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Decision 97-12-035 December 3, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Authority to Adjust its Electric Rates Effective January 1, 1997, and for Commission Order Finding That Electric and Gas Operations During the Reasonableness Review Period from January 1, 1995 to December 31, 1995 Were Prudent.

ORIGINAL
Application 96-04-001
(Filed April 1, 1996)

ORDER DENYING PETITION TO MODIFY DECISION 97-07-052

The Commission issued Decision (D.) 97-07-052 in Application (A.) 96-04-001. D.97-07-052 addressed the reasonableness of Pacific Gas and Electric Company's (PG&E) electric operations during the period January 1, 1995 to December 31, 1995.

D.97-07-052 concluded that the operation of PG&E's electric system during the review period was reasonable with the possible exception of those issues which were deferred to a future phase of this proceeding or to other proceedings. However, one of the issues addressed during the hearing in the reasonableness review phase of the hearing was PG&E's power purchase agreement with Yolo Energy Partners, Inc. (Yolo), a qualifying facility (QF). PG&E orally agreed to modify the terms of the contract by extending the probationary period for Yolo. PG&E did not memorialize in writing its decision to modify the Yolo contract.

The Office of Ratepayer Advocates (ORA) stated that while it believes that PG&E acted prudently in modifying the contract with Yolo, PG&E should have memorialized its oral agreement to extend the probationary period for the QF contract with Yolo. PG&E agreed with ORA's position.

ORA recommended that PG&E should be directed not to modify written QF contracts through an oral agreement.

Based on the position of ORA and PG&E, the Commission directed PG&E not to modify its contracts with QFs through an oral agreement in Ordering Paragraph 4 of D.97-07-052 which reads as follows:

"PG&E shall not modify its contracts with qualifying facilities through an oral agreement."

On July 25, 1997, PG&E filed a petition to modify Ordering Paragraph 4 of D.97-07-052 to read as follows:

"PG&E shall not materially modify its contracts with qualifying facilities through oral agreement." (Emphasis added.)

In support of its request PG&E stated, among other things, that Ordering Paragraph 4 is inconsistent with Conclusion of Law 6 which reads as follows:

"PG&E should be directed to keep a written record of any material modifications to written QF contracts, either through written amendments or other written records." (Emphasis added.)

ORA filed a response to PG&E's petition to modify D.97-07-052 stating, among other things, that PG&E's request is procedurally improper and unsupported by the record. PG&E has filed a reply to ORA's response to its petition to modify D.97-07-052. PG&E disagrees with ORA's position.

Discussion

While we believe that PG&E, by filing its petition to modify D.97-07-052, did not act improperly, we are of the opinion that PG&E should not be allowed to modify any terms of its contract with QFs through an oral agreement. Absence of any written record of modifications to contracts with QFs creates uncertainty and confusion in evaluating reasonableness of PG&E's action, which was evident in the case of the Yolo contract. Accordingly we will deny PG&E's request to modify D.97-07-052.

Findings of Fact

1. PG&E seeks to modify Ordering Paragraph 4 of D.97-07-052 which currently reads as follow:

"PG&E shall not modify its contracts with qualifying facilities through an oral agreement."

to read as follows:

"PG&E shall not materially modify its contracts with qualifying facilities through an oral agreement." (Emphasis added.)

2. Absence of any written record of modifications to contracts with QFs creates uncertainty and confusion in evaluating reasonableness of PG&E's action.

Conclusion of Law

PG&E's request to modify D.97-07-052 should be denied.

IT IS ORDERED that Pacific Gas and Electric Company's petition to modify Decision 97-07-052 is denied.

This order is effective today.

Dated December 3, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners