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ORIGINAL

Decision No. 83573

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 Purchased Gas Adjustment Provision in Its Tariffs.	Application No. 53797 (Filed January 19, 1973)

(List of Appearances in Appendix A)

OPINION ON CERTAIN EXAMINER'S PHASE II RULINGS AND RULINGS ON OTHER PLEADINGS

In Application No. 53797 applicant requested a general rate increase of $53,151,000.[1/] On September 28, 1973 during the course of the hearings on this rate increase, Southern California Edison Company (Edison) filed a motion requesting the Commission to consider evidence relating to alternate arrangements for deliveries of gas by applicant to its retail steam electric (G-58) customers (of which Edison is the largest), to San Diego Gas & Electric Company (SDG&E) for use in SDG&E's steam plants, and to applicant's regular interruptible A-block customers (G-53-T). The city of San Diego (San Diego) filed a motion to require an Environmental Impact Report (EIR) on the gas reallocation issue. Edison asserted that an EIR was not required.

1/ Decision No. 83160 dated January 16, 1974 authorized a rate increase of $33,693,000.

Applicant, fearing delay and loss of earnings, moved that the Commission issue a rate order prior to determining the reallocation issue, and that the reallocation issue be handled in a separate set of hearings (known as Phase II). Decision No. 82414 granted the request for a Phase II hearing and held that an EIR was not needed to determine the reallocation issue because that issue is part of a rate case and an EIR is not required in a rate case. Decision No. 82745 dated April 16, 1974 modified Decision No. 82414 by granting limited rehearing to reconsider whether an EIR was required for the Phase II proceedings. The EIR issue was to be determined pursuant to Rule 17.1(e) of our Rules of Procedure as part of Phase II.

Prior to the initial Phase II hearing set for May 16, 1974, applicant and Edison requested more time to prepare their showings in opposition to the preparation of an EIR. The examiner requested the calendar clerk to notify appearances at the Phase II prehearing conference that a continuance would be granted at the hearing of May 16, 1974. On May 16, one of the Phase I appearances, Henry Lippitt, 2nd, who was not given notice of the proposed continuance, was permitted to make a statement on the EIR issue (opposing an EIR requirement) and to introduce an exhibit, but was not permitted to present testimony. The examiner directed production of additional evidence.

San Diego filed a motion to strike the May 16th evidence because it claimed a right to be present at that hearing. In response to the motion the examiner outlined the scope of the May 16th hearing, stated that San Diego would be given an opportunity to be heard, and denied the motion to strike. We concur in that ruling.

The Phase II proceedings involve (1) the question of whether maintenance of the existing annual floor of deliveries from applicant to SDG&E, as ordered in Decision No. 80430[2/] dated August 29, 1972 in Application No. 52696 constitutes unreasonable discrimination on the ground that the level of service to SDG&E steam plants is significantly higher than the level of service which applicant is able to supply to its G-58 customers; (2) the question of what changes in delivery priorities and rates to the affected classes should be authorized if unreasonable discrimination exists; and (3) the question of the weight to be given to the environmental effects of a shift in gas priorities which would require SDG&E to burn additional quantities of low sulphur fuel oil, a more polluting fuel than gas, to make up for the loss of any gas volumes. (If such a shift were to be authorized SDG&E's electric fuel expenses would be significantly increased and Edison's decreased.)

2/ In Decision No. 80430 the delivery priority for G-58 and SDG&E's steam plants was designed to achieve parity based upon the Daily Contract Quantities (DCQ's) established in that order, and parity was achieved. Decision No. 80430 also provided that deliveries based upon an annual floor of deliveries to SDG&E would override parity considerations. Applicant states that additional deliveries to SDG&E, above parity levels, are now being made.

When reconsidering the applicable CEQA procedures pursuant to our rehearing order the examiner relied on the Public Resources Code. Section 21065(c) of that code defines "project" as "activities involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies." An order providing for a reallocation of deliveries based upon parity considerations is a change in "entitlement for use" as that phrase is used in CEQA. The examiner recognized that Phase II is both part of a rate application and a situation involving entitlement for use. The examiner differentiated this situation from that in a normal rate case where there are questions of allocation, of differential charges to different classes of customers, and where the sole impact is an economic one, so that CEQA procedures do not apply.

Based on those considerations, the examiner ruled that: (a) CEQA is applicable to Phase II of this proceeding and an Environmental Data Statement (EDS) should be prepared; (b) Edison is the proponent of the project and should prepare the EDS; and (c) SDG&E's motion for an interim order directing the preparation of an EIR should be denied because it is premature.

