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Decision 99-02-045 February 4, 1999

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.	Rulemaking 98-01-011 (Filed January 21, 1998)

ORDER MODIFYING AND DENYING REHEARING OF DECISION 98-08-030

On August 6, 1998, the Commission issued Decision (D.) 98-08-030, the first interim opinion in the natural gas restructuring rulemaking (R.98-01-011), which discussed the Commission's plans to complete its assessment of the market and regulatory framework for California's natural gas industry and to adopt a long-term strategy for that industry. Applications for rehearing of D.98-08-030 were filed by Pacific Gas and Electric Company (PG&E), Southern California Gas Company and San Diego Gas & Electric Company (jointly; hereinafter SoCal/SDG&E), and the Coalition of California Utility Employees and the Southern California Gas Workers Council (jointly; hereinafter Coalition/Council).

PG&E and the Coalition/Council allege that the enactment of SB 1602, the bill which among other things prohibits the Commission from enforcing any of its natural gas restructuring decisions for core customers issued between July 1, 1998 and August 24, 1998, renders unenforceable the requirement (in Ordering Paragraph 1) that the natural gas utilities submit cost and rate unbundling applications. PG&E also argues that the Commission cannot force a utility to involuntarily file an application to change its practices without first going

through the hearing process, developing a record, and making appropriate findings of fact. In addition, Coalition/Council argue that the provision in Ordering Paragraph 3 which requires the filing of advice letters to remove core aggregation limits is also unenforceable. These parties request that these two provisions be deleted from the decision. Finally, SoCalGas/SDG&E ask the Commission to issue a decision explaining the impact on D.98-08-030 of both SB 1602 and SB 1757 (which makes certain modifications to SB 1602), and if SB 1757 has become law, annulling Ops 3 and 4. (SB 1757 was vetoed, so portions of the SoCalGas/SDG&E application are moot for that reason.)

Responses to the applications for rehearing were filed by the Southern California Generation Coalition (SCGC); Enron Corp., Enron Capital & Trade Resources, and Enron Energy Services (jointly); Calpine Corporation (Calpine); and The Utility Reform Network (TURN). Enron et al. and Calpine oppose the applications outright. SCGC states that while in its opinion, it is doubtful that SB 1602 prohibits the Commission from asking for the kind of applications it seeks regarding cost and rate unbundling, this might well be prohibited by Public Utilities Code section 1708, because the Commission "clearly . . . has decided to alter or amend previous orders that permit the utilities to have, in some instances, bundled rates regardless of whether or not services are offered on a competitive basis." (SCGC App/Rhg, p. 3.) SCGC suggests the Commission consider opening an investigation into the appropriateness of the unbundling scheme, in the course of which it can provide parties with notice and an opportunity to be heard regarding the unbundling issues. After completion of this investigation, the Commission could order the filing of implementation applications. TURN argues that none of PG&E's arguments regarding Ordering Paragraph 1 have merit, and that basically the problem, if any, is a semantic one. TURN argues the directive to submit unbundling applications must be read in context, which shows that the parties have had plenty of notice about unbundling

in the course of this rulemaking, and that the Commission is merely seeking to gather information in order to make an informed decision about unbundling further down the road. TURN states, however, that if the Commission does have doubts about a conflict with SB 1602, it could either reword the Ordering Paragraph or open an investigation along the lines proposed by SCGC. TURN finally argues that while SB 1602 precludes establishing consumer protection rules, it does not otherwise prohibit changing the core allocation transportation programs or prevent the Commission from investigating consumer protection standards; however, TURN recommends that Ordering Paragraph 3 be modified to delete the clause "No later than 30 days after the Commission issues consumer protection rules".

Meanwhile, on October 14, 1998, in response to SB 1602, the Commission issued D.98-10-028, its second interim opinion in the above docket. This decision set a new procedural schedule for the rulemaking and addressed enforcement of the ordering paragraphs in D.98-08-030. No party has filed an application for rehearing of D.98-10-028.

We have reviewed all of the allegations of error in the applications for rehearing, and are of the opinion that D.98-10-028 effectively renders these applications moot. In D.98-10-028, we declare that we will take no enforcement action against any utility which does not comply with Ordering Paragraph 1. We also declare that nothing in SB 1602 prevents us from calling upon our staff to develop draft consumer protection standards, even though such standards could not actually be adopted until after January 1, 2000. We also state that there is no problem with the requirement in Ordering Paragraph 3 of D.98-08-030 that all utilities with a core allocation transportation program file advice letters to remove the existing restrictions on those programs within 30 days after the Commission adopts new consumer protection standards, because that requirement necessarily does not occur until after January 1, 2000.

With regard to this last point, we remain convinced that our conclusion is logical and lawful. However, we recognize that an argument could be made that SB 1602 means that no directive in D.98-08-030 concerning natural gas restructuring for core customers is enforceable, regardless of when the directive actually becomes effective. Therefore, in an abundance of caution and to provide further assurance that we intend to comply fully with SB 1602, we will delete the requirement that these advice letters be filed within 30 days after we adopt new consumer protection standards. However, at this time we have no reason to believe that we are going to change our minds about this directive, and we put the parties on notice that we fully expect to include a similar 30-day requirement in our eventual order adopting new standards.

IT IS ORDERED that:

1. Decision 98-08-030 is modified as follows:

a. The first paragraph on page 15 is modified to read:

"For all of these reasons, we put the respondent utilities with core aggregation programs on notice that we intend to require them to file advice letters, pursuant to a schedule we will set in conjunction with our issuing a natural gas consumer protection program, reflecting any tariff changes necessary to remove the minimum volume and maximum participation restrictions currently applicable to the core aggregation programs. This schedule may require these filings to be made no later than 30 days following our adoption of the above program."

b. Ordering Paragraph 3 is modified as follows:

"In a schedule to be set at the same time the Commission issues consumer protection rules, we intend to direct respondent utilities with core aggregation programs to file advice letters reflecting any tariff changes necessary to remove the minimum volume and maximum participation restrictions currently applicable to the core aggregation programs. This schedule

may require such filings within 30 days following the issuance of these rules."

2. Rehearing of Decision 98-08-030 as modified above is denied.

This order is effective today.

Dated February 4, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners