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Decision 98-03-038

March 12, 1998

MAIL DATE

3/19/98

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Gas Company for the expedited procedure for the approval of long-term negotiated discount contracts

(U 39 G)

A.92-07-047  
(Filed July 24, 1992)

Application of Pacific Gas and Electric Company for the establishment of an expedited approval procedure for competitive gas contracts

A.92-07-049  
(Filed July 28, 1992)

**ORDER RESPONDING TO PACIFIC GAS AND ELECTRIC COMPANY'S MOTION OF FEBRUARY 13, 1998, VACATING DECISION (D.) 94-09-070, DISMISSING APPLICATIONS FOR REHEARING AS MOOT AND DISMISSING A PETITION TO MODIFY AS MOOT**

In September, 1994 we issued an order attaching a number of conditions to our approval of a Pacific Gas and Electric Company (PG&E) tariff. That tariff, titled "Long Term Firm Intra-State Transportation Service to Large Customers" would have offered discounted transportation rates to large natural gas customers. It is referred to here as "G-LT service." The Decision (D.) approving G-LT service and attaching conditions, Re Southern California Gas Company/Re Pacific Gas and Electric Company [D.94-09-070] (1994) 56 Cal.P.U.C.2d 500, is referred to as the "G-LT Decision."

Previously, the Commission had established a procedure called "EAD" to approve long-term discounted gas contracts. Re Southern California Gas Company [D.92-11-052] 46 Cal.P.U.C.2d 444, which established the EAD procedure, is called the "EAD Decision."

After the EAD procedure was established, PG&E sought approval for G-LT service. In Resolution (Res.) G-3172, adopted June 4, 1994, we determined that the advice letter process was not the proper vehicle for approval of G-LT service. PG&E then filed a petition for modification of the EAD Decision seeking approval of G-LT service. We issued the G-LT Decision in response to that petition for modification.

PG&E timely filed an application for rehearing of the G-LT Decision. The utility alleged that the conditions we imposed were in error and elected not to file tariffs for G-LT service. El Paso Natural Gas Company (El Paso) and Mojave Pipeline Company (Mojave) also filed applications for rehearing of the G-LT Decision. In addition, Toward Utility Rate Normalization (TURN), now The Utility Reform Network, filed a petition for modification of the G-LT Decision.

While these matters were pending, we approved a comprehensive settlement known as the "Gas Accord" in D.97-08-055, \_\_ Cal.P.U.C.2d \_\_. Among other things, the Gas Accord established a regulatory framework for PG&E that differs markedly from the framework under which the EAD process and G-LT service were approved. Under the Gas Accord, PG&E will assume much of the responsibility for pricing gas transportation services and be able to utilize significantly improved pricing flexibility. The Gas Accord provides that the EAD procedure will no longer be used, although it makes provision for existing EAD contracts.

The approach adopted in the Gas Accord also seems to have superceded the need for G-LT service. In fact, G-LT service as conditionally approved in the G-LT Decision appears to be inconsistent with the terms of the Gas Accord. Thus the questions parties have raised about the G-LT Decision are hypothetical: even if the Commission responded to the applications for rehearing and the petition to modify, G-LT service could not be offered.

In a motion dated February 13, 1998, PG&E advised the Commission that “[w]ith . . . approval of the Gas Accord in D.97-08-055, PG&E’s proposed G-LT tariff is now moot.” PG&E sought permission to withdraw the petition to modify the EAD Decision that prompted the issuance of the G-LT Decision and requested an order vacating the G-LT Decision.

Since the Gas Accord renders G-LT moot, we will grant PG&E’s motion to withdraw its original petition for modification of the EAD Decision. Remaining questions regarding G-LT service and conditions we established are moot and further disposition of these issues is unnecessary. In addition, the withdrawal of PG&E’s petition extinguishes the underlying proceeding which was the basis for the G-LT Decision.

Consequently, we should vacate the G-LT Decision. We are guided by the reasoning of the U.S. Supreme Court in United States v. Munsingwear (1950) 340 U.S. 36, 39-40, which observed:

“The established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below. . . . That procedure clears the path for future relitigation of the issues between the parties and eliminates a judgment, review of which was prevented through happenstance. When that procedure is followed, the rights of all parties are preserved; none is prejudiced by a decision that in the statutory scheme was only preliminary.”

(See Order Vacating Decision 95-01-014 and Dismissing Application for Rehearing As Moot [D.97-11-085, p. 2 (slip op.)] (1997) \_\_\_ Cal.P.U.C.2d \_\_\_; cf. Pub. Util. Code, § 1736.)

In light of the Gas Accord and as a result of our having vacated the G-LT Decision, PG&E’s application for rehearing of D.94-09-070 becomes moot. Mojave’s application for rehearing, El Paso’s application for rehearing and

TURN's petition for modification also all become moot. Accordingly, we shall dismiss all the applications for rehearing of D.94-09-070 and TURN's petition to modify D.94-09-070 on this ground.

It is noted that the rehearing applications and the petition to modify raise several issues concerning federal and state constitutional rights, the procedural requirements of Public Utilities Code section 1708, federal pre-emption and gas utility ratemaking. By vacating the G-LT Decision we indicate that we choose not to address these and the other issues raised by parties now. Although there is dispute as to the correctness of the decision, to resolve those questions would result in the issuance of an advisory opinion. We have "a longstanding policy against issuing advisory opinions. In order to conserve scarce decisionmaking resources, [we] generally, '[do] not issue advisory opinions in the absence of a case or controversy.' [Citations omitted.] [We adhere] to this 'rule' unless [we are] presented with 'extraordinary circumstances.' [Citation omitted.]" (Order Disposing of Application for Rehearing of D.95-01-045 [D.97-09-058, pp. 3-4 (slip op.)] (1997) \_\_\_ Cal.P.U.C.2d \_\_\_; see also, Opinion on Pacific Gas and Electric Company's Motion for Adoption of Additional Guideline for Multiyear QF Buyouts [D.97-08-016, p. 6 (slip op.)] (1997) \_\_\_ Cal.P.U.C.2d \_\_\_.) The instant proceeding presents us with no such "extraordinary circumstances" which warrant the expenditure of our limited decisionmaking resources.

We have considered each and every allegation raised in the applications for rehearing and the petition for modification. We have concluded that the withdrawal of PG&E's original petition to modify the EAD Decision extinguished the underlying proceeding, which justifies our decision to vacate the G-LT Decision today. Therefore, in light of our having vacated that decision, the applications for rehearing and the petition for modification are moot. Accordingly, they should be dismissed.

**THEREFORE, GOOD CAUSE APPEARING, IT IS ORDERED**

that:

1. Pacific Gas and Electric Company's Motion of February 13, 1998 requesting withdrawal of its Petition to Modify D.92-11-052 is granted;
2. Decision 94-09-070 is vacated;
3. The application for rehearing of D.94-09-070 filed by Pacific Gas and Electric Company is dismissed as moot;
4. The application for rehearing of D.94-09-070 filed by Mojave Pipeline Company is dismissed as moot;
5. The application for rehearing of D.94-09-070 filed by El Paso Natural Gas Company is dismissed as moot;
6. The petition for modification of D.94-09-070 filed by Toward Utility Rate Normalization (TURN) is dismissed as moot.

This order is effective today.

Dated March 12, 1998, at San Francisco, California.

**RICHARD A. BILAS**

President

**P. GREGORY CONLON**

**JESSIE J. KNIGHT, JR.**

**HENRY M. DUQUE**

**JOSIAH L. NEEPER**

Commissioners