

## PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMISSION ADVISORY  
AND COMPLIANCE DIVISION  
ENERGY BRANCH

RESOLUTION G-3095  
FEBRUARY 3, 1994

**R E S O L U T I O N**

RESOLUTION G-3095. SOUTHERN CALIFORNIA GAS COMPANY.  
REQUEST FOR AN EXTENSION OF THE IMBALANCE TRADING PERIOD  
FOR LOCKHEED CORPORATION AND ENRON ACCESS ENERGY.

BY ADVICE LETTER 2213-G, FILED ON SEPTEMBER 21, 1993.

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**SUMMARY**

1. Customers of the Southern California Gas Company (SoCal Gas) that purchase their own gas supplies must ensure that the amount of gas they consume during a month equals the amount of gas they deliver into the utility system. Customers whose deliveries and consumption are out of balance by more than 10% are assessed imbalance charges by the utility that recover the costs that the under/over delivery of gas impose upon the utility system. In order to assist customers to keep their balances within the 10% range, SoCal Gas operates an imbalance trading program that allows its customers to trade their over and under-deliveries of gas amongst themselves in order to avoid imbalance charges. The rules for SoCal Gas' imbalance trading program are contained in Rate Schedule G-IMB (Imbalance Services.)
2. SoCal Gas requests a deviation from the Rate Schedule G-IMB tariffs for the month of June, 1993 for one of its customers (Lockheed Corporation) and its associated gas marketer (Enron Access Energy). In that month, Lockheed/Enron overdelivered 168,000 decatherms (Dth) of gas into the SoCal Gas system, an amount significantly greater than 10% of Lockheed's gas usage for the month. In order to avoid any imbalance charges, Enron traded Lockheed's overdeliveries with other customers who underdelivered gas under SoCal Gas' imbalance trading program. Although Enron consummated its imbalance trades, Enron failed to inform SoCal Gas of its trades by the deadline contained in rate schedule G-IMB. Lockheed/Enron was therefore assessed imbalance charges by SoCal Gas that resulted in an economic loss to Enron of \$161,000. SoCal Gas' requests a deviation from its tariffs that would excuse Lockheed/Enron from paying any imbalance charges for June 1993.

3. The Commission's Division of Ratepayer Advocates (DRA) protests SoCal Gas' request, arguing that any exemption is unwarranted, discriminatory, and constitutes retroactive ratemaking.

4. This resolution finds that SoCal Gas' requested deviation from its tariffs for Lockheed/Enron is precluded by the Commission's policies concerning prospective ratemaking as articulated by the Commission in Decision (D.)91-12-054 and other decisions. Accordingly, SoCal Gas' request is denied.

#### BACKGROUND

1. Under Commission rules adopted in D.90-09-089, gas customers who purchase their own gas supplies must ensure that the amount of gas they deliver into the utility system is approximately equal to the amount of gas they use during a month.<sup>1</sup> If the volume delivered is less than the customer's monthly usage, then the gas utility must make up for any shortfall in delivered gas. Conversely, if a gas customer delivers excess gas supplies into the utility system, the utility incurs gas storage costs and increased operational requirements.

2. Because it is difficult to balance gas deliveries with gas usage, Commission rules allow customers a 10% deviation (or imbalance) between deliveries and usage. Customers who exceed this 10% range are subject to additional rate charges. Since it is also possible that for each customer who overdelivers gas by greater than 10% there is a corresponding customer who has underdelivered, gas customers are allowed to trade their positive and negative imbalances amongst themselves after the end of each month in order to reduce their imbalances to within the 10% range and thereby avoid any additional charges.

3. On the SoCal Gas system, the rules for determining both the amount of any imbalance and the charges to be assessed for exceeding the imbalance limits are contained in SoCal Gas' rate schedule G-IMB (Imbalance Service).

4. In June 1993, Lockheed Corporation had an overdelivery of gas supplies to its account of 168,000 decatherms (dth) from its gas marketer Enron Access Energy (Enron), an amount significantly greater than 10% of Lockheed's gas usage for the month. In order to avoid any imbalance charges, Enron arranged to trade this positive imbalance with other gas customers who had a negative imbalance. This would have prevented Lockheed from incurring any charges under SoCal Gas' G-IMB rate schedule.

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<sup>1</sup> See D.90-09-089, 37 CPUC 2d 583 at p. 620-623, 627, 631-632.

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5. SoCal Gas tariffs gave customers sixteen days to consummate their trades and an additional 24-hours to notify SoCal Gas in order to avoid the imposition of imbalance charges. Enron claims that due to an "administrative oversight" on Enron's part, Enron failed to notify SoCal Gas of its imbalance trades by the deadline contained in SoCal Gas' tariffs.

6. Enron finally notified SoCal Gas of its trades and its failure to timely report them to SoCal Gas six days after the trading deadline had passed. Under rate schedule G-IMB, SoCal Gas purchased the overdelivered gas at the "buy-back" rate authorized in rate schedule G-IMB: 50% of SoCal Gas' applicable core subscription procurement charge. According to Enron, this results in an economic loss to Enron of \$161,000 (the difference between what Enron paid for the gas and what SoCal Gas paid for the gas). All imbalance charges assessed by SoCal Gas are credited to the core's Purchased Gas Account (PGA).

7. SoCal Gas, in its Advice Letter filing, requests a deviation from the rate schedule G-IMB tariffs for Lockheed/Enron for the June 1993 period in order to avoid assessing any charges against Lockheed/Enron for their administrative oversight in failing to consummate the necessary imbalance trades. SoCal Gas also requests "emergency consideration" of its advice letter filing.

8. SoCal Gas states that a deviation is appropriate because Enron's administrative oversight did not require SoCal Gas to either purchase or sell any standby gas and that no costs were incurred by SoCal Gas' core customer class. Additionally, SoCal Gas experienced no system-wide imbalance difficulties resulting from this incident. Overall, Enron's total amount of gas delivered in June for all of its customers was within the 10% error range when compared with gas usage for these same customers.

#### PROTESTS

1. The Division of Ratepayer Advocates (DRA) protested this Advice Letter on October 4, 1993. In its protest, DRA opposes SoCal Gas' request for emergency consideration of its advice letter filing arguing that the situation faced by Lockheed/Enron does not warrant expedited treatment. DRA also argues that any exemption for Lockheed/Enron from SoCal Gas' G-IMB rate schedule is unwarranted and contrary to the rules adopted in D.90-09-089.

2. DRA believes that SoCal Gas' request is discriminatory and retroactive.

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3. According to DRA, the imbalance trading program has now been in operation since August 1, 1991 and both SoCal Gas and its customers should be well aware of the program's deadlines and other requirements. As DRA notes, other customers in the past (as well as in the future) may face similar situations where due to "administrative oversights" they've incurred imbalance penalties. To exempt Lockheed/Enron would constitute discriminatory treatment and could result in a "flurry of similar requests from other customers" (DRA Protest, p. 2).

4. SoCal Gas responded to DRA's protest on October 11, 1993. Enron also responded to DRA's protest on October 12, 1993 as the "real party-in-interest" in this proceeding.

5. Both SoCal Gas and Enron dispute DRA's claim that SoCal Gas' Advice Letter should not receive emergency consideration. Both parties argue that expeditious consideration could potentially minimize the economic costs incurred by Lockheed/Enron. Enron, in its response, notes that SoCal Gas' request for emergency consideration is also consistent with Rule 81.5 of the Commission's Rules of Practice and Procedure.

6. SoCal Gas partially agrees with DRA's assertion that exempting Enron from the tariffs is discriminatory but argues that it is not unlawfully discriminatory. Public Utilities Code Section 453 only prohibits "unreasonable" differences in rates. SoCal Gas believes that the unique circumstances of Enron provide the Commission with reasonable cause to exempt Enron from the tariffs for the period in question and that there would be few, if any, other customers who would be similarly situated as Lockheed/Enron is.

7. Both SoCal Gas and Enron dispute DRA's claim that approving the Advice Letter would constitute retroactive ratemaking. SoCal Gas offers a narrow interpretation of the concept of retroactive ratemaking, arguing that it applies only to "matters involving the effectiveness of rates determined in general rate proceedings" (SoCal Gas Response to Protest, p. 2). Enron offers a different approach to the concept of retroactive ratemaking, arguing that the charges assessed against Enron constitute a "penalty", not a "rate", and that the Commission has discretion to waive a penalty if it desires.

