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Decision 99-03-026

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

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 LIMITED REHEARING TO CLARIFY DECISION (D.) 98-07-100 AND DENYING REHEARING OF THE DECISION, AS MODIFIED

I. INTRODUCTION

In D.98-07-100, we disposed of the applications for rehearing of D.97-04-082, filed by the City of Long Beach and The Utility Reform Network ("TURN"), and the petition for modification of this decision, filed by the Office of Ratepayer Advocates ("ORA"). D.97-04-082 involved the 1996 Biennial Cost Allocation Proceeding ("BCAP") applications filed by Southern California Gas Company ("SoCalGas") and San Diego Gas and Electric Company. (D.98-07-100, pp. 1.) We also disposed of the petition for modification of D.97-04, filed by the Office of Ratepayer Advocates ("ORA") in this decision. (D.98-07-100, pp. 4 & 20.)

Among the issues we considered in D.97-04-082 were those involving the relinquishments by SoCalGas 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 D.97-04-082, 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," based upon the amount of capacity reserved for each of these classes of customers. (D.97-04-082, p. 74 (slip op.).)

In D.98-07-100, the Commission discussed in much detail how the "surcharges" resulting from the stepdowns were not new costs,[1] but constituted the same transition costs which the noncore customers were made responsible for in its previous Capacity Brokering decisions (D.91-11-025 and D.92-07-025), but in a reduced amount. (D.98-07-100, pp. 8-11.) Thus, the Commission concluded that it erred in D.97-04-082 by treating these "surcharges" as new costs, and allocating these "surcharges" in a manner inconsistent with its previous decisions. Rather than modifying D.97-04-082 to make it consistent with its Capacity Brokering decisions, the Commission decided to grant a limited rehearing so as to specifically address the allocation issues (see D.98-07-100, pp. 12-14.), and to reach a decision based on an adequate record.

Applications for Rehearing of D.98-07-100, were filed by California Industrial Group and California Manufacturers Association (jointly, "CIG/CMA"); Southern California Gas Company ("SoCalGas"); Southern California Utility Power Pool and Imperial Irrigation District (jointly, "SCUPP/IID")[2]; and Southern California Edison

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[1] In D.98-07-100, the Commission noted that the costs resulting from the relinquishment of capacity on El Paso by Pacific Gas and Electric Company and a small amount by others were arguably new costs. D.98-07-100 also granted a limited rehearing to address the allocation of these costs. (D.98-07-100, pp. 13.)

[2] In their joint rehearing application, SCUPP and IID noted that their application was supported by the Southern California Generation Coalition ("SCGC"), the members of which, in addition to SCUPP and IID, are Houston Industries Power Generation, Inc. and Williams Energy Group.

Company ("Edison"). The following challenges are raised: the Commission erred in determining that the "surcharges" were not new costs; D.98-07-100 is inconsistent with the allocation policies adopted in D.92-07-025 and unsupported by the record; there was no need to grant a limited rehearing because there was evidence in the record to support the allocation adopted in D.97-04-082; the Commission did not comply with Public Utilities Code Section 1705 by failing to resolve the sufficiency of the evidence issue raised by TURN; the granting of limited rehearing was beyond the relief requested in TURN's application; D.98-07-100 contemplates an unlawful retroactive allocation of the surcharges; the Commission has committed legal error by prejudging the outcome of the rehearing authorized by the challenged decision, D.98-07-100 is inconsistent with past decisions in its discussion concerning the surcharges associated with the stepdowns by customers other than SoCalGas; and D.98-07-100 is inconsistent with the recently enacted Senate Bill ("S.B.") 1602.

Responses were filed by The Utility Reform Network ("TURN"), the Office of Ratepayer Advocates ("ORA"), and SCUPP/IID. In their responses TURN and ORA oppose the applications for rehearing. In their response, SCUPP/IID supports the S.B. 1602 argument raised by the rehearing applicants.

We have reviewed each and every allegation raised in the rehearing applications. We are still of the opinion that we erred in D.97-04-082 by concluding that the "surcharges" were new costs, and ordering an allocation of these costs in a manner inconsistent with previous Commission decisions. We also believe that the granting of a limited rehearing in D.98-07-100 was lawful for the reasons described below. Thus, we conclude that the legal arguments raised in the applications for rehearing have no merit. However, the applications for rehearing do suggest the need for clarification of some of our determinations in D.98-07-100. Thus, we will grant a limited rehearing, solely for the purpose of modifying D.98-07-100 in the manner discussed below. The modifications involve the scope of the Interstate Transportation Cost Surcharge ("ITCS") issues in the

limited rehearing granted in D.98-07-100; the need to revise D.97-04-082 to correct the error in that decision; and the addition of a brief explanation in D.98-07-100 as to why the record was inadequate. Thus, the applications for rehearing of D.98-07-100, as modified, should be denied.

