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Decision 98-05-046 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.	Rulemaking 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.	Investigation 94-04-032 (Filed April 20, 1994)

ORIGINAL

OPINION ON PETITIONS TO MODIFY DECISION 96-12-077

Summary of Decision

In this decision we deny as moot petitions to modify Decision (D.) 96-12-077 filed by Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (Edison). We grant in part a petition filed by the Office of Ratepayer Advocates (ORA) and modify D.96-12-077 to clarify our intent.

Background

On December 20, 1996, the Commission adopted D.96-12-077 approving the cost recovery plans filed by PG&E, Edison, and San Diego Gas & Electric Company (SDG&E), as required by Public Utilities Code § 368. Edison and PG&E filed petitions to modify D.96-12-077 on February 4, 1997; ORA filed its petition on February 14, 1997. ORA responded to PG&E's petition, and The Utility Reform Network (TURN) responded to PG&E's and Edison's petitions. PG&E, Edison, and SDG&E filed a joint response to ORA's petition.

PG&E's and Edison's Petitions

PG&E's and Edison's petitions raise similar issues. Both utilities focus on the implications of a single sentence in our discussion of the 10% rate reduction for small commercial and residential customers that § 368(a) requires, starting in 1998.[1] We noted that the Legislature made special provisions for financing the rate reduction:

> "AB 1890 allows the utilities the option of accomplishing the required rate reduction by issuing rate reduction bonds, as described in §§ 840-847." (D.96-12-077, slip op. at 9.)

The utilities object to the use and connotations of the word "option" in the quoted sentence. The utilities read this sentence as suggesting a "delinking" of the bonds and the 10% rate reduction. Moreover, the utilities argue that Assembly Bill (AB) 1890 (Stats. 1996, Ch. 854) requires a specific type of linkage between the bonds and the rate reduction; they believe the rate reduction is *contingent* on the successful issuance of the bonds. Thus, in their view use of the word "option" suggests an interpretation that would require the 10% rate reduction even if the bond proceeds were not available and that consequently "would either deny utilities recovery of transition costs, and thereby confiscate utility property, or impermissibly shift transition cost responsibility to other customer segments." (PG&E's Petition, p. 5.)

With the passage of time, PG&E's and Edison's petitions have become moot. The rate reduction bonds were approved in September 1997 (D.97-09-054, D.97-09-055, D.97-09-056, and D.97-09-057) and were successfully issued. The

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[1] Both TURN and ORA correctly emphasize that § 368(a) requires a rate reduction of *no less than* 10%. Our references in this decision to the 10% rate reduction are for convenience and should not be seen as ignoring or limiting the statutory language.

rate reductions began on January 1, 1998, as AB 1890 required. At this point, no benefit could be gained by our repeating the parties' arguments on this point and resolving this issue. We will therefore dismiss PG&E's and Edison's petitions as moot.

ORA's Petition

ORA seeks modification of a portion of D.96-12-077 where we reviewed the utilities' proposals for subaccounts of a proposed Industry Restructuring Memorandum Account. ORA objects to our finding, in connection with the proposed Qualifying Facilities (QF) Contract Restructuring Shareholder Incentive subaccount, that "PG&E's draft Preliminary Statement language for this subaccount is complete and consistent with the intent of D.95-12-063," which, with the modifications adopted in D.96-01-009, we refer to as our Preferred Policy Decision.

In the Preferred Policy Decision, we encouraged utilities to renegotiate their power purchase contracts with QFs to reduce the utilities' transition costs. To encourage such renegotiations, we created a monetary incentive: "We will allow shareholders to retain 10% of the net ratepayer benefits resulting from a renegotiation, which will be reflected by an adjustment to the transition cost total." (Preferred Policy Decision, slip op. at 132.) In the Preliminary Statement language referred to in D.96-12-077, PG&E proposed to retain 10% of the net ratepayer benefits as estimated at the time the Commission approved the renegotiated agreement.

ORA believes that by approving PG&E's language, D.96-12-077 prematurely decided a disputed issue. ORA believes that the 10% incentive should be based on actual net ratepayer benefits, rather than estimated ratepayer benefits. ORA has presented its position on this issue in its proposal for a generic

method to review QF contract modifications, as we directed in D.96-12-088 (slip op. at 39, 44).

Both ORA and the utilities in their joint response to ORA present arguments in support of their respective positions. However, it is unnecessary to consider the merits of these arguments to resolve ORA's petition.

ORA is correct that D.96-12-077 appears to decide a disputed issue by declaring that PG&E's language is "consistent with the intent of D.95-12-063." The Preferred Policy Decision did not indicate a preference for estimated net savings over actual net savings, and we did not intend to decide that issue in D.96-12-077. For that reason, we clarified at the beginning of D.96-12-077 that "our approval of the cost recovery plans does not dispose of or prejudge our resolution of issues still under consideration" in specific implementation proceedings (slip op. at 5).

ORA goes too far, however, in requesting that we substitute its favored resolution of this disputed issue for the utilities' approach. The utilities and ORA propose different ways of carrying out the intent of the Preferred Policy Decision, and in that sense both are "consistent" with the intent of that decision. Thus, strictly speaking, D.96-12-077 is accurate. We recognize, however, that our statement approving PG&E's proposed language carries an unintended connotation that we were taking a position on a disputed issue, and we will modify D.96-12-077 to remove that connotation. We will not at this time require the utilities to modify their Preliminary Statements filed in compliance with D.96-12-077. We can make any necessary adjustments after we have resolved this issue.

The underlying dispute between ORA and the utilities will be resolved in connection with their proposals on a generic method for reviewing QF contract modifications, filed in compliance with D.96-12-088. This issue was among those

presented for comment in the "Assigned Commissioner and Administrative Law Judge's Ruling Regarding Review of QF Contract Restructurings and Modifications," issued in this proceeding on February 6, 1998. After considering the comments on this issue, we will resolve this issue in the manner provided in that ruling.

Findings of Fact

1. Edison and PG&E filed petitions to modify D.96-12-077 on February 4, 1997, and ORA filed its petition on February 14, 1997.

2. The rate reduction bonds were approved in September 1997 and were successfully issued.

3. The rate reduction called for in AB 1890 began on January 1, 1998.

Conclusions of Law

1. PG&E's and Edison's petitions have become moot.

2. Edison's and PG&E's petitions to modify D.96-12-077 should be dismissed.

3. The Preferred Policy Decision did not indicate a preference for estimated net savings over actual net savings in calculating the shareholders' incentive to renegotiate QF contracts, and we did not intend to decide that issue in D.96-12-077.

4. D.96-12-077 should be modified to clarify that we were not in that decision deciding the issue of how the shareholders' incentive to renegotiate QF contracts should be calculated.

5. Because the utilities' negotiations with QFs may be affected by the modification we make to D.96-12-077, this order should be effective today.

ORDER

IT IS ORDERED that:

1. The first sentence on page 25 of Decision (D.) 96-12-077 is modified to read:

   "PG&E's draft Preliminary Statement language for this subaccount is complete and generally reflects the incentive adopted in D.95-12-063."

2. Except as granted in this order, the "Office of Ratepayer Advocates' Petition for Modification of Decision No. 96-12-077," filed February 14, 1997, is denied.

3. The "Petition for Modification of Decision 96-12-077 by Pacific Gas and Electric Company," filed February 4, 1997, and "Southern California Edison Company Petition for Modification of Decision No. 96-12-077," filed February 4, 1997, are dismissed.

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