

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



ORIGINAL

December 28, 1998

TO: PARTIES OF RECORD IN APPLICATION 97-12-048

Decision 98-12-071 was signed on December 17, 1998 with a concurrence from Commissioner Knight. However, the concurrence is not available at the time of mailing the enclosed decision. It will be mailed at a later date.

A handwritten signature in black ink, appearing to read "Lynn T. Carew".

Lynn T. Carew, Chief
Administrative Law Judge

LTC:vd1

Enclosure

35305

Decision 98-12-071 December 17, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Gas Company
to Unbundle Core Interstate Pipeline
Transportation.

Application 97-12-048
(Filed December 3, 1997)

(See Appendix A for Appearances.)

O P I N I O N

I. Summary

This decision dismisses this application filed by Southern California Gas Company (SoCalGas) to unbundle interstate transportation services for core customers as part of its core aggregation program. We dismiss the application on the basis that the passage of Senate Bill (SB) 1602 preempts our authority to require SoCalGas to implement the program it proposes or any variation of it.

II. Background

SoCalGas filed this application on December 31, 1997 pursuant to Decision (D.)95-07-048 which addressed rules for core aggregation programs. SoCalGas' current core aggregation program permits smaller customers to take advantage of competitive options in natural gas commodity markets. D.95-07-048 stated the Commission's intent to make available to core customers competitive options in interstate gas transportation markets by "unbundling" SoCalGas' interstate gas transportation services. This application adopts a method for unbundling and an allocation of stranded costs which will occur as customers migrate to the services of SoCalGas' competitors.

The application was protested by numerous parties representing customer groups and competitors in gas markets. The Commission held two prehearing conferences and five days of evidentiary hearings, one of which was attended by the Assigned Commissioner.

Parties who played an active role in this proceeding besides the applicant include Office of Ratepayer Advocates (ORA), The Utility Reform Network (TURN), Southern California Edison Company (Edison), Enron Corporation, Enron Energy Services, Inc., and Enron Capital & Trade Resources, Inc. (jointly, Enron), California Industrial Group and California Manufacturers Association (jointly, CIG/CMA), Southern California Utility Power Pool and Imperial Irrigation District (jointly, SCUPP/IID), the School Project for Utility Rate Reduction and Regional Energy Management Coalition (jointly, SPURR/REMAC), Indicated Producers, and Utilicorp Energy Solutions, Inc. (UES).

Following hearings in this proceeding, the California State Legislature passed SB 1602, a bill which the Governor subsequently signed into law. On September 23, 1998, SCUPP/IDD filed a motion to terminate the proceeding on the basis that SB 1602 precludes further action. On October 7, 1998, UES, Enron and SPURR/REMAC jointly filed a response and motion requesting our determination that SB 1602 does not apply to this proceeding. We address the bill and its effect on this proceeding below.

III. Overview of SoCalGas' Application

SoCalGas' application in this proceeding proposes to unbundle core interstate transportation as follows:

- Unbundle core interstate transportation for core customers and core aggregators acting on behalf of core customers;

- Allocate to all core customers the stranded costs resulting from unbundling core interstate transportation;
- Price all interstate transportation to all core customers on the basis of a market price, recovering associated losses by way of a balancing account and allocating entries to all core customers; and
- Retain all contractual obligations for the core class of 1044 MMcfd.

Parties representing the interests of core customers protested the application generally on the basis that it unfairly allocates all stranded costs to core customers. Competitors protested the application on the basis that its provisions to offer interstate transportation at market rates are anti-competitive.

IV. Settlement Filed by SoCalGas, TURN, ORA, CIG/CMA, QST and Energy Users Forum

On May 29, 1997, SoCalGas, TURN, ORA, CIG/CMA, QST Energy, Inc. and Energy Users Forum¹ filed a Joint Motion for Order Adopting Settlement pursuant to Rule 51. The settlement would resolve all pending issues in this proceeding, as follows:

- Unbundle interstate capacity costs from core rates effective April 1, 1999;
- Develop a method by which to calculate a market price for capacity for core customers;
- Include in core rates a "cost advantage" of 1.5 cents per therm for core transportation customers over core sales customers for a maximum of two years;
- Retain core customer responsibility for 1044 MMcfd of interstate capacity costs;

¹ QST and Energy Users Forum are not otherwise active parties to the proceeding.

- Eliminate core customer responsibility for 10 percent of pipeline demand charges;
- Allocate a portion of stranded core capacity costs to noncore customers;
- Establish the term and treatment of interstate pipeline demand charges through the end of the terms of agreements with El Paso and Transwestern; and
- Accommodate adjustments to the noncore customers' stranded cost responsibility depending on the outcome of TURN's application for rehearing of A.96-03-031.

The settlement parties believe the settlement is fair and consistent with Commission policy. They argue the settlement parties are reflective of affected interests.

Enron, Edison, Utilicorp, SCUPP/IID, Indicated Producers and SPURR/REMAC oppose the settlement, generally on the basis of their common view that its provisions do not further the goals of competition and improperly allocate costs to noncore customers.

Because the settlement was filed before the initiation of hearings, the parties explored the settlement's provisions in hearings and filed comments concurrent with opening briefs.

V. Issues

Several issues raised substantial controversy in this proceeding:

- Whether costs associated with existing stranded capacity should be reallocated between core and noncore customers;
- How to allocate stranded costs resulting from unbundling core interstate transportation between core and noncore customers;
- Whether electric utility generator (UEG) customers should be exempt from assuming any stranded costs; and

- How SoCalGas' transportation services to core customers should be implemented.

The Commission developed a record on each of these issues.

Subsequently, the assigned Administrative Law Judge (ALJ) issued a proposed decision which would have resolved outstanding matters with regard to core transportation unbundling. The ALJ concurrently issued a ruling recognizing the possible impact of SB 1602 on the proceeding and soliciting the parties' views on the matter. The parties briefed the matter in their comments to the proposed decision.

VI. The Effect of SB 1602

SB 1602, codified as Section 328 of the Public Utilities Code provides that:

The commission may investigate issues associated with the further restructuring of natural gas services beyond decisions made prior to July 1, 1998. If the commission determines that further natural gas industry restructuring for core customers, as considered in Rulemaking 98-01-011, including, but not limited to, opening or changing competitive markets, establishing consumer protection standards, or unbundling costs, rates or services, is in the public interest, the commission shall submit its findings and recommendations to the Legislature. Prior to January 1, 2000, the commission shall not enact any such gas industry restructuring decisions. Any decisions for core customers, as considered in Rulemaking 98-01-011 enacted prior to the effective date of this section, but after July 1, 1998, shall not be enforced.

The parties dispute the applicability of Section 328. UES, Enron, TURN and SPURR/REMAC argue that the law does not apply to this proceeding because SoCalGas filed the application pursuant to an order issued in July 1995, that is, prior to July 1, 1998, the date after which Section 328 would prohibit Commission action. TURN also states that although this proceeding was active when the Legislature passed SB 1602, the bill did not identify this proceeding

specifically, suggesting to TURN that the Legislature did not intend to influence the resolution of this proceeding.

CIG/CMA believe that SB 1602 precludes further action in this proceeding. They argue that it prohibits any further core unbundling, an issue which the Commission identified in the "Green Book" associated with R.98-01-011. CIG/CMA propose that the Commission suspend consideration of the matter for now and revisit it in the broader context of gas industry restructuring in R.98-01-011. SCUPP/IDD make similar comments, adding that the record in this proceeding would be stale by the time the Commission could implement core transportation unbundling and the Commission should therefore abandon it. Coalition of California Utility Employees and Southern California Gas Workers Council share these views.

SoCalGas believes SB 1602 can be interpreted to prohibit action in this proceeding or to permit it, although it believes a literal interpretation would preclude Commission action during the period identified by the bill.

We find that SB 1602 precludes us from implementing any program in this proceeding at this time. This proceeding addresses unbundling of costs, rates and services, specifically those related to interstate transportation for core customers. The purpose of such unbundling in part is to open competitive markets to core customers. SB 1602 states that we may not enact any decision which would open competitive gas markets or unbundle gas rates, costs or services. Our action on any of these matters is therefore specifically prohibited by SB 1602 until January 1, 2000.

Some parties argue that the Legislature must have recognized that this proceeding merely implements a program adopted in 1995 and that SB 1602 would have identified this docket if the Legislature had intended to preclude action here since it refers specifically to R.98-01-011. However, SB 1602 does

not provide exceptions to the provision that the Commission may not "enact any such gas decisions" prior to January 1, 2000. The "such" here refers to specified topics, among them, the unbundling issues raised in this application. In this context, any interpretation of SB 1602 offered to justify action in this proceeding would be little more than a legal sleight of hand in contravention of legislative intent.

We therefore close this proceeding without ordering any further action by SoCalGas. Any party may move to reopen the proceeding at a later date. The Commission may, after January 1, 2000, issue a decision on the basis of the record developed herein, supplement the record herein or abandon it, depending on the circumstances prevailing at the time.

Findings of Fact

1. The Legislature passed SB 1602 which prohibits the Commission from enacting any gas decisions prior to January 1, 2000 which would open competitive markets or unbundle the rates, costs or services of gas utilities.
2. Implementing any of the proposals presented in this application would require the Commission to enact a decision which would open a competitive gas market to core customers and would require SoCalGas to unbundle its rates, costs and services for core interstate transportation service.
3. The issues raised herein were addressed in the "Green Book" associated with R.98-01-011.

Conclusions of Law

1. The Commission should close this proceeding without further action in recognition of the requirements of SB 1602.
2. The Commission is within its discretion to reopen this proceeding and issue a decision in this proceeding after January 1, 2000.

O R D E R

IT IS ORDERED that this proceeding is closed without further action.

This order is effective today.

Dated December 17, 1998, at San Francisco, 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

Last updated on 27-JUL-1998 by: LPD
A9712048 LIST

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PUBLIC UTILITIES COMMISSION

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December 30, 1998

TO: PARTIES OF RECORD IN APPLICATION 97-12-048

Decision 98-12-071 was mailed on December 28, 1998, without the concurrence of Commissioner Knight. Attached herewith is the concurrence.

A handwritten signature in cursive script, reading "Lynn T. Carew".

Lynn T. Carew, Chief
Administrative Law Judge

LTC:vdI

Attachment

35451

A.97-12-048

D.98-12-071

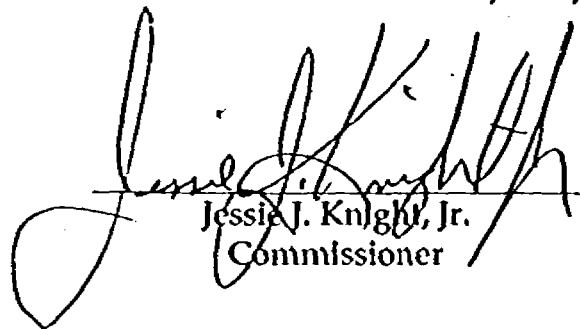
Commissioner Jessie J. Knight, Jr., Concurring:

For too long, outdated and antiquated regulatory policies dating back to the mid-1980's have prevented so-called core customers from reaping the benefits of competition in the natural gas industry. These core customers have been held captive by regulatory policies that seek to shield them from the mythical vagaries of the marketplace. However, the true impact of these policies is to simply deprive them of the myriad benefits of competition that California's larger natural gas consumers have enjoyed for years. It is indisputable that the Commission knows what the right policy is for unbundling the interstate core capacity. The sooner the Commission can move forward in this area, the greater the benefits all of California will reap. Competition in all aspects of California's natural gas business will enhance state competitiveness in the global economy and create jobs. California must move forward soon to begin this process.

However, this Commission's ability to truly reform the industries it regulates requires a broad consensus of reform existing among leading policymakers. In the electric and telecommunications industry we were able to successfully achieve such a broad consensus. However, this year the Legislature passed SB 1602 which prohibits the Commission from enacting, prior to January 1, 2000, certain gas decisions which would open competitive markets and unbundle the rates, costs or services of gas utilities. While I believe that a credible argument exists that SB 1602 does not apply, which would allow the Commission to go forward in this particular case within the letter of the law, I believe that going forward would not be clearly consistent with the spirit of the law.

The Legislature has clearly indicated that the Commission should not move forward with our aggressive efforts to bring competition to the natural gas market at this time. It is unfortunate that the Commission was not able to build a broader consensus among the parties and policymakers regarding the benefits of opening up this industry to robust competition. However, that time will come regardless of this regulatory hiccup. The Commission may have to think of a different plan for opening these markets to competition. It may have to evolve its thinking in certain key aspects in order to develop a proposal that can garner the kind of broad support that is necessary. While all indications are that California will not be a leader in the gas revolution, the broader consensus needed here in California will form as reforms sweep across other states. When it does, California will reap the benefits that greater competition in this market has to offer. At that time bold leadership will be needed by this Commission to move the agenda forward.

Dated December 17, 1998, at San Francisco, California.



Jessie J. Knight, Jr.
Commissioner

A.97-12-048

D.98-12-071

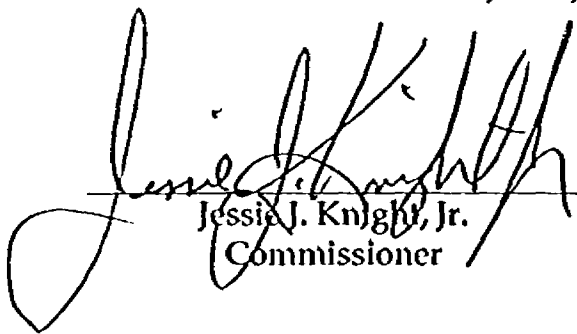
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Dated December 17, 1998, at San Francisco, California.



Jessie J. Knight, Jr.
Commissioner