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Decision 98-07-017 July 2, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Southern California Utility Power Pool and
Imperial Irrigation District,

Complainants,

vs.

Southern California Gas Company (U904-G),

Defendant.

ORIGINAL

Case 97-10-082
(Filed October 30, 1997)

O P I N I O N

Background

On October 30, 1997, the Southern California Utility Power Pool¹ and the Imperial Irrigation District filed a complaint alleging that Southern California Gas Company was refusing to disclose information concerning its natural gas transmission and storage contracts in violation of Rule 8 of the Commission's Final Rules Pursuant to Public Utilities (PU) Code § 489.1.

On January 27, 1998, the assigned Administrative Law Judge (ALJ) held a prehearing conference at which both parties appeared. After discussing the status of the proceeding with the parties, the ALJ announced a procedural schedule that called for cross motions for summary judgment and replies

¹ Whose members are the Los Angeles Department of Water and Power and the Cities of Burbank, Glendale, and Pasadena.

thereto.² The parties filed such motions on February 17, 1998, and Southern California Gas Company filed a response on March 4, 1998.

Discussion

In Decision (D.) 97-06-110, the Commission adopted rules in compliance with PU Code § 489.1 that exempt from public inspection certain contracts negotiated by a gas corporation, under specified conditions. That decision was hoped to bring to a close a long running dispute regarding the availability to the public of the terms and conditions of natural gas contracts. The history of this dispute is discussed in D.97-06-110 and need not be repeated here.

At issue in this proceeding is the meaning of Rule 8:

Section 489.1 does not protect from disclosure that type of information that a gas corporation'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 gas corporation shall then disclose the same information.

The parties do not dispute the applicability of Rule 8 to information regarding contracts executed after the effective date of the Rules. Because federal law requires Southern California Gas Company's competitors to make information available regarding all contracts currently in operation, regardless of effective date, the Power Pool and Irrigation District contend that Rule 8 requires the disclosure of all operational contracts, including those executed prior to the effective date of the 489.1 Rules. Southern California Gas Company disagrees

² Due to the resolution of this motion, no hearing will be held; thus, Article 2.5 of the Commission's Rules of Practice and Procedure do not apply to this proceeding.

and argues that the 489.1 Rules do not apply to contracts executed before the effective date of the rules, June 25, 1997.

The plain words of Rule 2 of the 489.1 Rules are dispositive of this complaint:

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

"a. the contract is executed on or after the date these rules are adopted."

Simply stated, the 489.1 Rules, including Rule 8, do not apply to contractual information executed before the rules were adopted.

This interpretation of the 489.1 Rules is consistent with the history outlined in D.97-06-110. The availability of the information contained in these contracts was a long fought issue. Historically, the Commission had granted requests by the gas companies to keep these contracts confidential, over the strenuous objections of other customers and the press. *See, e.g.,* Resolution L-246 (denying complainant's request for disclosure) and Resolution L-251 (denying similar request by a member of the press). Any decision by the Commission which would overturn this long-standing policy *on a retrospective basis*, as would Complainants' interpretation of Rule 8, would represent a significant change in Commission policy that would warrant extensive analysis and discussion in the decision. No such discussion appears in D.97-06-110.

Accordingly, we will adhere to the plain words of Rule 2 which limit the applicability of the 489.1 Rules to contracts which meet all the criteria, including having been executed on or after the effective date of these rules.

Finding of Fact

There are no disputed issues of material fact in this proceeding.

Conclusions of Law

1. No hearing is necessary.
2. Rule 2 of the Final Rules Pursuant to PU Code § 489.1 limits applicability of the Rules to contracts "executed on or after the date these rules are adopted."
3. The Commission adopted the 489.1 Rules on June 25, 1997.
4. The 489.1 Rules apply to all contracts executed on or after June 25, 1997.
5. Contracts executed prior to June 25, 1997, are not subject to the 489.1 Rules and need not be disclosed pursuant to Rule 8.
6. This is a complaint case not challenging the reasonableness of rates or charges, and so this decision is issued in an "adjudicatory proceeding" as defined in PU Code § 1757.1.
7. The complaint should be dismissed with prejudice.

O R D E R

Therefore, IT IS ORDERED that:

1. This complaint is dismissed with prejudice.

C.97-10-082 ALJ/MAB/wav/jva

2. This proceeding is closed.

This order is effective today.

Dated July 2, 1998, at San Francisco, California.

RICHARD A. BILAS

President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners