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Decision 95-11-031 November 8, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U 902-M) for Authority to Discontinue Steam Operations and Decommission Its Steam System)
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Application 93-06-055
(Filed June 24, 1993)

ORDER DENYING REHEARING OF DECISION 94-09-040

An application for rehearing of Decision (D.)94-09-040 was filed by San Diego Gas and Electric Company (SDG&E). In D. 94-09-04 we authorized SDG&E to discontinue steam service activities and denied the company's request to charge its electrical corporation customers for decommissioning costs and remaining capital costs related to the steam business. In addition we denied SDG&E's request to reallocate certain common Operation and Maintenance and common plant costs to its gas and electric customers.

SDG&E alleges that rehearing should be granted because the decision misapplies Commission precedent, ignores the Commission's own accounting standards and basic accounting principles, and inappropriately addresses issues that are outside the scope of SDG&E's Application 93-06-055. (Application for Rehearing, p. 1.) No party filed a response to the application for rehearing. We will discuss each of SDG&E's arguments below.

SDG&E argues that the decision relies upon D.93-06-038 (Re Pacific Gas and Electric Company (1993) 49 Cal.P.U.C. 2d 568), and that in doing so misapplies Commission precedent. SDG&E asserts that misapplication of Commission precedent is legal error. (Application for Rehearing, pp. 3-4.) In D.93-06-038 the Commission approved the request of Pacific Gas and Electric Company (PG&E) to sell its San Francisco steam service to a new utility provider. PG&E sold its steam system at a net capital loss, but did not seek to have its electric customers make up the difference. SDG&E argues that it is legal error for

the Commission to rely upon D.93-06-038 because that case involved a sale of PG&E's steam system, while SDG&E does not propose to sell anything, but instead proposes to retire old unused facilities. (Application for Rehearing, p. 4.) SDG&E is incorrect in its assertion that the instant decision relies upon D.93-06-038. In D.94-09-040 we make reference to D.93-06-038 to put SDG&E's application in historical context. The decision contains an analysis of the facts of the SDG&E application and states that SDG&E's request to have unrecovered steam equipment costs and decommissioning costs absorbed by electric customers is rejected for two reasons. First, it is unknown whether in the long term SDG&E will experience net losses or gains from the discontinuance of steam service. Second, even if the cessation of steam service would result in net costs to the company, we conclude that it is inappropriate to charge those costs to electric customers. (D.94-09-040, pp. 4-7 (slip op).)

Assuming arguendo that the reasoning of D.94-09-040 did rely on D.93-06-038, SDG&E's argument overlooks the fact that the Commission is not bound by prior Commission decisions. This issue is discussed at some length in Re Pacific Gas and Electric Company, 30 Cal.P.U.C. 2d 189, 223-225 (modified by D.88-12-083, unpublished.) Accordingly, it is not legal error for the Commission to deviate from the reasoning in a prior decision. While we find no inconsistency between D.93-06-038 and the decision at issue, such inconsistency would not in itself be evidence of legal error. The California Supreme Court addressed this during the era of the Railroad Commission of the State of California. The court observed as follows:

"The departure by the Commission from its own precedent or its failure to observe a rule ordinarily respected by it is made the subject of criticism, but our reply is that this is not a matter under the control of this court. We do not perceive that such a matter either tends to show that the Commission had not regularly pursued its authority, or that said departure violated any right of the petitioner guaranteed by the

state or federal constitution. Circumstances peculiar to a given situation may justify such a departure." Postal Telegraph-Cable Company v. Railroad Commission of the State of California (1925) 197 Cal. 426,436.

We find no legal error has been shown.

We also find no merit to SDG&E's argument that there is legal error because the decision ignores basic accounting principles and the Commission's own standard practices. Applicant argues that it is "retiring" its steam facilities, not selling them, and that therefore termination of steam operations should receive the same accounting treatment as retirement of other plant. SDG&E asserts that the decision ignores standard accounting principles for the retirement of plant as well as the Commission's Standard Practice U-4. (Application for Rehearing, pp. 4-5.) SDG&E's argument overlooks the policy reasons underlying the determination that SDG&E's electric customers should not be charged for the remaining steam system capital and decommissioning costs. The issue before the Commission is not simply an accounting one. In the decision we conclude that it would be inappropriate as a policy matter to charge SDG&E's electric customers with the costs of terminating steam service, an operation that for purposes of ratemaking has been treated as a separate utility from gas and electric operations. We note here, as we have previously observed, that ratemaking drives accounting, and not vice versa. Re Southern California Gas Company [D.90-11-031] (1990) 38 Cal.P.U.C.2d 166,191. With regard to the allegation that the decision does not follow the Commission's Standard Practice U-4, we do not agree that standard practice is applicable to the facts before us. Furthermore, it is not legal error for the Commission to deviate from its own precedent or a rule ordinarily followed by it where circumstances justify such a departure. Postal Telegraph-Cable Company v. Railroad Commission of the State of California, supra.

SDG&E's argument that the decision's discussion of Administrative and General (A&G) expenses is erroneous and

ignores sound accounting principles also must be rejected. (Application for Rehearing, p. 6.) The decision found that SDG&E did not provide evidence that supported its assertion that common O&M expenses cannot be charged to specific activities, and are not reduced even if the entire steam department is eliminated. (D.94-09-040, pp. 9-10 (slip op.)) Upon review we find that SDG&E did not meet its burden of proof on this issue. SDG&E claims that the decision ignores sound accounting practice, but does not allege what practice it believes is controlling. We conclude that the resolution of this issue is dictated not by accounting practices but by a failure of the evidence. SDG&E has failed to provide a breakdown of the A&G costs that it seeks to transfer to gas and electric rates. In the absence of evidence we do not find it credible to assume that there will be no reduction whatsoever in the A&G expenses previously assigned to steam rates, as a result of terminating steam service. We find no legal or factual error.

Finally, SDG&E argues that the decision improperly considers the disposition of the Station B property because the ultimate disposition of Station B is not before the Commission at this time. (Application for Rehearing, p. 7.) We find no legal error in the decision's reference to Station B. The decision notes that there is no evidence that in the long term SDG&E will experience a loss from the discontinuance of steam service. In this context the decision notes that SDG&E has no current plans for the disposition of Station B, which occupies a city block near the waterfront of downtown San Diego. (D.94-09-040, p. 5 (slip op.)) The SDG&E application itself makes reference to Station B and indicates that steam production facilities are located there. (A.93-06-055, pp. 1-2.) Applicant's decision not to include Station B treatment in its application does not preclude us from considering the fact that some portion of Station B value might be attributable to the Steam Department. In carrying out its mandate under Public Utilities Code Section 451 to set just and reasonable rates, it is appropriate for the

Commission to consider all relevant facts. SDG&E's argument is further flawed because the decision does not reach any conclusion regarding the disposition of Station B or the portion of its value that should be attributed to the Steam Department. The decision states:

"...even if the cessation of steam service would result in net costs to the company, it is inappropriate to charge these costs to electric customers." (D.94-09-040, p. 5 (slip op).)

SDG&E's argument is without merit.

No further discussion is required of SDG&E's allegations of error. Accordingly, upon reviewing each and every allegation of error raised by SDG&E we conclude that sufficient grounds for rehearing of Decision 94-09-040 have not been shown.

Therefore, IT IS ORDERED:

That the application for rehearing of Decision 94-09-040 filed by San Diego Gas and Electric Company is denied.

This order is effective today.

Dated November 8, 1995 at San Francisco, California.

DANIEL Wm. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, Jr.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners