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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ITEM # 34 ID#4903

ENERGY DIVISION **RESOLUTION G-3382**

September 22, 2005

R E S O L U T I O N

Resolution G-3382. Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E) submit modified open access tariffs, in compliance with Resolution G-3376. The utilities' submittals are approved with modifications.

By SoCalGas Advice Letter (AL) 3413-A and SDG&E AL 1474-G-A, filed on April 1, 2005.

SUMMARY

This Resolution approves as filed SoCalGas's and SDG&E's compliance Open Access tariffs (Rule 39 for both utilities) and the *pro forma* Confidentiality Agreement, submitted with ALs 3413-A and 1474-G-A, respectively. The Resolution approves with modifications the proposed *pro forma* Consulting Services Agreement and the proposed *pro forma* Collectible System Upgrade Agreement. The Resolution notes the redundancy of the proposed *pro forma* Interconnect Collectible System Upgrade Agreement (ICSUA) with the *pro forma* Interconnection Agreement (IA) being developed elsewhere in Order Instituting Rulemaking (R.) 04-01-025, and orders the utilities to file the ICSUA for Commission approval together with the IA.

BACKGROUND

To allow all new sources of natural gas supply coming into the California system, including LNG, to be able to compete on an equal footing with all other sources of gas, the Commission ordered (D. 04-09-022) SoCalGas, SDG&E, and Pacific Gas and Electric Company (PG&E) to file open access tariffs

These advice letters originate in R.04-01-025, in which the Commission is seeking to establish policies and rules to ensure reliable, long-term supplies of natural gas to California. Phase 1 of that proceeding covered a host of issues, including

liquefied natural gas (LNG) access, interstate pipeline access, capacity requirements, and interstate pipeline contract renewal. On September 10, 2004 the Commission issued its Phase 1 Decision, (D.) 04-09-022 (effective September 2, 2004), which dealt with many issues, and relegated some issues to other proceedings or to Phase 2 of the same proceeding. In ordering paragraph 6 of that decision, the Commission ordered SoCalGas, SDG&E, and Pacific Gas and Electric Company (PG&E) to file open access tariffs. Consequently, all three utilities filed their proposed open access tariffs by advice letter on October 4, 2004. SoCalGas in AL 3413 and SDG&E in AL 1474-G both proposed a new Rule 39 for the open access tariffs. PG&E proposed to attach the open access tariffs to its pre-existing Rule 21.

The Commission issued Resolution G-3376 on March 17, 2005 approving PG&E's open access tariffs as filed, and ordering SoCalGas and SDG&E to refile their tariffs making certain changes to their Rule 39 as well as offering *pro forma* proposals for all of the agreements referred to in Rule 39, except for the Interconnection and Operational Balancing Agreement (IOBA) which would be dealt with separately.

In compliance with Resolution G-3376, on April 1, 2005 SoCalGas and SDG&E filed ALs 3413-A and 1474-G-A respectively, re-submitting their Rule 39 as well as their *pro forma* proposals for a Consulting Services Agreement, a Confidentiality Agreement, a Collectible System Upgrade Agreement, and an Interconnect Collectible System Upgrade Agreement.

NOTICE

Notice of AL 3413-A and AL 1474-G-A was made by publication in the Commission's Daily Calendar. SoCalGas and SDG&E state that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

PROTESTS

SoCalGas Advice Letter 3413-A and SDG&E Advice Letter 1474-G-A were timely protested by Sempra LNG, BHP Billiton (Billiton), and Coral Energy Resources (Coral) on April 21, 2005.

Billiton Protest:

Billiton believes that the open access tariffs filed by SoCalGas and SDG&E are a farce and a travesty, represent a piecemeal approach that should be rejected by the Commission. According to Billiton, these are one-sided service agreements which give the Utilities too much lee-way to charge for capacity studies and facilities construction, without assuring service. Billiton also wants the implementation of open access tariffs to be better coordinated with the development of firm access rights in Application (A.) 04-12-004.

Coral Protest:

Collectible System Upgrade Agreement:

Coral generally supports the re-filed advice letters, and limits its protests to certain terms of the Collectible System Upgrade Agreement. This agreement concerns the system upgrade downstream of the interconnection necessary to accommodate the additional supply from the new or augmented interconnection. Coral's comments are summarized below.

Section I.C.7 − Firm rights: Coral wants language included to provide assurances that the pipeline capacity to be made created will be made available on a "firm" basis.

Section I.C (this should be "D") − Hinshaw Exemption: Coral acknowledges the Utility's right to avoid taking any actions that could jeopardize its Hinshaw Exemption under the Natural Gas Act, but asks that as soon as the Utility becomes aware of the problem, it give the Interconnecting Pipeline notice and an opportunity to rectify it.

Section II.C.2 − Inability to obtain permits: This section provides that the Utility may suspend services at any time if it has been unable to acquire the necessary permits or authorizations. Coral would like to condition this upon the Utility's having made "commercially reasonable efforts" to obtain said permits. Likewise with section VII.B., Coral would like to condition the regulatory *force majeure* clause upon the Utility's good faith (and unsuccessful) efforts to obtain governmental approvals.

Section III.A. − Utility discretion in design and construction: This section provides that the Utility facilities shall be designed and constructed by the Utility "in its sole discretion". Coral would like to limit this discretion to the specifications set forth in Exhibit B and to commercially reasonable standards.

Section III.A.1 − Recovery of actual costs: This section provides that the Interconnecting Pipeline will be responsible for "actual costs". Coral wants this limited to actual costs that are "reasonably and prudently incurred", consistent with the specifications of Exhibit B and with commercially reasonable standards. Coral adds that "actual costs" should of course not include damages or liabilities that the Utility may incur as a result of its own negligence. In addition Coral requests clarification of the Utility "internal overheads" the tariff proposes to make the Interconnecting Pipeline liable for.

Section III.C − Impact of additional parties: This section provides that costs for the Interconnecting Pipeline do not increase in the event that additional parties enter into arrangements with the Utility for gas deliveries at the interconnection point. Coral would like it also to provide that costs owed by the Interconnecting Pipeline may decrease due to involvement by an additional party. Along these lines, Coral wants language added to section VII.H stating that "costs charged to the Interconnecting Pipeline will be reduced due to incremental expansion facilities that are constructed by a third party."

Section IV.C − Assignment rights: Coral wants to ensure that assignment rights "may not be unreasonably withheld".

Section VI.B − Utility liability: This section provides limits to the Utility's liability. Coral would expunge the sentence which exculpates the Utility from liability, even for tortious actions.

Section VII.F. − Dispute resolution: This section sends all disputes to the CPUC for resolution. Coral wants the Commission to resolve only those disputes over which it has exclusive jurisdiction. With respect to other matters, Coral wants federal or state courts to have jurisdiction.

<u>Sempra LNG Protest:</u>

Sempra LNG's protest addresses both the proposed Consulting Services Agreement and the Collectible System Upgrade Agreement.

Consultant Services Agreement (CSA):

Section 3.2 − Limits on Utility liability: Sempra LNG argues that the proposed limitations on liability are overly broad. In particular, Sempra LNG believes the Utility should be liable in the event of breach of contract, of negligence, and of intentional misconduct.

Section 9 − Assignment: Sempra LNG seeks to expand the ability of parties to assign the agreement to third parties.

Exhibit A − Sharing of information submitted to regulatory bodies: This exhibit prohibits the subsequent sharing of documentation with regulatory bodies. Sempra LNG wishes to allow for such sharing, since there may be occasions where divulging such information is required. One such occasion might be a proceeding in which the utility applies for rolled-in ratemaking treatment for the upgrade.

Collectible System Upgrade Agreement (CSUA):

Section I.C − Hinshaw exemption: Sempra LNG would like to add language providing that the Utility notify the Interconnecting Pipeline as soon as it becomes aware of a problem, and allow the Interconnecting Pipeline to revise Exhibit B (this exhibit lists applicable facilities and provides a multi-step construction time line).

Section III.A − Utility discretion in design and construction: Sempra LNG wants to replace language giving the Utility "sole discretion" over design and construction decisions with language requiring that such design and construction conform to Schedule B.

Section VI – Limiting Utility liability: As with the CSA, Sempra LNG believes the language limiting liability in section VI of the CSUA is overly broad.

Section II.A − Recovery of actual costs: In the fourth sentence, Sempra LNG would like to add "and if applicable, shall" to indicate that its acceptance of the cost estimate is not automatic. In the next sentence, Sempra LNG proposes to fix a typographically erroneous word omission.

Section II.B − Recovery of actual costs: In the last sentence of section II.B, Sempra LNG would limit its liability for costs incurred to those which are "incurred *and* unavoidable" instead of "incurred *or* unavoidable".

Section II.C.2 − Failure to obtain necessary permits: Sempra LNG wishes to allow the Utility to suspend services resulting from a failure to obtain necessary permits and authorizations only if "commercially reasonable efforts have been made" to obtain them.

Section VII.B − Failure to obtain government permits: Sempra LNG would delete "inability to obtain governmental approvals or permits" from section VII.B, arguing that this repeats what's already in section II.C.2.

Section VII.G − Termination of agreement due to a CPUC decision: This section allows a party to terminate the agreement within 15 days in the event that a Commission (or any other agency with pertinent jurisdiction) decision diminishes the agreement's anticipated commercial benefit. Sempra LNG would also allow for immediate termination if necessary to comply with the decision.

REPLIES

Replies were timely filed on April 28, 2005 by two parties – SoCalGas/SDG&E (filing jointly) and Southern California Generation Coalition (SCGC).

SoCalGas Reply:

SoCalGas's reply first addresses Sempra LNG's protest.

Reply to Sempra LNG protest:

Warranties: Re Sempra LNG's proposal to modify the second-to-last sentence of section 3.2 of the CSA to allow for the possibility of warranties contained in the proposed language, SoCalGas/SDG&E opposes such, arguing that SoCalGas/SDG&E has never provided warranties associated with the consultant services and does not intend to do so in the future.

Indemnification: In response to Sempra LNG's proposal to modify the last sentence of section 3.2 of the CSA to reduce the blanket indemnification proposed therein, SoCalGas/SDG&E offers to add the phrase "With the

exception of claims solely arising from the gross negligence or intentional misconduct by Utility that occurs while performing the Service" to qualify the indemnification subsequently described. SoCalGas/SDG&E explains that the "breach of contract" clause proposed by Sempra LNG can be addressed by the CPUC through the Disputes section of the contract.

Assignment: SoCalGas/SDG&E is agreeable to the changes proposed by Sempra LNG to the language in section 9 of the CSA describing assignment.

Disclosure of information shared with regulatory bodies: SoCalGas/SDG&E objects to Sempra LNG's proposed modification of paragraph 3 of Exhibit A of the CSA to allow for possible use of the generated analyses in a regulatory proceeding, and then explains that its objection is based on concerns over publication of confidential information.

Hinshaw exemption: SoCalGas/SDG&E objects to Sempra LNG's proposal in section I.C (should be "D") of the CSUA to notify the Interconnecting Pipeline of threats to the Utility's Hinshaw Exemption and allow the Interconnecting Pipeline an opportunity to rectify such prior to terminating the contract. SoCalGas/SDG&E explains that the Hinshaw Exemption must not be threatened.

Utility discretion in facility design and construction: In response to Sempra LNG's proposal to modify section III.A of the CSUA to limit unfettered Utility discretion in facility construction, SoCalGas/SDG&E claims rather that it should "not be forced to design by consensus of unregulated parties."

Limitation of Utility liability: Re Sempra LNG's proposal to modify CSUA section VI limitation of Utility liability, SoCalGas/SDG&E opposes the change, explaining that the Utility is only doing this at the request of the Interconnecting Pipeline.

Recovery of actual costs: SoCalGas/SDG&E agrees to both of the changes to the CSUA section II.A proposed by Sempra LNG. SoCalGas/SDG&E opposes Sempra LNG's proposed change to CSUA section II.B to limit the costs which the Interconnecting Pipeline is liable for in the event of a work stoppage, the proposal, simply stating that costs incurred should be recoverable.

Failure to obtain government permits: SoCalGas/SDG&E objects to Sempra LNG's proposal to add a stipulation to SoCalGas/SDG&E's stated ability in

CSUA section II.C.2 to suspend construction for want of governmental authorizations. SoCalGas/SDG&E claims that the proposed language would only serve litigious purposes. In addition, SoCalGas/SDG&E objects to Sempra LNG's proposal to delete the clause relating to "inability to obtain governmental approvals or permits" under the CSUA section VII.B "Force Majeure" clause on the grounds of claimed redundancy. SoCalGas/SDG&E claims that in fact there is no redundancy.

Termination due to unfavorable CPUC ruling: SoCalGas/SDG&E does not object to the Sempra LNG proposed language change for section VII.G dealing with termination related to unfavorable regulatory rulings.

Reply to Coral Protest:

Firm rights: SoCalGas/SDG&E objects to Coral's proposed change to CSUA section I.C.7 ensuring firm rights for capacity made available by the new or augmented interconnection, arguing that this should properly be taken up in A.04-12-004.

Hinshaw exemption: As with Sempra LNG's proposal, SoCalGas/SDG&E objects to Coral's proposed change to CSUA section I.C (should be "D") dealing with the Hinshaw Exemption.

Failure to obtain government approvals: As with Sempra LNG's proposal, SoCalGas/SDG&E objects to Coral's proposed change to CSUA section II.C.2 to require that "commercially reasonable efforts" be made prior to Service suspension for lack of governmental authorizations. SoCalGas/SDG&E argues that it already must perform under the contract, and that the proposal could render the utility vulnerable to remedy from sources other than the CPUC.

Utility discretion in facility design and construction: As with Sempra LNG's proposal, SoCalGas/SDG&E objects to Coral's proposal to alter CSUA section III.A to require that SoCalGas/SDG&E's construction conform to "commercially reasonable standards" and conform to the previously mutually agreed-up Exhibit B. SoCalGas/SDG&E argues that if parties are unhappy with Utility performance, they can and should take it up with the CPUC.

Recovery of actual costs: SoCalGas/SDG&E objects to Coral's proposal for CSUA section III.A.1 to make the Interconnecting Pipeline liable only for those

costs which are "reasonably and prudently incurred" and consistent with Exhibit B. SoCalGas/SDG&E argues that (1) Exhibit B is only a general description and inadequate for purposes implied by Coral, (2) the Utility is already required to act reasonably by the contract, and (3) if the Interconnecting Pipeline believes the Utility is acting unreasonably, it can appeal to the CPUC. SoCalGas/SDG&E does not explain its objection to the request by Coral for clarification of "internal overheads", except to say that the Utility is not making a profit on these expenses.

Impacts from third parties: In response to Coral's proposal to amplify the cost allocation implications under CSUA section III.C of other parties joining in at the interconnection point, SoCalGas/SDG&E points out that, since cost allocation issues are actually being dealt with in A.04-12-004, this entire section should probably be deleted.

Assignment rights: SoCalGas/SDG&E does not object to the change in CSUA section IV.C proposed by Coral, to provide that assignment may not be unreasonably withheld.

Limits to Utility liability: SoCalGas/SDG&E does not address Coral's proposed changes to CSUA section VI.B relating to liability limitations.

Dispute resolution: SoCalGas/SDG&E objects to Coral's proposed change to CSUA section VII.F regarding dispute resolution.

Reply to Billiton Protest:

SoCalGas/SDG&E argues that Billiton's arguments should have been raised in response to the filing of the original advice letters, instead of to these compliance filings.

<u>SCGC Reply:</u>

SCGC's reply addresses Coral's proposal to modify CSUA section I.C.7 to allow for firm rights associated with the capacity expansion. SCGC supports Coral's proposed allocation of firm rights, but with the caveat that if there should be an interruption or decrease in service, the party with the firm rights under the CSUA should be apportioned a pro rata decrease.

DISCUSSION

The Commission has reviewed the advice letters, the protests and replies.

Billiton's protest:

Billiton should have raised its global objections in the comments to the original advice letter filings. Since the utilities filings examined here are compliance filings, Billiton's arguments, while colorful, are moot.

Rule 39:

Aside from Billiton (their protest is addressed above), no party has protested the compliance filings of Rule 39. We will approve them as filed.

Interconnect Collectible System Upgrade Agreement (ICSUA):

No party raised any objections to the ICSUA (Form 6430-5 for SoCalGas/SDG&E, and Form 143-001 for SDG&E) as filed by SoCalGas/SDG&E. Developments in R.04-01-025 dealing with the Interconnection and Operational Balancing Account (IOBA), however, affect the *pro forma* agreements contained in these advice letters, in particular the ICSUA.

On April 1, 2005, SoCalGas/SDG&E issued a proposed *pro forma* IOBA. In February 28, 2005 and April 21, 2005 rulings, the Assigned Commissioners in R.04-01-025 ordered Energy Division to lead a workshop to further develop this agreement. The workshop was conducted on May 11, 2005. In its June 8, 2005 report on the IOBA, ED recommended that the IOBA be separated into two agreements, an Interconnection Agreement (IA) and an Operational Balancing Agreement (OBA). On June 17, 2005, SoCalGas/SDG&E and SDG&E issued proposed separate *pro forma* agreements for the IA and the OBA. Parties are now conducting negotiations on these *pro forma* agreements to try to narrow differences. As requested in the June 8 report, SoCalGas/SDG&E have issued a progress report to the CPUC on August 16, 2005.

In viewing the IA filed by SoCalGas/SDG&E on June 17, 2005 it was evident that there were large areas of redundancy between the IA and the ICSUA contained in these advice letters. This was brought to the attention of SoCalGas/SDG&E, which, in the progress report filed on August 16, 2005,

accordingly revised the proposed IA and made slight modifications to the proposed ICSUA. **Therefore, in the interest of simplicity and reduced paperwork, we will not approve the ICSUA at this time. Rather, we will order the Utilities to refile the CSA and the CSUA with the revisions indicated herein and, if compliant, we will approve those advice letters without the ICSUA. The utilities will develop the ICSUA along with their *pro forma* IA and OBA.**

Confidentiality Agreement:

No specific complaints against the proposed Confidentiality Agreement were lodged, and we will approve it as filed.

Consulting Services Agreement (CSA):

The utilities should modify the CSA as noted below and refile it within 15 days of the date of this resolution.

Section 3.2 − Limits on Utility liability:

We agree with SoCalGas/SDG&E that warranties are not required, and reject the change to the second-to-last sentence proposed by Sempra LNG. Regarding changes to the last sentence dealing with liability, which would place fewer restrictions on liability, we will accept the change proposed by SoCalGas/SDG&E in its reply comments.

Section 9 − Assignment rights:

Regarding assignment rights, we accept the changes agreed to by both Sempra LNG and SoCalGas/SDG&E.

Exhibit A:

Regarding the use in regulatory proceedings of consulting analyses produced as a result of the CSA, we agree with Sempra LNG that SoCalGas'/SDG&E's concerns can be addressed by normal Commission procedures dealing with confidential material. Consequently, we will order the sentence in question to be deleted.

Collectible System Upgrade Agreement (CSUA):

The utility should modify the CSUA as noted below and refile it within 15 days of the date of this resolution.

Section I.C.7 − Firm transmission rights:

We agree with SoCalGas/SDG&E that the allocation of firm transmission rights is the purview of A.04-12-004, and should not be introduced into this agreement.

Section I.C (should be "D") − Hinshaw Exemption:

We agree with SoCalGas/SDG&E that their exemption from federal regulation under the Hinshaw amendment to the Natural Gas Act, 15 U.S.C. § 717(c), should not be threatened. The Hinshaw Exemption supports the Commission's jurisdiction and its ability to protect SoCalGas/SDG&E's ratepayers. Therefore, SoCalGas and SDG&E should not take actions, which could threaten their Hinshaw Exemption.

Sempra LNG and Coral acknowledge that the utilities should not jeopardize their Hinshaw Exemption, but merely ask the utilities to provide notice as soon as they are aware of such a risk of losing their exemption. We believe that the concerns of Sempra LNG, Coral, and the Utilities regarding the Hinshaw Exemption can be addressed by adding certain language to the end of the section. In their comments to the Draft Resolution, SoCalGas/SDG&E requested further refinement on the proposed insertion, which we find reasonable. The language to be added reads as follows:

> "While the Utility has the right and obligation to take action to protect its Hinshaw Exemption status, the Utility shall notify the Interconnecting Pipeline as soon as the Utility becomes aware that any action under the Agreement jeopardizes its Hinshaw Exemption. The Utility shall make a good faith effort to allow the Interconnecting Pipeline an opportunity to take such actions as are necessary to assist the Utility in eliminating the concern."

Section II.A − Construction cost estimates):

Regarding the development of construction schedule and cost estimates, we will accept the language offered by Sempra LNG and agreed to by SoCalGas/SDG&E.

Section II.B − Construction cost liability:

Regarding the dispute as to what costs the Interconnecting Pipeline should be liable for, we find the qualifier "unavoidable" to be counterproductive. Rather, the Interconnecting Pipeline should be responsible only for costs which are "incurred". We will order that the words "or unavoidable" be excised.

Section II.C.2 − Governmental authorizations:

Both Coral and Sempra LNG have argued for language requiring that the Utility first make "commercially reasonable efforts" to obtain governmental authorizations prior to suspending services. SoCalGas/SDG&E argues that this addition would tend to make the contract susceptible to litigation. We believe it is reasonable and useful to add "good faith efforts" in place of "commercially reasonable efforts" which Coral and Sempra LNG have proposed.

Section III.A − Limits on construction discretion:

Both Coral and Sempra LNG have argued for language requiring that the Utility adhere to Exhibit B and follow "commercially reasonable standards". SoCalGas/SDG&E argues that this will expose the system to loss of integrity. We will grant Coral's and Sempra LNG's request, and have the requirement that Exhibit B be adhered to inserted into the paragraph, along with requirements that the utility follow commercially reasonable standards. We acknowledge that the stated requirement to follow commercially reasonable standards could potentially invite legal remedies, and yet it does provide the Interconnecting Pipeline some useful comfort. We believe that Interconnecting Pipeline will be disinclined to abuse this provision in that needless legal action would also slow down project completion.

Section III.A.1 − Actual cost liability:

SoCalGas/SDG&E objects to the several qualifiers that Coral would like to add to the Interconnecting Pipeline's cost liability. We reject Coral's proposal to add "reasonably and prudently incurred", which seems to beg for litigation. We will allow, however, for the addition of language calling for consistency with Exhibit B and with commercially reasonable standards. Although it is wordy, Coral's proposal to add language disallowing recovery for damages or liabilities that the utility may incur as a result of its own negligence is appropriate. Finally, we will require the Utility to provide up front either a formula or a number, with documentation acceptable to the Interconnecting Pipeline, accounting for "internal overheads".

Section III.C − Cost allocation impacts from 3rd party involvement:

We agree with the discussion in SoCalGas/SDG&E's reply comments, and agree that cost allocation will be determined by A.04-12-004. But we do not wish for this agreement to be silent on the topic. As a result, we order SoCalGas/SDG&E to insert language into this section stating that the cost allocation impacts arising from involvement of a third party will be determined in A.04-12-004, or another pertinent CPUC proceeding.

Section IV.C − Assignment rights:

We accept the changes agreed to by Coral and SoCalGas/SDG&E regarding assignment rights not being unreasonably withheld.

Section VI.B − Liability limits:

SoCalGas/SDG&E's objections to the limits on liability proposed by Coral and Sempra LNG are not compelling, and we will order that the last sentence of section VI.B be deleted.

Section VII.B − Governmental approvals:

We accept SoCalGas/SDG&E's explanation that the governmental approvals mentioned in this section differ from those mentioned in section II.C.2, and so will allow the section to be unchanged.

Section VII.F − Dispute resolution:

Instead of the proposals offered by SoCalGas/SDG&E and Coral, we will order that disputes, except those in areas explicitly under state or federal jurisdiction, be resolved by binding arbitration. The language of this section will be changed to reflect this.

Section VII.G − Termination due to a CPUC decision:

We accept the language agreed to by SoCalGas/SDG&E and Sempra LNG dealing with contract termination resulting from unfavorable regulatory rulings.

COMMENTS

Timely comments were filed on September 8, 2005 by Coral and by SoCalGas-SDG&E.

Coral requests clarification of the clause in CSUA Section III.C, which deals with the cost allocation impacts from involvement of third parties. Coral asks that the modification proposed by the Draft Resolution be added to the end of the contract language proposed by SoCalGas/SDG&E, which states that costs to the original interconnecting party not be increased in the event that a third party became involved. We agree with Coral's proposed clarification.

SoCalGas/SDG&E proposes three modifications to the Draft Resolution's disposition of the CSUA. The first deals with the handling of the Hinshaw Exemption in Section I.C. The Draft Resolution had required that the utility notify the interconnecting party in the event that any action under the Agreement *could* jeopardize the utility's Hinshaw status. SoCalGas/SDG&E argue that this language would trigger many unnecessary notifications, and proposes to require notification in the event that the Hinshaw status *is* jeopardized. We agree that SoCalGas/SDG&E's proposal is more practical, and so adopt it.

Next, SoCalGas/SDG&E wish to reinsert into CSUA Section II.B the words "or unavoidable", which the Draft Resolution had excised, intending that the interconnecting party should be responsible for only those costs which were "incurred". SoCalGas/SDG&E argues that the extra words cover certain costs that were unavoidable but not actually incurred. We find SoCalGas/SDG&E's

argument unconvincing, and so we will not modify the Draft Resolution in this regard.

Third, SoCalGas/SDG&E argue that the limitation on liability that the Draft Resolution had proposed be removed from CSUA Section VI.B instead be replaced by liability-limiting language from Rule 4. We believe that to the extent the language in Rule 4 applies, it is redundant and unnecessary, and so we will not modify the Draft Resolution in this regard.

FINDINGS

1. Resolution G-3376 directed SoCalGas and SDG&E to file compliance advice letters containing modified open access tariffs (Rule 39) as well as draft *pro forma* proposals for the CSA, the CSUA, the CA, and the ICSUA.
2. SoCalGas and SDG&E filed timely advice letters 3413-A and 1474-G-A respectively on April 1, 2005.
3. BHP Billiton, Coral, and Sempra LNG filed timely protests on April 21, 2005.
4. SoCalGas/SDG&E (filing jointly) and SCGC filed timely replies on April 28, 2005.
5. The content of BHP Billiton's protest concerns matters addressed in Resolution G-3376 and should have been addressed there. BHP Billiton's protest is moot.
6. Aside from BHP Billiton, no party protested the content of the re-filed Rule 39, and it is reasonable to approve it as filed.
7. No party protested the content of proposed ICSUA or the CA.
8. It is reasonable to approve the CA as filed.
9. Because the proposed *pro forma* IOBA has been split into a *pro forma* IA and a *pro forma* OBA in R.04-01-025, it necessary to make further changes to the ICSUA to ensure conformity with the IA. Those changes can best be made together with the IA, and not in this resolution.
10. Coral's filed comments concern only the CSUA. Coral requests changes to the following sections: I.C.7, I.C (should be "D"), II.C.2, III.A, III.A.1, III.C, IV.C, VI.B, and VII.F.
11. Sempra LNG's filed comments concern the CSA and the CSUA. Sempra LNG requests changes to the following sections of the CSA: 3.2, 9, and Exhibit A. Sempra LNG requested changes to the following sections of the CSUA: I.C, II.A, II.B, II.C.2, III.A, VI, VII.B, and VII.G.
12. SoCalGas'/SDG&E's reply addressed nearly all of the comments of all three protesting parties.

13. SCGC's reply comments concerned only the portion of Coral's comments regarding section I.C.7 of the CSUA dealing with firm transmission rights.
14. CSA section 3.2 deals with ownership and use of the analyses generated by the consultant. We agree with SoCalGas/SDG&E that warranties for these analyses are not merited.
15. CSA section 9 deals with assignment rights. We support as reasonable the changes agreed upon by Sempra LNG and SoCalGas/SDG&E, which allow for certain circumstances in which authorization for assignment is not required from the other party.
16. Exhibit A to the CSA provides a cost estimate for the consulting services related to the interconnection. We agree with Sempra LNG that there are circumstances in which the documents generated should be made available in a regulatory proceeding, and that Commission confidentiality procedures can adequately safeguard confidential material.
17. CSUA section I.C.7 discusses incremental takeaway capacity resulting from the system upgrade. We agree with SoCalGas/SDG&E that firm transmission rights should not be part of this agreement.
18. CSUA section I.C (should be "D") deals with the Utility's response to perceived threats to its Hinshaw-exempt status. The concerns of both Coral (re their desire to participate in resolving these problems) and SoCalGas/SDG&E (re their desire to retain exclusive right to protect their Hinshaw-exempt status) can be achieved by inserting the following sentence into the section – "While the Utility has the right and obligation to take action to protect its Hinshaw Exemption status, the Utility shall notify the Interconnecting Pipeline as soon as the Utility becomes aware that any action under the Agreement jeopardizes its Hinshaw Exemption. The Utility shall make a good faith effort to allow the Interconnecting Pipeline an opportunity to take such actions as are necessary to assist the Utility in eliminating the concern."
19. CSUA section II.A deals with the work schedule for construction. Both of the small changes proposed by Sempra LNG and agreed to SoCalGas/SDG&E are reasonable and should be approved.
20. CSUA section II.B deals with work stoppages and their consequences. A fair resolution of the conflict between Coral and SoCalGas/SDG&E can be achieved by deleting the words "or unavoidable" from the text.
21. CSUA section II.C.2 deals with conditions preceding construction. Coral and Sempra LNG want the Utility to be required to make "commercially reasonable efforts" to obtain governmental authorizations, and

SoCalGas/SDG&E objects. It is reasonable to require the Utility to make "good faith efforts" to obtain governmental authorizations.

22. CSUA section III.A deals with the installation of facilities, and as proposed gives the Utility "sole discretion" in design and construction. Coral and Sempra LNG seek to limit this discretion by requiring conformance to Exhibit B (which outlines a construction work schedule), and (for Coral) to "commercially reasonable standards". We find it fair and practical to insert the two conditions into this section.
23. CSUA section III.A.1 deals with cost liability. We believe it is fair and practical to insert the same two requirements which are mentioned above for section III.A and also to exclude costs associated with damages related to negligence. Finally, the Utility should include up front either a number or a formula, with documentation agreeable to the Interconnecting Pipeline, accounting for "internal overheads", and should include this either in this section or in an exhibit to the CSUA.
24. CSUA section III.C deals with the implications of a third party's making deliveries at the interconnection. To acknowledge that this is being addressed elsewhere, we will require additional language in the CSUA indicating that cost allocation impacts arising from such events will be determined in A.04-12-004 or another pertinent CPUC proceeding.
25. CSUA section IV.C deals with assignment when the other party agrees in writing. We agree with Coral and SoCalGas/SDG&E that this clause should provide that such assignment will not be unreasonably withheld.
26. CSUA section VI.B deals with liability. SoCalGas'/SDG&E's proposed exemption language is over-broad and the last sentence of the section should be deleted.
27. CSUA section VII.B deals with *force majeure* conditions. We agree with SoCalGas/SDG&E that the circumstances mentioned here differ from those mentioned earlier in the contract, and thus are not redundant, and thus the section should not be changed.
28. CSUA section VII.F deals with dispute resolution. Instead of the proposals made by SoCalGas/SDG&E and Coral, it is reasonable that disputes, except those in areas explicitly under state or federal jurisdiction, be resolved by binding arbitration.
29. CSUA section VII.G deals with a decision to terminate in the event that a Commission decision reduces the benefits of the contract. We find reasonable the change offered by Sempra LNG and agreed to by SoCalGas/SDG&E which would allow for immediate termination when necessary.

THEREFORE IT IS ORDERED THAT:

1. The request of SoCalGas and SDG&E to implement the open access tariffs contained in Rule 39 as requested in AL 3413-A and AL 1474-G-A respectively is approved.
2. The Confidentiality Agreement is approved as filed.
3. The Interconnect Collectible System Upgrade Agreement is not approved. SoCalGas and SDG&E shall develop this agreement concurrently with their development of the Interconnection Agreement elsewhere in R.04-01-025.
4. SoCalGas and SDG&E shall refile their Consultant Services Agreement and their Collectible System Upgrade Agreement within 15 days of the day of this resolution, containing the modifications indicated in this resolution.
5. CSA section 9 shall be modified as regards assignment, as indicated herein.
6. The sentence in the CSA Exhibit A prohibiting use of the analyses in regulatory proceedings shall be deleted.
7. SoCalGas and SDG&E shall take actions to preserve their Hinshaw Exemption, but should give other parties notice and an opportunity to rectify the problems, so that there would be no threat of the utilities losing their Hinshaw Exemption. The following sentence – "While the Utility has the right and obligation to take action to protect its Hinshaw Exemption status, the Utility shall notify the Interconnecting Pipeline as soon as the Utility becomes aware that any action under the Agreement jeopardizes its Hinshaw Exemption. The Utility shall make a good faith effort to allow the Interconnecting Pipeline an opportunity to take such actions as are necessary to assist the Utility in eliminating the concern." – shall be inserted into CSUA section I.C (should be "D").
8. CSUA section II.A shall be modified as agreed to by Sempra LNG and SoCalGas/SDG&E.
9. The words "or unavoidable" shall be removed from CSUA II.B.
10. The language of CSUA section II.C.2 shall be modified to indicate that the Utility shall make "good faith efforts" to obtain required authorizations.
11. The language of CSUA section III.A shall be modified to require conformance with Exhibit B and with "commercially reasonable standards."
12. CSUA section III.A.1 shall be modified to require conformance with Exhibit B and with "commercially reasonable standards", to exclude from liability costs associated with damages related to negligence, and to include up front either

a number or a formula, with documentation agreeable to the Interconnecting Pipeline, accounting for "internal overheads".

13. CSUA section III.C shall be modified, as proposed by Coral in its comments to the Draft resolution, to add that cost allocation impacts arising from third parties' interconnecting shall be determined in A.04-12-004 or in another pertinent CPUC proceeding.
14. CSUA section IV.C shall be modified to indicate that assignment may not be unreasonably withheld.
15. The sentence in CSUA section VI.B broadly exculpating the Utility shall be deleted.
16. CSUA section VII.F shall be modified to indicate that disputes will be resolved with binding arbitration, except for areas explicitly under federal and state jurisdiction.
17. CSUA section VII.G shall be modified to allow for possible immediate termination, when necessary to comply.

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 September 22, 2005; the following Commissioners voting favorably thereon:

_____
STEVE LARSON
Executive Director