Following the filing of these applications for rehearing, there have been other related filings. On September 14, 1998, SCUPP/IID filed a motion for stay of the proceedings ordered in the D.98-07-100. Responses were filed by SoCalGas, CIG/CMA, and Edison. On October 16, 1998, Edison, SoCalGas, Southern California Generation Coalition ("SCGC"), and CIG/CMA jointly filed for a motion for reconsideration of the Oral Ruling of the Administrative Law Judge ("ALJ") at the September 16, 1998 Prehearing Conference. On October 21, 1998, an Assigned Commissioner's Ruling ("ACR") was issued on the motion for stay and the motion for reconsideration. The ACR denied both motions. On October 26, 1998, SCGC, CIG/CMA, Edison, and SoCalGas jointly filed an appeal to the full Commission of the ALJ's Ruling of September 16, 1998. TURN submitted a response to this filing. The same parties to the joint appeal of the ALJ's Ruling of September 16, 1998 also filed on November 10, 1998, a joint appeal of the ACR to the full Commission. On December 23, 1998, SoCalGas filed a motion to suspend the procedural schedule for the proceedings ordered in D.98-07-100, because the United States Court of Appeals issued a decision on December 11, 1998, which reversed and remanded the FERC order that approved a settlement proposed by El Paso Natural Gas Company and most of its customers regarding the ratemaking treatment associated with the relinquishment of firm interstate capacity on the El Paso system by SoCalGas, Pacific Gas and Electric company, and other firm shippers. TURN and ORA filed a joint response opposing the motion to suspend the procedural schedule. In a ruling issued February 9, 1999, the ALJ denied the motion, and ordered that evidentiary hearings would proceed as planned from March 15, 1999 to March 19, 1999.

Because the joint appeals are related to the limited rehearing granted in D.98-07-100, we will dispose of these pending appeals in the manner described below. Also, after a careful consideration of the arguments raised in the pleadings on SoCalGas' Motion to Suspend the Procedural Schedule, we affirm in today's decision the ALJ's Ruling of February 9, 1998, which denies this motion.

II. DISCUSSION

1. D.98-07-100 correctly determined that the "surcharges" related to SoCalGas' relinquishments of capacity on the El Paso and Transwestern pipelines were not new costs but were the same transition costs that the noncore was made responsible for in the Capacity Brokering Decisions, and lawfully granted a limited rehearing on the allocation issues.

The crux of the arguments in the rehearing applications is the Commission's determination in D.98-07-100 that the allocation of the "surcharges" resulting from the stepdown capacity in D.97-04-092 was erroneous because the classification of these "surcharges" as new costs in D.97-04-082 was wrong. (See D.98-07-100, pp. 8-11.) In D.98-07-100, we fully explained why we erred. (See D.98-07-100, pp. 8-11.) Rather than repeat that discussion here, we briefly note that our determination in D.98-07-100 regarding the definition of the "surcharges" resulting from SoCalGas' relinquishment of the capacity on El Paso and Transwestern was correct. This determination is supported by our Capacity Brokering decisions (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), and the FERC decisions on the El Paso and Transwestern Settlements (El Paso Natural Gas Company (1997) 79 F.E.R.C. ¶61,084, p. 61,118;[3] and Transwestern Pipeline Company (1995) 72 F.E.R.C. ¶61,085,

[3] Although the U.S. Court of Appeal recently reversed the FERC approval of the El Paso Settlement, this does not affect the discussion about the classification of the surcharges as being the same ITCS costs that the noncore

pp. 61,445-61,446, rehrg. denied, Transwestern Pipeline Company (1995) 73 F.E.R.C. ¶61,089). Based on our review of these decisions, we correctly determined that legal error had been committed in D.97-04-082 when we mistakenly concluded that the "surcharges" were new costs, and adopted an allocation of these "surcharges" based on this error. Further, our Capacity Brokering decisions support our conclusion that allocation of the "surcharges" adopted in D.97-04-082 was inconsistent with previous Commission decisions.

The rehearing applicants disagree. In particular, Edison, as well as SCUPP and IID, continue to contend that the "surcharges" from the FERC settlements are new costs, and not ITCS costs, by arguing that the "surcharges" are "stranded costs" of the FERC-regulated interstate pipeline companies resulting from the shippers' relinquishment of their capacity rights, and advocate that "the cost of this unsubscribed capacity" should be allocated in the same way pipeline reservation charges are currently allocated. (Edison's Application for Rehearing, pp. 12-14; see also, SCUPP/IID's Application for Rehearing, pp. 6-7.) However, these "surcharges" remain the very same transition costs that the noncore customers were made responsible for in Capacity Brokering

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were made responsible for in D.92-07-025. The Court of Appeal reversed the approval because FERC had unlawfully denied Edison any right to either severance or litigation against the settlement in its role as an indirect customer of El Paso. (See Southern California Edison Company v. F.E.R.C. (D.C. Cir. 1998) 162 F.3d 116, 117 & 120.)

Interestingly, in its brief to the U.S. Court of Appeal on this same case, Edison stated:

> "Edison requested rehearing. It reiterated that it was not asking FERC to pass judgment on the rates [SoCalGas] charged Edison, but instead on the rates El Paso charged [SoCalGas], and that FERC – not the state commission – was the proper forum for such a challenge. Edison also pointed out that it was not challenging the 'allocation' of [SoCalGas'] ITCS costs, as FERC had supposed, but rather the costs to Edison under the current ITCS allocation resulting from [SoCalGas'] acquiescence in El Paso's Offer of Settlement." (Edison's Brief in Southern California Edison Company v. F.E.R.C., U.S. Court of Appeal for the District of Columbia Circuit, Docket No. 97-1450, dated May 27, 1998, p. 14, emphasis in the original.)

From this statement, it appears that Edison itself believed that the surcharges resulting from the El Paso settlement constituted ITCS costs. This is contrary to what it alleges in its application for rehearing. (See Edison's Application for Rehearing, pp. 12-14.) We take official notice of this statement pursuant to Rule 73 of the Commission's Rules of Practice and Procedure. (Code of Reg., tit. 20, §73.)

Implementation Decision [D.92-07-025], supra, 45 Cal.P.U.C.2d at pp. 59-61, through the ITCS account. Only the amounts have been reduced as a result of the FERC settlements. This Commission has defined ITCS costs as "reasonably incurred transition costs, including costs associated with gas supply contracts and with firm interstate pipeline capacity which cannot be brokered at the rates billed to the utilities by pipeline companies." (Capacity Brokering Decision [D.91-11-025], supra, 41 Cal.P.U.C.2d at p. 705 [Finding of Fact No. 34].) Further, "[t]he ITCS shall be a volumetric surcharge that shall apply to noncore customer services and shall serve to recover various interstate pipeline costs." (Id. at 728.) Therefore, the applicants' attempt to characterize these "surcharges" as new costs is rejected.

Further, in their rehearing applications, CIG and CMA allege that it is D.98-07-100, and not D.97-04-082, that is inconsistent with D.92-07-025. (CIG/CMA's Application for Rehearing, p. 8.) SCUPP and IID also argue that D.98-07-100 is inconsistent with D.92-07-025, and violates Public Utilities Code Section 1708, by unlawfully reversing D.92-07-025 without giving proper notice and an opportunity to be heard. (SCUPP/IID's Application for Rehearing, pp. 10-11.) Specifically, these applicants cite to the following language in Capacity Brokering Implementation Decision [D.92-07-025], supra, 45 Cal.P.U.C.2d at p. 71, to support their claims that the surcharges were new costs and not ITCS costs:

> "Accordingly, we will direct the utilities to eliminate the use of the ITCS for each existing liability on the day that liability is no longer in effect. . . .Utility commitments made after issuance of D.91-11-025 shall not be included in the ITCS."

Relying on this language, CIG and CMA reasoned that these "surcharges" were created after the issuance of D.91-11-025, and thus by definition were not ITCS costs. Accordingly, the "surcharges" must be new costs. However, this reasoning is flawed. As discussed above, these "surcharges" were the same transition costs that D.92-

07-025 made the noncore responsible for, and they did not transform into new costs or become eliminated when they were termed "surcharges."

Also, contrary to the claim in SCUPP/IID's Application for Rehearing, pp. 10-11, these ITCS costs were not simply eliminated along with the SoCalGas' relinquishments on El Paso and Transwestern. Rather, there was still remaining capacity not relinquished by SoCalGas that was attributable to the noncore, and accordingly, the noncore remained liable for the ITCS related to this capacity. Thus, D.98-07-100 comports with D.92-07-25, and the requirements of Public Utilities Code Section 1708 for notice and opportunity to be heard were not triggered.

Consequently, we acted lawfully in granting a limited rehearing on this allocation issue. We had at least two options for correcting the error. We could have simply modified D.97-04-082 and made it consistent by allocating the "surcharges" in the manner set forth in the Capacity Brokering Implementation Decision [D.92-07-025] for the allocation of ITCS costs. We also had the option to grant a limited rehearing for the purposes of conducting an evidentiary hearing to determine whether these ITCS costs resulting from the stepdown capacity should have been allocated differently, e.g. in the same manner as adopted in D.97-04-082. We chose the latter.

At least three rehearing applicants argue that there was sufficient record evidence to support the allocation of the "surcharges" in D.97-04-082, and thus, there was no need for an evidentiary hearing. (See CIG/CMA's Application for Rehearing, pp. 7-8; SoCalGas' Application for Rehearing, pp. 3-5; Edison's Application for Rehearing, pp. 7-8.) However, our review of the record disclosed that much of the evidence available was premised on the incorrect assumption that the "surcharges" were new costs. Thus, such evidence was tainted and not reliable, and accordingly, not adequate. (D.98-07-100, p. 12.) Rather than rely on this evidence, we believe that reasonable decision-making and fairness necessitated granting a limited rehearing to permit the parties to present reliable evidence for the Commission's consideration of this issue. (See Cal. Water & Tel. Co. v.

Public Util. Com. (1959) 51 Cal.2d 478, 495.) Also, although there might have been some testimony, albeit small, that arguably might not have been tainted, there was a question as to whether this evidence was too generalized or speculative, and thus, the legal sufficiency of this evidence was questionable and might not meet even the "any record" standard. (Southern Pac. Co. v. Public Utilities Com. (1953) 41 Cal.2d 354, 369; Southern Pac. Co. v. Railroad Com. (1939) 13 Cal.2d 1215, 128.) Accordingly, the Commission correctly granted a limited rehearing to conduct evidentiary hearings on the allocation issue.

Although we did observe that the evidence was not adequate, we did not give a full explanation. Thus, we will modify D.98-07-100 to clearly explain why we found the record inadequate.

In their Joint Appeal to Full Commission of the ACR, filed November 10, 1998 and Joint Appeal to Full Commission of ALJ's Ruling, filed October 26, 1998, the rehearing applicants have argued that the limited rehearing should include the question of whether the surcharges are "new costs" or ITCS costs. In granting a limited rehearing in D.98-07-100, we did not include this issue regarding the definition of the "surcharges," simply because we had determined based on the review of the Capacity Brokering decisions and the FERC decisions that the "surcharges" in fact were the same ITCS costs that the noncore customers were made responsible for in the Capacity Brokering decisions. As our determination was a correct one, there was no need to take any evidence on this issue in the limited rehearing. Further, through their applications and their appeals, the rehearing applicants have had ample opportunity to present their arguments on this particular issue. As discussed above, we have reviewed these arguments, and we reject the request to amend D.98-07-100 to include this issue. Therefore, we will deny these joint appeals asking us to reconsider the definition of the "surcharges," and affirm the ALJ's Ruling of September 16, 1998, that the definition of the "surcharges" is not an issue in the limited rehearing.

Further, SoCalGas filed a motion to Suspend Procedural Schedule because of the U.S. Court of Appeal Decision in Southern California Gas Company v. F.E.R.C., supra, which reversed the FERC's approval of the El Paso Settlement, and remanded the case to the FERC. The ALJ issued a ruling on February 9, 1998 denying this motion, on the grounds that the surcharges were still being collected and equity required that the proceedings continue. The ruling is legally sound. Accordingly, we affirm the ALJ's ruling denying this motion.

2. Although the Public Utilities Code Section 1705 argument is without merit, D.98-07-100 is modified to correct in D.97-04-082 the erroneous assumption and allocation of the "surcharges."

In their joint rehearing application, CIG and CMA argue that the Commission failed to render any findings that the allocation of pipeline charges adopted in D.97-04-082 was unlawful or erroneous, and thus, violated Section 1705 of Public Utilities Code and the principles set forth in California Manufacturers Assn. v. Public Utilities Com. (1979) 24 Cal.3d 251, 258. (CIG/CMA's Application for Rehearing, p. 4.) SoCalGas raises a similar argument, by asserting that Public Utilities Code Section 1705 requires the Commission to make a finding that there was no evidence to support the result originally reached. (SoCalGas' Application for Rehearing, p. 5.) The rehearing applicants are claiming that the Commission was required to resolve the sufficiency of the evidence issue raised in TURN's application for rehearing, which the Commission in D.98-07-100 stated was unnecessary since it was granting rehearing of D.97-04-082.

We disagree that Public Utilities Code Section Section 1705 requires us to make a "finding" on the merits regarding TURN's sufficiency of the evidence argument. We lawfully concluded that the issue was moot with the granting of rehearing on grounds that D.97-04-082's allocation of the "surcharges" was inconsistent with previous Commission decisions. However, as discussed above and for the purposes of clarity, we

will modify D.98-07-100 to explain why the record was inadequate to support the allocation adopted in D.97-04-082.

