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Decision 96-11-022 November 6, 1996

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SOUTHERN)	
CALIFORNIA GAS COMPANY for Authority to)	Application 96-03-060
Change Core Procurement Rates on a Monthly)	(Filed March 29, 1996)
Basis.)	
_____)	

ORDER DENYING REHEARING OF DECISION (D.) 96-08-037

Background.

On September 6, 1996, Toward Utility Rate Normalization (TURN) timely filed an Application for Rehearing and Request for Partial Stay of Decision (D.) 96-08-037, which issued in Application (A.) 96-03-060 by the Southern California Gas Company (SoCalGas). On September 23, 1996, SoCalGas filed a response to TURN. No other pleadings were filed.

D.96-08-037 grants SoCalGas' request for ex parte approval of its proposal to change forecasts of natural gas prices monthly, rather than every two years, to put in place a new monthly gas procurement rate tariff, and to make this new tariff and certain other changes to existing core gas tariffs effective by advice letter filing. We remanded an additional issue, not relevant to this discussion, for further proceedings.

TURN alleges that: 1) we should order a partial stay of D.96-08-037 to preserve our options while considering whether to grant rehearing and to ensure that customer confusion will not result; and 2) our adoption of monthly pricing for residential customers violates Public Utilities Code Section 1708 and Rule 1.2 of the Commission's Rules of Practice and Procedure.

Resolution of TURN's Application for Rehearing renders the Request for Partial Stay moot.

The crux of TURN's argument for a partial-stay is the following: "Without a stay of the order as to this issue [the granting of SoCalGas' proposal to change the

residential pricing period], it is likely that monthly pricing for residential customers will be implemented, with all its attendant problems, long before the Commission acts on this application." (TURN rehearing application, p. 2.)

In D.96-08-037 we note SoCalGas' request to defer implementation of monthly pricing for residential customers at least until we issue a decision in its pending Biennial Cost Allocation Procedure (BCAP), which is A.96-03-031. We do not expect to issue the BCAP decision before the end of 1996, and as yet, SoCalGas has made no advice letter filings to implement residential monthly pricing. Our resolution of TURN's rehearing application today renders moot its request for stay and we deny the request on that basis.

Ex parte approval of SoCalGas' Application did not violate Public Utilities Code Section 1708 and Rule 1.2 of our Rules of Practice and Procedure.

TURN argues that we reviewed and rejected proposals to change core procurement rates on a monthly basis three times in the two years prior to the issuance of D.96-08-037¹ (TURN rehearing application, p. 3 and fn. 3.) Consequently, according to TURN, D.96-08-037 represents a change in our policy made without notice, in contravention of Public Utilities Code Section 1708. (TURN rehearing application, p.4.) TURN also asserts that ex parte issuance of D.96-08-037 constitutes an arbitrary action in violation of Rule 1.2 of our Rules of Practice and Procedure. (TURN rehearing application, p. 5.)

D.96-08-037 does not reverse Commission policy without notice. TURN is correct that in three prior decisions we did not approve the specific "real time pricing" proposals at issue. However, we signaled dissatisfaction with the status quo, as TURN, itself, notes: "On each of these occasions, the Commission recognized the desirability of providing more accurate price signals...". (TURN rehearing application, p. 3.)

Section 1708 requires notice to parties before the we rescind, alter, or amend any prior order or decision. However, our prior decisions show the public evolution of

¹ TURN cites the following three decisions: D.95-12-053, the last BCAP for Pacific Gas and Electric Company; D.95-07-048, which adopted modifications to the Core Aggregation Transportation program; and D.94-12-052, the last BCAP for SoCalGas.

Commission policy with respect to core procurement pricing. Specifically, in D.95-07-048, we stated that "the long-run success of competition in core gas markets will depend in part on the accuracy of price signals" and we indicated that a "reasonable step toward better pricing of core gas" would be "to identify the monthly cost of gas on core customer bills". (D.95-07-048, mimeo, p. 24.)

In D.95-09-075, a SoCalGas application concerning reduction of gas procurement rates, we continued to discuss our evolving policy preference, noting that SoCalGas could minimize the problems resulting from fluctuations between forecast and actual gas prices by charging rates based on monthly prices. (D.95-09-075, mimeo, p. 11.) In the challenged decision, we expressly refer to this evolution, stating: "We anticipated a change to monthly forecasts last year when we noted that SoCalGas could minimize the differences between forecast and actual prices by adopting a rate that reflected the previous month's prices." (D.96-08-037, mimeo, p. 6.) Further, three months before the issuance of D.96-08-037, we approved, on an ex parte basis, San Diego Gas & Electric Company's (SDG&E) proposal to forecast core gas procurement prices monthly rather than a year in advance. (D.96-05-071, mimeo.) TURN's rehearing application fails to mention our approval of SDG&E's proposal, though TURN was on the service list for the underlying proceeding, A.96-03-017. We note that TURN did not protest that application.

Our decisions illustrate the evolution, over a several-year-period, of our policy favoring monthly pricing for core procurement customers; D.96-08-037 does not reverse established Commission policy without notice. More particularly, our ex parte approval of D.96-08-037 cannot reasonably be construed to constitute a rescission, alteration, or amendment of SoCalGas' prior BCAP. TURN's rehearing application does not establish a violation of Section 1708 and rehearing on this ground is denied.²

² The California Supreme Court, construing Section 1708, has held that a party which challenges the Commission's amendment of or other change to a prior decision "... must be permitted to prove the substance of its protest rather than merely being allowed to submit written objections to a proposal." California Trucking Assn. v. Public Utilities Com. (1977) 19 C.3d 240, 244-45. California Trucking is not controlling here, however, since D.96-08-037 does not rescind or otherwise alter a prior Commission decision. Moreover, as we discuss below, TURN's protest did not expressly request a hearing.

TURN's protest did not meet the requirements of Rule 44.2. TURN contests Finding of Fact #5, the statement that no protestant requested a hearing. (TURN rehearing application, fn 5.) TURN argues that its protest presented both factual and policy issues requiring hearing and that in D.96-08-037 we incorrectly conclude otherwise. (TURN rehearing application, p. 6.)

Rule 44.2 provides:

"A protest must state the facts constituting the grounds for the protest, the effect of the application on the protestant, and the reasons the protestant believes the application, or part of it, is not justified. If the protest requests an evidentiary hearing, the protest must state the facts the protestant would present at an evidentiary hearing to support its request for whole or partial denial of the application." Rule 44.2, Commission Rules of Practice and Procedure.

TURN's protest did not rise to this level of specificity. Rather, TURN's protest broadly asserted that ex parte approval of SoCalGas' application would be unlawful under Section 1708; stated that the SoCalGas monthly pricing proposal was complex and could result in customer confusion; and suggested that one element of the proposal (the Level Pay Plan) should be offered to small commercial customers and master meter customers as well other residential customers. (See generally, TURN protest, pp. 1-5.) TURN requested that the SoCalGas application be bifurcated and the monthly pricing proposal for residential customers be consolidated with SoCalGas' BCAP. TURN did not state what facts it would introduce at an evidentiary hearing in support of its position; in fact, TURN did not request an evidentiary hearing.

We refer to the requirements of Rule 44.2 in D.96-08-037:

"An evidentiary hearing is required only when there are disputed issues of material fact that require sworn testimony to resolve. (See Rule of Practice and Procedure 44.2 (requiring protest to state facts to be presented at an evidentiary hearing to support request for denial of application). (D.96-08-037, mimeo, p. 3.)

We then continue:

"It remains possible, of course, that disputed factual issues do require an evidentiary hearing. That is not the case here. None of the protestants have stated facts that they would present at an

evidentiary hearing to support their requests that the application be denied in whole or in part. Without a need for fact finding, there is no need for an evidentiary hearing." (D.96-08-037, mimeo, pp. 3-4.)

Finding of Fact #5, which TURN challenges, states, "[n]one of the protestants requested an evidentiary hearing or stated facts that it would present at such hearing". Finding of Fact #5 is a reiteration of our determination that neither TURN, in the several pages of argument contained in its protest, nor any other party, had complied with Rule 44.2. We conclude that TURN has not shown legal error, and deny rehearing on this ground.

Ex parte approval D.96-08-032 was not arbitrary. TURN appears to argue that because we issued D.96-08-037 on an ex parte basis, we made our decision on an insufficient record. Rule 1.2 requires that Commission decisions be based on the evidence of record. As discussed above, TURN's rehearing application does not establish that evidentiary hearings were required. Neither does it establish that in the absence of hearings the SoCalGas application was insufficiently complete to permit ex parte approval. TURN has failed to show legal error and we deny rehearing on this ground.

Conclusion.

For the foregoing reasons, TURN's Application for Rehearing and Request for Partial Stay should be denied.

IT IS ORDERED that:

1. Rehearing of D.96-08-037 is denied.

This order is effective today.

Dated November 6, 1996 at San Francisco, California.

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