

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

_____))
Application of Pacific Gas and Electric Company)
(U 39 G) Proposing Cost of Service and Rates for)
Gas Transmission and Storage Services for Period)
2011-2014.)
_____)

A.09-09-013
(Filed September 18, 2009)

**OPENING COMMENTS
OF SOUTHERN CALIFORNIA GAS COMPANY (U 904 G) AND
SAN DIEGO GAS & ELECTRIC COMPANY (U 902 M)**

JOHNNY J. PONG

Attorney for
SOUTHERN CALIFORNIA GAS COMPANY
SAN DIEGO GAS & ELECTRIC COMPANY
555 West Fifth Street, Suite 1400
Los Angeles, California 90013
Telephone: (213) 244-2990
Facsimile: (213) 629-9620
E-mail: jpong@semprautilities.com

April 4, 2011

TABLE OF CONTENTS

| | | |
|------|---|----|
| I. | SUMMARY | 1 |
| II. | DISCUSSION | 2 |
| A. | On-System Delivery Rights | 2 |
| 1. | PD errs by ignoring duly executed contracts | 2 |
| a. | <i>Exhibit A and the 1996 Amendment support on-system delivery rights</i> | 2 |
| b. | <i>PD errs in weighing PG&E's tariff language over the Agreement</i> | 5 |
| 2. | At a minimum, SoCalGas should be allowed to pursue its contracts issue | 6 |
| B. | Storage Market Transparency | 7 |
| 1. | Factual misstatements underlying the PD's ruling | 7 |
| 2. | The PD fails to promote transparent and efficient markets | 9 |
| 3. | Phase 3 can specifically focus on PG&E's postings and market transparency | 10 |
| III. | CONCLUSION | 11 |

TABLE OF AUTHORITIES

Commission Rules

CPUC Rules of Practice and Procedure, Rule 14.3.....1

Commission Decisions

D.97-08-0553

D.92-09-0875, 6

Federal Rules

18 CFR Part 284 18 CFR Part 284, 15 U.S.C. 717-717w, 3301-3432; 42 U.S.C. 7101-7352; 43 U.S.C. 1331-1356.....9, 10

SUMMARY OF RECOMMENDED CHANGES

- The proposed decision (PD) should be modified to find in favor of SoCalGas' contractual right to make gas deliveries into PG&E's city-gate in northern California. Alternatively, if the Commission does not want to use this proceeding to fully weigh the merits of the contracts dispute, it should revise the PD to indicate that this dispute should be raised as a stand-alone issue to be litigated between SoCalGas and PG&E.
- The PD should be modified to adopt additional posting requirements for PG&E's storage transactions. PG&E is a storage competitor with captive ratepayers and transmission and distribution infrastructure, just like SoCalGas. The Commission can first hold PG&E and SoCalGas to higher posting standards, at least on par with their interstate storage competitors. The Commission would thereby demonstrate its leadership and commitment to creating more transparent and efficient storage market for the benefit of California storage customers and consumers at large. Without revision, the PD conveys the opposite message.

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

_____))
Application of Pacific Gas and Electric Company)
(U 39 G) Proposing Cost of Service and Rates for)
Gas Transmission and Storage Services for Period)
2011-2014.)
_____)

A.09-09-013
(Filed September 18, 2009)

**OPENING COMMENTS OF SOUTHERN CALIFORNIA GAS COMPANY (U 904 G)
AND SAN DIEGO GAS & ELECTRIC COMPANY (U 902 M)**

Pursuant to Rule 14.3 of the California Public Utilities Commission’s Rules of Practice and Procedure, Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E) file opening comments to the draft decision in Pacific Gas and Electric Company’s (PG&E’s) 2011-2014 Gas Transmission and Storage Rate Case (Gas Accord).

I. SUMMARY

The proposed decision (PD) adopts the Gas Accord settlement and adversely rules on the contested issues raised by SoCalGas and SDG&E on behalf of their core customers and ratepayers. Two of the issues pertain directly to the terms contained in the Gas Accord settlement agreement: exclusion of G-XF shippers from revenue sharing mechanism and the reasonableness of the G-XF rates themselves. *See* PD, p. 2. Although SoCalGas and SDG&E disagree with the PD’s findings on these issues, they realize that the Commission may be highly motivated to approve the settlement to allow PG&E to implement gas rates for 2011, and to focus on the critically important safety phase which remains open. *See* Id at 70, Ordering Paragraph 7.

