ALJ/RAB/eap **Mailed 9/17/99**

Decision 99-09-071 September 16, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of San Diego Gas & Electric Company and Southern California Gas Company for Approval of a Gas Transmission Service Tariff. (U 902 G) and (U 904 G)	Application 98-07-005 (Filed July 2, 1998)
In the Matter of the Application of Southern California Gas Company for Authority to Revise its Rates Effective August 1, 1999, in its Biennial Cost Allocation Proceeding. (U 904 G)	Application 98-10-012 (Filed October 01, 1998)
In the Matter of the Application of San Diego Gas & Electric Company for Authority to Revise its Gas Rates Effective August 1, 1999, in its Biennial Cost Allocation Proceeding. (U 902 G)	Application 98-10-031 (Filed October 15, 1998)

(Appearances are listed in Appendix A.)

OPINION

Summary

In this decision, we deny applicants' request for a special border tariff for gas service at discounted rates to Sempra affiliates in Mexico. The claim that such a discount border tariff is necessary is without merit. Instead, applicants' affiliates should take service at the rates provided in San Diego Gas & Electric Company's (SDG&E) default electric generation tariff.

Background

Southern California Gas Company (SoCalGas) and SDG&E are both Sempra Energy (Sempra) affiliates. In Application (A.) 98-07-005, applicants seek approval of a new international border (IB), joint transmission service tariff, Schedule IB, for service to the Commission Federal de Electricidad's (CFE) Rosarito Power Plant (Rosarito) in the state of Baja California Norte, Mexico, located about 20 miles south of the border, and to a combined cycle plant to be located about 30 miles south of Rosarito (the La Jovita plant). The shippers eligible to receive service under the tariff are two Sempra affiliates, Sempra Energy Mexico (SEM) for the La Jovita combined cycle plant and Gasoducto Rosarito (GR) for Rosarito.

As originally stated in the application, Schedule IB was also intended to provide service to the U.S. Generating Company (USGen)[1] electric generation plant to be built in the Otay Mesa area of San Diego County. However, because

[1] U.S. Generating Company has changed its name to "PG&E Generating Company." For this decision we will use the name USGen. USGen is developing a gas-fired generating project at Otay Mesa which is scheduled for operation in summer, 2002. USGen is an affiliate of Pacific Gas and Electric Company (PG&E). USGen develops, manages, and operates competitive electric power facilities in the United States. USGen is not regulated by the Commission.

USGen did not submit a timely request for service, SoCalGas does not intend to provide service to USGen under Schedule IB,[2] thus leaving only the two Sempra affiliates eligible for service under the tariff. Rates for these two shippers under Schedule IB would be 3.6 cents/therm at the delivery pressure of 275 pounds per square inch gauge (psig) at the border.

GR and SEM have been awarded long-term contracts to provide gas service to large electric generation facilities located near the U.S.-Mexico border in the state of Baja California Norte. GR signed a contract in August 1998 to provide service to CFE's Rosarito plant. Service is to start this fall. The SEM contract has conditions which make its in-service date very uncertain, but applicants believe start-up is at least two years away. Applicants propose to provide service to GR and SEM at rates which represent a significant discount from SDG&E's default rates for electric generators. Applicants also seek to exempt service to GR and SEM from an allocation of various costs, the most significant of which is the Interstate Transition Cost Surcharge (ITCS). Schedule IB also contains other terms which are highly favorable to GR and SEM.

In order to provide this service, SDG&E would have to construct a 3.7-mile pipeline from its Harvest Regulator Station to the international border crossing at Otay Mesa. GR would have to construct a 20-mile pipeline from the Otay Mesa receipt point to Rosarito.

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[2] The IB tariff requires that a customer apply for service on or before March 31, 1999, after which time the tariff would be closed to new customers. USGen failed to meet the March 31, 1999 date. By motion to file a supplemental reply brief, USGen seeks a waiver of the March 31, 1999 date. Applicants have no objection to the request to file a supplemental reply brief, but do object to the waiver. Because of our finding that the IB tariff is not needed, we do not reach the waiver issue. USGen's motion is denied.

Protests to the IB tariff, as proposed, were made by Southern California Edison Company (SCE), The Utility Reform Network/Utility Consumers' Action Network (TURN/UCAN), the Electric Generator Alliance (EGA), Southern California Generation Coalition (SCGC), City of Long Beach (Long Beach), California Cogeneration Council/Watson Cogeneration Company/California Industrial Group and California Manufacturers Association (CCC/Watson/CIG/CMA), the Office of Ratepayer Advocates (ORA), and USGen.

A.98-07-005 was consolidated for hearing with A.98-10-012 and A.98-10-031. Approximately two days of hearing were devoted to A.98-07-005.

The Need For An International Border Tariff

The fundamental principle underlying applicants' approach to the IB schedule is that it must be competitive with the most attractive alternate for transportation service that is available to potential customers.

Applicants presented evidence that there are viable alternates available to the potential IB customers. The testimony of applicants' witness Allison Smith (Ex. Nos. 29 and 29A) focused on the alternative pipeline project that she believes presented the greatest competitive threat to service from applicants in July 1998, in terms of both cost and timing. This alternative involves El Paso Natural Gas Company (El Paso) expanding its lateral from its mainline at Castle Dome, Arizona, to Yuma, Arizona (95 miles), and the construction of a new pipeline from Yuma for 150 miles across northern Baja California, Mexico, to the Rosarito power plant. Applicants assert that the viability of this alternative is bolstered by the announcement on April 12, 1999, by El Paso of an open season for additional capacity from Castle Dome to Yuma, Arizona. The purpose of the open season is to allow parties to express their non-binding interest in firm transportation service to serve natural gas markets located near Yuma, Arizona, and in the states of Sonora and Baja California Norte, Mexico.

Ms. Smith testified that in 1998 the competitive alternative could be in service within as little as 16 months from the date a commitment was made to it (Ex. No. 29, p. 4, lines 14-16). Applicants submit that this is an "imminent" competitive threat. When Gasoducto Rosarito won the contract with CFE in 1998, it had time to arrange for the competitive alternative and still meet its deadline to start service to CFE. While GR has chosen to pursue service with applicants, applicants argue that the Commission needs to approve a rate under Schedule IB that is competitive with the alternative, since Gasoducto Rosarito still has options for the future.

Applicants' witness Hansen's testimony (Ex. Nos. 28 and 28A) employed Ms. Smith's estimate of the costs of the gas transportation alternative to arrive at a recommended rate of 3.6 cents per therm at the California border at Otay Mesa. Applicants testify that this rate is necessary, if applicants are to offer a service that is competitive with an alternative service. SDG&E's current average rate to serve electric generators (EG) is 5.5 cents/therm. SDG&E proposes an EG rate of 5.384/therm.

Applicants testify that at the proposed rate of 3.6 cents/therm, and assuming volumes averaging between 20 and 30 Bcf/yr over ten years, the IB service would generate gross revenues of approximately $7 to $11 million per year, or a total of $72 to $108 million over ten years (Ex. 125 at p. 5). This amounts to a contribution to margin of approximately one million dollars per year. Should applicants lose this IB load they predict that rates for applicants' customers would increase by $4 million a year.

Every customer class represented in this proceeding (protestants) opposes the IB tariff. None of these parties believe that the alleged benefits to ratepayers outweigh the detriment that an IB tariff at a discounted rate would cause to ratepayers. These parties dispute the assertion that a competitive threat requires the IB tariff. Instead, all support considering the Mexico loads as part of the SDG&E EG tariff.

Protestants claim that, notwithstanding El Paso's open season notice, El Paso cannot possibly offer service to GR or SEM in the near future, and obviously could not do so in 1998, a year before the open season notice. The open season notice invites potential customers to submit non-binding statements of interest in firm capacity to the international border at Yuma. As protestants explain, the open season notice is nothing more than an invitation to open negotiations. Should anyone indicate an interest, negotiations would continue for some time. Only if negotiations result in binding commitments for firm service to Yuma would El Paso then seek approval from the Federal Energy Regulatory Commission (FERC) to construct the 95 miles of required expansion capacity and related facilities. It is reasonable to expect that FERC's review process would take a minimum of several months to complete. Assuming that FERC approves El Paso's plan, protestants contend that it would take El Paso at least an additional 14 to 16 months to obtain the necessary state and local government permits and complete construction of the expansion facilities.