#### DISCUSSION

1. While sympathetic to Enron's problems, SoCal Gas' suggested remedy is precluded by the Commission's concerns regarding retroactive ratemaking previously articulated in D.91-12-054. Additionally, in D.90-09-089 and D.92-07-018 the Commission has already expressed its concerns regarding the amount of discretion SoCal Gas should have in administering its imbalance trading program and has told SoCal Gas that it should file a petition to modify D.90-09-089, and not an advice letter, if it wishes to request additional discretion. As noted below, SoCal Gas had previously stated its intention to seek this discretion from the Commission but it appears that SoCal Gas failed to take the necessary action in a timely fashion.

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2. In D.91-12-054, the Commission has already addressed essentially the same issues regarding the waiver of imbalance charges raised by this advice letter and decided that retroactivity concerns prevented the Commission from dismissing imbalance charges that were already due and payable.

3. D.91-12-054 addressed the waiver of certain imbalance charges accrued during the start-up phase of the imbalance trading program. Despite assertions in the accompanying proceeding that the imbalance charges assessed against many of SoCal Gas' customers were probably the fault of SoCal Gas (due not only to program start-up problems but also, to other issues potentially subject to reasonableness review),<sup>2</sup> the Commission nonetheless denied any retroactive rate relief to the affected customers. As the Commission noted:

SoCal Gas' petition asks us to change its procurement program, in part for periods that have already passed. The request therefore raises questions about the rule against retroactive ratemaking. Even where a retroactive change may not be barred by the rule against retroactive ratemaking, the Commission's general policy is not to authorize rate changes relating to a past period unless the Commission has previously authorized later changes...For example, the Commission on occasion will make a utility's rates subject to refund for a specified purpose, but the refund provision will only apply from and after the date of the order making the rates subject to refund.

Based on our above stated policy, we will not grant any relief with regard to standby charges that have already become due because the corresponding imbalance trading period has already passed. (D.91-12-054, p<sub>3</sub> 9-10. See also D.91-12-054, Conclusion of Law #1 (p. 12)).

4. The same factual pattern exists in the present advice letter, where SoCal Gas is again asking the Commission to waive imbalance charges that have already become due. If the Commission chose not to waive imbalance charges which were arguably caused by SoCal Gas' own actions, then there is no equitable reason why the Commission should waive imbalance charges which accrued solely due to the fault of the customer.

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<sup>2</sup> See D.91-12-054, p. 5-6 and Finding #3 (p. 12).

<sup>3</sup> It should be noted that both this decision, as well as subsequent decisions regarding retroactivity (See for example D.92-03-094) have all been issued subsequent to the California Supreme Court case of TURN v. PUC (44 Cal.3d 870) issued in 1988, and cited by SoCal Gas in its response to DRA's protest.

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5. In D.91-12-054, the Commission also expressed its concern that "retrospectively changing our rules for imbalances might send the wrong signal to customers and competitors. ...We believe providing predictable rules on which business persons can plan their company's purchases is important" (D.91-12-054, p. 8). Indeed, as the California Gas Marketers Group<sup>4</sup> stated in that proceeding, "the bailout of some noncore customers sends the wrong signal to customers, marketers, and suppliers who made investments and business adjustments to ensure that their gas supplies would be delivered" (D.90-09-089, p. 4).

6. Enron argues that retroactivity is not an issue since the charges assessed against it constitute a "penalty" and not a "rate." This assertion is not supported by SoCal Gas' tariffs. SoCal Gas' G-IMB rate schedule defines the imbalance program as a "service for individual customers" offered under "rates" contained in a Commission approved tariff.<sup>5</sup> The charge which Enron is seeking to be exempted from in this Advice Letter is specifically listed as a "Buy-back rate" (not penalty) in the tariffs, which go on to state that this "rate is applied to (a) customer's positive transportation imbalance". In D.91-12-054, the Commission adopted a similar understanding, calling monies collected by SoCal Gas under its imbalance trading program "charges", not penalties, and stating that waiver of any imbalance charge would constitute a "rate change" and not, as Enron asserts, "a waiver of a penalty." D.91-12-054 also found that the level of the imbalance charges were neither "unreasonable" nor constituted a "windfall" to core customers, contentions made by both SoCal Gas<sup>6</sup> (in D.91-12-054) and by Enron in this advice letter proceeding.

