

Decision 99-09-038 September 2, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ARCO Products Company, Mobil Oil Corporation and Texaco Refining and Marketing, Inc.

C.97-04-025
(Filed April 7, 1997)

Complainants,

vs.

SFPP, L.P.,

Defendant

**ORDER DISMISSING APPLICATION FOR
REHEARING OF D.99-06-093**

I. SUMMARY

In this order, we will dismiss an application for rehearing filed by SFPP, L.P. (SFPP). The application alleges we erred when we issued Decision (D.) 99-06-093, ARCO Products Company, et al. v. SFPP, L.P. [D.99-06-093] (1999) __ Cal.P.U.C.2d __. That decision granted rehearing of a previous decision in this proceeding. We conclude that the application for rehearing neither shows error nor is the proper vehicle for raising SFPP's claims.

II. BACKGROUND

In 1998, we dismissed a complaint brought by a number of petroleum products shippers¹ against SFPP, L.P., a products pipeline. The decision

¹ ARCO Products Company, Mobil Oil Corporation, and Texaco Refining and Marketing Inc. instituted this proceeding and are referred to as "Complainants."

dismissing the complaint, ARCO Products Company, et al. v. SFPP, L.P. [D.98-08-033] (1998) __ Cal.P.U.C.2d __ is referred to as the “Original Decision.” Complainants filed an application for rehearing of the Original Decision, which we granted in the decision that is the subject of this application for rehearing. That decision, ARCO Products Company, et al. v. SFPP, L.P. [D.99-06-093] (1999) __ Cal.P.U.C.2d __, is referred to as the “Rehearing Decision.”

The Rehearing Decision discussed these issues: dedication of the Sepulveda Line, appropriate rates for the Watson Enhancement Facilities, tax, environmental costs, military revenue, burden of proof, the effect of subsidiary findings on the ultimate conclusion, and ancillary issues. In several cases, the Rehearing Decision found that the Original Decision’s rationale was likely not sufficient to support its conclusions. The Rehearing Decision did not conclude that the Original Decision’s conclusions were necessarily wrong, only that the analysis contained in the Original Decision was insufficient. Thus, the Rehearing Decision ordered a rehearing. Because the resolution of subsidiary issues led to the Original Decision’s ultimate conclusion, the Rehearing Decision also ordered reconsideration of that conclusion once these subsidiary matters were decided on rehearing. Finally, the Rehearing Decision directed the assigned administrative law judge to determine the best approach to conducting further proceedings.

SFPP has now applied for rehearing of the Rehearing Decision. SFPP asserts that the Commission may not legally grant rehearing of the Original Decision. The new application supports this contention with a discussion of two of the issues covered in the Rehearing Decision: dedication and environmental costs. SFPP’s application is opposed by Complainants.

III. DISCUSSION

Public Utilities Code section 1731, subdivision (b), indicates that the Commission may grant rehearing when it determines – in its discretion – there is good reason to do so. The precise language of the statute states: “The

Commission may grant and hold a rehearing on those matters, if in its judgement sufficient reason is made to appear.”

The new application for rehearing, however, asserts that the Commission is legally impaired from commencing the rehearing process in this proceeding. This contention lacks merit because it fails to take section 1731 into account. The statute requires only that rehearing be applied for and that we, “in [our] judgement,” determine that “sufficient reason” supports a grant of rehearing. Those requirements have been met. Complainants applied for rehearing. We considered Complainants’ application and determined a rehearing was warranted. We set out valid reasons for doing so in the Rehearing Decision. No further legal requirement must be met in order for our grant of rehearing to be proper.

A correct understanding of the role of a rehearing shows why the claims made by SFPP are not properly brought in an application for rehearing of the Rehearing Decision and should, instead, be brought up in the rehearing itself. The application for rehearing is part of a party’s obligation to exhaust its administrative remedies. (Pub. Util. Code, § 1732, Pub. Util. Code, § 1731, subd. (b).) Its purpose is to bring errors to our attention and allow us to correct them before an appeal is taken, reflecting a “legislative determination that all issues must be presented to the commission.” (Southern Pacific Transportation Co. v. Public Utilities Com. (1976) 18 Cal. 3d 308, 312, fn. 2.) Once the Commission disposes of an application for rehearing, a party that believes the Commission to be in error has the right to seek judicial review.

Thus, as a general matter, we consider applications for rehearing of orders responding to applications for rehearing when the new application is our last opportunity to consider (and potentially correct) a newly decided issue prior to an appeal. This situation could occur if an order responding to an application for rehearing created a new resolution of a contested issue. A party would only be able to present its concerns to us before appealing by filing a new application for rehearing of the order disposing of the previous application for rehearing.

In this case, however, we granted rehearing to provide for further consideration of the matters discussed in SFPP's new application for rehearing, among other things. Because we granted rehearing, those issues will be re-examined before a final Commission decision issues in this proceeding. As the reply points out, the grant of rehearing does not find against SFPP on any issues nor does it subject SFPP to a regulatory order. Thus, the time for presenting the arguments contained in SFPP's application is in the rehearing process, which is the forum we established to consider those claims. The time for challenging any conclusion SFPP disagrees with is when it is made by the Commission—which will be after the rehearing has occurred.

The application's contention that we may not legally grant rehearing to consider these issues is tantamount to a claim that we lack jurisdiction over SFPP and are legally required to cease consideration of the reasonableness of SFPP's rates. Given our role as the agency responsible for SFPP's regulation, this contention is counterintuitive, at best. (Cf., Vos v. Pacific Gas and Electric Corporation [D.97-12-054] (1997) __ Cal.P.U.C.2d __, at p. 5 (mimeo.).).

In this respect, the new application mistakenly argues that we were legally required to deny rehearing by applying the standard an appellate court would have used to determine the legality of the Original Decision. This contention is not correct: section 1731, subdivision (b) states a discretionary standard for granting rehearing. Unlike a reviewing court, we are not required to limit our consideration to certain factors specifically set out in Sections 1757 and 1757.1.

Moreover, the determination that rehearing was warranted was correct. Although SFPP contends the Rehearing Decision should be rescinded, it only alleges error with respect to three of the eight topics the Rehearing Decision discussed. Specifically, the new application fails to account for the Rehearing Decision's determination that we must re-examine tax issues, one of the main

issues on which rehearing was granted. The application also ignores the Rehearing Decision's determination regarding rates for the Watson Facilities.

With respect to the dedication of the Sepulveda Line, the Rehearing Decision determined that the record contained "facts suggesting dedication may have occurred." In light of that evidence, we held that the Original Decision's "unelaborated conclusion that evidence... is 'missing' likely constitutes error." (ARCO Products Company, et al v. SFPP, L.P., supra, at pp. 4-5 (mimeo).) The new application claims that evidence existed on both sides of the issue and the Commission should evaluate that evidence and conclude that dedication has not occurred. This claim is premature. It also does not indicate any error in the Rehearing Decision's conclusion that evidence in favor of dedication was not, in fact, "missing."

Similarly, the new application's claims regarding environmental costs do not support SFPP's contention that the original Decision's analysis is the only legally valid approach. After considering the application for rehearing of the Original Decision, we found that a number of different conclusions likely could be drawn from the evidence presented on environmental costs. Thus, we determined that the Original Decision should not have limited itself to choosing between only two of those conclusions. The application asserts that the nature of our role in complaint cases is such that we are "not free" to determine ("pick and choose," according to SFPP) what the evidence shows in a complaint challenging the reasonableness of rates. SFPP claims the burden of proof must be applied in a way that precludes our reaching conclusions not suggested by the parties. According to SFPP, unless we so limit ourselves, defendants will be required to make unnecessary showings. We disagree with this contention. The issue is what conclusion we may draw from the evidence in the record, not the type of showing SFPP is required to make. In this respect, the application also makes too much of the distinction between a rate case and a complaint challenging the reasonableness of rates. It was proper to grant rehearing and further consider this issue so that our

conclusion would be derived from the record rather than from a choice that the evidence in the record suggested was somewhat arbitrary. SFPP can always explain on rehearing why such a choice is in fact reasonable, if that is what the evidence or appropriate procedural rules actually suggest.

IV. CONCLUSION

We conclude that the application for rehearing of D.99-06-093 neither shows error nor is the proper vehicle for raising the claims SFPP makes. As a result we will dismiss this application for rehearing.

Therefore, good cause appearing, the application for rehearing of D.99-06-093 is dismissed.

This order is effective today.

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

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
JOEL Z. HYATT
CARL W. WOOD
Commissioners