

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**No. 01-
1144
Term, 2001**

September

Public Service Electric & Gas Company, Filed May 28, 2002
Petitioner

v.

Federal Energy Regulatory Commission,
Respondent

Transcontinental Gas Pipe Line Corporation, et al.,
Intervenors

Petition for Review of Orders of the Federal Energy Regulatory Commission
Before: GINSBURG, Chief Judge, and RANDOLPH and TATEL, Circuit Judges.

J U D G M E N T

_____ This petition for review was considered on the record from the Federal Energy Regulatory Commission and on the briefs filed by the parties. The court has determined that the issues presented occasion no need for a published opinion. It is

ORDERED AND ADJUDGED that the petition for review be granted.

The Commission ruled that Transcontinental Gas Pipe Line Corp. sold capacity on its pipeline to PSE&G at a discounted rate not required by competition. According to the Commission, the "most important" indication that Transco did not

need to give PSE&G the discount in order to keep the latter's business was that PSE&G had agreed to pay the maximum rate for the remainder of the twenty-year contract in the event the Commission disallowed the discount rate. But as the contract between PSE&G and Transco reveals, and as the Commission now concedes, PSE&G had in fact agreed only that under such circumstances it would pay the maximum rate for three years and would thereafter be released from the contract.

The Commission now characterizes this mistake as harmless error, but because the Commission based its order primarily upon a fact that turns out to have been wrong, we cannot say with any confidence how it would have ruled in the absence of that factor. We therefore remand the case to the Commission for further proceedings based upon the correct reading of the contract.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

Michael C. McGrail
Deputy Clerk