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Decision 98-09-042 September 3, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion to Implement the Biennial Resource Plan Update Following the California Energy Commission's Seventh Electricity Report.	I. 89-07-004 (Filed July 6, 1989) A. 91-02-092 A. 91-07-004 A. 91-08-028

ORIGINAL

ORDER GRANTING LIMITED REHEARING OF DECISION 95-09-117

I. INTRODUCTION

In Decision (D.) 95-09-117, the Commission denied the protests of Watson Cogeneration Company ("Watson") and other parties[1] to the April 1995 avoided cost posting filed by Southern California Edison Company ("Edison"). (D. 95-09-117, pp. 6-7 (slip op.).) The protests allege that Edison improperly reflected the transportation costs of sixty-two M3Btu[2] per day of firm El Paso Natural Gas Company capacity. (Id. at p. 4 (slip op.).)

Edison holds long-term firm rights to 206 M3Btu per day of capacity on the El Paso pipeline, for which it pays 100% of the as-billed rate regardless of whether it uses that capacity. (Id. at p. 5 (slip op.).) All of this capacity has Ehrenberg as the primary delivery point, on the southern arm of the El Paso pipeline. For deliveries on the northern arm, Edison has only alternate firm rights,

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[1] The California Cogeneration Council ("CCC") and Sunrise Energy Services, Inc. ("Sunrise") also protested Edison's April posting on the same issue which is the focus of this rehearing application.

[2] M3Btu represents 1 billion British Thermal units, or the equivalent of 1 million cubic feet (MMcf) of gas.

placing it behind those with primary rights. (Ibid.) In April 1995, the price of gas from the San Juan basin was less than the price of gas from the Permian basin. As a result, Edison purchased nearly all of its southwest gas in April 1995 from San Juan.

The San Juan basin is physically connected to El Paso's northern line, connecting with the Southern California Gas system at Topock. Because many gas users were buying the San Juan gas, Edison faced capacity reductions in transporting the gas. To improve delivery, Edison acquired 70 M3Btu/day of brokered capacity with a primary delivery point at Topock. Edison then brokered part of its unneeded long-term El Paso capacity.

The price of the capacity Edison purchased and the capacity that it sold were about 9% of the as-billed rate. In reflecting these transactions in the April posting, Edison did not include the cost of the unused firm capacity for delivery at Ehrenberg, pursuant to an earlier Commission decision. (Re Biennial Resource Plan Update: Opinion on Protests to Pacific Gas and Electric Company's Avoided Cost Postings for Various Months ("Re BRPU: PG&E Postings") [D.92-08-040, p. 6 (slip op.)] (1992) 45 Cal. P.U.C.2d 316 [unpublished].) Nor did Edison reflect the sale of capacity to others. The posting does reflect the capacity purchased for delivery at Topock at the price Edison paid (9% of the as-billed rate), and the capacity that Edison used for delivery at Ehrenberg at the price Edison paid (100% of the as-billed rate).

The Commission determined that Edison had acted prudently, and no violation of the index methodology in any of the components of the brokered transactions had been shown. (D. 95-09-117, p. 6 (slip op.).) Accordingly, the Commission denied the protests. Watson timely filed an application for rehearing,

alleging that the decision fails to apply the correct Commission standards for the index methodology in a review of Edison's April 1995 posting; violates the Public Utility Regulatory Policies Act of 1978 ("PURPA"); and fails to comply with Public Utilities Code section 1705. [3]

We have reviewed all of Watson's allegations, and conclude that its allegations of legal error concerning the standards for the index methodology and the requirements of PURPA are without merit. However, our further review of D.95-09-117 has persuaded us that we have not sufficiently stated the primary basis for denying Watson's protest; consequently, the decision appears to be in violation of section 1705. We will, therefore, grant limited rehearing to correct this omission, and will deny rehearing on all other grounds.

II. DISCUSSION

A. The Decision Was Consistent With The Index Methodology.

The application claims that the Commission's avoided cost index methodology adopted in D.91-10-039[4] was violated by Edison's April posting.

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[3] Watson also alleges that the Commission fails to acknowledge the authority Watson cited in its protest and that the Commission cannot base its decision on a finding that Edison's purchase of brokered capacity was prudent. However, since the Commission's denial of Watson's protest is based on Commission precedent stating that a utility may exclude unused capacity from its avoided cost posting, the above allegations are resolved.

