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Decision No. 82517

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for authority to revise its gas service tariff to offset the effect of increases in the price of gas from California sources and Pacific Gas Transmission Company. (Gas)	Application No. 53866
Application of Pacific Gas and Electric Company for authority to revise its gas service tariff to offset the effect of an increase in the price of gas from El Paso Natural Gas Company. (Gas)	Application No. 54127

ORDER DENYING REHEARING
AND ESTABLISHING REFUND OBLIGATION

A total of five petitions for rehearing have been filed in the above-entitled matters by San Francisco Consumer Action (SFCA) and Mrs. Sylvia M. Siegel representing various consumer groups. Since these matters were heard on a consolidated record and, further, since the subject petitions are somewhat interrelated, we choose to dispose of all arguments in one opinion.

On July 10, 1973, we issued Decision No. 81590 wherein Pacific Gas and Electric Company (PG&E) was authorized to increase its rates for gas service due to increased costs in purchasing Canadian gas. This relief was interim in nature and the increase was expressly made refundable. 1/

1/ Decision No. 81590 was corrected by Decision No. 81690, issued July 17, 1973.

In Decision No. 82137, issued November 13, 1973, PG&E was authorized to increase its gas rates due to an increase in the price of gas purchased from El Paso Natural Gas Company (El Paso). Finally, in Decision No. 82224, issued on December 4, 1973, we allowed PG&E to increase its gas rates to offset price increases for California gas. This last decision also authorized final increases for Canadian gas.

The petitions for rehearing have raised many and varied grounds wherein error is asserted to have occurred. The Commission has thoroughly reviewed each of these claims and, except as provided hereinafter, hereby concludes that they are without merit.

(1) Environmental Impact Reports (EIRs). It is asserted that the California Environmental Quality Act (CEQA) requires the preparation of EIRs for rate proceedings. In Decision No. 81237, wherein rules were adopted to comply with the requirements of CEQA, we analyzed the applicability of CEQA to rate proceedings and concluded that such proceedings were not "projects" within the meaning of CEQA.[2/] Therefore, notwithstanding the other analyses made in the subject decisions concerning the inapplicability of CEQA, SFCA's argument must be rejected on the grounds that the legal issue has been decided by the Commission and the Supreme Court.

(2) Interim Relief. As indicated hereinabove, Decision No. 81590 granted PG&E refundable interim relief. Petitioners claim that no such relief can be granted without findings that an emergency situation or undue hardship exists. Admittedly, Decision No. 81590 contains no such findings.

While it is generally true that these conditions should exist as a prerequisite to interim relief (Saunby v. Railroad Commission, 191 Cal. 226, 230; Pacific Tel. & Tel. Co. ,Decision No. 80639 ____CPUC____; Pacific Tel. & Tel. Co., 48 CPUC 487, 488;

2/ Decisions Nos. 81237 and 81484 (denying rehearing) were brought before the Supreme Court in S.F. Nos. 23031 and 23034. On January 16, 1974 the Supreme Court denied the petitions.

c.f. Dyke Water Company v. Public Utilities Commission; 56 Cal.2d 105, 110), there is no reason to withhold said relief, in the absence of said conditions, if the developed record will support a finding that the increase is justified (Public Utilities Code, Section 454). Decision No. 81590 finds that "[a] refundable increase of [0.181] cents per therm will be just and reasonable until further order herein, and applicant's present gas rates are for the future unjust and unreasonable." (Finding No. 5, emphasis added.) On further reflection, we find that the "refundable" increase authorization may be misconstrued.

The Public Utilities Code requires that the Commission be convinced that the exercise of its ratemaking powers results in just and reasonable rates for the future. Rates found justified cannot be overturned in the future by a finding that the rates assessed in the past were not justified. Stated another way, rates may only be authorized to be applied prospectively. Our findings and order in Decision No. 81590 may cause some confusion on this issue.

The reason we authorized a refundable rate increase in Decision No. 81590 was not because we felt the increase was not justified. Rather, realizing the staff had not had a full opportunity to conclude its investigations, we, out of an overabundance of caution to fully protect the ratepayer, acceded to the motion of PG&E for "refundable" relief and to the position of the staff that it would not oppose limited "refundable" relief.

The record in the present proceeding does support the interim relief granted. The increase authorized, 0.181 cents per therm, is significantly less than the total amount requested by applicant and was fully justified by the testomony and exhibits before us in the Phase I proceeding.

There is no reason at this late date to modify Decision No. 81590 with respect to the refundability of the interim increase authorized. We do, however, with respect to this proceeding, specifically disclaim any intent to authorize by a "refundable" increase anything other than a justified rate increase within the meaning of Public Utilities Code Section 454.

(3) Public Utility Status of Gas Producers. Petitioners have alleged also that our decision not to launch a detailed investigation of the California gas producers for the purpose of determining whether they may be classified as "public utilities" was in error. They assert that this question is a material issue and must be disposed of before a final decision in this matter can be made.

Decision No. 82224 sets forth the primary reasons for our disagreement with petitioners on this point. As we stated there, we do not believe the law requires that this Commission exercise its discretion to engage in what we have good reason to believe in advance will be a futile and possibly counterproductive undertaking. We are strengthened in this belief by the actions of prior Commissions in this regard.

Following the landmark decisions of the California Supreme Court in the Richfield Oil cases,[3] the same Commission which was reversed by the Court, in its attempts to establish public-utility regulation over gas producers, conducted an investigation of exactly the kind which we are now requested to make. After seventeen days of hearings, in which forty parties took an active part, and receipt of evidence consisting of the testimony of forty-one witnesses and sixty exhibits, the Commission concluded that its then-existing statutory authority, as interpreted by the Supreme Court, did not contemplate effective regulation of the production of natural gas in this state.[4]

The sole result of that investigation was a recommendation by the Commission for legislation, which was transmitted directly to the Legislature. Since that time, over ten years ago, no action has ever been taken on that recommendation, and this Commission has acted

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3/ Richfield Oil Corp. v. P.U.C. (1960) 54 Cal.2d 419; Richfield Oil Corp. v. P.U.C. (1961) 55 Cal.2d 187.

4/ Decision No. 65078, 60 CPUC 634 (1963).

consistently in all subsequent proceedings involving the gas producers on the assumption that they are not public utilities.

We reaffirm our action denying petitioners' motion for an investigation on this subject.

(4) El Paso Refunds. In Decision No. 82137 we declined to determine whether a potential El Paso refund to PG&E, occasioned by a curtailment of gas in 1972 and a subsequent change in El Paso's rate structure should be passed through to PG&E customers. Petitioners take issue with our failure to decide this issue.

We reaffirm herein our decision not to determine the refundability of any such refund by El Paso to PG&E. However, some further explanation of our reasoning for this decision is necessary.

Any refund obligation by PG&E to its consumers of the subject potential El Paso refund will be dependent upon whether PG&E is presently so obligated under or pursuant to prior Commission decisions or in the utility's filed tariffs. In other words, if the prior rate authorization by the Commission to PG&E, which is tied to the potential refund from El Paso to PG&E, was made subject to refund, PG&E must pass this refund on. On the other hand, if the prior authorization was not made subject to refund and if PG&E's tariffs do not cover such a contingency, no such refund can be required now since to do so in such circumstances would constitute retroactive ratemaking.

Thus, any commitment by us now on this matter would merely amount to an advisory opinion. We cannot, in this proceeding, create new legal rights to this potential refund from El Paso.

There is, however, a separate matter which must be decided. Decision No. 82137 contains no discussion of whether PG&E should be required to pass on refunds made to it by El Paso relative to the price increase upon which the rate authorization in Decision No. 82137 was predicated. Consistent with our prior actions, such a refund obligation should have been provided for. This decision will so order.

THEREFORE, IT IS ORDERED that:

1. Pacific Gas and Electric Company shall refund, with interest, to its consumers any refund made by El Paso Natural Gas Company to Pacific Gas and Electric Company relative to the price increase upon which the rate increase in Decision No. 82137 was authorized.

2. In all other respects rehearing of Decisions Nos. 81590, 82137 and 82224 are denied.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 20th day of FEBRUARY, 1974.

President

Commissioners