However, the remaining two contested issues can be decided in favor of SoCalGas and SDG&E without impacting the Gas Accord settlement, and therefore deserve more thorough consideration on the merits than what the PD affords.

Those issues are:

- (1) whether SoCalGas (on behalf of both SoCalGas and SDG&E core ratepayers) has the right to use its contracted capacity on PG&E's backbone transmission system known as Redwood Path to make deliveries into PG&E's city-gate, and
- (2) whether PG&E's storage transactions should be made more transparent.

The record and sound public policy support an affirmative finding on both issues. While SoCalGas and SDG&E are the only parties that did not join the settlement, their issues should not be brushed aside simply to move forward with approval of the settlement. SoCalGas is both a transportation customer and storage competitor of PG&E, and represents approximately 6.4 million affected core customers (on the contracts issue) as well as all ratepayers (on the storage issue) who will be harmed if the PD is adopted. Each issue is discussed below.

II. DISCUSSION

A. On-System Delivery Rights

1. PD errs by ignoring duly executed contracts

a. Exhibit A and the 1996 Amendment support on-system delivery rights

The PD commits clear legal error by affording no weight to the evidence presented by SoCalGas expressly giving flexible delivery rights into the PG&E city-gate. Specifically, the PD fails to explain why a signed and executed contractual document, Exhibit A to the Firm Transportation Service Agreement (Agreement), does not control SoCalGas' deliveries. Absent

a substantive finding that Exhibit A is not legally binding, there is no reasonable basis for denying the express rights granted by that document.

While PG&E claimed that it was a clerical error to list two delivery points instead of one, PG&E never attempted to correct this error:

Q: Did PG&E ever attempt to correct this error?

A: Not that I'm aware of.¹

The Utility Reform Network (TURN) raised serious doubts about PG&E's claim of clerical error:

This is not a lengthy and complex document in which a single errant phrase might plausibly have been overlooked. Moreover, given PG&E's historic position that under the Gas Accord market structure southern California shippers do not have delivery rights to northern California, the inclusion of such a provision should have attracted immediate notice, and not have been casually signed and sent on its way.²

PG&E's claim is not credible when weighed against the evidence. Furthermore, the PD makes no finding that Exhibit A was an erroneous document. Yet, the PD simply believes PG&E's circumstantial explanation that there was no way that PG&E would have ever granted SDG&E or SoCalGas flexible delivery rights.³ However, the record clearly supports a contrary finding, as demonstrated by three key pieces of evidence. First, PG&E admitted that Exhibit A is the operative contractual document that would list a shipper's delivery point options:

¹ Transcript (Tr.) 1118:21-23, PG&E witness Graham, 10/25/10.

² See Opening Brief of TURN on Behalf of the Indicated Settlement Parties, pp 3-4.

³ The PD erroneously relies on a quote contained in a motion to adopt the original Gas Accord settlement. That quote was not part of the Commission's decision adopting that settlement (*i.e.*, D.97-08-055). Moreover, that quote (“[s]ince at least 1991, two years before the commercial operation of the [Line 401] Expansion, PG&E has clearly stated to firm Expansion shippers that delivery-point flexibility would not be permitted if it created a revenue shortfall for PG&E”) has no weight considering that PG&E did in fact allow shippers on that line to have flexible delivery rights before the original Gas Accord settlement, which was adopted in 1997. See PD at 44, fn. 20.

