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Mail Date

4/16/97

Decision 97-04-055

April 16, 1997

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's)
 Own Motion into Implementation of)
 Public Utilities Code Section 489.1,)
 Which Exempts from Public Inspection)
 Certain Contracts Negotiated by a Gas)
 Corporation, Under Specified Conditions)
 _____)

R.97-04-010
 (Filed April 9, 1997)

ORDER CORRECTING ERROR

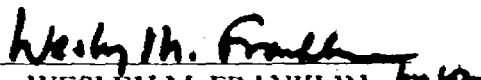
The Commission has been informed that in Rulemaking (R.) 97-04-010 which was issued on April 14, 1997, Appendix A was inadvertently omitted from the mailing. This order is necessary to correct this omission.

Therefore, pursuant to the authority granted in Resolution A-4661, **IT IS ORDERED** that:

1. Appendix A shall be served on all parties on the service list for the following proceedings: (1) Gas Expedited Application Docket in R.92-12-016 & I.92-12-017; (2) Gas Storage in I.87-03-036 & A.92-03-038; (3) PG&E Gas Accord in A.96-08-043 & A.92-12-043; (4) SoCalGas Global Settlement in R.88-08-018, et al.; and (5) SDG&E's 1997 BCAP in A.96-04-030.

This order is effective today.

Dated April 16, 1997, at San Francisco, California.



 WESLEY M. FRANKLIN
 Executive Director

APPENDIX A**Proposed Rules Pursuant to Public Utilities Code Section 489.1****Exemption from public inspection requirements for certain gas corporation contracts**

1. To encourage fair competition for gas corporations, the Commission has adopted these rules pursuant to Public Utilities Code, Section 489.1, which provides that the Commission may, by rule or order (partially or completely) exempt from the requirements of Section 489(a) contracts negotiated by gas corporations for service subject to the Commission's jurisdiction with rates, terms, or conditions differing from the schedules on file with the Commission.

2. Notwithstanding other provisions of law, these rules shall apply to any contract between a gas corporation and its customer(s) that satisfy all of the following criteria:

- (a) the contract is executed on or after the date these rules are adopted,
- (b) the contract is subject to the Commission's jurisdiction,
- (c) the contract contains rates, terms, or conditions differing from the gas corporation's rates, schedules and tariffs on file with the Commission, and
- (d) the contract precludes the gas corporation from shifting to any other customers responsibility for any loss of revenue as measured against filled rates and tariffs.

3. The gas utility shall request the exemption pursuant to Section 489.1 in the following manner:

- In an application proceeding, the utility should make the request as part of the application.
- In a complaint case, investigation or rulemaking, the utility should make the request as a motion.
- In an advice letter filing, the utility should make the request in the advice letter.

The utility's request should explain how the contract qualifies for the exemption, including how the contract meets the criteria set forth in Rule 2 and Rule 8. The utility has the burden of proof to justify the exemption.

If the Commission determines that the contract satisfies the above criteria and is therefore exempt from the requirements of section 489(a), the utility must stamp on each page of the contract: "CONFIDENTIAL PURSUANT TO PUBLIC UTILITIES CODE SECTION 489.1".

4. Any person, including a representative of residential customers of the gas corporation, can request disclosure of a contract that has been found to be exempt from the requirements of Section 489(a) and any additional specific information in the contract in the following manner:

- If the contract is relevant to a pending formal proceeding (i.e., application, complaint, investigation, or rulemaking), the person shall make the request by filing a motion in that proceeding. The administrative law judge or Assigned Commissioner shall issue a ruling on the motion.

- In the case of an advice letter filing, the person shall make the request to the Director of the Energy Division, who shall make an initial determination based on the requirements set forth in these Rules. The Resolution disposing of the advice letter will address the request for public inspection.
- If there is no pending formal proceeding affecting the contract, the person shall present the request by letter to the Director of the Energy Division. The Energy Division will prepare a resolution on the request.

The request should state all of the following:

- (a) The person is not a competitor.
- (b) The person is willing to sign a nondisclosure agreement.
- (c) The person has not previously violated a nondisclosure agreement.
- (d) The reasons Section 489.1 does not prohibit such disclosure.

The utility, customer or other interested parties may file a response to the request within fifteen (15) days. The person may file a reply to any response within five (5) days of the response.

With respect to a request for additional specific information on a particular contract, disclosure under this rule for such information will be based on a finding that the public benefit from such disclosure would outweigh the interests of the gas corporation and customer in confidentiality.

5. These rules do not prohibit the disclosure of any information concerning these contracts as may be reasonably necessary to permit auditing and collection of fees and taxes by the Commission or any other governmental entity.

6. Public Utilities Code Section 454.4 provides:

“The Commission shall establish rates for gas which is utilized in cogeneration technology projects not higher than the rates established for gas utilized as a fuel by an electric plant in the generation of electricity, except that this rates shall apply only to that quantity of gas which an electrical corporation serving the area where a cogeneration technology project is located, or an equivalent area, would require in the generation of an equivalent amount of electricity based on the corporation’s average annual incremental heat rate and reasonable transmission losses or that quantity of gas actually consumed by the cogeneration technology project in the sequential production of electricity and steam, heat, or useful work, whichever is the lower quantity.”

To ensure compliance with this section, these rules shall not apply to contracts between gas utilities and electrical corporations, which continue to be subject to Commission policy and its Rules of Practice and Procedure. No less information shall be made publicly available regarding these contracts as would otherwise be made available pursuant to this section.

7. Public Utilities Code Section 489.1 does not affect the Commission and its staff’s rights to inspect the contract and any related additional information.

8. Section 489.1 does not protect from disclosure that type of information that a utility’s competitor(s) must disclose pursuant to federal law (see for example, the Federal Energy Regulatory Commission’s Discount Reports requirements, 18 C.F.R. paragraph 284.7(c)(6)). If federal law requires disclosure of a competitor’s information, the utility shall then disclose the same information.

9. Nothing precludes a utility or customer from waiving the protections provided in Section 489.1.

10. Nothing in these rules prohibit any person from requesting full public inspection and disclosure of a particular contract because the exemption no longer applies, e.g. the information is no longer competitively sensitive.

11. These rules shall remain in effect only until January 1, 2001, and as of that date are repealed, unless a later enacted statute, which is enacted before January 1, 2001, deletes or extends that effective date of Section 489.1.