[4] A recent Commission decision replaced the index methodology with the interim short-run avoided costs methodology ("SRAC") pursuant to Public Utilities Code §390. (Order Instituting Investigation on the Commission's Own Motion to Implement the Biennial Resource Plan Update Following the California Energy Commission's Seventh Electricity Report [D. 96-12-028, p. 20 (slip op.)] (1996) _ Cal. P.U.C.2d _ [unpublished]). That decision described the index methodology and its history stating:

> "In D.91-10-039, the Commission adopted an interim methodology to replace the noncore WACOG. The noncore WACOG represented a bundled commodity and transportation price at the California border (or local distribution company city-gate) and the adopted methodology was intended to serve as a proxy for that price. The index methodology represented a price for buying the commodity to which is added the utility's forecasted cost of transportation to the California border. The index methodology prices gas purchased at a known supply basin at the weighted average cost of gas in that basin (according to indices derived from trade publications) plus the full tariffed cost of firm transportation to the California border." (Id. at p. 4.)

The index methodology was replaced in D.96-12-028 to comport with the requirements of AB 1890. (Id. at p. 2 (slip op.).)

This claim is without merit. Prior to issuing D. 95-09-117 we had issued two decisions about the effect of brokering on the transportation charge. In D. 92-08-040, we allowed PG&E to divide its transportation charge on the Transwestern pipeline by the amount of gas it used rather than posting the transportation charge on the full amount of capacity that it had purchased the *right to use*. Re BRPU: PG&E Postings [D.92-08-040], supra, at p. 6. Watson mischaracterizes D. 92-08-040 as having mandated that the utility post "the per unit cost at 100% load factor, of the capacity for which it has forecasted demand". In fact, we specifically *denied* the QF protest of PG&E's avoided cost posting at 10% load factor. (Id. at p. 6.) Thus, in D. 92-08-040 we *approved* the posting of the reservation charge based on the amount of capacity *used*, not the amount of capacity purchased.

Similarly, in Re Biennial Resource Plan Update: Opinion on Certain Protests to Avoided Cost Postings ("Re BRPU: Certain Protests") [D.94-02-016] (1994) 53 Cal. P.U.C.2d 186, 189-190, we denied a QF protest to Edison's August 1993 avoided cost posting on the basis that Edison properly excluded *unused* capacity. Edison had acquired 67 MMBtu of brokered firm capacity on Transwestern, but it used only 54 MMBtu of that capacity, so Edison only posted 54 MMBtu. (Id. at p. 189.) The QF's argued that Edison should have posted the entire 67 MMBtu that it purchased. (Id. at p. 190.) We denied the protest stating that D. 92-08-040 had settled the issue of how unused capacity was to be posted. (Ibid.) Thus, it is established that IOU's do not have to include unused capacity in their avoided cost postings.

Here, Watson is arguing that Edison should have included the transportation charge on 122 units of El Paso firm capacity that Edison purchased, even though Edison only used 60 units of that firm capacity. At the time the challenged decision was issued, we had already twice stated that a utility may post

the transportation charge based on the capacity it uses. Thus the decision did not violate Commission precedent and Watson's protest was appropriately denied.

B. Limited Rehearing is Granted and The Decision Is Modified to Comply With Section 1705.

Public Utilities Code section 1705 states that Commission decisions must include, "separately stated [sic] findings of fact and conclusions of law by the commission *on all issues material to the order or decision.*" (Pub. Util. Code §1705, emphasis added.) In California Motor Transport Co. v. Public Utilities Com. (1963) 59 Cal.2d 270, 272, the California Supreme Court interpreted section 1705 to require that, "[e]very issue that must be resolved to reach that ultimate finding [of public convenience and necessity] is 'material to the order or decision'". The court's rationale was that separately stated findings on material issues will provide a rational basis for judicial review, assist parties in preparing an application for rehearing and prevent arbitrary action by the Commission. (Id. at p. 274-275.)

In reviewing Watson's application for rehearing on the issue of consistency with the index methodology, we have determined that in D. 95-09-117, the Commission did not clearly and sufficiently state the primary basis for approving the April posting, namely, that Edison's posting was consistent with Commission precedent. We believe that this omission is a violation of section 1705.

Therefore, we are granting limited rehearing of D. 95-09-117 to include additional text and a conclusion of law based on the above discussion of relevant Commission precedent. This precedent supports our conclusion that Edison's April 1995 posting of brokered capacity was lawful. This additional discussion and conclusion will satisfy section 1705.

