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Decision 92-07-071 July 22, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
SOUTHERN CALIFORNIA GAS COMPANY)
for authority to revise its rates)
effective October 1, 1989, in its)
Annual Cost Allocation proceeding.)

ORIGINAL
Application 89-04-021
(Filed April 12, 1989)

And Related Matters.)

) Application 89-05-006
) Application 90-02-027
) Application 90-04-029
) Application 90-10-032

O P I N I O N

This decision denies petitions for modification of Decision (D.) 91-05-007 and D.91-08-036 filed by Agrico Cogeneration Corporation (Agrico) and San Diego Gas & Electric Company (SDG&E). Both petitions seek changes to Commission decisions which set forth guidelines for utility payments to qualifying facilities (QFs) that fail to comply with contractual commitments to meet federal efficiency standards.

SDG&E's Petition to Modify

SDG&E's petition asks the Commission to rule that SDG&E should not be required to backbill QFs that fail to meet federal efficiency standards for overpayments which may have been made prior to January 1, 1990. Specifically, SDG&E asks that the Commission eliminate the guideline which requires the utilities to backbill for "three years ending on the last date for which QF efficiency data are submitted." SDG&E states that some QFs on its system have never submitted any information regarding their compliance with QF efficiency standards and that it therefore would have to backbill such QFs as far back as the date on which the QF commenced operations.

Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison) and the Division of Ratepayer Advocates (DRA) filed responses to SDG&E's petition. PG&E and Edison take no position on the merits of SDG&E's request but argue that any changes to the rules should apply to all utilities. DRA opposes the petition on the basis that the issue has been litigated and decided, and that SDG&E presents no new evidence demonstrating a need for changing the existing guidelines.

SDG&E's petition to modify motivates us to reiterate what D.91-05-007 does and does not do. D.91-05-007, as modified by D.91-08-036, authorizes utility programs to monitor the efficiency of power producers and adopts broad guidelines for use in our consideration of the reasonableness of utility efforts to carry out those programs. D.91-05-007, as modified, therefore supplements the general principles, summarized in D.90-09-088, which have traditionally defined the standard of review in reasonableness proceedings. What D.91-05-007 does not do is require a more stringent or rigid application of the general principles. Rather, under D.91-05-007, as always, the utilities must retain some discretion in the way they enforce contracts and tariffs and, with respect to the monitoring programs, the way they interpret data presented to demonstrate contract compliance.

SDG&E appears to have formed an extreme interpretation of the monitoring program guidelines. Contrary to what SDG&E's comments imply, we can foresee circumstances where it may be appropriate for the utilities to negotiate payments with QFs or to accept efficiency data which may not be complete but which provides reasonable assurance that the QF has complied with efficiency standards. While we expect the utilities to take all reasonable steps to enforce contracts and tariffs, we emphasize that unreasonable behavior may as readily be manifest by overzealousness as by passivity.

With regard to the matter before us, we agree with DRA that we have already considered the backbilling issue in hearings and in response to applications for rehearing. SDG&E errs in interpreting D.91-08-036 to require SDG&E to backbill QFs for an indefinite period. D.91-08-036 states that the period subject to collection is three years ending on the last date for which QF efficiency data are submitted "in response hereto." Efficiency data cannot be collected "in response" to a May 1991 decision before May 1991. Therefore, QFs are accountable only for the three years prior to the day data are first submitted after May 1991. We will deny SDG&E's petition to modify.

Agrico's Petition to Modify

Agrico filed a petition seeking, on an emergency basis, changes to the QF efficiency guidelines. Agrico asks the Commission to modify its decision to provide that the utilities may not backbill QFs who are out of compliance with federal efficiency standards. In the alternative, it asks that backbilling not apply to QFs that operated their facilities "in good faith." Agrico presents information regarding the "good faith" operation of its own plant in support of its alternative proposal. Agrico argues that in spite of its attempts to maintain sufficient data to demonstrate compliance, PG&E found Agrico's QF to be out of compliance.

PG&E responded to Agrico's petition. PG&E takes no position on whether retroactive application of the program should be eliminated but observes that the issue has already been addressed and resolved. PG&E opposes Agrico's alternative proposal regarding application of the rules based on "good faith" efforts of QFs. PG&E states a utility cannot determine whether the efforts of a QF to comply with efficiency standards are "in good faith." PG&E also takes issue with Agrico's characterization of its own circumstances, arguing that Agrico has refused to provide relevant data to PG&E.

DRA protested Agrico's petition, arguing that it represents a collateral attack on the Commission's program which provides no evidence which either demonstrates its own contract compliance or discredits the Commission's existing set of guidelines.

Consistent with our treatment of SDG&E's petition to modify, we decline at this time to change our guidelines, which were developed after hearings and a thorough review of the issues. In any event, as PG&E observes, it would be unreasonable to require the utilities to determine when a QF acts in "good faith." Such a requirement would open the door for costly and needless litigation. Finally, we would not modify guidelines applicable to an entire industry so that they suit the circumstances of a single affected entity, and certainly not in an expedited, ex parte order where the QF's circumstances are the subject of factual dispute. We will deny Agrico's petition to modify.

Discussion

Although we deny the petitions of Agrico and SDG&E, the issues raised by the petitions suggest that workshops should be conducted to address utility implementation of the QF efficiency monitoring guidelines. We will direct the Commission Advisory and Compliance Division (CACD) to hold workshops to discuss each utility's QF efficiency monitoring program and to work toward resolution of issues arising from the utilities' implementation of their programs. The workshops will not be a forum to alter or undercut the guidelines adopted in D.91-05-007 and D.91-08-036 (e.g., retroactivity; level of reduced payments) and clarified in today's order. Our intent is to provide a forum for each utility to explain the details of its program and for participants to raise questions regarding technical or implementation issues.

Findings of Fact

1. The QF efficiency guidelines adopted in D.91-05-007, as modified by D.91-08-036, were developed following hearings and a thorough consideration of relevant issues.

2. Neither SDG&E nor Agrico presents any new information to support changing the QF efficiency guidelines.

Conclusions of Law

1. SDG&E's petition to modify D.91-05-007 and D.91-08-036 should be denied.

2. Agrico's petition to modify D.91-05-007 and D.91-08-036 should be denied.

O R D E R

IT IS ORDERED that:

1. The petition to modify Decision (D.)91-05-007 and D.91-08-036 filed by San Diego Gas & Electric Company is denied.

2. The petition to modify D.91-05-007 and D.91-08-036 filed by Agrico Cogeneration Corporation is denied.

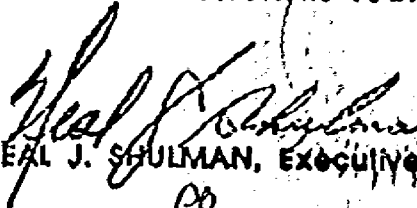
3. CACD shall conduct workshops to examine the implementation of QF efficiency monitoring programs by each utility within 60 days from the date this order becomes effective.

This order is effective today.

Dated July 22, 1992, at San Francisco, California.

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

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


NEAL J. SHULMAN, Executive Director