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Decision 96-02-022 February 7, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking into Natural Gas Procurement and System Reliability Issues.	R.88-08-018 (Filed August 8, 1988)
And Related Matters.	Application 90-06-030 Application 91-06-030 Application 92-06-015 R.92-12-016 I.92-12-017 Application 93-09-006 Application 93-10-034 Application 92-11-017

ORDER DENYING REHEARING AND MODIFYING DECISION (D.) 94-04-088

In Decision (D.) 94-04-088, we conditionally approved a settlement involving the gas purchasing decisions for and regulatory oversight of Southern California Gas Company ("SoCalGas"). This settlement is known as the Global Settlement.

D.94-04-088 retains interim balancing account protection for unbundled, noncore storage services that utilize SoCalGas' existing facilities for the five year term of the settlement. This balancing account is known as the Noncore Storage Balancing Account ("NSBA"). We had adopted this revenue protection, which guarantees recovery of 75% of noncore firm service costs for existing facilities, in Re Natural Gas Procurement and System Reliability Issues (D.93-02-013) (1993) 48 Cal.P.U.C.2d 107, 130-131.

McFarland Energy, Inc. and Ten Section Storage Group (jointly, "McFarland") timely filed an application for rehearing, alleging the following legal error: (1) D.94-04-088 failed to

consider what adverse effects the revenue protection will have on competition; (2) the Commission did not comply with its own standards for approval of settlements by approving a policy change without explanation; and (3) the Commission failed to balance competing interests in adopting the Global Settlement's NSBA Protection. SoCalGas timely filed a response to the rehearing application, objecting to the allegations raised by McFarland.

We have carefully reviewed each and every allegation of error raised in the above application and considered the response thereto, and are the opinion that insufficient grounds for granting rehearing have been shown. However, in the course of our review of McFarland's allegations, we noted that our discussion of McFarland's anticompetition argument and our reasoning for continuing the revenue protection for noncore storage while eliminating the balancing account treatment for noncore transportation may have been too brief; and thus, more elaboration is needed. So we will modify D.94-04-088 to add more details on these matters. Also, we will delete Finding of Fact Number 30 in D.94-04-088 which is inconsistent with D.93-02-013.

DISCUSSION

In D.94-04-088, p. 42 (slip op.), we considered McFarland's anticompetition argument, but were not persuaded to eliminate the revenue protection. We also concluded that the revenue protection for noncore storage was not "an unreasonable arrangement." (Id.) Admittedly, our discussion was brief. Accordingly, we will modify D.94-04-088 to provide further elaboration for our rejection of McFarland's anticompetition argument. Also, we will add findings of fact to accompany this additional discussion.

McFarland's contention that the Commission did not comply with its own standards for approving settlement, such as

"making a conscious decision" when reviewing a settlement and understanding the ramifications of the settlement, is simply without merit. In D.94-04-088, we made a conscious decision to keep the revenue protection for noncore storage while eliminating the balancing account treatment for noncore transportation revenues. In D.94-04-088, we stated:

> "D.93-02-013 found that SoCalGas should be at risk for 25% of the revenues related to its storage capacity which is assigned to noncore customers. We have no reason to believe this is an unreasonable arrangement, even if a similar policy is changed for transportation revenues."

(D.94-04-088, p. 42 (slip op.).) The record supports this conclusion. In its comments, SoCalGas explained:

> "[T]he Global Settlement gives SoCalGas some upside potential as well as downside risk for transportation revenues, but if SoCalGas sells out all noncore storage, it recovers just 100% of its cost under the storage program; there is no upside potential to compensate for the downside risk if SoCalGas were to be put fully at risk for recovery of storage costs from sale of storage services."

(Post-Workshop Comments of SoCalGas on Global Settlement, R.88-08-018, et al., filed February 4, 1994, p. 35; see also, Reply Comments of SoCalGas to Comments of McFarland and Ten Section, R.88-08-018, et al., filed December 31, 1993, pp. 6-7.) Thus, in the absence of any upside potential for storage, we concluded that it was not "an unreasonable arrangement" to retain the revenue protection, even though "a similar policy is changed for transportation revenue." (See D.94-04-088, p. 42 (slip op.).)

However, because our explanation appears to have been brief, we will modify D.94-04-088, so as to fully explain our

rationale for continuing the revenue protection for noncore storage while eliminating it for noncore transportation.

Further, we find no merit to McFarland's argument that the Commission did not understand the ramifications of the settlement because the Commission did not elaborate on the anticompetitive impacts of continuing the revenue protection for noncore storage. As discussed above, we considered McFarland's anticompetition argument but rejected it.

In their rehearing application, McFarland also accuses us of overlooking the fact that the settlement has precluded future inquiry into the revenue protection that was adopt in D.93-02-013. In that decision, we stated that:

> "We will allow both types of bypass costs to be recovered from all ratepayers on a temporary basis, but we may revise the policy on discounting costs in R.92-12-016 and I.92-12-017."

((Re Natural Gas Procurement and System Reliability Issues [D.93-02-013, p. 36 (slip op.)] (1993) 48 Cal.P.U.C.2d 107, 130.) McFarland argues that D.94-04-088 entrenches the policy for five years, so that it is no longer a "interim policy" that was to be reexamined in another proceeding. Thus, McFarland asserts that we made a change without explanation. By this argument, McFarland seems to be arguing that we have taken from them a "right" to have the revenue protection policy reexamined and revised.

McFarland is wrong. D.93-02-013 did not give McFarland an absolute "right" to have the policy re-evaluated or revised, and the decision is not a bar to keeping the revenue protection for five years. The decision only stated that the Commission "may revise" the policy. Also, D.94-04-088 does not modify D.93-02-013; rather, it is merely left in place for five years the revenue policy it adopted in D.93-02-013. After the term of

the settlement, the Commission "may" then revise the policy in R.92-12-0-16 and I.92-12-017.

It is noted that McFarland did point out an error in a finding of fact, which states: "D.93-02-013 did not require that ratemaking treatment of noncore storage costs and revenues mirror ratemaking treatment of noncore transportation costs and revenues." (D.94-04-044, p. 51, Finding of Fact Number 30 (slip op.).) The rehearing applicants are correct that Finding of Fact Number 30 in D.94-04-088 is inconsistent with D.93-02-013. Rule 5.1 in D.93-02-013 does provide for a match of shareholder risks for storage with shareholder risks for transportation. (Re Natural Gas Procurement and System Reliability Issues, supra, 48 Cal.P.U.C.2d at p. 145 [D.93-02-013, Appendix B, p. 3 (slip op.)].) Accordingly, D.94-04-088 will be modified to remove this finding of fact.

However, this error does not give merit to McFarland's argument that we have not complied with our own standards for approving settlements. With respect to the revenue protection and as discussed above, we made a "conscious decision" and understood the ramifications, albeit disagreeing with McFarland.

Moreover, McFarland is wrong in its contention that we have failed to balance the interests of all affected parties because we allegedly have not considered the anticompetitive impacts the revenue protection would have on the development of an open storage market. As discussed above, we did consider McFarland's allegation of anticompetitive impacts, and rejected it. We determined in D.93-02-013 that the NSBA is not inconsistent with a "let the market decide" policy, and with legislative mandates to remove barriers to competition in the storage market. (See discussion, infra.) McFarland's argument in the instant proceeding has not persuaded us that this determination is no longer valid.

CONCLUSION

As discussed above, we have considered each and every allegation made by McFarland, and have concluded there is no good cause to justify a rehearing of D.94-04-088. Therefore, McFarland's Application for Rehearing of D.94-04-088 is denied.

THEREFORE, IT IS ORDERED that D.94-04-088 is modified as follows:

1. The second full paragraph on page 42 is deleted.

2. The following language shall to added after the first full paragraph on page 42:

> Since the adoption of NSBA in D.93-02-013, McFarland has challenged the revenue protection on the grounds that the protection was a barrier to fair competition in the storage market, and inconsistent with legislative mandates. (See McFarland Energy, Inc.'s Application for Rehearing of D.93-02-013, filed March 8, 1993, pp. 2 & 5-7.) When McFarland requested the elimination of the revenue protection on these grounds, we rejected McFarland's arguments and refused to eliminate the NSBA. (Order Modifying Decision 93-02-013 and Denying Rehearing [D.93-09-090, p. 2 (slip op.)] (1993) ___ Cal.P.U.C.2d ___; Order Instituting Investigation Into Procurement and System Reliability Issues Deferred from D.86-12-010 ("Storage Decision for PG&E") [D.94-05-069, pp. 25-26 (slip op.)] (1994) ___ Cal.P.U.C.2d ___.)
>
> Further, in D.93-02-013 we found this protection to be consistent with a "let the market decide" policy. (Re Natural Gas Procurement and System Reliability Issues ("Storage Decision") [D.93-02-013, 37 (slip op.) (1993) 48 Cal.P.U.C.2d 107, 131.) Also, in D.93-02-013 we specifically addressed McFarland's concerns about barriers to competition in the storage market, and adopted rules to remove these barriers.

(Id. at p. 121 [D.93-02-13, p. 15 (slip op.).) The settlement in no way changes these particular rules.

Moreover, the revenue protection is responsive to legislative mandates. In D.93-02-013 we concluded that the storage rules, which included the revenue protection, were directly responsive to the legislative urgings found in Assembly Bill 2744, which was enacted in 1992 and uncodified (see Stat. 1992, ch. 1337, §1, pp. 6159-6161). Thus, we adopted rules that would remove "the barriers to investment in new storage facilities," primarily so that independent storage providers could compete in an open storage market, and to "encourage the development of independent storage by establishing interconnection rules and reasonable cost allocations." (Storage Decision, supra, 48 Cal.P.U.C.2d at p. 126 [D.93-02-013, p. 26 (slip op.)].)

In the instant proceeding, McFarland has once again raised these same concerns about the revenue protection. (See Workshop Transcripts, January 20, 1994, p. 497; Reply Comments of McFarland and Ten Section to the Global Settlement, R.88-08-018, et al., filed December 14, 1993, pp. 4-7.) In reviewing the record on this matter, which includes workshop transcripts and reply comments from both McFarland and SoCalGas (see supra; see also, Reply Comments of SoCalGas to Comments of McFarland and Ten Section, R.88-08-018, et al., filed December 31, 1993), we are not persuaded that there is a reason for changing the policy we set forth in D.93-02-013. Nothing in the record has convinced us to grant McFarland's request for the elimination of the revenue protection. McFarland has added nothing new to the arguments it has raised in the past.

In addition, D.93-02-013 found that SoCalGas should be at risk for 25% of the revenues related to its storage capacity which is assigned to noncore customers. We have no reason to believe this is an unreasonable arrangement, even if a similar

policy is changed for transportation revenues. SoCalGas may request elimination of the risk it now bears for noncore storage revenues. We are, however, unlikely to adopt a ratemaking change which would compromise existing policy to promote better management by providing increased opportunities for reward as a trade off for the utilities' assuming a higher level of risk.

Although D.93-02-013 (see Storage Decision, supra, 48 Cal.P.U.C.2d at p. 145 [D.93-02-013, Appendix B, p. 3 (slip op.)]) does provide that shareholder risks for noncore storage should match shareholder risks for noncore transportation service, the Commission is convinced that for purposes of this settlement, continuing the revenue protection for noncore storage while eliminating the balancing account treatment for transportation revenue is reasonable. This is because the settlement gives SoCalGas some upside potential as well as downside risk for transportation revenues, but does not provide such an upside opportunity for unbundled noncore storage services. Thus, because of this particular aspect in the settlement, it is reasonable to continue the revenue protection for noncore storage while eliminating similar protection for noncore transportation.

3. Finding of Fact Number 30 on page 51 is deleted.

4. Findings of Fact Number 31 to 34 are renumbered as Finding of Fact Numbers 33 to 36, respectively.

5. The following findings of fact are added as Finding of Fact Numbers 30-32:

30. D.93-02-013 determined that the noncore storage balancing account is consistent with a "let the market decide" policy, and is responsive to legislative mandates.

31. Nothing in the record for this settlement changes the determination in D.93-02-013, or warrants elimination of the revenue protection adopted in D.93-02-013.

32. Retaining the current ratemaking convention for storage services to noncore customers, that is, shareholders would be at risk for 25% of forecasted revenues, is not an unreasonable arrangement, and would not adversely affect storage competition in its infancy.

IT IS FURTHER ORDERED that rehearing of D.94-04-088 as modified herein is denied.

This order is effective today.

Dated February 7, 1996, at San Francisco, California.

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