

Decision 87 12 655 DEC 17 1987**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SUNLAW COGENERATION PARTNERS I, )

Complainant, )

vs. )

SOUTHERN CALIFORNIA GAS CO., )

Defendant. )

Case 87-02-040  
(Filed February 13, 1987)INTERIM OPINIONSummary of Decision

We approve the stipulation filed by Sunlaw Cogeneration Partners I (Sunlaw) and Southern California Gas Company (SoCal) and dismiss the complaint.

Background

On February 13, 1987, Sunlaw filed a complaint, Case (C.) 87-02-040, against SoCal for its actions to discourage Sunlaw from timely executing a long-term gas transportation agreement. Sunlaw contends that SoCal's actions have resulted in significant and ongoing financial losses for Sunlaw.

Sunlaw is a California limited partnership engaged in the operation of two gas-fired cogeneration systems at the U.S. Growers and Federal Cold Storage Facilities in Vernon, California. Sunlaw currently purchases natural gas to operate these facilities.

According to Sunlaw, beginning in April 1986, it expressed to SoCal its intention to enter into a long-term gas transportation agreement with SoCal for delivery of customer-owned gas to the Vernon cogeneration facilities in accordance with the approved policies of the Commission.

By October 31, 1986, Sunlaw had agreed to execute a long-term gas transportation agreement pursuant to SoCal's approved Schedule GT-2. In anticipation of execution of this agreement, Sunlaw concluded a gas supply agreement to secure a source of fuel. This agreement was to terminate under its own terms if initial takes of natural gas did not occur by March 1, 1987.

Immediately before executing the agreement on October 31, 1986, Sunlaw requested clarification of two tariff provisions relating to demand charges for transportation and gas purchase arrangements. According to Sunlaw, SoCal officials indicated that the demand charge issue could be interpreted in a manner which would be highly unfavorable to Sunlaw. SoCal promised immediate clarification of the disputed provisions and suggested that Sunlaw should not execute the agreement pending receipt of that clarification.

On December 3, 1986, the Commission issued Decision (D.) 86-12-009, which, among other things, ordered a suspension of tariffs and associated service agreements governing long-term transportation of natural gas. The Commission has since clarified that only those executed long-term contracts delivered to SoCal prior to 11:59 p.m., December 3, 1986 would not be subject to the terms of the suspension.

According to Sunlaw, it was not informed of the suspension until December 5, 1986 and was therefore unable to submit an executed long-term transportation agreement in a timely manner.

Sunlaw alleges that SoCal's actions have deprived Sunlaw of the economic advantage associated with the long-term transportation of natural gas under either Schedule GT-2 or GLT-2. These actions, include, but are not limited to:

1. Statements of certain employees of SoCal to Sunlaw regarding the interpretation of the application of demand charges.

These statements did not correctly represent policies of the Commission with respect to gas transportation agreements.

2. The suggestion of SoCal's officials that Sunlaw should refrain from signing the GT-2 agreement pending clarification of the demand charge issues raised by Sunlaw, induced Sunlaw to delay execution of that agreement.

3. SoCal's failure to promptly clarify its interpretation of relevant sections of Schedule GT-2 with respect to demand charges was directly responsible for Sunlaw's inability to execute a gas transportation agreement before the suspension ordered by the Commission on December 3, 1986.

Sunlaw requests that the Commission issue an order as follows:

1. Directing SoCal to execute the Gas Transportation Service Agreement with Sunlaw under Schedule GLT-2 which Sunlaw has submitted to SoCal.

2. In the alternative, direct SoCal to execute a Gas Transportation Service Agreement with Sunlaw in accordance with prior Schedule GT-2 including the terms and conditions which Sunlaw accepted on October 31, 1986.

3. In the alternative, order and direct SoCal to pay Sunlaw actual damages in the amount of approximately \$5,000 per day for the term of the proposed agreement for losses resulting from Sunlaw's present inability to arrange for transportation of customer-owned gas to its facilities.

4. Sunlaw further requests that the Commission act on an expedited basis to grant the relief sought in view of the pending expiration date of Sunlaw's gas supply agreement.

SoCal's Reply

SoCal denies the allegation by Sunlaw that its actions have deprived Sunlaw of the economic advantage associated with long-term transportation of natural gas under either Schedule GT-2 or GLT-2.

SoCal also denies that certain of its employees made statements to Sunlaw that misrepresented the policies of the Commission with respect to transportation agreements and that it is responsible in any manner for Sunlaw's inability to execute a gas transportation agreement by December 3, 1986.

SoCal alleges that Sunlaw's inability to execute a long-term transportation agreement is solely the result of the Commission suspending tariffs for long-term transportation service in D.86-12-009. SoCal contends that the suspension of Schedules GT-2 and GLT-2 effective December 3, 1986, was totally unexpected by it.

#### History of Proceeding

A prehearing conference (PHC) was held on April 23, 1987 before Administrative Law Judge Garde. The PHC established a procedure enabling Sunlaw to obtain certain documents from SoCal.

On August 18, 1987, Sunlaw and SoCal filed a stipulation for settlement of C.87-02-040. On August 19, 1987, Sunlaw filed a motion for approval of the stipulation and dismissal of the case.

The following facts are stipulated:

1. Sunlaw began negotiating with SoCal for a long-term transportation agreement in April, 1986.
2. Sunlaw and SoCal held meetings concerning a long-term transportation agreement on May 29, June 5, August 20, October 14, October 22, and October 31 of 1986.
3. A question regarding the calculation of customer demand charges arose during the October 31, 1986 meeting.
4. Sunlaw and SoCal had fully agreed to and would have executed a long-term transportation agreement at the October 31, 1986 meeting if the demand charge issue had not surfaced.
5. Before the resolution of the demand charge issue, the Commission issued D.86-12-009 on December 3, 1986, which suspended long-term transportation tariffs immediately.

6. On December 3, 1986, eight customers contacted SoCal and requested to sign long-term transportation agreements. SoCal did not solicit these customers because it was unclear whether customers who signed long-term transportation agreements on December 3, 1986 would come under the Commission's suspension deadline set forth in D.86-12-009.

7. By D.87-01-065, the Commission accepted for filing the long-term transportation agreements signed on December 3, 1986 and formally extended the deadline for long-term transportation tariffs to 11:59 pm on December 3, 1986.

The stipulation contends that Sunlaw's situation is unique because it had orally agreed to a long-term contract on October 31, 1986 and that no other customers of SoCal fit in the same factual circumstances as Sunlaw. On October 15, 1987, SoCal filed a declaration stating that Sunlaw's situation is unique and that approval of the stipulation would not allow other parties to successfully seek long-term transportation contracts because no other customers come under Sunlaw's fact pattern.

The terms and conditions of the stipulation are as follows:

"1. This agreement shall be presented to the Commission by parties hereto and recommended for Commission approval.

"2. Sunlaw shall be authorized to enter into a long-term transportation agreement with SoCal under the terms and conditions of SoCal's GLT-2 transportation tariff which were available to customers up until December 3, 1986.

"3. The terms and conditions of the SoCal-Sunlaw transportation agreement shall be the standard terms and conditions under SoCal's service agreement filed with the Commission pursuant to its GLT-2 tariff. The term shall be for five years, the same term originally agreed to at the October 31, 1986 meeting between SoCal and Sunlaw. A complete fully executed copy of the proposed

transportation agreement is attached to the stipulation as Appendix A.

"4. For ratemaking purposes, the Commission shall treat all revenues associated with the SoCal-Sunlaw transportation agreement in the same manner as revenues from other long-term transportation agreements executed pursuant to SoCal's GLT-2 tariff.

"5. This stipulation is intended as a final settlement of all claims and demands, and, therefore, Sunlaw and SoCal covenant and agree with each other that they will not hereafter commence, maintain or prosecute any action at law or otherwise, or assert any claim against each other for damages or loss of any kind or amount arising out of the subject matter of this above-entitled action, Each party has read and hereby waives the provisions of Civil Code Section 1542.

"6. This stipulation shall not be effective and shall not bind the parties unless and until it has been approved by the Commission. Every part of this stipulation is material. If the Commission does not adopt this agreement in its entirety, the parties will not be bound by any provision set forth herein and this agreement shall not be used as evidence in any proceeding."

#### Discussion

The facts surrounding Sunlaw's complaint are unique. Prior to the suspension of long-term transportation tariffs, Sunlaw and SoCal would have executed a long-term transportation agreement had the demand charge issue not surfaced. According to SoCal's declaration, no other of SoCal's customers who missed the December 3, 1986 deadline had expressed the certain intent to SoCal to enter into long-term transportation agreement, and had made preparations to do so. Sunlaw, on the other hand, had made arrangements to acquire its own gas supply. Therefore, Sunlaw's case is unique.

We believe that approval of the stipulation will not allow other parties to successfully seek long-term transportation

agreements. Therefore, the stipulation should be approved and as requested by Sunlaw, C.87-02-040 be dismissed.

Findings of Fact

1. On February 13, 1987, Sunlaw filed a complaint against SoCal for its actions to discourage Sunlaw from executing a long-term gas transportation agreement.
2. In April, 1986, Sunlaw began negotiating with SoCal for a long-term gas transportation agreement.
3. Sunlaw and SoCal held meetings concerning a long-term transportation agreement on May 29, June 5, August 20, October 14, October 22, and October 31 of 1986.
4. A question regarding the calculation of customer demand charges arose during the October 31, 1986 meeting.
5. Sunlaw and SoCal had fully agreed to and would have executed a long-term transportation agreement at the October 31, 1986 meeting if the demand issue had not surfaced.
6. Before the resolution of the demand charge issue, the Commission issued D.86-12-009 on December 3, 1986, which suspended long-term transportation tariffs immediately.
7. On August 18, 1987, Sunlaw and SoCal filed a stipulation for settlement of C.87-02-040.
8. Under the terms of the stipulation, Sunlaw would be authorized to enter into a long-term transportation agreement with SoCal under the terms and conditions of SoCal's GLT-2 transportation tariff which was available to customers up until December 3, 1986.
9. On August 19, 1987, Sunlaw filed a motion for approval of the stipulation and dismissal of C.87-02-040.
10. Approval of the stipulation would not allow other parties to successfully seek long-term transportation agreements with SoCal.

Conclusions of Law

1. The stipulation filed by Sunlaw and SoCal should be approved.
2. C.87-02-040 should be dismissed.

INTERIM ORDER

IT IS ORDERED that:

1. The stipulation filed by Sunlaw Cogeneration Partners I and Southern California Gas Company is approved.
2. C.87-02-040 is dismissed.

This order is effective today.

Dated DEC 17 1987, at San Francisco, California.

STANLEY W. HULETT  
President

DONALD VIAL  
G. MITCHELL WILK  
JOHN B. OHANIAN  
Commissioners

Commissioner Frederick R. Duda  
being necessarily absent, did not  
participate.

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



Victor Weiss, Executive Director

pb