

Decision No. 83810**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 Purchased Gas Adjustment
Provision in Its Tariffs.

Application No. 53797
(Filed Jan. 19, 1973)

OPINION AND ORDER DENYING REHEARING AND STAY

Southern California Gas Company (SoCal) and Southern California Edison Company (Edison) have filed petitions for rehearing of Decision No. 83575 issued October 8, 1974. Edison also requests that we stay Decision No. 83575. By that decision we adopted certain rulings of the presiding examiner. Both petitioners take issue with our determination that the provisions of the California Environmental Quality Act (CEQA) are applicable to Phase II of this proceeding and Edison does not agree with our determination that it is the "proponent" of a "project" within the meaning of CEQA and must prepare an Environmental Data Statement (EDS).

Petitioners argue that this proceeding is a rate case and that CEQA is therefore not applicable. They cite decisions of the California Supreme Court denying petitions for writ of review wherein it was argued that CEQA is applicable to Commission rate cases. (See Peninsula Commute & Transit Committee v. P.U.C., S.F. No. 23031, writ denied January 16, 1974; Sierra Club v. P.U.C., S.F. No. 23069, writ denied April 16, 1974.) Their reliance is misplaced, as the instant proceeding is not a normal rate case. This proceeding has been divided into two parts, the first of which, Phase I, resolved the question of overall rate relief. Phase I was completed upon the issuance of Decision No. 83160, dated July 16,

1974. In Phase II the Commission is considering whether there is discrimination in service to certain customers on SoCal's system, and if so, whether gas supplies should be reallocated to different customers in different geographic locations, and what changes in rates, if any, may be necessitated as to the affected customers. We have determined that an order providing for a reallocation of gas is a change in "entitlement for use" as that phrase is used in Section 21065(c) of the Public Resources Code.

We also note that petitioners' reliance on the case of San Diego Gas & Electric Co. v. P.U.C., S.F. No. 23101, writ denied July 17, 1974 as support for their "rate case" argument is misplaced. In that case San Diego Gas & Electric Company (SDG&E), a party herein, sought review of Decision No. 82414, issued January 29, 1974, which decision held, inter alia, that CEQA was not applicable to this proceeding. Prior to the Supreme Court's ruling in S.F. No. 23101, we issued Decision No. 32745 in this case and thereby ordered a rehearing for the purpose of further considering whether CEQA is applicable. We made the Court aware of this fact in our Answer filed May 13, 1974, and argued that it rendered the petition moot. We believe that the Court based its denial of the petition on this ground. In addition, it should be noted that petitioner SDG&E characterized the proceeding as one involving reallocation of gas supplies rather than a rate case, and that the Commission, in responding to the petition for writ of review, did not rely on the "rate case" argument.

Edison argues that, assuming CEQA is applicable, the Commission has erred by determining that Edison is the "proponent" of a "project" within the meaning of Rules 17.1(c) and 17.1(e)(2)(F) of the Commission Rules of Practice and Procedure. Edison argues that it has merely raised the issue of discrimination in this proceeding and has not sought a reallocation of gas supplies. Edison also argues that the Commission by ordering it to prepare an EDS has placed unconstitutional conditions precedent on its assertion of the claim of discrimination.

We have examined Edison's motion of September 28, 1973, as well as Edison's subsequent participation in this proceeding, and are of the opinion that it seeks a reallocation of natural gas deliveries

in SoCal's system. It is the moving party as to this issue and the proponent of this change in gas deliveries. We are not moved by Edison's threat to withdraw its motion if the order to prepare an EDS is not reversed. Rule 17.1(c) of the Commission's Rules of Practice and Procedure provides,

"... each proceeding concerning a project covered by Section (a)(1) shall include an Environmental Data Statement (EDS). Such statement shall be prepared by the proponent of the project for which Commission approval is sought. Any party may be the proponent of a project in a given proceeding."

We will proceed to make a determination regarding discrimination in service in SoCal's system pursuant to Sections 451 and 728 of the Public Utilities Code regardless of whether Edison withdraws its motion. We have found that Edison is the proponent of the project and have ordered it to prepare an EDS. The withdrawal of the motion at this time will not change that finding or order and we hereby affirm them.

Edison's constitutional claim is without merit. Due process does not require any particular type of procedure in an administrative hearing. (See Amer. Toll Bridge Co. v. Railroad Com., 12 Cal. 2d 184 (1938) aff'd 307 U.S. 486 (1938).) The cases cited by Edison as support for its contention that we have placed an unlawful condition precedent on its assertion of discrimination involve the imposition of penalties for the taking of unsuccessful appeals from court judgments. They are unlike the situation here where the Legislature has imposed reasonable conditions on parties seeking the approval of government agencies for certain kinds of activities. The EDS requirement is not such a burden as to amount to a denial of Edison's right to assert its claim of discrimination. Edison has ample resources with which to prepare an EDS.

We have examined all other grounds asserted by petitioners and are of the opinion that they do not merit a grant of rehearing. Further, good cause for a stay of Decision No. 83575 has not been made to appear.

IT IS ORDERED that rehearing of Decision No. 83575 is hereby denied.

IT IS FURTHER ORDERED that Edison's request for a stay of Decision No. 83575 is denied.

IT IS FURTHER ORDERED that Edison will proceed with the preparation of an EDS as ordered in Decision No. 83575.

The effective date of this order is the date hereof.

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

I abstain -

Robert E. Myland

Commissioner

Vernon L. Sturgeon
President

William J. Quinn

Thomas J. Moran

[Signature]

Commissioners