

Decision 98-06-080

June 18, 1998

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

Resolution G-3124. Pacific Gas and Electric Company Requests approval of Non-Standard Firm Transportation Service Agreements Between PG&E and Shippers for Firm Intrastate Transportation Service on the PG&E Expansion Pipeline, in compliance with Decision 94-02-042 Dated February 16, 1994.

Application 94-10-029
(Filed October 17, 1994)

ORDER DENYING REHEARING OF RESOLUTION G-3124

In their Application for Rehearing, the Cities of Burbank, Glendale, and Pasadena ("Cities") requested that we clarify the portion of Resolution G-3124 that interprets the Uniform Terms of Service ("UTS") provision incorporated into the Cities' Firm Transportation Service Agreements ("FTSA") with Pacific Gas and Electric Company ("PG&E") for service on PG&E's Expansion Project. The UTS provision provides:

8. UNIFORM TERMS OF SERVICE

If PG&E modifies or changes any term or condition specified in an effective Firm Transportation Service Agreement with any shipper receiving service under this rate schedule, within sixty (60) days thereafter, PG&E shall offer to make the same terms(s) and condition(s) applicable to any other shipper then receiving service under this rate schedule.

The Cities urge that we interpret the UTS provision found in their FTSA agreements with PG&E as applying to not only "firm" transportation agreements, but also to service that utilizes unsubscribed firm capacity. PG&E has been marketing such service as "as-available" service. The Cities contend that PG&E should not be permitted to ignore the UTS provision simply by renaming firm capacity as as-available capacity.

PG&E entered into FTSA agreements with Southern California Edison Company ("Edison") and San Diego Gas and Electric Company ("SDG&E") as well. Edison and SDG&E filed a Response to the Cities' Application for Rehearing of Resolution G-3124 in which they also request that we find that the UTS provision applies to as-available service, arguing that such service is the operational equivalent of firm transportation service. They claim that because PG&E did not have sufficient success in marketing its unsubscribed Expansion Project capacity, it repackaged the unsubscribed capacity as discounted "as-available service." They argue that this as-available service is operationally equivalent to firm transportation service since both types of service provide the highest degree of reliability on the Expansion Project pipeline.

Contrary to the Cities' claims, the record shows that we considered and rejected the Cities' as-available service arguments. For example, in their April 7, 1994 Protest to PG&E's Advice Letter 1839-G, the Cities presented their argument that the UTS provision should be interpreted to apply not just to Firm Transportation Service Agreements, but to Expansion As-Available service agreements as well. The Cities, SDG&E, and Edison also raised the issue in a joint shipper letter sent to the Energy Branch Chief on May 17, 1994.

On September 15, 1994, we issued Resolution G-3124 in which we responded to the Cities' request for an interpretation of the UTS provision. We ruled that "the UTS provision in the FTSA is clearly applicable only for firm transportation agreements." We expressed therein our awareness of the Cities'

UTS arguments and noted that the only way the UTS provision could function to allow a firm shipper to claim as-available service terms (e.g., discounts) would be “[i]f PG&E had offered the as-available service [terms] to any one of the firm shippers and not to others.”

In G-3124, the Commission reiterated PG&E’s stated distinctions between firm service and as-available service, noting that firm service on the Expansion will be provided under a default Modified Fixed Variable (MFV) rate design, with substantial demand charge responsibilities and a 95% assumed Expansion throughput used to calculate the volumetric component. As-available service, however, is obtainable on a purely volumetric basis with no demand charge responsibility and rates are calculated on an approved 70% load forecast. We added that any unsubscribed Expansion firm capacity would have to be sold on an interruptible/as-available service basis.

Thus, the application for rehearing of the Cities is denied since the Cities have not shown that there was legal error in the Resolution. The Cities simply repeat arguments previously presented to and rejected by the Commission.

The Cities’ application is also denied based on recent actions that make the issue at hand moot. On August 1, 1997, 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 resolved the UTS issue presented in the Cities’ Application for Rehearing of Resolution G-3124. We explicitly held therein that UTS and all other contract rights remain applicable only to firm service. (Gas Accord, Section F: Firm Expansion Agreements, (a)(ii), at p. 31.)

We have considered each and every allegation raised in the Cities’ application for rehearing and have concluded that it should be denied based on mootness and the failure to demonstrate legal error.

THEREFORE, IT IS ORDERED that:

1. The application for rehearing of Resolution G-3124 filed by the Cities of Burbank, Glendale, and Pasadena is denied.

This order is effective today.

Dated June 18, 1998, at San Francisco, California.

RICHARD A. BILAS

President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners