

Decision **PROPOSED DECISION OF ALJ KERSTEN** (Mailed on 7/3/14)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Gas Company (U904G) to establish a Compression Services Tariff.

Application 11-11-011
(Filed November 3, 2011)

DECISION DENYING CLEAN ENERGY FUELS CORP. PETITION FOR MODIFICATION OF DECISION 12-12-037**1. Summary**

This decision denies the Petition for Modification of Decision 12-12-037 filed by Clean Energy Fuels Corp. on July 11, 2013, in light of the following:

1) Commission's denial of Clean Energy's application for rehearing which raises the same arguments¹; and 2) the Opinion of the California Court of Appeal, Fourth Appellate District, District Three, affirming D.12-12-037 as modified via Decision 13-10-042.

The proceeding is now closed.

2. Procedural Background

On December 27, 2013, the Commission issued D.12-12-037 granting Southern California Gas Company (SoCalGas) authority to offer compression services and authorizing it to establish a Compression Services Tariff (CST).

¹ Decision 13-10-042 "Order Modifying D.12-12-037, and Denying Rehearing of the Decision, as Modified, and Denying Motion for Stay," dated October 17, 2013.

Decision (D.) 12-12-037 found that with the adopted rules and protections, the CST was in the public interest because it offers additional choice to customers, makes more widely available a service that reduces the health and environmental impacts from air pollution, reduces greenhouse gas emissions, and will lead to an increase in the use of natural gas as an alternative to gasoline and diesel fuel.

On January 28, 2013 Clean Energy Fuels Corporation (Clean Energy) filed an Application for Rehearing of D.12-12-037. Clean Energy challenged the new compression services tariff on numerous grounds: 1) D.12-12-037 fails to make requisite findings and conclusions on a variety of material issues; 2) the evidence does not support some of the findings or D.12-12-037 ignores the evidence; 3) some of the conclusions of law are not supported by findings of fact, misapply the law, and/or erroneously dismiss some Commission decisions as irrelevant authority; and 4) Clean Energy was erroneously denied discovery on late intervenors.²

On July 13, 2013, Clean Energy filed a Petition for Modification (PFM) of D.12-12-037 seeking to modify the new compression services tariff and to limit SoCalGas's market to the underserved.

On October 17, 2013, the Commission issued D.13-10-042 denying Clean Energy's Application for Rehearing of D.12-12-037, denying a motion for stay of D.12-12-037, and providing further changes to D.12-12-037.

² D.13-10-042 at 1-2.

On November 15, 2013, Clean Energy sought a review of D.12-12-037, as modified by D.13-10-042, with the California Court of Appeal, Fourth Appellate District, Division Three.

On December 12, 2013, the Commission approved Resolution G-3482 approving the new tariff and addressing various protests and responses raised by various parties including Clean Energy.

On May 29, 2014, the California Court of Appeal, Fourth Appellate District, Division Three, issued an opinion affirming the Commission's decisions (D.12-12-037 and D.13-10-042) authorizing SoCalGas to provide a CST. Among other things, the Court rejected Clean Energy's arguments that the CST would allow SoCalGas to unfairly compete.

3. Discussion

Clean Energy's Petition for Modification (PFM) raises the same legal, factual, technical, and policy arguments that we rejected in D.12-12-037 and that Clean Energy again raised in its Application for Rehearing of D.12-12-037, which we denied in D.13-10-042. Clean Energy made these arguments in the underlying proceeding and D.12-12-037, as modified by D.13-10-042, resolved them consistent with the law, State of California Public Utilities Code, the record evidence, and Commission precedent and policy. To the extent that the PFM rehashes the arguments made in its Application for Rehearing, the PFM is moot.

Clean Energy also recommends the Commission more narrowly tailor the scope of SoCalGas's market to those markets that are "failed" or "underserved."³ However, as we stated in Resolution G-3482 issued on December 12, 2013, "The

³ Clean Energy PFM at 2.

Commission finds nothing in D.12-12 -037 limiting SoCalGas's provision of the CST to underdeveloped markets."⁴

Further, Clean Energy does not offer new facts to give us cause to revisit this issue. According to the Commission's Rules and Procedures, Rule 16.4(b), "any factual allegation submitted in a PFM must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed fact must be supported by an appropriate declaration or affidavit." We find that Clean Energy offers no reason, changed or new facts or circumstances that warrant modifying D.12-12-037.

4. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on July 23, 2014 by Clean Energy. In response to comments, no changes were made to this decision.

5. Assignment of Proceeding

Carla A. Peterman is the Assigned Commissioner and Colette E. Kersten is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. There is a full and complete record in Application A.11-11-011, which supports D.12-12-037, as modified by D.13-10-042.

⁴ Resolution G-3482, Findings and Conclusions 12, at 16; per Resolution G-3482, AL 4459 became effective January 19, 2014.

2. Clean Energy's Petition for Modification raises the same arguments raised in its Application for Rehearing, which we denied in D.13-10-042.

3. Clean Energy does not identify any new facts, supported by a declaration or affidavit, that merit reconsideration or modification of the findings of fact, conclusions of law, or ordering paragraphs set forth in D.12-12-037, as modified by D.13-10-042.

Conclusions of Law

1. Clean Energy's Petition for Modification should be denied.
2. Clean Energy's Petition for Modification should also be denied as Clean Energy has not identified any changed or new facts that justify modification of D.12-12-037, as modified by D.13-10-042.
3. The proceeding should be closed.
4. This decision should be effective immediately.

O R D E R

THEREFORE, IT IS ORDERED that:

1. Clean Energy Fuel Corp.'s Petition for Modification of Decision 12-12-037 is denied.
2. Application 11-11-011 is closed.

This order is effective today.

Dated _____, at San Francisco, California.