Also, related to this Public Utilities Code Section 1705 question is the issue of whether we should have modified D.97-04-082, including the text, the findings of fact or the conclusions of law, when we discovered that there was a factual error as to the classification of the "surcharges" in D.97-04-082. We saw no need to modify D.97-04-082 to correct the error because we were granting rehearing, and in doing so had fully explained in D.98-07-100 the error that we found in D.97-04-82. The explanation was more than sufficient " 'to assist [a] reviewing court to ascertain the principles relied upon by the [C]ommission and to determine whether it acted arbitrarily, as well as assist parties to know why the case was lost.' " (California Manufacturers Assn. v. Public Utilities Com., supra, 24 Cal.3d 251 at p. 259.) However, to be in technical compliance with Public Utilities Code Section 1705, the Commission should modify D.98-07-100 so as to order that the error be corrected in D.97-04-82, and to include necessary separate findings of fact and conclusions of law.

3. Although the Commission did not violate Public Utilities Code Section 1731, D.98-07-100 is modified to make it clear that the scope of the allocation issues relates to the costs from the stepdowns.

In the rehearing applications, there is an allegation that D.98-07-100 is inconsistent with and beyond the scope of TURN's Application for Rehearing of D.97-04-082, and thus is contrary to Public Utilities Code Section 1731(b). (See CIG/CMA's Application for Rehearing, pp. 4-6; SoCalGas' Application for Rehearing, pp. 7-8; SCUPP/IID's Application for Rehearing, pp. 7-9; Edison's Application for Rehearing, pp. 14-16.) The rehearing applicants interpret Public Utilities Code Section 1731 to argue that the Commission may only grant a request for rehearing as to those matters that are specified in the application for rehearing.

In its application for rehearing of D.97-04-082, TURN argues that the decision was unlawful because it was not supported by "the record in this proceeding or by the capacity brokering decisions." (TURN's Application for Rehearing, pp. 3-4.) In a petition for modification of D.97-04-082, ORA raised the similar arguments in its appeal of D.97-04-082. (ORA's Petition for Modification of D.97-04-082, pp. 7-13.)

In D.98-07-100, we agreed that the allocation of the "surcharges" from the stepdown capacity in D.97-04-092 was inconsistent with previous Commission decisions. (D.98-07-100, pp. 7-11.) After reviewing the previous Capacity Brokering decisions and the FERC decisions, we correctly concluded that we erred when we classified the "surcharges" as new costs, rather than ITCS costs, and when we decided, based on this erroneous classification, to allocate the "surcharges" in a manner different from the allocation adopted in D.92-07-025. (D.98-07-100, pp. 8-11.) Thus, in D.98-07-100, we dealt with an issue that was specifically raised in TURN's rehearing application and ORA's petition for modification, that D.97-04-082 was inconsistent with previous Commission decisions, and granted a limited rehearing on this specific allocation issue.

The rehearing applicants are concerned that the scope of the limited rehearing is overly broad because it appears to encompass any aspect of the allocation of ITCS costs adopted in D.92-07-025, rather than merely the stepdown issues. The rehearing applicants' concern may be valid because although the Commission does imply that the issues for the limited rehearing are related to the allocation of the "stepdown costs," the questions posed in D.98-07-100 could leave a different impression about the intended scope of the allocation issues. (See D.98-07-100, p. 13.)

The ALJ's Oral Ruling of September 16, 1998 correctly characterized the scope of the limited rehearing granted in D.98-07-100. The ALJ's prehearing conference statement notes:

> "This rehearing will not revisit the core reservation policy for all ITCS assignments, as some parties' comments seem to imply. It is a limited rehearing to allow the parties the

> opportunity to convince the Commission that stepdown costs in [SoCalGas'] BCAP should be allocated differently than current ITCS policies would dictate."

Since the scope of the limited rehearing on the allocation of the ITCS issue may arguably appear overly broad and more sweeping than intended, D.98-07-100 is modified accordingly, and we also take the opportunity to affirm the scope set forth in the ALJ's Oral Ruling of September 16, 1998.

Also, the rehearing applicants assert that we violated Public Utilities Code Section 1731(b) when we did not limit the rehearing to the allocation of the "surcharges" issues and the relief sought in TURN's Application for Rehearing. (See SoCalGas' Application for Rehearing, pp. 7-8; CIG/CMA's Application for Rehearing, pp. 4-5; Edison's Application for Rehearing, pp. 14-15; SCUPP/IID's Application for Rehearing, pp. 7-9.) As discussed above, we did not intend in D.98-07-100 to broaden the scope of limited rehearing beyond the allocation of the ITCS as it specifically relates to the costs resulting from the relinquishment, and D.98-07-100 is modified to eliminate any possible misimpression.

