

Mailed 10/14/98

Decision 98-10-028 October 8, 1998

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

Rulemaking on the Commission's Own Motion to  
Assess and Revise the Regulatory Structure  
Governing California's Natural Gas Industry.

**ORIGINAL**  
Rulemaking 98-10-028  
(Filed January 21, 1998)

**SECOND INTERIM OPINION IDENTIFYING STEPS TO  
BE TAKEN TO EXPLORE AND ADOPT A  
COMPREHENSIVE GAS STRATEGY**

On August 6, 1998, we issued an interim opinion in this docket, describing our goals in the underlying rulemaking and the steps we expected to take (Decision (D.) 98-08-030). Among other things, this decision required the gas utilities to file applications reflecting cost separation and rate separation for the gas revenue requirement; and called for the removal of existing restrictions on participation in the core aggregation transportation programs after the implementation of certain consumer protection procedures. Subsequently, the Legislature and the Governor enacted Senate Bill (SB) 1602, creating § 328 of the Public Utilities (PU) Code. That section expressly allows this Commission to investigate issues associated with the further restructuring of natural gas services, but prohibits the Commission from "enacting" any gas industry restructuring decisions prior to January 1, 2000. It also states that any natural gas restructuring decisions for core customers issued after July 1, 1998 "shall not be enforced." This provision appears to refer to D.98-08-030, the only decision issued on this subject since July 1, 1998.

In response to this legislation, we are issuing this order to set a new procedural schedule and to address enforcement of the ordering paragraphs in D.98-08-030.

### **New Schedule**

#### **Prehearing Conference**

Various parties have filed Market Conditions Reports, comments on the reports, rebuttal to the reports and requests for evidentiary hearings. Based on our initial review of these documents, it is evident that we should conduct evidentiary hearings on many factual issues raised in the reports and rebuttal. In addition, we are interested in receiving evidence on anticipated labor impacts of the various restructuring proposals that have been raised in this proceeding either through the report issued by the Division of Strategic Planning (DSP), or through the comments of active parties. This includes, but is not limited to, the labor impacts from allowing for the competitive provision of bill-related services as discussed in D.98-08-030 and other revenue cycle services. We direct the assigned Commissioners and Administrative Law Judge (ALJ) to hold a Prehearing Conference in the Commission Courtroom in San Francisco on November 4, 1998, at 11:00 a.m. to discuss the format and schedule for evidentiary hearings.

#### **Evidentiary Hearings**

Hearings will begin on December 7, 1998 and continue, as needed, for the remainder of that week.

### **Briefs**

Assuming that hearings are completed during the week of December 7, 1998, opening briefs on matters considered in the hearings will be due no later than January 15, 1999. Reply briefs will be due no later than January 29, 1999.

### **Oral Argument**

Oral argument on the implications of the information developed through the market conditions report process and the hearings on the appropriate market structure for a competitive natural gas industry will be held in February, 1999.

### **Report to the Legislature**

Based on our review of all of this information, in concert with the recommendations contained in the report issued by the DSP last January, comments received on that report, and the reports of the two working groups discussed in D.98-08-030, we will prepare a report to the legislature identifying our proposed long-term market structure for the natural gas industry. This report will be in the form of a Commission decision identifying a proposed policy. We will release this report in draft form as a proposed decision for comment before voting on whether or not to send it to the legislature.

### **Open Comment Meetings**

We are interested in receiving comments about the appropriate market structure for the gas industry from those who may not formally participate in our

proceedings. Toward that end, we will schedule and conduct open comment meetings in various portions of the state. We will hold these meetings after we have issued a proposed policy in order allow people to have an opportunity to respond to the proposal.

### **Final Adoption**

In the decision adopting a report to the legislature, we will set forth a schedule for receiving the additional information the Commission will need to adopt a final market structure policy decision. That additional information will include open comment meetings and may include further written comments, full panel hearings, roundtable discussions, and evidentiary hearings, as seem appropriate. We expect to undertake this additional inquiry in 1999. Further, as discussed in D.98-08-030, the release of the decision adopting a report to the legislature will commence the time for filing any additional motions concerning the applicability of the California Environmental Quality Act to this process. In the absence of further statutory instruction, the Commission will not adopt a final market structure policy decision until on or after January 1, 2000.

### **Implementation**

As we discussed in D.98-08-030, we expect that our final market structure policy decision will establish the context for addressing an array of implementation issues raised in the Strategic Planning report and in parties' comments. These include, among others, the adoption of regulatory reforms, the treatment of stranded costs, the provision of default service, and setting appropriate balancing requirements. Some changes, such as any we might make to rate design, may need to follow the resolution of other implementation issues. We still intend that when we issue a decision on market structure, we will

R.98-01-011 ALJ/SAW/avs \* \*

announce a schedule and process for considering all of these and other implementation issues.

#### **Enforcement of D.98-08-030**

Section 328 states, in part, that any natural gas restructuring decisions "for core customers" issued prior to the effective date of the statute but after July 1, 1998 "shall not be enforced." The only order that appears to meet this definition is D.98-08-030, our first interim order in this docket. There is only one ordering paragraph in that decision that could be the subject of enforcement efforts by the Commission. That is Ordering Paragraph 1, which states:

"No later than February 26, 1999, the utilities listed as respondents in the rulemaking order opening this proceeding shall file applications as described in this decision. These applications shall address separation of costs and rates for all services as discussed in this decision. The goal of this exercise is to provide a basis for ensuring that customers who elect to receive competitive natural gas services from an entity other than the utility will not be charged by the utility for those services."

Pursuant to this paragraph, the utilities would be required to file applications providing for cost and rate separation no later than February 26, 1999. Prior to the enactment of § 328, had a respondent utility failed to file an application on a timely basis, the Commission could have taken administrative or other legal actions to enforce its order. Consistent with the statute, however, the Commission will not take steps to ensure that the respondent utilities comply with this ordering paragraph and the utilities will not be subject to penalty or other sanctions for failure to comply. However, the Commission may direct utilities to provide additional information as needed to further this investigation.

There are four additional ordering paragraphs. Ordering Paragraphs 2 and 5 consider that applicability of the California Environmental Quality Act to our

consideration of a new gas strategy. Neither of these paragraphs placed an enforceable requirement on any party.

Ordering Paragraphs 3 and 4 address the necessity of adopting new consumer protection measures prior to removing existing restrictions on the utilities' core aggregation transportation programs. Ordering Paragraph 4 directs our own staff to develop new consumer protection rules. This paragraph does not raise any enforcement concerns. Paragraph 3 directs the utilities to file any tariff changes necessary to remove the minimum volume and maximum participation restrictions currently applicable to the core aggregation programs and to do so no later than 30 days after the Commission adopts the new consumer protection standards. This requirement is also consistent with § 328 and raises no enforcement requirements, since it does not spring into effect until the Commission adopts new consumer protection measures. This paragraph simply notifies the utilities that they will be required to act on this matter at a later date. We will expect the Energy Division to release proposed rules for comment, as originally planned. Although we cannot adopt new rules before January 1, 2000, we can prepare the rules we would prefer to adopt and report to the Legislature on that proposal.

#### **Findings of Fact**

1. Recent legislation affects the procedures and schedule the Commission should adopt for undertaking this investigation.
2. Recent legislation affects the Commission's ability to enforce the ordering paragraphs in D.98-08-030.

### **Conclusions of Law**

1. The Commission should modify its procedures and schedule for undertaking this investigation.
2. The Commission cannot enforce the requirement, contained in Ordering Paragraph 1 of D. 98-08-030, that the respondent utilities file certain specified application in February 1999.

### **SECOND INTERIM ORDER**

#### **IT IS ORDERED that:**

1. The assigned Commissioners and Administrative Law Judge (ALJ) shall hold a prehearing conference in the Commission Courtroom in San Francisco on November 4, 1998, at 11:00 a.m., to discuss the format and schedule for evidentiary hearings concerning the market conditions reports and rebuttal to those reports as well as labor impacts likely to result from various proposed changes to the natural gas market structure.
2. Unless the assigned Commissioners or ALJ rule otherwise at a later time, hearings will commence on December 7, 1998 and continue as described in this opinion, and all other dates set forth in this opinion shall apply.
3. Based on our review of the entire record in this proceeding, we will prepare a report to the legislature identifying our proposed long-term market structure for the natural gas industry. This report will be in the form of a Commission decision identifying a proposed policy. It will contain a schedule for the Commission to receive further information prior to adopting a final policy. We will release this report in draft form as a proposed decision for comment before voting on whether or not to send it to the Legislature.

4. In the absence of further statutory instruction, the Commission will not adopt a final market structure policy decision until on or after January 1, 2000.

5. The Commission will not take steps to ensure that the respondent utilities comply with Ordering Paragraph 1 of Decision 98-08-030 and the utilities will not be subject to penalty or other sanctions for failure to comply.

This order is effective today.

Dated October 8, 1998, at Laguna Hills, California.

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

I will file a written concurrence.

/s/ JESSIE J. KNIGHT, JR.  
Commissioner



**Commissioner Jessie J. Knight, Jr., Concurring:**

Those who know my fervor for pushing aggressively to bring the benefits of choice to consumers will easily understand that my support for this decision could easily be categorized as "reluctant."

Some may see this order as purely procedural because it merely refocuses the Commission's schedule given recently adopted legislation. But this roadmap order indeed has a greater significance in that it veers the Commission off the initially adopted pathway for this proceeding. I am troubled by the delay imposed on us legislatively through outside intervention in order to protect incumbent interests. The original schedule put forth by the Commission provided equal due process for all parties concerned. In my personal judgment, SB 1602 is an unfortunate law, for it adds an unnecessary delay of one year into this Commission's efforts to continue and complete the gas industry restructuring that was begun over a decade ago. The year already spent on this proceeding provided an ample record to expand the core aggregation program, draft proposed consumer protection rules, and begin the arduous task of cost examination and unbundling. But now, all of these objectives are in regulatory limbo. The fear of incumbent interests won out and regardless of one's views regarding what would happen or not happen in a future Commission proceeding, the precedent here of exercising political intervention and causing subsequent delay has particularly worrisome implications. While I deplore its effect, I will abide by my constitutional duty to uphold the law, even though I disagree with the law.

The delay caused by this law is a blow to bringing a fully competitive gas marketplace to California. Down the line, this could translate into a blow for the state's economy given the positive multiplier effect that increased competition and choice can engender.

There will be a high opportunity cost to our state from this legislation and its effects on the Commission's decision-making time frame. Part of that opportunity cost results from retention of the status quo, which favors the monopolists, and precludes entrepreneurs from moving into the gas supply business. Plus, any delay in further restructuring prevents imaginative competitors from using the natural synergies of electric and gas restructuring and passing these synergies on to gas consumers in the form of price savings or value-added products and services.

I want to urge my three colleagues whose terms extend beyond mine to keep this proceeding tightly focussed on the new schedule set forth in this order so that come January 2000, the Commission will be ready to enact and implement a further gas restructuring policy for California.

R.98-01-011  
D.98-10-028

Dated this October 8, 1998 at Laguna Hills, California.

---

Jessie J. Knight, Jr.  
Jessie J. Knight, Jr.  
Commissioner

**Commissioner Jessie J. Knight, Jr., Concurring:**

Those who know my fervor for pushing aggressively to bring the benefits of choice to consumers will easily understand that my support for this decision could only be categorized as "reluctant."

Some may see this order as purely procedural because it merely refocuses the Commission's schedule given recently adopted legislation. But this roadmap order indeed has a greater significance in that it veers the Commission off the initially adopted pathway for this proceeding. I am troubled by the delay imposed on us legislatively through outside intervention in order to protect incumbent interests. The original schedule put forth by the Commission provided equal due process for all parties concerned. In my personal judgment, SB 1602 is an unfortunate law, for it adds an unnecessary delay of one year into this Commission's efforts to continue and complete the gas industry restructuring that was begun over a decade ago. The year already spent on this proceeding provided an ample record to expand the core aggregation program, draft proposed consumer protection rules, and begin the arduous task of cost examination and unbundling. But now, all of these objectives are in regulatory limbo. The fear of incumbent interests won out and regardless of one's views regarding what would happen or not happen in a future Commission proceeding, the precedent here of exercising political intervention and causing subsequent delay has particularly worrisome implications. While I deplore its effect, I will abide by my constitutional duty to uphold the law, even though I disagree with the law.

The delay caused by this law is a blow to bringing a fully competitive gas marketplace to California. Down the line, this could translate into a blow for the state's economy given the positive multiplier effect that increased competition and choice can engender.

There will be a high opportunity cost to our state from this legislation and its effects on the Commission's decision-making time frame. Part of that opportunity cost results from retention of the status quo, which favors the monopolists, and precludes entrepreneurs from moving into the gas supply business. Plus, any delay in further restructuring prevents imaginative competitors from using the natural synergies of electric and gas restructuring and passing these synergies on to gas consumers in the form of price savings or value-added products and services.

I want to urge my three colleagues whose terms extend beyond mine to keep this proceeding tightly focussed on the new schedule set forth in this order so that come January 2000, the Commission will be ready to enact and implement a further gas restructuring policy for California.

R.98-01-011  
D.98-10-028

Dated this October 8, 1998 at Laguna Hills, California.

  
Jessie J. Knight, Jr.  
Commissioner