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Decision 98-04-053 April 23, 1998

'APR 23 1998'

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation.

R.94-04-031
(Filed April 20, 1994)

ORIGINAL

Order Instituting Investigation on the Commission's Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation.

I.94-04-032
(Filed April 20, 1994)

**INTERIM OPINION REGARDING
IEP'S PETITION TO MODIFY THE PREFERRED POLICY DECISION**

On December 20, 1995, we issued Decision (D.) 95-12-063, as modified by D.96-01-009, our Preferred Policy Decision in our Rulemaking (R.) and Investigation (I.) on electric industry restructuring (R.94-04-031/I.94-04-032). Among the many issues addressed in this decision, we determined that Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (Edison) should be encouraged to voluntarily divest at least 50% of their fossil generation. Pursuant to Rule 47 of our Rules of Practice and Procedure, on December 9, 1996, the Independent Energy Producers Association (IEP) filed a petition to modify the Preferred Policy Decision. IEP requests that we modify the decision to find that the voluntary divestiture of at least 50% of fossil generation should also apply to San Diego Gas & Electric Company (SDG&E). Responses to IEP's petition were timely filed by SDG&E, the Office of Ratepayer Advocates (ORA), and California Manufacturers Association (CMA). We deny IEP's petition as moot.

On September 23, 1996, Assembly Bill (AB) 1890 was signed into law by Governor Wilson. AB 1890 amends the Public Utilities Code to require that this Commission undertake various actions related to restructuring the electric services

industry in California. Among other provisions, AB 1890 reaffirms our role in addressing issues concerning competition, market power and divestiture with the enactment of §§ 330(1)(3) and 362. In our second Roadmap Decision (D.96-12-088), we determined that the legislation makes no reference to the Preferred Policy Decision's voluntary divestiture proposal as a means of mitigating market power or to the incentive for encouraging such divestiture. (D.96-12-088, mimeo. at p. 12.) We reaffirmed our commitment to consider market power problems and concluded that AB 1890 did not require any modification of our proposal for voluntary divestiture of at least 50% of fossil generation assets. Moreover, § 377 states:

"The commission shall continue to regulate the nonnuclear generation assets owned by any public utility prior to January 1, 1997, that are subject to commission regulation until those assets have been subject to market valuation in accordance with procedures established by the commission. If, after market valuation, the public utility wishes to retain ownership of nonnuclear generation assets in the same corporation as the distribution utility, the public utility shall demonstrate to the satisfaction of the commission, through a public hearing, that it would be consistent with the public interest and would not confer undue competitive advantage on the public utility to retain that ownership in the same corporation as the distribution utility."

PG&E and Edison are already well on the way to divesting both fossil and non-fossil generation. On December 19, 1997, SDG&E filed Application (A.) 97-12-039 seeking authority to sell electrical generation facilities and power purchase contracts, including two large fossil generation plants, 19 combustion turbines, its 20% interest in the San Onofre Nuclear Generating Station, and its interest in several long-term power contracts. In addition, D.98-03-073 approved the merger of Enova Corporation (SDG&E's holding company) with Pacific Enterprises, providing various conditions are met. For example, Ordering Paragraph 2.b. of D.98-03-073 requires that SDG&E sell its gas-fired generation facilities to nonaffiliates by December 31, 1999. Both because AB 1890 reaffirmed our role in addressing issues concerning competition, market power and divestiture and because SDG&E has recently filed an application seeking authority to divest 100% of its fossil generation, IEP's petition is denied as moot.

Findings of Fact

1. Events have overtaken IEP's petition to modify the Preferred Policy Decision.
2. The requirements of AB 1890 make IEP's petition moot, as does SDG&E's A.97-12-039, in which it requests authority to divest its electric generation facilities and interests in power purchase contracts.
3. D.98-03-073 requires SDG&E to sell all of its gas-fired generation facilities to nonaffiliates, as a condition of approving the merger of Enova Corporation with Pacific Enterprises.

Conclusions of Law

1. AB 1890 does not affect our authority to address competition and market power problems in the manner set forth in the Preferred Policy Decision, including the proposal of voluntary divestiture for PG&E and Edison as a means for mitigating such problems.
2. Section 377 requires that, after market valuation, a public utility that wishes to retain ownership of nonnuclear generation assets in the same corporation as the distribution utility must obtain Commission approval that such ownership would be consistent with the public interest and would not confer undue competitive advantage.
3. IEP's petition to modify the Preferred Policy Decision should be denied as moot.
4. This order should be effective today, so that the requirements of AB 1890 can be implemented in an expeditious manner.

INTERIM ORDER

IT IS ORDERED that the Independent Energy Producers Association's Petition to Modify Decision (D.) 95-12-063, as modified by D.96-01-009, is denied as moot.

This order is effective today.

Dated April 23, 1998, at Sacramento, California.

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