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Decision 98-05-044 May 21, 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)
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)

ORIGINAL

OPINION MODIFYING DECISION 97-12-048

I. Summary

In Decision (D.) 97-12-048, the Commission adopted a bonding requirement of $500,000 for meter service providers (MSPs). A petition for modification was filed by Applied Metering Technologies, Inc. (AMT) to change the bond requirement.

Today's decision grants AMT's petition. MSPs shall have the option of providing a bond in the amount of $100,000 or providing proof of liability insurance in the format described in this decision and in an amount no less than $1 million. D.97-12-048 is modified accordingly.

II. Background

On January 13, 1998, AMT filed its "Petition to Modify Order D.97-12-048, Opinion Regarding the Meter and Data Communications Standards Workshop." AMT seeks to modify the $500,000 bonding requirement that a MSP must satisfy before it can be certified to perform metering services in California. AMT

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recommends that the decision be modified to allow general liability insurance to substitute for the bond.

AMT states in its petition that it meets all the requirements to become a MSP except for the bond. AMT is negotiating with several large electric service providers (ESPs) to provide meter installations in Southern California. Although AMT represents that its employees and management have extensive experience in utility-related work, AMT has been unsuccessful in getting a bond company to issue the required bond.

AMT states that the bond companies have expressed five reasons companies such as AMT cannot secure the bond that is needed to become an MSP. The first reason is that the type of bond is not specified. Bond companies do not know whether D.97-12-048 requires a performance bond, a payment bond or a contract bond. Bond companies have informed AMT that D.97-12-048 does not provide sufficient information for them to issue a bond.

The second reason bond companies are reluctant to issue a bond is that the bond companies do not have any knowledge of or experience with meter installation and meter services. Because of this, the bond companies that AMT spoke with are hesitant to assess the risks and to establish the cost of the bond.

A third reason is the size of the required bond. The companies that AMT contacted thought that the size of the required bond was too large. In addition, for a company the size of AMT, the annual cost of such a bond would run about 8% to 10% of the total bond amount, i.e., about $40,000 to $50,000. In contrast, the cost of a bond for a large company runs about one percent of the bond amount. AMT asserts that such a cost is unreasonable for a small business to bear. AMT contends that if the cost of the bond for MSPs is too high, this cost will be passed on to end-use customers, which will keep electricity rates high.

The fourth reason is that some of the bond companies remarked that general liability insurance, rather than a bond, is more appropriate. AMT states that it already has $1,000,000 in limited liability insurance. AMT contends that expanding the coverage to include other damages that could result from meter service activities should suffice to meet the Commission's intent.

The fifth reason is similar to the second reason. AMT states that the bond companies have no familiarity with the work that MSPs do, or no understanding of the ramifications if an MSP does defective work. AMT also points out that the bond companies seem to favor the size of the company rather than the technical competence of the MSP.

AMT recommends that instead of a bond requirement, the Commission allow prospective MSPs to have general liability insurance in the amount of $500,000.

AMT's petition generated several responses in favor of a change to the bond requirement.

Enron supports the use of a recognized, widely accepted, and reliable financial guarantee instrument as a substitute for the bond requirement. Enron contends that the use of such substitutes will promote competition.

Enron also believes that the Commission should revisit the amount required. Enron contends that the $500,000 requirement is a large amount for small companies and for the type of electrical work that MSPs will provide. Enron favors an approach that will make it easier for new businesses to enter into the market of providing meter-related services.

The Office of Ratepayer Advocates (ORA) recommends that the Commission revisit the bond requirement. ORA states that the $500,000 bond requirement may have the unintended effect of discouraging small and new entities from participating as MSPs. ORA suggests that the Commission determine whether an alternative approach can be developed which protects consumer interests while at the same time permits the entry of MSP applicants.

In ORA's conversation with a bonding company, ORA was informed that bonding is a specialized industry with well-established types of business activity. That is, one "cannot extrapolate the bonding requirements of established businesses to a new business, nor create wholly new forms of bonding, without the assistance of an expert in surety law." In addition, if a bond for a substantially different line of business is required, the bond company's obligation should be defined in terms of the requirements that bond companies are already familiar with.

ORA also states that the size of the required bond is unusually large. When "businesses associated with electrical construction have a requirement for a form of bonding, it is often in the range of $50,000 to $100,000." ORA asserts that if the bonding requirement was intended to address electrical safety issues, the monetary amount should be comparable to what is found for other kinds of electrical contracting work.

Pacific Gas and Electric Company (PG&E) points out that metering-related services involve hazardous work in and around energized circuits. Due to these kinds of hazards, PG&E contends that meter installation companies engaged in this kind of work must be financially prepared to cover claims for any liability that may result from their operations. This involves making sure that the MSP has adequate bonding or insurance. PG&E believes that regardless of the kind of bond that D.97-12-048 intended, a general liability insurance policy is more suitable to accomplish the Commission's goal of compensating persons for any damage caused by the MSPs.

PG&E proposes that the general liability insurance satisfy the following specifications. First, the policy should be "commercial general liability" insurance with coverage that, at a minimum, is the same as what is provided in the "Insurance Services Office Commercial General Liability Coverage occurrence" form. PG&E states that this is a standard industry-approved form that is used nationally.

The second specification that PG&E proposes is that the limit should not be less than $1 million for each occurrence for bodily injury, property damage, and personal injury. If the coverage is subject to a general aggregate limit, PG&E suggests that this aggregate limit should be $2 million.

PG&E's proposed third specification is that an additional insured endorsement should be part of the policy naming the UDC and the ESP for whom the MSP is performing work. PG&E also proposes that the MSP's insurance be endorsed as the primary insurance, and that any insurance or self-insurance maintained by the UDC or the ESP for whom the MSP is performing metering work shall not contribute with the primary insurance.

PG&E also recommends that the MSP be responsible for making sure that its subcontractors maintain sufficient limits of the same insurance coverage. PG&E also suggests that the MSPs be required to show the Commission that it has evidence of coverage for workers' compensation. In addition, PG&E recommends that the MSP show employers' liability coverage of not less than $1 million for injury or death for each accident. PG&E also recommends that before commencing any meter installation work, the MSP should be required to furnish the UDC and the ESP for whom it is performing meter work with certificates of insurance and endorsements of all required insurance for the MSP and its subcontractors.

PG&E comments that the documentation should include a statement that the coverage will not be canceled except after thirty (30) days' prior written notice has been given to the Commission, the ESP and the UDC. Such a requirement would prevent an MSP from starting any work if the insurance lapsed.

A joint letter from Schlumberger, Inc., CellNet Data Systems, Inc., Star Data Services, Phaser, Inc., E-Mon Corporation, and Utility Systems and Applications, support AMT's proposal. Those parties state that AMT's proposal would reduce market barriers by lowering the cost for MSPs seeking to become certified. They also state that a requirement of general liability insurance will provide "essentially the same protection to workers and electricity customers as does the bond requirement."

III. Discussion

Some entities have been able to secure the MSP bond as evidenced by the bonds submitted to the Commission. At the same time, some prospective MSPs, such as AMT, have been unsuccessful in obtaining the bond. Based on AMT's petition for modification and the responses to the petition, the problem that AMT has encountered is that it appears that surety companies are unwilling or reluctant to issue such a bond due to primarily three reasons. The first reason appears to be that the surety companies lack sufficient information to issue such a bond. The second reason centers around the surety companies' lack of experience with meter installation and meter services. The third reason is the size of the required bond and its impact on smaller companies such as AMT.

The first reason why AMT appears to be having trouble in securing a bond is that the surety companies do not have sufficient information to issue a bond. This has not been a problem for some MSPs who have been successful in obtaining a bond. In an effort to clarify the situation for the surety companies, we reiterate that the intent behind the adoption of the bond requirement in D.97-12-048 is to ensure that the MSPs adhere to all of the provisions governing the installation and removal of electric meters, and that an adequate source of compensation is available in case an end-use customer suffers damages as a result of the MSP's actions. (D.97-12-048, p. 25.) The bond requirement is in essence for a licensing bond for all MSPs. This bond requirement is not unlike the bond requirement for building contractors. (See Bus. & Prof. Code Sections 7071.5 and 7071.6.)

Some of the prospective MSPs or bonding companies have asked whether a sample bond form is available. We did not adopt a specific bond form in D.97-12-048. Instead, we felt that it should be left to the surety companies to develop the specific language for the bond in a manner that is consistent with D.97-12-048. The MSPs who obtained the required bond were able to get the surety companies to draft up the bond language. The Energy Division has made samples of the bond language available to other prospective MSPs who need a sample bond form.

