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Mail Date
4/14/97

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's)
Own Motion into Implementation of)
Public Utilities Code Section 489.1,)
Which Exempts from Public Inspection)
Certain Contracts Negotiated by a Gas)
Corporation, Under Specified Conditions)
_____)

FILED
Public Utilities Commission
April 9, 1997
San Francisco Office
R.97-04-010

ORIGINAL

ORDER INSTITUTING RULEMAKING

Introduction

We institute this proceeding and propose rules for public comments for purposes of complying with Public Utilities Code Section 489.1, which exempts from public inspection certain contracts negotiated by a gas corporation, under specified conditions. These contracts are for services which are subject to the Commission's jurisdiction, with rates, terms or conditions differing from the schedules on file with the Commission, and which preclude shifting to any other customers responsibility for any loss of revenue as measured against filed rates and tariffs.

Background

Under Public Utilities Code Section 489(a), every utility is required "to keep open to public inspection schedules showing all rates, tolls, rentals, charges, and classifications collected or enforced, or to be collected or enforced, together with all rules, contracts, privileges, and facilities which in any manner affect or relate to rates, tolls, rental, classifications, or service." (Pub. Util. Code, §489,

subd. (a).) However, exemptions are granted for certain contracts when the public interest in nondisclosure outweighs the interest in disclosure due to a consideration of fairness in competition. (See e.g. Resolution L-246, adopted January 5, 1995.)

In Resolution L-246, the Commission found that Section 489(a) and the California Public Records Act (Gov. Code, §6250, et seq.) give the Commission discretion to balance the interest in public disclosure against nondisclosure of individual utility contracts based on the particular facts of a given case. In this resolution, the Commission denied disclosure to the utility's competitors of contracts negotiated by a utility in a competitive environment to prevent the loss of a large load utility customer to the detriment of remaining utility customers. The Commission noted that the utility's competitors did not have a similar obligation to publicly disclose their transactions with customers. Thus, the Commission concluded that in order to retain a level competitive playing field, the public interest in nondisclosure outweighed the interest in disclosure of the requested documents. (Resolution L-246, adopted January 5, 1995, pp. 2-3; see also, D.96-12-091, pp. 3-4 (slip op.).)

Subsequent to Resolution L-246, the Legislature enacted, and the Governor signed on February 6, 1996, Assembly Bill ("AB") 1095 which added Section 489.1 to the Public Utilities Code. This newly enacted statute essentially codified the Commission practice as applied in Resolution L-246. The Legislature found, in enacting AB 1095, "[t]he evolving deregulation of gas industry is forcing gas utilities to offer special contract terms in competitive markets, as recognized by the [C]ommission, in order to compete for these customers. Regulated gas utilities are placed at a competitive disadvantage if their contracts or trade secrets are open to public inspection by their competitors, upon whom that burden is not placed."

(Assem. Bill No. 1095, Stats. 1996, ch. 8, §1.)

Public Utilities Code Section 489.1 explicitly provides for an exemption for certain contracts. It "applies to contracts executed by gas corporations in instances in which the corporations are precluded from shifting to any other customers any loss of revenue as measured against filed rates and tariffs." (Pub. Util. Code, §489.1, subd. (a).) Further, the statute states: "To encourage fair competition, the Commission may, by rule or order, partially or completely exempt contracts negotiated by the gas corporations for service subject to the Commission's jurisdiction with rates, terms, or conditions differing from the schedules on file with the Commission." (Pub. Util. Code, §489.1, subd. (a).) It further provides for the adoption and enforcement of Commission rules, on or before July 1, 1997, for these contracts. (Pub. Util. Code, §489.1, subd. (a).) The rules to be adopted have to consider the following two issues: (1) reasonable comparability between contract disclosure requirements applicable to gas corporations and those applicable to competitors pursuant to federal law, and (2) the disclosure of such information as may be reasonably necessary to permit auditing and collection of fees and taxes. (Pub. Util. Code, §489.1, subs. (a)(1)-(a)(2).) Public Utilities Code Section 489.1 will remain in effect only until January 1, 2001, unless a later enacted statute, enacted before January 1, 2001, deletes or extends that date. (Pub. Util. Code, §489.1, subd. (e).)

Discussion

In implementing Public Utilities Code Section 489.1, we propose rules in Appendix A for public comment. In proposing these rules, we have considered the policy goals set forth in AB 1095 and Resolution L-246, which include maintaining equitable treatment between the gas utility and its competitors in the gas market.

The proposed rules apply to contracts that preclude from shifting to any other customers responsibility for any loss of revenue as measured against filed rates and tariff, and comport with the following requirements in Section 489.1: (1) reasonable comparability between contract disclosure requirements applicable to gas corporations and those applicable to competitors pursuant to federal law; (2) the disclosure of such information as may be reasonably necessary to permit auditing and collection of fees and taxes; (3) the disclosure of additional information upon a finding that the public benefit from the disclosure of additional specific information regarding a particular contract would outweigh the interests of the gas corporation and customer in confidentiality, and with the imposition of additional conditions and limitations that the Commission may establish; (4) the disclosure to representatives of residential customers of the gas corporation, who are not competitors of the gas corporation and who have not previously violated a nondisclosure agreement, to inspect the contracts subject to a nondisclosure agreement; and (5) the nonapplicability of Section 489.1 to contracts between gas utilities and electric corporations so as to ensure compliance with Public Utilities Code Section 454.4.

These proposed rules are intended to provide general guidance to the public and to minimize the need for administrative adjudication. In addition, these proposed rules will be essential as the Commission continues its commitment to protect the interests of California consumers in keeping open for public inspection rates, tolls, charges and other related information while at the same time balancing the need of regulated gas utilities to compete with nonregulated entities in such competitive services. We intend that the final rules that are adopted will be added to the tariffs of each gas utility.

Requirements for Comments on the Proposed Rules

We are anticipating the adoption of the rules as set forth in AB 1095, by July 1, 1997, the deadline specified in the statute. In order to establish a service list, we will require a letter to be sent to the Commission's Process Office by any person who wishes to be a party in this proceeding. This letter should arrive at the Commission's Process Office no later than April 21, 1997. Parties will be mailed a copy of this service list prior to the date when comments are due.

Parties are directed to file comments on the proposed rules no later than May 1, 1997, and to concurrently serve a copy of their comments on the service list for this proceeding. Parties have until May 15, 1997, to reply to the comments submitted on the proposed rules as specified in Section 489.1 of the Public Utilities Code. Parties are further directed to identify in a clear and focused manner any additions, deletions, clarifications or modifications they believe are appropriate in the rules set forth herein. If parties intend to request evidentiary hearings, they should explain why the traditional notice-and-comment approach is not sufficient to implement the rules pertaining to Section 489.1, and should identify those material factual issues that need to be resolved by evidentiary hearings.

Also, the Commission intends to adopt a standard nondisclosure agreement as part of this rulemaking. Any party who wishes to provide a proposed nondisclosure agreement that it believes meets the requirement of Public Utilities Code Section 489.1 should submit the proposed nondisclosure agreement with the comments that are due May 1, 1997. Parties may comment on any proposed nondisclosure agreement in their reply comments due on May 15, 1997. The proposed nondisclosure agreement should include a definition of "competitor" for purposes of Public Utilities Code Section 489.1.

IT IS ORDERED that:

1. Comments on the proposed rules for exempting certain gas utilities' contracts from public inspection in accordance with Public Utilities Code Section 489.1 shall be filed with the Commission and served on all parties to this rulemaking no later than May 1, 1997.

2. Reply comments shall be filed with the Commission and served on all parties to this rulemaking no later than May 15, 1997.

3. Any party wishing to submit a proposed nondisclosure agreement for Commission consideration should do so when the party files its comments on May 1, 1997.

4. Any party wishing to comment on any submitted proposed nondisclosure agreement shall do so in its reply comments.

5. Parties who wish to be on the service list for this rulemaking shall notify the Commission's Process Office in a letter to arrive by April 21, 1997.

6. The Executive Director is directed to cause a copy of this Order Instituting Rulemaking to be served on parties on the service lists for the following proceedings: (1) Gas Expedited Application Docket, in R.92-12-016 & I.92-12-017; (2) Gas Storage in I.87-03-036 & A.92-03-038; (3) PG&E Gas Accord in

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A.96-08-043 & A.92-12-043; (4) SoCalGas Global Settlement in R.88-08-018,
et al.; and (5) SDG&E's 1997 BCAP in A.96-04-030.

This order is effective today.

Dated April 9, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners