

Decision 99-12-002 December 2, 1999

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Southern California Gas Company  
to Unbundle Core Interstate Pipeline  
Transportation.

Application 97-12-048  
(Filed December 31, 1997)

**SUMMARY DENIAL OF PETITION TO MODIFY DECISION 98-12-071**

**Summary**

This decision summarily denies the Petition to Modify Decision (D.) 98-12-071, filed by Utilicorp Energy Solutions, Inc. (UES) and California Utility Buyers (CUB). Rather than reopening or modifying D.98-12-071, the Commission will address the unbundling of Southern California Gas Company's (SoCalGas) core interstate pipeline transportation function in Investigation (I.) 99-07-003.

**Background**

SoCalGas filed this application on December 31, 1997, pursuant to D.95-07-048. D.95-07-048 stated the Commission's intent to make available to core customers competitive options in interstate gas transportation markets by "unbundling" SoCalGas' interstate gas transportation services. Application (A.) 97-12-048 adopted a method for unbundling and an allocation of stranded costs that would occur as customers migrated to the services of SoCalGas' competitors.

Following hearings in A.97-12-048, the California State Legislature passed Senate Bill (SB) 1602, a bill that the Governor subsequently signed into law. It is codified in Pub. Util. Code § 328:

The commission may investigate issues associated with the further restructuring of natural gas services beyond decisions made prior to

July 1, 1998. If the commission determines that further natural gas industry restructuring for core customers, as considered in Rulemaking 98-01-011, including, but not limited to, opening or changing competitive markets, establishing consumer protection standards, or unbundling costs, rates or services, is in the public interest, the commission shall submit its findings and recommendations to the Legislature. Prior to January 1, 2000, the commission shall not enact any such gas industry restructuring decisions. Any Commission natural gas restructuring decisions for core customers, as considered in Rulemaking 98-01-011 enacted prior to the effective date of this section, but after July 1, 1998, shall not be enforced.

In D.98-12-071, we found that SB 1602 prohibited the Commission from enacting any gas decisions prior to January 1, 2000 that would open competitive markets or unbundle the rates, costs or services of gas utilities, and that implementing any of the proposals in the application would require such unbundling. (Findings of Fact 1 & 2, slip op. at p. 7.) Accordingly, we closed the proceeding without further action. (Conclusion of Law 1, slip op. at p. 7.)

In dicta, we invited any party to move to reopen the proceeding at a later date. (Slip op. at p. 7.) However, we concluded only that the Commission is within its discretion to reopen the proceeding and issue a decision after January 1, 2000. (Conclusion of Law 2, slip op. at p. 7.)

On August 3, 1999, UES and CUB filed what was initially styled a Joint Motion to Reopen Proceeding in this docket. The Commission docket office re-titled the pleading as a Petition to Modify D.98-12-071 because, under Commission Rule 45, motions are made during pending proceedings; this proceeding was not pending on August 3, 1999<sup>1</sup>.

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<sup>1</sup> We recognize that a motion to reopen was the natural response to the invitation extended in dicta in D.98-12-071.

A number of parties responded to what they believed was a motion to reopen. SoCalGas, California Industrial Group and California Manufacturers Association (CIG/CMA) and Southern California Utility Power Pool and Imperial Irrigation District (SCUPP/IID) oppose the motion. Southern California Edison Company (SCE) suggests that I.99-07-003 will consider the unbundling issue, but that if the motion is granted, Commissioner Knight's alternate to D.98-12-071 should be adopted. Enron Energy Services, Inc. and Enron Capital & Trade Resources, Inc. (Enron) supports the motion to reopen.

On October 26, 1999, UES and CUB filed a supplement to their petition, pointing out that AB 1421 had been signed. That act repeals Pub. Util. § 328 as of January 1, 2000.

On October 27, 1999, the Administrative Law Judge in I.99-07-003, set that Investigation on the Commission's Own Motion to Consider the Costs and Benefits of Various Promising Revisions to the Regulatory and Market Structure Governing California's Natural Gas Industry and to Report to the California Legislature on the Commission's Findings for hearing to begin May 3, 2000.

### **Discussion**

Commission Rule 47 provides the requirements for a Petition for Modification. Understandably, the petitioners herein have not closely hewed to those requirements, as they believed they were invited to file a motion to reopen. Thus, pursuant to Rule 87, and for good cause shown, we permit deviation from Rule 47 under the unique circumstances of the invitation in dicta in D.98-12-071. We move on to a discussion of the substance of the motion/petition.

Noting that the Commission has stated that unbundling core interstate transportation service as soon as possible is a promising option (D.99-07-015, pp. 49 and 60), Petitioners argue that "[t]he most expeditious and efficient means by which the Commission can implement core interstate unbundling on the

SoCalGas system...is by using the extensive record that already has been developed in [A.97-12-048]." (Petition at p. 4.) UES, CUB, and Enron want this issue severed from the other promising options now under consideration in I.99-07-003 and readied for decision in early 2000. It appears that they may also wish to remind the Commission and all parties of the guiding principles for unbundling adopted in D.95-07-048.

We included the option of unbundling utility interstate capacity costs for core customers in our list of promising options to be considered in I.99-07-003. (D.99-07-015, Appendix C.) We agree with the opponents of the motion/petition that there is no good reason to sever this issue and consider it outside the context of restructuring the natural gas industry as a whole. Rather, there are many good reasons to keep it within our upcoming investigation into the costs and benefits of the promising options identified in D.99-07-015. Among the reasons to consider this option with other options, is the efficient use of the time and energy of the Commission, its staff, and the parties, as well as the necessity of fitting options together into a coherent and integrated whole. We welcome the parties' attempt to do this through settlement, but ultimately, we will determine the best way to incorporate this option into a larger market restructuring and report on our determination to the Legislature.

Any valuable information elicited in the record in A.97-12-048 is available for use in I.99-07-003, if it is relevant, through incorporation in the record by stipulation or through a motion to take official notice. The 1995 guiding principles of D.95-07-048 may or may not pertain to the new market structure that will be established in the year 2000; the parties may make their arguments in

briefs should I.99-07-003 advance to that stage. The proposed decisions in A.97-12-048 that were not adopted have no present use<sup>2</sup>.

We need not parse the language of SB 1602, AB 1421 or our conclusions in D.98-12-071 to decide whether reopening prior to January 1, 2000 is allowable. We do not choose to exercise any discretion we may have to do so. Rather, we will work with the parties and the Legislature to craft a new market structure for the natural gas industry in which the unbundling of SoCalGas' interstate core pipeline transportation services is but one element.

We conclude that we should not modify D.98-12-071 nor exercise our discretion to reopen the docket in A.97-12-048 because the issue of concern to petitioners will be addressed in I.99-07-003.

### **Comments of the Parties**

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 received from SoCalGas, SCUPP/IID and the Utility Reform Network. No substantive changes were made in response to the comments or otherwise.

### **Findings of Fact**

1. We found in D.98-12-071 that SB 1602 prohibited the Commission from adopting any gas decisions prior to January 1, 2000, that would open competitive markets or unbundle the rates, costs or services of gas utilities, and that

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<sup>2</sup> Those proposed decisions were made in a different factual context than is now extant. In addition to factual changes as a result of the passage of time, as noted by CIG/CMA, our decision in SoCalGas' Biennial Cost Allocation Proceeding may also change the context for issues like allocation of stranded costs.

implementing any of the proposals in A.97-12-048 would require such unbundling. Accordingly, we closed the proceeding.

2. In dicta in D.98-12-071, we invited any party to move to reopen the proceeding at a later date.

3. This proceeding was not pending on August 3, 1999, when the Joint Motion to Reopen Proceeding in this docket was filed.

4. With the Joint Movants' knowledge, the Commission docket office re-titled the pleading as a Petition to Modify D.98-12-071 because, under Commission Rule 45, motions are made during pending proceedings.

5. Good cause has been shown to deviate from the Commission's Rules regarding Petitions for Modification.

6. We are not persuaded to modify D.98-12-071, even in light of the newly signed AB 1421.

7. We included the option of unbundling utility interstate capacity costs for core customers in our list of promising options to be considered in I.99-07-003 and we will do so in a hearing beginning in May, 2000. (D.99-07-015, Appendix C.)

### **Conclusions of Law**

1. The Joint Motion to Reopen Proceeding should be considered a Petition to Modify D.98-12-071 because A.97-12-048 was not pending when the Joint Motion was filed.

2. The Commission should permit a deviation from the Rules for Petitions for Modification for good cause shown.

3. The Petition for Modification should be denied.

4. The Commission should not exercise its discretion to reopen A.97-12-048 because the issue of concern to Petitioners will be considered in the context of a new market structure for the natural gas industry.

**ORDER**

**IT IS ORDERED** that:

1. The Joint Motion to Reopen Proceeding in Application 97-12-048 is deemed a Petition to Modify Decision 98-12-07.
2. The requirements of Rule 47 are waived for the purposes of this proceeding only.
3. The Petition for Modification is denied.
4. This proceeding is closed.

This order becomes effective 30 days from today.

Dated December 2, 1999, in San Francisco, California.

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