. The net effect of TURN's allegations could mean less public debate by Commissioners – certainly an unintended effect and possibly negating recent organizational reform efforts such as those contained in Senate Bill 960.

The Allocation of the Stepdown Surcharges is Not Inconsistent With Prior Orders

In response to TURN's first allegation, it has been my view that the allocation of surcharge costs to both core and noncore customers as adopted in D.97-04-082 is not inconsistent with prior Capacity Brokering decisions. The surcharges are the result of contract stepdowns on the interstate pipelines. The Capacity Brokering implementation decision envisioned that when stepdowns like the ones at issue here occurred, the noncore would no longer bear a liability for these costs. (D.92-07-025, mimeo., at page 41) The 1992 decision clearly states, "Utility commitments made after issuance of D.91-11-025 shall not be included in the ITCS." (D.92-07-025, mimeo., at p. 42) This statement upholds my conclusion that demand charges, and surcharges embedded in them, are new liabilities resulting from rate case settlements adopted in 1995 and 1997 that do not belong in the ITCS. Indeed, D.92-07-025 explicitly states, "New utility commitments should not be included in the ITCS." (D.92-07-025, Conclusion of Law 33, mimeo at p. 52, emphasis added)

My disagreement with this rehearing order hinges on an interpretation of the word "new." I view these surcharge costs as new utility commitments based on the following reasoning. The contract stepdowns turned unsubscribed capacity costs back to the interstate pipelines to collect, or bear, in a new fashion. The pipelines could no longer rely on contracts with the utilities, and the ITCS accounts of the utilities, to collect these costs. As a result, litigation of interstate pipeline general rate cases before FERC resulted in comprehensive settlements wherein the interstate pipelines and their utility customers, including SoCalGas,

share the risks of these unsubscribed capacity costs. Indeed, part of the costs passed on through the surcharges result from PG&E's relinquishment of a substantial amount of capacity on the El Paso system. These are unquestionably new costs for SoCalGas customers. The portion borne by the interstate pipeline customers is collected through the rate case settlement surcharges which parties such as SoCalGas, Southern California Edison (SCE), Southern California Utility Power Pool (SCUPP), and Imperial Irrigation District (IID) indicate are a component of the customer's reservation demand charge. (SCE/SCUPP/IID rehearing response, June 19, 1997, p. 2).

According to these parties, the surcharges are unmistakably part of the newly established interstate pipeline rates. As costs on the interstate pipeline have gone up, customers who use the interstate pipeline (i.e. both core and noncore customers), should bear these costs in relation to the type of service they enjoy. This is consistent with the principle of cost causation and in my view is not inconsistent with prior capacity brokering decisions. It would be inconsistent with D.92-07-025 to treat these surcharges, which are essentially new utility commitments based on the 1996 settlement agreements, as costs to be recovered entirely from the noncore through the ITCS. Now that the contracts reserving this capacity are no longer in effect, why must the noncore continue to bear the full burden for these costs? TURN implies that since these costs once belonged to the noncore, therefore they must continue to be assigned this way. By this logic, the noncore would never escape these charges. Furthermore, why should SoCalGas' noncore customers pay a larger portion of PG&E's stepdown costs than SoCalGas' core customers when these costs were never contemplated in the Capacity Brokering decisions?

Furthermore, the foundation of TURN's arguments regarding consistency with prior Commission orders hinges on policy interpretation of the Capacity Brokering decisions. Consistency of application is not an argument on which a legal error claim can be sustained to grant rehearing. I reiterate my interpretation that Capacity Brokering policy relinquishes the noncore from paying the costs of stranded capacity once contract stepdowns have occurred. The surcharges collect costs incurred today by the pipelines. I do not agree that allocating these surcharges to both core and noncore customers based on current usage is a policy change. In fact, TURN's arguments are inconsistent in that TURN acknowledges that surcharges were never contemplated in Capacity Brokering. (Oral Argument transcript, April 20, 1998, page 40) Thus, on this basis alone, it is a new call as to what to do with them. Now that D.97-04-082 has not chosen TURN's arguments, the Commission is considered inconsistent. But how can the Commission be inconsistent if the prior order did not envision this scenario? This logic truly escapes comprehension. Rather, I say consistency is

maintained because the noncore is released from this liability as unequivocally stated by this Commission in 1992.

Essentially, I disagree with the rehearing order when it states that D.97-04-082 "unintentionally erred" in concluding that the surcharges constitute "new" costs. The rehearing order maintains that the surcharges are simply a new form of an old commitment, which implies that the language in D.92-07-025 regarding new commitments is not applicable to these surcharges. I find it preposterous that the Commission must be locked into a rigid framework that prevents it from taking a fresh look at a situation and elucidating an outcome pertinent to today's reality. Effectively, parties that have sought to overturn the original decision would have the Commission rigidly adhere to stale interpretations of principles established over six years ago rather than allowing today's economy and market conditions to influence a more current interpretation of historical policy statements. This is truly nonsensical and has extraordinary implications for future Commission decisions.

The Record Supports the Outcome in D.97-04-082

With regard to TURN's second allegation that the record does not support the policy outcome in D.97-04-082, I disagree. The alternate which I crafted did not fabricate an outcome out of thin air, as TURN alleges. SoCalGas, San Diego Gas & Electric, SCE, SCUPP/IID, and California Industrial Group/California Manufacturers Association all argued on the record of the case for the allocation of surcharges that was ultimately adopted. (D.97-04-082, mimeo., at 73) In addition, all parties received notice that this issue would be decided in the SoCalGas BCAP proceeding. TURN itself clarifies that the issue was deferred from the gas restructuring proceeding R.88-08-018/R.90-02-008 to the SoCalGas BCAP. (TURN rehearing request, June 4, 1997, page 5)

During the oral argument, the California Manufacturers Association verified where the record of the case contained testimony regarding noncore gas customers' costs of doing business in California and the ability of California businesses to compete. (Oral Argument transcript, April 20, 1998, pages 33-36.) Southern California Edison cited to evidence on the record that core and noncore electric customers would bear increased electric costs if TURN's position prevailed. (Oral Argument transcript, April 20, 1998, page 27) While some may argue that this evidence cannot be relied upon because these are only generalized claims, I believe that it is in this area that there is discretion for the Commission to draw reasonable inferences from the testimony for decision-making purposes.

Furthermore, SoCalGas' testimony during the case indicated that if there had been no settlements at FERC, there would be a significant likelihood that all the costs associated with unsubscribed capacity on the interstate pipelines would have been allocated to the remaining firm shippers at higher rates than those negotiated in the settlements. (Exhibit 1, Chapter J, Table LPL-3, Witness Lorenz) Thus, I conclude that the record contained evidence of a potential benefit to the core from the adopted allocation of the settlement surcharges.

Rehearing Should Affirm the Surcharge Allocation in D.97-04-082

Although I do not agree that legal error requires the reexamination of this surcharge allocation issue, I am confident that upon rehearing, further evidence will sustain the outcome supported by the majority of the Commissioners who voted for D.97-04-082. As rehearing commences, the Commission should be fully cognizant of the larger issues raised by this surcharge debate.

First and foremost, both "core" and "noncore" are arbitrary customer class distinctions which may soon be relics of the past. Second, we should not lose sight of the fact that these surcharges reflect costs that interstate pipelines incur as part of their operations today. The customers who use the pipeline today should bear these costs. Let us not hold one class of customers to an archaic cost allocation scheme in the name of consistency when an industry is undergoing monumental change. This rigidity is not good public policy, but merely perpetuates a subsidy structure of the past. Simply because noncore customers once bore responsibility for these costs, this allocation should not be carved in stone - particularly when an end-point to the liability had been predetermined. Rather, this Commission has made a conscious move to encourage competition by eliminating hidden subsidies and making customers shoulder the costs of the services they use.

Third, and most important, while I believe that decisions should not be based on mere speculation, the Commission should not be constrained by a rigid requirement to prove absolute, tangible short term benefits. The Commission should be able to rely on its own synthesis of information that long term and possibly second order economic benefits will accrue to the economy of California. If decisions cannot be made without proving that something will occur before it actually does, the breakup of AT&T back in 1984 may never have occurred and we would be living today in a world without pagers, PCS devices and cellular phones simply because we could not prove these technologies would take hold.

In closing, I restate my confidence that an enhanced record will sustain the outcome of D.97-04-082. It is my hope that this enhancement can occur quickly

so that I may see this issue resolved before the conclusion of my term. I pray that parties and staff seek to make this happen on an expedited basis.

Dated July 23, 1998 at San Francisco, California.

/s/ Jessie J. Knight, Jr.
Jessie J. Knight, Jr.
Commissioner

A.96-03-031, A.96-04-030
D.98-07-100

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Rehearing Should Affirm the Surcharge Allocation in D.97-04-082

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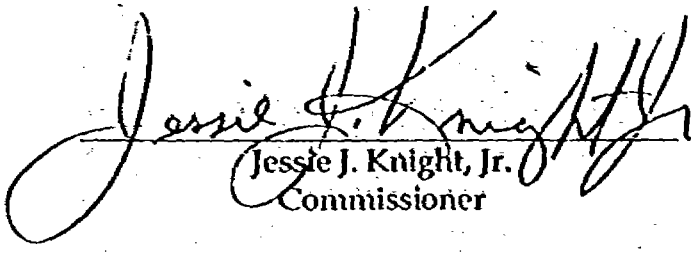
so that I may see this issue resolved before the conclusion of my term. I pray that parties and staff seek to make this happen on an expedited basis.

Dated July 23, 1998 at San Francisco, California.



Jessie J. Knight, Jr.
Commissioner