
PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

July 23, 2010

Agenda ID #9668

TO PARTIES OF RECORD IN DRAFT RESOLUTION ALJ-255

This draft resolution regarding Granting Extension of Confidential Treatment of Information in Application 07-04-004 and Closing the Proceeding will be on the agenda at the September 2, 2010 Commission meeting. The Commission may then vote on this draft resolution, or it may postpone a vote.

When the Commission acts on the draft resolution, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own order. Only when the Commission acts does the resolution become binding on the parties.

You may serve comments on the draft resolution. Comments shall be served no later than August 12, 2010. Service is required on all persons on the attached service list. Comments shall be served consistent with the requirements of Pub. Util. Code § 311(g) and Rule 14.5 of the Rules of Practice and Procedure.

Finally, comments must be served separately on Administrative Law Judge Seaneen M. Wilson at smw@cpuc.ca.gov, and for that purpose I suggest e-mail, hand-delivery, overnight mail, or other expeditious method of service.

/s/ KAREN V. CLOPTON

Karen V. Clopton, Chief
Administrative Law Judge

KVC:hkr

Attachment

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-255
Administrative Law Judge Division
September 2, 2010

RESOLUTION

RESOLUTION ALJ-255 Granting Extension of Confidential Treatment of Information in Application 07-04-004 and Closing the Proceeding.

1. INTRODUCTION

Pursuant to Pub. Util. Code §§ 454.5(g) and 583, the Commission may grant requests to file all or part of a document under seal, or to seal all or part of an evidentiary record, to protect the sealed information from public disclosure. In the interest of balancing the policy goals of public disclosure, full participation and transparency with the statutory provisions allowing and indeed requiring confidential treatment of information in limited circumstances, the Commission may grant requests for confidential treatment for discrete periods of time, rather than in perpetuity. Under those circumstances, a party may request, by motion, an extension of the time granted in a ruling for confidential treatment of information.

2. REQUEST

In Decision (D.) 07-06-027, we authorized the confidential treatment of Southern California Gas Company (SoCalGas) 2007-2008 Winter Hedging Program (Hedging Program), filed in Application (A.) 07-04-004, as well as authority for SoCalGas to file a motion for further protection, if necessary. On May 21, 2010, SoCalGas timely filed its motion requesting an extension of confidential treatment of its Hedging Program for three years. In its motion, SoCalGas stated that the information contained in its Hedging Program could provide competitors with a guide to its hedging methodologies, which competitors could use to impute SoCalGas' future hedging behavior under a variety of market conditions. SoCalGas also stated that release of this confidential information could be detrimental to its residential and small business core procurement customers.

3. POSITIONS OF PARTIES

In its June 7, 2010 response to SoCalGas' motion, Indicated Producers (IP) stated that it is concerned that SoCalGas' motion departs from what it believes is the Commission's prescribed treatment of confidential information; has not demonstrated that the information remains market sensitive; and if approved, may encourage the withholding of similar information without providing proof of its market sensitivity.

SoCalGas and Shell Energy North America (US), L.P. (Shell),¹ filed replies to IP's response on June 22, 2010. In its reply, SoCalGas stated that the information filed under seal could still be used by competitors to infer SoCalGas' future hedging programs, and referred to an assigned Administrative Law Judge's (ALJ) ruling in Order Instituting Rulemaking (R.) 08-06-025² in support of its position. In this ruling, the ALJ had ruled that a hedging program from a prior period should remain under seal due to its continued commercially sensitive nature. SoCalGas also questioned why IP wants to see its Hedging Program information if it no longer has value, referring again to the assigned ALJ ruling in R.08-06-025, which found that hedging programs are not both outdated and relevant to contemporary hedging policies. Also, SoCalGas stated that its request for continued confidentiality is not inconsistent with the protocols adopted in D.06-06-066.

In its reply, Shell reiterated IP's concerns, and added that, in D.06-06-066, the Commission confirmed that gas hedging plans more than three years old should be made public; that disclosure of SoCalGas' Hedging Program will not harm SoCalGas' core procurement customers; that the restructured regulatory treatment for winter hedging costs in D.10-01-023 provides evidence that SoCalGas' Hedging Program will not be replicated; and that there must be a limit on the duration of confidential treatment of winter hedging programs.

4. DISCUSSION

SoCalGas has provided ample evidence for extension of the protective order. As illustrated in the assigned ALJ ruling in R.08-06-025 discussed above, the Commission found that hedging programs from prior periods contain market sensitive information, disclosure of which could be detrimental to the utility or its customers.

Most recently, in D.10-01-023, the Commission reiterated its position regarding the sensitive nature of hedging programs, stating:

¹ Formerly Coral Energy Resources L.P. and a party to A.07-04-004.

² See R.08-06-025, *Administrative Law Judge's Ruling Denying Motions to Compel Discovery*, dated July 8, 2009.

We reject Shell's claim that utility hedge plans should be provided to third parties, including gas marketers. As stated in past decisions, the utility hedging plan is to remain confidential, presumably containing highly sensitive market information which, if released, could work toward the detriment of ratepayers. Many hedging instruments can be purchased in a liquid and transparent market, however, and DRA publishes an after-the-fact review of the utilities' performance. Shell fails to justify why utilities, buying gas for core customers, should be compelled to establish a transparent, non-discriminatory "full disclosure" solicitation protocol for hedge products, while the rest of the market would not be covered within this protocol.³

Shell believes the change in regulatory treatment of gas hedging programs pursuant to D.10-01-023 means that previous hedging programs will no longer provide a roadmap to future hedging programs. Shell also interpreted a comment by SoCalGas in R.08-06-025⁴ to mean that SoCalGas would modify its winter hedging program if the proposed change in regulation occurred. We disagree with Shell's interpretation of both D.10-01-023 and SoCalGas' comment in that proceeding. First of all, there is no requirement that utilities change their gas hedging programs as a result of the new regulatory treatment of gas hedging programs. And, even if SoCalGas modifies its hedging program in response to D.10-01-023, that does not preclude it from using a previous hedging program as a basis for any new hedging program. Therefore, D.10-01-023 does not preclude the extension of the protective order.

We agree with SoCalGas' position that there is no reason for a market participant to want access to an old gas hedging program if it no longer has any value. Since IP wants access to the SoCalGas' Hedging Program, this indicates that it still has value and should remain confidential.

We also find that D.06-06-066 is not applicable to the current request, since it only addresses electric utility forecasts of natural gas hedging in order to ensure sufficient natural gas supplies for electric generation, which is different from the information included in a utility's confidential gas winter hedging program. It should also be noted that D.06-06-066 and related decisions do not restrict a utility's ability to request an extension of a protective order if necessary. These decisions also make a distinction between provision of information to parties between non-market participants and market participants.

³ See D.10-01-023 at 32-33.

⁴ See R.08-06-025, *Response of Southern California Gas Company (U 904 G) and San Diego Gas & Electric Company (U 902 M) to Administrative Law Judge's Ruling Soliciting Further Information Regarding Hedging Issues* at 14-15.

Shell argues that there must be a limit to confidential treatment of a hedging program. However, General Order 66-C requires confidential treatment of documents as long as necessary and does not put a limit on the length of time they may remain confidential. If the disclosure of confidential information could be detrimental to ratepayers, it must remain confidential.

Given the Commission's previously articulated position on the sensitive nature of gas hedging programs, the Commission's regulations and decisions regarding confidentiality, the continued sensitive nature of the Hedging Program, the harm that disclosure of the Hedging Program could do, as well as the use competitors could make of the Hedging Program, we grant an extension of the protective order originally authorized in D.07-06-027.

Also, in an effort to provide SoCalGas with the opportunity to request continued confidentiality if necessary, and for parties to respond to such a request, we grant SoCalGas' request to file a motion 30 days before the protective order authorized herein expires, in order to request extension of the current protective order.

5. CONCLUSION

We therefore grant an extension for three years, running from the effective date of this resolution. Within 30 days of the expiration of this protective order, SoCalGas may file and serve a motion requesting an extension of the protective order authorized herein.

6. COMMENTS ON DRAFT RESOLUTION

As provided by Rule 14.2 and Pub. Util. Code § 311(g)(1), the draft resolution of the ALJ in this matter was mailed to the parties on July 23, 2010. Comments were filed on

IT IS ORDERED that:

1. The request for extension of time for confidential treatment is granted for three years, as set forth above.
2. Within 30 days of the expiration of this protective order, Southern California Gas Company may file and serve a motion requesting an extension of the protective order authorized herein.
3. Application 07-04-004 is closed.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on _____, the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

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