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Decision 92-09-054 September 2, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's own motion to change
the structure of gas utilities'
procurement practices and to propose
refinements to the regulatory
framework for gas utilities.

R.90-02-008
(Filed February 7, 1990)

And Related Matters

R.86-06-006
Application 91-06-035
Application 91-06-045
Application 91-06-056
Application 91-06-063

ORDER DENYING REHEARING OF DECISION 91-09-085

On September 25, 1990, the Commission issued Decision (D.) 90-09-089, which set forth new rules for utility gas procurement and transportation services. This decision was later modified in several respects by D.90-12-100. Numerous parties filed applications for rehearing and petitions for modification of both of these decisions. We dealt with these various filings in several subsequent decisions, one of which was D.91-09-085. That decision in part resolved a petition for modification of D.90-09-089 and D.90-12-100 filed by the Southern California Gas Company (SoCal), in which SoCal had requested that we establish tracking accounts for interutility transportation costs and brokerage fees for the period between August 1, 1991 and the effective date of the decision in its 1991 Biennial Cost Allocation Proceeding (BCAP). D.91-09-085 denied this request.

Applications for rehearing of D.91-09-085 were filed by several parties, including SoCal. We dealt with most of these applications in D.92-02-043. However, that decision reserved

SoCal's application for our later consideration. We now reach SoCal's issues.

SoCal's application challenges our denial of its request that we establish tracking accounts for interutility transportation fees and brokerage fees. After review of that application, we conclude that none of SoCal's allegations have convinced us that we should change our decision on this issue, on either legal or policy grounds. We hereby reaffirm our decision denying authorization of such accounts. In the following discussion, we clarify our reasons for such denial.

First, as we discussed in D.91-09-085, SoCal missed its opportunity early in the game to raise the issue of possible shortfalls to the Commission in either of these areas. As that decision notes, D.90-09-089 had already declined to adopt balancing accounts for brokerage fees. In our view, such accounts might transfer new risks to utility ratepayers without sufficient offsetting benefits. Moreover, the utilities traditionally had brokerage fees set in ACAPs after substantial review; we reaffirmed that such ratemaking treatment of brokerage fees was adequate. (D.90-09-089 (Sept. 25, 1990) 37 CPUC 2d 583, 611-612.) No party, including SoCal, applied for rehearing of D.90-09-089 or D.90-12-100 on this issue.

Concerning interutility transportation fees, D.91-09-085 further points out that no party raised any shortfall issue when the treatment of such fees was being considered in mid-1990. Moreover, as with the brokerage fees issue, no party, including SoCal, filed an application for rehearing of D.90-09-089 or D.90-12-100 on the issue of a tracking account for interutility transportation fees. Significantly, it remains unclear to us, even after extensive investigation, whether SoCal in fact experienced any shortfall of revenue in this area.

SoCal did not raise either issue until early 1991, when it tried to introduce testimony in hearings on rate design changes. Its testimony stricken in response to the motion of another party, SoCal then filed a petition for modification seeking the tracking

accounts, which, as noted above, we denied in D.91-09-085. It was only then that SoCal deemed its arguments worthy of an application for rehearing.

We deny SoCal's application for rehearing, primarily because SoCal failed to avail itself of its administrative remedy in a timely fashion. In a case analogous to this one, where a party failed to timely apply for rehearing but later tried to obtain the same result by filing a petition to reopen based on infirmities in the original decision, the California Supreme Court stated: "Having failed to apply for a rehearing within the time limit fixed by the code [the petitioner] cannot accomplish the same purpose by a petition to reopen, that petition differing in form only, not in its substance, from a petition for a rehearing." Northern Cal. Assn. v. Public Util. Com. (1964) 61 C.2d 126, 134; citing Young v. Industrial Acc. Com. (19) 63 Cal.App.2d 286, 291-292.

While procedurally the instant case differs slightly from the situation in Northern Cal. Assn., supra, the result is the same. Here, SoCal failed to apply for rehearing of D.91-09-085 within the statutory time limit. That decision thus became final. SoCal then filed a petition for modification of the same decision, and when that filing was denied, sought rehearing of the decision denying the requested modification. Had we determined after reviewing SoCal's petition for modification that there was good cause to change our mind on these issues, that would have been perfectly appropriate. However, we did not do so, and SoCal cannot be heard to complain of any illegality at this late date.

Secondly, we reject SoCal's argument that D.91-09-085 "fails to comply with Commission precedent and unlawfully deprives SoCalGas of the opportunity to recover its authorized revenues over an equivalent 12-month rate cycle." (Application for Rehearing at 2.) The precedent SoCal cites is D.90-11-023, where the Commission allegedly authorized the "continuation of the surcharge with relation to four particular tracking accounts in order to provide SoCal with the opportunity to recover its authorized revenue

requirement over the full 12-month rate cycle which had been forecast and adopted in the previous SoCal 1989 ACAP decision." (Id.) SoCal applies this argument to both of the alleged shortfalls, i.e., interutility transportation costs and brokerage fees.

The situation in D.90-11-023 bears no similarity to the situation in the instant case. In D.90-11-023, we authorized SoCal to institute a surcharge which would allow SoCal to amortize in rates balances already accrued in four tracking accounts established before SoCal's 1989 ACAP period. Without such a surcharge, SoCal would not have been able to recover the accrued balances due to the timing of both the 1989 and 1990 ACAP decisions. Thus tracking accounts had already been established; the issue involved allowing SoCal to recoup the full balances which had accumulated in those accounts. In the instant case, SoCal has asked that tracking accounts be established; this simply was not at issue in D.90-11-023.

Conclusions of Law

1. Nothing in SoCal's application for rehearing or petition for modification convinces us that we should change our decision with regard to tracking accounts for brokerage fees or interutility transportation fees. As noted in D.90-09-089, we declined to adopt balancing accounts for brokerage fees at that time because that might transfer new risks to utility ratepayers without sufficient benefits. As for interutility transportation fees, SoCal has not established to our satisfaction that it will actually suffer a shortfall of revenue in this area.

2. There is no statutory right to reopen Commission proceedings once submitted and decided. The decision whether to grant or deny a petition for modification of a prior Commission decision rests within the Commission's discretion.

3. A party to a Commission proceeding cannot use a petition for modification of a prior decision to attempt to obtain

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judicial review of the prior decision and thereby circumvent its failure to apply for rehearing of the prior decision.

THEREFORE, good cause appearing,

IT IS ORDERED that SoCal's application for rehearing of Decision 91-09-085 is denied.

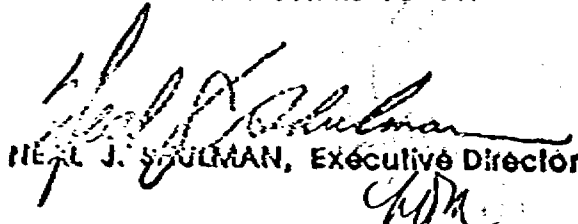
This order is effective today.

Dated September 2, 1992, at San Francisco, California.

DANIEL WM. FESSLER
President
JOHN B. OHANIAN
NORMAN D. SHUMWAY
Commissioners

Commissioner Patricia M. Eckert,
being necessarily absent, did
not participate.

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


NEIL J. SULMAN, Executive Director