

Mailed

MAR 12 1992

Decision 92-03-042 March 11, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking into )  
natural gas procurement and )  
reliability issues. )

**ORIGINAL**

R.88-08-018

(Filed August 10, 1988)

INTERIM OPINION

This decision finds that Southern California Gas Company (SoCalGas) unlawfully assigned certain interstate gas pipeline capacity rights to its affiliate, Pacific Interstate Transmission Company (PITCO). We direct SoCalGas to reinstate previous arrangements for moving gas purchased by PITCO.

Procedural Background

The Commission held hearings in this proceeding between February 3 and February 21 to address implementation of natural gas pipeline capacity brokering, pursuant to Decision (D.) 91-11-025. During the course of the hearings, it came to the Commission's attention that SoCalGas had assigned to its affiliate, PITCO, 218 million cubic feet per day (MMcf/d) of capacity rights over the El Paso Natural Gas Company (El Paso) interstate pipeline network.

The assigned administrative law judge (ALJ) directed SoCalGas to present a witness to testify about the nature of the assignment. SoCalGas' witness testified on the matter February 21, 1992. SoCalGas, Indicated Producers, Pan-Alberta Gas Ltd. (Pan-Alberta), and the Division of Ratepayer Advocates (DRA) filed briefs on February 28, 1992.

SoCalGas' Position

SoCalGas assigned to PITCO 218 MMcf/d of SoCalGas' firm capacity rights at the Topock, Arizona delivery point on the El Paso system, effective January 1, 1992. SoCalGas states the sole purpose and effect of the assignment was to reduce the cost of gas

delivered to SoCalGas at the California border. SoCalGas explains that this savings arises because, under the assignment, PITCO pays the firm volumetric rate rather than the higher interruptible rate.

Prior to the assignment, SoCalGas paid fixed demand charges for firm service plus a firm volumetric rate, while PITCO paid an interruptible rate to move gas to California for SoCalGas' customers. The interruptible rate (which is volumetric) is higher than the firm volumetric rate because firm service customers like SoCalGas pay a fixed demand charge in addition to the volumetric rate. Since the assignment, SoCalGas receives the same amount of gas for its core customers under firm service and, therefore, the fixed demand charge is spread over the same quantity of gas; however, PITCO gas moves under the lower firm volumetric rate rather than the interruptible rate. SoCalGas states the assignment will reduce the cost of PITCO supplies by \$0.225 per decatherm with a maximum annual savings of \$10.6 million.

The assignment, according to SoCalGas, does not affect the interstate capacity SoCalGas will retain for the core market or diminish the capacity available for brokering by SoCalGas. SoCalGas proposes to include the capacity as part of the 1067 MMcf/d reserved for the core market in D.91-11-025.

SoCalGas believes it is authorized to make the assignment to an affiliate pursuant to its service agreement with El Paso. That service agreement permits assignments of firm capacity to SoCalGas affiliates by substituting a portion of El Paso's gas tariffs with language to allow the assignments.

The agreement which effectuates the assignment was signed December 26, 1991.

DRA's Position

DRA recommends that the Commission permit the assignment on the basis that it may save ratepayers several million dollars. It further recommends that the Commission require SoCalGas to change the agreement so that delivery of the gas to SoCalGas is

made at Ignacio, where the gas enters the El Paso system. This modification would increase ratepayers savings, according to DRA, by \$3.4 million a year because ratepayers would no longer be responsible for the demand charges associated with San Juan facilities. DRA also believes this approach avoids the appearance of favoritism toward SoCalGas' affiliate.

DRA comments that SoCalGas should have informed the Commission of the assignment in advance.

Indicated Producers' Position

Indicated Producers argue that SoCalGas' assignment to PITCO is contrary to policies of the FERC and the Commission. They believe the assignment may, contrary to SoCalGas' testimony, reduce the reliability of pipeline capacity to other shippers. Indicated Producers also argue that SoCalGas had no authority to assign its rights to its affiliate, notwithstanding the language in its service agreement with El Paso. According to Indicated Producers, the service agreement contradicts Federal Energy Regulatory Commission (FERC) rules and is therefore without legal effect. Indicated Producers recommend the Commission direct SoCalGas to terminate the assignment.

Pan-Alberta's Position

Pan-Alberta does not object to SoCalGas' assignment to PITCO. It does however, object to DRA's suggestion that SoCalGas take over PITCO's rights to transport gas from Ignacio, Pan-Alberta states these rights have been separately certificated by FERC and that they cannot be modified without FERC authorization.

Discussion

SoCalGas' assignment of interstate capacity rights to PITCO is unlawful. Neither the FERC nor this Commission has authorized SoCalGas to broker or assign firm interstate capacity rights. On August 14, 1991, the FERC vacated the certificate authorization for capacity brokering on the El Paso and Transwestern systems. As we stated in D.91-11-025 and D.92-02-42,

the FERC must authorize capacity brokering before California utilities can implement capacity brokering programs. Lacking that authorization, SoCalGas had no authority to assign firm capacity rights to PITCO on January 1, 1992.

SoCalGas defends the assignment by referring to its service agreement with El Paso. Part of that agreement would replace a portion of El Paso's tariffs with language permitting SoCalGas to assign capacity to its affiliates. This service agreement, however, was never filed with or approved by the FERC. A private contract between SoCalGas and El Paso does not provide lawful authority for SoCalGas' assignment to PITCO.

SoCalGas' unlawful assignment to PITCO is also discriminatory in contravention of the FERC's and this Commission's stated policies. SoCalGas never conducted an open season. Instead, it unilaterally and secretly assigned capacity rights only to its affiliate. This preferential treatment for its affiliate is exactly the type of discrimination which we have consistently sought to avoid.

SoCalGas argues the assignment is harmless to market participants because the capacity is included as part of the core reservation established by the Commission in D.91-11-025. We reject this argument. D.91-11-025 reserved firm capacity for the core in anticipation of capacity brokering programs. The core reservation has no effect until and unless the utilities implement capacity brokering programs pursuant to FERC and Commission authority. Moreover, we are concerned that SoCalGas effectively delegated to an unregulated affiliate the responsibility to procure and transport almost a quarter of the core's annual gas demand for interstate supplies.

Ironically, PITCO has previously argued the unlawfulness of the type of assignment which SoCalGas now claims is lawful. In a pleading before the FERC, dated October 30, 1991, PITCO commented on El Paso's suggestion that SoCalGas assign firm rights to PITCO:

SoCalGas would obviously be reluctant, to say the least, to schedule its affiliate supplies ahead of its own supplies and to provide the effective equivalent of brokered capacity to its affiliate. As the Commission is aware, El Paso's proposal to provide capacity brokering has been rejected by the Commission. Therefore, El Paso's suggestion to SoCalGas could result in a possible violation of the Commission order if it brokers capacity to PITCO, and could result in a possible violation of PITCO's certificate order which requires that PITCO's sales be made at the California-Arizona border...

(Answer of Pacific Interstate Transmission Company to motion of El Paso Natural Gas Company for Leave to File Answer and Answer in El Paso Natural Gas Company (Docket Nos. RP88-44-019, RP91-188-002, and CP90-2214)

Finally, we comment on SoCalGas' handling of this matter. SoCalGas did not initiate formal or informal notice of the assignment to the FERC or this Commission even though it occurred during a period of intense deliberation on capacity brokering issues by the FERC and this Commission. We learned of this matter from members of our staff who met with SoCalGas six weeks after the assignment was made. Our staff, and not SoCalGas, called the meeting. In addition, SoCalGas misrepresented the status of PITCO transportation rights in a report filed with the Commission on December 31, 1991. That report, required by D.91-11-025, states that SoCalGas was considering an assignment of El Paso rights to PITCO. It was submitted after the assignment had in fact already been made. This misstatement of facts violates Rule 1 which provides that "any person who...transacts business with the Commission" shall not "mislead the Commission or its staff by an artifice or false statement of fact or law." SoCalGas should not be surprised at our outrage at its misrepresentation and failure to even consult either the FERC or this Commission before taking action. We trust it will not happen in the future.

Because the assignment is unlawful, we decline to adopt DRA's recommendation to approve it. We will direct SoCalGas to reinstate the transportation arrangements with El Paso which existed prior to the unlawful assignment of capacity to PITCO. SoCalGas states the assignment agreement with PITCO may be terminated upon 30 days' notice by either party. Because the assignment was unlawful, the agreement which effectuated the assignment is null and void. SoCalGas shall reinstate the previous transportation arrangements within three days of the effective date of this order. If SoCalGas fails to comply with our order, we will not hesitate to issue an order to show cause and, if appropriate to find SoCalGas in contempt.

