

Decision 98-06-016 June 4, 1998

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Joint Application of Pacific Enterprises, Enova Corporation, Mineral Energy Company, B Mineral Energy Sub and G Mineral Energy Sub for Approval of a Plan of Merger of Pacific Enterprises and Enova Corporation With and Into B Energy Sub ("Newco Pacific Sub") and G Energy Sub ("Newco Enova Sub"), the Wholly-Owned Subsidiaries of a Newly Created Holding Company, Mineral Energy Company.

**ORIGINAL**

Application 96-10-038  
(Filed October 30, 1996)

**ORDER MODIFYING DECISION 98-03-073**

Pursuant to Rule 47 of the Commission's Rules and Practice and Procedure, applicants Pacific Enterprises and Enova Corporation seek to modify Decision (D.) 98-03-073 (issued March 26, 1998) (the Decision), to resolve a potential timing inconsistency in applicants' compliance obligations ordered by the Decision.

Absent modification, the Decision could require applicants to commence bill credits to refund merger savings to customers prior to applicants receiving all jurisdictional approvals needed to close the merger. The Decision requires bill credits to commence on September 1, 1998 whether or not the merger has been consummated.

There are two agencies with authority over this merger where final approval is pending; the Federal Energy Regulatory Commission and the Securities and Exchange Commission. While the Decision should resolve any outstanding issues in both forums, and allow those agencies to quickly issue their final approvals, the potential exists that agency delay beyond applicants' control could conflict with the start date for bill credits ordered by the Decision.

Specifically, Ordering Paragraph 2.d at p. 146 states that "SoCalGas [Southern California Gas Company] and SDG&E [San Diego Gas & Electric Company] shall return merger savings in the amount of \$174 million in the manner set forth in this Decision." The Decision further provides that these "total net savings allocated to ratepayers...be refunded to ratepayers through an annual bill credit over five years commencing September 1, 1998." (Mimeo. p. 35.)

In contrast, Ordering Paragraph 3 recognizes the need to obtain other regulatory approvals, and thus requires applicants to submit resolutions of their respective boards of directors accepting the Decision's conditions "within 60 days after the final jurisdictional approval is received," or the Commission's grant of authority to merge lapses. A delay caused by one of the agencies withholding approval until after September 1 would render incongruous the obligation to commence bill credits on that date.

Applicants assert that unless the Decision is modified, any final jurisdictional approval coming within 90 days of September 1 poses a substantial compliance conflict for applicants, in that it might not be possible to complete the work necessary to close the merger and then implement the bill credit in that time. To resolve this problem, consistent with Ordering Paragraph 3 and the foregoing timing considerations, applicants recommend that the Decision be modified by striking reference to the September 1 date, and instead providing that the bill credits will be implemented within 90 days of the merger's closing. This avoids the potential timing conflict between other jurisdictional approvals, closing, and implementation of bill credits. Applicants' petition has merit.

The Office of Ratepayer Advocates and The Utility Reform Network both recommend that the change be "within 90 days after the final jurisdictional approval is received." This will assure promptness in implementing bill credits

for ratepayers. Applicants have no objection to this recommendation. There are no protests to the petition.

**Finding of Fact**

Delays in the approval of the merger by Federal Agencies could create a conflict with the date ordered in D.98-03-073 for starting to refund merger savings.

**Conclusions of Law**

1. The petition of Pacific Enterprises and Enova Corporation to modify D.98-03-073 should be granted.
2. D.98-03-073 should be modified to state that the start date for refunding merger savings is within 90 days after the final jurisdictional approval is received.

**IT IS ORDERED that:**

1. The last paragraph on page 35 of Decision 98-03-073 is modified as follows:

Strike the phrase "September 1, 1998", and replace it with "within 90 days after the final jurisdictional approval is received." 2. The petition of Pacific Enterprises and Enova Corporation to modify Decision 98-03-073 is granted.

This order is effective today.

Dated June 4, 1998, at San Francisco, California.

RICHARD A. BILAS  
President  
P. GREGORY CONLON  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
Commissioners