However, the rehearing applicants err in arguing that Public Utilities Code Section 1731(b) limits the Commission's authority to delineate the scope of rehearing on an issue raised in an application for rehearing, and is limited to granting rehearing of the exact relief sought in the application. Public Utilities Code Section 1731(b) provides, in relevant part:

> "After any order or decision has been made by the [C]ommission, any party to the action or proceeding, . . . may apply for a rehearing in respect to any matters determined in the action or proceeding and specified in the application for rehearing. The [C]ommission may grant and hold a rehearing on those matters, if in its judgment sufficient reason is made to appear. . . ." (Pub. Util. Code, §1731, subd. (b).)

Contrary to the rehearing applicants' assertion, Public Utilities Code Section 1731(b) permits us to hold "a rehearing," but does not limit the Commission's authority to determine the scope of the rehearing or the type of relief granted with the rehearing.

Further, the Commission has broad authority to do all things necessary to discharge its constitutional duty of regulating public utilities, including the discretion to determine how it will correct an error after it grants rehearing and what the scope of the issues for a rehearing on a specific matter raised in a rehearing application should be. (See Cal. Const., art. XII, §6; Pub. Util. Code, §701; see also, Ford v. Pacific Gas and Electric Company (1997) 60 Cal.App.4th 696, 700.) The California Supreme Court has observed that the authority of the Commission to do all things, whether specifically designated in the Public Utilities Code, must be liberally construed. (Consumer Lobby Against Monopolies v. Public Utilities Com. (1979) 25 Cal.3d 836, 905.) No language in Public Utilities Code Section 1731(b) has abrogated this authority. Accordingly, we reject the rehearing applicants' interpretation of Public Utilities Code Section 1731(b).

4. The granting of a limited rehearing did not result in unlawful retroactive ratemaking.

Several of the applicants claim that D.98-07-100 contemplates an unlawful retroactive reallocation of pipeline surcharges, since the tariffs implementing D.97-04-082 were reviewed and approved by the Commission. (See CIG/CMA's Application for Rehearing, pp. 9-10; SoCalGas' Application for Rehearing, pp. 6-7.) This claim has no merit.

In D.98-07-100, we were not retroactively reallocating the "surcharges." Rather, we were merely correcting an erroneous classification of the "surcharges" resulting from the stepdowns, and based on this corrected information, permitting the allocation issue to be considered during the limited rehearing. The correction and the determination in the limited rehearing would date back to D.97-04-082, which is the decision where the error was committed. Thus, nunc pro tunc effect would be given to

the correction in D.98-07-100 (the rehearing order for D.97-04-082) and the determinations in the decision resulting from the limited rehearing.

Public Utilities Code Section 1736 permits the Commission to give a decision on rehearing such an effect. This statutes provides:

> "If, after such rehearing and consideration of all the facts, including those arising since the making of the order or decision, the [C]ommission is of the opinion that the original order or decision or any part thereof is in any respect unjust or unwarranted, and should be changed, the [C]ommission may abrogate, change, or modify it. The order or decision abrogating, changing, or modifying the original order or decision shall have the same force and effect as an original order or decision, but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision unless so ordered by the [C]ommission." (Pub. Util. Code, §1736.)

Further, the fact that the tariffs were reviewed and made effective on June 1, 1997, by the Energy Division does not prevent us from correcting an error, and permitting the "rates already in place to be subject to refund." The law against retroactive ratemaking does not prevent us from correcting mistakes. As discussed above, the Commission can correct the mistake and give nunc pro tunc effect as to the correction.

Moreover, we have the authority to promulgate an interim rate that is subject to refund after we grant rehearing. (City of Los Angeles v. Public Utilities Com. (1975) 15 Cal.3d 680, 707.) Thus, the Commission acted lawfully when it allowed the tariffs that became effective June 1, 1997 to remain in place, and to subject them to any adjustment depending on the outcome of the limited rehearing.

If we were to agree with these applicants' retroactive ratemaking assertion, then we could never fix an inaccuracy whether the correction favored the ratepayers, a class of ratepayers or a public utility. Obviously, we have discretion to correct our own errors, and to assure that our determinations are correct. We would be remiss in our

constitutional and statutory duties if we did not correct an error that we saw in our decision, especially one that is related to an issue raised in a rehearing application.

5. The allegation that the Commission has prejudged the categorization of the FERC "surcharges" as ITCS costs is without merit.

In its application for rehearing, Edison argues that we have committed legal error by prejudging the outcome of the rehearing authorized by D.98-07-100. (Edison's Application for Rehearing, pp. 16-17.) It makes this argument because D.98-07-100 determined that the "surcharges" were not new costs, but ITCS costs. Edison claims that the definition of the stepdown surcharges was an issue in the limited rehearing, and thus, D.98-07-100 had prejudged the issue.

Edison is simply wrong in asserting that D.98-07-100 granted a rehearing to determine what these surcharges were. As discussed above, that determination was made and fully explained in D.98-07-100. (See D.98-07-100, pp. 8-11; see also, the discussion above as to why this determination was factually and legally correct.) We granted a limited rehearing on the issues concerning the allocation between core and noncore of the "surcharges," and not on the issue of what these surcharges were. (See the issues posed in D.98-07-100, pp. 12-13 and 18-19, for the limited rehearing.) In crafting the issues for the limited rehearing, we were careful to not prejudge the allocation issues. Therefore, this allegation of prejudgment is without merit.

6. The Commission is not inconsistent on its treatment of the "surcharges" associated with the stepdowns by customers other than SoCalGas.

In their joint rehearing application, SCUPP and IID argue that we erred in granting rehearing on the question of whether the surcharge costs associated with capacity stepdown by pipeline customers other than SoCalGas should be allocated to the ITCS.[4]

[4] The Commission granted a limited rehearing on the allocation of these costs because these particular costs were lumped in with the other stepdown costs, which were erroneously allocated in D.97-04-082.

They reasoned that since we found that these specific costs were "new costs" and not ITCS costs, the Commission acted inconsistently in making them "eligible for allocation to the ITCS." (SCUPP/IID's Application for Rehearing.) This argument has no merit.

In D.98-07-100, we did not make these "new costs" eligible for allocation to the ITCS. Rather, we posed the questions for rehearing as to how these new costs should be allocated. We asked if these costs should be treated in the same manner as the costs resulting from SoCalGas' stepdowns on El Paso and Transwestern, which are collected through the ITCS. We also asked whether we should treat these "new costs" differently." (D.98-07-100, pp. 13 & 19 [Ordering Paragraph No. 4].) Accordingly, contrary to this argument raised by SCUPP and IID, we did not act inconsistently in granting rehearing on the allocation of these "new costs."

7. D.98-07-100 is not contrary to Senate Bill 1602.

In their application for rehearing, SCUPP and IID argue that D.98-07-100 is inconsistent with the recently enacted S.B. 1602 (Stats. 1998, ch. 401.). This new statute added Section 328 to the Public Utilities Code, which provides:

> "The [C]ommission may investigate issues associated with the further restructuring of natural gas services beyond decisions made prior to July 1, 1998. If the [C]ommission determines that further natural gas industry restructuring for core customers, as considered in Rulemaking 98-01-011, including, but not limited to, opening or changing competitive markets, establishing consumer protection standards, or unbundling costs, rates or services, is in the public interest, the [C]ommission shall submit its findings and recommendations to the Legislature. Prior to January 1, 2000, the [C]ommission shall not enact any such gas industry restructuring decisions. Any [C]ommission natural gas restructuring decisions for core customers, as considered in Rulemaking 98-01-011 enacted prior to the effective date of this section, but after July 1, 1998, shall not be enforced." (Pub. Util. Code, §328.)

Rulemaking (R.) 98-01-011 is the Commission's efforts to restructure the natural gas industry. It was issued on January 21, 1998 and is commonly called the "Gas Strategy" or "The Green Book."

Specifically, in their joint rehearing application, SCUPP and IID state "[t]he unbundling of interstate pipeline costs from core rates and the allocation of stranded costs arising from core unbundling are among the issues being considered in R.98-01-011." Thus, they reasoned that "[r]emoving the cost of interstate pipeline surcharges from core rates is nothing more than partial unbundling and the concomitant shifting of such costs from core customers to the ITCS mechanism." Accordingly, they argue that "it would be unlawful for the Commission, prior to January 1, 2000, to implement D.98-07-100 to alter the method for allocating ITCS costs between the core and noncore established in D.92-07-025." (SCUPP/IID's Application for Rehearing, pp. 12-13.)

The assertion that the Commission has violated S.B. 1602 is without merit. SCUPP's and IID's argument that the limited rehearing to consider an allocation of the ITCS costs (as related to the "surcharges" resulting from the stepdowns) different from D.92-07-025 constitutes partial unbundling is simply wrong. The determinations in D.98-07-100 do not constitute any sort of unbundling, as contemplated in the Gas Strategy. (See R.98-01-001, pp. 44-47.) The limited rehearing granted in D.98-07-100 in no way "unbundles" interstate pipeline demand charges from core rates. Rather, in D.98-07-100, we only granted a limited rehearing to correct the error in D.97-04-082, and to provide the parties with notice and an opportunity to present untainted evidence on those issues of whether the Commission should change the allocation adopted in D.92-07-025, as it relates to the "surcharges" resulting from the stepdowns. These were issues involved in the 1996 SoCalGas BCAP proceeding. As we stated: "Although the issues were raised during this proceeding, the record is not adequate to help us consider all aspects, ..." (D.98-07-100, p. 12.) Accordingly, D.98-07-100 is not inconsistent with S.B. 1602.

THEREFORE, IT IS ORDERED that :

1. The following sentence shall be added at the end of page 11 of D.98-07-100:

"Therefore, we will modify D.97-04-082 to eliminate this incorrect assumption."

2. D.98-07-100 shall be modified on page 18 to add an ordering paragraph, which will be numbered 2a, and which will contain the following language:

"2a. D.97-04-082 is modified as follows:

a. The third paragraph in the Discussion on pages 74-75 is deleted, and replaced with the following paragraphs:

'SoCalGas has described the surcharges resulting from SoCalGas' stepdowns on the El Paso and Transwestern pipelines as new costs. We do not agree that these particular stepdowns have resulted in any new costs for us to allocate. Rather the transition costs we have previously assigned to the noncore have been merely reduced by the FERC settlements. Thus, we will maintain our established policy framework until we have reviewed our transition cost policy in a generic, statewide proceeding. In return for receiving all of the benefits of shedding cost responsibility for 750 MMcf/d of interstate capacity, noncore and wholesale customers will pay the pipeline surcharges which result from the capacity stepdowns. SoCalGas will allocate the Transwestern "shared cost surcharge" and the El Paso "risk sharing amount" or "reservation add-on" to the ITCS account. Accordingly, this allocation will be consistent with the assignment of transition costs between the core and noncore set forth in D.92-07-025.'

b. The language in Finding of Fact No. 58, on page 174 is deleted, and replaced by the following language:

'Contrary to SoCalGas' assertion, the "surcharges" are not new costs, but the same transition costs that

noncore customers were responsible for under the capacity brokering decisions as ITCS costs.'

c. Finding of Fact No. 61 on page 174 is modified to read:

'We should maintain the established framework regarding the allocation of all capacity stepdowns. The assignment of transition costs between the core and noncore shall be consistent with the allocation set forth in D.92-07-025.'

d. The following should be added to D.97-04-082, on page 182, as Conclusion of Law No. 12:

'The allocation of the "surcharges" should be consistent with the assignment of transition costs between core and noncore as set forth in D.92-07-025.' "

3. The first paragraph on page 12 of D.98-07-100 (lines 1-13) is deleted and replaced by the following paragraph:

"Although we erred in D.97-04-082 by allocating the "surcharges" in a manner inconsistent with previous capacity brokering decisions (in particular, D.92-07-025), we next consider whether the record is adequate to support a different allocation, the one adopted in D.97-04-082. Our review of the record for this proceedings indicates that the record is not adequate. We observe that much of the available evidence as to the benefits to the core and noncore was premised on the incorrect assumption that the "surcharges" were new costs. Thus, such evidence was tainted and was not reliable, and accordingly, not adequate. (D.98-07-100, p. 12.) Also, we note that arguably there might have been some testimony, albeit small, that might not have been tainted, but our review of this evidence raises some serious questions as whether this evidence was so generalized and speculative as to be not adequate. Rather than rely on this evidence, we believe that reasonable decision-making and fairness dictates the granting of a limited rehearing to permit the parties to present reliable

and legally sufficient evidence for us to consider. (See Cal. Water & Tel. Co. v. Public Util. Com. (1959) 51 Cal.2d 478, 495.) We will grant a limited rehearing so that interested parties can address the following questions, specifically as they relate to the "surcharges" resulting from the relinquishments of capacity on El Paso and Transwestern, and not on any other ITCS related issues:"

IT IS FURTHER ORDERED that:

4. The applications for rehearing of D.98-07-100, as modified, are denied.

5. The Joint Appeal to Full Commission of Assigned Commissioner's Ruling, filed November 10, 1998 and the Joint Appeal to Full Commission of Administrative Law Judge's Ruling of September 16, 1998, filed October 26, 1998, are denied, consistent with the determinations in this decision. The ALJ Ruling of September 16, 1998, on the scope of the issues for the limited rehearing granted in D.98-07-100 is affirmed.

6. The ALJ's Ruling of February 9, 1999 which denies SoCalGas' Motion to Suspend Procedural Schedule is affirmed.

This order is effective today.

Dated March 4, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners