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Decision No. 82745

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SOUTHERN CALIFORNIA GAS COMPANY for (a) A General Increase in Its Gas Rates, and (b) For Authority to Include a Purchase Gas Adjustment Provision in Its Tariffs.	Application No. 53797

ORDER GRANTING LIMITED REHEARING

Petitioners, San Diego Gas & Electric Company (SDG&E), and the City of San Diego (San Diego), seek rehearing or reconsideration of Decision No. 82414 issued January 29, 1974. That decision established Phase II proceedings in the above-captioned application to consider a possible reallocation of gas supplies between Southern California Gas Company's (SoCal) G-58 and G-61 customers. After thorough consideration of the petitions, we are of the opinion that some discussion of the issues raised therein is necessary. Limited rehearing is to be granted. Furthermore, sufficient reason exists to modify the procedural requirements of the anticipated Phase II proceedings to a limited degree.

SDG&E's first claim of error suggests that the reason for considering a reallocation of SoCal's gas no longer exists. While we disagree with SDG&E's assertion that the reason for Phase II is premised on an emergency, we also point out that whether the need no longer exists is properly an issue to be determined in the Phase II hearings and not a justification to discontinue them before they begin.

Another argument of SDG&E concerns an allegedly inconsistent posture by the Commission in stating that end use classifications will not be considered in Phase II. A review of the

subject decision will show that our statement regarding end use classification was made in the context of deciding that certain A-block regular interruptible customers would not be included within the scope of the reallocation proceeding. We hereby reaffirm that determination and disclaim any inconsistency in so deciding and in proceeding to consider the issue of reallocation on the limited basis of SoCal's G-58 and G-61 customers.

It is further asserted by SDG&E that we have already decided the parity issue as evidenced by our posture before the Federal Power Commission in Transwestern Coal Gasification Company, et al., FPC Docket No. CP73-211. We herein reject this claim in the strongest manner possible and assert that the Phase II hearings will be objectively considered by us.

In the FPC proceeding, the Commission is a party, having intervened in the matter. As a party, it sponsored a witness, who was, and is, a member of this Commission's staff. That witness presented testimony in the FPC proceeding as to the position of this Commission's staff on the parity issue in the proceeding now before us. A careful review of the FPC record will show that the distinction between the Commission and its staff was clearly established. We have not prejudged the parity issue through our participation in the FPC proceeding.

SDG&E also argues that Decision No. 82414 is erroneous in that a reallocation of SoCal's gas supply cannot be fairly made without consideration of Edison's other sources of energy, including other gas supplies. In Decision No. 82414 we determined that this "additional" information was irrelevant to the Phase II proceedings. We now find it necessary to explain and, to some extent, modify that prior determination.

As indicated in Decision No. 82414 the purpose of the Phase II proceedings is to determine whether discrimination exists in SoCal's service to electric generation utilities. If undue discrimination is found to exist the Commission is legally bound

to eliminate it. To the resolution of this matter we have no discretion.

SDG&E's argument, on the other hand, seems to concern the different and distinct question of whether the Commission should consider the equitable reallocation of a scarce source of energy - i.e., natural gas. It is thereafter urged that if this question is to be evaluated, the Commission must have a full record upon which to justify both the need for a reallocation and the particular reallocation to be required.

The issue, as raised by SDG&E, involves the exercise of our powers in a discretionary manner. Thus, instead of focusing upon SoCal and its allegedly discriminatory conduct, SDG&E chooses to look at the involved customers of SoCal and the resulting overall impact any allocation of SoCal gas will have upon them. This difference in emphasis converts an otherwise mandatory proceeding to eliminate discrimination into a discretionary action to reallocate gas.

In opting not to exercise our discretionary powers at this time and thereby declining to broaden the scope of the Phase II proceedings, we are guided by the following considerations: (1) the effect of such regulatory action on the incentives of the utilities to prudently procure fuel supplies would likely be undesirable; (2) such action would represent a fundamental change in the very nature of utility regulation in California and should not be entertained lightly; (3) a "reallocation proceeding" cannot be logically limited to gas but should, instead, include consideration of all fuel supplies; (4) such a broad proceeding, if feasible at all, would require an extremely long period of time to hear and decide; and (5) such a proceeding may, as a legal matter, be beyond the scope of our existing powers.

We therefore reaffirm the determination made in Decision No. 82414 not to consider the "broader" scope of reallocation. Rather, the limited questions to be decided in Phase II are (1)

whether discrimination by SoCal exists and (2) whether a particular reallocation designed to take the place thereof, if necessary, is nondiscriminatory.

In Decision No. 80430 we established daily contract quantities (DCQs) for the purpose of curtailment classification of utility electric generation service on a parity basis. Since we must, in eliminating any discrimination found to exist by SoCal, assure ourselves that the solution is nondiscriminatory, the reasonableness of the DCQs is in issue.

Accordingly, Phase II must contain an adequate record to justify any result reached. SoCal has submitted a document for the Phase II proceedings entitled "Requirements, Deliveries and Level of Service". This document shows, among other things, the potential fossil fuel requirements on SoCal's system under SoCal's schedule G-58 and SDG&E's schedule G-54 for 1974. SoCal should be required to update these requirements and its G-58 and G-61 customers should be prepared to explain the basis of their respective estimated requirements, as shown in the SoCal documents, in the Phase II proceedings.

One final point on this issue remains to be discussed. SDG&E alleges that certain gas supplies flow from SoCal through the City of Long Beach to Edison. Any such gas supplies are relevant in determining undue discrimination and the elimination thereof. Thus, evidence on this factual circumstance will be received and considered.

In SDG&E's final argument, it is alleged that an environmental impact report (EIR) is required. In this claim it is joined by San Diego. In Decision No. 82414 we found that an EIR would not be required for the Phase II proceedings. After further consideration we now feel that that issue should be re-evaluated. For this purpose limited rehearing will be granted, said rehearing to be considered as a part of the Phase II proceedings.

In the challenged decision we expressed our concern about the emergency nature of the proposed reallocation because of shortages in gas and other fuel. Recognizing that the guidelines to the California Environmental Quality Act and our Rule 17.1 both provide for the exemption of emergency projects from the EIR requirement, we indicate, for the benefit of all parties, that Rule 17.1 contains provisions for procedurally dealing with that issue. Thus, the limited rehearing to be granted by this decision will embrace all relevant issues to a proper determination of whether an EIR is required for the Phase II proceedings.

THEREFORE, IT IS ORDERED that:

1. Southern California Gas Company shall supply updated estimates for its G-58 and G-61 customers showing each customer's gross requirements on its system and the estimated offerings for 18 months together with recorded 1974 deliveries by month.

2. Southern California Gas Company's G-58 and G-61 customers shall be prepared to explain the basis of their respective estimated requirements, as shown in those exhibits to be filed by Southern California Gas Company, in the Phase II proceedings.

3. Southern California Gas Company's G-60 customer, the City of Long Beach, shall be prepared to explain the basis of its gas deliveries to Southern California Edison Company in the Phase II proceedings.

4. The filing and distribution of evidence by Southern California Edison Company relative to the order in Decision No. 82414 shall be made on or before April 19, 1974.

5. The filing and distribution of evidence by San Diego Gas & Electric Company, and other parties, shall be made on or before May 3, 1974.

6. The filing and distribution of evidence by Southern California Gas Company relative to Ordering Paragraph 1, hereinabove, shall be made on or before May 3, 1974.

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7. Limited rehearing of Decision No. 82414 is hereby granted, said rehearing to be limited to the issue of whether an environmental impact report is required for the Phase II proceedings.

8. Said limited rehearing shall be heard and considered as a part of the Phase II proceedings. The issue of the need for an environmental impact report shall be determined pursuant to Rule 17.1(e).

9. In all other respects rehearing or reconsideration of Decision No. 82414 is hereby denied.

10. The stay granted by Decision No. 82657 is hereby terminated.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 16th day of APRIL 1, 1974.

President

Commissioners

I will file a dissent.
Thomas Moran

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

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THOMAS MORAN, COMMISSIONER, dissenting.

Decision 82414 itself was ill-advised and indeed improper for reasons which I set forth at length in my dissenting opinion in that case. The limited rehearing ordered today can do nothing to remedy the major defects of that decision.

By Decision 82414 this Commission unnecessarily and improperly complicated what was originally a simple application by a utility for a general increase in its gas rates. The consequent delays can only affect adversely both the utility and the ratepayers whom it serves.

Dated: April 16, 1974
San Francisco, California

Thomas Moran, Commissioner