C. The Decision Is Consistent With PURPA.

Watson claims that by approving Edison's April 1995 posting, D. 95-09-117 violates PURPA. This claim is without merit. By enacting PURPA, Congress amended the Federal Power Act to encourage the development of cogeneration and small power production facilities. (Independent Energy Producers Ass'n, Inc. v. CPUC (9th Cir. 1994) 36 F.3d 848, 850.) PURPA both designated certain facilities as QF's and defined the benefits to which they would be entitled. (Ibid.) With regard to the purchase price that IOU's would pay to QF's, PURPA stated that the Federal Energy Regulatory Commission ("FERC") would set rates with the following guidance:

> "(1)...just and reasonable to the electric consumers of the electric utility and in the public interest, and
>
> (2) shall not discriminate against qualifying cogenerators or qualifying small power producers."
> (16 U.S.C. §824 a-3)

In addition, Congress provided that no rule prescribed under this section would provide for a rate *exceeding* the IOU's avoided cost. (Id.) When FERC promulgated its rules under this section, it set the rate at which the IOU must purchase electricity from a QF at the IOU's *full avoided cost*. (18 C.F.R. §292.304(b).) In American Paper Inst. v. American Elec. Power (1983) 461 U.S. 402, 417, the Supreme Court upheld §292.304(b) as a reasonable interpretation of PURPA §210. Under PURPA, the authority to oversee the calculation of avoided costs and the contractual relationship between the QF's and IOU's lies with the state commissions. (Independent Energy Producers, supra, 36 F.3d at p. 856.) 18 C.F.R. §292.304(e) specifically provides that avoided costs shall be calculated,

inter alia, on the basis of state review of the data IOU's are required to provide.[5]

Here, the Commission has the statutory authority under PURPA to determine how avoided costs are to be calculated with respect to unused capacity. The index methodology was created by the Commission to approximate the utility's full avoided costs. (Re Biennial Resource Plan Update: Opinion Establishing An Interim Method for Calculating Avoided Costs [D.91-10-039] (1991) 41 Cal. P.U.C.2d 484.) As discussed earlier, the Commission has determined in Re BRPU: PG&E Postings [D.92-08-040] supra, and Re BRPU: Certain Protests [D.94-02-016] supra, that IOU's may exclude the transportation charge on capacity they do not use consistent with the index methodology. Since Edison's 1995 avoided cost posting was consistent with the index methodology, the decision is consistent with PURPA.

Therefore, **IT IS ORDERED** that:

1. Limited rehearing of D.95-09-117 is granted in order to modify the decision to comply with the requirements of Public Utilities Code section 1705.

2. D.95-09-117 is modified as follows:

a. The second full paragraph on page 6 of D.95-09-117, which denies the protest, is amended to read:

> "We will deny this protest. This Commission has previously stated that a utility may exclude unused capacity from its avoided costs posting consistent with the index methodology. (Re Biennial Resource Plan Update: Opinion on Protests to Pacific Gas and Electric Company's Avoided Cost Postings for Various Months ("Re BRPU: PG&E Postings") [D.92-08-040, p. 6 (slip op.)] (1992) 45 Cal. P.U.C.2d 316 [unpublished]; Re Biennial Resource Plan Update:

[5] §292.302(b) requires IOU's to provide state commissions with the following data: "(1) The estimated avoided cost on the electric utility's system, solely with respect to the energy component...(2) The electric utility's plan for the addition of capacity by amount and type for purchases of firm energy and capacity...(3) The estimated capacity costs at completion of the planned capacity additions and planned capacity firm purchases..." (18 C.F.R. §292.302 (b)(1-3)).

Opinion on Certain Protests to Avoided Cost Postings ("Re BRPU: Certain Protests") [D.94-02-016] (1994) 53 Cal. P.U.C.2d 186, 189-190.) Edison appears to have acted prudently in taking steps it deemed necessary to protect delivery of less expensive gas. QF's have shown no violation of the index methodology in any of the components of the transactions."

b. New conclusion of law 4A is added to D.95-09-117 to read:

"All of the components of the challenged El Paso transaction are in compliance with the index methodology."

3. Rehearing of D.95-09-117 as modified above is hereby denied in all other respects.

This order is effective today.

Dated September 3, 1998, at San Francisco, California.

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