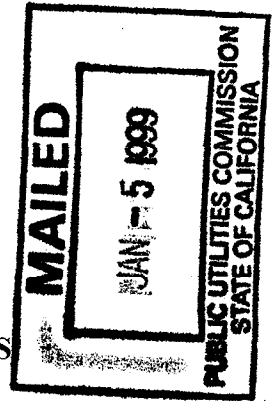


PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**RESOLUTION E-3532
DECEMBER 17, 1998**



RESOLUTION

RESOLUTION E-3532. SAN DIEGO GAS & ELECTRIC COMPANY (SDG&E) SEEKS COMMISSION APPROVAL OF ITS PLAN TO REFUND TO CUSTOMERS ELECTRIC RATE OVERCOLLECTIONS THROUGH ITS ELECTRIC DEFERRED REFUND ACCOUNT. THE TOTAL AMOUNT PROPOSED TO BE REFUNDED IS APPROXIMATELY \$395,000 PLUS INTEREST ADOPTED AS MODIFIED.

BY ADVICE LETTER 1076-E, FILED ON JANUARY 29, 1998.

SUMMARY

1. By Advice Letter (AL) 1076-E, dated January 29, 1998, San Diego Gas & Electric Company (SDG&E) filed a proposed refund plan for amounts it overcollected in electric rates in January 1997. SDG&E proposes that the total amount to be refunded is about \$395,000.
2. The overcollection resulted from electric rates which were too high in January 1997 due to the application of an incorrect formula for the SDG&E Fuel Price Index Mechanism (FPIM). SDG&E has calculated the refund amount based on the difference between the incorrect rates effective on January 1, 1997 and the correct rates effective on January 1, 1997.
3. SDG&E requests approval of the refund plan to allow the refunds to be reflected in SDG&E customers' July 1998 bills. SDG&E requests deferral of the refund to July 1998 to allow time for problems associated with its recently-installed Customer Information System to be corrected, and because the amount of the refund is relatively small.
4. SDG&E proposes to make the refund to residential customers through a bill credit based on an equal cents/customer and to make the refund to non-residential customers based on actual January 1997 consumption "if practical." (SDG&E states that if the refund to non-residential customers based on January 1997 consumption does not prove to be practical, then SDG&E would calculate their refund on an equal cents/customer basis.)
5. A joint protest was filed against AL 1076-E by the Office of Ratepayer Advocates (ORA) and the Utility Consumers Action Network (UCAN).

6. ORA/UCAN protested the amount, the deferral, and the refund methodology proposed by SDG&E. The amount of the refund is the main point of contention. ORA/UCAN assert that SDG&E had no lawful authority to increase rates on January 1, 1997 because it had not filed a tariff sheet which complied with Section 397 of the Public Utilities Code until January 23, 1997. ORA/UCAN calculate the refund amount to be about \$3.1 million plus interest. This amount is based on the difference between the incorrect rates on January 1, 1997 and the pre-1997 rates through January 23, 1997, plus the difference between the incorrect rates effective on January 24, 1997 and the correct rates effective on January 24 1997, through January 31, 1997. Because the amount of the refund estimated by ORA/UCAN is much larger than estimated by SDG&E, those parties recommend that the refund be more timely and more closely based on January 1997 consumption for all customers.

7. In reply to the ORA/UCAN protest, SDG&E states that the Commission's Energy Division determined that the FPIM formula should be revised, and that the Energy Division agreed to allow SDG&E to provide a substitute tariff sheet reflecting the revised FPIM methodology. SDG&E further indicates that it had agreed with the Energy Division on the amount of the refund, that the Energy Division agreed that the refund would be flowed to the EDRA, and that the Energy Division sent SDG&E a letter making the rate increase, although incorrect, effective January 1, 1997. SDG&E also asserts that ORA's protest is untimely, since it did not protest the effective date of the rate increase for nearly a year.

8. ORA/UCAN's protest concerning the amount of and deferral of the refund is denied. SDG&E shall provide refund to customer classes based on the portion of the January 1997 revenues received from those classes. Residential customers will receive refunds on an equal cents per customer basis; non-residential customers will receive refunds based on usage.

BACKGROUND

1. In D.96-12-025, the Commission established the EDRA for the three major California electric utilities to ensure that disallowances and certain refunds to the utilities would be credited to electric customers directly rather than be used simply as an offset to electric transition costs. The Commission ordered that refunds be made through an annual refund, be based on each customer's average monthly electric usage for the prior calendar-year period, and be returned in accordance with a refund plan filed by advice letter on or before January 31 of the succeeding year.

2. On December 20, 1996, SDG&E filed AL 1014-E, which established an EDRA for SDG&E, in compliance with D.96-12-025. That AL went into effect on its own motion.

3. SDG&E did not file an annual EDRA advice letter in 1997 because there were no amounts in its EDRA at the end of 1996.

4. The amounts in SDG&E's EDRA at the end of 1997 result from an electric rate overcollection. Electric rates in California generally have been frozen as a result of AB 1890, but that legislation also allowed SDG&E to adjust its electric rates if gas prices changed by more than 10%, calculated on a 12-month rolling average basis, from the price reflected in an index of prices as of January 1, 1996. This provision of AB 1890 was written into the Public Utilities Code in Section 397.
5. The mechanism by which SDG&E is allowed to adjust its electric rates is referred to as the Rate Cap Mechanism (RCM). The formula in the RCM by which SDG&E calculates specific adjustments to its electric rates is the Fuel Price Index Mechanism (FPIM). SDG&E originally proposed the RCM and FPIM formula to the Commission in its AL 998-E, filed on September 24, 1996. The Energy Division returned AL 998-E to SDG&E and requested that it be submitted as an amendment to SDG&E's Cost Recovery Plan. SDG&E filed its Cost Recovery Plan with the Commission on October 15, 1996 in the electric restructuring proceeding, and included AL 998-E as part of its filing.
6. SDG&E's Cost Recovery Plan was approved by the Commission in D.96-12-077. In that decision the Commission established January 1, 1997 as the implementation date for the electric rate freeze for SDG&E, and conditionally approved SDG&E's RCM as follows:

"SDG&E should request a rate cap mechanism consistent with Section 397 by refile the material previously presented in AL 998-E, with any modifications required by this decision. If the renewed advice letter is in compliance with the requirements of this decision, the rate cap mechanism will be effective on the date filed." (Slip op, pgs. 32-33).
7. SDG&E filed AL 998-E-A on December 23, 1996, with which it submitted its RCM/FPIM. On December 27, 1996, SDG&E filed AL 1015-E, by which it proposed a 3.09% electric rate increase, of \$47 million, to be effective on January 1, 1997, calculated using the FPIM submitted with AL 998-E-A.
8. On January 10, 1997, ORA filed a protest against ALs 998-E-A and 1015-E. ORA protested the FPIM formula submitted with AL 998-E-A and the magnitude of the rate increase calculated in AL 1015-E. ORA argued that the FPIM formula was not in compliance with Section 397 of the PU Code and that the correct rate increase should be only about 2.81%. ORA recommended that ALs 998-E-A and 1015-E be rejected.
9. On January 17, 1997, SDG&E filed a reply to the ORA protest. SDG&E argued that ORA never commented on the FPIM formula submitted with SDG&E's Cost Recovery Plan, nothing in D.96-12-077 ordered SDG&E to modify the FPIM formula, and AL 998-E-A was simply filed in compliance with D.96-12-077. SDG&E argued that ORA should have been precluded from requesting further modifications in the FPIM formula, and the "only question should be whether SDG&E complied with D.96-12-077." SDG&E

recommended that ORA's protest be rejected, and that ALs 998-E-A and 1015-E be promptly approved.

10. In response to discussions it had with Energy Division staff, on January 23, 1997, SDG&E submitted a "substitute tariff sheet" for AL 998-E-A revising the FPIM, as recommended by ORA, to the Commission. SDG&E also mailed a copy of the substitute tariff sheet to the recipients of AL 998-E-A on January 24, 1997. However, SDG&E did not request a change in the rate increase requested in AL 1015-E.

11. On January 30, 1997, SDG&E submitted a letter to the Energy Division explaining its understanding of how SDG&E intended "...to correct the overbilling situation relating to Advice Letter 1015-E." SDG&E explained that it estimated that its electric customers were overcharged by about \$350,000 in January 1997, because it had increased electric rates on January 1, 1997 by 3.09%, rather than by 2.81% as calculated using the revised FPIM. SDG&E stated that based on its discussions with Energy Division staff, it would flow the overbilled amounts to its EDRA and would apply interest to that amount until such time as the balance in the EDRA is refunded to eligible customers.

12. On May 19, 1997, the Energy Division sent SDG&E a letter stating that AL 1015-E became effective on January 1, 1997 "...despite its inconsistencies from the Rate Cap Mechanism set forth in 998-E-A (as corrected)." The letter further indicated that, due to the costs associated with the restating and rebilling for January usage, the Energy Division accepted the method SDG&E proposed in its January 30, 1997 letter, to refund overcharges for the January 1997 period.

13. On August 1, 1997, the Energy Division sent SDG&E a letter stating that AL 998-E-A became effective on December 23, 1996.

14. SDG&E filed AL 1021-E on January 24, 1997 with which it requested another electric rate increase, this time using the FPIM formula recommended by ORA. On September 24, 1997, the Energy Division sent SDG&E a letter stating that AL 1021-E became effective on February 1, 1997.

15. In compliance with D.96-12-025, and in accord with the agreement it made with the Energy Division, on January 29, 1998, SDG&E filed AL 1076-E proposing the refund to its electric customers of about \$395,000 (including interest in its EDRA as of the end of 1997), plus any additional interest accrued through the date of the refund.

16. SDG&E requested deferral of the refund to allow sufficient time for problems associated with its Customer Information System (CISCO) to be corrected, and because the amount of the refund is relatively small.

17. SDG&E also proposed that SDG&E would refund residential customers' share of the refund on an equal cents/customer basis, and would provide non-residential customers' refund based on those customers actual energy consumption in January 1997, if deemed

practical. (SDG&E did not explain how the allocation of the refund to residential and non-residential customers would be made.) SDG&E further stated that if such a refund to non-residential customers did not prove to be practical, then SDG&E would calculate their refund on an equal cents/customer basis.

NOTICE

1. Public notice of AL 1076-E was made by publication in the Commission calendar, and by SDG&E mailing copies of the filing to utilities and interested parties on the mailing list attached to its advice letter.

PROTESTS

1. A protest was filed by ORA and UCAN jointly to AL 1076-E on February 17, 1998.
2. ORA and UCAN state that they protest the amount, the deferral, and the refund methodology proposed by SDG&E. First, they argue that SDG&E's calculation of the amount of the refund is in error. ORA/UCAN argue that SDG&E's rate increase proposed with AL 1015-E could not have become effective any earlier than January 23, 1997. ORA/UCAN assert that the first date on which the RCM could lawfully become effective was the date on which a valid tariff filing was made. The original tariff filing made with AL 998-E-A was not valid, since it was not in compliance with PU Code 397. Therefore, the first date on which the RCM could become effective was January 23, 1997, when the "substitute tariff sheet" was filed. ORA/UCAN note that that General Order 96-A states that: "Substitute tariff sheets are allowed in order to make minor changes due to typographical errors or other errors that are insignificant in impact." ORA/UCAN assert that the change incorporated in the substitute tariff sheet submitted on January 23, 1997 did not constitute the type of change allowable with a substitute tariff sheet. Therefore, the rate increase requested in AL 1015-E could not occur until January 23, 1997. ORA/UCAN calculate the amount which should be refunded as about \$3.1 million plus interest.
3. With regard to the refund deferral and methodology, ORA/UCAN argue that a "larger refund would warrant a refund that is both more timely and more closely based on January 1997 consumption." ORA/UCAN also state that the refund should be made to "...each customer, based on the customer's total January 1997 bill."
4. ORA/UCAN recommend that AL 1076-E be rejected.
5. On February 24, 1998, SDG&E filed its reply to the ORA/UCAN protest. SDG&E recounts that:
 - ORA did not comment on SDG&E's AL 998-E;
 - D.96-12-077 later approved SDG&E's RCM and ordered SDG&E to file a supplement to AL 998-E-A to resubmit the RCM;

- nothing in D.96-12-077 ordered SDG&E to modify the FPIM formula that SDG&E originally proposed in AL 998-E; the same FPIM formula was refiled with AL 998-E-A;
- while SDG&E still at that point believed its FPIM formula was appropriate, it acknowledges that “the Commission determined that SDG&E’s formula was inconsistent with AB 1890 and that formula set forth by ORA should be utilized”;
- after “...this directive and several discussions with Energy Division staff, the Energy Division agreed to allow SDG&E to provide a substitute sheet reflecting the revised FPIM methodology...”
- SDG&E sent the January 30, 1997 letter to the Energy Division, discussed earlier, stating its understanding of its agreement with the Energy Division on how to correct the overbilling situation;
- the Energy Division sent SDG&E the May 19, 1997 letter also discussed earlier, making AL 1015-E effective on January 1, 1997, and confirming its agreement with SDG&E’s January 30th letter.

6. Based on this series of events, SDG&E argues that both ALs 998-E-A and 1015-E were “approved by the Commission”, and that SDG&E was provided with the necessary authority to increase rates on January 1, 1997, so ORA/UCAN’s assertion that SDG&E had no authority to increase rates on January 1, 1997 is without merit. SDG&E also argues that ORA/UCAN’s protest is untimely since neither party raised its concerns until nearly one year after these filings were approved by the Commission. Finally, SDG&E argues that the only matter at issue is the manner in which the \$395,000 refund is made to customers. SDG&E recommends that the joint ORA/UCAN protest be dismissed and AL 1076-E be approved as filed.

DISCUSSION

1. On January 29, 1998, SDG&E filed AL 1076-E in compliance with D.96-12-025, and in accord with an apparent agreement it had with the Energy Division. AL 1076-E submits a refund plan for amounts in SDG&E’s EDRA as of the end of 1997. The amounts in the SDG&E EDRA result from an overcollection in electric rates in January 1997.

2. Although D.96-12-025 envisioned that the EDRA would provide for refunds to customers for disallowances and refunds to the utilities, it appears that the use of the EDRA for the purpose of capturing this specific overcollection refund to customers is reasonable, and is not in dispute.

3. The main issue at dispute here is the amount of the refund which should be returned to SDG&E’s electric customers. The underlying question is whether an electric rate increase should have occurred on January 1, 1997 due to the application of SDG&E’s

RCM, or whether the rate increase could not have lawfully occurred until January 23, 1997.

4. ORA/UCAN argue that no electric rate increase could have lawfully occurred on January 1, 1997 because no tariff had been filed by SDG&E until January 23, 1997 which complied with Section 397 of the PU Code, and a "substitute tariff sheet" submitted on January 23, 1997 could not be effective on January 1, 1997 because GO 96-A does not allow significant changes to be made to tariffs via substitute tariff sheets.

5. SDG&E argues that it had an agreement with the Energy Division on how the refund should be dealt with, that the Energy Division did in fact send SDG&E a letter confirming the agreement, and that the Energy Division sent SDG&E letters making both AL 998-E-A and AL 1015-E effective, on December 23, 1996 and January 1, 1997, respectively. Therefore, a 3.09% rate increase occurred on January 1, 1997, while a 2.81% rate should have occurred.

6. There is no dispute that after January 23, 1997 and through January 31, 1997 the overcollected amount was due to the difference in the FPIM formulas advocated by SDG&E and ORA, resulting in 3.09% and 2.81% rate increase respectively.

7. A rate increase occurred on February 1, 1997 also due to the application of the RCM, using the FPIM formula advocated by ORA, as requested by SDG&E in AL 1021-E. The electric rate increase hit the maximum authorized system average rate. The tariff for this rate increase had been submitted prior to February 1, 1997, so that rate increase amount is not in dispute. (However, ORA did protest AL 1021-E, noting that the RCM could not have become effective prior to on or around January 23, 1997.)

