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

San Francisco, California

Date: January 5, 1995

Resolution No. L-246

**RESOLUTION**

**BACKGROUND:**

The Southern California Utility Power Pool (SCUPP)<sup>1</sup> and the Imperial Irrigation District (IID) have appealed a staff denial of SCUPP/IID's Public Records Act Request for certain of Southern California Gas Company's (SoCalGas) Expedited Application Docket (EAD) unredacted contracts.<sup>2</sup>

**DISCUSSION:**

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1. Members of SCUPP are the Los Angeles Department of Water and Power, and the Cities of Burbank, Glendale, and Pasadena.
  2. Those contracts are:
    1. Agreement between Southern California Gas Company ("SoCalGas") and KES Kingsburg, L.P., dated February 4, 1993, submitted in Southern California Gas Company, Expedited Application Docket ("BAD") Application 93-03-043, filed March 12, 1993, and approved in Decision ("D.") 93-06-096 (June 23, 1993);
    2. Agreement between SoCalGas and the Dairyman's Cooperative Creamery Association, dated May 6, 1993, submitted in Southern California Gas Company, BAD Application 93-06-023, filed June 18, 1993, and approved in D.93-10-072 (Oct. 20, 1993);
    3. Agreement between SoCalGas and the California Milk Producers, dated May 11, 1993, submitted in Southern California Gas Company, EAD Application 93-06-024 filed June 18, 1993, and approved in D.93-10-072 (Oct. 20, 1993); and
    4. Agreement between SoCalGas and California Correctional Institute - Tehachapi, dated September 9, 1993, submitted in Southern California Gas Company, BAD Application 93-10-025, filed October 7, 1993, and approved in D.94-02-044 (Feb. 16, 1994).

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Although the California Public Utilities Code Sections 583, 3709 and General Order 66-C prohibit staff disclosure of confidential information provided to the Commission, for good cause shown the Commission may authorize or direct disclosure of such information.

The contracts requested were submitted under the BAD procedure established in D.92-11-052 (Nov. 23, 1992) and modified by D.93-02-058 (Feb. 17, 1993) for the review and approval of long-term discount contracts intended to avoid uneconomic bypass of gas utility systems.

This procedure requires the filing and service of a completed response to a master data request. The response is to include a copy of the proposed contract and is to be maintained on a confidential basis for six months, a period which could be extended for good cause shown.

In D.94-02-042, (Feb. 16, 1994), we denied a PG&B request to designate contract provisions as confidential we said:

We will deny PG&B's request. Under our market-based approach to gas transportation, we favor pipelines which are economically justifiable means to reduce gas costs through gas-on-gas competition. For the gas commodity market to operate efficiently, the participants must have access to information about transportation and other costs. ...confidentiality of information might prejudice some negotiations, but the costs of that prejudice are far outweighed by the benefits of an open market. Secret prices and conditions do not encourage the competitive market we envision. (D.94-02-042, p. 50)

In accord with the above is our later decision in alternative regulatory frameworks of Local Exchange Carriers D.94-09-065 (Sept. 15, 1994) at pages 237-241.

More recently, in D.94-12-038, the Commission found that the circumstances surrounding a power purchase contract termination agreement warranted continued confidentiality protection. In so ruling, we discussed San Diego Gas & Electric Company's assertion that public disclosure of the termination agreement terms and the computation of benefits could place the company and other California utilities at a disadvantage in similar negotiations.

The principle underlying the disposition of disclosure issues is whether on the facts of a particular case, the public interest is served by not making records public clearly outweighs the public interest served by the disclosure of the record,

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unless a statute directly applies. The policy of the Public Records Act Government Code 6250 et seq. favors disclosure and refusal to disclose must be found in specified statutory exceptions or on a showing that the public interest in nondisclosure outweighs the public interest in disclosure. (*San Gabriel Tribune v. Superior Court of Calif.* (1983) 143 Cal App. 3d 762).

The contracts here have been reviewed and approved for some time. The last one was approved in February of 1994 and prices in the contracts are in effect.

We are aware that the six month confidentiality period of the EAD procedure has terminated. Appellants also note that Section 489 (a) of the Public Utilities Code prescribes that the Commission shall order public utilities to keep open for public inspection rates, tolls, charges to be collected or enforced together with contracts affecting or relating to such rates, tolls, and charges. The impact of Section 489 in these circumstances requires that we determine the public interest using a legislative formulation of 1911 to address economic conditions in 1995. As early as 1986 the Legislature recognized that the terms of Section 489 were incompatible with the dynamics and reality of competitive markets and began work which was completed with amendments in 1992 carving out major exceptions to the filed rate provisions of Section 489(a) for telecommunications market participants. There has, as yet, been no similar amendment to the statute to address the emergence of competition in energy markets. However, the Commission has a well developed history and statutorily sanctioned practice of recognizing the proprietary nature of certain confidential information which utilities file with this Commission. The circumstances under consideration here warrant such treatment.

The filed rate open to public inspection provisions of Section 489(a) are a means to defend the public against discriminatory conduct on the part of a de jure monopolist. In adopting the EAD procedure, we recognized that the utilities' large load customers do form a contestable market for natural gas, and that core customers would be advantaged if the utility was free to aggressively compete for the retention of that load so long as the terms of the retention contract covered the cost of service and made a contribution to fixed costs. Were we now to disclose the contracts so formed, we would be alerting others on the contestable frontier who will then seek to form similar deals, shrinking the customer base over which reasonable utility system costs are shared to the disadvantage of other customers and the utility shareholders. In these circumstances, we conclude that, on balance, the public interest in not making these contracts public outweighs the public interest served by disclosure.

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**FINDINGS OF FACT:**

1. A public records request for certain Southern California Gas Company contracts was denied by the Commission staff pending a ruling by the Commission authorizing disclosure.
2. An appeal to the full Commission has been properly filed.
3. The information consists of gas transportation contracts which have been approved by the Commission, the last one was so approved in February of 1994. The contract prices, charges, and terms are now effective.
4. The public interest in confidentiality outweighs the public interest in disclosure of these contracts.

**CONCLUSIONS OF LAW:**

1. The Commission staff properly denied release of the contract information pending a Commission order.
2. Under the specific facts of this case the public interest in continuing to hold confidential unredacted utility contracts outweighs the public interest served by disclosure.

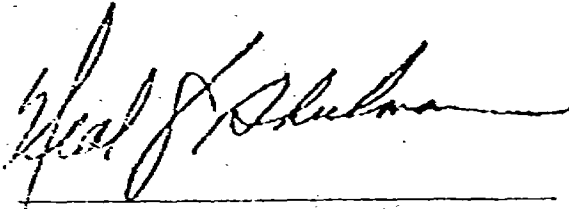
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**ORDER:**

1. The appeal and formal request of the Southern California Utility Power Pool and the Imperial Irrigation District for unredacted Southern California Gas Company contracts in these proceedings is denied.

2. This order is effective twenty days from the date hereof.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on January 5, 1995. The following Commissioners approved it:



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NEAL J. SHULMAN  
Executive Director

DANIEL Wm. FESSLER  
President  
NORMAN D. SHUNWAY  
P. GREGORY CONLON  
JESSIE J. KNIGHT, JR.  
Commissioners