

Decision 88 02 025

FEB 10 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 San Diego Gas & Electric Company for)
 Authorization to Exchange All Issued)
 and Outstanding Common Stock Pursuant)
 to a Plan of Reorganization (U902-M))

Application 85-06-003
 (Filed June 3, 1985)

ORDER MODIFYING DECISION (D.) 87-02-031 AND DENYING REHEARING

The San Diego Gas and Electric Company (SDG&E) has filed an application for rehearing of D.87-02-031. Toward Utility Rate Normalization (TURN) has filed a response thereto. We have considered each and every allegation of error raised in the application, and are of the opinion that good cause for granting rehearing has not been shown. However, our further review has convinced us that the decision should be modified to more clearly state our views on the relationship of this case to Public Utilities Code Section 1801.

IT IS ORDERED that D.87-02-031 is modified as follows:

1. The discussion on eligibility, beginning on page 10 and ending on page 14, is deleted and the following language substituted:

"a. Eligibility.

"It seems clear that the relevant language in § 1801 was a result of a compromise between those legislators who felt that the Commission should have authority to award compensation in any proceeding and those who believed that compensation should be associated with ratemaking proceedings only. The compromise involved restricting awards to proceedings which meet either of two criteria.

"The first criterion allows compensation awards in proceedings in which rates are actually changed ('proceedings for the purpose of modifying a rate'). Plainly,

general rate proceedings and the usual expense and ratebase offset proceedings fall within this § 1801 language. The second criterion refers to proceedings which 'establish a fact or rule which may influence a rate.' The Legislature did not specify which proceedings meet the second criterion; therefore, the Commission maintains the discretion as to when and to what extent to implement this authorization. The key question in this case is what kinds of proceedings fall within the second criterion.

"SDG&E would have us limit proceedings meeting the second criterion to those in which a specific present or future impact on rates is identifiable. On the other hand, UCAN embraces a much broader construction of the criterion, arguing in essence that it is satisfied by any proceeding which may in concept impact rates, even though no specific rate effect is identifiable at the time. We are not satisfied with either construction.

"In our view, SDG&E's interpretation is nothing more than a restatement of the first criterion. Moreover, UCAN's broad interpretation of the second criterion has the basic flaw cited by SDG&E: conceptually, virtually all Commission activities have some impact on rates. Therefore, if the Legislature had supported UCAN's view, it would not have amended the original language in SB 4. Clearly, the Legislature intended that there be some limits on the type of proceeding for which intervenors may receive compensation.

"What is missing from the positions of both parties is a middle ground, which we think can be described as consideration of the magnitude of the potential rate impact, either actual or conceptual. To state it another way, the inquiry should be whether one purpose of the proceeding is to establish facts or rules which may have an influence on rates. This inquiry may take into account both the nature of the case and the magnitude of the possible rate impact. We consider this approach to be fully in keeping with the Legislature's concerns in enacting SB 4, and with the our commitment to ratepayers that they receive good value for the money they pay to intervenors.

"What remains is to apply this policy to the proceeding at hand. The Commission approved the diversification and holding company structure contingent upon the utility's acceptance of twenty conditions. We can say with assurance that the conditions we adopted governing SDG&E's proposed affiliate relationships would have had a significant influence on future rates. The potential impact on rates of Condition 18 alone, governing affiliate payments to SDG&E, would have been substantial.

"To confirm this we need only to look at the recent rate impacts of the relationships between Pacific Bell and its affiliates, which now have a number of years of experience travelling down the path which SDG&E had also proposed. In D.86-01-026, we declared that only those affiliate related expenses which are of direct and primary benefit to the ratepayers of the regulated public utility are allowed in rates. To that end, we adjusted the holding company's expenses by \$17.6 million before allocating those expenses to the utility. \$4.35 million of PacBell's request was disallowed as representing an expense to be incurred solely to benefit its affiliates. We found that an additional \$2.6 million should be imputed to the utility's revenues from serving its affiliates and that its prices should be marked up by 10% to make its prices competitive with those whom the affiliates would otherwise do business with. These numbers illustrate the sizeable financial impacts of a utility's relationship with a non-regulated affiliate on the utility's revenue requirement and the corresponding effect of that relationship on rates.

"In addition, although it is not necessary to our determination of UCAN's eligibility, this case may have future rate impacts which extend beyond SDG&E's service territory. The SDG&E application is the first request in recent years by a major California utility for authorization to form a holding company. Therefore, the rules adopted for SDG&E in this case are likely to serve as models which may condition the diversification activities of other California utilities, and thus may ultimately influence rates on a statewide basis.

"Accordingly, applying the policy we have enunciated above, JCAN's request for a Finding of Eligibility should be granted."

2. Conclusion of Law 3 on page 22 is modified to read:

"For the purposes of Section 1801, eligibility for compensation may be sought in cases where one purpose of the proceeding is to establish facts or rules which may have an influence on rates."

IT IS FURTHER ORDERED that rehearing of D.87-02-031 as modified above is denied.

This order is effective today.

Dated FEB 10 1988 at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
Commissioners

Commissioner John B. Ohanian, being necessarily absent, did not participate.

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


Victor Weisser, Executive Director

general rate proceedings and the usual expense and ratebase offset proceedings fall within this § 1801 language. The second criterion refers to proceedings which 'establish a fact or rule which may influence a rate.' The Legislature did not specify which proceedings meet the second criterion; therefore, the Commission maintains the discretion as to when and to what extent to implement this authorization. The key question in this case is what kinds of proceedings fall within the second criterion.

"SDG&E would have us limit proceedings meeting the second criterion to those in which a specific present or future impact on rates is identifiable. On the other hand, UCAN embraces a much broader construction of the criterion, arguing in essence that it is satisfied by any proceeding which may in concept impact rates, even though no specific rate effect is identifiable at the time. We are not satisfied with either construction.

"In our view, SDG&E's interpretation is nothing more than a restatement of the first criterion. Moreover, UCAN's broad interpretation of the second criterion has the basic flaw cited by SDG&E: conceptually, virtually all Commission activities have some impact on rates. Therefore, if the Legislature had supported UCAN's view, it would not have amended the original language in SB 4. Clearly, the Legislature intended that there be some limits on the type of proceeding for which intervenors may receive compensation.

"What is missing from the positions of both parties is a middle ground, which we think can be described as consideration of the magnitude of the potential rate impact, either actual or conceptual. To state it another way, the inquiry should be whether the purpose of the proceeding is, at least in significant part, to establish facts or rules which may have a meaningful influence on rates. This inquiry takes into account both the nature of the case and the magnitude of the possible rate impact. We consider this approach to be fully in keeping with the Legislature's concerns in enacting SB 4, and with our commitment to ratepayers that they receive good value for the money they pay to intervenors.

"Accordingly, applying the policy we have enunciated above, UCAN's request for a Finding of Eligibility should be granted."

2. Conclusion of Law 3 on page 22 is modified to read:

"For the purposes of Section 1801, eligibility for compensation may be found where the purpose of the proceeding is, at least in significant part, to establish facts or rules which may have a meaningful influence on rates, and the intervenor's participation for which it seeks compensation relates, at least in significant part, to that purpose."

IT IS FURTHER ORDERED that rehearing of D.87-02-031 as modified above is denied.

This order is effective today.

Dated _____ at San Francisco, California.

D-88-02-025

A-85-06-003

DECISION NO. _____ CASE NO. _____ APP. NO. _____