

Decision No. 93122 JUN 2 1981

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the form and)
timing of public disclosure of)
fuel oil contracts entered into)
by regulated electric utility)
companies, their negotiation and)
consummation and the prices paid)
for fuel oil by regulated electric)
utilities in the State of)
California.)

OII No. 66
(Filed March 4, 1980)

O P I N I O N

The use of fuel oil to generate electricity is a matter of major importance to electric utilities in California, their customers, and this Commission. The procurement strategy of each of the utilities is examined in detail in Energy Cost Adjustment Clause (ECAC) proceedings. In order to effectively consider such matters we provided in the original generic ECAC decision that each utility shall:

"...file with us all fuel oil contracts, written solicitations, bids, and offers whether for long-term or spot purchase, for the sale of fuel, with adequate documentation as to dates, terms and other pertinent data, and explanation of the reasons for rejecting each such bid, offer, or solicitation."
(Decision No. 85731.)

Although we have limited the public disclosure of such information, we have directed its disclosure to the Los Angeles Department of Water and Power (LADWP).

Fuel oil cost information is also submitted by each utility to the Federal Energy Regulatory Commission (FERC) on its Form No. 423 "Monthly Report of Cost and Quality of Fuels for Electric Plants." Generally the Form No. 423 data is not made public until at least two months after the transaction has occurred. No uniform method of reporting the data is followed, impeding direct comparisons among utilities.

On March 4, 1980 we initiated this investigation "into the matter of whether fuel oil contract delivery information supplied to the Commission pursuant to Decision No. 85731 shall be made available to the public upon request." This matter has been submitted upon receipt of written comments filed by Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), San Diego Gas & Electric Company (SDG&E), LADWP, Chevron U.S.A. Inc. (Chevron), and the Commission staff.

Only LADWP proposes a change from the current practice. It states that:

"The Department requires fuel oil contract pricing information for two reasons:

- "1. Indications of the market price for low-sulfur fuel oil to guide renegotiations of fuel oil contracts;
- "2. The need to furnish comparisons of prices paid for fuel oil by other utilities, with that paid by the Department, on a quarterly basis to the Council of the City of Los Angeles."

Therefore, it requests that this Commission make public "such fuel oil contract delivery information as normally would have been reported on Form 423 as is available."

Each of the opposing parties expresses a similar concern - the "additional public disclosure will have an adverse effect upon the ability of utilities subject to the Commission's jurisdiction to

secure needed quantities of fuel oil under contracts that present the most favorable terms available." (PG&E Reply to Comments.) Several reasons are offered to support this conclusion.

PG&E and Edison each describes the west coast fuel oil market as less than "perfectly" competitive. In this situation they consider confidentiality to be critical to their flexibility required for fuel oil procurement. Based on the need to rely on long-term contracts from among a relatively limited number of prospective suppliers they believe that contract commitments must remain confidential in order to have leverage in negotiations. Edison cites several specific examples of perceived harm caused by previous public disclosure of contract provisions.

Chevron predicts that public disclosure of contract terms would tend to result in:

"...agreements that are relatively uniform, comparatively simple, and for shorter terms; and prices under such agreements will tend to approximate 'spot market' prices. The net result of the pressures toward contractual uniformity will be to deprive the utilities of their present ability to insure both long-term security of supply and relative price stability by means of long-term contracts that satisfy their unique requirements."

As a supplier, it is also concerned that public disclosure will harm its ability to negotiate with other customers.

Several of the parties question the value of the information for the purposes indicated. SDG&E states that "Each utility's operations are unique as to its individual circumstances and its fuel procurement policies." PG&E warns that because the public disclosure:

"...would in itself do nothing to alter the underlying market structure, the resulting imbalance in bargaining strength is as likely therefore to cause PG&E to be

confronted with deteriorating prices and terms as it is to enhance those presented to LADWP and other municipals. Thus, even assuming that PG&E's and LADWP's regional supply market is the same and that they have similar demand characteristics, there is simply no reason to believe that the mere disclosure of PG&E's contract information will result in better terms for LADWP."

Chevron puts the problem in more technical terms:

"The myriad of information would be more than a limited special interest group could handle. Major suppliers' utility contracts contain dozens of equations and numbers used to generate complex escalation factors. The factors are computed monthly subject to auditable changes in operating costs related to the raw materials, transportation and processing costs for manufacturing utility fuels. The supporting documents are not technically part of the contract, but can be verified by an audit by a utility's own auditors and/or a public accounting firm. The inquiry proposes to make the supporting documents public information. The support documents will be thousands of pages of material. Greatly compounding the complexity of attempting to duplicate the monthly prices are continual adjustments occurring month to month for pricing purposes. Final prices are based on factors known only after the sale, sometimes as long as three months after. Without these documents, the contract itself will not be sufficient to verify prices. Moreover, the potential for politically-motivated misrepresentation to the public of the intent and effect of contract provisions taken out of context is too obvious to require extended comment, as is the impossibility of effectively countering such abuses."

Thus, the value of the information is challenged.

We are satisfied that no change from the existing procedure is appropriate. The concerns regarding possible harm from public disclosure are reasonable. The advantages associated with such

disclosure are highly speculative and limited in their application to only a portion of the public. Therefore, the overall public interest is best served by the status quo.

We consider that the information sought is more in the nature of a convenience than a necessity. Contract terms and conditions are necessarily evaluated in the context of overall utility operations. We are not satisfied that a simple comparison of contract prices discharges our obligation to examine the procurement practices of utilities subject to our jurisdiction and we resist the application of such a superficially appealing test. Without a thorough investigation of all of the surrounding facts and circumstances the specific information would be no more useful than the more general information presently available. Existing procedures reasonably balance the competing interests. Therefore this investigation should be discontinued.

Findings of Fact

1. By Decision No. 85731 electric utilities are required to file certain specific fuel procurement information with the Commission.

2. Public disclosure of such information is limited.

3. We have provided for the occasional disclosure of such information to LADWP.

4. LADWP requests public disclosure of fuel oil contract pricing information in order to aid in its renegotiations of contracts and to allow comparisons of prices by the Los Angeles City Council.

5. Public disclosure of fuel oil price information might place utilities at a competitive disadvantage relative to oil suppliers.

6. Public disclosure of fuel oil contract pricing information might inhibit the flexibility sought by utilities as an integral part of their procurement practices.

7. The fuel oil price contract information has only limited value for the purposes indicated.

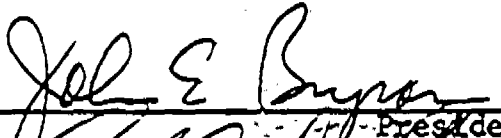
Conclusions of Law

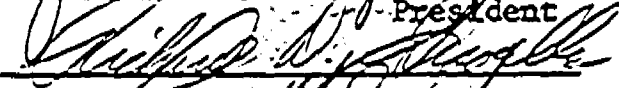
1. The possible disadvantages of disclosure of fuel oil contract pricing information substantially exceed possible advantages.
2. This proceeding should be discontinued.


O R D E R

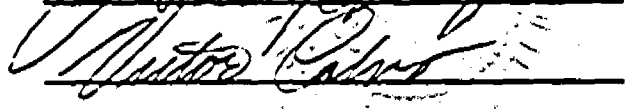
IT IS ORDERED that this proceeding is discontinued.
The effective date of this order shall be thirty days
after the date hereof.

Dated JUN 2 1981, at San Francisco, California.



President






Commissioners

Commissioner Priscilla C. Crew, being
necessarily absent, did not participate
in the disposition of this proceeding.