

Mailed

NOV 7 1991

Decision 91-11-024 November 6, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Independent Energy Producers Association,

ORIGINAL

Complainant,

Case 91-08-014

vs.

(Filed August 8, 1991)

Southern California Edison Company,

Defendant.

Independent Energy Producers Association,

Complainant,

Case 91-08-015

vs.

(Filed August 8, 1991)

Pacific Gas and Electric Company,

Defendant.

OPINION

Independent Energy Producers Association (IEP) filed these complaints on August 8, 1991 against Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (Edison). The complaints challenge elements of the utilities' programs to monitor the efficiency of qualifying facilities (QFs) under contract with the utilities. The complaints allege that, in their implementation efforts, PG&E and Edison have overstepped the authority granted to them by Decision (D.) 91-05-007.

Description of Complaints Against PG&E and Edison

IEP's complaints allege that Edison and PG&E have overstepped the authority granted to them in D.91-05-007 to monitor and enforce contracts with QFs. Specifically, IEP states that

Edison and PG&E are improperly seeking efficiency data from power producers who are not cogenerators, data based on monthly operations, and data unrelated to FERC efficiency standards. The complaints also take issue with the utilities' stated intent to conduct site visits for confirming data.

The complaints include three procedural motions. First, IEP asks the Commission to issue a cease and desist order on the basis that the utilities are seeking information from QFs which is not permitted under the authority granted by D.91-05-007. Second, IEP asks the Commission to stay the August 23, 1991 data production deadlines set forth by the utilities in their implementation of monitoring programs. Finally, IEP moves to shorten the 30-day period set forth in Rule 12 for answers to complaints so the Commission may act expeditiously on the complaints.

Response of PG&E

On August 20, 1991, PG&E filed a motion to dismiss the complaint. PG&E's motion responds to IEP's allegations regarding the propriety of requests for certain specific information. For example, PG&E denies that it has improperly sought information from power producers other than cogenerators and that D.91-05-007 applied only to cogenerators. PG&E responds that D.91-05-007 applies to any QF subject to efficiency standards.

PG&E filed an answer to the complaint on September 6, 1991 seeking dismissal of the complaint.

Response of Edison

On August 20, 1991, Edison filed a motion to dismiss the complaint. Its motion argues that each issue raised by IEP's complaints has been considered in the hearings leading to D.91-05-007. According to Edison, IEP had an opportunity to participate in those hearings and did not. IEP cannot now mount a collateral attack on the decision.

Discussion

On August 15, 1991, the assigned administrative law judge (ALJ) issued a ruling which denied IEP's request to shorten the time for PG&E and Edison to respond to the complaints. The ruling found that IEP had not demonstrated that immediate Commission action was required. We confirm the ALJ ruling.

IEP's request to stay the data production deadlines is moot because the deadline of August 23 has already passed.

IEP's request for a cease and desist order is based on its belief that information requested by PG&E and Edison from contracting QFs is not required to calculate FERC efficiency standards and the utility data requests are therefore not authorized by the Commission. IEP, however, does not demonstrate that PG&E and Edison have overstepped the "authority" granted to them by D.91-05-007. That decision did not, as IEP argues, limit the utilities' efforts to enforce contracts they have signed with QFs. The decision resolved matters of law with regard to state authority to require jurisdictional utilities to enforce QF efficiency standards. In that context, the decision provided guidance to the utilities regarding monitoring programs which would, if implemented, meet a test of reasonableness in a review of utility avoided cost payments made pursuant to contracts with QFs. D.91-05-007 states:

"We approve specific monitoring and enforcement guidelines in this decision in order to give the utilities an indication of enforcement efforts which appear reasonable under the existing set of circumstances...Our approval of program guidelines, however, does not signal that we intend to manage utility efforts to enforce tariffs or contracts. Contract and tariff enforcement is the obligation of the utilities, subject to reasonableness reviews."

The decision also recognized that the guidelines adopted might require changes as circumstances change:

"The guidelines, however, may be inappropriate in the future. We expect the utilities to tailor their programs as necessary to address prevailing circumstances."

The decision did order the utilities to implement certain program elements. It did not, however, narrowly limit, as IEP suggests, utilities' authority to enforce their contracts.

Complainant states that if the Commission does not issue a cease and desist order, QFs will suffer irreparable injury because (1) they will face disconnection or rate reductions for non-compliance with utility data requests and (2) they will be required to provide commercially sensitive information to the utilities which is not required under D.91-05-007. Complainant offers no evidence or argument with regard to how any information requested by the utilities is "commercially sensitive." This matter was litigated in Application (A.) 89-04-021, et al., and resolved in D.91-05-007. D.91-05-007 ordered the utilities to provide QFs the option of submitting information under a protective agreement.

IEP has not demonstrated that rate reductions and disconnections which may occur as a result of non-compliance with their contracts will cause "irreparable injury" to QFs.¹ Its

1 Only those QFs in Edison's territory which primarily serve their own load and operate in accordance with Edison's tariff Schedule No. S for standby power would potentially be subject to "disconnection" for failure to comply with FERC-mandated efficiency standards as required under their purchase power contracts with Edison. These QFs are known as "bypass QFs" and operate in parallel with Edison. Depending on their load, bypass QFs may at times sell power to Edison, but they generally do not depend on these sales in order for their project to remain viable.

(Footnote continues on next page)

complaint does not show that the utilities seek information which could not have been anticipated during the proceeding which led to D.91-05-007. Moreover, a QF that is wrongly disconnected or improperly reimbursed for power purchases may seek reparations before this Commission or damages before a court of law. We will therefore deny IEP's request for a cease and desist order.

The evidence in A.89-04-021, et al., the docket in which we reviewed QF efficiency monitoring programs, suggests that the utilities have not heretofore undertaken efforts to enforce their contracts with QFs. To the extent the utilities are paying full avoided costs to QFs that do not meet contract obligations, utility ratepayers have paid too much for QF power. This is a circumstance that we will not allow to continue.

During the proceeding which led to D.91-05-007, participating QFs made clear their opposition to utility monitoring programs. The instant complaints appear to be nothing more than continued efforts by a group of QFs to avoid showing contract compliance. We view the complaints as a collateral attack on D.91-05-007. Public Utilities Code Section 1709 states that "In all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive." Some

(Footnote continued from previous page)

Accordingly, simply reducing utility payments to these QFs when they fail to comply with their purchase power contracts will not necessarily spur compliance.

For this reason, Edison instead has proposed to remove or "disconnect" bypass QFs from parallel operation--i.e., cause these QFs to operate in isolation from the utility's grid but with standby service--when these QFs fail to comply with FERC-mandated efficiency standards. In that event, a QF may still operate on a stand-alone basis and receive standby power until the QF complies with FERC standards, as required by its contract.

of IEP's allegations rely on a misinterpretation of D.91-05-007. Even if the allegations of IEP's pending complaints were correct, the complaints do not convince us that the issues raised differ materially from those already considered and resolved in D.91-05-007. Accordingly, we will dismiss IEP's complaints.

Findings of Fact

1. IEP's complaints do not demonstrate the need for immediate Commission action.
2. D.91-05-007 did not limit utility monitoring of QFs in ways which IEP's complaints allege.
3. IEP's complaints do not demonstrate that QFs will be irreparably harmed by the utility program elements to which the complaints refer.
4. Issues relating to commercially sensitive information required by utilities from QFs for monitoring efforts were considered in A.89-04-021, et al. and resolved in D.91-05-007.

Conclusions of Law

1. IEP's complaints represent a collateral attack on D.91-05-007.
2. IEP's complaints should be dismissed and its requests for cease and desist orders should be denied.
3. PG&E's and Edison's motions to dismiss should be granted.

ORDER

IT IS ORDERED that:

1. The motions of Southern California Edison Company (Edison) and Pacific Gas and Electric Company (PG&E) to dismiss Case (C.) 91-08-014 and D.91-08-015, respectively, are granted.
2. C.91-08-014, the complaint of Independent Energy Producers (IEP) against Edison, is dismissed.
3. C.91-08-015, the complaint of IEP against PG&E, is dismissed.

4. IEP's requests for cease and desist orders are denied.
This order is effective today.
Dated November 6, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

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


NEAL J. SULLIVAN, Executive Director

03