

Decision 90-10-034 October 12, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on	)	
the Commission's Own Motion into	)	I.88-12-027
the Interstate Natural Gas Pipeline	)	(Filed December 19, 1988;
Supply and Capacity Available to	)	Petition for Modification
California.	)	filed July 18, 1990)
_____)		

O P I N I O N

Mojave Pipeline Company (Mojave) and Kern River Gas Transmission Company (Kern River) (petitioners) hereby petition this Commission to issue an order stating that: (1) the Mojave and Kern River projects meet the standards for our support set forth in Decision (D.) 90-02-016 in I.88-12-027; (2) that we are satisfied with petitioners' arrangements for transfers, after approximately 20 years, of those portions of Mojave's and Kern River's facilities located in California to Public Utilities Commission (PUC) jurisdiction and that the requirement of pre-granted FERC approval contained in D.90-02-016 should be deleted; and (3) our waiver of General Order (GO) 96-A contained in D.90-02-016 will fully apply to all transportation agreements between Mojave and Kern River and their shippers, including agreements with both Enhanced Oil Recovery (EOR) shippers and non-EOR shippers, over which this Commission may subsequently assume jurisdiction.

Background

Kern River has received certificates of public convenience and necessity from FERC in Docket Nos. CP89-2047 and CP89-2048, which certificates authorize Kern River to construct and operate a natural gas pipeline system from the State of Wyoming to and within the State of California for the purposes, inter alia, of providing natural gas transportation service to customers in California. Mojave has also received certificates

of public convenience and necessity from FERC in Docket Nos. CP 89-1-000, CP89-1-002 and CP89-2-000, which certificates authorize Mojave to construct and operate one or more natural gas pipeline systems from the State of Arizona to and within the State of California for the purpose, inter alia, of providing natural gas transportation service to customers in California. We originally opposed Kern River's and Mojave's applications before FERC, but have now dropped all opposition in their FERC certificate cases and the related appeals.

D.90-02-016 concluded, inter alia, that there is a substantial near and long-term need for additional interstate natural gas pipeline capacity to serve California's requirements. The decision provided criteria for the construction and operation of new interstate pipeline capacity to serve California and further provided that: "[I]f a pipeline does conform to our criteria, we are convinced that our adopted policy for additional pipeline capacity would provide sufficient protection to California ratepayers to warrant termination of existing litigation over that project." (D.90-02-016, at pp. 112-113.) In the decision, we waived GO 96-A with respect to any contracts for service on the interstate pipeline projects over which we would assume jurisdiction after a 20-year period, thereby waiving our right to modify such contracts. The decision also required that any arrangement for future transfers of pipeline facilities within California to an entity subject to PUC jurisdiction be approved by FERC. Both Kern River and Mojave filed timely applications for rehearing of D.90-02-016 raising many of the same issues addressed in this Petition for Modification. These applications are still pending before the Commission.

On August 31, 1989, Kern River and Mojave entered into an agreement with Southern California Gas Company (SoCalGas) (the SoCalGas Agreement) which, inter alia, provides procedures whereby the California portion of Kern River's and Mojave's

proposed pipelines and facilities could be sold to SoCalGas after 20 years, thereby creating pipeline systems that may become subject to this Commission's jurisdiction. Prior to the SoCalGas Agreement, Kern River and SoCalGas on June 15, 1989, and Mojave and SoCalGas on June 22, 1989, entered into separate agreements (respectively the June 15 and June 22 agreements) which also provide for the sale of Kern River's and Mojave's proposed pipelines and facilities to SoCalGas. Recently, Mojave, Kern River, and SoCalGas amended the June 15 and June 22 agreements (collectively the settlement agreements) to satisfy further our criteria. Pursuant to those amendments, if SoCalGas exercises its option to purchase the California facilities of Mojave and Kern River approximately 20 years after commencement of service through the facilities, Mojave and Kern River commit themselves to make all appropriate regulatory filings at such time to effectuate the transfer of the facilities to SoCalGas.