We affirm the above rulings. Under Rule 17.1, motions are permitted after the preparation of an EDS and the presiding officer may issue rulings on such motions (including a ruling on whether a Negative Declaration is sufficient).

Edison's motion to consider evidence relating to alternate arrangements for deliveries of gas by applicant to SDG&E and to its G-58 and A-block customers is discussed in detail on the first four pages of Decision No. 82414. Edison's position in this proceeding has been to urge reallocation of gas supplies which would result in approximately equal levels of satisfaction for the A and S-1 requirements of each of applicant's G-58 customers, of SDG&E's steam plants, and of applicant's A-block regular interruptible customers, and would result in a substantial reduction in gas availability for SDG&E's steam plants. Edison would be the major beneficiary if a reallocation were made within the parameters outlined in Decision No. 82414. There is evidence (Exhibit 57) which shows that for the test year 1974 Edison would receive 3,914 M^2cf (38.6%) of the 10,127 M^2cf of gas SDG&E could lose if reallocation were made on a parity basis, or 6,269 M^2cf (65.7%) of 9,548 M^2cf if reallocation were made on a modified parity basis.

The presiding examiner also received briefs regarding whether the Commission should issue an interim order either reallocating gas supplies or preserving the status quo pending issuance of a final decision after completion of the CEQA proceedings.

Decision No. 82745 did not modify the determination in Decision No. 82414 that the Phase II proceedings are a rate case. The Commission's rate authority derives from the statutory provisions of the Public Utilities Code and from Article XII, Section 23 of the California Constitution.

Article XII, Section 23 reads in part:

". . . The Railroad Commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities, in the State of California, and to fix the rates to be charged for commodities furnished, or services rendered by public utilities as shall be conferred upon it by the Legislature, and the right of the Legislature to confer powers upon the Railroad Commission respecting public utilities is hereby declared to be plenary and to be unlimited by any provision of this Constitution...."

Applicant anticipates further deterioration in the level of available gas supplies to meet steam plant requirements after 1974. Applicant states that Canadian opposition will prevent several utilities, including itself, from obtaining a hoped-for gas supply (see discussion on pages 7 and 73 of Decision No. 83160). The record shows that completion of the CEQA procedures, if an EIR is required, may take over one year.

We concur with the examiner's ruling that there should be an expeditious resolution by interim order of whether or not the denial of reallocation (i.e., preservation of the floor) will result in unreasonable discrimination for the future. The examiner stated that after the receipt of evidence the matter should be submitted for interim order after short oral arguments covering the concepts involved; that environmental evidence will be taken for consideration in an interim order; and that if the record discloses that there is unreasonable discrimination, such discrimination should not continue without any action on our part pending final preparation of all necessary documents to conform to the CEQA procedures. These rulings are reasonable. If unreasonable discrimination does not exist the CEQA procedures are moot. If an unreasonable discrimination exists, the CEQA procedures will be fully complied with prior to our issuance of a final order in Phase II.

Edison petitioned the Commission to issue an interim order, pending final disposition of the issues, containing indemnification provisions. Edison contends that such an interim order would lawfully promote the ends of justice in light of the prima facie showings of disparities in projected 1974 levels of service for electric utility generation contained in this record; that most of the gas under consideration is for the same end use, utility electric generation; that there are inordinate cost differences between natural gas and low sulphur fuel oil (the higher-priced fuel needed if the gas is not used for generation); and that this procedure will eliminate the possibility of any advantage accruing to any party by delaying the Phase II proceedings till the gas supplies available from the applicant are reduced to negligible amounts.

The record contains earlier estimates of requirements on applicant's system and updated estimates. The later estimates reflect, among other things, the effects of curtailments of generating requirements flowing from the energy crisis and above-normal availability and purchases of hydroelectric power by electric utilities served by applicant. Electric utility gas requirements and the level of satisfaction of such requirements vary under the differing assumptions. We require further evidence on rate effect, environment, and requirements prior to issuing our interim order. We see no basis for indemnification.

SDG&E filed a motion for an examiner's proposed report if an interim order is issued. Granting such a motion would be inconsistent with our desire to expedite the resolution of the issue of whether applicant's rates and conditions of service should be changed to eliminate unreasonable discrimination. SDG&E's motion should be denied.

Findings

1. San Diego's motion to strike the material contained in the May 16, 1974 hearing should be denied.

2. The CEQA proceedings are appropriate to Phase II of this proceeding and an EDS should be prepared.

3. Edison is the proponent and should prepare the EDS.

4. SDG&E's motion for an interim order directing the preparation of an EIR should be denied because it was premature. Under Rule 17.1 motions are permitted after the preparation of an EDS and the presiding officer may issue rulings on such motions.

5. The CEQA procedures do not apply in a normal rate case where the sole impact includes determination of a total revenue requirement and the apportionment of a change in revenue requirements to different classes of customers. The Commission will consider potential environmental impacts in normal rate cases. When environmental issues are brought to light by our staff or other parties, appropriate findings will be made thereon.

6. The expeditious resolution of our constitutional and statutory obligations to fix just and reasonable rates, with no unreasonable discrimination, requires the issuance of an interim order in applicant's Phase II rate increase application, upon completion of an adequate record.

7. Edison's motion for an interim order containing indemnification provisions should be denied.

8. SDG&E's motion requesting an examiner's proposed report should be denied.

9. Any pleading or motion inconsistent with the preceding findings should be denied.

Conclusions

1. San Diego is not prejudiced by permitting the record of the May 16, 1974 hearing to stand.

2. This Phase II rate proceeding is a project as defined in CEQA.

3. Edison is the proponent and should prepare the EDS.

4. SDG&E's motion for an interim order directing the preparation of an EIR should be denied because it is premature.

O R D E R

IT IS ORDERED that:

1. The city of San Diego's motion to strike the May 16, 1974 material is denied.

2. Southern California Edison Company, the proponent in Phase II of this proceeding, is directed to prepare an Environmental Data Statement forthwith, in conformity with the provisions of Rule 17.1 of the Commission's Rules of Procedure. Southern California Edison Company shall furnish monthly estimates to the Commission and to the parties of the completion date of the Environmental Data Statement.

3. San Diego Gas & Electric Company's motion for an interim order directing the preparation of an Environmental Impact Report is denied.

4. Southern California Edison Company's motion for an interim order containing indemnification provisions is denied.

5. San Diego Gas & Electric Company's motion requesting an examiner's proposed report is denied.

6. Anypleading or motion inconsistent with this order is denied.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 8th day of OCTOBER, 1974.

President

Commissioners

I dissent

- Vernon L. Sturgeon

APPEARANCES

APPLICANT

Robert Salter and David B. Follett, Attorneys at Law, for Southern California Gas Company.

INTERESTED PARTIES

Chickering & Gregory, by Donald Richardson and David Lawson; and Gordon Pearce, Attorneys at Law, for San Diego Gas & Electric Company.

Robert J. Logan, Deputy City Attorney, and V. P. DiFiglia and Ronald L. Johnson, Attorneys at Law, for City of San Diego.

Rollin E. Woodbury, Robert J. Cahall and H. Robert Barnes, by H. Robert Barnes, Attorneys at Law, for Southern California Edison Company.

Arthur T. Devine and Frederick H. Kranz, Jr., Attorneys at Law, for Los Angeles Department of Water and Power.

Burt Pines, City Attorney, by Leonard L. Snaider, Attorney at Law; and Manuel Kroman, for Department of Public Utilities and Transportation, City of Los Angeles.

Leonard Putnam, City Attorney, by Harold A. Lingle and Robert W. Parkin, Deputy City Attorneys; and Edward C. Wright, General Manager, Long Beach Gas Department, for City of Long Beach.

Roy A. Wehe, for City of Long Beach and for Imperial Irrigation District.

INTERESTED PARTIES (Continued)

Frank R. Manzano, Senior Assistant City Attorney, and Peter C. Wright, Attorney at Law; and W. H. Fell, by W. S. Miller, for City of Glendale.

Eldon V. Soper, Attorney at Law, and James D. Woodburn; and Warren D. Hinchee, by Lynn L. McArthur, for Public Service Department, City of Burbank.

Earl R. Steen, Deputy City Attorney, for City of Pasadena.

Brobeck, Phleger & Harrison, by Gordon E. Davis, Attorney at Law, for California Manufacturers Association.

Earl A. Radford, Attorney at Law, for Shell Oil Company.

Gary Morrison, Attorney at Law, for Regents of the University of California, Los Angeles.

Hugh M. Flanagan and J. Randolph Elliott, Attorneys at Law, for California Portland Cement Company & Associates.

Evan A. Santell, Attorney at Law, for Atlantic Richfield Company.

Henry F. Lippitt, 2nd, Attorney at Law, for California Gas Producers Association.

FOR THE COMMISSION STAFF

Janice E. Kerr, Attorney at Law, and Eugene S. Jones.