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Decision 95-09-016 September 7, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Mojave Pipeline Company, )  
 Complainant, )  
 vs. )  
 Pacific Gas and Electric )  
 Company, )  
 Defendant. )  
 (U-39-G) )

Case 94-12-043  
(Filed December 22, 1994)

**ORIGINAL**

O P I N I O N

Mojave Pipeline Company, a general partnership existing under the laws of the State of Texas, seeks an order barring Pacific Gas and Electric Company (PG&E) from: (1) offering, executing, and providing service under any contract entered into pursuant to its Schedule G-ITS proposal or any other similar proposal containing terms and conditions contrary to established Commission policies without first obtaining Commission approval; and (2) offering, executing, and providing service under contracts that are offered to customers based on their proximity to Mojave's Northward Expansion.

Defendant answered the complaint and filed a motion to dismiss on the ground that the complaint fails to set forth "any act or thing done or omitted to be done by any public utility including any rule or charge heretofore established or fixed by or for any public utility, in violation, or claimed to be in violation, of any provision of law or of any order or rule of the Commission."

Defendant's opposition to the motion to dismiss was filed on March 10, 1995. In response to the Administrative Law Judge's Ruling dated March 24, 1995 taking the motion to dismiss under

advisement, both parties represented that the filed pleadings constituted an agreed statement of facts and the motion to dismiss should be addressed as a threshold legal question which would determine whether or not an evidentiary hearing was required.

The questions presented are: (1) whether defendant's Schedule G-ITS proposal and contracts violate any provision of law or of any order or rule of the Commission, and (2) whether the geographic limitation of these contracts is unreasonable and, hence, discriminatory.

Agreed Facts

Complainant Mojave Pipeline Company (Mojave), a wholly owned subsidiary of El Paso Natural Gas Company, is actively soliciting firm, long-term transportation customers in PG&E's service area for a proposed 475 MMcf/d expansion of its system within California. PG&E has taken several steps to compete with Mojave's proposed bypass of PG&E's system.

First, under the Commission's Expedited Application Docket (EAD) rules, PG&E entered into a limited number of contracts with noncore customers. The EAD contracts provide for firm, long-term service and have been approved only after Commission findings that there was an imminent threat of bypass. While the terms of the EAD contracts are competitive with Mojave, the procedures are cumbersome; obtaining Commission approval of each contract takes several months, while Mojave is not required to obtain regulatory approval of its long-term contracts.

To compete with Mojave on a more even footing, PG&E sought authorization for a standardized firm, long-term transportation tariff (Schedule G-LT), which would have been available without prior Commission approval to any noncore customer with an annual average usage of at least three million therms. Under the Schedule G-LT tariff, transportation contracts were to have ten-year terms, starting at a rate of \$0.048/therm which is \$0.0076/therm below PG&E's current noncore industrial transmission

rate, but above its long-run marginal cost. As firm customers, Schedule G-LT customers would have had equal receipt point rights with other firm noncore customers, enabling them to obtain Canadian gas via PG&E's existing Line 400, as well as Southwest or Rocky Mountain supplies via PG&E's Line 300.

In approving PG&E's G-LT tariff, however, the Commission imposed conditions that were unacceptable to the utility, and PG&E has not provided Schedule G-LT service.

Another tool PG&E has used to compete with Mojave is its approved interruptible transportation tariff (Schedule G-ITS). As Mojave continued to solicit PG&E's customers, PG&E commenced an open season for interruptible, 59-month contracts at a discounted rate of \$0.047/therm. This rate is lower than the current transmission rate, but higher than the current cogenerator transportation rate, and escalates at a rate of 2% per year. Consistent with the Commission's existing rules for interruptible transportation contracts, which allow rate discounts for customers with competitive alternatives, PG&E restricted its offer to customers within ten miles of Mojave's proposed expansion. The ten-mile limit was designed to meet Mojave's offer to connect customers within ten miles of its proposed expansion.

