

Decision 00-03-004 March 2, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Enron Corporation,

Complainant,

vs.

Southern California Gas Company, Pacific Gas
and Electric Company, and San Diego Gas &
Electric Company,

Defendants.

Case 98-03-005
(Filed March 3, 1998)

O P I N I O N

This opinion denies the Petition of Southern California Gas Company (SoCalGas) for Modification of our Decision dismissing the Complaint of Enron Corporation (Enron).¹ Enron's Complaint alleged that SoCalGas was improperly operating an Internet website known as Energy Marketplace. Because SoCalGas' Petition is moot, as we explain below, we affirm our decision dismissing the complaint.

Background

The Energy Marketplace website initially "enable[d] customers to identify core aggregation service providers in their areas and to interact with some of

¹ *Enron Corporation vs. Southern California Gas Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company*, Case 98-03-005 (Filed March 3, 1998) (Complaint), & Decision (D.) 99-02-059 (Mailed February 18, 1999) (Decision).

those suppliers on-line. Customers [could] use the program offered at the site to identify their gas needs and request bids.”² Enron complained that SoCalGas³ was improperly operating the website without Commission approval. Enron argued that “defendants were obligated to make a filing with the Commission to establish the service being offered, justify the new rate being charged and demonstrate that the rate is just and reasonable.”⁴

Our Decision held that Energy Marketplace — as then constituted — was not a “new product or service” requiring filing of an application or advice letter.⁵ We reasoned that the website was simply a means of making the public aware of services SoCalGas was already authorized to offer — core aggregation programs.⁶

However, we found that if SoCalGas were to expand the website’s offerings beyond the core aggregation market, SoCalGas would have to file an advice letter pursuant to our affiliate transaction rules.⁷ It is this provision of the Decision that SoCalGas challenged in its Petition. SoCalGas asserted that it “already possesse[d] ample authority to operate the electricity component of the

² D.99-02-059, *mimeo.*, at 3.

³ Pacific Gas and Electric Company (PG&E) and San Diego Gas & Electric Company (SDG&E) were joint sponsors of the website, but did not participate actively in the Complaint proceeding. We do not discuss these entities separately here, but affirm our dismissal of the complaint in its entirety.

⁴ D.99-02-059, *mimeo.*, at 4.

⁵ *Id.* at 7.

⁶ *Id.* at 6.

⁷ *Id.* at 1.

Energy Marketplace website. . ."⁸ and sought elimination of the advice letter filing requirement from D.99-02-059.

Nonetheless, SoCalGas filed Advice Letter 2793 (and subsequent supplements 2793-A and 2793-B) in compliance with our Decision requiring an advice letter for any use of Energy Marketplace beyond that applicable to core aggregation. We rejected SoCalGas' advice letter filings because they were not in compliance with D.99-02-059. That decision required advice letter filings *prior to* expansion of the website to cover new energy offerings. Because SoCalGas acknowledged in its advice letter filings that it was *already* using the website to offer electricity to customers, the condition of prior authorization was not met.⁹

SoCalGas did not further pursue its advice letters, or its Petition. Instead, on October 27, 1999, it filed an application seeking approval pursuant to Pub. Util. Code § 851 of its sale of the Energy Marketplace website to a third party.¹⁰ That proceeding is currently pending before the Commission.

In view of SoCalGas' decision to sell the website, its Petition is now moot and is hereby dismissed. We affirm our order dismissing the Complaint.

⁸ Petition at 2.

⁹ Letter dated November 23, 1999 from Paul Clanon, Director, Energy Division, California Public Utilities Commission, to Sid Newsom, SoCalGas (Attachment A hereto) (Advice Letter rejection).

¹⁰ *Application of Southern California Gas Company for Authority Pursuant to Public Utilities Code Section 851 to Sell Certain Intellectual Property Known as Energy Marketplace*, Application 99-10-036 (Filed October 27, 1999). Protests were due on January 14, 2000.

Comments on Draft Decision

The draft decision of ALJ Sarah R. Thomas in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g) and Rule 77.1 of the Rules of Practice and Procedure. No party filed comments on the draft decision.

Findings of Fact

1. On October 27, 1999 SoCalGas filed an Application (A.99-10-036) seeking Commission approval to sell the Energy Marketplace website. That Application is still pending before us.

2. SoCalGas does not dispute that we properly dismissed the Complaint in D.99-02-059. Its sole challenge to our Decision relates to our requirement that SoCalGas file an advice letter before broadening the Energy Marketplace website beyond core aggregation services. SoCalGas filed its Petition on March 5, 1999.

3. SoCalGas filed advice letters in compliance with D.99-02-059, but did so after it had already expanded the website to include energy services other than core aggregation. Because D.99-02-059 required prior rather than subsequent approval of such changes to the website, the Energy Division rejected the advice letters on November 23, 1999.

4. SoCalGas has not pursued its Petition since its filing on March 5, 1999.

5. SoCalGas did not refile its advice letters after the Energy Division rejected them on November 23, 1999.

6. The sole matter related to the Energy Marketplace website that SoCalGas has pursued is its pending Application (A.99-10-036) for approval to sell the website.

Conclusions of Law

1. SoCalGas' actions render moot its Petition for Modification of D.99-02-059. These actions consist of SoCalGas (1) failing to pursue its Petition since its filing on March 5, 1999, (2) failing to refile its advice letters after the Energy Division

rejected them on November 23, 1999, and (3) filing its Application for approval to sell the Energy Marketplace website.

2. SoCalGas' Petition is therefore denied, and our dismissal of Enron's Complaint is affirmed.

O R D E R

IT IS ORDERED that:

1. The Petition of Southern California Gas Company (U 904 G) For Modification of Decision (D.) 99-02-059 is denied.

2. Our order dismissing *Enron Corporation vs. Southern California Gas Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company*, Case 98-03-005, D.99-02-059 (Mailed February 18, 1999) is affirmed.

3. This proceeding is closed.

This order is effective today.

Dated March 2, 2000, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
CARL W. WOOD
LORETTA M. LYNCH
Commissioners

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
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November 23, 1999

Advice Letter 2793

Mr. Sid Newsom
Southern California Gas Company
P.O. Box 3249
M. L. 25A1
Los Angeles, CA 90051-1249

Subject: Advice Letter 2793 and supplements 2793-A and 2793-B (Energy Marketplace)

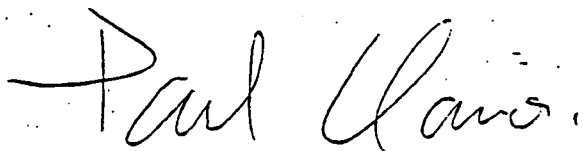
Dear Mr. Newsom:

This is to inform you that your Advice Letter 2793 and subsequent supplements A and B are rejected. The advice letter is not in compliance with Decision 99-02-059, dated February 18, 1999, in Case 98-03-005. That Decision required that if Southern California Gas Company (SoCalGas) expands its use of the energy marketplace beyond the function of supporting the gas core aggregation, it must first file an advice letter under Rule VII.E. of the affiliate transaction rules.

Your initial filing of Advice Letter 2793 indicated that "Prior to a final decision in the complaint case and in response to customer requests, SoCalGas added to Energy Marketplace an electricity platform, as a natural extension of the website, to facilitate interactions between consumers and marketers." Neither the original advice letter nor the subsequent supplements indicate that the electricity platform has been discontinued so that the conditions precedent to approval of an advice letter pursuant to D.98-03-005 can be met. Rule VII.E also requires an advice letter filing prior to offering a new category of nontariffed products or services.

An advice letter that contains errors, such as the procedural problem outlined above, may be rejected under the provisions of General Order 96A, Section VII. The Commission Energy Division has rejected your Advice Letter No. 2793 and Supplements A & B on the basis stated. Copies of the Advice Letter marked rejected are being returned for your use.

Sincerely



Paul Clanon, Director
Energy Division

Cc w/o att.:

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(END OF ATTACHMENT A)