L/afm

Decision 92-07-084 July 22, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Order Instituting Rulemaking into natural gas procurement and reliability issues.	R.88-08-018 (Filed August 10, 1988)

ORDER DENYING REHEARING OF DECISION (D.) 92-03-042

On April 10, 1992, Southern California Gas Company ("SoCalGas") filed an application for rehearing of D.92-03-042. In its application, it alleges that the decision erred in concluding that SoCalGas had violated Rule 1, and that the capacity assignment agreement between SoCalGas and Pacific Interstate Transmission Company ("PITCO") constituted an illegal assignment of capacity. Responses to this application were filed by Indicated Producers and Toward Utility Rate Normalization.

We have considered all the allegations of error in the application and the responses to this application. We are of the opinion that good cause for rehearing has not been shown.

There is sufficient evidence and legal basis to support our determination that SoCalGas violated Rule 1 by misleading the Commission as to the status of the PITCO transportation arrangements in the report it filed with the Commission on December 31, 1991. SoCalGas executed the capacity assignment on December 26, 1991, but did not make this fact known to the Commission in the report it filed on December 31, 1991. Rather, SoCalGas incorrectly informed the Commission that it was "contemplating" such an assignment. (Exhibit DRA-16, p. 19.) Even after the assignment became effective on January 1, 1992, SoCalGas failed on its own to advise the Commission of the assignment, despite the claims that "[a]s a business matter, [SoCalGas] always communicate[s] closely with the pertinent staff on these matters whether or not there is a formal requirement that [SoCalGas] . . . submit a filing." (RT Vol. 42, p. 5185.)

Apparently, the Commission staff learned about the assignment on February 9, 1992, during a meeting between the staff and SoCalGas, over 6 weeks after the assignment had been executed. (RT Vol. 42, p. 5185.) According to the Administrative Law Judge, the assignment was discovered by accident during the course of the implementation proceedings for the Commission's brokering rules. (RT Vol. 41, p. 5186.)

Thus, from the record, a strong evidentiary inference can be drawn that SoCalGas did not intend to inform the Commission about the assignment of interstate capacity to an affiliate which this decision itself found to constitute unlawful capacity brokering.

Interestingly, SoCalGas also did not address the assignment in its testimony during the implementation phase of the Capacity Brokering Proceeding, although SoCalGas argued that the amount assigned was part of the 1067 MMcf/d reserved for the core class under the capacity brokering rules in D.91-11-025. (See RT Vol. 42, pp. 5160 & 5187; Application for Rehearing, p. 7.) Absent the Commission's accidental discovery of this illegal assignment, the inaccurate language in the December 1991 report constituted a continuing misrepresentation of the true facts about the PITCO transportation arrangements, and would have misled the Commission that the assignment was only being contemplated.

Therefore, by failing to provide the correct information in its report, and in not informing the Commission of the actual assignment, SoCalGas misrepresented and misled the Commission. This resulted in giving preferential treatment and benefits to its affiliate PITCO, which obtained 218,500 Mcf/d of firm capacity, while precluding third party shippers on the El Paso system or other suppliers of the core from the opportunity to acquire such capacity. By behaving in such a manner, SoCalGas violated Rule 1.

Such a conclusion is supported by Re U.S. West Cellular of California, Inc. (D.90-12-038] (1990) 38 Cal.P.U.C.2d 411,

420-421.) In this decision, the Commission found a Rule 1 violation against a cellular telephone company for taking advantage of a "mistake" it had introduced and for failing to bring this "mistake" to the attention of the Commission within a reasonable time. (Id.) This "mistake" and its perpetuation resulted in creating an ambiguity in a Commission Resolution and, more importantly, in giving the telephone company a competitive advantage in the marketplace. (Id. at p. 421.)

Finally, we did not err by concluding that the capacity assignment agreement between SoCalGas and PITCO constituted an illegal assignment of capacity. The evidence and the law support the conclusion that the assignment constituted capacity brokering within the meaning of the capacity brokering rules of both this Commission and the Federal Energy Regulatory Commission ("FERC"). (See RT Vol. 42, pp. 5167-5169; Texas Eastern Transmission Corporation (1989) 48 F.E.R.C. ¶61,248, p. 61,873.) FERC makes no distinction between assignment and brokering. (Id.) SoCalGas' brokering, or assignment, constitutes a new transportation service, subject to the FERC's jurisdiction, and thus requires FERC approval. (Id.; see also, United Gas Pipe Line Company (1989) 46 F.E.R.C. ¶61,060, p. 61,263.) SoCalGas had no authority from the FERC or the Commission to broker or assign firm interstate capacity rights when it did so on December 26, 1991. In D.92-02-042, we stated that the California local distribution companies, such as SoCalGas, had to have FERC authorization. (D.92-02-042, pp. 2-3.) Moreover, on August 14, 1991, the FERC vacated the certificate authorization for capacity brokering on the El Paso system. (El Paso Natural Gas Company (1991) 56 F.E.R.C. ¶61,289, pp. 62,124, 62,131-62,132; D.92-02-042, pp. 2-3 (slip op.).) Lastly, because SoCalGas did not conduct an open season and merely assigned the capacity rights to its affiliate only, the assignment was discriminatory, and contrary to FERC and Commission policy. (See Texas Eastern Transmission Corporation, supra, 48 F.E.R.C. ¶61,248, at p. 61,873; Pipeline Service Obligations and Revisions to

Regulations, Etc. (FERC Order No. 636) (1992) 59 F.E.R.C. ¶61,030, p. 70 (slip op.); D.92-02-042, p. 5 (slip op.). Thus for all the above reasons, we reaffirm our conclusion that the capacity assignment agreement resulted in illegal capacity brokering.

In conclusion, we have considered all the allegations of error in the application and are of the opinion that good cause for rehearing has not been demonstrated.

THEREFORE, IT IS ORDERED that rehearing of D.92-03-042 is denied.

This order is effective today.

Dated July 22, 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. SHULMAN, Executive Director