

Decision 92984 MAY 5 1981

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application  
of SAN DIEGO GAS & ELECTRIC COMPANY  
for authority to decrease its electric  
rates and charges in accordance with  
the Energy Cost Adjustment Clause in  
its electric tariff schedules, as  
modified by Decisions 91269 and 91277  
in OII 56 dated January 29, 1980.

Application 59945  
(Filed September 18, 1980)

ORDER REOPENING PROCEEDING

On February 5, 1981, the staff of the California Public Utilities Commission (staff) filed a motion to alter or rescind Administrative Law Judge Johnson's Ruling of December 10, 1980 at hearing in Application (A.) 59945.

The hearings involve a series of four fuel oil exchange contracts between San Diego Gas & Electric Company (SDG&E) and United Petroleum Distributors (UPD) of Houston, Texas. A total of 2,400,322 barrels of fuel oil were delivered to UPD during the period May 1978 through April 1979. UPD returned 307,718 barrels of fuel oil to SDG&E during the period May 1979 through October 1979. In April and August, under amended agreements between UPD and SDG&E, UPD made cash payments in lieu of returning oil. In November 1980, due to an inability to purchase replacement oil or to pay cash for the oil received, UPD defaulted on its obligations under the agreements. At the date of default, 1,892,604 barrels of oil remained out on exchange. Questions about the transactions first arose in SDG&E's Energy Cost Adjustment Clause (ECAC) A.59643 at hearing in June 1980 before Administrative Law Judge (ALJ) Squeri. SDG&E's presentation on the issue was postponed to

the November 1980 ECAC proceedings in A.59945 before ALJ Johnson. Because of the complexity of the subject, a decision on the UPD transactions was reserved and Interim Decision 92558 issued December 30, 1980 disposing of the ECAC rate modifications in A.59945.

At the beginning of the testimony surrounding the UPD transactions, SDG&E made a motion to limit the scope of the proceeding to the ratemaking implications of the UPD transactions. Staff opposed the motion. ALJ Johnson ruled that he would permit testimony by the three witnesses who at that time had submitted prepared testimony on the UPD issues (Frank Ault and Ronald Watkins for SDG&E and Paul Grove for the staff), effectively denying the motion to limit the scope of the proceeding. On December 10, 1980 ALJ Johnson ruled that the UPD transactions were sufficiently detailed on the record so that further pursuit of the matter was unnecessary. It is this ruling that staff wishes altered or rescinded, to permit the staff to call and to examine the following employees or ex-employees of SDG&E: Robert Belt, Guenter Cohn, R. L. Haney, Larry Honick, Tommy Thompson, and George Reiss.

In support of its motion, staff argues that the testimony of the above witnesses is neither redundant nor cumulative and is essential to a full and fair inquiry into the UPD transactions. Staff alleges that the two witnesses from SDG&E who did testify lacked personal knowledge of many of the key events in the UPD exchange transactions. Ault, who is manager, Accounting Services, did not participate in the negotiation of the agreements and only became involved in the later part of 1979 during the evaluation of certain items of collateral. Watkins, who is vice president, Resource Planning, was also not involved in the planning or execution of the UPD exchange agreements but familiarized himself with the case after the reorganization of the Fuel Resources Department into the Resource Planning Department. Staff alleges 11 specific instances where

SDG&E's witnesses were unable, on cross-examination, to provide accurate information regarding the events which led to the UPD transactions and their subsequent renegotiation. Staff also points out that the witnesses it wanted to call are precisely the persons who should have testified in the first place.

Belt was the vice president of the Fuel Resources Department at the time of the exchanges and was responsible for overseeing all fuel transactions. He was the immediate superior of the men who apparently arranged the exchanges.

Cohn is an in-house attorney for SDG&E, and personally conducted negotiations with UPD on behalf of SDG&E. He supervised the drafting of key agreements in the exchanges.

Haney is an assistant treasurer of SDG&E, who, apparently first questioned UPD's ability to meet its financial obligations under the exchange agreements and who investigated the value of the collateral during later exchanges.

Honick was the SDG&E employee assigned to monitor the financial condition of UPD and has first-hand knowledge of their financial statements and records.

Thompson, who is no longer with SDG&E, was the senior fuel buyer at the time of the exchanges, was apparently personally involved in the initial contacts with UPD, and the only person so involved who is still within Commission subpoena power.

Reiss was manager of the Fuel Acquisitions Section at the time of the exchanges and was directly responsible for implementing all fuel transactions.

Finally, the staff alleges that the single staff witness prepared his report at a time when the staff anticipated the availability of witnesses with first-hand information and that the report was aimed primarily at locating the financial impacts of the UPD transactions.

SDG&E's response opposing the staff motion was filed February 25, 1981. SDG&E argues that it has completely addressed the lack of ratemaking implications and has, to this point in the proceeding, made a detailed showing on the UPD transactions. According to SDG&E, the record is now complete and the Commission is justified in ruling that additional evidence should be unnecessary and redundant.

SDG&E takes exception to staff's allegation that the two witnesses presented by SDG&E were unable to answer questions about the transactions, noting that the examples given are weak and inaccurate. SDG&E also argues that the new internal practices, implemented since the UPD transactions to prevent recurrence, were fully explored on the record, as were the practices and procedures which led up to the transactions.

SDG&E points out that the staff presentation was comprehensive and that the scope of the Staff Report goes far beyond the limited financial implications alleged. It further contends that staff should have been on notice that the number of necessary witnesses was at issue when SDG&E made its motion for a prehearing conference on November 21, 1980 to delineate the issues, designate the witnesses, and to define the scope of the investigation. In view of this, SDG&E submits that the staff did not have any reasonable expectation that additional witnesses beyond Ault and Watkins would be available.

Our review of the arguments for and against additional witnesses, plus a reading of the opening briefs, reply briefs, and motions and responses relating to the staff's opening brief leaves us convinced that the record should include testimony from those witnesses who had first-hand information about the transactions at the time they occurred. Having this testimony will better allow us to make an informed decision on the prudence of these transactions. Accordingly, we will grant the staff motion to alter the ruling of ALJ Johnson to

permit the staff to call witnesses Belt, Cohn, Haney, Honick, Thompson, and Reiss. Since A.59945 stands submitted as of December 11, 1980 (subject to the receipt of opening and closing briefs which have been filed), we will reopen the proceeding on our own motion for the purpose of hearing additional testimony and cross-examination on the subject of the UPD transactions. As soon as dates are established for further hearing, the staff should subpoena the witnesses it wishes to call. SDG&E may thereafter file motions to quash service of the subpoenas should it consider it appropriate to do so, setting forth in detail the legal basis for its motions. SDG&E should be on notice that we will consider quashing service only for adequate legal reasons and will not entertain further policy arguments for not producing the named witnesses.

Finally, we note that SDG&E does not want a finding that the oil transaction in issue, and the resulting loss, was imprudent. Accordingly, SDG&E should have every incentive to see that the record is developed with testimony of those with firsthand knowledge. SDG&E has the burden to show the transaction was reasonable, on a full record, if it expects the finding it desires.

Therefore, good cause appearing,  
IT IS ORDERED that:

1. Submission of A.59945 is set aside and the proceedings are reopened for the purpose of hearing additional evidence, testimony, cross-examination, and argument on the subject of the transactions between United Petroleum Distributors, Inc. and San Diego Gas & Electric Company.

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2. The Commission staff shall subpoena those witnesses it wishes to call as soon after further hearing dates are set as is possible to do so.

This order is effective today.

Dated     MAY 5 1981    , at San Francisco, California.

John E. Snyca  
President  
Richard D. Stovall  
Samuel M. Smith  
Victor Calvo  
Pres. Ma C. Green  
Commissioners