

ORIGINAL

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Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 CALIFORNIA GAS TRANSMISSION COMPANY,
 a California corporation, for a
 certificate that the Present and
 Future Public Convenience and Necessity
 require or will require the construction
 and operation of a natural gas pipeline
 and related facilities from a point on
 the United States-Mexico International
 Boundary near Mexicali, Mexico to
 electric generating plants in the
 Metropolitan area of Los Angeles,
 California, and for authority to issue
 and sell securities.

Application No. 42931

In the Matter of the Application of
 SOUTHERN CALIFORNIA EDISON COMPANY to
 participate in a new natural gas pipeline
 project to the extent set forth herein
 and in support of the proposal of
 California Gas Transmission Company.

Application No. 42932

(Appearances are listed in Appendix A, hereto.)

O P I N I O N

This is a special proceeding on an Order to Show Cause
 which was heard before Commissioner McKeage at Los Angeles on
 June 28, 1961.

The events out of which this Order to Show Cause arose are
 revealed by said Order, the part here material reading as follows:

"Under date of June 5, 1961, Southern California Gas Company
 and Southern Counties Gas Company of California, protestants in the
 above-entitled consolidated proceeding, filed with this Commission
 their verified written motion alleging that California Gas Transmission
 Company, one of the applicants in the above-entitled consolidated

proceeding, had violated the instructions of the Commission requiring the parties to said proceeding to refrain from distributing to the public material containing statements and arguments respecting the merits of the natural gas pipeline project involved in said proceeding. By reference hereto said verified written motion is hereby made a part of this order to show cause and is incorporated herein as a part hereof as though herein set out in full. Said protestants allege that said California Gas Transmission Company has distributed to the public the material annexed to said written verified motion in violation of the instructions of the Commission in this regard. Said verified written motion has been served upon said California Gas Transmission Company and Southern California Edison Company, the latter being the other applicant, herein, and, also, upon all other appearances of record.

"Protestants request the issuance by the Commission of an order to show cause to said applicants ordering and directing them to show cause, if any they may have, why the Commission should not dismiss said proceeding or grant a mistrial thereof because of the alleged action taken in distributing said material to the public. Further, protestants request that this Commission issue an order requiring applicants to physically retrieve all the copies of said material which protestants allege have been distributed contrary to the instructions of the Commission, and to order applicants to refrain from the distribution of similar material in the future. Protestants request general relief.

"Under date of June 8, 1961, California Gas Transmission Company filed with this Commission its verified answer to said verified written motion admitting the distribution of the material,

annexed to said verified written motion, to publishers, editors and reporters of newspapers, radio and television stations in California and New York, but denies that there had been any distribution of such material to members of the general public, and further denies that its action in distributing such material violated the instructions of the Commission and requests that said motion be dismissed or denied. Southern California Edison Company has filed no answer or other pleading to said verified written motion.

"Based upon said verified written motion and the verified answer of California Gas Transmission Company, applicants, California Gas Transmission Company and Southern California Edison Company, are

"HEREBY ORDERED to show cause before Commissioner McKeage and Examiner Dunlop in the Assembly Room of the Old California State Building, 217 West First Street, Los Angeles, California at the hour of 10 o'clock, a.m., on June 28, 1961, why the above-entitled consolidated proceeding should not be dismissed or a mistrial granted, or why said applicants should not be required to physically retrieve all of the said material which allegedly has been distributed contrary to the instructions of the Commission and to refrain from distributing such material in the future.

"IT IS FURTHER ORDERED that applicants furnish a verified written statement to the Commission at the hearing of the within order to show cause setting out the names and addresses of all persons, corporations or other entities to whom any of said material has been distributed and showing the date of distribution in each case, and pending the hearing and determination of this order to show cause, applicants are hereby restrained and enjoined from distributing to the public material of the nature herein referred to."

The instructions and admonition of the Commission, adverted to in the verified written motion of Southern California Gas Company and Southern Counties Gas Company of California (Southern Companies) and the Order to Show Cause, were to the effect that the Commission took note of the fact that certain printed arguments, views and expressions of opinion as to the merits of the natural gas pipeline project, here involved, had been distributed to the public by some of the parties to this consolidated proceeding. The Commission requested and admonished the parties to said proceeding to dispense with such activity during its pendency and prior to final determination by the Commission. Upon subsequent inquiry by counsel for clarification of the Commission's position on the subject of news releases, counsel were informed that the admonition did not proscribe news releases, except news releases that would undertake to comment upon the evidence received or to be received in the proceeding, such as a running comment as to the weight or veracity of such evidence. While the instructions and admonition of the Commission were not couched in mandatory or directory terms, the language thereof clearly reveals that the parties were informed of the Commission's intent to proscribe the conduct adverted to.

The evidence clearly shows that Southern California Edison Company (Edison) did not engage in any conduct, subsequent to the instructions and admonition by the Commission concerning the publication of material bearing upon the merits of the natural gas pipeline project, referred to in said Order to Show Cause, which could be said to have the remotest connection with said instructions and admonition, and said Order to Show Cause will be discharged as to Edison, and said motion, so far as Edison may be concerned, will be dismissed.

The record herein reveals a hotly contested economic battle between and among giant corporate interests. California Gas Transmission Company (California Gas), an affiliate of Tennessee Gas Transmission Company, with the active support of Edison, is seeking before this Commission and other regulatory agencies, authority to enter the lucrative Southern California gas market for the purpose of selling large quantities of natural gas to Edison and, later, to other customers in that territory.

This action on the part of California Gas and Edison is vigorously contested by the Southern Companies and several other interested parties. It is clear from the evidence that these protesting parties fear that the granting of the request of California Gas and Edison would prejudice their economic interests and they, additionally, contend that the granting of such request would seriously prejudice the public interest. California Gas and Edison counter the position of these protestants by asserting that the granting of their request would serve--not prejudice--the public interest.

In light of the decision which we will render herein, it is unnecessary to recite in detail all the facts and circumstances constituting the frame of reference out of which this special proceeding arose.

On the one hand, the Southern Companies contend that the distribution to news media by California Gas of the material annexed to their verified written motion constituted a violation of the Commission's instruction and admonition, while, on the other hand, California Gas and Edison deny the alleged violation and, additionally, raise the federal constitutional issue of freedom of

speech and press, asserting that the action of California Gas, in the circumstances shown by the record, was and is protected by those constitutional safeguards.

We do not reach the federal constitutional issue. The matter will be disposed of upon other grounds.

It may well be argued that the conduct of California Gas, here in issue, would find protection under the sweeping "clear and present danger" rule adhered to by the Supreme Court of the United States in such cases as Bridges v. California, 314 U.S. 252, and Craig v. Harney, 331 U.S. 367. However, we do not decide that point.

That the material distributed by California Gas, which is here in issue, commented upon the merits of this natural gas pipeline project and upon what it considered a rival project, then pending before this Commission, and commented upon the evidence in this consolidated proceeding, the evidence clearly reveals. Such comment was contrary to the spirit of the instructions and admonition of the Commission. What would normally be found in a brief of counsel appeared, among other things, in the material distributed by California Gas. However, the evidence resolved most favorably to California Gas (we believe this to be the correct rule to follow), convinces us that such violation was unintentional and was not accompanied by a careless disregard of the instructions and admonition of the Commission.

The context of this controversy reveals mitigating circumstances and provocations on both sides. It is clear from the evidence that the Southern Companies, prior to the giving of the instructions and admonition by the Commission, engaged in the

putting out of propaganda, as did Edison, which could be said to conflict with the spirit of the Commission's later instructions and admonition. It was this conduct which gave rise to the Commission's action in this regard. Furthermore, the record reveals that, subsequent to the instructions and admonition by the Commission, representatives of the Southern Companies released or made statements to the press which violated the spirit of said instructions and admonition. In other words, it would appear to be a case of "six of one and half a dozen of the other" or "the pot calling the kettle black". Neither side may be said to have "clean hands".

Notwithstanding assertions of innocent motives by these parties in contest, we cannot conclude that their action in arguing their respective cases in the press and before the public is wholly inspired by their attachment to the public interest. We believe there lurk within the folds of this asserted public interest habiliment certain motives of obvious economic self-interest. As a general proposition, it may be said that men do not knowingly or purposely perform idle acts. A fair view of the record in this case would lead one to conclude that Lord Macaulay was not altogether in error when he said: "If it were to the advantage of any considerable financial interest, there would not be wanting argument against the law of gravity."

There is an ancient but wise and moral saying: "God forbid that men be no better than the law absolutely requires them to be." Such maxim is peculiarly appropriate and applicable here.

Conceding for sake of argument, and for such purpose only, that the law does not absolutely proscribe the conduct of

California Gas, here in issue, or that of the Southern Companies, and that the "clear and present danger" rule would be a good defense in an action for contempt, based upon such conduct, nevertheless, such conduct is most unwise, is calculated to hinder the orderly trial of this consolidated proceeding and is calculated to prejudice rather than aid the causes of these parties. The instant Order to Show Cause proceeding is a fair example. On mature reflection, we believe these parties will perceive the validity of what we have just said. Therefore, we admonish each and all of the parties to this consolidated proceeding to refrain from commenting upon the evidence, received and to be received in said consolidated proceeding, or distributing propaganda to the press or to other members of the public bearing upon the merits of said natural gas pipeline project, in the form of information releases to the press or to other members of the public. Such comments should be made in the record of the trial of this consolidated proceeding, where they will be equally available to the press and to all other members of the public. In this way these parties will very materially assist this Commission in administering justice in said proceeding rather than in hindering it in its public endeavor by persisting in the conduct concerning which the foregoing admonition is directed.

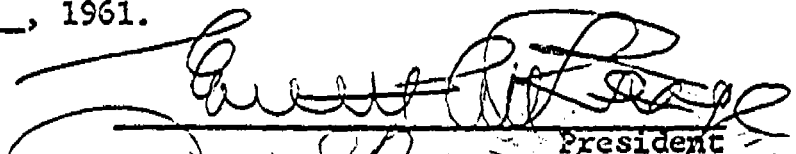
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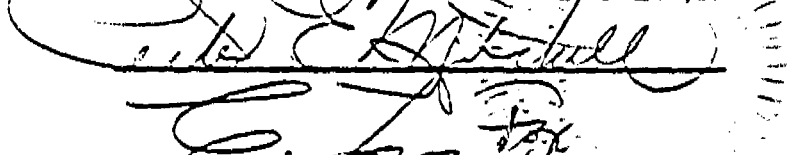
Pursuant to the foregoing findings and conclusions,
IT IS ORDERED that, as to Southern California Edison Company, the Order to Show Cause herein is hereby discharged, the Restraining Order is hereby set aside and vacated, and the verified

written motion filed herein by Southern California Gas Company and Southern Counties Gas Company of California is hereby dismissed.

IT IS FURTHER ORDERED that, as to California Gas Transmission Company, the Order to Show Cause herein is hereby discharged, the Restraining Order is hereby set aside and vacated, and the verified written motion filed herein by Southern California Gas Company and Southern Counties Gas Company of California is hereby denied.

Dated at San Francisco, California, this 11th
day of July, 1961.



President


Commissioners

I concur in the order.
George T. Grover

I concur.
Fredrick B. Hobbuff

APPENDIX A

LIST OF APPEARANCES

For Applicant in Application No. 42931: John A. Ferguson, Jr.; Thelen, Marrin, Johnson & Bridges, by Samuel S. Gill; Harry S. Littman and Jack Werner; W. C. Braden, Jr.; Thelen, Marrin, Johnson & Bridges, by Robert L. Bridges.

For Applicant in Application No. 42932: Rollin E. Woodbury, Harry W. Sturges, Jr., and William E. Marx, by Rollin E. Woodbury.

For Respondent in Application No. 42931: Rollin E. Woodbury, Harry W. Sturges, Jr., and William E. Marx, by Rollin E. Woodbury.

Protestants: D. C. Sattinger and Joseph R. Rensch, for Pacific Lighting Gas Supply Company; Milford Springer, Joseph R. Rensch and Reginald Vaughan, for Southern Counties Gas Company; Harry P. Letton, Jr., John Ormasa and Reginald L. Vaughan, for Southern California Gas Company.

Interested Parties: Brobeck, Phleger & Harrison, by Gregory A. Harrison, George D. Rives, Malcom T. Dungan and Gordon E. Davis, for El Paso Natural Gas Company; Brobeck, Phleger & Harrison, by Gregory A. Harrison, George D. Rives, Malcom T. Dungan and Gordon E. Davis, for California Manufacturers Association; K. L. Parker, for the City of Glendale; Gerald Desmond, City Attorney of Long Beach, by Edward T. Bennett, for the City of Long Beach; Henry E. Jordon, for the City of Long Beach; Alfred H. Driscoll, for the City of Los Angeles and its Department of Water and Power; Ralph Foy, General Manager, by Lynn McArthur, for the City of Burbank; L. M. Windle, for himself; R. W. Russell and M. Kroman, for the Department of Public Utilities and Transportation, City of Los Angeles; Donald J. Carman and Richard Edsall, for the California Electric Power Company; Chickering & Gregory, by Sherman Chickering, C. Hayden Ames, and Richard B. Morris, for the San Diego Gas & Electric Company.

Intervenor: Charles C. Keeble, for Humble Oil & Refining Company.