

Decision 01-02-076 February 22, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into the operations and practices of the Southern California Gas Company, concerning the accuracy of information supplied to the Commission in connection with its Montebello Gas Storage Facility.

Investigation 99-04-022
(Filed April 22, 1999)

OPINION ON PETITION FOR MODIFICATION

1. Summary

The principal issue raised by the Consumer Services Division's (CSD) Petition for Modification of Decision (D.) 00-09-034 is whether the notice sent by Southern California Gas Company (SoCalGas) to prior Montebello mineral owners offering to return mineral rights that SoCalGas had acquired from them (offer of rescission) complies with D.00-09-034. The notice, mailed on November 22, 2000, requires the prior mineral owners to sign a general release with respect to SoCalGas' acquisition of mineral rights to obtain rescission. CSD believes that SoCalGas' notice does not comply with D.00-09-034 because, according to CSD, that decision modified the settlement agreement's provision requiring the prior owners to sign a general release before obtaining rescission. SoCalGas disagrees, and believes that the Commission adopted the settlement agreement without modifying the requirement for a general release.

Because SoCalGas' notice requires landowners to respond thereto within 120 days of the notice's mailing (i.e., by March 22, 2001), CSD requested and the

Commission granted an expedited briefing schedule and resolution of this petition.

We deny CSD's petition for modification and clarify that, in D.00-09-034, we did not modify the SoCalGas/CSD settlement agreement to remove the requirement that the prior mineral rights owners (landowners) sign an appropriate general release if they elect to obtain rescission pursuant to the terms of the settlement.

2. D.00-09-034

In D.00-09-034, the Commission approved a settlement between SoCalGas and CSD, provided that the parties agreed to two specific changes not applicable to the current controversy. The settling parties agreed to both of these changes.

Paragraph 3 of the settlement agreement¹ provides as follows:

“3. Within 60 days of a final Commission decision adopting this Agreement, SoCalGas will send to all persons from whom SoCalGas acquired mineral interests in the Montebello Gas Storage Field on or after January 1, 1991, a written offer to rescind the acquisition of such mineral rights and to restore the mineral rights to the prior owner upon the execution by the prior owner of a general release of SoCalGas. This offer will remain open for at least 120 days following mailing. SoCalGas will advise CSD of the results of this process on or before July 14, 2000.” (D.00-09-034, Appendix A at p. 3.)

In their joint comments on the settlement, CSD and SoCalGas clarified the settlement in various respects. Relevant to this petition, the settling parties stated that due to the small amount of money paid to acquire the mineral rights, and the desire to mend relations with prior mineral rights holders, that SoCalGas

¹ A copy of the settlement agreement is attached to D.00-09-034 as Appendix A.

did not intend to seek repayment of moneys paid to acquire these rights should a prior owner request rescission under the settlement. (D.00-09-034 at 24.)² The Commission adopted this, among other, clarifications.

The Commission wanted the landowners receiving a rescission offer from SoCalGas to have sufficient information in order to make an informed choice. Therefore, the Commission directed SoCalGas to make full disclosure to these owners of the condition of the property. (*Id.* at 25.)

While the motion to adopt the settlement was pending before the Commission, SoCalGas had filed Application 00-04-031 requesting Commission authority to sell Montebello. Because of the pendency of the application, and because the landowners were not parties to the OII, the Commission clarified the scope of issues which the settlement resolved. In this clarification, the Commission reaffirmed that individual landowners remained free to pursue other remedies if they deemed rescission to be an inadequate remedy.

“The settling parties state clearly that this settlement does not preclude individual landowners from litigating against SoCalGas, should they believe that rescission is not an adequate remedy for any of SoCalGas’ alleged wrongs at Montebello. We clarify that nothing in this decision precludes individual owners from litigating any issues regarding SoCalGas’ actions at Montebello should they believe rescission is not an adequate remedy, and nothing in this decision or the settlement can be used by SoCalGas against these owners in any such litigation, in order to preclude litigation of such issues or otherwise.” (*Id.* at 30.)

Finding of Fact 10 summarized the above discussion.³

² In this decision, we do not summarize the entire settlement and the Commission’s discussion and clarification thereof, but focus on the points relevant to CSD’s petition.

3. The Petition for Modification

Several weeks after SoCalGas sent its November 22 notice of rescission to the landowners⁴, CSD filed a Petition for Modification of D.00-09-034 on December 12, 2000. The petition requests the Commission to clarify that the decision allows the mineral owners to elect rescission and to pursue civil litigation against SoCalGas if they believe rescission alone is an inadequate remedy. CSD primarily relies upon Finding of Fact 10, which it argues modified and clarified the settlement agreement so that affected landowners are not required to sign a general release before obtaining rescission of the mineral interests. According to CSD, this reading of the decision reserves all other rights for the landowners. In other words, if landowners elect rescission, they are only precluded from pursuing rescission alone in another forum, and not from pursuing other remedies. CSD believes that only this reading of the decision will

³ Finding of Fact 10 in D.00-09-034 states: “This settlement and decision approving it does not preclude individual landowners from litigating against SoCalGas, should they believe that rescission is not an adequate remedy for any of SoCalGas’ alleged wrongs at Montebello. Furthermore, nothing in this settlement or decision can be used against these owners by SoCalGas in any such litigation, in order to preclude litigation of these issues or otherwise.”

⁴ The notice consisted of a November 22, 2000, letter offering rescission. The end of this letter includes a “Statement of Non-Acceptance.” The letter also states that if SoCalGas does not receive a response after 120 days, it will assume that the recipient has decided not to accept the offer. The notice also contains a separate document entitled “Election to Rescind and Release Agreement.” D.00-09-034 also required SoCalGas to include some environmental information regarding Montebello. SoCalGas therefore also included the following information in the notice: Executive summary of the revised supplement of the proponent’s environmental assessment dated September 2000; deficiency letter and completeness reports dated May 10, 2000 and August 22, 2000, respectively; and a postage prepaid envelope.

restore landowners to their previous condition and that these landowners should not have to elect between a partial remedy and lengthy litigation.

CSD specifically requests that this Commission order SoCalGas to:

(1) retract its cover letter and election to rescind and release agreement immediately; (2) nullify any releases that have already been signed; and (3) order SoCalGas to pay unspecified fines for noncompliance with D.00-09-034.

4. Position of the Office of Ratepayer Advocates (ORA) and SoCalGas

A. ORA

ORA agrees with CSD. It also requests additional penalties for SoCalGas' violation of the decision and its disregard of CSD and Energy Division's interpretation of it. (Apparently, SoCalGas conferred with CSD and the Commission's Energy Division prior to mailing its notice to landowners, but the parties were unable to reach agreement on the issue presented in this petition.)

B. SoCalGas

SoCalGas opposes the petition. First, it points out that CSD has technically not followed the Commission's rules for requesting modification of a decision because CSD did not propose specific language to carry out its proposed modifications.⁵ On the merits, SoCalGas argues that the settlement provides for rescission of the mineral interests upon the prior owner's execution of a general release of SoCalGas, and that CSD cannot now modify this portion of the settlement. SoCalGas argues that, if the Commission intended to modify the settlement on this point as CSD suggests, the Commission would have specifically said so, as it did on several other items. SoCalGas also cites several

⁵ See Rule 47(b) of the Commission's Rules of Practice and Procedure.

federal cases regarding the grounds for relief from a final judgment, and argues that CSD has not met those grounds here.

5. Discussion

CSD and SoCalGas are signatories to the settlement agreement. Paragraph 3 of the settlement agreement clearly requires the prior landowners to execute a general release in order to rescind SoCalGas' acquisition of the mineral rights under the settlement. The issue presented by this petition is whether D.00-09-034 modified the settlement so that these landowners are not required to sign a general release before obtaining rescission under the settlement.

We clarify that D.00-09-034 did not modify the settlement as now suggested by CSD. In D.00-09-034, the Commission stated that it conditionally approved the settlement with two changes, both of which are not applicable to the current controversy. The Commission also clarified its understanding of the settlement, adopted certain clarifications made by the settling parties, and required SoCalGas to conform with certain procedural reporting requirements. However, it did not eliminate the requirement set forth in the settlement agreement (to which both CSD and SoCalGas agreed) for a prior landowner to sign an appropriate general release before obtaining rescission according to the settlement terms.

In discussing why the settlement is in the public interest, the Commission made clear that it interpreted the settlement to require a general release in order for a prior landowner to obtain rescission under the settlement, but that nothing in the settlement precluded these landowners from any other remedies they might elect to pursue in the Superior Court or otherwise, should they not wish to obtain rescission under the settlement's terms.

“The settlement is in the public interest because it offers certain affected landowners the opportunity to obtain rescission of SoCalGas’ acquisition of the landowners’ mineral interests. This portion of the settlement addresses another major contention of the OII, namely, that SoCalGas may have paid less than fair market value for the mineral interests. The settlement avoids the complexity of the jurisdiction issues because the settlement provides that SoCalGas will take action to initiate rescission (assuming the landowners agree), and it is relatively clear that it is within this Commission’s jurisdiction to order utilities to take appropriate action with respect to their regulated assets. The settlement does not preclude any of these persons from seeking relief in state court should they conclude that a civil action is warranted. The settlement’s resolution of this issue appears reasonable, especially since it gives landowners the option to accept rescission and does not preclude any other remedies these landowners might elect to pursue in Superior Court or otherwise, should they not wish to obtain rescission under the settlement’s terms.” (D.00-09-034 at 23-24, citations omitted, emphasis added.)

In other words, the Commission understood the settlement as requiring prior landowners electing rescission under the terms of the settlement to also sign an appropriate general release with respect to the mineral interests rescinded under the terms of the settlement. However, prior landowners who do not elect rescission under the settlement’s terms are free to pursue all other remedies against SoCalGas.

Finding of Fact 10 does not require a different interpretation. In this finding, the Commission specifically stated its understanding of the settlement, namely, that the agreement did not preclude individual landowners from litigating against SoCalGas should they believe that rescission is not an adequate remedy. In other words, landowners could elect rescission and sign a general release, or pursue their claims against SoCalGas elsewhere.

Finding of Fact 10 goes on to state that nothing in the settlement or decision can be used against these owners by SoCalGas in any such litigation, in order to preclude litigation of these issues or otherwise. Thus, with respect to the Montebello mineral interests, should a landowner elect to pursue remedies in lieu of the rescission provided for in the settlement, SoCalGas cannot use the Commission's approval of the settlement to somehow preclude litigation of these issues or to demonstrate SoCalGas' lack of liability.

D.00-09-034 expressed a desire that landowners receiving a rescission offer from SoCalGas should have sufficient information to make an informed choice and required SoCalGas in its rescission offer to make a full disclosure of the condition of the property. In addition, in its notice, SoCalGas has stated that the recipient landowners are free to consult their own lawyer about SoCalGas' offer of rescission and the legal consequences of signing the Election to Rescind and Release Agreement (release agreement). We have not been asked to, nor do we approve the release agreement. We do note, however, that it is a general release of all of the recipient's claims, etc., arising from and related to SoCalGas' acquisition of mineral rights from the landowner and appropriately does not include a release of any other potential causes of action these landowners may have with respect to SoCalGas (i.e., concerning SoCalGas' acquisition of the storage rights from the landowners or otherwise.)

6. Further Compliance With D.00-09-034 and other Commission Rules

The settlement agreement approved in D.00-09-034 required SoCalGas to mail the notice of rescission within 60 days of a final Commission decision adopting the agreement. On the 60th day, pursuant to Rule 48(b) of the Commission's Rules of Practice and Procedure, SoCalGas requested from the Commission's Executive Director an extension of time to fulfill this requirement.

The Executive Director denied the request upon several grounds, including that it was untimely under the Commission's rules. The Executive Director also admonished SoCalGas to endeavor to comply with D.00-09-034 as soon as possible in order to mitigate any sanctions the Commission may impose. SoCalGas sent the notice of rescission to affected landowners on November 22.

The correspondence attached to CSD's petition for modification indicates that SoCalGas' attempt to resolve its dispute with CSD concerning the proper interpretation of D.00-09-034, at least in part, caused its failure to comply with D.00-09-034. We therefore will not impose sanctions for SoCalGas' failure to timely mail the notices of rescission. However, in the future, if SoCalGas believes an extension of time is necessary to comply with a Commission decision, it should request one within the time constraints provided by Rule 48.

Similarly, because of the important issue involved, we do not dismiss this petition because CSD did not comply with the technical requirements of Rule 47(b) to propose specific wording to carry out all requested modifications to the decision. However, we caution parties filing such petitions to comply with our rules in the future, in order that we and interested parties can better understand the precise nature of the requested relief.

7. Comments on Draft Decision

The draft decision of ALJ Econome in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7. CSD filed comments⁶ and SoCalGas filed reply comments to the draft decision. We do not make changes to the draft decision in response to the comments.

⁶ The Administrative Law Judge granted CSD's oral motion to extend the time for filing comments by two days.

Findings of Fact

1. CSD and SoCalGas are signatories to the settlement agreement. Paragraph 3 of the agreement clearly requires the prior landowners to execute a general release in order to rescind SoCalGas' acquisition of the mineral rights under the settlement.

2. D.00-09-034 did not modify the settlement agreement as now suggested by CSD, and did not eliminate the requirement (to which CSD and SoCalGas agreed) for a prior landowner to sign an appropriate general release before obtaining rescission according to the settlement terms.

3. Finding of Fact 10 in D.00-09-034 does not require a different interpretation. In this finding, the Commission specifically stated its understanding of the settlement agreement, namely, that the agreement did not preclude individual landowners from litigating against SoCalGas should they believe that rescission is not an adequate remedy. In other words, landowners could elect rescission and sign a general release, or pursue their claims against SoCalGas elsewhere.

4. The correspondence attached to CSD's petition for modification indicates that SoCalGas' attempt to resolve its dispute with CSD concerning the proper interpretation of D.00-09-034, at least in part, caused its failure to timely mail the notices of rescission as required by the settlement.

Conclusions of Law

1. CSD's Petition for Modification of D.00-09-034 should be denied.

2. If in the future SoCalGas believes an extension of time is necessary to comply with a Commission decision, it should request one within the time constraints provided by Rule 48.

3. Because the time for landowners to respond to the offer for rescission is March 22, 2001, this decision should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The Consumer Services Division's December 12, 2000, Petition for Modification of Decision 00-09-034 is denied.

2. This proceeding is closed.

This order is effective today.

Dated February 22, 2001, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

RICHARD A. BILAS

CARL W. WOOD

GEOFFREY F. BROWN

Commissioners