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PLAINTIFFS

DEFENDANTS

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, a Delaware Corp.

COMMONWEALTH GAS PIPELINE CORP., a Virginia Corp.

Motion - Tuesday 2:00 P.M.

*Dwight Alpern
FERC
(202) 357-5583*

CAUSE

(CITE THE U.S. CIVIL STATUTE UNDER WHICH THE CASE IS FILED AND WRITE A BRIEF STATEMENT OF CAUSE)

Breach of Contract
Title 28, U.S.C., Section 1332 (a) (1)

ATTORNEYS

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Case set:	
On Merits:	
PTC	04-06-87
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BENCHMEMO: TRANSCONTINENTAL GAS PIPELINE CORP. v. COMMONWEALTH GAS PIPELINE CORP., CA 86-0788-R. Hearing on motion to stay, March 31, 1987 at 2:00 p.m.

ATTORNEYS: Plaintiff -- E. Milton Farley (Hunton & Williams)
Defendant -- Barabara Williams (McGuire, Woods)
Amicus -- Dwight Alpern (F.E.R.C.)

Judge, this matter is before you on the defendant's motion to stay pending rulings by the Federal Energy Regulatory Commission ("FERC") in two related proceedings. The parties have stipulated that the matter should be stayed, and the FERC has filed an amicus brief also supporting a stay. You have indicated that you will most likely follow the parties and FERC's recommendation, but you have directed them to come before you and state for the record just what benefits the Court will reap from this deal.

This is definitely not your garden variety breach of contract case -- indeed, even the FERC attorney concedes that the situation is pretty complex -- but I'll try to give you some idea of what the case is all about and suggest what issues will be resolved by FERC. (FERC's resolution of these issues will either moot this action or, at a minimum, counsel contend, materially aid the Court in its decision.)

Defendant Commonwealth Gas has moved to stay this action by Transcontinental Gas Pipeline ("Transco") to recover a minimum commodity bill charge, pending rulings by the FERC in Columbia Gas Transmission Corp. v. Transcontinental Gas Pipeline Corp., Docket No RP86-48-000 and in Transcontinental Gas Pipeline Corp., Docket Nos. RP87-32-000 and RP82-55-000. The justness and reasonableness of Transco's minimum commodity bill and other questions related to its application are at issue in these proceedings. Defendant argues that a stay of the instant litigation is appropriate under the well-settled doctrine of primary jurisdiction, by which federal courts defer to administrative agencies having the expertise necessary to address complex regulatory issues and the power to fashion and enforce uniform guidelines.

FACTUAL BACKGROUND

Commonwealth Gas is a Virginia public service corporation engaged in the purchase, transport, storage and sale of natural gas. It purchases gas from a number of suppliers, including Transco. In November 1969, Commonwealth Natural Gas Corporation, a predecessor of Commonwealth Gas, entered into a service agreement with Transco. Under the terms of this agreement, Commonwealth Gas is classified as a "contract demand service customer." Transco's gas tariff, referred to in the service agreement, requires such customers to pay Transco a minimum annual charge even if the contract price for the amount of gas purchased would be lower.

Commonwealth Gas has not paid Transco the minimum annual charge for the 1985 contract year because the validity of Transco's minimum bill and its application by Transco have been challenged in proceedings before the FERC.

The justness and reasonableness of the inclusion of a minimum bill in Transco's proposed rate schedule, which went into effect on October 1, 1982, subject to investigation, was first challenged in Transcontinental Gas Pipe Line Corp., Docket No. RP 82-55-000. On December 30, 1986, the FERC issued Opinion No. 260 in Docket No. RP82-55-000 finding that a minimum bill for Transco would produce unjust and unreasonable rates. The FERC ordered Transco to revise its rate schedules and tariff sheets and to refund, with interest, all amounts collected in excess of the approved rates. Transco moved for a rehearing of Opinion 260 on January 29, 1987. Philadelphia Gas Works has requested the FERC to modify Opinion 260 so as to eliminate Transco's minimum bill effective October 1, 1982. Commonwealth Gas has also filed a petition for rehearing.

Other proceedings regarding the validity of Transco's minimum bill are also presently pending before the FERC. Commonwealth Gas is party to Columbia Gas Transmission Corp. v. Transcontinental Gas Pipe Line Corp., Docket No. RP 86-48-000. At issue in these proceedings is a complaint seeking removal of

Transco's minimum bill on the grounds that it is unjust, unreasonable and unduly discriminatory, as well as contrary to the public interest. The relief sought in these proceedings includes having the FERC declare that Transco's minimum bill is unenforceable for the 1985 contract year and ordering Transco to cease and desist all discriminatory and anticompetitive practices as long as its minimum bill remains in effect.

Transco, in turn, filed a petition on January 21, 1987, in Docket No. RP 87-32-000 for authorization for a limited waiver of certain provisions of its gas tariff so as to permit Transco to avoid collection of its minimum commodity bill from its full requirement customers during the 1985 contract year. In support of its petition, Transco argues that there is good cause to allow waiver of its minimum commodity bill tariff for full requirement customers who had no control over their market loss during the 1985 contract year. Commonwealth Gas, a partial requirement customer, has filed a motion to intervene.

ISSUES FOR THE FERC TO RESOLVE

Transco's complaint and Commonwealth Gas' answer raise issues falling squarely within the FERC's area of expertise and regulatory responsibilities. These issues include: (1) whether Transco's minimum commodity bill is unjust and unreasonable; (2) whether Transco's minimum commodity bill has been applied in a discriminatory and anticompetitive manner; and, (3) whether Transco's minimum commodity bill for the 1985 contract year is enforceable. These issues are so closely intertwined with the alleged breach of contract here that it would be impossible to decide this case in an equitable manner without first deciding these underlying issues, according to Commonwealth Gas.

Since the FERC already has these issues pending before it, adjudication of Transco's claims in this Court would run the risk of inconsistent determinations, particularly since Transco has filed similar actions against other contract demand customers.

The issues presented in the above-mentioned proceedings also include: (1) determination of the causes of the imbalance between the gas supplies deliverable under purchase agreements and buyers' ability to sell that gas at market prices; (2) interpretation of the merits of Transco's minimum commodity bill; (3) interpretation of the application and enforceability of Transco's minimum commodity bill under gas purchase agreements; (4) determination of the impact of credits for spot gas transportation on contract damages; and, (5) analysis of the impact of contract damages on the regulated market.

The outcome of Docket Nos. RP 87-32-000 and RP 86-48-000 and clarification of Opinion No. 260 in Docket No. RP 82-55-000 will determine whether the minimum commodity bill incorporated in Transco's gas tariff is valid and whether the minimum commodity bill should be enforced either prospectively or retroactively. A determination by the FERC that Transco's minimum bill is invalid would, of course, make this case moot.

LAF

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