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Decision 92-06-067 June 17, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of Application of
SOUTHERN CALIFORNIA GAS COMPANY
for authority to: (1) implement two
new pilot test service offerings to
its residential customers, wrapping
and strapping of gas hot water
heaters and connecting gas appliances;
(2) charge \$25.00 per service call
with a set-time appointment option.

ORIGINAL
Application 91-12-032
(Filed December 20, 1991)

ORDER MODIFYING AND GRANTING
LIMITED REHEARING OF RESOLUTION G-2972

By Advice Letters (AL) 2078 and 2079 filed October 18, 1991, Southern California Gas Company (SoCalGas) requested authority to offer two pilot services to residential customers: 1) a "wrapping and strapping" service of water heaters and connection of various appliances to its residential customers for a fee (AL 2078); and 2) a set-time appointment service call within one-half hour of the time requested, for a \$25 fee per visit (AL 2079). On October 31, 1991 the California Plumbers Heating and Cooling Contractors Association (CAPHCC) submitted a formal protest against AL 2078 and requested a public hearing. Protests were also filed by thirteen other parties, including Toward Utility Rate Normalization (TURN) and Division of Ratepayer Advocates (DRA). No public hearing was subsequently held. On November 20, 1991, the Commission issued Resolution G-2972, approving both of SoCalGas' requests, with modifications. CAPHCC filed a timely application for rehearing on December 20, 1991. SoCalGas subsequently filed a response on January 6, 1992.

The application for rehearing challenges only the approval of the wrap and strap and appliance connection services contained in AL 2078. CAPHCC alleges legal error primarily on the following grounds: 1) that the Commission's adoption of

Resolution G-2972 without a hearing violates Public Utilities Code Section 770¹ and Rule 52 of the Commission's Rules of Practice and Procedure, as well as principles of due process; and 2) that in approving the Advice Letters the Commission failed to comply with Section 783. As discussed below, after consideration of all of applicant's arguments, it is concluded that even though granting of rehearing is not legally required, it is appropriate in the circumstances of this case.

CAPHCC argues that the failure of the Commission to grant the requested hearing denied them an opportunity to be heard, in violation of due process and the provisions of Section 770 and Rule 52 of the Commission's Rules of Practice and Procedure. These arguments are discussed below.

A. Section 770

This section of the code states as follows, in pertinent part:

The Commission may after hearing:

(a)....fix just and reasonable standards, classifications, regulations, practices, measurements, or service to be furnished and followed by all....gas....corporations. (Emphasis added).

SoCalGas correctly points out that this section refers to the requirement for a hearing for changes initiated by the Commission to utility standards, classifications, regulations, practices, measurements or service. When the utility proposes changes, Sections 454 and 455 apply.

Although CAPHCC incorrectly argued that Section 770 fit these circumstances and mistakenly deduced a hearing requirement from it, this does not end our inquiry. We should consider whether any other provisions of law require a hearing.

1. All Section references are to the Public Utilities Code unless otherwise noted.

B. Rule 52

Applicant's reliance on Rule 52 is misplaced. CAPHCC claims that SoCalGas failed to post and publish notice of a public hearing, in violation of Rule 52. That rule, however, is inapplicable to the instant proceeding. It pertains to complaints, investigations or the filing of an "application", not the filing of an advice letter.

Advice letter filings are governed by General Order 96-A (G.O. 96-A), which does not specifically require a hearing before a tariff may go into effect. Furthermore, Rule 52 does not explicitly require a hearing, but only requires posting and publication of notice of a hearing in those cases in which we have scheduled a hearing.

Section 454(a) does require a utility to furnish notice to its customers of a proposed rate change. This notice requirement does not apply to advice letter filings except as specifically required by the Commission. In any event, SoCalGas did publish notice of these proposed changes. The issue is not whether the notice was defective, but whether a hearing is required. Rule 52 does not create a hearing requirement.

C. Compliance with Section 783

Applicant's next argument is that Resolution G-2972 violates the requirements of Section 783 in three ways: 1) by failing to make findings on the effect of the service on existing employment; 2) by failing to adequately consider the effect on existing ratepayers; and 3) by providing for the implementation of services before July 1, 1992. The threshold issue is whether SoCalGas' proposed "wrapping and strapping" service constitutes a "service" within the meaning of Section 783.

Section 783 provides in pertinent part as follows:

"(b) Whenever the commission institutes an investigation into the terms and conditions for the extension of services provided by gas and electrical corporations to new or existing customers, or considers issuing an

order or decision amending those terms or conditions, the commission shall make written findings on all of the following issues:

(1) The economic effect of the line and service extension terms and conditions upon...employment, and commercial and industrial building and development...

(5) The effect of the line and service extension regulations and any modifications to them, on existing ratepayers. (Emphasis added.)

SoCalGas argues in response that these three arguments are fatally flawed in that Section 783 applies only to line and service extensions by utilities, not to the subject matter of Advice Letters 2078 and 2079, the offering of services in general. According to SoCalGas, the term "services" when used in Section 783 is intended to have the meaning of "service(s)" as defined in Rule 1 of SoCalGas' tariffs: "all pipes, valves, and fittings from and including the connection at the main...."

SoCalGas further asserts that this view is supported by the legislative history of Section 783. According to SoCalGas the legislative findings indicate that this section was enacted in response to rules proposed by Commission Case No. 10260, dealing specifically with the physical extension of pipe or wire to new gas and electric customers.

The repeated use of the phrase "line and service extensions" in the statute supports this view. We find that the services described in AL 2078 do not fit within the ambit of Section 783. However, even if the specific requirements of Section 783 do not apply, the question remains whether the issues raised by the protests and the application merit a hearing.

D. Business & Professions Code Section 7042.1 and Competition

CAPHCC also argues that the Resolution is contrary to the public policy expressed in Business and Professions (B&P) Code Section 7042.1(c) which states: "It is the intention of the Legislature in enacting this Section that public utility

regulations be clearly based on the principle that the energy conservation industry should be allowed to develop in a competitive manner, as declared in Chapter 984 of the Statutes of 1983." CAPHCC claims that SoCalGas' monopoly power and size will result in unfair competition with its members, most of whom are small businesses.

SoCalGas responds that authorization of these services does not necessarily violate B&P Code Section 7042.1(c) and Chapter 984 of Stats. 1983 (since repealed). SoCalGas argues that as long as its services are priced above fully allocated cost, then the customers are entitled to the choice of an independent plumber or SoCalGas, citing the language in the Resolution on page 5 which states: "[T]hat is true competition; if SoCalGas fully recovers its cost then there is a benefit to the ratepayer by it offering the service. The Commission should shelter neither the utility nor the independent plumbers."

SoCalGas estimates that it will perform 66,000 services annually under the new tariff. CAPHCC assumes that all of these would come at the expense of its members. It is not clear how many of these services would have been performed without the entry of SoCalGas into the market or how they will be divided between SoCalGas and CAPHCC members. It is also not clear whether SoCalGas' estimated prices truly reflect its fully allocated costs.

Since all parties agree that wrapping and strapping serve the commendable objectives of promoting energy conservation and earthquake safety, there are benefits to allowing SoCalGas to develop and promote this service. This is true so long as SoCalGas does so fairly, both with respect to its customers and its competitors. Some of the information necessary to make this evaluation cannot accurately be obtained unless SoCalGas is actually engaged in delivering the service.

However, we are also convinced that these are valuable services, as they promote energy conservation as well as public

safety. Since the estimated costs appear reasonable, we see no need to suspend these services pending further evaluation.

The Resolution deferred this evaluation to SoCalGas' next general rate case (GRC). As will be discussed below, upon reflection we find that there are problems with the approach we previously adopted. The method of review creates a problem of timing. The report is not due back soon enough to fit the GRC schedule, nor to protect the interests of either CAPHCC or the customers. There are disputed issues which need to be resolved, but, since the estimated costs appear reasonable, SoCalGas need not discontinue its service so long as the evaluation is conducted promptly.

Petitioner's due process claim is based largely on the provisions of Sections 770 and 783, B&P Code sec. 7042.1(c) and Rule 52. In addition to these specific enactments relied upon by the applicant, we have considered other statutes and general principles of due process in analyzing the instant request for rehearing. Those statutes and general principles permit but do not require a hearing.

Section VI of G.O. 96A provides in part as follows: "(I)n cases where the proposed increases are minor in nature the Commission may accept a showing in the advice letter provided justification is fully set forth therein, without the necessity of a formal application." SoCalGas estimated the annual revenues from these new services at \$3.5 million annually. In relation to SoCalGas' overall revenues, this rate increase is relatively minor. This amount is also consistent with other advice letter filings for large utilities. We remain convinced that the advice letter filing was the appropriate procedure and that the showing by SoCalGas warranted approval.

However, in this case, other factors persuade us that a hearing is warranted. The underlying question is whether there are disputed issues of material fact which ought to be resolved sooner than the GRC. Contrary to the claim of SoCalGas that CAPHCC failed to raise any contested matters of fact needing to

be resolved through a hearing (SoCalGas Response, p.7), CAPHCC challenges the survey of contractors costs' (CAPHCC Application, pp. 6,11) upon which the Resolution relies, in part, in concluding that the proposed charges are reasonable, not unfairly competitive and not likely to result in ratepayer cross-subsidies. (Resolution, Discussion at pp. 5-6; Findings 2 and 3.) The survey is based on information provided to CACD by SoCalGas in response to a data request. SoCalGas admitted that it had not performed any studies evaluating the competitive market for these services. It did provide the minimum hourly and trip charges for several contractors who perform wrap and strap services.

This "survey" of contractors' minimum hourly rates and trip charges does not reflect actual charges for any of the services described in AL 2078. These charges only provide a "rough" benchmark for comparison with the costs estimated by SoCalGas. As CAPHCC points out, these minimum hourly charges do not form the basis for a more meaningful comparison with the fixed charges proposed by SoCalGas. It is not possible to tell whether the charges proposed by SoCalGas are too high or too low without knowing how long each procedure takes, or what the minimum or average charge would be for each service. Additional information is necessary to determine what the charges actually are in the marketplace, whether the charges proposed by SoCalGas are reasonable, whether they have any adverse effects on competition and employment, or on different classes of ratepayers, as well as the overall impact on efforts to promote safety and energy conservation.

The method adopted by the Resolution for gathering this information and making these determinations has a couple of defects. The Resolution defers evaluation of these services until the next GRC, with a report due due by March 15, 1993. The test year for SoCalGas' next GRC is 1994. According to the rate case plan, this means that the case will already have commenced hearings before the report is due. This will not allow staff or

any other party a full and fair opportunity to review the report and respond. This is true for both AL 2078 and AL 2079.

The supplemental filings required by the Resolution were made on December 1, 1991. By December 1, 1992, SoCalGas will have had a full year of experience with these new services. We will order that the Resolution be modified to accelerate the report due date for both AL 2078 and AL 2079 to December 1, 1992. This will allow more time to assess these reports and incorporate the results into the GRC.

Even if a rehearing is not legally required, it may still be appropriate to shed light on the important issues raised by CAPHCC regarding competition and ratepayer subsidies. Given the number of protestants concerned primarily, or perhaps exclusively, with AL 2078, we are of the view that it is more efficient to grant rehearing than to fold these contested issues into the GRC.

We find that limited rehearing should be granted to reconsider AL 2078, but that SoCalGas should be permitted to continue these services while the rehearing is being conducted. An interim report by SoCalGas will be ordered, regarding the issues related to AL 2078 only, due 30 days after the decision on rehearing is issued. We also consider that a report from CAPHCC on the costs and charges of its members for these services over the last year and a half would be helpful in evaluating SoCalGas' proposal. We will order that such a report be prepared and submitted. The results of the rehearing and of these reports can then be incorporated into the GRC.

Finally, Paragraph 8 on page 6 of the Resolution requires a minor correction. The last sentence of the paragraph reads: "The next general rate case seems to be the most appropriate vehicle to review these costs and either incorporate them into base rates or terminate them based on the record at that time." Incorporating them into base rates would charge all ratepayers, whether or not they use the services. This would

result in the cross-subsidy which the previous sentence of Paragraph 8 said should be avoided. It also unduly limits our possible options. We will order that the phrase, "and either incorporate them into base rates or terminate them based upon the record at that time", be deleted.

While CAPHCC failed to make a compelling legal argument for rehearing as a matter of right, there are material issues of disputed fact, on matters of significance to us and to SoCalGas' ratepayers, which deserve a hearing sooner than the GRC. On the other hand, SoCalGas made a sufficient showing to warrant continuation of the services pending the outcome of the rehearing.

THEREFORE, good cause appearing, IT IS ORDERED that Resolution G-2972 is modified as follows:

1. The second sentence in Paragraph 5 on page 6 is modified to read: "SoCal shall also prepare an annual cost study and a detailed report for these programs due on December 1, 1992 and sent to CACD's Energy Branch."

2. The last sentence in Paragraph 8 on page 6 is modified to read: "The next general rate case appears to be the most appropriate vehicle to review these costs and services."

3. Paragraph 2 on page 8 is modified to read: "Southern California Gas Company shall submit a report by December 1, 1992 citing the costs and revenues on a fully allocated cost basis of wrap and strap and appliance connection programs and the set-time appointments."

IT IS FURTHER ORDERED that:

4. The application for rehearing of Resolution G-2972 by CAPHCC is granted for the limited purpose of reconsidering AL 2078.

5. This limited rehearing shall be held at such time and place and before such Administrative Law Judge as shall hereafter be determined. While this limited rehearing is pending SoCalGas may continue to provide the services described in AL 2078.

6. This limited hearing shall be scheduled promptly in accordance with Public Utilities Code Section 1734. The results of the rehearing should be incorporated into SoCalGas' next general rate case.

7. SoCalGas shall prepare an interim cost study and detailed report regarding its experience with the services described in AL 2078, indicating the number of services performed and fully allocated costs between December 1, 1991 and June 1, 1992. This report shall be submitted to CACD's Energy Branch and distributed to all parties within 30 days of the date of this decision.

8. CAPHCC shall prepare a survey of its members and submit a report for the same services described in AL 2078, covering at least the period from December 1, 1990 through June 1, 1992, indicating the number of services performed, and minimum as well as average costs and charges, for each service. This report is also due within 30 days of this decision and shall also be distributed to CACD's Energy Branch and all parties.

9. The Executive Director shall provide notice of this limited rehearing to all parties who submitted protests of both AL 2078 and 2079, whether timely or untimely filed, as well as all parties of record in the SoCalGas general rate case proceeding in the manner prescribed by Rule 52 of the Commission's Rules of Practice and Procedure.

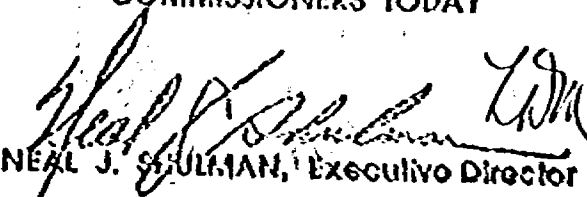
10. Except as granted herein, rehearing of Resolution G-2972 is denied.

This order is effective today.

Dated June 17, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
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. SCHULMAN, Executive Director