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Decision 98-07-102 July 23, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Enserch Energy Services, Inc. for Rehearing of Commission Resolution G-3233.	A.98-05-023 (Filed May 11, 1998)

INTERIM ORDER CONDITIONALLLY GRANTING REHEARING OF RESOLUTION G-3233

I. SUMMARY

On May 11, 1998, Enserch Energy Services, Inc. (Enserch) filed an application for rehearing of Resolution G-3233 in which the Commission approved Advice Letter No.2513 submitted by Southern California Gas Company (SoCalGas). In the Advice Letter, SoCalGas proposed that it reimburse three core aggregators for certain interstate transportation demand charges incurred prior to October 1, 1995.[1] Enserch protested the filing. Although Enserch did not object to the three named aggregators being reimbursed, it claimed that it too should receive a demand charge reimbursement, in the amount of $39,464.54. In Resolution G-3233, the Commission approved SoCalGas's proposal and denied Enserch's protest.

Enserch now applies for rehearing of the resolution claiming the Commission acted on incorrect facts and discriminated against Enserch.

After careful review of Enserch's application and matters related to it, as well as the response of SoCalGas, we find that Enserch has raised material facts in dispute. Although Resolution G-3233 sets forth the findings necessary for determining whether a core aggregator is due a reimbursement (also referred to as a "refund"), it is

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[1] The three core aggregators for whom reimbursement was approved are: Regional Energy Management Coalition (REMAC), Broad Street Oil & Gas (BSOG), and Texas-Ohio West (TOW).

based on comments submitted by the parties, not on an evidentiary record, as is the normal procedure with respect to an advice letter filing. As a result, the Commission is issuing this interim order providing for the establishment of an evidentiary hearing, but only on condition that Enserch, after considering our discussion herein, affirms that it is prepared to establish the specific facts the Commission has determined are necessary for supporting a demand charge reimbursement from SoCalGas.

II. BACKGROUND

Prior to October 1, 1995, Enserch, like other core aggregators, used an assignment of SoCalGas's interstate pipeline capacity rights to transport natural gas volumes from the producer to California in order to serve core customers. Enserch, therefore, paid the transportation demand charges to the interstate pipeline to defray SoCalGas's obligation to the interstate pipeline. Enserch recovered its demand charge costs from the end-user customers upon delivery of the gas.

In D.95-07-048, the Commission modified the Core Aggregation Transportation (CAT) program, effective October 1, 1995. The relevant change in the program required that core aggregators recover their demand charges from SoCalGas, rather than from the core customers, upon delivery of the gas to the customer. SoCalGas, in turn, recovered the demand charge in the payment made by the core aggregator's customer . Left unchanged was the core aggregator's obligation to pay the demand charges directly to the interstate pipeline. (D.95-07-048, 60 CPUC 2d 519,529 (July 19, 1995).)

Because of the change in the CAT rules, a disjunction of payments and reimbursements resulted. Some core aggregators who incurred demand charge costs prior to October 1, 1995 by defraying SoCalGas's interstate pipeline obligations, could not recover the charges from the core customers if the volumes associated with those charges were delivered to core customers after October 1. (The volumes involved were

necessarily storage volumes.) For these volumes, the core aggregator was also not reimbursed by SoCalGas since the new rules did not specify that SoCalGas was to repay demand charges for pre-October 1, 1995 interstate gas transportation.

The Commission found that this betwixt-and-between situation was applicable to the three core aggregators. Their problem was resolved, however, because the Commission was able to determine that the gas volumes in question were acquired before October 1, were delivered after October 1, and SoCalGas had collected a demand charge from the core customers upon the post-October 1 delivery. SoCalGas, therefore, reimbursed the three core aggregators the demand charges that had been collected.

Enserch was distinguished from the three other core aggregators because Enserch did not show that it had acquired gas volumes before October 1, 1995 for which Enserch had paid demand charges to the interstate pipelines, but for which SoCalGas, not Enserch, had recovered the demand charge costs from core customers upon delivery after October 1, 1995. (Resolution G-3233, mimeo, Finding No. 7, p.6.) To state it another way, Enserch did not establish that for a certain quantity of natural gas delivered to core customers after October 1, 1995, SoCalGas had received the benefit of a double recovery of demand charges, first from Enserch (which covered SoCalGas's obligation to the pipeline under the capacity assignment), and then from the core customers, and that SoCalGas did not reimburse Enserch. (Resolution G-3233, mimeo, Discussion Item No. 6, p.5.)

In its application for rehearing, Enserch contradicts our conclusions, and requests a rehearing of the essential facts, insisting that SoCalGas did make a double recovery on the gas volumes in question. In response, SoCalGas claims that with respect to any gas volumes delivered by Enserch to core customers after October 1, 1995, transportation and delivery was completed under the new rules so that SoCalGas reimbursed Enserch for demand charges paid by Enserch to the pipeline at the initial stage of the transaction . And when, therefore, SoCalGas recovered the demand charges from

the core customers upon delivery under the post-October 1, 1995 rules, it recovered its own costs and was not obliged to turn the payment over to Enserch.

SoCalGas also argues that with respect to any pre-October 1 gas volumes for which Enserch had paid the demand charges to the interstate pipeline upon assignment of SoCalGas's capacity rights, Enserch may well have sold the volumes to noncore customers or to marketers, and, therefore, should have recovered its costs in the sales price.

To resolve the disputed facts, we will order the establishment of an evidentiary hearing upon condition that Enserch first provides a statement to the Commission that it is prepared to make the necessary showing on the issues we discuss below.

III. DISCUSSION

In its application, Enserch focuses on the Commission's determination that Enserch did not deliver the gas volumes originally marked for core customers that was in storage prior to October 1, 1995. Enserch believes that it was denied reimbursement of the demand charges it paid for these volumes because it did not deliver the exact stored gas molecules to core customers after October 1. That conception of our rationale is incorrect. (Enserch's Application, pp. 7-8, 11-12.) Although our discussion makes reference to the stored volumes, the Commission's conclusion did not depend on resolving the question whether gas molecules are fungible or not. Rather, it is based on the facts regarding demand charge payments and recoveries as we determined from the comments submitted by the parties.

Enserch claimed that it had injected 1,061,160 therms of gas into storage for its core aggregation customers prior to October 1, 1995 for which it was not reimbursed related demand charges of $39,464.54 by either core customers or SoCalGas, even though it delivered at least 1,061,160 therms of "flowing" nonstorage gas supplies after October

1, 1995. Enserch asserts that even though it is true that it utilized core aggregation gas acquired and stored before October 1, 1995 for "trading" purposes, and not just for deliveries to core customers, nonetheless, the fact that it delivered at least 1,061,160 therms of "flowing" nonstorage gas supplies on or after October 1, 1995 to its core customers means, per se, that SoCalGas must reimburse it the demand charges of $39,464.54. (See, Enserch's prior Application for Rehearing of October 2, 1997 (Docket A.97-10-009), Exhibit A, Letter of August 26, 1996 from counsel for Enserch to the Commission's Advisory and Compliance Division, at p. 4. A copy of the October 2, 1997 Application and Exhibit A are attached to the subject Application filed May 11,1998.)

SoCalGas acknowledges that under the old rules it did not pay Enserch for the demand charges for the 1,061,160 therms of gas placed in storage before October 1, 1995. However, with respect to the "flowing" supplies delivered by Enserch to its customers after October 1, 1995, SoCalGas claims that it directly reimbursed Enserch as required by the new rule since such supplies were transported and delivered under the new rules. (SoCalGas's Response to Application of Enserch, Attachment Letter of September 3, 1996 from SoCalGas to the Commission's Advisory and Compliance Division, p.2.)

The key material fact in dispute, therefore, is the latter assertion of SoCalGas that, essentially, for all volumes delivered to Enserch's core customers on or after October 1, 1995, SoCalGas reimbursed Enserch. We note that in comments filed by Enserch, and in its application for rehearing, that Enserch is vague on this point. The Commission, therefore, can reconsider whether as Enserch claims, SoCalGas collected demand charges from both Enserch (via Enserch's payment to the interstate pipeline of SoCalGas's demand charge obligation) and from core customers which were never reimbursed to Enserch for the delivery of 1,061,160 therms after October 1, 1995. If, for example, Enserch can prove that it delivered this quantity to core customers on or after October 1, 1995, that it did not include the demand charges in the sale price it recovered

from its core customers, did not did receive reimbursement of those demand charges from SoCalGas, and SoCalGas collected for itself the demand charges from the customers, we would have to reconsider our order in Resolution G-3233. For, in this latter circumstance, SoCalGas would have recovered demand charges without having incurred the expense.

There is an alternative inquiry that can be made. Assuming Enserch admits that it has been reimbursed directly by SoCalGas for all volumes delivered on or after October 1, 1995, according to the application for rehearing, Enserch would still claim that because of the rule change, it has never been allowed to recover the interstate pipeline demand charges of $39,464.54 that it had paid before October 1, 1995 upon assignment of SoCalGas's capacity rights for the transportation of 1,061,160 therms of core gas that was placed in storage . However, the Commission cannot reasonably order SoCalGas to reimburse Enserch unless there are still 1,061,160 therms in storage for which Enserch has paid the demand charges before October 1, 1995, and that the same quantity of CAT gas, which has not been the subject of post-October 1, 1995 rules, is still available for delivery. Were Enserch to deliver these volumes to core customers, SoCalGas could recover the demand charges from those customers under the post-October 1, 1995 rules, and then could reimburse Enserch. The resolution of Enserch's claim would be similar to that applied to the claims of the other three core aggregators Resolution G-3233.

To summarize, as complicated as the facts of this case may be, Enserch can establish its right to be reimbursed $39,464.54 if it can provide probative evidence which shows:

1) that it paid interstate demand charges of $39,464.54 for 1,061,160 therms before October 1, 1995, and
2) that it delivered 1,061,160 therms to core customers on or after October 1, 1995 without charging the customer for the demand charges, and

3) that SoCalGas recovered from core customers the demand charges of $39,464.54 for 1,061,160 therms gas volumes delivered on or after October 1, 1995, that Enserch had paid the interstate pipeline demand charges for these volumes upon assignment of SoCalGas's capacity rights, and SoCalGas did not reimburse Enserch the demand charges so recovered.

Alternatively, the Commission may resolve the issue if Enserch can present probative evidence that from a period beginning before October 1, 1995, and continuing to the present, it has consistently maintained in storage1,061,160 therms for which it had paid interstate demand charges of $39,464.54 before October 1, 1995. In other words, if indeed Enserch has maintained a gas "cushion" since before the rule change, and up to the present, then it can put itself in the place of the other three core aggregators and finally deliver the quantity of gas in question. This will allow SoCalGas to collect the demand charges from the customers and reimburse Enserch.

As our Resolution stated, we did not find in the comments submitted with respect to SoCalGas's Advice letter any reason to conclude that SoCalGas failed, with respect to Enserch, to comply with the CAT demand charge rules. At this juncture, therefore, we find our conclusions in this matter just and reasonable. Nonetheless, Enserch raises material factual issues, albeit without proffering specific evidence on the salient issues. Because, therefore, there is no evidentiary record of testimony and evidence presented under penalty of perjury and tested by cross-examination, the Commission will conditionally establish a limited evidentiary hearing. In order to avoid unnecessary costs and the wasteful expenditure of resources by the Commission and the parties, however, we will open the hearing only after Enserch has reconsidered the matter as discussed in this decision, and decides that it can meet its burden of proof as we describe in the following ordering paragraphs. To that effect, we will require that Enserch inform the Commission of its decision within a specified time, and if it opts to go forward on the issues, it must submit initial documentation in support of its position.

Such documentation shall not be considered a limitation or restriction on other evidence which may be offered by any party if a hearing is established.

IT IS THEREFORE ORDERED that:

1. Enserch shall submit a letter to the Commission's Chief Administrative Law Judge, to be received at the Commission's San Francisco headquarters within 14 days of the mailing date of this decision, in which Enserch either requests withdrawal of its application for rehearing of Resolution G-3233, or asserts that it is prepared to go forward with probative evidence, and attaches supporting documentation, showing:

   a) that Enserch paid interstate demand charges of $39,464.54 for 1,061,160 therms of natural gas before October 1, 1995,

   b) that it delivered 1,061,160 therms to core customers on or after October 1, 1995 without charging the customer for the demand charges,

   c) that SoCalGas recovered demand charges of from core customers upon delivery of the 1,061,160 therms on or after October 1, 1995 for which Enserch had not charged the core customers, and

   d) SoCalGas did not reimburse Enserch for $39,464.54 in demand charges recovered from core customers on 1,061,160 therms for which Enserch had paid the interstate pipeline demand charges.

2. Alternatively, if Enserch does not assert that it is prepared to go forward on the issues as set forth in Ordering Paragraph 1, and does not opt to withdraw the application for rehearing, Enserch has the option of submitting a letter to the Commission's Chief Administrative Law Judge, to be received at the Commission's San Francisco headquarters within 14 days of the mailing date of this decision, in which Enserch asserts that it is prepared to go forward with probative evidence, and attaches supporting documentation, demonstrating:

a) that Enserch has consistently maintained in storage 1,061,160 therms for which it paid interstate demand charges of $39,464.54 before October 1, 1995, and

b) the same quantity of natural gas, for which it has not been reimbursed the demand charges by SoCalGas is available from storage for delivery to core customers.

3. Should Enserch elect to submit a letter withdrawing its application for rehearing of Resolution G-3233, or should Enserch not make a timely response in compliance with Ordering Paragraph 1 or 2, a final order on the application for rehearing shall be issued promptly.

4. Should Enserch elect to go forward on the issues set forth either in Ordering Paragraph 1or 2, and timely submits the required letter and documentation, the matter shall be remanded to an assigned Administrative Law Judge for a limited hearing as shall hereafter be determined.

5. The Executive Director shall provide notice of such limited rehearing to the parties to this proceeding, and all other persons and entities appearing on the service list of this proceeding, in the manner prescribed by Rule 52 of the Commission's Rules of Practice and Procedure.

This order is effective today

Dated July 23, 1998, at San Francisco, California.

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