8. Based on ORA's protest, SDG&E acknowledged its error in calculating the FPIM and set about correcting the rate from 3.09% to 2.81%. In addition, SDG&E noted that customers would be entitled to a refund for the overcharge. In order to expedite these changes, Energy Division allowed SDG&E to file a substitute sheet.¹

9. ORA notes, correctly, that substitute sheets, are to used for minor errors

10. There are two issues here. The first issue is whether AL 998-E-A and AL 1015-E were effective January 1, 1997. The second issue is whether these advice letters were defective.

11. AL 998-E-A and AL 1015-E were effective as of January 1, 1997. They were filed in a timely manner as ordered by the Commission. The tariffs were defective, however, since SDG&E proposed an incorrect FPIM rate. In all other respects, the tariffs were in compliance with Commission orders.

¹ ORA in its protest argues that since AL's 998-E-A and 1015-E were not effective on January 1, 1997, SDG&E was not even entitled to the 2.81% FPIM rate increase.

12. No party says that SDG&E was trying to mislead the Commission. The error was unintended. Over time, utilities on occasion make such errors ---- some that benefit the utility, some that benefit ratepayers.

13. When this error occurred, there were two options available for correcting the tariffs. The first method would have been to have SDG&E file a new advice letter, which would have required a Resolution to dispose of the protests. This procedure would have taken several months. Energy Division opted for the use of the "substitute sheets" as provided for in General Order 96-A (Section III.J.)

14. Since the matter of whether AL 998-E-A and AL 1015-E were effective January 1, 1997 is now before the Commission, we find that SDG&E AL 998-E-A and AL 1015-E were effective January 1, 1997, albeit defective. The defect was corrected in a timely manner by the "substitute sheets" submitted on January 23, 1997.

15. The EDRA refund method described in D.96-12-025 indicates that EDRA refunds should be made based on the most recent calendar-year usage. However, in the case of the SDG&E refund discussed here the overcollection occurred in a single month, so there is no reason to base the refund amount on 1997 calendar-year usage.

16. In two recent EDRA refunds, for Pacific Gas and Electric Company and Southern California Edison Company, we adopted a class average refund allocation method in Resolutions E-3520 and E-3525, respectively. Using this method, the refund was allocated first to customer classes according to the calendar-year revenues received from customers. Then, within the class, each customer's refund was based on their calendar-year energy usage.

17. In AL 1076-E, SDG&E proposed that its refund be deferred to July 1997 to allow time for problems with its new Customer Information System (CISCO) to be corrected. SDG&E also proposed that SDG&E would refund residential customers' share of the refund on an equal cents/customer basis, and would provide non-residential customers' refund based on those customers actual energy consumption in January 1997, if deemed practical. (SDG&E did not explain how the allocation of the refund to residential and non-residential customers would be made.) SDG&E further stated that if such a refund to non-residential customers did not prove to be practical, then SDG&E would calculate their refund on an equal cents/customer basis.

18. ORA/UCAN argued that the refund should be more timely, and that each customer's refund should be "more closely based on January 1997 consumption" or "on the customer's total January 1997 bill."

19. The amount of the refund is relatively small compared to other recent refunds we have ordered, and SDG&E has informed our Energy Division that basing the residential refund strictly on the January 1997 usage would be administratively burdensome in view

of the size of the refund, and the relatively minor difference it would make in the size of the refund to customers. We believe that the refund should be made as follows. The total refund should first be allocated to SDG&E's electric customer classes based on the portion of January 1997 revenues SDG&E received from those classes. Residential customers' share of the refund should then be allocated to residential customers on an equal cents/customer basis. Nonresidential customers' share of the refund should be allocated to customers based on January 1997 usage, if available. Otherwise, the closest monthly data to January 1997 that is available should be used.

20. At this point in time, we believe that SDG&E's refund should be deferred until March 1999, including accrued interest, but if the refund can be made sooner SDG&E should do so.

21. Finally, in response to an Energy Division data request, SDG&E states that it has one special contract customer which is served at other than tariffed rates. Special contract customers who are supplied electricity at other than tariffed rates should not receive any of the EDRA refund.

FINDINGS

1. SDG&E filed AL 1076-E on January 29, 1998 requesting approval of its proposed refund plan for amounts in its EDRA, in compliance with D.96-12-025, and in accord with an agreement it made with the Energy Division. The amounts in the SDG&E EDRA result from an overcollection in electric rates in January 1997.

2. SDG&E requests deferral of the refund to allow sufficient time for problems associated with its Customer Information System (CISCO) to be corrected, and because the amount of the refund is relatively small.

3. SDG&E also proposed that SDG&E would refund residential customers' share of the refund on an equal cents/customer basis, and would provide non-residential customers' refund based on those customers actual energy consumption in January 1997, if deemed practical. (SDG&E did not explain how the allocation of the refund to residential and non-residential customers would be made.) SDG&E further stated that if such a refund to non-residential customers did not prove to be practical, then SDG&E would calculate their refund on an equal cents/customer basis.

4. ORA and UCAN filed a joint protest of AL 1076-E. ORA and UCAN recommend that AL 1076-E be rejected because: a) the amount of the refund calculated by SDG&E is too small, b) the refund should be made in a more timely manner, and c) the refund should be based on customers' January 1997 consumption. ORA/UCAN argue that SDG&E did not file a valid tariff sheet with AL 998-E-A explaining its FPIM formula until January 23, 1997. No rate increase could have occurred until then, since GO 96-A does not allow substitute tariff sheets except when the change being proposed is

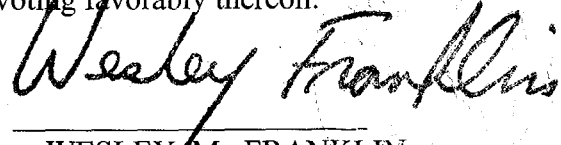
insignificant, and the rate increase could therefore not occur prior to the date a valid RCM was in effect.

5. In its reply to the ORA/UCAN protest, SDG&E recounts the history of AL 998-E-A and AL 1015-E, and explains that it had obtained the agreement of the Energy Division on how to handle the overcollection, and it had received letters from the Energy Division which authorized a rate increase effective on January 1, 1997.
6. The joint protest of ORA and UCAN concerning the amount of the refund should be denied.
7. SDG&E should make its EDRA refund using the following refund allocation method. The total refund should first be allocated to SDG&E's electric customer classes based on the portion of January 1997 revenues SDG&E received from those classes if available. Otherwise, the closest monthly data to January 1997 that is available should be used. Residential customers' share of the refund should then be allocated to residential customers on a equal cents/customer basis. Nonresidential customers' share of the refund should be allocated to customers based on January 1997 usage.
8. SDG&E should not allocate any of the refund to special contract customers who were supplied with electricity at other than tariffed rates in January 1997.

THEREFORE, IT IS ORDERED THAT:

1. The refund plan proposed in SDG&E AL 1076-E, filed on January 29, 1998 is approved as modified as follows: a) SDG&E shall make its EDRA refund using the refund allocation method described above, and b) SDG&E shall not provide any of the EDRA refund to special contract customers who are supplied with electricity at other than tariffed rates in January 1997.
2. SDG&E shall refund to its retail electric customers the EDRA amounts, including interest through the date of the refund, in customers' March 1999 bills, or sooner if practical.
3. The joint protest of ORA and UCAN is denied with respect to the amount of the refund. The joint protest of ORA and UCAN with respect to the deferral of the refund is denied. The joint protest of ORA and UCAN with respect to the refund methodology is granted to the extent discussed above.
4. SDG&E shall provide a letter summarizing the refund within 60 days of completion of the refund to the Director of the Energy Division, and copies to ORA and UCAN.
5. This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on December 17, 1998, the following Commissioners voting favorably thereon:



WESLEY M. FRANKLIN
Executive Director

RICHARD A. BILAS
President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners