

IS

Decision No. 83433

**ORIGINAL**

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. )  
(Gas) )

Application No. 54616  
(Filed January 31, 1974)

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 EL PASO )  
NATURAL GAS COMPANY. )  
(Gas) )

Application No. 54617  
(Filed January 31, 1974)

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 PACIFIC )  
GAS TRANSMISSION COMPANY. )  
(Gas) )

Application No. 54618  
(Filed January 31, 1974)

OPINION AND ORDER DENYING REHEARING  
AND MODIFYING DECISION NO. 83127

A petition for rehearing of Decision No. 83127 was filed by Sylvia M. Siegel, for herself, and on behalf of the Consumer Federation of California, Consumers Cooperative of Berkeley, Inc., Diablo Valley Consumer Action and Alameda County Consumer Action (hereafter referred to as petitioners) on July 22, 1974. On August 13, 1974 Pacific Gas and Electric Company (PG&E) filed a response to the petition. The Commission has considered each and every allegation of the petition and is of the opinion that good cause for rehearing of Decision No. 83127 has not been shown.

However, the Commission considers it necessary to respond to some of petitioners' allegations and to modify Decision No. 83127 in certain respects.

Petitioners allege that the Commission, in Decision No. 83127, failed to explore the possibility of "anticompetitive features", including price-fixing arrangements, with respect to the purchases of gas by PG&E from California gas producers and from PG&E's Canadian affiliates.

I.

THE RELATIONSHIP OF PACIFIC GAS AND  
ELECTRIC COMPANY (PG&E) WITH  
ITS CALIFORNIA PRODUCERS

At page 18 of Decision No. 83127 the Commission states:

"We have considered the issues of price fixing and antitrust at length only recently in Decision No. 53866 dated December 4, 1973 in Application No. 53866.[1/] No new evidence was presented in this proceeding to cause us to change our findings and conclusions respecting California gas purchasing arrangements as set forth in that decision."

Petitioners do not challenge this statement. Instead, they claim that the record in the proceedings herein "suggests price-fixing arrangements in regard to California gas just as the previous case, A.53866 did." The Commission believes that the record in these

proceedings, like the record in Application No. 53866, does not warrant the exercise of its sua sponte powers to investigate further alleged anticompetitive effects of PG&E's purchases of natural gas from California producers. Therefore, the Commission's reliance on Decision No. 83127 to the discussion of the antitrust issues in

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1/ The reference to Decision No. 53866 should be to Decision No. 82224. (See infra, Ordering Paragraph No. 3 for modification.)

Decision No. 82224 was proper and is hereby reaffirmed.<sup>2/</sup> However, the Commission will modify the findings in Decision No. 83127 to specifically incorporate by reference the appropriate findings and conclusions of Decision No. 82224. (See infra, Ordering Paragraph No. 2.)

II.

THE RELATIONSHIP OF PG&E WITH ITS  
CANADIAN AFFILIATES AND THEIR SUPPLIERS

During the hearings herein evidence was presented regarding the following matters upon which petitioners herein assert the need for an antitrust investigation:

1. PG&E's purchases of natural gas from multi-national oil and gas companies who are also joint venturers with PG&E in a separate enterprise to build an Arctic pipeline.<sup>3/</sup>

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<sup>2/</sup> At this point it should be noted that petitioners herein sought rehearing of D.82224 for, among other things, the failure of the Commission to adequately consider the anti-trust issues involved in Application No. 53866. Decision No. 82517, dated February 20, 1974, denied rehearing of Decision No. 82224. Petitioners did not seek review by the Supreme Court of Decision No. 82224.

<sup>3/</sup> Petitioners claim that "[m]ost of the oil and gas (85%) in Canada is located in the province of Alberta," and that "[t]he oil companies own 72% of the gas produced." (Pet., p. 2.)

