

122 FERC ¶ 61,110
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Southern California Generating Coalition

Docket No. RP08-27-000

v.

Southern California Gas Company

ORDER DISMISSING COMPLAINT

(Issued February 7, 2008)

1. On October 22, 2007, the Southern California Generating Coalition (SCGC)¹ filed a complaint alleging that Southern California Gas Company (SoCalGas), pursuant to authorization granted by the California Public Utilities Commission (CPUC), intends to charge a fee, called Firm Access Rights (FAR) charge, for access to its intrastate pipeline system in violation of the Supremacy Clause of the United States Constitution, the Natural Gas Act (NGA), and the Commission's rules and regulations.
2. SCGC requests that the Commission determine that the charges are preempted by the Commission's exclusive jurisdiction over interstate transportation of natural gas under the NGA. In addition, SCGC asserts that the Commission previously ruled in *Union Pacific Fuels*² that a similar type of access charge was an impermissible charge to

¹ SCGC consists of a group of gas-fired electric generators located in southern California, the City of Anaheim, Burbank Water and Power, Glendale Water and Power, Imperial Irrigation District, Los Angeles Department of Water and Power, City of Pasadena, and Reliant Energy Services, Inc.

² *Union Pacific Fuels, Inc., et al. v. Southern California Gas Co.*, 76 FERC ¶ 61,300 at 62,494 (1996), *reh'g denied*, 77 FERC ¶ 61,283 (1996), *aff'd in part sub nom., Public Utils. Comm'n of the State of Cal. v. FERC*, 143 F.3d 610 (D.C. Cir. 1998), *on remand*, 85 FERC ¶ 61,177 (1998).

interstate shippers, because it encroached upon the Commission's exclusive jurisdiction over transportation of natural gas in interstate commerce. In response, SoCalGas and the CPUC argue that the FAR is not similar to the charges in *Union Pacific Fuels*, and is a permissible intrastate charge that SoCalGas can impose.

3. As discussed below, the Commission dismisses the complaint based upon its finding that the FAR charge does not encroach upon the Commission's exclusive jurisdiction over gas transported in interstate commerce. The FAR charge is imposed upon SoCalGas customers who have executed intrastate transportation agreements with SoCalGas, and this charge reflects specific intrastate services that SoCalGas provides to customers. Thus, the FAR charge is not similar to the charge rejected by the Commission in *Union Pacific Fuels*.

Notice of Filing and Pleadings

4. On October 23, 2007, the Commission issued a notice of SCGC's complaint with comment and protest due as provided in Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.211 and 385.214 (2007). On November 13, 2007, SoCalGas filed an answer, the CPUC filed a notice of intervention and protest, and both Southern California Edison Company and San Diego Gas & Electric Company (SDG&E) filed comments urging dismissal of the complaint. American Gas Association, Pacific Gas & Electric Company, Indicated Producers,³ Anadarko Electric and Power Company and Anadarko Petroleum Corporation jointly, Coral Energy Resources, L.P., Constellation New Energy, Gas Division, LLC, Sempra Energy LNG, Transwestern Pipeline Company, LLC, Calpine Corporation and Exxon/Mobil Gas and Power Marketing filed timely motions to intervene, and Southern Gas Corporation and the Arizona Corporation Commission filed out-of-time motions for intervention. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2007), all timely unopposed motions to intervene and any motion to intervene out-of-time filed before issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding nor place additional burden on existing parties.

5. On December 20, 2007, SCGC filed a motion for leave to answer and an answer. While the Commission will on occasion, for good cause shown, accept an answer to an answer, SCGC has not shown good cause because it did not explain why it delayed more than five weeks after the answers were filed to make this filing, nor has it included any

³ Indicated Producers includes Aera Energy, LLC, BP Energy Company, BP America Inc. (including Atlantic Richfield Company), ConocoPhillips Company, Chevron USA Inc., Midway Sunset Cogeneration Company (an affiliate of Aera Energy) and Occidental Energy Marketing Inc.

material that was not available when the answers were filed. Accordingly, the Commission rejects this filing.

Background

6. The issue presented is whether the FAR charge is appropriately associated with intrastate services and therefore within the CPUC's jurisdiction, or whether the FAR charge is an attempt to impose a charge on interstate shippers falling under the *United Pacific Fuels* precedent. Accordingly, we will first describe that case.

7. In 1993, the CPUC authorized SoCalGas to construct facilities that would connect its intrastate pipeline to the interstate Kern/Mojave pipeline⁴ at Wheeler Ridge, California. The CPUC approved a tariff under which SoCalGas would charge rates for interconnection applicable to natural gas transportation deliveries nominated by shippers into SoCalGas' intrastate system at the Wheeler Ridge point of receipt.⁵ Under this charge the interstate shippers were to inform SoCalGas of gas deliveries to be made to the Wheeler Ridge interchange and the intended end-users of such deliveries. After receipt at Wheeler Ridge, the gas was transported to the end-users under contracts between SoCalGas and the end-users. SoCalGas then billed the interstate shippers based on the volumes of gas they delivered to SoCalGas and billed the local end-users based on actual transportation. The interstate shippers charged a bundled price to the end-users. The CPUC upheld the access charge based on the process used to direct shipment of the gas.

8. Interstate Shippers filed a complaint with the Commission challenging the charges as impermissible under the NGA. The Commission held that SoCalGas did not have the authority to make the tariff applicable to interstate shippers. The Commission acknowledged that while SoCalGas was a "Hinshaw" pipeline under the NGA,⁶ and generally exempt from Commission jurisdiction, the interconnection charge at issue fell within the Commission's exclusive jurisdiction because it was "a charge to interstate

⁴ The Kern/Mojave pipeline is a joint project of the Kern River Gas Transmission Company and Mojave Pipeline Company.

⁵ The CPUC also authorized connection with the intrastate Pacific Gas and Electric Company system at another point.

⁶ 15 U.S.C § 717(c). The Hinshaw Amendment to section 1 of the Natural Gas Act carves out an exception to Commission jurisdiction for natural and legal persons engaged in the transportation of "natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such state."

shippers for the act of moving gas over the [interstate] Kern/Mojave pipeline and delivering it to SoCalGas rather than a charge for any service performed by SoCalGas after its receipt of the gas.”⁷ The Commission concluded that because SoCalGas performed no service for the interstate shippers after receipt of the gas at Wheeler Ridge, the Hinshaw Amendment did not apply, and the CPUC had no authority to allow SoCalGas to charge the access fee under the tariff.

9. The court upheld the Commission’s finding that SoCalGas did not render any identifiable service to the interstate shippers. The court referred to the fact that the interstate shippers nominated deliveries to Wheeler Ridge, and the contracts for actual transportation of gas from Wheeler Ridge to the California end-users were between the end-users and SoCalGas. The interstate shippers did not contract with SoCalGas for gas delivery. The court noted that the “nomination” on which the CPUC’s determination focused was nothing more than a formal announcement by the interstate shippers to SoCalGas of the destination of the gas, which was required by the SoCalGas tariff in order for the gas to reach the end-users. In short, the court stated that the interstate shippers did not receive any service from SoCalGas that supported the charge. Thus, the court held that the Commission “acted reasonably ... when it concluded that the tariff was an access charge that interstate shippers were compelled to pay in order to deliver their gas to the SoCalGas pipeline.”⁸

10. Next, the court addressed whether the Commission correctly held that the Hinshaw Amendment did not prevent the Commission from acting on the access charges. After recognizing that SoCalGas is a Hinshaw pipeline, the court stated that the Commission correctly interpreted the Hinshaw Amendment as drawing the line of demarcation between federal and state regulation at the point when the intrastate company receives the gas from an interstate shipper. In this instance, SoCalGas’ access fee related “to something that occurred, by definition, prior to transfer of the gas from the interstate shipper to SoCalGas, the intrastate party.”⁹

11. The court upheld the Commission’s determination that the tariff at issue required the interstate shippers to pay an access charge, a charge that related to something that occurred, by definition, prior to the transfer of the gas from the interstate shippers to SoCalGas, the intrastate party. Thus, the court concluded “it followed reasonably that the access charge belonged within the Commission’s jurisdiction. In functional terms, a

⁷ *Union Pacific Fuels*, 76 FERC at 62,495.

⁸ 143 F.3d at 614.

⁹ *Id.* at 615.

charge to interstate shippers for access to intrastate service directly and significantly affects interstate shipment of gas by increasing its costs.”¹⁰

The Complaint

12. The complaint asserts that in connection with the CPUC’s plan to integrate the SoCalGas and SDG&E gas transmission systems, the CPUC approved access fees for both SoCalGas and SDG&E in an order issued December 14, 2006, D.06-12-031 (the FAR Order).¹¹ The complaint described the SoCalGas system at present as having takeaway capacity of approximately 3,875 MMcf/d for redelivery to downstream points, while upstream delivery capacity to the SoCalGas receipt points stands at 5,675 MMcf/d.

13. Thus, currently, when the aggregate nominations for deliveries to SoCalGas by interstate pipelines’ shippers exceed the available capacity at a specific receipt point, the available capacity is allocated among the interstate pipeline shippers on the basis of the shippers’ contractual rights and the interstate pipeline’s capacity allocation rules (e.g., nominations by firm service interstate shippers are reduced on a pro-rata basis).

14. The complaint asserts that under the FAR program SoCalGas would create five transmission zones. SoCalGas would determine whose gas supplies will flow through its available receipt point capacity each day. Shippers that desire to deliver gas into SoCalGas would be required to acquire access rights at particular receipt points, designated as “firm primary rights.” The aggregate access rights for deliveries to the receipt points within a given zone would not be permitted to exceed the “takeaway” capacity of that zone.