7. In a follow-up proceeding to D.91-12-054, the Commission addressed some remaining unresolved issues regarding SoCal Gas' imbalance trading program. During this follow-up proceeding, SoCal Gas announced its intention to "file an advice letter seeking specific authority to exercise discretion to extend the

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4 This group consisted of a number of California gas marketers who could be considered as competitors to Enron. Enron was not a member of this group.

5 D.90-09-089, Ordering Paragraph #3 required SoCal Gas to "file by January 10, advice letters proposing tariffs to implement the rules adopted in this proceeding and attached as Appendix A. The advice letters shall be served on all parties to this proceeding" (p. 85) which included Enron (See D.90-09-089, p. 5 and SoCal Gas Advice Letter 2063, p. 2). SoCal Gas' proposed tariffs were approved by the Commission on February 19, 1992 as a compliance filing to D.90-09-089.

6 See D.91-12-054, p. 7 and Enron's Response to DRA's Protest (p. 4)

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imbalance trading period 'as circumstances warrant' " (See D.92-07-018, p. 4-5). D.92-07-018, the Commission decision which addressed these follow-up issues, noted that SoCal Gas' request could not be accomplished by Advice Letter but would have to be done through a petition to modify D.90-09-089<sup>7</sup>, a petition SoCal Gas appears never to have subsequently filed. This raises an additional issue as to whether SoCal Gas can even request an extension of its imbalance trading deadlines through this Advice Letter.

8. Finally, since the Commission neither granted SoCal Gas' request for emergency consideration nor approved SoCal Gas' advice letter filing prior to the normal 20-day protest period contained in General Order 96-A, there is no need for the Commission to address SoCal Gas' request for expedited consideration of its advice letter.

#### FINDINGS

1. In D.91-12-054, the Commission concluded that to dismiss imbalance charges that were already due and payable would violate the Commission's policies concerning prospective ratemaking.
2. SoCal Gas' requested deviation from its tariffs for Lockheed/Enron is precluded by the Commission's ratemaking policies as articulated by the Commission in D.91-12-054 and other decisions.
3. Lockheed/Enron's incurrence of imbalance charges is due solely to its own actions and is not the result of any action of SoCal Gas.

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7 It appears that in D.90-09-089 the Commission considered the degree of discretion to offer SoCal Gas in its imbalance trading program. In that proceeding, the Commission noted the position taken by the Indicated Producers that the "settlement rules for balancing and standby services may allow SoCal Gas too much discretion in determining when to apply charges or purchase gas. This discretion, according to Indicated Producers, could result in discrimination between customers and should be eliminated" (See D.90-09-089, 37 CPUC 2d 583, 622). The Commission rejected the proposed settlement rules in favor of a 10% tolerance for imbalances with an imbalance trading program.

8 On September 17, 1993 Enron filed a petition for modification of D.90-09-089 requesting modifications to D.90-09-089 similar to those originally proposed by SoCal Gas.

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4. Even in cases where the utility may have been at fault for imbalance charges being assessed against customers, the Commission has not granted relief to these customers for charges that were already due and payable.

5. Imbalance charges are a "rate" for a "service" offered under a Commission-approved tariff and are not a "penalty" as asserted by Enron.

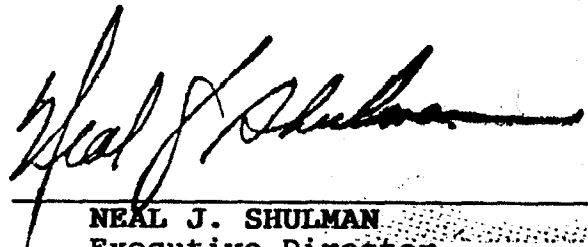
6. There is no need for the Commission to address the issue of expedited consideration of SoCal Gas' advice letter filing.

**THEREFORE, IT IS ORDERED that:**

1. Southern California Gas Company's (SoCal Gas') request to allow Lockheed Corporation and its gas marketer Enron Access Energy to deviate from the imbalance trading deadlines of Rate Schedule G-IMB for the month of June, 1993 is denied.

2. This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on February 3, 1994. The following Commissioners approved it:



NEAL J. SHULMAN  
Executive Director

DANIEL Wm. FESSLER  
President  
PATRICIA M. ECKERT  
NORMAN D. SHUMWAY  
P. GREGORY CONLON  
JESSIE J. KNIGHT, JR.  
Commissioners