

L/afm\*

MAIL DATE  
2/11/97

Decision 97-02-020 February 5, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and  
Electric Company for Authority,  
Among Other Things, to Change its  
Rates and Charges for Electric  
Service.

(Electric and Gas) (U 39 M)

**ORIGINAL**

Application 91-11-036  
(Filed November 26, 1991)

ORDER DENYING REHEARING AND CORRECTING  
FACTUAL ERROR IN DECISION NO. 95-10-033

Toward Utility Rate Normalization (TURN) has filed an application for rehearing of Decision 95-10-033 which authorized Pacific Gas and Electric Company (PG&E) to issue pre-approved generic contract rate options to large commercial and industrial customers who demonstrate the ability to obtain electricity from sources other than under PG&E's regulated standard tariffs.

TURN argues that the Decision permits PG&E to file under seal all contracts entered pursuant to the new tariffs in violation of section 489(a) of the Public Utilities Code. This issue was recently litigated in Southern California Utility Power Pool et al. v. Public Utilities Commission; S.F. No. SO 49667.

There the Commission denied a Public Records Act request for certain unredacted versions of gas transportation contracts entered into between the Southern California Gas Company and its customers even though it was argued that Section 489(a) of the Public Utilities Code required disclosure of the documents requested.

The Supreme Court issued an order denying the writ of review on April 10, 1996. Denial by the Supreme Court of an order of the Commission is a decision on the merits both as to law and facts even though the order of the Court is without opinion. People v. Western Airlines (1954) 42 C 2d 621.

TURN secondly asserts that the Decision approves an anticompetitive scheme permitting PG&E to enhance its position by using ratepayer money. This argument lacks merit.

Since under current law utilities are subject to the regulatory supervision of the Commission, utilities can be involved in anticompetitive actions. As stated in Northern Natural Gas Co. v. Federal Power Comm., by the Federal Court of Appeal:

"This is not to suggest, however, that regulatory agencies have jurisdiction to determine violations of the antitrust laws. [Citations.] Nor are the agencies strictly bound by the dictates of these laws, for they can and do approve actions which violate antitrust policies where other economic, social and political considerations are found to be overriding importance. In short, the antitrust laws are merely another tool which a regulatory agency employs to a greater or lesser degree to give understandable content to the broad statutory concept of the public interest." (Northern Natural Gas Company v. Federal Power Commission (1968) 399 F.3d 953 p. 958).

And the California Supreme Court has quoted this language with approval in Northern California Power Agency v. P.U.C. (1991) 5 C.3d 370:

"As seen above, the Commission may approve projects even though they would otherwise violate the antitrust laws; it may also disapprove projects which do not violate such laws." (53 C.3d 378)

We have considered this question in the Decision (p. 48 slip opinion) and affirm our findings and conclusions that the price floor combined with the lack of locking in the market share for PG&E justify the conclusion that they are not anticompetitive.

TURN next points out that D.95-10-033 incorrectly cites D.95-06-023. We agree. The later decision approves a gas

transportation service agreement between PG&E and USS-POSCO Industries Inc. which is not applicable to the instant proceeding relating to electric contracts. Therefore we will correct this factual error in our order below.

Wherefore IT IS ORDERED that,

1. D.95-10-033 is modified. The following language on page 52 and 53 is stricken from the Decision:

"Also, we note that in the USS-POSCO decision, we stated:

"6. Until this matter goes to further hearing and a final order is forthcoming, PG&E shall not recover in rates, nor include in cost allocation forecasts, revenue shortfalls, if any, resulting from this Agreement.

"7. This proceeding is ordered consolidated with Application 95-02-010 and shall remain open for the purpose of determining the appropriate treatment of revenue shortfalls identified in Ordering Paragraph 6."  
(D.95-06-023, Ordering Paragraph 6 and 7.)

Accordingly, we conclude that the issue of revenue shortfall from the USS-POSCO contract should be decided in Application 95-02-010. TURN's citation to Ordering Paragraph 4 of D.95-06-023 does not support its argument."

2. The following language is added to page 53 of D.95-10-033 below the quotation from page 6 of the Joint Recommendation:

"We agree with this provision of the Joint Recommendation of PG&E and DRA and that it should control on this issue.

3. Rehearing is hereby denied on all other issues raised in the application for rehearing of D.95-10-033.

This order is effective today.

Dated February 5, 1997, at San Francisco, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners