

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

San Francisco, California
August 2, 1996
Resolution No. L-251

R E S O L U T I O N

BACKGROUND

J.A. Savage has appealed a staff denial of a California Public Records Act request for access to records in the Application of Southern California Gas Company (SoCal), A.95-10-010, D.96-02-053 for the purpose of inspection and copying certain information. In the appeal Savage explains and clarifies that the request is a limited one stating:

"The information I ask to inspect is as follows: The "bypass evaluation" filed along with the contract between Southern California Gas Company and First Brands Corporation, A.95-10-010, D.96-02-053. I am not requesting a copy of the contract itself, only the evaluation of potential bypass of the utility's distribution system."

The bypass evaluation in that case is contained in the public file text of the application. It was not filed with a claim of confidentiality.

In a letter dated June 26, 1996, Savage revises her request, concluding that there was no bypass evaluation filed in A.95-10-010, D.96-02-053 stating:

"Therefore, this renewed request is for all the bypass evaluations that have been filed following D.96-02-053. Those should consist of at least the two following cases--D.96-06-004 (Baker Commodities) and D.96-04-019 (Canners Steam).

I reiterate, I am not requesting a copy of the contract itself, only the evaluation of potential bypass of the utility's distribution system."

In addition to the two cases cited in the letter, there is a third application that was filed by SoCal on June 25, 1996 which was given Docket EAD No. 96-06-041. That application is for approval of an agreement with Chevron U.S.A. Inc.

Gas utilities have been submitting for approval transportation discount contracts under an expedited application docket procedure (EAD) established in D.92-11-052 (Nov 23, 1992) and modified by D.93-02-058 (Feb 17, 1993). The EAD was created for review and approval of long-term discount transportation contracts intended to avoid uneconomic bypass of gas utility systems.

The Commission added a bypass evaluation requirement for future EAD applications on September 27, 1995 in the application of Southern California Gas Company A.95-05-025, D.95-09-097 by stating:

"The Commission approves special contracts to allow SoCalGas to meet potential bypass competition. In future EAD applications, we request that SoCalGas evaluate potential bypass given the cumulative volume of EADs, which we have already approved. We note that as the EAD volume grows, the potential for bypass declines because the market for a potential competitor has shrunk." (D.95-09-097 slip opinion p.4)

Under the procedure if a utility experiences a revenue shortfall owing to an EAD agreement that is less than would have been earned by the tariff rate, the shareholders of the utility absorb the revenue loss.

Recently the Commission in Resolution L-246, issued on January 5, 1995, denied a request by Southern California Utility Power Pool and Imperial Irrigation District (SCUPP/IDD) for redacted information relating to several EAD contract applications of Southern California Gas Company Resolution L-246 concluded that after balancing the public interest disclosure of confidential information included in the applications was not in the public interest in that core customers are "advantaged if the utility was free to aggressively compete for retention of load so long as the terms of the retention contract covered the cost of service and make a contribution to fixed costs." (Resolution L-246, p.3)

Judicial review of Resolution L-246 was sought from the California Supreme Court by SCUPP/IDD. In SCUPP/IDD vs. Public Utilities Commission No. S049667, the issue of whether the Public Records Act, specifically Section 6255 of the Government code, permits withholding any record if the agency concludes that the public interest in non-disclosure outweighs disclosure was squarely before the court. We note that Savage addressed the court in that case by letter of March 27, 1996 arguing:

"California Energy Markets believes that the relief that the Southern California Utility Power Pool has requested is necessary to ensure the California Public Utilities Commission complies within the requirements of the California Public Records Act. Unless the Supreme Court

corrects the Commission's current course of conduct, the Commission is likely to continue to disregard the direct requirements of California law. Accordingly, California Energy Markets believes that it is essential that this court consider the issues in the above case."

Contrary to both SCUPP/IDD's and Savage's argument the Supreme Court issued an Order Denying the Petition for Writ of Review of Supreme Court S.O.49667 April 10, 1996 ___ Cal. 3d ___. Denial by the State Supreme Court of an order of the Commission is a decision on the merits both as to law and facts presented, even though the order of the Court is without opinion. People vs. Western Airlines (1954) 42 C.2d 621.

Two of the contracts following the SCUPP/IDD Case, D.96-06-004 (Baker Commodities) and D.96-04-019 (Connors) have been reviewed and approved, and the six month confidentiality period provided in the EAD procedure has terminated. The third contract, EAD No. 96-06-041 has yet to be approved, since it has just been filed.

In all three matters there is text in the application and affidavits from an executive of each customer which discusses and evaluates the risk of bypass. In all three matters SoCal has served a master data request upon the staff which contains information relating to bypass and which was served under a claim of confidentiality.

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 confidential data about 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. Furthermore, we must also recognize that even in the case of a request from a journalist organization, granting the request results in making the information available to the general public, including customers with whom SoCal Gas is negotiating in competition with other gas suppliers. This would negate our decision in Resolution L-246. In these circumstances, we conclude that, as we did in Resolution L-246, on balance, the public interest in not making these contracts public outweighs the public interest served by disclosure.

FINDINGS OF FACT

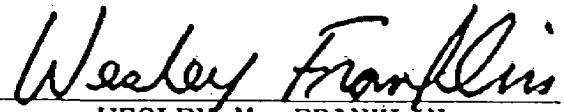
1. J.A. Savage has made public records request for inspection of documents in Southern California Gas Company A.95-10-010, D.96-02-053 which was denied by the Commission staff.
2. An appeal to the Commission was properly filed.
3. Learning that no redacted bypass evaluation had been filed in A.95-10-010, D.96-02-053, Savage submitted a new request for the bypass calculations filed following that case.
4. Three matters were filed containing some bypass evaluation data filed under claim of confidentiality. These are EAD 95-03-021, D.96-04-019 (Canners Steam) EAD 95-12-049 D.96-04-019 (Bakers Commodities) and EAD 96-06-041 (Chevron Inc.). The latter application has not yet been decided. J.A. Savage has requested release of this bypass evaluation data in each of these applications.

CONCLUSION OF LAW:

1. The public interest in this case in not making the requested records public outweighs the public interest served by disclosure of the records requested because SoCal would be placed at a competitive disadvantage by disclosure.

THEREFORE, IT IS ORDERED that:

1. The appeal by J.A. Savage to have the Commission release the bypass evaluation information filed in the Southern California Gas Company applications discussed above is denied.


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