

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to Adopt New
Safety and Reliability Regulations for
Natural Gas Transmission and Distribution
Pipelines and Related Rulemaking
Mechanisms.

Rulemaking 11-02-019
(Filed February 24, 2011)

**COMMENTS OF
THE DIVISION OF RATEPAYER ADVOCATES
ON THE PROPOSED DECISION TRANSFERRING CONSIDERATION
OF THE NATURAL GAS PIPELINE COMPREHENSIVE PRESSURE TESTING
IMPLEMENTATION PLAN OF SAN DIEGO GAS & ELECTRIC COMPANY
AND SOUTHERN CALIFORNIA GAS COMPANY TO THE
TRIENNIAL COST ALLOCATION PROCEEDING**

LAURA TUDISCO

Attorney for the Division of Ratepayer
Advocates
California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-2164
Email: ljt@cpuc.ca.gov

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Resolution G-34533,4, 5

I. INTRODUCTION AND SUMMARY OF RECOMMENDATIONS

Pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) provides these Comments to the Proposed Decision of Administrative Law Judge Maribeth Bushey. DRA supports the recommendations in the Proposed Decision to transfer consideration of the Natural Gas Pipeline Comprehensive Pressure Testing Implementation Plan of San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCalGas) to the Triennial Cost Allocation Proceeding, Application (A.) 11-11-002. The Proposed Decision, however, would also authorize SDG&E and SoCalGas to file a Tier 2 Advice Letter creating a memorandum account to record for future ratemaking consideration the costs of their Pipeline Safety Enhancement Plan. For the reasons discussed below, DRA believes that recommendation is based on legal, factual and technical errors and should not be adopted by the Commission.

II. BACKGROUND

On June 9, 2011, the Commission ordered all California natural gas transmission pipeline operators “... to prepare Natural Gas Transmission Pipeline Comprehensive Pressure Testing Implementation Plans to either pressure test or replace all segments of natural gas pipelines which were not pressure tested or lack sufficient details related to performance of any such test.”¹ On August 26, 2011, SoCalGas and SDG&E filed their Implementation Plan. On December 2, 2011, SoCalGas and SDG&E filed an amended Pipeline Safety Enhancement Plan (Plan) proposing a phased approach over a time horizon extending beyond 2023 and seeking, among other things, up to \$4.5 billion in total additional revenue requirement for SoCalGas and \$2.4 billion for SDG&E. For the 2012-2015 period, the Plan includes a forecast of \$1.2 billion in capital costs, and \$255 million in operations and maintenance costs for SoCalGas, and \$229 million in capital and \$7 million in operations and maintenance costs for SDG&E in what the utilities

¹ Proposed Decision (PD), p. 2.

called their Phase 1A. The utilities asked the Commission to approve their Phase 1A forecasts immediately.²

On December 21, 2011, the Assigned Commissioner issued a Ruling addressing, among other things, whether consideration of the SoCalGas and SDG&E Natural Gas Transmission Pipeline Comprehensive Pressure Testing Implementation Plan should be reassigned to the utilities' Triennial Cost Allocation Proceeding, A.11-11-002. The two utilities filed Comments supporting the transfer. They also repeated their requests for memorandum accounts, supplementing those requests with various cost estimates.³

As described in the Proposed Decision, in supplementing their memorandum account requests, SoCalGas and SG&E presented two groups of costs. The Proposed Decision describes the first group as:

...the costs that SDG&E and SoCalGas preliminarily estimate that they will incur during the first 12 months of implementing their Pipeline Safety Enhancement Plan. Because that Plan, as set forth in D.11-06-017, imposes new obligations on these operators which could not have been foreseen in the last general rate case, these direct costs appear to be incremental to adopted revenue requirement and may be properly recorded in the memorandum account for subsequent ratemaking review by the Commission.⁴

The second group of costs for which SDG&E and SoCalGas request authority to record in the proposed memorandum account relate to compliance with the record review directive in Commission Resolution L 410.⁵ The Proposed Decision allows SDG&E and SoCalGas to file a Tier 2 Advice Letter to create a memorandum account to record the first group of costs, but not the second. DRA recommends no Commission authorization for the utilities' memorandum account proposals.

² PD, p. 3.

³ PD, p. 4.

⁴ PD, p. 7.

⁵ PD, p. 8.

III. LEGAL, FACTUAL AND TECHNICAL ERRORS

Rule 14.3 states that Comments on Proposed Decisions “...shall focus on factual, legal or technical errors ... and in citing such errors shall make specific references to the record or applicable law.” Allowing SoCalGas and SDG&E a memorandum account is contrary to Findings and Conclusions the Commission just made on a similar issue in Resolution G-3453. Moreover, the Proposed Decision appears to rely on assumptions that may be factually incorrect, and would adopt an approach that if not “technical error,” is procedurally questionable.

A. Legal Error

In Resolution G-3453, the Commission considered, and rejected, an Advice Letter request by Pacific Gas & Electric Company (PG&E) for approval of a “memorandum account to record costs of implementing new governmental transmission pipeline requirements and utility pipeline safety initiatives....” PG&E filed the Advice Letter “in anticipation of new government requirements prompted by the San Bruno pipeline rupture and for safety programs undertaken by the utility.”⁶

The Commission denied PG&E the authority without prejudice to seek approval of a memorandum account in the proceeding in which PG&E’s Natural Gas Pipeline Comprehensive Pressure Testing Implementation Plan was being evaluated. In denying PG&E’s request, the Commission made findings and conclusions that are equally applicable to SoCalGas and SDG&E.

For example, Finding #8 of Resolution G-3453 states: “Analysis of a memorandum account request should consider whether there is a reason for a utility to make a large expenditure that was unforeseen at the time of its most recent rate case.” As the Commission has stated, utilities are:

...obliged to exercise competent managerial discretion and make the necessary capital expenditures and capital repairs and maintenance even if those expenditures exceed test year forecasts.... The “regulatory compact” is that, in exchange for

⁶ Resolution G- 3453, p. 2.

a reasonable opportunity of earning a fair return, ratepayers pay the adopted rates and the utility does what is necessary to provide safe and reliable service.⁷

In Resolution G-3453, the Commission found that “PG&E has not demonstrated that it has an immediate need to make any significant expenditures unforeseen since its last rate case and in advance of R.11-02-019.”⁸ The same is true for SoCalGas and SDG&E. To date, there is no evidence to support the conclusion that SoCalGas or SDG&E have “... an immediate need to make any significant expenditures unforeseen since their last rate case.” At this point, there is no evidence at all; just the utilities’ completely untested Plan.

In Resolution G-3453, the Commission found that “[i]t is unclear why PG&E needs a memorandum account now and in advance of regulations that may be adopted in R.11-02-019.”⁹ No new regulations have been adopted in that proceeding. Similarly, for SoCalGas and SDG&E, this proceeding is still in the preliminary stages and, in fact, evidentiary hearings are still months away. Certainly no new regulations have been adopted here either.

DRA raised these points in its Responses in opposition to both the original Motion and the Supplement filed by SoCalGas and SDG&E, but the Proposed Decision granting the utilities’ memorandum account request does not address them. This does not comport with Public Utilities Code Section 1757 which requires that Commission decisions be supported by findings and the findings be supported by “substantial evidence in light of the whole record.”

The Proposed Decision also includes as a footnote the following:

At the direction of the assigned Commissioner, CPSD prepared Technical Reports on each of the Implementation Plans submitted by the gas system operators pursuant to

⁷ *Alternate Decision of President Peevey on Test Year 2009 General Rate Case for Southern California Edison Company* (2009) D.09-03-025, mimeo, p. 324.

⁸ Resolution G-3453, Finding #9.

⁹ Resolution G-3453, Finding #9.

Decision (D.) 11-06-017. The Commission will give great weight to the recommendations contained in these reports and parties disagreeing with any recommendation should put forward compelling evidence demonstrating a superior means to achieve the Commission's goal of public and employee safety.¹⁰

It may well be, that *after* all parties have had an opportunity to present evidence on the CPSD Technical Reports and brief those positions, that the Commission will decide that great weight should be given to the reports. At this point, however, such a determination is premature, and including it in a final decision would be legal error. DRA recommends that this footnote be removed from the final decision.

B. Factual Errors

The Proposed Decision would allow a memorandum account for SoCalGas and SDG&E based on the following;

...implementing their Pipeline Safety Enhancement Plan. Because that Plan, as set forth in D.11-06-017, imposes new obligations on these operators which could not have been foreseen in the last general rate case, these direct costs appear to be incremental to adopted revenue requirement¹¹

There is no factual support for the assumptions in this statement. It should be deleted.

First, whether the measures included in the utilities' proposed Pipeline Safety Enhancement Plans are required to meet "new" obligations is a question currently in litigation in the ongoing Pipeline Safety Implementation Plan proceeding for Pacific Gas and Electric Company (PG&E), and is likely to be a contested issue in the SoCalGas and SDG&E proceeding as well. The sentence quoted above appears to prejudge that question. A utility's proposed "Plan" is not an adopted regulation. Even SoCalGas and SDG&E admit that "[t]he schedule, estimated costs and scope of work set forth in the

¹⁰ PD., pp. 4-5, footnote 2.

¹¹ PD, p. 7.

attached is based on a very high level analysis of the Phase 1A projects identified in the proposed Pipeline Safety Enhancement Plan.”¹²

Second, there is no factual basis to conclude that “... these direct costs appear to be incremental...” This too is an issue being litigated in the Pipeline Safety Enhancement Plan for PG&E and it should not be prejudged in the case of SoCalGas and SDG&E. So far, there are only the utilities’ unsubstantiated assertions that their estimated costs are incremental. There is no record evidence to support this claim. In fact, DRA is investigating whether SoCalGas and/ or SDG&E have included costs in their Plans for *distribution* pipeline segments. DRA is also investigating whether SoCalGas and/ or SDG&E have included in their Plans costs for segments that were installed after 1961.¹³

C. Technical Error

The Proposed Decision begins by taking consideration of the Plan out of R. 11-02-019 and transferring it to A.11-11-002, but then orders a memorandum account for the case it just transferred. While this may not rise to the level of a “technical error” within the meaning of Rule 14.3, it is, to DRA’s knowledge, an unusual procedural step and may have implications that have not yet been considered. If nothing else, it does create the impression that the Commission is making a determination on the merits of a Plan about which it has heard no evidence before transferring it to the docket where the merits of the Plan are supposed to be considered. The fact that the Scoping Memo in A.11-11-002 states that “[w]e expect a decision in R.11-02-019 to authorize an interim memorandum account for each Applicant” is, again to DRA’s knowledge, unusual.

¹²Comments of Southern California Gas Company and San Diego Gas & Electric Company In Response to Assigned Commissioner’s Rulings and Supplement to Request for memorandum Account , p. 8.

¹³ For example, the Plan proposes the following: \$10.7 million for pressure testing and repair of Line 404 including segments installed after 1961. (Amended Workpapers, WP-IX-1-5 to WP-IX-1-6.) \$8 million for pressure testing and repair of Line 406 including segments installed after 1961. (Id.) \$15.7 million to replace 5.1 miles of Line 1011 including segments installed after 1961. (Amended Workpapers, WP-IX-1-24) \$43.3 million to replace 7.8 miles of Line 1015 including segments installed after 1961. (Id.) The installation dates of all segments can be found in the Sempra response to DRA data request DAO-10.

IV. CONCLUSION

DRA supports the recommendation of the Proposed Decision to transfer consideration of the reasonableness and ratemaking review of the Natural Gas Transmission Pipeline Comprehensive Pressure Testing Plans of SDG&E and SoCalGas be transferred to the Triennial Cost Allocation Proceeding. DRA, however, respectfully recommends that the final decision in this matter deny without prejudice the utilities' request for memorandum account. DRA's recommended changes to the Proposed Findings of Fact and Conclusions of Law are included in the Appendix to these Comments.

Respectfully submitted,

/s/ Laura Tudisco

Laura Tudisco
Staff Counsel

Attorney for the Division of
Ratepayer Advocates

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-2164
Fax: (415) 703-2262
E-mail: ljt@cpuc.ca.gov

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APPENDIX A

Proposed Findings of Fact

5. Delete.

7. **[Add]**: It is premature to authorize SDG&E or SoCalGas to establish memorandum accounts for implementing their Plan.

Proposed Conclusions of Law

5. Delete

7. **[Add]**: Analysis of a memorandum account request should consider whether there is a reason for a utility to make a large expenditure that was unforeseen at the time of its most recent rate case.

8. **[Add]**: Authorizing a memorandum account for the Natural Gas Transmission Pipeline Comprehensive Pressure Testing Implementation Plan of SoCalGas and SDG&E may be considered in A.11-11-002