

Decision 98-06-081

June 18, 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

ORIGINALR.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)

ORDER DENYING REHEARING AND CLARIFYING
DECISION 97-12-048

I. SUMMARY

This order denies an application for rehearing of Decision (D.) 97-12-048 filed by Pacific Gas and Electric Company (PG&E).¹ As we explain below, D.97-12-048 establishes appropriate practices for utility distribution companies (UDCs) like PG&E. The application's allegations are based on a misunderstanding of the nature of the responsibilities mandated by D.97-12-048 and do not demonstrate error.

However, the application's misunderstanding of the Meter & Data Standards Decision persuades us that we should make the UDCs' actual responsibilities more explicit. ORA concurs in this conclusion. Therefore, although we deny the application for rehearing, we will modify the Meter & Data Standards Decision accordingly.

¹ This application was opposed by Enron and the Office of Ratepayer Advocates (ORA).

II. BACKGROUND

D.97-12-048, referred to as the "Meter & Data Standards Decision," was issued following workshops designed to produce statewide standards for electricity metering equipment and functions that could be used by all participants in the restructured market. The Meter & Data Standards Decision refines interim tariff provisions and provides details on how metering services are to be provided.

The application claims that ordering paragraph 1b is in error. The pertinent part of ordering paragraph 1b requires PG&E to:

. . . adhere to these [i.e. the Commission's] interim standards and procedures, and . . . ensure that the electric service providers (ESPs) and other third parties comply with the applicable interim metering standards and procedures.

(Meter & Data Standards Decision, pp. 54-55 (mimeo.)) The application also refers to Conclusions of Law 12 and 25, which contain similar language.

III. DISCUSSION

The application's claims of error focus on the use of the word "ensure." When the requirements of the Meter & Data Standards Decision are understood in context, it becomes clear that our use of the word ensure does not produce the results claimed in the application. Thus, our decision is not in error.

The practices and procedures required by the Meter & Data Standards Decision are designed to ensure that standards of safety and accuracy continue to be maintained as new types of companies, such as electric service providers (ESPs), become involved in the business of selling electricity. As we explained with respect to meter services: "Under the monopoly framework, it was relatively easy to make sure that the regulated utility adhered to . . . standards. However, as we move into a competitive environment, we need to design new

safeguards and controls to ensure that the new [service providers] meet the same level of standards." (Meter & Data Standards Decision, p. 22 (mimeo.))

For meter installation and calibration, the Meter & Data Standards Decision ensures compliance with standards by requiring all work to be performed by an "MSP," a meter services provider who is "responsible for ensuring that all the interval meters comply with Commission meter design specifications and for installing and calibrating the meters in compliance with the Commission's performance specifications." (Meter & Data Standards Decision, p. 23 (mimeo.)) Those wishing to become an MSP must meet a number of requirements, including obtaining an electrical contractors' license and being certified by the Commission.

The Meter & Data Standards Decision establishes a five part certification process for MSPs. UDCs are required to participate in steps four and five of this process. Initially, only existing electric utilities with meter experience, including UDCs, will receive "permanent" MSP certification. Provisionally certified MSPs must undergo a series of "joint meetings" with the UDC. At a joint meeting, both the UDC and the MSP (or its licensed electrical subcontractor) are to be present when a meter is installed. A provisionally certified MSP must perform at least its first 50 installations at joint meetings. However, the UDC may waive attendance at a joint meeting.

The UDC and the provisionally certified MSP must maintain a log of joint meetings. The log will record, among other things, whether or not the meter installation passed or failed. A joint meeting waived by the UDC counts as a successful joint meeting in the log. Once an MSP has performed 50 installations successfully at joint meetings it may apply to the Commission for permanent certification. This application will include, among other things, the log of the joint meetings. The UDC may submit a written objection to the granting of permanent certification within 20 days of the MSP's application.

Similarly, our decision establishes procedures to ensure that meter data management activities meet relevant standards. We designated those who provide such services "MDMAs," an acronym for meter and data management agents. The Meter & Data Standards Decision establishes a screening process for potential MDMAs. Initially, all existing regulated utilities who perform their own meter reading and data management may act as MDMAs. Potential MDMAs which are not utilities must pass through a screening process administered by the UDC. A potential MDMA must submit to the UDC a written request describing training and other programs that ensure the MDMA's staff have the capability to perform their responsibilities. The UDC must review the request and confirm in writing whether or not the MDMA's proposed requirements are compatible with the UDC's requirements.

These requirements achieve the Meter & Data Standards Decision's objective of ensuring that meter and data services continue to be provided in a manner that meets applicable standards despite the shift to a new market structure. The participation of the UDC during meter installation allows for the presence of a qualified MSP with expertise in meter installation during a provisionally certified MSP's first 50 meter installations. The MSP certification process also provides a way for already-qualified MSPs to report to the Commission on the competence of provisionally certified MSPs before permanent certification is granted. Likewise, the MDMA screening process provides a mechanism ensuring that non-utility MDMAs will have substantially the same internal procedures and requirements as a UDC currently has.

The application objects to the Meter & Data Standards Decision's use of the word "ensure" in the ordering paragraph that implements these requirements and in relevant Conclusions of Law. PG&E argues the term "could be read as making the utilities guarantors of MSP and MDMA behavior." (Application, p. 4.) As Enron's response to the application for rehearing points out,

only a strained reading of the decision would require PG&E to serve as guarantor of an MSP's or MDMA's ultimate performance. What the Meter & Data Standards Decision requires is that UDCs participate in the process so that those MSPs and MDMA's who will now perform functions previously performed only by the predecessors of the UDCs will have the capability to meet applicable standards. Additionally these procedures ensure that provisionally certified MSPs do not perform their very first meter installations singlehandedly.

As the application notes, we placed the responsibility for meeting standards on those who actually perform the work. (Responsibility to customers rests with the ESP or UDC.) Yet the UDC must play a role in ensuring MSPs and MDMA's meet applicable standards. Prior to electric restructuring, only the UDCs' predecessors, vertically integrated monopoly utilities, performed the functions relevant here. In order to ensure that new participants perform properly, the UDC must transfer knowledge, assist us in evaluations, and in cases such as meter installation, provide a backstop against unsafe practices. The UDCs' participation in the interim procedures makes it possible—i.e., “ensures”—that ESPs and other third parties will meet applicable standards.

Under these circumstances it is reasonable for us to require the UDCs' participation in procedures designed to ensure that ESPs and other third parties meet applicable standards. The application's claims that this scheme is legally unsound have no merit. The Commission's authority to regulate utilities in such a manner is clearly established. The case cited regarding unlawful delegation, Schechter Poultry Corp. v. United States (1935) 295 U.S. 495, in fact refers to the United States Congress' ability to make an uncontrolled delegation of authority to the President and bears little relationship to this issue. As ORA notes, professional peers may participate in the regulatory process “so long as they are provided with sufficient standards. . . .” (Twohy v. State Bar (1989) 48 Cal.3d 502.)

The application's remaining claims also do not demonstrate error. The application claims that no finding of fact nor any conclusion of law provides a rationale for the decision to have PG&E guarantee a third party's performance. Since the Meter & Data Standards Decision does not require this, such findings and conclusions are unnecessary. The application claims that PG&E had no notice that it would be subject to such a responsibility. We disagree. PG&E had adequate notice that we would set new standards and determine how those standards would be applied. The claim that PG&E must be given investigation powers, authority over MSPs and MDMAs, and cost recovery ability similarly does not demonstrate error because such extraordinary measures are not required to fulfill the UDCs' responsibilities under the Meter & Data Standards Decision.

Therefore, good cause appearing,

IT IS ORDERED that:

1. D.97-12-048 is modified so that Conclusion of Law 12, on page 52, is restated to read:

The UDCs should be required to participate in the interim procedures discussed in this decision in order to ensure that all ESPs and other third-party MSPs are qualified to comply with electrical safety requirements discussed in this decision and to ensure that work performed by provisionally certified MSPs meets applicable standards.

2. D.97-12-048 is modified so that Conclusion of Law 25, on page 53, is restated to read:

The UDCs should be required to comply with the MDMA-related procedures described in this decision in order to ensure that all ESPs and other third parties comply as well.

3. D.97-12-048 is modified so that the last clause of the ordering paragraph 1b, appearing on the last line of page 54, beginning with the phrase "and shall ensure that..." is restated to read:

and shall participate in these procedures in order to ensure that electrical service providers (ESPs) and other third parties comply with the applicable interim metering procedures as well.

4. The application for rehearing of D.97-12-048 is denied.

This order is effective today.

Dated June 18, 1998, at San Francisco, California.

RICHARD A. BILAS

President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners