

AUG 11, 1995

Decision 95-08-010 August 11, 1995

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. )

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

OPINION**ORIGINAL**Summary

We herein vacate Decision (D.) 91-05-007, D.91-07-068, D.91-08-036, and D.92-07-071 to the extent that those decisions are inconsistent with the determination of the Ninth Circuit Court of Appeals that our policy for monitoring qualifying facility (QF) efficiency is preempted by federal law. We direct the electric utilities to continue to monitor the efficiency of QFs by collecting appropriate data and to pursue appropriate remedies against non-complying QFs before the Federal Energy Regulatory Commission (FERC).

Background

D.91-05-007<sup>1</sup> ordered electric utilities to monitor the efficiency of QFs selling electricity to them and to reduce the avoided cost payments to QFs that did not comply with federal efficiency standards. We adopted the program seeking to insure

<sup>1</sup> D.91-07-068, D.91-08-036, and D.92-07-071 modified to some extent D.91-05-007 and are incorporated in the discussion by reference.

that utility ratepayers would get full value for the services that are performed by the QFs, in accordance with the published minimum efficiency standards of the FERC. Under the program, QFs have supplied operational information to the utilities so that QF efficiency could be measured against the FERC standards. QFs not in compliance with those standards have received a lesser avoided cost payment than the rate under which they had contracted to sell electricity to the utility. The program has required the utilities to backbill QFs for power already sold to the utility that was not produced in accordance with FERC's efficiency standards.

Representatives of certain QFs and the Independent Energy Producers Association (IEPA) sought a temporary restraining order in federal district court to prevent implementation of this Commission's QF monitoring program. The Court denied the request and granted summary judgment in favor of the Commission and the utilities that supported it. The Ninth Circuit Court of Appeals reversed this judgment on appeal (IEPA, et al. v CPUC, et al., 36 F.3d 848 (9th Cir. 1994)). The Court held that the Commission is preempted by FERC in the enforcement of QF efficiency standards set forth in the Public Utility Regulatory Policies Act of 1978 (PURPA) and the regulations promulgated by FERC to implement PURPA:

"We conclude that the CPUC program is preempted by PURPA insofar as it authorizes the Utilities to determine that a QF is not in compliance with the Commission's [FERC] operating and efficiency standards and to impose a reduced avoided cost rate on that QF. Moreover, to the extent that the CPUC program authorizes the Utilities to disconnect from parallel operation a 'non-complying' QF, and thus to prevent such a QF from selling energy to and purchasing energy from the Utility, it is also preempted under federal law." (Citation omitted.)  
36 F.3d 848, 859.

Discussion

The Court's opinion in IEPA v CPUC requires that we vacate D.91-05-007 and related orders in these consolidated dockets to the extent our decisions are preempted by federal law. Specifically, we vacate those provisions of D.91-05-007 which would require or permit the utilities to reduce avoided cost payments to QFs that are not in compliance with FERC efficiency standards or to disconnect such a QF from parallel operation until and unless the FERC has determined that the QF is no longer certified.

Although the Court found that we are preempted from ordering the utilities to take these steps, the preemption did not extend to reasonable information gathering and reporting requirements ordered in D.91-05-007.

Notwithstanding the limits on our authority with respect to pricing and interconnection, we remain concerned that California ratepayers receive the benefits of QF development as anticipated by state and federal law. If QFs fail to achieve the efficiency standards set forth by the FERC, ratepayers may be paying an unjustifiable premium for QF power. For this reason, we expect California utilities to continue their information gathering and reporting activities in this area and to petition the FERC to revoke a power producer's QF status in cases where a QF is out of compliance with FERC efficiency standards, consistent with the Court's order. If the utilities fail to protect ratepayer interests in this way, we will consider adjustments to balancing accounts.

We add that the Court has not preempted Commission authority to order the utilities to remove QFs that are not in compliance with FERC efficiency standards from tariffs offering gas discounts to QFs. We addressed this matter in D.90-12-019 and our policy is not changed.

O R D E R

IT IS ORDERED that:

1. Decision (D.) 91-05-007, D.91-07-068, D.91-08-036, and D.92-07-071 are hereby vacated to the extent they permit or require a utility to reduce payments to a qualifying facility (QF), to disconnect a QF from parallel operation, or to backbill a QF when, in the opinion of the utility, the QF is or was not in compliance with the minimum efficiency standards of the Federal Energy Regulatory Commission.

2. The electric utilities shall continue to obtain operational data consistent with D.91-05-007 so as to monitor the efficiency of QFs from whom they purchase electricity pursuant to the Public Utility Regulatory Policies Act of 1978. All reporting requirements to the Commission remain in effect.

This order is effective today.

Dated August 11, 1995, at San Francisco, California.

DANIEL Wm. FESSLER  
President  
P. GREGORY CONLON  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
Commissioners

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

*Wesley Franklin*

Acting Executive Director