

Decision 99-11-024 November 4, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Western Gas Resources-California, Inc.,

Complainant,

vs.

Pacific Gas and Electric Company (U-39-G),

Defendant.

Case 99-04-004
(Filed April 6, 1999)

OPINION DISMISSING THE COMPLAINT AS MOOT

Summary

This decision dismisses the Complaint. The Complaint is bottomed on the theory that Defendant acted in an anti-competitive manner. Since we have determined in a companion case, Application (A.) 99-04-010, that Complainant may not compete at present, this case is moot.

Background

On April 6, 1999, Western Gas Resources-California, Inc. (WGRC), a California corporation, filed the instant complaint against Pacific Gas and Electric Company (PG&E) alleging ten causes of action arising from WGRC's efforts to enter into competition with PG&E in the local transmission and distribution of natural gas in a five-county area. On April 13, 1999, Instructions to Answer were issued. On the same date, WGRC filed an Application for a Certificate of Necessity and Public Convenience (CPCN) to enable it to construct the necessary connections to PG&E's backbone transmission system. WGRC wished to use a previously proprietary pipeline system in the local transmission and distribution

of natural gas at market-based rates and without the obligation of universal service. With the authorization of the CPCN, WGRC could compete with PG&E as it desired. PG&E answered the complaint on May 13, 1999. PG&E also filed Motions to Dismiss the Complaint and the Application on June 4, 1999. After extensive briefing, an oral argument on the motions was held on July 12, 1999.¹

In its Complaint, WGRC alleges ten causes of action, all of which rest upon: 1) PG&E's alleged failure to agree to interconnect with the pipeline system WGRC has an option to purchase; 2) PG&E's alleged refusal to offer discounts to WGRC's customers; or 3) PG&E's alleged failure to interpret its tariff to relieve those customers of the obligation to pay local transmission charges. WGRC characterizes these alleged failures and refusals as anti-competitive.

WGRC requests an order: 1) directing PG&E to interconnect; 2) directing PG&E to install and furnish whatever facilities are necessary to accomplish interconnection; 3) confirming the method of expense recoupment; 4) requiring PG&E to complete necessary engineering studies, or provide WGRC all the information necessary to independently complete these studies; 5) enjoining PG&E from in any way hindering the process necessary to complete and operate the interconnection; 6) declaring PG&E has a conflict of interest in marketing backbone transmission services to customers with competitive alternatives to PG&E's local transmission and distribution system; 7) requiring PG&E to implement a discount for WGRC's local transmission customers commensurate with the discount offered to shippers using PG&E's local transmission; 8) declaring that PG&E's tariff should be interpreted to define deliveries into

¹ The Commission's Office of Ratepayer Advocates, Calpine Pittsburg, Inc., Calpine Pipeline Corporation, Southern California Gas Company and the Coalition of California Utility Employees also appeared at the argument.

WGRC's system as "off-system;" 9) declaring that PG&E's refusal to so interpret the tariff is an unlawful tying arrangement in violation of Commission competition policy; 10) establishing an appropriate rate for backbone transmission service into WGRC's territory; 11) requiring PG&E to conform its tariff to the established rate or to grant WGRC a deviation from the filed tariff; and 12) if the changes in the tariff are not granted, instituting an investigation to determine whether PG&E's rates are unjust and unreasonable in this regard and in violation of Pub. Util. Code §§ 451 and 453, or alternatively, ruling that this issue should be incorporated into the Natural Gas Strategy proceeding.

Discussion

We dismiss this Complaint as moot because today we are simultaneously dismissing the Application for the CPCN (A.99-04-010) on the ground that our policy does not yet provide for competition in local transmission and distribution at market-based rates and without a universal service obligation. WGRC therefore lacks authorization to operate as a public utility gas corporation and is unlikely to seek such authorization under current policy. Since WGRC lacks even the imminent potential of such authorization, the premise for the complaint is no longer viable at present. WGRC cannot compete and has no present basis upon which to demand interconnection, or engineering studies. It has no customers or immediate potential for customers and therefore has no basis upon which to demand a discount or special tariff interpretation for those customers.

As to WGRC's request for the alternative relief of an inquiry into the reasonableness of PG&E's rates, it does not conform to the requirements of Pub. Util. Code §1702 and Commission Rule 9(a). It must therefore be dismissed.

No hearing is necessary because this case is being dismissed as moot.

Conclusion

WGRC's Application for a CPCN is being dismissed for failure to conform to Commission policy. Therefore, at this time, WGRC cannot compete with PG&E and, given its proposed business, is unlikely to file another Application to conform to current Commission policy. The causes of action in the complaint claim anti-competitive behavior. Since WGRC is in no position to compete, the complaint is moot.

Comments on Draft Decision

The draft decision of the Administrative Law Judge 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. Comments were filed on September 22, 1999, and reply comments were filed on September 27, 1999. No changes were made to the substance of this decision, since we do not agree that this matter is capable of repetition yet evades review. If WGRC files a new application that indicates a potential of imminent competition, and PG&E acts in a manner that WGRC believes is anti-competitive, a new complaint can also be filed.

Findings of Fact

1. Western Gas Resources-California, Inc. seeks to compete with PG&E in local transmission and distribution of natural gas, charging market-based rates and without an obligation of universal service.
2. Western Gas Resources-California, Inc. rests its complaint on the allegedly anti-competitive activity of PG&E.
3. Western Gas Resources-California, Inc.'s Application for a CPCN (A.99-04-010) is being dismissed.
4. Since Western Gas Resources-California, Inc. cannot compete with PG&E at this time, and cannot file an Application for its desired business that conforms with Commission policy, this case is moot.

5. Western Gas Resources—California, Inc. is not a mayor or the president or chairman of the board of trustees or a majority of the council, commission, or other legislative body of the city or city and county within which the alleged violation occurred, nor is it 25 actual or prospective consumers or purchasers of gas service.

6. No hearing is necessary in this case.

Conclusions of Law

1. This complaint should be dismissed as moot.
2. The alternative relief requested by Complainant cannot be granted because Complainant does not have the requisite statutory status to challenge PG&E's rates.
3. This proceeding should be closed, effective immediately.

O R D E R

IT IS ORDERED that:

1. Complaint 99-04-004 is dismissed as moot.
2. This proceeding is closed.

This order is effective today.

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

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

I dissent.

/s/ JOEL Z. HYATT
Commissioner