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ORIGINAL

Decision 88-07-041

JUL 8 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DANIEL C. MERRILL, M.D.,

Complainant,

vs.

PACIFIC GAS AND ELECTRIC  
COMPANY,

Defendant.

Case No. 86-04-038  
Filed April 23, 1986)

ORDER DENYING REHEARING  
AND MODIFYING D.88-04-067

DANIEL C. MERRILL, M.D. (Merrill) has filed an application for rehearing of Decision (D.) 88-04-067. We have considered all the allegations of error in the application and are of the opinion that good cause for rehearing has not been shown. However, although we made our findings and conclusions clear in the body of D.88-04-067, Merrill rightly points out that we did not copy them into the formal statement of findings and conclusions, as required by § 1705 of the Public Utilities Code.

We have made no findings or conclusions concerning Merrill's constitutional arguments, which first appear on the record in Merrill's closing brief, filed concurrently with that of PG&E. No evidence was submitted in support of these claims and PG&E was not given any opportunity to bring evidence or arguments against them. Furthermore, PG&E is not a state agency and cannot have violated the supremacy clause of the U.S. Constitution, or Merrill's due process or equal protection rights.

Section 1705 requires us to make findings and conclusions on material issues only. For the reasons stated, the constitutional claims referred to in Merrill's application for rehearing are meaningless and do not constitute material issues.

Therefore, IT IS ORDERED that:

1. Rehearing of D.88-04-067 is hereby denied.
2. D.84-04-067 is hereby modified as follows:
  - a) Finding of Fact No. 7a is added, as follows:

PG&E was not required by D.84-08-037 to notify any QFs of the interim solution and its impact on interconnection to PG&E's constrained northern system. PG&E decided on its own motion to inform QFs that PG&E believed were affected by the decision.

- b) Conclusion of Law No. 1a is added, as follows:

Complainant has not met his burden of showing, by clear and convincing evidence, that PG&E advised him not to get in touch with PG&E again until after he had obtained a FERC license.

c) Conclusion of Law No. 4 is added, as follows:

Complainant has not met his burden of showing, by clear and convincing evidence, that PG&E is in violation of any provision of law or of any order or rule of the Commission.


This order is effective today.

Dated July 8, 1988, at San Francisco, California.

STANLEY W. HULETT  
President  
DONALD VIAL  
G. MITCHELL WILK  
JOHN B. OHANIAN  
Commissioners

Commissioner Frederick R. Duda  
being necessarily absent, did not  
participate.

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

  
Victor Weissor, Executive Director

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Decision 88 07 041 JUL 8 1988

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