

Decision 96-11-046 November 26, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation On)
The Commission's Own Motion To)
Develop A Policy Governing Utility)
Involvement In The Market For)
Low-Emission Vehicle.)

I.91-10-029
(Filed October 23, 1991)

ORIGINAL

Order Instituting Rulemaking On)
The Commission's Own Motion To)
Establish Rules and Procedures)
Governing Utility Involvement)
In The Market For Low-Emission)
Vehicles.)

R.91-10-028
(Filed October 23, 1991)

O P I N I O N

Summary

This decision grants, in part, Southern California Gas Company's (SoCalGas) Petition for Modification¹ of Decision (D.) 95-11-035 (LEV Decision) filed October 9, 1996. The company requests that the Commission modify a portion the November 1995 LEV Decision ordering utilities to remove from rate base customer-site natural gas vehicle (NGV) refueling stations. Specifically, SoCalGas requests that the LEV Decision confirm that the sale of these stations does not require further approval under § 851 of the Public Utilities Code. Timely responses were filed by Pacific Gas and Electric Company, Western States Petroleum Association, and the Office of Ratepayer Advocates.

¹ The Administrative Law Judge's (ALJ) Ruling of October 16, 1996 granting SoCalGas' motion shortening time for response stated that SoCalGas' Petition for Clarification would be treated as a Petition for Modification.

Background

The LEV Decision addressed the issue of the ratepayers' role in utility owned customer-site NGV refueling stations. We declined to approve ratepayer funding for any station on customer property for which contracts had not been signed as of the date of issuance of the ALJ's proposed decision. In addition, we required the utilities "to remove all customer-site stations from ratebase when they are sold, or six years from the effective date of this decision (LEV Decision), whichever comes first."²

In order to encourage an expedient and profitable sale of these facilities, we established an incentive structure to better align ratepayer and shareholder interests. Utility shareholders are to absorb 25% of any resulting losses from station sales and can retain 25% of any resulting gains on sale, while ratepayers are responsible for 75% of any gains or losses.

Public Utilities Code § 851 requires public utilities to seek an order from the Commission approving a sale or other disposition of utility plant, system, or other property necessary or useful in the performance of its duties to the public. We did not make a determination in the LEV Decision whether the proceeding satisfied the requirements of § 851 and as such that no § 851 applications are required with regard to the sale of NGV refueling stations. SoCalGas' Petition brings this issue to our attention.

Parties' Position

SoCalGas' Petition requests that the Commission modify D.95-11-035 to affirm that the requirements of § 851 and Commission Rules 35 and 36 "have been satisfied through the lengthy litigation and extensive factual record developed in this proceeding...."³

² LEV decision, mimeo. at 88.

³ Petition of SoCalGas for Modification dated October 9, 1996 at 2.

SoCalGas also requests that the Commission issue a decision in this matter as soon as possible to remove any regulatory uncertainty surrounding purchase decisions as the company is currently seeking to sell some or all of the affected NGV refueling stations.

SoCalGas also submits its proposed accounting treatment that would apply at the time these stations were sold. The company proposes to continue to reflect the ratepayers' 75% share of any gain or loss in rate base. SoCalGas argues that this is consistent with other sales of depreciable assets which provide for flow through of the gain or loss in rate base rather than through a memorandum account.

The Western States Petroleum Association agrees with SoCalGas "that separate § 851 filings should not be required prior to the sale of each NGV station" and that "provisions of § 851 have been satisfied through the litigation and factual record developed in the LEV proceeding."⁴ By granting SoCalGas' petition, Western States Petroleum Association indicates it will expedite the sales of the NGV stations and reduce the administrative burden for all involved. However, the Western States Petroleum Association urges that the details regarding the sale of each NGV station should be included in SoCalGas' November 1 annual reports to the Commission in order to enable the Commission to review in subsequent reasonableness proceedings the specifics of such sales. With regard to SoCalGas' proposed accounting treatment, the Western States Petroleum Association finds that SoCalGas' proposed treatment is contrary to the express language at page 88 in the LEV Decision.

The Office of Ratepayer Advocates urges that the Commission hold SoCalGas' petition in abeyance and not make any ruling that says SoCalGas has complied with § 851. The Office of

⁴ Comments of the Western States Petroleum Association dated October 25, 1996 at 2 and 3.

Ratepayer Advocates raises concerns initiated by members of the public that "SoCalGas is conducting the solicitation for the sale of its NGV stations in a manner designed 1) to ensure that an unregulated affiliate of SoCalGas is able to obtain stations at below-market cost, or 2) to obtain confidential financial information from competitors which SoCalGas could then use for anti-competitive purposes."⁵ The Office of Ratepayer Advocates raises the concern that if these allegations are substantiated, they may well defeat the Commission's twin objectives of maximizing the value of these stations and encouraging competition in the NGV market.

Pacific Gas and Electric Company "fully supports SoCalGas' request that the Commission confirm that Public Utilities Code Section 851 applications will not be necessary to effect utility sales of compressed natural gas refueling stations on third party property."⁶ Pacific Gas and Electric Company does take issue with SoCalGas' claim that these requirements have been satisfied through the record in this proceeding. This is a matter previously raised in Pacific Gas and Electric Company's pending application for rehearing of D.95-11-035 filed December 28, 1995.

Discussion

D.95-11-035 should be modified to make explicit that Public Utilities Code § 851 applications are not required to effect sales of customer-site NGV refueling stations to unaffiliated companies of the selling utility. Findings of Fact 80 through 82 of the LEV Decision found that the utility programs as proposed were not in the ratepayer interest but that as modified by the LEV Decision the public interest would be protected. Thus in approving

⁵ Comments of Office of Ratepayer Advocates dated October 25, 1996 at 2.

⁶ Comments of Pacific Gas and Electric Company dated October 25, 1996 at 1.

the removal of these stations from rate base, the Commission concluded, though not explicitly, that based on the record, the sale of the stations was in the public interest and as such § 851 applications are not needed with regard to the sale of customer-site NGV stations sold to unaffiliated companies of the selling utility. We will add a conclusion of law to D.95-11-035 to make this explicit. In addition, the removal of the regulatory uncertainty should not only reduce the administrative and regulatory costs, but also better achieve our objective of maximizing the ratepayer value for these stations.

The Office of Ratepayer Advocates in its comments has raised a potential concern. Our incentive mechanism, which is intended to better align ratepayer and shareholder interests in maximizing the sales value of the stations, may be frustrated by an overriding potential conflict of interest in cases where the stations are sold to utility affiliates. In such instances a countervailing incentive may exist for a utility to sell a station below its market value since shareholders are responsible for only 25% of the loss on sale and the affiliate would be able to realize 100% of the difference in value between the sale price and the market value for the station. As such, where a refueling station is proposed to be sold to a utility affiliate or to a company in which a utility affiliate has an equity interest, the utility will be required to seek explicit Commission approval for the sale by filing a § 851 application. This will allow the Commission to examine these specific transactions to ensure that our twin objectives of maximizing ratepayer value in the sale of these stations and encouraging competition in the NGV market are not frustrated. A § 851 filing should include the requirements as set out in Rules 35 and 36 of our Rules of Practice and Procedure as well as providing the information listed at page 3 in the comments of the Office of Ratepayer Advocates.

We disagree with SoCalGas' characterization of the accounting treatment that will apply to the disposition of these stations upon sale. We agree with the Western States Petroleum Association that SoCalGas' position is contrary to the express language of our LEV Decision that requires the utilities "to remove all customer-site stations from ratebase when they are sold...."⁷ (emphasis added). Pursuant to this language, any gain or loss on the sale of NGV stations should be reflected and accounted for as a non-operating income/expense item in the utility's one-way balancing Natural Gas Vehicle Account (NGVA). The plant balance at the time of sale should be entirely removed from the rate base account.

Finally, we decline to modify D.95-11-035 at this time with respect to the request from the Western States Petroleum Association that we require SoCalGas to include details regarding the disposition of each NGV station in its November 1 annual reports to the Commission to be used in subsequent reasonableness reviews. The incentive structure we established was intended to replace ex post reasonableness reviews in these circumstances. Any allegations of utility imprudence regarding the disposition of particular stations can be examined through specific complaint proceedings where the details of a station sale can be examined. As discussed above, we will examine the reasonableness of sales to utility affiliates through § 851 proceedings prior to approving such sales.

Findings of Fact

1. D.95-11-035 required the utilities to remove all customer-site stations from ratebase when they are sold, or six years from the effective date of this decision, whichever comes first.

⁷ LEV Decision at 88.

2. Public Utilities Code § 851 requires public utilities to seek an order from the Commission approving a sale or other disposition of utility plant, system, or other property necessary or useful in the performance of its duties to the public.

3. D.95-11-035 does not address the issue of whether § 851 applications are required at the time NGV refueling stations are sold or whether the litigation and factual record developed in this proceeding satisfies the requirements of § 851 and Rules 35 and 36 of our Rules of Practice and Procedure.

4. SoCalGas requests the Commission to modify D.95-11-035 to confirm that the sale of customer-site NGV refueling stations do not require further approval under Public Utilities Code § 851.

5. Pacific Gas and Electric Company and the Western States Petroleum Association support SoCalGas' Petition that § 851 applications are not required in the sale of customer-sited utility NGV refueling stations.

6. The Office of Ratepayer Advocates raises potential conflict of interest concerns where NGV refueling stations are sold to utility affiliates.

7. SoCalGas' proposed accounting treatment of the sale of NGV refueling stations is contrary to the express language of D.95-11-035 that calls for removal of stations from rate base when they are sold.

Conclusions of Law

1. The Petition for Modification of D.95-11-035 filed by SoCalGas should be granted in part, as set forth in the order below.

2. SoCalGas' proposed accounting treatment for the sale of NGV refueling stations should be rejected as contrary to the express language of D.95-11-035 that calls for removal of stations from rate base when they are sold.

O R D E R

IT IS ORDERED that:

1. The Petition to Modify Decision (D.) 95-11-035 is granted in part.

2. Conclusion of Law 16 is added to D.95-11-035:

"16. The sale of customer-site NGV refueling stations to unaffiliated companies of the selling utility should not require the filing of a Public Utilities Code § 851 application. Sales of customer-site NGV refueling stations to unregulated utility affiliates or to companies in which a utility affiliate has an equity interest should require utilities to seek Commission approval by filing a § 851 application."

3. Southern California Gas Company shall remove the unamortized station plant balance from the rate base account at the time a station is sold. Any gains or losses on a sale attributable to ratepayers shall be reflected in a new Subaccount C in the company's one-way balancing Natural Gas Vehicle Account.

This order is effective today.

Dated November 26, 1996, at San Francisco, California.

P. GREGORY CONLON
President
DANIEL Wm. FESSLER
JESSIE J. KNIGHT, JR.
JOSIAH L. NEPPER
Commissioners

Commissioner Henry M. Duque,
being necessarily absent,
did not participate.