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Decision 87 12 031 DEC 9 1987

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
Own Motion Into the Operations of
All Gas Corporations Regarding the
Transportation of Customer-owned Gas
From the California Border to
Industrial Facilities Within
California.

ORIGINALI.84-04-079
(Filed April 18, 1984)

And Related Matters.

(I&S)
Case 84-04-80(I&S)
Case 84-02-06(I&S)
Case 85-08-12(I&S)
Case 85-09-10(I&S)
Case 85-09-11ORDER MODIFYING DECISION 87-09-027 AND DENYING REHEARING

On May 29, 1987, this Commission issued Decision (D.) 87-05-069, establishing a system of interutility gas transportation which would allow the owners of natural gas supplies to move those supplies completely across the systems of California's regulated gas utilities. D.87-05-069 did not require the major gas utilities to offer interutility transportation as a tariffed service. In the course of the proceeding, Pacific Gas and Electric Company (PG&E) had presented arguments that the Commission lacked an adequate record to order this service on a tariffed basis. In order to allow the other parties an opportunity to address PG&E's arguments, D.87-05-069 deferred the resolution of this issue until the parties could

submit briefs on the question of "whether interutility transportation can and should be offered as a tariffed service." See D.87-05-069, pp. 77-78, Conclusions of Law 13-15, Ordering Paragraph 7. In D.87-09-027, the Commission concluded that not only did the public interest require that interutility transportation be offered on a tariffed basis, but also that the Commission had the jurisdiction to so order.

PG&E filed an application for rehearing of D.87-09-027. Southern California Gas Company (SoCal) and, jointly, Mobil Oil and Shell Oil (Oil Cos.) filed responses in opposition to PG&E. We have considered all of the allegations raised, and are of the opinion that sufficient grounds for rehearing have not been shown. However, we will clarify and modify D.87-09-027 in one important respect.

We begin by noting that we pointed out in D.87-10-050, which denied PG&E's earlier application for rehearing of D.87-05-069, that PG&E's dedication arguments were raised prematurely, given that D.87-05-069 ordered the filing of briefs on a question which included that issue. We also pointed out that the issue had been disposed of in D.87-09-027, and that to the extent the two orders were contradictory on the dedication issue, D.87-09-027 was to control. However, at the time we issued D.87-10-050, we had not yet received PG&E's application for rehearing of D.87-09-027. In considering that application, we have undertaken further review of the dedication issue. Although we remain of the view that the issue of whether PG&E has dedicated its facilities to interutility transportation has been rendered moot, in the interests of clarity and completeness we make an affirmative finding on this issue in today's order.

In their response to PG&E, the Oil Cos. correctly point out that D.87-09-027 does not find the issue of dedication to be

irrelevant; rather, it has become moot due to PG&E's own actions. In that decision, the Commission explained that in its earlier D.85-12-102, it did not make a specific finding on whether the gas utilities had dedicated their facilities to the provision of gas transportation. Instead, the Commission found an independent basis for its authority to order the utilities to file transportation tariffs. PG&E never challenged D.85-12-102 on the ground that it had not dedicated its facilities to transportation service; rather, PG&E filed tariffs for the transportation of gas owned by third parties, and began transporting such gas. Under such circumstances, the issue of dedication in this case is moot, whether or not PG&E's practices prior to its filing of tariffs under D.85-12-102 would have supported a finding of dedication.

More fundamentally, SoCal argues that dedication may be found as follows: under Public Utilities Code Sections 216(a), 221, and 222, the act of owning natural gas facilities for the transmission of natural gas to the public is alone sufficient to bring a corporation within the Commission's jurisdiction; by defining the act of owning a gas plant for the transmission of natural gas as a public utility activity, those statutes enable the Commission to regulate the terms and conditions of gas transportation service within California. Moreover, SoCal points out that PG&E has already been providing such service under one set of terms and conditions. D.87-09-027 does nothing more than establish further terms and conditions for transportation of gas across facilities which PG&E has already used for transporting gas for the public.

PG&E has never presented persuasive distinctions between the transportation services contemplated in D.87-09-027 and the transportation services already being provided by PG&E pursuant to earlier Commission order and Commission approved tariffs.

Provision of interutility gas transportation makes use of existing facilities which are already dedicated to public use, and entails delivery of the service in virtually the same physical location where service is now being provided. It does not require any extension of existing facilities beyond PG&E's existing service territory. While the ultimate interutility transportation customer will receive the gas from another utility at a point outside PG&E's service territory, the service PG&E will provide is exactly the same as for customers with end-use facilities within PG&E's service territory. PG&E has not shown that with this configuration of circumstances, a sufficient distinction exists between the transportation it is already providing and that which D.87-09-027 orders to justify a finding that in the former, PG&E has dedicated its facilities to the public, but in the latter, it has not.

Given that PG&E has dedicated its facilities to the provision of transportation services to the public, it is clear that Section 761 of the Code provides the Commission with authority to order PG&E to provide interutility transportation with those facilities under Commission-approved tariffs.

IT IS THEREFORE ORDERED that D.87-09-027 is modified in accordance with the above discussion to include the finding that PG&E has dedicated its facilities to the public use for the provision of interutility transportation services.

IT IS FURTHER ORDERED that rehearing of D.87-09-027 as modified herein is denied.

This order is effective today.

Dated DEC 9 1987 at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN

CERTIFY ~~Commissioners~~ DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.

Stanley W. Hulett

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