15. According to SCGC, a customer would also have firm alternate “Within-and-Without the Zone” rights that would permit the customer to receive gas at the other receipt points outside the primary zone if capacity were available at the alternate point. SoCalGas would allocate firm access rights to market participants triennially through a three-step open season process.

16. SCGC alleges that only holders of firm or interruptible access rights would be permitted to nominate deliveries of gas into the SoCalGas system. As a result it contends

¹⁰ *Id.* The court reversed the Commission’s ruling that it would not order refunds for the period when the tariff was in effect and the interstate shipper paid the access fee. Upon remand, the Commission ordered refunds.

¹¹ The CPUC denied rehearing but modified the FAR order by order issued September 20, 2007, Decision 07-09-046.

that holders of access rights will determine whose gas will flow into the SoCalGas system instead of interstate pipelines.

17. According to the complaint, the authorized fees under SoCalGas' CPUC tariff, Schedule No. G-RPA are a five cents per Dth per day reservation charge for firm access rights, and up to a five cents per Dth per day volumetric charge for interruptible access rights.

18. According to SCGC, under the approved tariff, Schedule No. G-RPA, an access right is "[a]pplicable to firm and interruptible receipt point access rights to Utility's¹² transmission system," and that firm receipt point access rights to Utility's transmission system do not guarantee nor imply firm service on Utility's local transmission/distribution system; such service is defined by the end-use customers' applicable Utility transportation service agreement. (Schedule No. G-RPA, Sheet 1, Applicability).

19. The complaint asserts that only SoCalGas' end-use and wholesale customers are eligible to acquire physical forward haul transportation service on the SoCalGas system, although interstate pipeline shippers could acquire access rights to reach the new paper on-system "citygate" that would be created under the access rules. SCGC argues the interstate pipeline shippers would not be permitted to hold rights to physical transportation on the SoCalGas/SDG&E system unless they otherwise qualified as a result of being end-use or wholesale customers of SoCalGas.

20. The complaint alleges that an interstate shipper's exercise of access rights would result in SoCalGas receiving the shipper's gas into the system with "delivery" being recorded on a purely accounting basis to five paper delivery points: (1) an end-user's local transportation agreement, (2) a citygate pool account, (3) a storage account, (4) a contracted marketer or core marketer or core aggregator transportation account, or (5) an off-system delivery account.¹³ The complaint contends these delivery points constitute merely a paper "citygate," and would be nothing more than an accounting convention for recording the receipt of gas onto the SoCalGas system.

21. The complaint asserts that, while payment of the FAR access charges provides no on-system transportation service, the revenues that SoCalGas will receive by charging shippers for access rights will be used to defray the cost of the utility's intrastate

¹² Utility refers to Southern California Gas Company.

¹³ See Schedule No. G-RPA, Sheet 2, Delivery Points.

backbone transmission system¹⁴ and the utility's local transmission and distribution systems.¹⁵

22. The complaint contends that the imposition of access fees by SoCalGas, but without the Commission approval, would unlawfully encroach upon the Commission's exclusive jurisdiction over the transportation of gas in interstate commerce. SCGC argues that SoCalGas would require an interstate pipeline shipper to pay an access fee as a condition for receiving the shipper's gas into the SoCalGas system at the SoCalGas' receipt points.

23. The complaint asserts that the FAR proposal is similar in all relevant aspects to the charge found illegal in *Union Pacific Fuels*, and that neither SoCalGas nor the CPUC have adequately explained how the new access charges in this proceeding is distinguishable from the Wheeler Ridge access charge found to be illegal in *Union Pacific Fuels*. Like the Wheeler Ridge charge, the complaint asserts, the new charge would apply too broadly insofar as it extends to access by interstate shippers to the SoCalGas system. The complaint asserts that, absent approval by the Commission, SoCalGas cannot lawfully require the interstate shippers to pay the FAR charge.

24. That the new "citygate" is not at any actual downstream point, the complaint asserts, is further evidenced by the fact that there is no correlation between the actual cost of transportation on the SoCalGas "backbone" transmission lines and decision to set the level of the access charges at five cents per Dth per day. The only difference, the complaint contends, between the FAR reservation and interruptible charges, and the *Union Pacific Fuels* access charge is that, rather than paying for new intrastate interconnection facilities, interstate shippers nominating deliveries to the southern California receipt points will be subsidizing intrastate shippers by paying five cents per Dth per day to access the southern California market.

25. The complaint contends that the access rights acquired by payment of the FAR charge to SoCalGas does not grant to shippers the right to any on-system transportation service. However, even if it were assumed *arguendo* that the payment of the FAR charge

¹⁴ The backbone system refers to SoCalGas' large intrastate pipelines, whereas local transmission consists of SoCalGas' local distribution facilities.

¹⁵ The CPUC first ordered a 5 cent/dth reduction in transportation rates, but in the rehearing order, CPUC directed SoCalGas to use the greater of open season throughput results or the utility's forecast of 2008 cold-year throughput to calculate an amount that would be applied to reduce the SoCalGas transmission revenue requirement. The reduction in the transmission revenue requirement would then be applied to reduce transportation rates for end-users.

provides that payer some on-system transportation service, in addition to access, the complaint asserts, the charge would still be, in part, if not in its entirety, a charge for access to the SoCalGas system. It would not be, and neither SoCalGas nor the CPUC have claimed it would be, exclusively a charge for transportation on the SoCalGas system.

26. Finally, the complaint asserts that even if the proposed access fees could somehow be construed to avoid field preemption, the fees are unlawful as a matter of conflict preemption, because the fees would be an obstacle to the accomplishment and execution of Congressional objectives. According to the complaint, the access fees and associated access rights could degrade the value of holding interstate pipeline capacity and undermine the Commission's ability to achieve uniform and comprehensive regulation of gas transportation in interstate commerce.

27. In sum, the complaint asserts that if the SoCalGas access fees are implemented interstate shippers will incur an additional cost that they do not currently incur because currently interstate shippers are not required to pay charges for access to SoCalGas' system. Complainants request that the Commission find that the SoCalGas access charges as applied to interstate shippers as a condition for gaining access to the SoCalGas system are preempted by the Commission's exclusive jurisdiction over the transportation of gas in interstate commerce under the NGA, and may not be imposed.¹⁶

The Answers

28. SoCalGas filed an answer, and the CPUC protested the complaint, and both asked the Commission to deny the complaint.¹⁷ The basic thrust of both pleadings is that the FAR reservation charge is not similar to the access charge in *Union Pacific Fuels*. SoCalGas and the CPUC contend that the FAR reservation charge differs from the charge in *Union Pacific Fuels* in the following ways:

First, the FAR reservation charge is not a fee for the sole act of nominating gas to the SoCalGas system. Second, the FAR reservation charge will be levied only on shippers who enter into agreements with SoCalGas for transportation over the intrastate transmission system to, at a minimum, the

¹⁶ SCGC states that it does not believe that either of the Commission's alternative dispute resolution procedures would assist the parties in resolving its dispute. The answers echo this position.

¹⁷ Southern California Edison Company and SDG&E filed comments requesting that the Commission dismiss the complaint.

SoCalGas citygate. Third, the FAR reservation charge will be levied only on SoCalGas customers to whom title to gas has been transferred after the gas has been received by SoCalGas. Fourth, the FAR reservation charge entitles the FAR holder to transport gas on the SoCalGas backbone system for delivery to ... an end-use customer agreement for transportation on the local transmission/distribution system; SoCalGas' storage fields for receipt by a holder of a storage services agreement; or to a customer's off-system services agreement for delivery to the Pacific Gas and Electric Company (PG&E) system; and across the [SDG&E] system from Mexico to the SoCalGas system.¹⁸

29. The answers explain that until now SoCalGas did not allocate intrastate capacity, and that its intrastate system was a matrix, rather than a path-based, system in which deliveries at any receipt point could be redelivered to customers at any delivery point or to storage, but with no assurance that the delivery could be made to the distribution location. Accordingly, in December 2004, SoCalGas filed the FAR proposal for a system of firm, tradable transmission rights to address this problem.

30. SoCalGas states that under the FAR system, SoCalGas will initiate a contracting process whereby the available firm rights will be awarded through a three-step open season process, and thereafter will be tradable on SoCalGas' Electronic Bulletin Board (EBB). Then, on each day, according to SoCalGas, the contractual rights and the priorities of those rights will determine whose gas flows over the SoCalGas system from the eleven receipt points in the five designated zones, based on the daily nominations under the customers' agreements for intrastate transportation service.

31. SoCalGas contends that a shipper with FAR rights will acquire transportation rights on the SoCalGas system. It cites to its September 17, 2007 tariff filing with the CPUC, Advice No. 3706-A, which establishes the FAR system. That filing included Schedule No. G-RPA, Receipt Point Access (RPA).

32. SoCalGas contends that while it is true that the tariff describes the delivery points in terms of the associated agreements under which title to the gas will transfer, the holder of receipt point rights receives physical transportation service under these agreements.

33. With respect to the charge for the FAR rights, SoCalGas states that it has unbundled the five cents per Dth from end-use transportation rates, and is instead charging that amount to shippers that utilize the transportation services under the FAR

¹⁸ SoCalGas Answer at 2.

rights. The FAR charge amounts will be applied to reduce SoCalGas' revenue requirements, which, in turn, will reduce the transportation rate on the SoCalGas system. Thus, it contends, end-use customers, like the members of SCGC, will experience a reduction to their transportation rates that is intended to match the revenues obtained from shippers paying the FAR reservation charge for the transportation services they receive.

34. SoCalGas argues that the central facts relied upon by the Commission in *Union Pacific Fuels* to reject the Wheeler Ridge charges, are not present here. First, SoCalGas argues that in *Union Pacific Fuels* the interconnection charge was levied on interstate pipeline shippers solely for the act of nominating deliveries to the SoCalGas system, while here the FAR charge will be levied only upon the RPA holder, which may be any creditworthy party, and the RPA holder must be party to another contract with SoCalGas for intrastate transportation. By contrast, SoCalGas asserts, there is no requirement that a RPA holder be an upstream interstate pipeline shipper. Thus, unlike the access charge in *Union Pacific Fuels*, the FAR charge is not levied upon the interstate shipper. Moreover, SoCalGas argues, unlike the interconnection charge, the FAR charge is not levied on an interstate shipper for the act of nominating gas to the SoCalGas system. It asserts that there is no requirement that an upstream pipeline shipper hold receipt point rights to nominate gas on the upstream pipeline to the SoCalGas system.

35. Second, SoCalGas contends that, in *Union Pacific Fuels*, the Commission stated that the charge did not apply to shippers after SoCalGas received the gas from the upstream pipeline, so the charge was levied for action taken prior to SoCalGas' receipt of the gas. Here, according to SoCalGas, the FAR charge only applies to the shipper's contractual reservation for firm service or for interruptible service after title¹⁹ has transferred from the shipper on the upstream pipeline to the shipper on the SoCalGas system. Thus, SoCalGas asserts that the FAR charge applies to gas to which the RPA holder has title after it is received by SoCalGas from the upstream pipeline.

36. SoCalGas adds that while it is true that the tariff describes the delivery points in terms of the associated agreements under which title to the gas will transfer, this is transportation service. A shipper holding and paying for receipt point access rights will

¹⁹ In the testimony submitted to the CPUC, Roger R. Schwecke, Senior Pipeline Product Manager for SoCalGas, stated that consistent with the protocols of the North American Energy Standards Board, title to gas flowing into the SDG&E/SoCalGas system will transfer from the holder of the transportation contract on the upstream pipeline to the customer under the Receipt Point Access Contract at the point of interconnection between SDG&E/SoCalGas and the upstream pipeline. *See* Exhibit K attached to complaint, n.16.

be assured firm transportation for gas delivery from the five Transmission Zones to the delivery point(s) as designated by the RPA holder's transportation agreement(s).

37. Finally, SoCalGas asserts, in *Union Pacific Fuels*, the Commission noted that there was no contractual relationship between the interstate shippers and SoCalGas because the charge was levied on interstate shippers "regardless of whether those shippers have service agreements with SoCalGas for the transportation of the gas over the SoCalGas system after its receipt."²⁰

38. Here, SoCalGas states, an RPA holder must execute a contract with SoCalGas as a condition to acquiring receipt point rights and being assessed the FAR reservation charge. SoCalGas asserts that if a party refuses to execute an agreement with SoCalGas, they will neither be allowed to acquire receipt point rights nor be required to pay the FAR reservation charge.

39. While the complainants' contend that the FAR charge cannot stand because it is not "exclusively a charge for transportation on the SoCalGas system." SoCalGas counters that the FAR charge is indeed for services on its intrastate pipeline system. Thus, SoCalGas asserts, it is a permissible charge since the Commission clearly held in *Union Pacific Fuels* that an access charge is unlawful only if it is exclusively for the nomination of gas by the interstate pipeline but not when any intrastate transportation service is provided, and the FAR charge covers intrastate services.

40. SoCalGas also asserts that various cost allocation matters raised in the complaint to support the complaint are within the CPUC's jurisdiction and not relevant in determining whether the FAR charge encroaches on the Commission's jurisdiction. Thus, SoCalGas argues that the allegation at p. 21 of the Complaint that the FAR charge is unrelated to providing intrastate service because fuel charges are not assessed to shippers paying the FAR reservation charge is not relevant in determining whether the FAR charge can be imposed. Cost allocation, SoCalGas states, is a matter of state rate-making within the CPUC's jurisdiction, and because the specific transportation mileage for holders of receipt point rights is not identified, the CPUC may determine that no specific fuel charge should be assessed for now. Moreover, whether the charges for fuel on the SoCalGas system involve some measure of subsidy between intrastate customer classes is clearly a state ratemaking matter for the CPUC to determine, and would not be relevant to whether the charge is an interference with interstate commerce, according to SoCalGas.

41. Finally, SoCalGas argues that SCGC has failed to demonstrate that the RPA program will harm its members. Contrary to the claims that "interstate shippers will

²⁰ Citing *Union Pacific Fuels*, 76 FERC at 62,495.

incur an additional cost they do not currently incur,” SoCalGas states that the FAR reservation charge is not levied on interstate shippers at all, so the program would not cause interstate shippers to incur an additional cost.

42. As to SCGC’s claim that interstate shippers that do not choose to acquire receipt point rights will incur an additional cost of five cents per Dth, SoCalGas responds that acquiring receipt point rights will allow the customers to obtain firm gas transportation service, something that is not currently offered by SoCalGas. Moreover, because SCGC’s members are all intrastate transportation customers of SoCalGas, and the complaint concedes at 28, that intrastate shippers “will be benefited by a reduction of on-system transportation charges....”, SoCalGas contends that SCGC members will also benefit from the FAR charge.

43. In short, SoCalGas asserts that the FAR charge is in full compliance with the decisions in *Union Pacific Fuels*, and the Commission should deny the complaint.

44. The CPUC’s protest echoes much of SoCalGas’ answer. The CPUC first states that it has been engaged in an almost decade-long process to establish firm transportation rights on SoCalGas’ intrastate backbone system. In the decision approving the FAR reservation charge, the CPUC stated:

This system will ensure that the holders of the FAR will be able to access the receipt points on the transmission system and have their gas transported to the designated delivery points. This is in contrast to the current system where upstream gas shippers and end-use customers have no guarantee that their gas will flow through the receipt points. This problem is exacerbated under the current system when there are capacity constraints on the SoCalGas transmission system.²¹

45. The CPUC adds that there is a need for guaranteeing firm transportation over SoCalGas’ complex backbone transmission system because of the mismatch between upstream interstate pipeline capacity and the smaller, takeaway capacity of the SoCalGas backbone system, and the FAR system is a response to that need.

46. The CPUC asserts that the complaint mischaracterizes the CPUC’s decision and SoCalGas’ tariff in a number of ways, and gives examples of these errors. The CPUC cites to the following statements in the complaint, and explain the error in the statement:

²¹ FAR Order at 2.

<p><u>Complaint:</u></p> <p>“The fees would be charged to all shippers that seek access to the SoCalGas system, including interstate pipeline shippers that have no transmission service agreement with SoCalGas and only ship over upstream pipelines for the purpose of delivering gas to the SoCalGas system.” (at 1)</p>	<p><u>CPUC Explanation:</u></p> <p>This statement is incorrect. An interstate pipeline shipper is not required to pay a FAR fee.</p>
<p><u>Complaint:</u></p> <p>“No transportation service would be provided in return for the acquisition of and payment for access rights.” (at 6-7)</p>	<p><u>CPUC Explanation:</u></p> <p>FAR clearly provides transportation service on the backbone transmission system, just not all the way to the burner tip.</p>
<p><u>Complaint:</u></p> <p>“Interstate shippers that acquire access rights but which are not also intrastate shippers will incur an increased cost of five cents/Dth/day as a reservation charge for firm access rights or five cents/Dth as a volumetric charge for interruptible access rights.” (at 28)</p>	<p><u>CPUC Explanation:</u></p> <p>This is not correct. First, interstate shippers are not required to obtain FARs. They could simply drop off the gas at the border with a marketer or customer that does have receipt points. Second, to the extent an interstate shipper is also a customer, customers’ transportation rates will be reduced by the FAR revenue requirement, so there should be an offset. Third, to the extent the interstate shipper is also a marketer, the marketer would presumably try to recover the five cents in the citygate price.</p>

47. The CPUC argues that *Union Pacific Fuels* is not applicable because under FAR the reservation charge “is assessed on those market participants who have a FAR at a receipt point on the SDG&E and SoCalGas transmission system. The holder of the FAR has the firm right to have its gas transported over the transmission system to the citygate.”²² In summary, the CPUC asserts that the FAR charge is not a fee on interstate

²² *Id.* at 83.

transporters for access to the SoCalGas system, but is for transportation services on the SoCalGas system.

48. Moreover, the CPUC disputes the complaint's assertion that the FAR charge would impede Congressional objectives in increasing interstate capacity. The CPUC states that the FAR framework would make customers more willing to sign up for new firm interstate pipeline capacity because they would now have greater assurance of delivering gas at the desired receipt points and it would provide a mechanism by which shippers could indicate the need and market support for expansions of capacity.

49. SoCalGas and the CPUC request that the Commission find that the FAR charge approved by the CPUC does not infringe upon the FERC's exclusive jurisdiction over interstate commerce and thus deny SCGC's complaint.

Discussion

50. The issue presented by SCGC's complaint is whether the FAR charge encroaches on the Commission's exclusive jurisdiction over the interstate transportation of natural gas. According to the complaint, the FAR charge is similar to the one that the Commission rejected in *Union Pacific Fuels*. In response, SoCalGas and the CPUC argue that the FAR charge is distinguishable from the charges involved in *Union Pacific Fuels* because it is imposed on intrastate shippers who receive specific intrastate services set out in contracts between SoCalGas and its customers. Thus, CPUC and SoCalGas assert that the FAR charge affects only intrastate transportation and its approval by the CPUC is thus a permissible exercise of state regulation over intrastate transportation of natural gas. They also assert that regulation of the FAR charge by the Commission is precluded because of SoCalGas' status as a Hinshaw pipeline.

51. The Commission will dismiss the complaint. We agree with SoCalGas that the FAR charge is different from the access fee the Commission rejected in *Union Pacific Fuels* because: 1) it is imposed on intrastate customers, not interstate pipelines and their shippers; 2) it is subject to contracts between SoCalGas and its intrastate customers for intrastate gas transportation services; and 3) these transportation contracts cover an array of possible intrastate transportation services, including transportation to storage, to pooling points or to off-system delivery points within the state of California. The FAR charge differs significantly from the access charge in *Union Pacific Fuels*, which was a fee assessed to interstate shippers for nominations to SoCalGas receipt points. No other services were involved. Accordingly, the Commission concludes that the FAR charge and the intrastate services associated with that charge are properly subject to regulation by the CPUC.

52. The issue presented is whether the FAR system is similar to, or unlike the access charge in *Union Pacific Fuels*. If it differs from the access charge in *Union Pacific Fuels*, we must determine whether it is a permissible charge by SoCalGas' system. Thus,

we will first undertake to determine what a “customer” receives when it acquires receipt point access rights under Schedule No. G-RPA.

53. In Sheet 1, Cal. P.U.C. Sheet No. 42260, the five Transmission Zones in SoCalGas’ system are listed with “Specific Points of Access,” and continues that the FAR charge is applicable to firm and interruptible receipt point access rights to SoCalGas’ transmission system. Service under this Schedule is available to any creditworthy party. Schedule G-RPA states that:

Firm receipt point access rights to Utility’s transmission system do not guarantee nor imply firm service on Utility’s local transmission/distribution system; such service is defined by the end-use customers’ applicable Utility transportation service agreement.

54. In Sheet 2 the five delivery points noted above are set forth. Sheet 4 then sets forth describing the Special Conditions, applicable to the FAR charge:

- As a condition precedent to service under this schedule, an executed Receipt Point Master Agreement (RPMA) and a Receipt Point Access Contract (RPAC) (Form Nos. 6597-17 and 6597-18) are required. All contracts, rates and conditions are subject to revision and modification as a result of CPUC order or rules.

* * *

- The Utility will display on its Electronic Bulletin Board (EBB) total available receipt point access capacity at each point along with the firm and interruptible scheduled volumes at the respective points during each nomination cycle.
- Customers holding firm receipt point access capacity will be able to nominate natural gas for delivery on an alternate “within-the-zone” firm basis from any specific Receipt Point within an applicable transmission zone. Customers will also be able to nominate natural gas for delivery on an alternate “outside-the-zone” firm basis from any receipt point on the system.

55. SCGC asserts that there is no actual interstate service provided under the FAR that a shipper does not receive under the existing system. It contends that the delivery points denominated on Sheet 2, are paper points, and no actual transmission service is provided. On the other hand, SoCalGas and the CPUC argue that the holder of receipt point rights receives physical transportation service under the agreement they enter into under the FAR system.

56. In explaining the reason for the adoption of the FAR proposal the CPUC stated that, due to the difference between the delivery capability and the take-away capacity of the receipt points, problems in the delivery of one's gas supply can result from that "mismatch" or "bottleneck." Under the existing allocation rules, the upstream shippers' contractual rights govern whose gas will flow on that particular day. The FAR was proposed since it was felt that it was preferable that "California end-users, or their agents, [should] control which supplies enter the SDG&E and SoCalGas system under this circumstance."²³

57. Under the FAR system the holders of firm access rights will determine which supply flows from each supplier on each day within each zone and "moves the control of SoCalGas receipt points from the FERC-regulated interstate pipelines to the holders of FAR...."²⁴ The FAR system will provide market participants with assurance that they can access the transmission system of SDG&E and SoCalGas on a firm basis.

58. In *Union Pacific Fuels* the Commission noted that an "access charge" could be structured to not infringe on federal jurisdiction, stating:

With relatively minor changes to the interconnection charge, the CPUC could accomplish its purpose without infringing on our exclusive jurisdiction. The CPUC need only change the applicability of the charge to those customers of SoCalGas who have service agreements for the actual transportation of natural gas over the interconnection facilities.²⁵

59. Under the FAR, the shipper who purchases the FAR right must enter into a contract with SoCalGas, so that this shipper and not necessarily the interstate shipper, will be responsible for payment of the FAR charge. The contract will ensure firm delivery for the intrastate shipper that has purchased the FAR; however, the interstate shippers are not precluded from purchasing these rights. We agree that "[u]pstream pipeline shippers will, of course, be eligible to acquire receipt point rights if they so elect and are creditworthy, and they may well choose to do so to ensure that firm upstream

²³ Direct testimony of Stephen A. Watson in CPUC proceeding. Exhibit K to Complaint at 3.

²⁴ FAR Order at 77.

²⁵ *Union Pacific Fuels*, 77 FERC at 62,249.

rights match firm downstream rights, thereby creating a firm path from the supply basin to the market center or citygate.”²⁶

60. A key difference between *Union Pacific Fuels* and the instant case is that here there is simply no requirement for the upstream interstate shipper itself to hold firm access rights. The FAR charge provides shippers a firm right to receive the gas into the SoCalGas system, which translates into a firm ability to transport the gas after receipt to a variety of delivery points on the system, including to storage, to pools, or to off-system delivery points. This is so because SoCalGas will only sell receipt point access rights up to its ability to take away quantities of gas that are to enter its system. This allocation mechanism for SoCalGas capacity is properly subject to regulation by the CPUC, and exempt from Commission jurisdiction under the Hinshaw Amendment. Thus, the FAR system appears to have been tailored to follow what the Commission suggested in *Union Pacific Fuels*.

61. SCGC has failed to show that no intrastate service is provided to the FAR holder. SCGC argues that this follows because a shipper desiring to deliver gas onto SoCalGas’ system and to have the gas transported downstream of the delivery point for its own account must sign a second contract with SoCalGas to provide for downstream transportation. We disagree. That there is another contract for transportation downstream of the SoCalGas receipt points does not negate the fact that the FAR holder receives a benefit from the access rights. The FAR charge guarantees that the gas will flow onto the SoCalGas system, and ensures delivery of the gas to the designated delivery point, a service that it is unavailable under the existing conditions with the limited takeaway capacity at the SoCalGas receipt points.

62. We understand that under the FAR system, the process by which gas will be transported from interstate pipelines to end-use delivery points is as follows: The receipt point rights will be available for the five transmission zones. The aggregate receipt point rights within a given zone cannot exceed the takeaway capacity of that zone. The FAR charge is five cents per Dth per day for firm RPA contracts, and a volumetric charge of no more than five cents per Dth for interruptible RPA contracts. The upstream pipeline shipper transfers the title of the gas to the RPA holder on the SoCalGas pipeline system based on the RPA contract number. The upstream shipper does not pay to nominate such gas to the RPA holder. The RPA holder then nominates the gas pursuant to its RPA agreement to the particular delivery point(s). Thus, the shipper holding and paying for the receipt point rights will be entitled to transport gas on the backbone pipeline system to the delivery points (end-use customer, and storage) designated by its RPA contract. A subsequent contract would be required for transportation of the gas downstream from the delivery point under SoCalGas’ intrastate tariff.

²⁶ SoCalGas Answer at 17.

63. We find this transportation service provided under the FAR to be an intrastate service that is distinct from any interstate services provided by upstream pipelines. It is imposed only on intrastate shippers who elect to avail themselves of this service and related benefit and is not a charge on interstate shippers as was the case in *Union Pacific Fuels*. Moreover, we note that no interstate shippers intervened in support of the SCGC complaint or even filed comments on the FAR proposal. This is in sharp contrast to the proceedings in *Union Pacific Fuels* where a number of different types of interstate shippers participated actively with significant and vocal opposition to the access charge in that case.

64. In contrast to the FAR charge, in *Union Pacific Fuels* the access charge for nominations by interstate shippers of deliveries to Wheeler Ridge was imposed on the interstate shippers to pay for new interconnection facilities at Wheeler Ridge. Here, the FAR charge applies only to those who have entered into contracts with SoCalGas involving the SoCalGas system. The FAR system changes the current system where there are nominations for delivery to entities that are receiving gas for service on the SoCalGas system, but that nomination did not ensure delivery of the gas because of the mismatch between delivery capacity and takeaway capacity. Thus, under FAR:

the holders of the FAR will be able to access the receipt points on the transmission system and have their gas transported to the designated delivery points. This is in contrast to the current system where upstream gas shippers and end-use customers have no guarantee that their gas will flow through receipt points.²⁷

65. As explained by the CPUC, under FAR, the holders of access rights will determine which supply flows from each supplier on each day within each zone. The FAR proposal effectively follows the guidelines the Commission delineated in *Union Pacific Fuels* that would allow a charge to be evaluated solely at the state level. Here the FAR charge is levied only on the RPA holder, which is not necessarily the upstream interstate shipper. The FAR charge is applied only to shippers' contractual reservations for service after title has been transferred from the upstream shipper to the shipper on the SoCalGas pipeline system. The FAR charge will only be levied on customers that execute intrastate transportation agreements with SoCalGas, thus ensuring that there be a contractual relationship between the parties for the transportation of supplies into the SoCalGas system. Such a charge is not unique in California; all parties acknowledge that PG&E has had a system of firm tradable backbone rights for many years.

²⁷ FAR Order, at 2.

66. Finally, the charge here is not for the simple nomination of gas for delivery to the SoCalGas system, but rather for the transportation into and over the SoCalGas system to a number of different delivery points, and to guarantee that the gas will flow on the SoCalGas system. This is not inconsistent with Commission policy because the FAR right does not override the interstate shipper's rights on the interstate pipeline. We find that the FAR charge is a permissible charge by SoCalGas under the Hinshaw Amendment. Accordingly, the Commission will dismiss the complaint.

The Commission orders:

The October 20, 2007 complaint filed by SCGC is dismissed.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.