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Decision 97-11-077 November 19, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint application of Pacific Gas and Electric Company, San Diego Gas and Electric Company, and Southern California Edison Company for Ex Parte Interim Approval of a Loan Guarantee and Trust Mechanism to Fund the Development of an Independent System Operator (ISO) and a Power Exchange (PX) Pursuant to Decision 95-12-063 et al.

DR. [Signature]

Application 96-07-001
(Filed July 9, 1996)

OPINION

I. Summary of Decision

In this decision, we grant in part a petition for modification presented by Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company (Petitioners). We increase from \$250 million to \$300 million the authorized amount of loan guarantees Petitioners may extend to the PX and ISO Restructuring Trusts for development and startup of the Power Exchange (PX) and Independent System Operator (ISO). We also authorize memorandum account treatment of the increased loan guarantees, as requested. We defer, however, our decision on Petitioners' request for recovery of PX and ISO implementation costs under Public Utilities Code § 376.¹

II. Background

On October 17, 1997, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company filed their "Petition to Modify Decision No. 96-08-038 in Compliance with D.96-10-044: ISO and PX Funding."²

¹ All section references are to the Public Utilities Code.

² The Petition was filed more than one year after the effective dates of D.96-08-038 and D.96-10-044. Rule 47(d) of the Commission's Rules of Practice and Procedure requires a petition filed after one year to explain "why the petition could not have been presented within

Footnote continued on next page

Petitioners state that the requested modifications are needed to increase the loan guarantee that Petitioners have provided to the ISO Trust and the PX Trust and ultimately to provide additional funding to the California Independent System Operator Corporation and the California Power Exchange Corporation (ISO and PX Corporations).

Responses were submitted on November 3 by the Office of Ratepayer Advocates (ORA); by The Utility Reform Network (TURN); jointly by the Energy Producers and Users Coalition, the Cogeneration Association of California, the California Farm Bureau Federation, and the California Industrial Users (EPUC *et al.*); jointly by Automated Power Exchange, Avista, Eastern Pacific Energy, Electric Clearinghouse, Inc., Enron, New Energy Ventures, Illinova Energy Partners, Montana Power, Vitol, and California Retailers Association (APX *et al.*)³; separately by Automated Power Exchange⁴ (Automated Power); and jointly by the California Large Energy Consumers Association and the California Manufacturers Association (CLECA/CMA). Petitioners replied on November 13.

In D.96-08-038, dated August 2, 1996, we authorized Petitioners to provide loan guarantees totaling \$250 million to fund the ISO and PX Trusts, which were to develop the hardware and software needed for the then-unformed ISO and PX to begin

one year of the effective date of the decision." In this case, however, D.96-10-014 requires Petitioners to file a petition for modification of D.96-08-038 when startup expenditures for the ISO and PX reach specified levels. This Petition is filed to comply with that requirement. In addition, the Petition alleges facts that explain why the petition could not have been brought within one year of D.96-08-038, which stated the primary provisions that the Petition proposes to alter.

³ Southern Energy Trading and Marketing, Inc. (Southern) was listed as one of the parties joining in the response of APX *et al.* In a letter dated November 6, 1997, an officer of Southern stated that Southern had been included in the filing in error, and that it did not support the response of APX *et al.*

⁴ Automated Power also filed a Petition to Intervene in this proceeding on November 3. Automated Power will compete with the PX, and thus has an interest in certain aspects of the Petition. The Petition to Intervene is granted.

operations on January 1, 1998. Section 361, which took effect on September 23, 1996, made clear the Legislature's intent that the trust funds were to be made available to the entities that would ultimately run the ISO and PX (later established as the ISO and PX Corporations), and in D.96-10-044, we modified D.96-08-038 to reflect this intent. In D.97-09-053, we approved the transfer of responsibility for bringing the ISO and PX into operation from the Trustee to the ISO and PX Corporations. (See D.97-09-053 for a more detailed history.)

Petitioners now ask us to do three things: to authorize Petitioners to increase their loan guarantees to the ISO and PX Trusts from \$250 million to \$300 million; to authorize the same memorandum account and ratemaking treatment for this \$50 million increment that we allowed for the earlier loan guarantee; and to allow the Petitioners to include in their transition cost balancing accounts any restructuring implementation fees that the Federal Energy Regulatory Commission (FERC) authorizes the ISO or PX to charge or incur for their startup and development costs, and to allow recovery of such charges from all retail customers on a nonbypassable basis without further reasonableness review, under the authority of § 376.³ (The request for § 376 treatment may also cover other costs.) We address the first two of these requests in this decision, but defer our decision on the treatment of implementation costs under § 376.

III. Increase in the Amount of the Loan Guarantee

D.96-08-038, slip op. at 15, excluded "on an interim basis" startup costs for the formation of the ISO and PX from the scope of the loan authorization. In D.96-10-044, we acknowledged the Legislative instruction of § 361 and authorized the trusts to

³ Although Petitioners designate their filing as a Petition for Modification and invoke Rule 47, at no point does the Petition actually ask for any modifications of any previous decisions, much less "propose specific wording to carry out all requested modifications to the decision," as Rule 47(b) requires. Thus, Petitioners run the risk that we may misunderstand their specific request and grant something other than what they want, or that we may deny their Petition due to their failure to provide sufficient information to serve as a ground for granting it.

provide unconditional access to the trust funds to the ISO and PX Corporations as soon as their boards were capable of making decisions. We also required the Petitioners to file a petition to modify D.96-08-038 to expand the loan guarantee authority if use of the trust funds by the boards exceeded \$12 million, or the expected use of trust funds for the next quarter was expected to exceed \$13 million, *and* it was represented that further expenditures by the corporations without additional funding would compromise the trusts' ability to complete the necessary hardware and software development on time. (D.96-10-044, slip op. at 3-4, 7(Ordering Paragraph 1).) This requirement led to the present petition.

On September 2, 1997, a letter from the trusts' accountant notified Petitioners that funds disbursed from the trusts to the corporations were expected to exceed \$13 million during the last quarter of 1997. (Attachment A to the Petition.) Affidavits attached to the Petition state that the original loan guarantee of \$250 million will not provide sufficient funds for the startup and development of the ISO and PX and for their functioning until they begin receiving revenues from their operations (mid-February for the PX, April for the ISO). Of the requested additional \$50 million, \$24 million would be provided to the ISO Corporation, for a total of \$215 million, and \$26 million would be provided to the PX Corporation, for a total of \$85 million. The PX and ISO Corporations will repay the loans according to the terms of the Amended and Restated Trust Agreements approved in D.97-09-053.

According to the affidavit of the Treasurer of the ISO Corporation (Attachment B), the increased funding for the ISO is needed to provide for contingency costs and additional costs for testing and validation that were not adequately estimated in the original scope of work. The ISO also incurred unexpectedly high expenses for interim staff due to delays in hiring permanent staff. The original scope of work did not include the ISO's need for working capital during the first quarter of 1998; full revenues will not begin to flow until around April 1, because of the time needed to deliver services, bill for those services, and receive payment of the bills. Actual costs for hiring, FERC filings, and capital expenditures were also higher than projected in the original scope of work.

The affidavit of the Controller of the PX Corporation (Attachment C) cites similar reasons for the need for additional funding. The original scope of work made no provision for contingency costs, testing, or working capital for early 1998. Actual costs of interim staff, FERC filings, legal representation, and capital costs exceeded earlier estimates. Additional purchases of computer infrastructure for the primary and backup centers require additional funding.

Discussion

The items included in the request for additional funding are a necessary consequence of our authorization in D.97-09-053 to transfer the responsibility for developing the ISO and PX from the trusts to the corporations. The funding needs of the corporations are no longer limited to amounts needed to cover the costs of formation. In light of the greatly expanded responsibilities of the ISO and PX Corporations, we will authorize the increased loan guarantees.

Although we are concerned at this substantial increase in projected costs of bringing the PX and ISO into operation, it is clearly prudent for the PX and ISO to have a provision for contingencies and working capital until the revenue flow stabilizes, and these amounts were not included in the original scope of work. In addition, the obligation of the ISO and PX to repay the loans gives the management of the corporations an incentive to control costs.

IV. Memorandum Account and Ratemaking Treatment

In D.96-08-038, we ordered the Petitioners to set up two memorandum accounts to record the utility's liability associated with the development costs of the PX and ISO, "so that if and when FERC rejects [recovery of] any development cost the amount is booked into the account." (D.96-08-038, slip op. at 39.) The accounts were to "preclude the booking of any development costs until such time as FERC has rejected recovery in ISO or PX rates, and allow the liability associated with the loan guarantee to be booked when incurred." (*Id.*)

Discussion

Petitioners ask us to confirm that the liability, if any, arising from the requested increase in the loan guarantee will be equally eligible for the memorandum account treatment authorized for the initial amount. This confirmation is consistent with our decision to authorize the increase in the loan guarantee, and we will grant this part of Petitioners' request.

V. Deferral of Decision on Recovery Under Section 376

Petitioners ask for authority to record in their transition cost balancing accounts and to recover under § 376: 1) any initial charges or restructuring implementation fees, whether assessed as one-time charges or not, that FERC authorizes the PX and ISO to charge for their development and startup costs, 2) development and startup costs incurred by the ISO or PX but not included in FERC-approved rates, and 3) any ISO or PX implementation costs incurred by Petitioners under their loan guarantees. (Petition, pp. 4, 11, 13.)⁴

Due to the complexities of the language of § 376 and the importance of applying and interpreting this statute correctly in this, the first time we have had these questions squarely before us, we have been unable to address this issue as quickly as Petitioners requested. We will consider this part of the Petition's request in a subsequent decision.

Findings of Fact

1. On October 17, 1997, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company filed their "Petition to Modify Decision No. 96-08-038 in Compliance with D.96-10-044: ISO and PX Funding."

2. Responses were submitted on November 3 by ORA; by TURN; by EPUC *et al.*; by APX *et al.*; by Automated Power; and by CLECA/CMA. Petitioners replied on November 13.

⁴ Petitioners' specific request is confusing, due to typographical and other errors. This summary reflects what we and most of the responding parties understand the request to be.

3. Automated Power filed a Petition to Intervene in this proceeding on November 3.

4. Automated Power will compete with the PX, and thus has an interest in certain aspects of the Petition.

5. In D.96-10-014, we required the Petitioners to file a petition to modify D.96-08-038 to expand the loan guarantee authority if use of the trust funds by the boards of the ISO and PX Corporations exceeded \$12 million, or the expected use of the trust funds for the next quarter was expected to exceed \$13 million, *and* it was represented that further expenditures by the corporations without additional funding would compromise the trusts' ability to complete the necessary hardware and software development on time.

6. On September 2, 1997, a letter from the trusts' accountant notified Petitioners that funds disbursed from the trusts to the corporations were expected to exceed \$13 million during the last quarter of 1997.

7. The original loan guarantee of \$250 million will not provide sufficient funds for the startup and development of the ISO and PX and for their functioning until they begin receiving revenues from their operations.

8. The funding needs of the ISO and PX Corporations are no longer limited to amounts needed to cover the costs of formation.

9. In D.96-08-038, we ordered the Petitioners to set up two memorandum accounts to record the utility's liability associated with the development costs of the PX and ISO.

Conclusions of Law

1. The Petition to Intervene of Automated Power should be granted.
2. The greatly expanded responsibilities of the ISO and PX Corporations justify the increased loan guarantees.
3. The Petitioners' liability, if any, arising from the requested increase in the loan guarantee should be eligible for the memorandum account treatment authorized for the initial amount.
4. The Petition to Intervene of Automated Power Exchange should be granted.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SD&E), and Southern California Edison Company (Edison) are authorized to increase the loan guarantees authorized in Decision (D.) 96-08-038 by \$22.5 million, \$5 million, and \$22.5 million, respectively.

2. D.96-08-038 is modified as follows:

- a) The first full sentence on p. 2 (slip op.) is modified to read: "Pursuant to Public Utilities Code Sections 701 and 830, this decision grants in part and denies in part the ex parte joint application of Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE/Edison) requesting interim authority to guarantee notes for loans to two trusts in an amount up to \$135 million for PG&E, \$30 million for SDG&E, and \$135 million for SCE."
- b) The third full sentence in the paragraph at the top of p. 17 is modified to read: "We therefore approve as requested authority to guarantee loans up to \$135 million for PG&E, \$30 million for SDG&E, and \$135 million for SCE."
- c) The main (initial) paragraph of Ordering Paragraph 1 on p. 63 is modified to read: "Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE) are authorized on an interim basis to guarantee loans to an Independent System Operator (ISO) Trust and a Power Exchange (PX) Trust in an aggregate amount of up to \$135 million for PG&E, \$30 million for SDG&E, and \$135 million for SCE to be used to develop hardware and software upon the following conditions:"

3. The loan increase of \$50 million we authorize today shall be subject to the treatment described in Ordering Paragraph 6 of D.96-08-038.

4. Other issues raised in the "Petition to Modify Decision No. 96-08-038 in Compliance with D.96-10-044: ISO and PX Funding," filed by PG&E, SDG&E, and Edison on October 17, 1997, will be addressed in a subsequent decision.

5. The Petition to Intervene of Automated Power Exchange is granted.

This order is effective today.

Dated November 19, 1997, at San Francisco, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEPPER

RICHARD A. BILAS

Commissioners