

Decision 99-09-034

September 2, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to Consider the
Line Extension Rules of Electric and Gas
Utilities.

Rulemaking 92-03-050
(Filed March 31, 1992)

**ORDER GRANTING MOTION TO STAY IMPLEMENTATION OF
OPERATING PARAGRAPH 5 OF D.99-06-079**

Decision (D.) 99-06-079 adopted changes to the rules governing the extension of gas and electric service to new customers. The changes were intended to "promote competition in line extension construction services provided by the utilities and independent contractors." (D.99-06-079, p. 1.) Among other adopted changes, the utilities are now to provide the first inspection of each trench section at no charge to the applicant. *Id*; Ordering Paragraph (OP) 5. This change results in the costs for first inspections being borne by the ratepayers. Previously, the inspection costs were borne by the applicants for line extensions. *See* D.85-08-043. D.99-06-079 was effective on its June 24, 1999 issuance date, and the utilities were directed to file the necessary tariff rule changes.

Pacific Gas and Electric Company, Southern California Gas Company, San Diego Gas & Electric Company, Southwest Gas Corporation, and Southern California Edison Company (collectively "joint utility respondents (JURs)") made a letter request to the Executive Director to extend the time for compliance with OP 5 on July 26, 1999. *See* Rule 48(b) of the Commission's Rules of Practice and Procedure.¹ A Motion for Stay and an Application for Rehearing were also filed by the JURs on July 26, 1999. On

¹ Unless otherwise indicated, all rule references are to the Commission's Rules of Practice and Procedure.

July 29, 1999, the Executive Director granted an extension to delay the implementation of OP 5 until the Commission acted on the Motion for Stay. Responses in opposition to the Motion to Stay were filed by the California Building Industry Association (CBIA), Pacific Utility Installation, Inc. (Pacific) and Utility Design, Inc. (Utility).²

The JURs request a stay of OP 5 of D.99-06-079 pursuant to Rule 45. The JURs contend that all the elements for a stay are satisfied: (1) significant harm results absent a stay; (2) there is no prejudice to others from a stay; (3) the balance of hardship favors stay; and (4) a strong likelihood of prevailing on rehearing exists. *See, e.g.*, D.97-10-033, D.96-08-031, D.95-05-020.

The JURs assert there is strong probability of prevailing on rehearing. The JURs note the rule change adopted deviates from fifteen years of utility practices. The JURs also note the absence of a clear definition of "first inspection for each section of trench" in D.99-06-079. Should rehearing be granted, the JURs argue that there will be irreparable harm to the ratepayers as well as to the utilities absent a stay. The JURs claim that significant changes to procedures required to implement OP 5 will have to be undone if rehearing is granted. The JURs add that the ratepayers will be unable to recover the costs from the applicants who received the free inspections absent a stay. Lastly, JURs argue that continuing to charge for the inspections will not cause undue prejudice to the expectations of applicants.

Pacific, Utility, and CBIA oppose the granting of a stay. Pacific contends that a stay will thwart the Commission's efforts to ensure fair competition in the building industry. If a stay is granted, Pacific argues that builders will continue to be penalized for selecting a contractor over a utility to install gas and electric facilities. Pacific estimates that non-refundable inspection fees add as much as \$200 to the cost of a home. Similarly, CBIA and Utility cite the harm to competition from the grant of a stay. CBIA also contends that it is "nonsense" for a party to automatically obtain a stay just because the

² The Commission grants the Motion of Utility Design, Inc. to accept its one day late filing.

Commission changes its policies and practices. As to the clarity of OP 5, CBIA notes that D.99-06-079 directed the JURs to file the necessary tariff changes. Utility adds that the ambiguities can be corrected in the decision on the JURs' Petition to Modify.

The Commission requires "good cause" for a stay. Re Pacific Gas & Electric Co. (1994) 55 CPUC2d 300, 302. Among other factors, the Commission looks to the probability of prevailing on rehearing and/or the threat of irreparable harm in its assessment of good cause. Re Southern California Gas Co. (1990) 39 CPUC2d 14, D.90-12-101.

There is good cause for a stay. A showing of irreparable injury has been made by the JURs. If the Motion for a Stay is denied, the costs for first inspections between now and the Rehearing Decision issuance will be borne by the ratepayers. If the JURs then ultimately prevail on rehearing, the costs of those first inspections should have been borne by the applicants and not the ratepayers. Yet the ratepayers will have no way of recouping from applicants those first inspection costs absent a stay. *See, e.g., In Re Southern Pacific Company* (1995) 58 CPUC2d 654 (Stay granted where utility unable to recover moneys paid to General Fund if it prevailed on rehearing).

More importantly, this stay will preserve the Commission's options for the disposition of the pending Rehearing Application. The utilities are hereby directed to set up deferred accounts to track monies collected from the applicants pending a resolution of the Rehearing Application. The utilities are also directed to set up memorandum accounts to track monies to be recouped from the ratepayers, subject to adjustment. In addition, the utilities are directed to file advice letters consistent with this Decision within ten days of the effective date.

No further discussion is required of the JURs' grounds for the stay. Accordingly, upon review of each and every argument raised by the JURs, we conclude that the Motion to Stay should be granted.

IT IS THEREFORE ORDERED that:

1. The JURs' Motion to Stay the implementation of OP 5 of D.99-06-079 is granted pending resolution of the Application for Rehearing.
2. The utilities are to set up deferred accounts to track monies collected from the applicants pending a resolution of the Rehearing Application.
3. The utilities are also to set up memorandum accounts to track monies to be recouped from the ratepayers, subject to adjustment.
4. The utilities are to file advice letters consistent with this Decision within ten days of the effective date.

This order is effective today.

Dated September 2, 1999, at San Francisco, California.

HENRY M. DUQUE
JOEL Z. HYATT
CARL W. WOOD
Commissioners

I dissent.

/s/ RICHARD A. BILAS
President

I dissent.

/s/ JOSIAH L. NEEPER
Commissioner