We also direct SoCalGas to investigate DRA's proposal to take PITCO gas from Ignacio rather than have it delivered to the California border and thereby effectuate the savings it realizes under the existing assignment plus an additional \$3.4 million. This arrangement would also permit SoCalGas to retain the El Paso rights rather than delegating them to an unregulated affiliate. It appears that transferring this authority would require FERC approval. SoCalGas shall file notice in this proceeding of any such change and demonstrate its authority for making the change.

Without immediate action on this matter, the unlawful assignment which is the subject of this decision may affect the rights of other interstate shippers, undermine the confidence of the FERC and market participants in this Commission's regulatory oversight, and increase risks to the core customer class. We believe the potential harm associated with the unlawful assignment constitutes an unforeseen emergency, pursuant to Public Utilities Code § 311(d). We, therefore, waive the provisions of § 311(d) requiring preparation and filing of the ALJ's proposed decision and specifying that the Commission's decision shall be issued no sooner than 30 days thereafter.

Findings of Fact

1. SoCalGas assigned to PITCO 218 MMcf/d of its firm transportation rights over the El Paso system.
2. SoCalGas did not notify this Commission or the FERC of its assignment.
3. SoCalGas' service agreement with El Paso includes provisions which conflict with El Paso's tariffs and certificate of service.
4. The FERC has not approved SoCalGas' service agreement.
5. The record in this proceeding does not clarify how the assignment might affect allocation of excess PITCO gas costs, how the assignment might affect SoCalGas' core gas purchasing flexibility or other matters.
6. Taking PITCO gas from the point at which the gas enters the El Paso system may save California ratepayers several million dollars.
7. Without immediate Commission action, the unlawful assignment by SoCalGas could affect the rights of interstate shippers, risks to the core customer class, and confidence in our regulatory oversight. Because of these potentially damaging effects, SoCalGas' assignment constitutes an unforeseen emergency.
8. SoCalGas misrepresented the status of PITCO transportation arrangements in the report filed December 31, 1991 in R.88-08-018 and pursuant to D.91-11-025.

Conclusions of Law

1. SoCalGas assigned 218 MMcf/d of firm capacity rights to PITCO without legal authority.
2. The Commission should order SoCalGas to reinstate the service arrangements with El Paso which existed prior to SoCalGas' assignment of firm capacity rights to PITCO.
3. The Commission should direct SoCalGas to investigate the feasibility of taking PITCO gas from the point at which the gas enters the El Paso system, and should file notice in this

proceeding of any changes it makes to its service arrangements with El Paso.

4. Because an unforeseen emergency exists, the provisions of Section 311(d) which require publication of a proposed ALJ decision should be waived.

5. SoCalGas violated Rule 1 when it misrepresented the status of PITCO transportation arrangements in the report filed December 31, 1991 in R.88-08-018.

INTERIM ORDER

IT IS ORDERED that:

1. Southern California Gas Company (SoCalGas) shall, within three days of this order, reinstate the service arrangements with El Paso Natural Gas Company (El Paso) which existed prior to SoCalGas' unlawful assignment of firm capacity rights to Pacific Interstate Transmission Company (PITCO).

2. SoCalGas shall investigate the feasibility of taking PITCO gas from the point at which the gas enters the El Paso system, and shall file notice in this proceeding of any changes it makes to its service arrangements with El Paso.



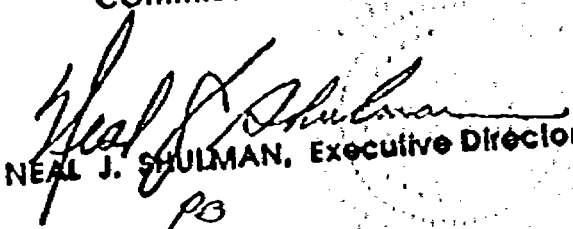
3. By issuing this decision today, the Commission waives the provisions of Public Utilities Code § 311(d) which require publication of the administrative law judge's proposed decision, and specifying that the Commission's decision shall be issued no sooner than 30 days thereafter.

This order is effective today.

Dated March 11, 1992, at San Francisco, California.

DANIEL Wm. PESSLER  
President  
JOHN B. OHANIAN  
PATRICIA M. ECKERT  
NORMAN D. SHUMWAY  
Commissioners

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

  
NEAL J. SHULMAN, Executive Director  
PB