Moreover, protestants maintain that El Paso's expansion of Yuma capacity is only half the picture. A pipeline company, identity unknown, would be responsible for building facilities 150 miles from Rosarito to Yuma to interconnect with El Paso. Not only would the builders have to get permission from Mexican authorities to construct the pipeline to Yuma, they would have to secure the right of way from an unknown number of landowners.

Discussion

In our opinion, the first record evidence of potential competition from a source external to Sempra and its affiliates surfaced in May 1999. In 1998, Sempra was striking at shadows. Today, GR has a 10-year contract in hand and is building a 20-mile pipeline from Rosarito to Otay Mesa. There was no competitive threat in 1998, there is none today, and any future competition is mere speculation.

Not only was the testimony regarding a competitive threat in 1998 unpersuasive, but also the confidential testimony regarding costs to build this competing pipeline was equally unpersuasive. The unredacted portion of Ms. Smith's testimony (found in Ex. No. 29A) provides her analysis of the cost of the competitive alternative. We have reviewed the unredacted testimony on this issue and find it vague as to detailed costs and devoid of credible evidence regarding (1) the entity to build this competing pipeline through Mexico, (2) the land acquisition and environmental problems to be met and overcome, and (3) the time required to complete the job.[3] Applicants contend that it would only take 14 to 16 months to complete the interconnect with El Paso. Given the uncertainties inherent in any large-scale construction project, applicants' scenario is improbable. It is the merest speculation that this pipeline could have been built within the time necessary to make it a competitive threat in 1999.

Because of the confidential nature of applicants' cost projections and the severity of the restrictions placed on reviewing those projections, only ORA reviewed the material. ORA was not impressed.

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[3] The witness' prepared testimony description of the route of the Mexico pipeline is "The Rosarito supplier would build the 150-mile pipeline system through northern Baja." (Ex. 29, p.5, L.9.) The accompanying map provides no detail of an actual routing and does nothing to demonstrate that a credible competitive alternative exists.

> "Any calculation for the cost of service of a hypothetical competitor of providing service to Rosarito is highly speculative. ORA notes that SDG&E's analysis ignores many of the benefits of using the SoCalGas/SDG&E systems. For example, if a customer took service from an El Paso pipeline expansion through Northern Mexico, this customer would only interconnect to the El Paso system. The SoCalGas/SDG&E system allows access to El Paso, Transwestern, Kern River, and the PG&E system via Wheeler Ridge. SDG&E's analysis also ignores the rate design of the pipeline service. El Paso typically has a large fixed component in its rate design, while the SDG&E proposal is a volumetric rate design subject to some minimum volume constraints. Customers typically prefer volumetric over fixed charge rate designs. Customers look at more than just the rate when evaluating potential competitive alternatives. The SoCalGas/SDG&E system offers important advantages which competitors can not offer." (Exhibit 33, Direct Rosarito Testimony of Khoury (ORA), p. 5-8 through P. 5-9.)

On cross-examination, the ORA witness emphasized that he did not endorse the SoCalGas/SDG&E analysis given the infinite number of variables and scenarios, which could lead to different results:

Schedule IB represents an obvious attempt by applicants to shift discounting risks to their existing customers. It also contains additional terms of service that are unduly favorable to GR and SEM and could result in the degradation of service to applicants' domestic customers. There is no need for a special discount tariff for service to GR and SEM. With respect to SoCalGas, GR and SEM volumes are indistinguishable from other SDG&E volumes received by SoCalGas for transportation across its system to the interconnection points with SDG&E's system. With respect to SDG&E, GR and SEM are indistinguishable from any other electric generation customer. GR and SEM volumes will be metered within SDG&E's service territory. SDG&E will be providing GR and SEM with the same customer services that it provides its other retail customers. And all of the gas delivered to GR and SEM will be used for electric generation purposes. Accordingly, SDG&E's service to GR and SEM should be governed by the same default tariff and should be delivered at the same fully allocated rates that apply to SDG&E's default EG service.

Applicants have made much of an El Paso competitive threat. We find that threat chimerical. But there is a real competitive threat that applicants have created with their proposed IB tariff: the threat of power produced in Mexico competing on unfair terms with power produced in the United States. As the testimony of the electric generator witnesses makes clear, low transportation rates to Rosarito means higher rates for California generators and unfair competition at the Power Exchange, where CFE is expected to sell surplus power.[4]

Under applicants' proposal the risk associated with the IB tariff discount is borne not by shareholders but by other customers, including the EG customer. The EG customer must thus pay higher rates than it would otherwise in order to provide a discounted transportation rate that benefits its competitors in Mexico and near the international border. Those discounted transportation rates will allow the IB generators to offer correspondingly lower bids in the Power Exchange, even if they are less efficient than the domestic generator. As a result of those lower bids, the IB generators could be successful in the PX auction and be selected to dispatch their generation when the domestic EG customer is not.

The gas delivered at the international border, at the boundary of SDG&E's service area, has only one use: electrical generation. Because of the convergence

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[4] CFE's electric system in Baja California is interconnected with the California grid. CFE actively participates in both purchasing power from and selling power into the Western U.S. markets. CFE's new 550 MW plant will be among the most efficient gas-fired plants connected to the California grid.

of the gas and electric industries and the new, highly competitive market for electric generation, requiring SDG&E to charge the same rate for all gas used for electrical generation and delivered within or at the boundary of the SDG&E service area will promote fair and vigorous competition in the California electric generation market, to the benefit of all California electric customers.

Comments to the Proposed Decision

We have received comments from the parties who, for the most part, reiterated the arguments made in their briefs. SDG&E has pointed out that there will not be an EG tariff until the BCAP is decided and, therefore, service at the border must be provided under current tariffs. SDG&E proposes to serve under its rate schedule for cogenerators, GTCG-SD until the BCAP is decided. SDG&E's proposal is reasonable and will be adopted.

We have made some nonsubstantive language changes for clarity.

Findings of Fact

1. Only two customers, Gasoducto Rosarito and Sempra Energy Mexico, are eligible for the proposed Scheduled IB, and both are affiliates of applicants.

2. Schedule IB is not necessary to avoid bypass by GR and SEM.

3. Applicants have overstated the risk of bypass by GR, as GR must connect to SDG&E's system and take service from SDG&E in order to meet its contractual commitments to CFE. As the only potential bypass option identified to date is purely speculative, there is no credible bypass threat.

4. A competitive service did not exist in July 1998, does not exist in July 1999, and whether it will exist in two more years is pure speculation.

5. There is no need for a discounted rate to attract potential load near the U.S.-Mexico border.

6. The proposed IB tariff will have the effect of providing applicants' affiliates with preferential treatment not available to other electric generators.

7. It is not good regulatory policy to require domestic generators to subsidize their direct competitors across the international border.

8. The gas proposed to be delivered at the international border, at the boundary of SDG&E's service area, has only one use: electrical generation.

9. Schedule IB should be rejected and GR and SEM should receive service under SDG&E's electric generation tariff as soon as the 1999 BCAP decision is issued and effective. The current SDG&E rate schedule for utility electric generation (Schedule GTUEG-SD) has a monthly fixed demand charge structure that would not workably apply to service to GR or SEM. The current SDG&E rate schedule for cogenerators (GTCG-SD) has a rate design that would workably apply to service to GR or SEM prior to a decision in the 1999 BCAP.

10. The forecasted throughput for service at the international border should be included in both SDG&E's EG forecast and SoCalGas' wholesale forecast for ratemaking purposes.

Conclusions of Law

1. Approval of the proposed international border joint transmission service tariff should be denied.

2. Applicants' IB tariff proposal creates an unfair, anticompetitive, and insupportable competitive advantage for IB generators.

3. Requiring SDG&E to charge the same rates for all gas used for electrical generation and delivered within or at the boundary of the SDG&E service area will promote fair and vigorous competition in the California electric generation market, to the benefit of all California electric customers.

4. Electric generation customers taking service at the international border should take service under SDG&E's electric generation rate schedule that will be adopted in SDG&E's 1999 BCAP. Until then, any service should be provided under the current SDG&E cogenerator rate schedule, Schedule GTCG-SD.

ORDER

IT IS ORDERED that:

1. Approval of the proposed international border joint transmission service tariff is denied.

2. Electric generation customers taking service at the international border should take service under SDG&E's electric generation rate schedule that will be adopted in SDG&E's 1999 BCAP. Until then, any service should be provided under the current SDG&E cogenerator rate schedule, Schedule GTCG-SD.

3. Application 98-07-005 is closed.

This order is effective today.

Dated September 16, 1999, at San Francisco, California.

RICHARD A. BILAS
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HENRY M. DUQUE
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APPENDIX A

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