Q: *And as you stated earlier, there is no - - the operative Exhibit A to SDG&E's FTSA is the one that shows delivery capacities to two different delivery points, correct?*

A: *Correct.*⁴

Second, PG&E's statement that: "[p]ut simply, SoCalGas/SDG&E have always been permitted *only one* delivery point and that delivery point was *only* to deliver gas off-system at Kern River Station, in Southern California,"⁵ is in direct conflict with its own cross examination testimony:

Q: *To your knowledge did SDG&E ever have flexible delivery rights either prior to the Gas Accord 1 period ... ?*

A: *Yes, I believe there was a period of time where all G-XF shippers had flexible delivery point rights.*⁶

Third, the 1996 Amendment to the Agreement indicated that SDG&E's delivery rights were suspended temporarily, only until the end of the first Gas Accord period:

For the period beginning on the first day of the Negotiated Period and ending on the last day of the Negotiated Period, SDG&E agrees to deliver all gas transported under this amendment off PG&E's system, using the delivery point specified in Exhibit A attached to the original FTSA. Following the Negotiated Period, SDG&E shall have a right to whatever delivery point options are available in effective CPUC-approved tariffs applicable to long-term firm Expansion service.⁷

Combined with Exhibit A's express granting of flexible delivery rights beginning August 1, 2003, which is around the same timeframe that marked the end of the first Gas Accord period,

⁴ Tr.1122:9-13, PG&E witness Graham, 10/25/10.

⁵ See Opening Brief of PG&E and Indicated Gas Accord V Settlement Parties, p. 9 (emphasis added by PG&E).

⁶ Tr.1122:14-20, PG&E witness Graham, 10/25/10. PG&E's brief was filed *after* hearings, where its own witness admitted under oath that SDG&E actually did have flexible delivery rights at one time.

⁷ Exhibit (Ex.) 21, Prepared Direct Testimony of Johannes Van Lierop, Attachment entitled, "Amendment to the Firm Transportation Service Agreement Between San Diego Gas & Electric Company and Pacific Gas and Electric Company."

there is ample evidence, supported by two signed and executed contracts, that logically timelines that SDG&E had flexible delivery rights before the first Gas Accord period, SDG&E temporarily suspended those rights, and SDG&E regained those rights at the conclusion of the first Gas Accord period.

b. PD errs in weighing PG&E's tariff language over the Agreement

The PD relies on PG&E's explanation that because tariff schedule uses the term "delivery point" in the singular, it necessarily follows that PG&E intended that shippers be restricted to a single delivery point. *See* PD at 44-45. However, the tariff does not actually say that. Instead, the tariff schedule states: "Customer may nominate only to the Delivery Point set forth in Exhibit A to the Customer's FTSA."⁸ Again, the Commission only has Exhibit A to refer back to. Given that Exhibit A grants SDG&E two delivery point options, the Commission is confronted with resolving any inconsistency created by these documents.

The PD notes the provision in the Agreement which states, "in the event of a conflict or ambiguity between this Agreement and PG&E's Rate Schedule . . . ***the terms of this Agreement shall govern.***" *See* PD at 45, fn. 22 (emphasis added). In addition, the Commission has stated in the past, "[o]ur rule that ambiguous tariff provisions should be interpreted in order to give the customer the lowest rate is well established." *See* D.92-09-087.⁹ In that decision, the Commission found in favor of a customer of Pacific Bell over a contractual dispute involving a service tariff. Pacific Bell claimed it was erroneous to interpret tariff ambiguities against their drafters without first applying other rules of construction. However the Commission rejected that argument and instead adopted a conclusion of law stating that "tariff ambiguities should be

⁸ Ex. 18, PG&E Rebuttal Testimony, Ch. 1 (Graham), Attachment 1E.

⁹ 1992 Cal. LEXIS 961; 45 CPUC 2d 645.

interpreted against the drafting utility.”¹⁰ The Commission should follow its own rule-of-thumb expressed in D.92-09-087, which the Commission stated was “well established in Commission precedent,”¹¹ and find in favor of SoCalGas.

2. At a minimum, SoCalGas should be allowed to pursue its contracts issue

If the Commission does not modify the PD to find in favor of SoCalGas’ right to deliver into the PG&E city-gate, SoCalGas should be allowed to pursue its contracts issue on a stand-alone basis, where the merits of the evidence presented by SoCalGas, and legality of the signed contract (i.e., Exhibit A), are given full consideration. SoCalGas’ contracts issue may have been dwarfed in the context of a broader Gas Accord settlement; however, it remains a \$3-4 million per year core ratepayer issue for the duration of the Agreement.¹²

In the interest of allowing PG&E to implement the terms of the Gas Accord settlement without imprudently harming 6.4 million core ratepayers of SoCalGas and SDG&E who are receiving little to no value under the Agreement, the Commission can adopt the settlement without deciding the contracts issue. Instead, it can allow SoCalGas to litigate the issue directly with PG&E outside this proceeding, where full consideration of the evidence offered by SoCalGas is not limited due to pressures to adopt a multi-party settlement and to focus on the next phase of the proceeding.

