L/WHK:rg *

EX-3

Decision 84 12 028 DEC 5 1984

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SOUTHERN CALIFORNIA GAS COMPANY to rescind refund orders relative to its investment tax credit election pursuant to Decisions 85627, 86117, 86118, and 86691 and suspended by Decisions 86154 and 86684.	Application 83-04-63 (Filed April 29, 1983)

ORDER DENYING REHEARING

An application for rehearing of D.84-09-083 has been jointly filed by the Cities of Los Angeles and San Diego (the Cities). A response thereto, asking that rehearing be denied, has been filed by Southern California Gas Company (SoCal). We have carefully considered each and every allegation of error and argument in these filings and are of the opinion that good cause for granting rehearing has not been shown.

The Cities concur with the position taken by the attorney for the staff in this proceeding, namely, that we are precluded from rescinding our prior refund orders because of the decision of the California Supreme Court in SoCal v. Public Utilities Com. (1979) 23 Cal.3d 470. We discussed this position in D.84-09-083 and found it unpersuasive. In effect, the Cities ask us to ignore the subsequent actions of Congress most notably, the Surface Transportation Assistance Act of 1982, and its legislative history. As we stated in D.84-09-083, we are

persuaded by the language of that Act and that history that Congress agreed with the Internal Revenue Service's interpretation of the relevant provisions of the Internal Revenue Act rather than ours. Although we understand that such interpretations by Congress of prior legislation are not binding on the courts, it is well settled that such enactments and statements are factors which may be considered by a court in determining the true intent of Congress at the time it enacted the prior law (Fong Eu v. Chacon, 16 Cal.3d 583; Standard Oil Co. v. State Bd. of Equalization, 39 Cal.App.3d 765). Extrinsic aids, such as the "Report of the Committee on Finance, U.S. Senate" on H.R. 1524, which SoCal included in its brief, are also legitimate aids in determining legislative intent (SoCal v. Public Utilities Com., 24 Cal.3d 653).

Therefore, although we cannot predict with certainty what a federal court would decide if the question of SoCal's eligibility for ITC were litigated in that forum, we find it reasonable to conclude that such a court would seriously consider these new factors in construing the applicable tax law. Since those factors are all adverse to our earlier conclusions as to the effect of our refund orders on that eligibility, it is also reasonable to conclude that the risk of SoCal's loss of ITC has been increased.

We continue to believe, as we stated in D.84-09-083, that such an event would not be in the best interests of SoCal's ratepayers and that prudent regulation requires us to avoid such a consequence if we can reasonably do so. That is the reason we have decided to rescind our prior orders.

The Cities also contend that our action was taken without notice and opportunity to be heard as required by law. However, we note that they do not allege they were not served with a copy of SoCal's "Motion to Rescind Refund Orders," which formed the basis of this proceeding. SoCal has stated, and its certificate of service so certified, that copies thereof were

served by mail on all interested parties in the original proceedings, including the counsel for the Cities who signed the Application for Rehearing. Although the Cities may not have been aware that SoCal's "motion" was actually filed as a new application, we do not find that fact as excusing the Cities' failure to respond or to ask for a hearing if one was desired.

In any event, we fail to see what purpose such a hearing would serve. The material evidence consists of the relevant federal laws and their legislative history. none of which is in dispute. Anything in addition would be merely opinion as to what legal conclusions should be drawn from such evidence. Such arguments can be made in a brief as well as by sworn testimony and are not binding on this Commission (Market Street Railway Co. v. Railroad Commission, 320 U.S. 548). Although the Cities filed no brief as such, they have made all their legal arguments in their Application for Rehearing and these have been considered.

No other issues need be discussed. Therefore,

IT IS ORDERED that

Rehearing of D.84-09-083 is denied.

This order is effective today.

Dated DEC 5 1984 at San Francisco, California.

I abstain.

FREDERICK R. DUDA
Commissioner

DONALD VIAL
President
VICTOR CALVO
PRISCILLA C. GREW
WILLIAM T. BAGLEY
Commissioners

I CERTIFY THAT THIS DECISION WAS APPROVED BY THE ABOVE COMMISSIONERS TODAY.

Joseph E. Bodovitz, Executive Director