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Decision 92-09-089 September 16, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the
Western Liquid Gas Association for
Application for Rehearing of Resolution
G-2948 to consider Economic Impact of
Economic Practicality, Alternate Fuels,
Non-core and Curtailment Penalty issues.

And Related Matters.

ORIGINAL

Application 91-06-045
(Filed June 21, 1991)

Application 91-06-063
R.90-02-008
R.86-06-006

**ORDER DENYING REHEARING
OF DECISION (D.) 92-03-091**

I. INTRODUCTION

On May 6, 1992, California Industrial Group, California Manufacturers Association and California League of Food Processors (collectively, "CIG") filed an application for rehearing ("application") of D.92-03-091. In its application, CIG alleges that the Commission erred by concluding that the elimination of the alternate fuel requirement necessitated an increase in the curtailment penalty, because the conclusion was without evidentiary support and contrary to D.91-09-085. CIG also claims that its due process was denied when the Commission ordered in D.92-03-091 that the curtailment penalty for Pacific Gas and Electric Company ("PG&E") should be considered in proceedings for Application (A.) 91-11-001, because D.92-03-091 was issued after the close of evidentiary hearings in A.91-11-001.

Accompanied by a Motion for Leave to Accept Late Filing, PG&E filed a Response in Opposition to CIG's application on June 5, 1992.¹

In D.92-07-026, the Commission denied CIG's application for rehearing of D.92-03-091, as untimely filed. It was discovered later that the application had been delivered and tendered timely to the Commission for filing, but due to an inadvertent error, the application had not been stamped as filed on the date of delivery. (See D.92-08-049, p. 1 (slip op.)) As a result, D.92-07-026 was vacated by D.92-08-049, in order to allow the Commission to consider the merits of CIG's application. (Id. at p. 2 (slip op.))

In this rehearing order, the Commission has reviewed the allegations of error raised by CIG's application. We have considered carefully all the issues and arguments set forth in the application and are of the opinion that good cause for rehearing has not been shown.

II. DISCUSSION

Contrary to CIG's claim, the Commission's conclusion that the elimination of the alternate fuel requirement

1. We grant PG&E's Motion for Leave to Accept Late Filing because it appears that PG&E's untimely filing may have been the result of inaccurate information received from the Docket Office regarding when a response to an application for rehearing may be filed. Under Rule 86.2, a response to an application for rehearing "may be filed no later than fifteen days after the day the application for rehearing was filed." (Code of Regs., tit. 20, §86.2.) "The day the application for rehearing was filed" means the date of actual filing with the Docket Office, namely the date stamped as filed with the Docket Office, and not the "date that the filing appears in the Commission Daily Calendar." It is a bit odd that PG&E did not know what the requirement meant under Rule 86.2, since it has filed enough responses to applications for rehearings to be cognizant of this fact.

necessitated an increase in the curtailment penalty is supported by the record. Evidentiary support for this conclusion can be found in comments filed by Southern California Gas Company ("SoCalGas") and PG&E. (See Comments of Southern California Gas Company in Compliance with Decision 91-09-085, filed on October 21, 1991 ("SoCalGas' Comments"), R.90-02-008 & R.86-06-006, et al., pp. 2 & 4-5; Comments of Pacific Gas and Electric Company on the Alternative Fuel Requirement, filed on October 21, 1991 ("PG&E's Comments"), R.86-06-006 & R.90-02-008, pp. 5-6.) These comments discuss the need to increase the curtailment penalty with the elimination of the alternate fuel requirement. These comments are part of the record for the rulemakings, R.92-02-008 and R.86-06-006. Thus, there is evidentiary support for the Commission's conclusion that with the elimination of the alternate fuel requirement, there should be an increase in the curtailment penalty.

Also, this conclusion is not contrary to D.91-09-085. In that decision, the Commission declined to increase the penalty at the time, but noted that it would be "open to future arguments that the penalty should be modified if experience shows that it is not sufficient to ensure that curtailment is occurring." (D.91-09-085, p. 2 (slip op).) The comments filed pursuant to D.91-09-085 disclosed that the \$1 curtailment penalty was insufficient to enforce compliance with curtailments which are necessary to protect core customers. (See SoCalGas' Comments, R.90-02-008 & R.86-06-006, et al., p. 4; PG&E's Comments, R.86-06-006 & R.90-02-008, pp. 5-6.) For example, PG&E noted that "[c]urrently, customers [could] fail to curtail for more than 43 days per year before noncore rates [became] more expensive than core rates." (PG&E's Comments, R.86-06-006 & R.90-02-008, pp. 5-6.) Consequently, there was an economic incentive for customers to violate curtailment while retaining the rate benefits of having elected noncore status. (SoCalGas' Comments, R.90-02-008 & R.86-06-006, et al., p. 5.) Therefore, the comments showed that the \$1 penalty was insufficient to

ensure curtailment, and thus, the Commission's proposal to increase the curtailment penalty was not contrary to D.91-09-085.

In its application, CIG further argues that the Commission erred by concluding in D.92-03-091 that PG&E should propose appropriate curtailment increases in A.91-11-001. CIG reasons that because D.92-03-091 was issued after the close of evidentiary hearings in A.91-11-001, it has been denied due process. This argument is without merit.

During the hearings in A.91-11-001, CIG had an opportunity to address the issue of the penalty to be assessed noncore customers who do not curtail during a curtailment period. The issue was raised by testimony submitted by PG&E on the matter. In fact, the Administrative Law Judge in A.91-11-001 denied CIG's motion to strike such testimony, and stated that "parties may address the rate level for this penalty, and other related matters, in this proceeding." (Administrative Law Judge's Ruling, A.91-11-001, January 3, 1992, pp. 1-2.) Further, CIG's witness, Cameron Raether, presented testimony on the issue. (See Exhibit 20 in A.91-11-001.) Moreover, CIG addressed the curtailment penalty issue in its opening and reply briefs. (Initial Brief of CIG, filed April 17, 1992, A.91-11-001, pp. 16-23; Reply Brief of CIG, filed April 30, 1992, pp. 5-8.) Thus, CIG has not been foreclosed from an opportunity to address the issue, and its due process has not been denied.

III. CONCLUSION

For the reasons stated above, CIG's application has failed to allege any facts or raise any legal issues which constitute error. Accordingly, we are of the opinion that good cause for rehearing has not been shown.

THEREFORE, IT IS ORDERED that:

1. PG&E's Motion for Leave to Accept Late Filing of its Response in Opposition to CIG's application for rehearing of D.92-03-091 is granted.

A.91-06-045, et al. L/pds

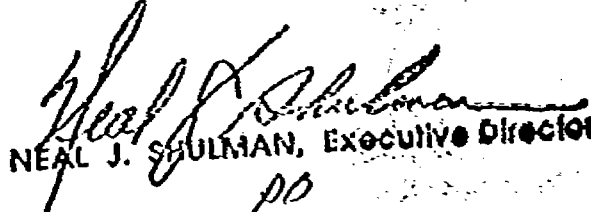
2. Rehearing of D.92-03-091 is denied.

This order is effective today.

Dated September 16, 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
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