To ensure that all of the bonds submitted in connection with the MSP certification process are in a format that is consistent with what is required by D.97-12-048, we will direct the Legal Division to review all of the bonds submitted to date to ensure that they are consistent with the intent expressed in our decision. We will also direct the Energy Division, with the assistance of the Legal Division, to disseminate to prospective MSPs upon request sample bond forms that are consistent with the Commission's intent in D.97-12-048.

The second reason why surety companies seem reluctant to issue a bond is that they lack experience with and an understanding of meter installation and maintenance practices. As a result, the surety companies are unwilling to issue a bond, or in the case of a small MSP, the companies charge a significant premium for a bond for a prospective MSP. Unfortunately, there is nothing we can do to influence a change in the behavior of the surety companies. As time goes by and more bonding companies become exposed to these kinds of bonds, this type of barrier should be lessened.

The third reason why AMT and other prospective MSPs face difficulties in obtaining a bond is something the Commission can control. That is, we can re-examine the size of the bond or we can provide prospective MSPs with an alternative to the bonding requirement.

Instead of promoting competition, the bond requirement has had the effect of limiting the entry of MSPs into the meter installation and related markets. To facilitate the entry of more MSPs, we need to re-examine whether the bond amount can be lowered, or if liability insurance can be substituted for the bond, while still protecting consumer interests.

Although some of the responses contend that the amount of the required bond is too much, the bond amount is not too high when one considers the cost to rebuild a building and if more than one incident were to occur. However, as Enron and ORA point out, the $500,000 requirement is a large amount considering the type of electrical work the MSPs will be doing, and the size of the other bonds that are required of contractors when electrical construction is involved.

We will modify D.97-12-048 by reducing the size of the required bond from $500,000 to $100,000. A bond of this size will help to ensure that the MSP will be in a position to cover possible claims for liability if the meter installation or related work results in damage or other loss.

To promote the entry of more ESPs, we will allow a prospective MSP to show proof of general liability insurance in an amount not less than $1 million as an alternative to the bonding requirement. Proof of liability insurance in this amount may substitute for the bond requirement as long as the general liability insurance meets the following specifications: (1) the insurance policy shall be commercial general liability insurance with coverage that, at a minimum, is the same as what is provided for in the "Insurance Services Office Commercial General Liability Coverage occurrence" form which appears to be generally available in the insurance industry; (2) the policy limit shall not be less than $1 million for each occurrence for bodily injury, property damage, and personal injury, and if the coverage is subject to a general aggregate limit, the aggregate limit shall not be less than $2 million; (3) the policy shall include, as an additional insured, the UDC in whose service territory the MSP is operating in and the ESP for whom the MSP is performing the meter-related work; and (4) the liability insurance policy shall include a statement that thirty days' written notice shall be provided to the Commission, the ESP and the UDC before the policy is canceled. The first two specifications will ensure that the MSP has sufficient coverage for any claims that may result. The third specification is intended to make sure that the MSP's activities cover any claims that might be brought against the UDC and the ESP because of the MSP's activities. The fourth specification will ensure that the Commission and other affected parties will receive notice of the MSP's or the insurer's intent to cancel the required insurance.

PG&E has suggested that the MSP's insurance be endorsed as the primary insurance and that any insurance or self-insurance maintained by the UDC or the ESP shall not contribute with the primary insurance. We decline to adopt that suggestion because a decision on whose insurance is primary could prejudge the possible fault of the MSP, the UDC, and the ESP.

PG&E also suggests that the MSP be responsible for making sure that the MSP's subcontractors carry the same insurance coverage as that required of the MSP and that the MSP be required to show that it has evidence of workers' compensation coverage. We decline to adopt those suggestions. It should be left to the MSP to determine what other insurance it should have and what its subcontractors should have. We decline to get involved in mandating proof of workers' compensation coverage since such coverage is the MSP's responsibility.

In accordance with the above discussion, D.97-12-048 at page 25 should be modified as set forth in Ordering Paragraph 2 to reflect the option of requiring the MSP to provide a bond in the amount of $100,000 or to provide proof of liability insurance.

Findings of Fact

1. AMT filed its petition to modify D.97-12-048 on January 13, 1998.

2. Several parties filed responses and submitted a letter in support of AMT's petition.

3. Some entities have been able to secure the MSP bond required by D.97-12-048.

4. Surety companies appear reluctant to issue a bond due to insufficient information regarding the bond, the surety companies' lack of experience with and understanding of meter installation and maintenance practices, and the size of the required bond and its financial impact on smaller companies.

5. D.97-12-048 left it to the surety companies to develop the specific bond form language.

6. As a result of the surety companies' lack of experience with and understanding of meter installation and maintenance practices, prospective MSPs may be unable to obtain a bond or may be charged a significant premium.

7. The bond requirement has limited the entry of MSPs into the meter installation and related markets.

8. The MSP bond requirement of $500,000 is a large amount considering the type of electrical work the MSPs will be doing, and the size of other bonds that are required of contractors when electrical construction is involved.

9. A bond of $100,000 will help to ensure that the MSP will be in a position to cover possible claims for liability should the meter installation or related work result in damage or other loss.

10. The MSP should determine what other kinds of insurance it and its subcontractors should have.

Conclusions of Law

1. The intent behind the adoption of the bond requirement in D.97-12-048 is to ensure that the MSPs adhere to all of the provisions governing the installation and removal of electric meters, and that an adequate source of compensation is available in case an end-use customer suffers damages as a result of the MSP's actions.

2. The MSP bond requirement is for a licensing bond.

3. The size of the required MSP bond should be reduced from $500,000 to $100,000.

4. As an alternative to a bond, a prospective MSP may show proof of general liability insurance in the form specified and in an amount not less than $1 million.

5. PG&E's suggestion that that MSP's insurance be endorsed as the primary insurance and that any insurance or self-insurance maintained by the UDC or the ESP shall not contribute with the primary insurance should not be adopted because it could prejudge the possible fault of the MSP, the UDC, and the ESP.

6. D.97-12-048 should be modified to reflect the changes discussed in this decision.

ORDER MODIFYING DECISION 97-12-048

1. The petition for modification filed by Applied Metering Technologies, Inc. is granted to the extent set forth in this decision and in the ordering paragraphs below.

2. The second and third full paragraphs on page 25 of Decision (D.) 97-12-048 shall be modified by replacing those two paragraphs with the following:

> "In addition to the written application, the MSP shall either arrange for a bond in favor of the State of California in the amount of $100,000 or provide the Energy Division with proof that the MSP has general liability insurance that meets the specifications described below.
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> "If a bond is used, it shall be submitted with the written application. The bond shall be for the benefit of anyone who may be damaged as a result of the MSP's actions in connection with the installation, maintenance, repair, or removal of the electric meter. Should a complaint for damages arising from the MSP's actions be filed in civil court, and a claim is made against the bond, a copy of the complaint shall be served by registered or certified mail upon the Commission's Executive Director.
>
> "The bond requirement will ensure that the MSPs adhere to all applicable provisions governing the installation and removal of electric meters. Should an end-use customer suffer damages as a result of the MSP's actions, the bond will provide a source of compensation.
>
> "If the MSP elects to provide proof of liability insurance, the insurance shall meet the following specifications: (1) the insurance policy shall be commercial general liability insurance with coverage that, at a minimum, is the same as what is provided for in the Insurance Services Office Commercial General Liability Coverage occurrence form; (2) the policy limit shall not be less than $1 million for each occurrence for bodily injury, property damage and personal injury, and if the coverage is subject to a general aggregate limit, the

> aggregate limit shall not be less than $2 million; (3) the policy shall include, as an additional insured, the UDC in whose service territory the MSP is operating in and the ESP for whom the MSP is performing the meter-related work; and (4) the liability insurance policy shall include a statement that thirty days' written notice shall be provided to the Commission, the ESP and the UDC before the policy is canceled. Proof of liability insurance will ensure that the MSP has sufficient insurance coverage to cover any claims that might be brought against the MSP for metering-related activities."

3. At page 51 of D.97-12-048, the following new finding shall be added as Finding of Fact No. 23, and the subsequent findings of fact shall be renumbered:

> "Proof of liability insurance will ensure that the MSP has sufficient insurance coverage to cover any claims that might be brought against the MSP for metering-related activities."

4. The Legal Division shall review all of the meter service provider (MSP) bonds submitted to date to ensure that the language contained in the bonds is consistent with D.97-12-048 and this decision.

5. The Energy Division, with the assistance of the Legal Division as described in Ordering Paragraph 4, shall be directed to disseminate to prospective MSPs, upon request, samples of acceptable MSP bond forms.

This order is effective today.

Dated May 21, 1998, at San Francisco, California.

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