

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION G-3216

August 1, 1997

RESOLUTION

RESOLUTION G-3216 SOUTHERN CALIFORNIA GAS COMPANY REQUESTS TO ESTABLISH A MEMORANDUM ACCOUNT TO RECORD ADDITIONAL TAXES AND INTEREST INCURRED FROM AN AUDIT OF ITS FEDERAL TAX RETURNS FOR 1983, 1984 AND 1986; AND TO MODIFY ITS NATURAL GAS VEHICLE TARIFFS. DENIED.

BY ADVICE LETTER 1961-G, FILED ON JUNE 20, 1990.

BY ADVICE LETTER 2276-G, FILED ON FEBRUARY 23, 1994.

SUMMARY

1. By Advice Letter (AL) 1961-G, Southern California Gas Company (SoCalGas) requests to establish a memorandum account to record additional taxes and interest associated with the audit of its federal tax returns for 1983, 1984 and 1986
2. Protest were filed in AL 1961-G by both Division of Ratepayer Advocates (DRA), now Office of Ratepayer Advocates, and Toward Utility Rate Normalization (TURN), now the Utility Reform Network. DRA contends that granting SoCalGas' request would be retroactive rate making. TURN agreed and endorsed DRA's position
3. This resolution rejects AL 1961-G. DRA and TURN's protest are granted.
4. By AL 2276-G, SoCalGas requests approval to modify its Natural Gas Vehicle (NGV) tariffs as follows: divide its NGV tariffs into four new rate schedules, make minor clarification changes to current and effective tariff sheets, adopt its pro forma agreement for a vehicle refueling appliance field test program, adopt its proposed billing modifications required by federal legislation and delete outdated language.
5. No protest was filed in AL 2276-G.
6. This resolution rejects AL 2276-G because Decision (D.) 95-11-035 made the proposed revisions moot.

August 1, 1997

1. In AL 1961-G, SoCalGas requests authority to establish a memorandum account to record additional taxes and interest associated with the audit of its federal tax returns for 1983, 1984 and 1986. SoCalGas claims this request is in compliance with D.90-01-016.
2. SoCalGas filed AL 1961-G because the Internal Revenue Service (IRS) unexpectedly reversed its policy regarding deducting employee benefit cost in the year incurred. This policy change resulted in SoCalGas being assessed additional federal income tax (FIT) for tax years 1983, 1984, and 1986. SoCalGas argues it was being penalized because the level of income tax allowances in SoCalGas' base rates did not include this change in policy.
3. On September 7, 1990, staff received SoCalGas' request that AL 1961-G be held in abeyance pending a decision on SoCalGas' Petition for Modification of D.90-01-016. However, on March 24, 1993, in D.93-03-039, upon written request of both SoCalGas and DRA, the petition for modification of D.90-01-016 was dismissed. No other action has been taken on this matter.
4. AL 2276-G was filed on February 23, 1994 by SoCalGas to address several items associated with its Low Emission Vehicle program. In an effort to clarify and prevent confusion of its NGV tariff schedules, SoCalGas proposed changing its two existing NGV tariff schedules into four new tariff schedules. Further, SoCalGas requested the approval of its Variable Refueling Appliance (VRA) field test pro forma agreement form, make minor changes to its current tariff sheets, adoption of proposed billing modifications required by federal legislation, and deletion of outdated language.
5. In D.95-11-035, the Commission did away with the existing NGV tariffs, and instead, directed each utility, including SoCalGas, to file natural gas tariffs that allow gradual transition from the current rate levels to rates that reflect the direct and fully allocated long-run marginal cost of the service being provided.

NOTICE

1. Notice of AL 1961-G was made by publication in the Commission's calendar and by mailing copies of the filing to adjacent utilities and interested parties.
2. Notice of AL 2276-G was made by publication in the Commission's calendar and by mailing copies of the filing to adjacent utilities and interested parties.

PROTEST

1. In AL 1961-G, protests were filed by both DRA and TURN. DRA contend that the level

SoCalGas AL 1961-G, 2276-G/BFS

of income tax allowance is based on test year estimates and not on actual FIT paid. Further, DRA argued that granting SoCalGas' request would be retroactive rate making because it would mandate a true-up rate making mechanism for income taxes and will give all other Commission regulated utilities the opportunity to request retroactive recovery of IRS adjustments to FIT returns. DRA also asserts that in D.90-01-016, the Commission denied a similar request by SoCalGas. Finally, approval of AL 1961-G would discourage utilities from pursuing adverse tax rulings. TURN agreed and endorsed DRA's position.

2. No protests were received for AL 2276-G.

DISCUSSION

1. AL 1961-G should be denied because SoCalGas has not taken any action on this matter since it requested dismissal of its petition for modification of D.90-01-016. On March 24, 1993, in D.93-03-039, the Commission ordered dismissal of SoCalGas' petition for modification of D.90-01-016.

2. Further, SoCalGas has not provided any justification to support its assertion that the proposed memorandum account does not constitute retroactive rate making. Staff agrees with DRA's position that the establishment of a memorandum account constitutes retroactive rate making as it would allow SoCalGas to recover additional FIT for prior years. Moreover, SoCalGas' base rates are based on test year estimates and not actual FIT paid by SoCalGas. Furthermore, granting SoCalGas' request would mandate a true-up rate making mechanism for income taxes and would be used by other Commission regulated utilities to request retroactive recovery of prior year IRS adjustments to FIT returns. Finally, approval of AL 1961-G would send the message that utilities need not pursue adverse tax rulings as it could recover any additional assessment from ratepayers through memorandum accounts.

3. Therefore, SoCalGas has not sufficiently supported its request to establish a memorandum account to track additional federal income tax assessed against SoCalGas by the IRS for tax years 1983, 1984, and 1986. AL 1961-G should be denied.

4. AL 2276-G should be denied because SoCalGas' request to divide its NGV tariffs schedules into four new schedules, make billing modifications required by federal legislation, and delete outdated language is moot. In D.95-11-035 the Commission did away with the existing NGV tariffs, and instead, directed each utility, including SoCalGas, to file natural gas tariffs that allow gradual transition from the current rate levels to rates that reflect the direct and fully allocated long-run marginal cost of the service being provided. SoCalGas' current NGV tariff schedules, filed in 1996, complies with this directive. The tariff schedules proposed in AL 2276-G do not. Further, SoCalGas' request to make minor changes to its current tariff sheets, approve billing modifications required by federal legislation, and delete outdated language do not

SoCalGas AL 1961-G, 2276-G/BFS

comply with D.95-11-035, and therefore, should be denied.

5. In AL 2276-G, SoCalGas also requested approval of its VRA field test pro forma agreement form. However, in D.95-11-035, the Commission found the VRA program to be an incentive, promotional program which produced no clear ratepayer benefit because the primary purpose of the VRA program was to promote the purchase of natural gas vehicles over vehicles using other types of fuel. SoCalGas' VRA field test pro forma agreement does not comply with D.95-11-035, and therefore, should be denied.

FINDINGS

1. SoCalGas filed AL 1961-G on June 20, 1990 requesting permission to establish a memorandum account to track additional federal income tax assessed against SoCalGas by the IRS for tax years 1983, 1984, and 1986.
2. DRA filed a protest to AL 1961-G, contending that the level of income tax allowance is based on test year estimates and not on actual FIT paid. DRA also contends that granting SoCalGas' request would be retroactive rate making.
4. TURN agreed and endorsed DRA's position.
5. On September 7, 1990, staff received request from both SoCalGas and DRA that AL 1961-G be held in abeyance pending a decision on SoCalGas' Petition for Modification of D.90-01-016.
6. On March 24, 1993, in D.93-03-039, upon written request of both SoCalGas and DRA, the petition for modification of D.90-01-016 was dismissed.
7. No other action has been taken on this matter.
8. On February 23, 1994, SoCalGas filed AL 2276-G, requesting approval to divide its Natural Gas Vehicle tariffs into four new rate schedules, make minor changes to current tariff sheets, adopt a pro forma agreement for a VRA field test program, approve billing modifications required by federal legislation, and delete outdated language.
9. In D.95-11-035 the Commission did away with the existing NGV tariffs, and instead, directed each utility, including SoCalGas, to file natural gas tariffs that allow gradual transition from the current rate levels to rates that reflect the direct and fully allocated long-run marginal cost of the service being provided. SoCalGas' current NGV tariff schedules, filed in 1996, complies with this directive.

SocalGas AL 1961-G, 2276-G/BFS

10. In D.95-11-035, the Commission found the VRA program to be an incentive, promotional program which produced no clear ratepayer benefit because the primary purpose of the VRA program was to promote the purchase of natural gas vehicles over vehicles using other types of fuel.

11. SoCalGas' VRA field test pro forma agreement does not comply with D.95-11-035, and therefore, should be denied.

12. SoCalGas' request to make minor changes to its current tariff sheets, approve billing modifications required by federal legislation, and delete outdated language are also moot.

THEREFORE IT IS ORDERED THAT:

1. Southern California Gas Company's request for approval of advice letter 1961-G is denied. A copy of advice letter 1961-G shall be returned to Southern California Gas Company marked denied.
2. The protest of DRA and TURN is granted.
3. Southern California Gas Company's request for approval of advice letter 2276-G is denied. A copy of advice letter 2276-G shall be returned to Southern California Gas Company marked denied.
4. This resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on August 1, 1997 The following Commissioners approved it:



WESLEY M. FRANKLIN

Executive Director

P. Gregory Conlon, President

Jessie J. Knight, Jr.

Henry M. Duque

Josiah L. Neep

Richard A. Bilas

Commissioners