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MAIL DATE

7/28/98

Decision 98-07-105

July 23, 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 Mineral Energy Sub ("Newco Pacific Sub") And G Mineral Energy Sub ("Newco Enova Sub"), the Wholly-Owned Subsidiaries Of A Newly Created Holding Company, Mineral Energy Company.

ORIGINAL

A.96-10-038  
(Filed October 30, 1996)

**ORDER DENYING APPLICATION FOR REHEARING OF  
DECISION NO. 98-03-073 BY THE CITY OF VERNON**

In D. 98-03-073, we approved the merger of Pacific Enterprises and Enova Corporation. To mitigate the effect of San Diego Gas and Electric Company's (SDG&E) loss as a potential competitor and Southern California Gas Company's (SoCal Gas) market power, the Commission ordered SDG&E to sell its gas fired generation and SoCal Gas to sell its options to acquire the California portions of the Kern River pipeline and the Mojave pipeline. Applicant argues that the decision violates PUC Code §854(b) (3) and 854 (c) (8) because failed to adopt measures sufficient to mitigate the adverse effects on competition identified in the decision itself and because of the rejection without "substantive consideration" of the Attorney General's recommended mitigation measure relating to intrastate gas transmission services.

Section 854 provides in pertinent part:

"§ 854. Acquisition or control of public utility;  
approval of Commission...

Before authorizing the merger, acquisition, or control of any electric, gas, or telephone utility organized and doing business in this state, where \*\*\* any of the utilities that are parties to the proposed transaction has gross annual California revenues exceeding five hundred million dollars (\$500,000,000), the Commission shall find that the proposal does all of the following:

...

- 3) Not adversely affect competition. In making this finding, the Commission shall request an advisory opinion from the Attorney General regarding whether competition will be adversely affected and what mitigation measures could be adopted to avoid this result.
- c) Before authorizing the merger, acquisition, or control of any electric, gas, or telephone utility organized and doing business in this state, where \*\*\* any of the entities that are parties to the proposed transaction has gross annual California revenues exceeding five hundred million dollars (\$500,000,000), the Commission shall consider each of the criteria listed in paragraphs (1) to (8), inclusive, and find, on balance, that the merger, acquisition, or control proposal is in the public interest.
1. Maintain or improve the financial condition of the resulting public utility doing business in the state.
  2. Maintain or improve the quality of service to public utility ratepayers in the state

3. Maintain or improve the quality of management of the resulting public utility doing business in the state.
4. Be fair and reasonable to affected public utility employees, including both union and nonunion employees.
5. Be fair and reasonable to the majority of all affected public utility shareholders.
6. Be beneficial on an overall basis to state and local economies, and to the communities in the area served by the resulting public utility.
7. Preserve the jurisdiction of the commission and the capacity of the commission to effectively regulate and audit public utility operations in the state.
8. Provide mitigation measures to prevent significant adverse consequences which may result."

The City begins its argument by listing certain Findings of Fact in the decision that reflect a potential diminution in competition in the California gas market flowing from the merger. Applicant then first argues that the decision does not contain sufficient mitigation measures to ensure continued competition in the relevant market. However, Applicant focuses on only one of the adopted mitigation measures: the requirement that SoCal Gas divest itself of its options to purchase the California facilities of the Mojave and Kern River interstate pipelines. The argument made is that this does not enhance competition but merely preserves the status quo. First, the above legislation does not require the Commission to enhance competition, but merely to adopt measures to mitigate the adverse effect on competition resulting from the merger. Second, applicant conveniently overlooks the comprehensive mitigation measures adopted in Appendix B of the decision. These run to 32 pages and include the requirement that SDG&E divest itself of its fossil power plants, various other detailed conditions for affiliate

transactions, including even a detailed code of conduct for the resulting corporate entity. Third, as Pacific Enterprises and Enova Corporations point out in their response, the conditions adopted in the decision will prevent SoCal Gas from exercising market power 'in any context not subject to the Commission's Review and Enforcement Authority.' (Response, page 2.) Applicant's argument is without merit.

Applicant next argues that the decision is in error for failure to adopt the mitigation proposal offered by the Attorney General that SoCal Gas be required to auction off as much pipeline capacity as it historically required to serve SDG&E. PUC Code Section 854 (b) (3) does require the Commission to request an advisory opinion from the Attorney General in merger proceedings, which was done in this case. Further, as the decision points out at page 41, such opinion is to be given "great weight", citing Moore v. Parrish (1982) 32 CAL 3d 535 and Farron v. City and County of San Francisco (1989) 216 CAL App 3d, 1071.

That the Commission considered the Attorney General's opinion is evident in the decision at page 78:

"The Attorney General recommends that we require SoCalGas, as a mitigation measure of SDG&E's acquisition, to auction volumes of its intrastate transmission rights equal to SDG&E's use. We are of the opinion that such an auction is unnecessary in light of our requiring divestiture of the options to purchase the Kern River and Mojave facilities. Having a competitive pipeline is a much more effective mitigation measure". Decision at pp.78-79.

Applicant does not allege and we are unaware of any authority that requires the Commission to adopt every recommendation of the Attorney General but only to solicit his opinion, which was clearly done in this proceeding. The

failure to adopt that recommendation therefore does not constitute legal error and the argument is without merit.

The Application for Rehearing demonstrates no legal or factual error and should be denied.

**IT IS THEREFORE ORDERED that:**

1. The Application for Rehearing of Division No. 98-03-073 is denied.
2. 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