2. The overlapping executive positions and directorships of Mr. Henry Booth as to PG&E's Canadian affiliates.<sup>4/</sup>

3. Mr. Booth's position as Vice Chairman of the Board of Directors of the Pipeline Division of the Canadian Petroleum Association (CPA).<sup>5/</sup>

None of the extensive evidence adduced at the eleven days of hearings herein, during which almost 1200 pages of testimony were transcribed, indicates any price fixing or anticompetitive arrangements between PG&E and its Canadian gas producers. In fact the evidence shows that Alberta and Southern, PG&E's wholly-owned Canadian

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<sup>4/</sup> As stated in Decision No. 83127, PG&E purchases approximately 40 percent of its gas supply from Pacific Gas Transmission Company (PGT) at the California-Oregon border. PG&E owns 51 percent of the outstanding shares of PGT. PGT purchases gas at the Canadian border from Alberta and Southern Gas Co., Ltd. (Alberta and Southern), a wholly-owned subsidiary of PG&E. Alberta and Southern purchases the gas from various Canadian producers in the province of Alberta, and transports the gas to the Canadian border by means of The Alberta Gas Trunk Line Company, Ltd. (Trunk Line) (in which PG&E has no appreciable interest) and Alberta Natural Gas Company, Ltd. (Alberta Natural). PGT owns 45 percent of the outstanding shares of Alberta Natural.

Mr. Booth is the President, Chief Executive Officer and a director of both Alberta and Southern and Alberta Natural. He is also a director of PGT. (Exhibit 8, p. 3-1.) Decision No. 83127 (see mimeo, p. 22) stated that Alberta and Southern and Alberta Natural share the same officers.

<sup>5/</sup> In the petition for rehearing of Decision No. 83127 Mr. Booth is incorrectly designated as "a vice-president of the Canadian Petroleum Association." It should be noted for the record that the Pipeline Division of the Canadian Petroleum Association is one of several divisions of the CPA, and that the Pipeline Division is technically oriented in that its major functions involve matters of safety and operating codes. (See Tr., pp. 568-569.)

subsidiary, does not pay the ninety different Canadian producers the same price for gas because of differences in transportation costs and differences in the Btu content of the gas. The evidence also indicates that Alberta and Southern negotiates separately with each producer and that the Canadian producers make conscious efforts to avoid discussing prices among themselves because of the Canadian laws that are similar to the antitrust laws in the United States.

Decision No. 83127 discussed in great detail the "Canadian Gas Regulations" (see pages 25-32, 34-37). The evidence shows that 28.4¢ of the 31.8¢ increase in Canadian gas as of July 1, 1974 was attributable to an increase in the field price of Canadian gas, and that both the provincial government of Alberta and the Canadian national government have, though indirectly, greatly influenced and favored the huge increases in such field prices and, in turn, the international border prices. Petitioners do not challenge the Commission's findings as to the field prices of Canadian gas, or the Commission's findings that the field prices negotiated by PG&E were "the best that could be obtained under the circumstances." Instead, they claim that "[n]o investigation was made by the staff to examine the influence the oil and gas industry has on provincial energy policies [and] on arrangements of various segments of the industry to restrict competition and so forth." Assuming, as petitioner Siegel tried to show during cross-examination of PG&E's witnesses, that the multi-national oil and gas companies have influenced the provincial and national governments of Canada to raise the field prices of gas, the Commission does not think that even the Northern California Power Agency decision<sup>6/</sup> requires that

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6/ Northern California Power Agency v. Public Util. Com.,  
5 Cal.3d 370 (1971).

is A.54616, et al. "

the Commission do more in this particular instance than to recognize that:

"... an American utility corporation may not be the most effective arm to negotiate on behalf of [northern California consumers]" (Decision No. 83127, p. 36),

and to:

"... direct the General Counsel of the Commission to confer with the representatives of the United States Department of State, and such other federal agencies as may be appropriate, and enlist their advice and aid for the purpose of securing effective representation before the appropriate Canadian federal and provincial governmental bodies and agencies in future executive, legislative, judicial and regulatory proceedings involving the cost of natural gas imported into the United States from Canada." (Decision No. 83127, pp. 48-49.) 7/

Decision No. 83127 stressed the following facts: First, all the engineering witnesses in these proceedings "agreed that there was no practical alternative [at this time] to natural gas for space and water heating for most northern California residential and commercial customers." Second, PG&E, with the approval of the Commission, has become committed to Canadian sources for 40 percent of its natural gas supply to northern California customers.<sup>8/</sup>

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7/ In this respect it should be noted that the General Counsel of this Commission has enlisted the advice and aid of the Chairman of the Federal Power Commission for the purposes enumerated above.

8/ PG&E's increasing dependence on Canadian sources of natural gas has resulted from dwindling supplies of natural gas in the United States which, in part, have resulted from curtailments of gas supplied by El Paso Natural Gas Company (El Paso) to PG&E. (The FPC has ordered such curtailments.) Also, PG&E has looked to Canada for its natural gas in order to avoid depletion of California natural gas reserves. (See Decision Nos. 80794, 80878, 81590, 82137, 82224 and 83127.)

Third, since this commitment was made without the benefit of a treaty or other international agreement, PG&E, and its customers, must pay whatever field prices may result from the operation of the Canadian political structure. Fourth, the best way presently to influence the Canadian political structure to lower the field prices appears to be through representation by the United States government, not by PG&E, before the appropriate Canadian political bodies. Decision No. 83127 has attempted to implement this policy.

The fact that "multi-national oil and gas companies" control the Canadian supplies of gas" (see supra. fn. 3) does not indicate any antitrust violations by PG&E. To the contrary, PG&E is only one of several customers competing for natural gas in Canada. If there is any price-fixing by the Canadian producers, which the evidence in the record seems to contradict, this Commission and the United States government can only attempt to influence the Canadian government to prevent these practices. Also, PG&E's relationship with some of its Canadian suppliers in the Arctic pipeline venture does not infer any antitrust violations with respect to the sale of natural gas to PG&E.

The existence of a relatively large, virtually integrated system with interlocking officers and directors is a common pattern in the oil and gas industry, and the evidence herein does not indicate that the corporate structures of Alberta and Southern, Alberta Natural and PGT has led to antitrust violations.

Finally, the evidence in the record shows that Mr. Booth's position with the Canadian Petroleum Association has little or no impact on the price structure of natural gas in Canada.

Based on the foregoing discussion and the evidence in the record herein,

IT IS HEREBY ORDERED that:

1. Rehearing of Decision No. 83127 is hereby denied;
2. Decision No. 83127 is hereby modified by the inclusion of the following findings:

"21. No new evidence was presented in this proceeding to cause the Commission to change the findings and conclusions of Decision No. 82224 (Application No. 53866) respecting the issues of price fixing and anticompetitiveness regarding the purchases of natural gas by PG&E from California gas producers. Findings No. 6 through 8 and Conclusion No. 1 through 4 of Decision No. 82224, dated December 4, 1973, are incorporated by reference herein.

"22. The evidence in the record does not warrant the exercise of our sua sponte powers to further investigate alleged price-fixing or anticompetitiveness with respect to purchases of natural gas by PG&E from its Canadian affiliates."

3. The first sentence of the second paragraph at page 18 of Decision No. 83127, mimeo, is hereby modified as follows:

"We have considered the issues of price-fixing and antitrust at length only recently in Decision No. 82224 dated December 4, 1973 in Application No. 53866."


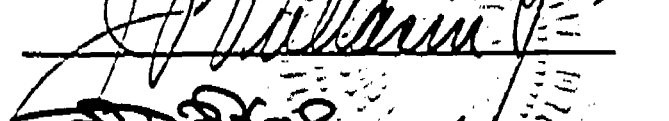
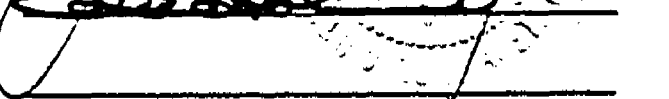
In all other respects the provisions of Decision No. 83127 shall remain in full force and effect.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 11<sup>th</sup> day of SEPTEMBER, 1974.

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.

  
President  
  


Commissioners