¹⁰ Id.

¹¹ Id.

¹² See Ex. 21 (Van Lierop direct) at 2.

B. Storage Market Transparency

The PD does not adopt SoCalGas' storage transactional posting proposal. The PD's rationale follows that of PG&E and other independent storage providers (ISPs) that favor less transparency presumably because there are several storage providers in northern California. Although there is one single unified California storage market,¹³ the PD accepts PG&E's and ISPs' self-serving argument that there is a differentiation between the "southern California storage market" and the "northern California market." However, PG&E and ISP parties in this proceeding have filed applications before this Commission specifically listing SoCalGas (and its storage fields located in southern California) as competitors to their storage operations.¹⁴ More importantly, the PD does not demonstrate any interest on the part of the Commission to improve market transparency and efficiency. For these reasons, the PD should be modified to reach a more rational and prudent conclusion.

1. Factual misstatements underlying the PD's ruling

In giving weight to PG&E's argument that northern California storage market is already competitive while southern California's is not, the PD states, "SoCalGas is the only provider of gas storage services in southern California." PD at 49. The PD ignores Tricor Ten Section Hub, LLC, which has applied for the Federal Energy Regulatory Commission (FERC) approval to construct and operate storage facilities in southern California.¹⁵ As an interstate storage provider, Tricor will be required to meet FERC's posting requirements. In other words, southern

¹³ See Ex. 22, Prepared Direct Testimony of Steve Watson, Attachment A (map included in Gill Ranch Storage LLC's Application (A.) 08-07-032 showing the companies with whom it is likely to compete. That map plots SoCalGas' storage fields as competing fields.

¹⁴ See Exs. 33, 35, and 36 (applications of PG&E; Wild Goose Storage, Inc.; and Gill Ranch Storage, LLC; where these parties specifically list SoCalGas as a storage competitor).

¹⁵ See Ex. 22 (Watson direct) at 13.

California storage providers will compete and operate under transparent posting requirements where northern California storage providers would not.

The PD also states, “PG&E is already required to post certain gas storage information on its Pipe Ranger website, from which storage customers can obtain the kind of information that SoCalGas wants to impose on PG&E.” PD at 49. The PD ignores the evidence that clearly demonstrates that PG&E provides information that is nowhere near what FERC requires. Table 1 of Ex. 22 provides a side-by-side comparison of what the FERC requires and what PG&E currently posts or reports. This evidence shows that PG&E does not post any pricing information concerning its storage transactions on Pipe Ranger website. The limited pricing information provided in its monthly reports on negotiated contracts, which PG&E sends to interested parties, is far less than what the FERC would require, and not even close to what SoCalGas currently posts on its public website.¹⁶ Moreover, in these monthly reports on past storage transactions, there is no price information anywhere reflected regarding its bundled storage transactions.¹⁷

While the PD assumes northern California’s storage market to be competitive, the price-checking process it describes is not as efficient as comparing public postings. SoCalGas questions how timely postings of more transactional details on the Pipe Ranger website would not immediately result in customer benefits, where customers would no longer have to contact PG&E individually to obtain prices and other key details but can readily access that information on that website.

¹⁶ See Ex. 34.

¹⁷ See Ex. 22 (Watson direct) at 15, Table 4.

2. The PD fails to promote transparent and efficient markets

Notwithstanding the factual misstatement's underlying the PD's ruling on the storage posting issue, the PD conveys a lack of interest on the part of the Commission to promote transparent, competitive, and efficient storage markets within its jurisdiction. The PD simply states "this proceeding is not the proper proceeding in which to raise that issue." PD at 49. SoCalGas urges the Commission to reject the PD's position regarding transparency in the storage market, especially given the Commission's desire for greater transparency in areas such as pipeline safety and integrity (*see* R.11-02-019) and financing transactions (*see* R.11-03-007).

While the preceding two subject matters are being addressed in broader rulemaking proceedings, SoCalGas explained why it would be appropriate to impose additional posting requirements on PG&E now, while leaving a more expansive effort to a future time. PG&E and the ISPs want market-based rates, yet they oppose market transparency which would benefit their customers. However, those concerns should not prevent the Commission from taking timely and proactive steps to roll out greater market transparency beginning with the large public utilities, PG&E and SoCalGas, which both have over 100 Bcf of storage capacity, captive ratepayers, and control the gas transportation system connected to their respective storage fields.¹⁸ Because the ISPs are not at risk in this proceeding from any Commission action mandating increased public disclosure of their storage transactions, their concerns should not dictate how the Commission rules with respect to PG&E.

FERC has already taken prudent and proactive steps to promote market transparency and efficiency for interstate facilities. FERC originally established posting requirements in 2000,¹⁹

¹⁸ Tr.1170:2-16, PG&E witness Graham, 10/26/10.

¹⁹ *See* FERC Order 637, 18 CFR Part 284, 15 U.S.C. 717-717w, 3301-3432; 42 U.S.C. 7101-7352; 43 U.S.C. 1331-1356 (issued February 9, 2000).

and reiterated the importance of transparency in 2006.²⁰ Moreover, FERC Order No. 735-A brought the less stringent transactional reporting requirements for Section 311 and Hinshaw pipelines closer in line with the reporting requirements for interstate pipeline and storage facilities.²¹ In addition, FERC Order No. 735-A clearly states the benefits of storage transaction transparency for FERC-regulated storage fields: “the increased transparency that the Final Rule brings should improve the natural gas transportation market’s efficiency,”²² and “a Commission finding that a service provider lacks market power should not be read to mean that its shippers are at no risk of undue discrimination or other unlawful practices. It is even more critical for the Commission to review pricing when the Commission is relying on competition to regulate rates, rather than scrutinizing the underlying cost of service.”²³

Because the Commission is the regulatory body having jurisdiction over California’s intrastate storage market, it is imperative that the Commission assert its leadership in creating greater transparency and more competitive prices by adopting SoCalGas’ proposal. SoCalGas is already there; PG&E should be next.

3. Phase 3 can specifically focus on PG&E’s postings and market transparency

If the Commission does not want to keep this phase of the proceeding open to consider the merits of increasing market transparency by requiring PG&E to post additional transactions details, SoCalGas recommends that the Commission open a third phase of this proceeding to specifically address PG&E’s posting adequacy. This would preserve the record that was already created on the issue, and would ensure that adoption of additional posting requirements upon

²⁰ See FERC Order 678, 18 CFR Part 284, 15 U.S.C. 717-717w, 3301-3432; 42 U.S.C. 7101-7352; 43 U.S.C. 1331-1356 (issued June 19, 2006).

²¹ See FERC Order 735-A, 18 CFR Part 284, 15 U.S.C. 717-717w, 3301-3432; 42 U.S.C. 7101-7352; 43 U.S.C. 1331-1356 (issued December 16, 2010), pp. 35-36.

²² Id. at 38.

²³ Id. at 40.

PG&E would not impact the ISPs. Should the Commission decide that the goal of greater market transparency and efficiency mandates a broader investigation into extending any adopted posting requirements to other storage providers, the Commission can certainly do so at some later time.

III. CONCLUSION

SoCalGas and SDG&E request that the PD be modified to (1) confirm SoCalGas' on-system delivery rights and (2) adopt the proposal to impose enhanced reporting requirements on PG&E's storage activities. In the alternative, if the Commission decides it does not want to render a decision on these issues at this time, the PD should nonetheless be modified to allow these issues to be immediately addressed outside of this phase of the proceeding. Appendix A contains proposed modifications to the PD consistent with their request.