Discussion

Petitioners believe that the settlement agreements will result in the development of interstate pipelines that fully meet our criteria and therefore merit our support. The projects contemplated by the settlement agreements will result in new interstate capacity that we recognize is needed to satisfy the needs of the California natural gas market. At the same time, the settlement agreements as amended, with their respective provisions that Mojave and Kern River agree to convey to SoCalGas in the future all of their facilities within the State of California, are intended to satisfy our requirement that the facilities in question should eventually become subject to PUC jurisdiction. As a result, petitioners seek our support of the projects contemplated by their settlement agreements as amended. Petitioners also seek specific assurances by us regarding our support of the settlement agreements, as discussed below.

Furthermore, petitioners are authorized by SoCalGas to state that SoCalGas supports the granting of this petition.

1. Generic Criteria for New Interstate Capacity

Mojave's and Kern River's projects satisfy our generic criteria for interstate capacity. (See D.90-02-016 at pp. 89-102.) The projects' economic viability is established by strong customer commitments. We are confident that the projects will not be built unless they prove to be economically viable, since neither Mojave nor Kern River is expected to construct without first obtaining contractual shipper commitments sufficient to obtain financing.

The projects also meet the criteria by accessing reliable, long-term gas supplies and fostering supply diversity. Kern River provides California with direct access to gas supplies from the Overthrust region of Wyoming and increases access to Canadian supplies. Mojave provides increased, secure, direct access to southwestern and midcontinent supplies, particularly the huge new supply of inexpensive San Juan coal steam gas in New Mexico. Furthermore, construction of both the Mojave and Kern River projects will benefit California by offering alternative routes for shippers, increasing supply reliability and competition. The combined routes of the Mojave/Kern River projects, therefore, offer California supply diversity.

Most important, the projects satisfy the needs of the market. They provide direct service to the EOR market in Kern County. Capacity on both Mojave and Kern River will be allocated by pre-construction shipper contracts. Brokering of capacity, as required by FERC and the PUC, also will be available.

Furthermore, the projects satisfy our criteria with respect to cost allocation. Shippers on the projects will pay the full cost of the new pipelines. No existing customers in California will bear any of the costs of the interstate pipeline projects unless they choose to take service on the projects.

Finally, the projects offer benefits in addition to our general criteria. First, the construction of joint facilities by Mojave and Kern River should provide economies of scale that will benefit all California consumers. Second, the construction of joint rather than separate facilities would tend to have fewer environmental impacts. And third, the inclusion of Mojave will increase throughput on El Paso and Transwestern, to the benefit of all California consumers.

2. Jurisdictional Criteria for New Interstate Pipelines

In D.90-02-016, we indicated that we could support interstate pipeline projects that demonstrated "commitment that any FERC-regulated interstate facilities within the state must revert to PUC jurisdiction after some extended period of time." (*Id.* at 97.) This requirement simply represents the consistent application of the policy set forth by the Commission in I.88-12-027. In the Order initiating this investigation we stated,

"We continue to prefer that any new interstate capacity should interconnect at the state border with an intrastate pipeline subject to CPUC jurisdiction. The Commission will consider approval of FERC-regulated pipeline facilities initially dedicated to EOR use as a part of an overall settlement if the capacity of such facilities is limited to incremental EOR service or service which does not bypass the distribution utilities."

and further, that,

"While new EOR-dedicated capacity may be federally regulated for an extended period of time (e.g. fifteen years) to enable EOR customers to recover a substantial portion of their investment during the period of FERC jurisdiction, after such a period of time has elapsed, jurisdiction over any new pipeline facilities constructed within the State of California must revert to CPUC jurisdiction, preferably through self-implementing arrangements which give a substantial measure

of certainty that they will operate as intended in the future." (Emphasis added.) (I.88-12-027, pp. 18-19 mimeo.)

Petitioners believe that the arrangements they have entered into satisfy these requirements. Mojave and Kern River have committed themselves to transfer their California facilities to SoCalGas after 20 years if SoCalGas at that time exercises its unilateral option to purchase those facilities. To provide further assurance that our jurisdictional criteria will be met, Mojave, Kern River, and SoCalGas have entered into appropriate amendments to the settlement agreements, specifically designed to reinforce petitioners' commitment to meeting our requirements.

In their original settlement agreement submitted in I.88-12-027, Kern River, Mojave, and SoCalGas included a requirement that they would file with the FERC an application for pre-granted abandonment, with the expectation that FERC would approve the application. We included such a requirement in D.90-02-016 where we said "To gain Commission support a project will have to demonstrate...final FERC approval of provisions to effectively transfer jurisdiction of facilities within California to PUC jurisdiction after a stated period of time not to exceed 20 years through pre-granted abandonment;..." (At p. 99.)

Petitioners no longer believe FERC would approve pre-granted abandonment and, therefore, have filed this petition. We have reviewed petitioners' arguments and recent decisions and other activities of FERC. We conclude that petitioners are accurate in their assessment of FERC's position on pre-granted abandonment. We also take note of an exchange of correspondence between President Wilk of this Commission and Chairman Allday of the FERC. (Letters attached hereto as Appendix A.) In response to President Wilk's request that the FERC indicate whether or not the FERC would formally or informally consider the joint SoCal/Kern River/Mojave settlement, Chairman Allday stated that,

"The Commission [FERC] is not in a position to formally approve the settlement at this time. Certificates have been granted by the Commission in the dockets covered by the settlement. Any action by the FERC to enable the parties to implement the settlement would occur only after certain filings are made in the future." The Chairman went on to praise the settlement and state that the FERC would process and consider the requisite abandonment filings when they were made in a timely manner.

This exchange of correspondence merely confirms the conclusion we have already independently reached. That is, because FERC has already granted certificates for petitioners' pipelines, it will take no further action until SoCalGas exercises its options. We are also of the opinion that petitioners' settlement conforms to FERC policy to foster competition and that when presented with the option exercised by SoCalGas FERC will approve.

Pacific Gas and Electric Co. (PG&E) and the Wyoming-California Pipeline Co. (WyCal) protest the Mojave and Kern River Petition for Modification and argue that to remove the precondition in D.90-02-016 for final FERC approval is a major substantive change in our policy which warrants full reconsideration after additional hearings. We disagree. Our basic policy on bypass has never waived, and the action we take today is fully consistent with that policy.<sup>1</sup>

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1. Protestants also argue that the Mojave and Kern River settlement does not comply with the criteria of I.88-12-027 to the extent that there is no commitment from the pipelines to forgo non-EOR bypass. (I.88-12-027, p. 18-19, mimeo.) We do not find this argument persuasive as both Mojave and Kern River will serve primarily EOR customers (and a few utility customers

(Footnote continues on next page)

I.88-12-027 made it clear that we preferred structural solutions to jurisdiction, such as those eventually adopted by PGT and WyCal, but also indicated that we would consider a variety of other means to protect our jurisdiction over intrastate facilities. Prior to our Feb. 7, 1990 decision, there was no express requirement for final FERC approval of pregranted abandonment, and today we remove that requirement because it is unnecessary to obtain our ultimate goals in this proceeding. The parties should bear in mind that the requirement for final FERC approval was added to D.90-02-016 because of the Commission's concern with ambiguous language in the January 24, 1990 FERC certificate orders respecting Mojave and Kern River<sup>2</sup> which stated that the FERC was not approving the filed settlement.

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(Footnote continued from previous page)

including SoCalGas who will not, of course, engage in bypass) and because both pipelines have committed to interconnect with SoCalGas for the purpose of permitting third party transportation through the LDC's facilities. (Mojave/SoCalGas Agreement of June 22, 1989, p. 7; Kern River/SoCalGas Agreement of June 15, 1989, p. 3.) We must also take note of the fact that the non-discriminatory transportation obligation each pipeline must accept pursuant to its FERC certificate makes it impossible for either pipeline to formally commit to discriminate against a non-EOR transporter with access to the pipeline which bypasses the LDC. We are not prepared to enforce a condition which is literally invalid under federal regulations. At the same time we believe both the proposed customer mix and the interconnection agreements provide adequate assurance that the LDCs will carry virtually all non-EOR gas transported over the new interstates. Thus, we are confident that this arrangement will achieve our goal of minimizing non-EOR bypass.

2. Order Issuing Certificates, Granting and Denying Rehearing, and Clarifying and Modifying Prior Order, issued January 24, 1990, Docket Nos. CP89-2047-000 and CP89-1-001, et al.



The Commission was concerned that the refusal to approve the settlements represented FERC hostility toward the settlement provisions that call for transfer of the facilities. The Allday letter belies such a concern. More importantly, SoCal's firm contractual commitment from Kern River and Mojave to permit SoCal to purchase the intrastate facilities at its option remains intact, and is further buttressed by the recent amendments specifying the pipelines' obligations to make the requisite filings with the FERC at the appropriate time. The Commission is prepared to rely on the fact that Mojave and Kern River are bound by contract to grant SoCalGas an option to buy the intrastate pipeline facilities. Moreover, FERC approval of a mere option to purchase at this time would not guarantee that a future FERC would take the necessary actions if and when SoCalGas exercises its options. But, there is no reason to believe that a future FERC will oppose the transfer at the time the option is exercised.

Quite clearly the main concession to our jurisdiction made by Kern River and Mojave is the granting of the option to SoCalGas. This concession was consistent with the criteria set forth in I.88-12-027 and with the resolution of our concerns regarding the FERC's reaction to the settlement, there is no reason that the Commission should not assent to such an arrangement as a valid resolution of the jurisdictional concerns we have consistently pursued.

Thus, while we have in the past stated that "we prefer" that new capacity link up with the LDC's facilities at the border, and that the reversion of jurisdiction to California "preferably" be through self-implementing procedures, and that pre-granted abandonment is one of the "potential vehicles" to

accomplish same,<sup>3</sup> we do not feel compelled to deny the instant Petition in the absence of such provisions. This is particularly so because SoCalGas possesses a firm right to exercise its option to purchase the instate facilities, subject only to our assertion of jurisdiction, and what we view as the ministerial act of FERC recognition of the Hinshaw Amendment's grant of exemption from federal jurisdiction following the transfer of the California facilities of Mojave and Kern River.

Under the circumstances, Petitioners' request to delete the requirement of FERC approval of pre-granted abandonment is reasonable and appropriate. As we have dropped all outstanding litigation opposing Kern River and Mojave, to grant their petition will remove the Commission as a regulatory obstacle to new pipeline projects and further our goal of allowing competitive focus to determine the extent of new capacity additions for natural gas review to California. To deny the Petition on the grounds requested by the Protestants would leave the Commission in the unacceptable position of supporting some pipeline projects and opposing others at a time when the Commission's first and foremost goal is to avoid a regulatory bias in favor of one project or another. If the marketplace is to work effectively, the Commission must not indicate a

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3. I.88-12-027 at pp. 18-19.

preference between competing projects who have each satisfied the Commission's criteria for new pipelines, albeit in differing ways.<sup>4</sup>

3. The Waiver of General Order 96-A

In D.90-02-016, we held that with regard to the pipeline projects covered by the decision (which included Mojave and Kern River), when the Commission assumed jurisdiction over those portions of the facilities that were located in California and were previously interstate facilities, we would waive the provisions of GO 96-A with regard to any existing contracts for transportation over those facilities. This was done "to permit the provisions of such [contracts] to remain in effect for the lives of the contracts in the same manner that they were implemented while the pipeline in question was under FERC jurisdiction." (*Id.* at 100.)

Petitioners request that, should we determine that the Mojave and Kern River projects meet the criteria for Commission support, the waiver of GO 96-A specifically apply to the projects so that all contracts entered into between Mojave and Kern River and their EOR and non-EOR shippers, throughout their contract terms, as extended or modified, will not be subject to Commission

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4. Protestants also argue that granting the Petition would violate Section 1708 of the Public Utilities Code as this is not a "minor modification". We disagree. As conclusively demonstrated above, the deletion of the final FERC approval requirement is, in fact, a minor modification of existing CPUC policy, and one which is fully consistent with the original goals of the Commission as set forth in I.88-12-027. The need for the final FERC approval condition has been eliminated, and the assurances which remain are sufficient to convince the Commission that the reversion of jurisdiction will take place if SoCalGas exercises its option. There are no triable issues of fact in this policy decision, only the interpretation of the criteria originally set forth in I.88-12-027 as modified by D.90-02-016.

modification; as a result, the parties to the contract will not be adversely affected by the transfer. While we view D.90-02-016 as having granted this waiver for the Petitioners already, in the interests of clarification, we will grant this request.

Findings of Fact

1. For a proposed interstate pipeline serving California to meet our standards for support, the requirement of pre-granted final FERC approval either for transfers of California facilities to a jurisdictional utility or for an option to accomplish the same result, as set forth in D.90-02-016, is burdensome, unnecessary, and should be deleted.

2. It is reasonable to waive the provisions of General Order 96-A for the Mojave and Kern River projects so long as those projects remain in compliance with the criteria of D.90-02-016.

3. The Mojave and Kern River projects meet the standards for our support set forth in D.90-02-016 and I.88-12-027.

Conclusion of Law

The Commission concludes that the petition should be granted.

ORDER

IT IS ORDERED that:

1. The projects of Mojave Pipeline Company (Mojave) and Kern River Gas Transmission Company (Kern River) (petitioners) meet the standards for our support set forth in D.90-02-016 and I.88-12-027.

2. The requirement of pre-granted final FERC approval for abandonment of facilities or an option to transfer such facilities contained in D.90-02-016 is deleted.

3. Our waiver of GO 96-A contained in D.90-02-016 will fully apply to all transportation agreements between Mojave and Kern River and their shippers, including agreements with both EOR shippers and non-EOR shippers, over which this Commission may subsequently assume jurisdiction.

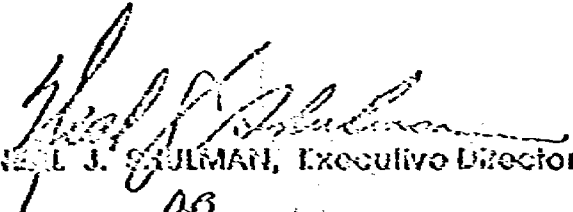
This order is effective today.

Dated October 12, 1990, at San Francisco, California.

G. MITCHELL WILK  
President  
FREDERICK R. DUDA  
STANLEY W. HULETT  
PATRICIA M. ECKERT  
Commissioners

I will file a written dissent.  
/s/ JOHN B. OHANIAN  
Commissioner

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

  
NEIL J. SCHULMAN, Executive Director  
DB

I.88-12-027

CON/bjk

APPENDIX A



**Public Utilities Commission**  
 STATE OF CALIFORNIA

COMM 11 027

July 20, 1990

Chairman Martin Allday  
 Federal Energy Regulatory Commission  
 825 No. Capitol Street, N.E.  
 Washington, D.C. 20426

Dear Chairman Allday,

I am pleased to transmit to you a revised version of the June 15, 1989 settlement between Mojave Pipeline Company, Kern River Gas Transmission Company and the Southern California Gas Company which has just been filed with the California Public Utilities Commission. This revised agreement provides that Kern and Mojave will commit to make the filings at the FERC required to implement the transfer of facilities to SoCal should the utility exercise its option to purchase the California portion of the project. Further, it eliminates the requirement that the parties file at the FERC for pre-granted abandonment of the facilities within 60 days of receiving final certificates.

The parties have made these amendments in the hope of resolving litigation disputes and minimizing any delay regarding the construction of the combined Mojave/Kern River pipeline project. In addition, the parties have petitioned our Commission to modify its decision of February 7, 1990 in which the CPUC restated its minimum criteria for supporting new pipeline projects. That decision required that pipelines meet one of three alternative tests for resolving jurisdictional concerns of our Commission. One test required interstate pipelines to stop at the state border and deliver their gas to local distribution companies. The other two acceptable options required FERC approval of either pre-granted abandonment of the facilities at some date in the future, or FERC approval of an option for the local distribution company to purchase the California portion of the pipelines.

It is important for a number of reasons for our two agencies to coordinate and cooperate in our regulation of new pipeline capacity to California. In that regard, we are most interested in the reaction of the FERC to the amended Mojave/Kern River/SoCal settlement, particularly in view of the comments in the FERC order of January 24, 1990 in the Mojave and Kern River certificate cases, in which the Commission specifically declined

Chairman Martin Allday  
July 20, 1990  
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to approve the initial settlement. The reason the CPUC included the "FERC approval" language in two of the options for new pipelines is to ensure that the FERC would support and not actively oppose implementation of a settlement that involved the possible sale of FERC jurisdictional facilities. We recognize, of course, that future filings would be made to implement such a transfer and that the FERC cannot prejudge such filings at this time. However, to the extent that the FERC could indicate, either formally or informally, that it would consider the parties' filed applications seeking FERC authorization to implement the provisions of the settlement, it would provide important assurance for the CPUC that Mojave, Kern River and SoCal have selected a viable option for ensuring that our Commission's jurisdictional concerns have been addressed.

I can personally assure you that both I and my colleagues at the CPUC are committed to actively supporting the construction of new pipeline capacity to serve California, and that our Commission has taken every possible step consistent with our statutory responsibilities to ensure that it will be the competitive forces of the marketplace which determine which pipelines are constructed. That policy is the cornerstone of our February 7, 1990 decision, and we are determined to see it carried out. As you are aware, the CPUC has already reached a settlement with the Wyoming-California Pipeline Company which has resulted in an amended certificate being filed with the FERC. In addition, the CPUC has determined that the Pacific Gas Transmission Company project has met the minimum criteria for new pipeline construction and, on that basis, we have supported the issuance of a FERC certificate for that project. It is our desire to reach a similar accommodation with Mojave and Kern River so that all the pipeline applicants can compete fairly, without regulatory hindrances from either Commission.

To that end, we urge prompt FERC action on pending pipeline applications, in order to ensure an equal opportunity for all applicants to compete for the expanding California market. As for Mojave and Kern River, because they have already received certificates, we urge that the Commission indicate its support for the compromise reached by the applicants, SoCal, and the CPUC by either formally approving the amended settlement, or by informally advising the CPUC of the FERC's view with respect to whether the Commission will consider applications to implement the settlement.



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Chairman Martin Allday  
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I look forward to a response at your earliest convenience as well as to continued communication and cooperation between our two agencies as we face the ongoing challenges associated with the transformation of the natural gas industry into a truly competitive market.

Cordially,

  
G. Mitchell Wilk,  
President, CPUC

Enclosures

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I.88-12-027 COM/bjk

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D. C. 20426

CPUC:MAN

July 23, 1990

The Hon. G. Mitchell Wilk  
President  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, California 94102

Dear President Wilk:

I was pleased to receive your letter of July 20, 1990, regarding the amendment to the June 15, 1989 settlement between Mojave Pipeline Company, Kern River Gas Transmission Company, and the Southern California Gas Company. In your letter, you request that the FERC either formally approve this settlement amendment, or informally advise the CPUC as to the FERC's view with respect to whether the Commission will consider applications seeking to implement the provision of the settlement, which provides for an option to transfer the Kern River/Mojave facilities located within California to SoCal, subject to regulatory approval.

It is my understanding that the parties have entered into the settlement in order to resolve their differences and to pursue a possible means of serving the various segments of the California gas market. Further, as you indicate, the parties have entered into the settlement in order to satisfy the regulatory concerns of the CPUC. In this regard, the settlement is designed to comply with the directives of the CPUC's February 7, 1990 decision.

The Commission is not in a position to formally approve the settlement at this time. Certificates have been granted by the Commission in the dockets covered by the settlement. Any action by the FERC to enable the parties to implement the settlement would occur only after certain filings are made in the future. However, I encourage the resolution of disputes, including litigation, by the parties. As a general matter, I enthusiastically support settlements such as this which resolve litigation and provide greater certainty for pipeline certification. I favor a course of action which will result in the timely construction of the certificated facilities. The settlement appears to be aimed at accomplishing this goal. I commend the CPUC and the parties for resolving their differences in this fashion.

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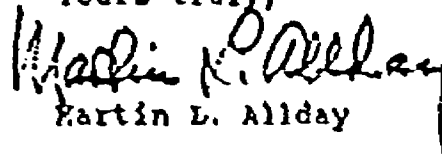
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Without prejudging or committing in any way as to what action we may take in response, if, at a future date, the pipelines file applications seeking authority to implement a transfer of the facilities to SOCAL, the Commission will, of course, process and consider those abandonment applications under applicable law in a timely manner.

Finally, let me state that I generally share your view that competition should determine who wins the California market. Fostering competition in the marketplace has been the cornerstone of the FERC's regulatory philosophy. Order Nos. 436 and 500, as well as the optional certificate procedures, were passed and are being implemented to achieve this goal. I favor a regulatory framework that ensures that all parties have an equal opportunity to compete for gas markets in all states, including California. I expect that the Commission will continue to apply this pro-competitive policy as the Commission considers pipeline expansion proposals to serve California.

If I can be of assistance in this or any other Commission matter, please let me know.

Yours truly,



Martin L. Allday

END OF APPENDIX A

I.88-12-027

D.90-10-034

John B. Ohanian, Dissenting,

Before us today is a tricky question of how to handle Commission enumerated criteria when such criteria become irrelevant. In this case the Commission established three methods by which new interstate pipeline applicants could meet the Commission's concerns about interstate pipeline bypass of local distribution utilities. These criteria may have served the function of extracting concessions from interstate pipeline applicants.

One of the three methods was for parties to receive final FERC approval of pregranted abandonment of intrastate facilities. As events unfolded, the FERC could not give such approvals. This method of meeting the Commission's bypass concerns thereby became irrelevant.

Subsequently, the pipeline projects which made the business judgement to rely upon the final FERC approval method petitioned the Commission to change the established criteria in order to receive Commission support. In essence, the argument is that the criteria as established are no longer relevant since times and events have changed.

The question facing the Commission today is what to do about the petitions to modify our previous decision. As I see it, we have a choice between three options. The first option is to deny the modification as unnecessary. The petitioners have already received a FERC certificate, have fully subscribed their line, and have announced that construction will begin in December.

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According to the petitioners, there is nothing left to be done between now and the commencement of gas deliveries on which this Commission can have any impact. Our explicit support appears to be unnecessary at best. Indeed, no one has provided any reason why such support is needed.

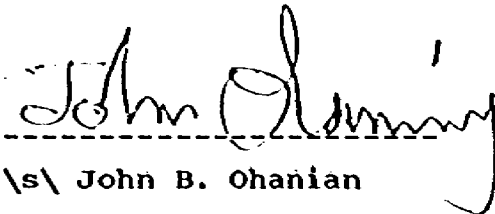
A second option, as adopted by today's majority, is to grant the petitioner's request and change our decision to meet their desires. This will allow the Commission to support the petitioner's project.

Let me emphasize here that I have no objection to endorsing these particular projects or any other projects which expedite the building of new pipeline capacity to California. I do believe, however, that the method by which it is being done here is fundamentally flawed. That is why I have suggested a third option.

The third option is to remove all criteria required for our support. This will allow the Commission to endorse all new pipelines without going through the steps of re-analyzing each criterion as it applies to each project. As an example, what happens when the next pipeline applicant asks the Commission for support, but does not meet all of the Commission's criteria? Will we change the criteria? Will we deny the support? How do we decide? Today's decision does nothing to address the real question.

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It is clearly preferable to abolish criteria as a condition for our support. When this issue next comes before the Commission I will make the same suggestion. Perhaps the idea will receive the consideration it merits at that time.

  
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\s\ John B. Ohanian

October 12, 1990