PG&E was informed that Mojave has made competitive offers to customers that have facilities within ten miles of Mojave's proposed project. In addition, PG&E verified the economic feasibility of constructing facilities to provide service to large customers within ten miles of Mojave's proposed pipeline. Therefore, PG&E determined that the ten-mile limitation was a rational means of limiting the discount to customers with competitive alternatives.

Like all interruptible service, customers receiving service under Schedule G-ITS are subject to receipt point curtailments prior to firm customers, which makes it unlikely that they will be able to transport Canadian gas via PG&E's existing

Line 400 under current market conditions. Due to the interruptible nature of the service, the program had limited success. When the open season closed on January 16, 1994, only seven customers with a combined volume of 13 MMcf/day had entered into these contracts. PG&E has no plans to renew this offer.

There are differences between the proposed Schedule G-LT long-term gas tariff and the standard offer PG&E made for 59-month contracts (Schedule G-ITS). The most significant difference is the interruptible nature of the 59-month contracts. Interruptible service provides limited access to Line 400, which carries Canadian gas into California, because interruptible customers are curtailed at the Malin receipt point before all firm customers. If interruptible capacity is not available on Line 400, customers either have to procure Southwest or Rocky Mountain supplies via Line 300, or pay the higher, incremental rate for service on PG&E's Pipeline Expansion to transport Canadian gas. Under current supply conditions, interruptible capacity is usually not available on Line 400.

#### Discussion

The agreed facts, taken from defendant's motion to dismiss and the declaration of PG&E's senior marketing analyst attached to its answer, show that PG&E's G-ITS proposal and contracts do not violate any provision of law or of any order or rule of the Commission. A reading of the admitted facts demonstrates that the geographic limitation in the contracts of which complaint is made is reasonable and not discriminatory.

It appears that Mojave's complaint is an effort to persuade the Commission to extend certain conditions it imposes upon PG&E's long-term gas supply contracts to PG&E's short-term contracts. Such extension constitutes a ratemaking policy issue that is better addressed in a broader-based proceeding.

The complaint should be dismissed with prejudice.

Findings of Fact

1. Mojave complains that interruptible, 59-month contracts entered into by PG&E pursuant to its Schedule G-ITS violate established Commission policies and are geographically discriminatory.

2. The parties agree that the facts surrounding the contracts complained of are undisputed.

3. A reading of the facts agreed upon shows that PG&E's Schedule G-ITS contracts do not violate any provision of law or of any order or rule of the Commission, and that the geographic limitation in those contracts is not discriminatory.

4. PG&E's 59-month gas transportation contracts comply with the Commission's rules for interruptible, short-term service, the \$0.047/therm rate is above PG&E's long-run marginal cost, and the negotiated price exhibits have been submitted to the Commission's Advisory and Compliance Division as required.

5. The ten-mile limit in PG&E's offer for discounted interruptible service does not constitute unreasonable discrimination because: (a) there was a rational basis for the ten-mile limit as it was patterned after Mojave's offer to connect customers within ten miles of Mojave's proposed expansion; and (b) the ten-mile limit is consistent with the Commission's policy to allow rate discounts only for customers that have viable competitive alternatives.

6. The remedy sought by Mojave constitutes a change in Commission rules of general application, which are better addressed in a broader-based proceeding. To consider changes to the applicable rules regarding interruptible, short-term transportation contracts in a complaint proceeding might deny other interested parties an opportunity to be heard.

7. A public hearing is not required.

Conclusion of Law

The motion to dismiss should be granted.

ORDER

IT IS ORDERED that:

1. The motion to dismiss filed by defendant Pacific Gas and Electric Company is granted.
2. The complaint is dismissed with prejudice.

This order becomes effective 30 days from today.

Dated September 7, 1995, at Los Angeles, California.

DANIEL Wm. FESSLER  
President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

Commissioners

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

*Wesley Franklin*

Acting Executive Director