Respectfully submitted,

By: /s/ Johnny J. Pong

JOHNNY J. PONG

Attorney for
SOUTHERN CALIFORNIA GAS COMPANY
SAN DIEGO GAS & ELECTRIC COMPANY
555 West Fifth Street, Suite 1400
Los Angeles, CA 90013-1034
Telephone: (213) 244-2990
Facsimile: (213) 629-9620
Email: jpong@semprautilities.com

April 4, 2011

APPENDIX A

**PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

PROPOSED FINDINGS OF FACT

36. If SoCalGas is allowed to use its G-XF capacity to deliver gas into the PG&E citygate, PG&E ~~shareholders are~~ is likely to suffer a revenue loss as a result of a reduction in sales of backbone transmission capacity to northern California shippers, ~~which in turn will cause rates to increase on PG&E's backbone transmission system for both the core and noncore unless PG&E is ordered to absorb this loss.~~

37. Before the first Gas Accord market structure was agreed to in D.97-08-055, PG&E's Schedule G-XF tariff allowed delivery point flexibility.

38. With the change in the gas market structure from a bundled gas transportation system to an unbundled system, PG&E pointed out the need in A.96-08-043 to limit Line 401 expansion shippers to a single delivery point, instead of to multiple delivery points. However, the Commission's decision adopting the first Gas Accord does not acknowledge PG&E's position.

39. The attached "Amendment to the Firm Transportation Service Agreement Between San Diego Gas & Electric Company and Pacific Gas and Electric Company" quote in Exhibit 2148 at 1-6, which is cited in footnote 20 of this decision, supports the argument that the Gas Accord market structure restricted delivery point flexibility but only until the end of the first Gas Accord period.

40. ~~Although the Exhibit A that SoCalGas and SDG&E rely on contains two delivery points. Exhibit A is the only operative document that lists the delivery point options available to SoCalGas and SDG&E, it is clear from various provisions in the December 1991 FTSA and the December 1996 amendment to the FTSA that the delivery point options of SoCalGas are subject to PG&E's current G-XF tariff.~~

41. PG&E's current Schedule G-XF tariff ~~regarding the "Delivery Points" is unchanged from the G-XF tariff that was approved in Resolution G-3288, and states that "Customer may nominate only to the Delivery Point set forth in Exhibit A to the Customer's FTSA."~~

42. ~~Although PG&E controls a large percentage of available gas storage in northern California, has captive ratepayers, and owns the gas transportation system connected to its storage facilities. PG&E faces storage competition from several ISPs, and potential storage customers can easily compare storage prices by checking with the ISPs.~~

43. SoCalGas is currently the only intrastate provider of gas storage in southern California, but at least one interstate storage provider has filed to offer gas storage in southern California. ~~and ISPs have not filed applications as readily to offer gas storage in southern California.~~

44. PG&E ~~is already required to post~~ certain gas storage operational, but not pricing, information on its Pipe Ranger website.

PROPOSED CONCLUSIONS OF LAW

4. SoCalGas ~~has the express~~ ~~does not have~~ a right to use its capacity on Line 401 to deliver into PG&E's citygate because SoCalGas' delivery point options are subject to ~~PG&E's G-XF tariff,~~ which limits the delivery point options to a single delivery point as set forth in Exhibit A to the FTSA.

Alternate 4:

4. No ruling will be made in this proceeding regarding SoCalGas' delivery rights. SoCalGas can pursue this contractual dispute on a stand-alone basis against PG&E.

5. This proceeding is not the proper proceeding in which to lay the groundwork for storage posting requirements that could apply to all the ISPs in the future. However, this proceeding is the proper proceeding to impose additional storage transactional posting requirements upon PG&E, which is the largest gas storage provider in northern California. Increasing market transparency and efficiency in California's storage market is a goal that this Commission will advance by adopting increased storage transactional posting requirements upon its two largest natural gas utilities.

6. The proposal of SoCalGas and SDG&E to impose the FERC gas storage posting requirements on PG&E is ~~not~~ adopted.

Alternate 5 & 6:

5. This proceeding is ~~not~~ the proper proceeding in which to lay the groundwork for storage posting requirements that could apply to all the ISPs in the future. However, the Commission will open Phase 3 to this proceeding to specifically address whether additional storage transactional postings on PG&E's Pipe Ranger website will increase market transparency and efficiency to the benefit of storage customers. Increasing market transparency and efficiency in California's storage market is a goal that this Commission can advance by requiring increased storage transactional postings upon its two largest natural gas utilities.

6. The proposal of SoCalGas and SDG&E to impose the FERC gas storage posting requirements on PG&E will be addressed in Phase 3 of this proceeding ~~is not adopted.~~