

Decision 99-04-013 April 1, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for an Order Under Section 701 of the Public Utilities Code Granting Pacific Gas and Electric Company Permission to Use Natural Gas-Based Financial Instruments to Manage Market Risks Associated with California Gas Transmission's Assets. (U 39 G)

ORIGINAL

Application 98-04-008
(Filed April 9, 1998)

OPINION

Summary

In this decision, we grant the petition to modify Decision (D.) 98-12-082 filed by Pacific Gas and Electric Company (PG&E) on January 15, 1999. D.98-12-082 granted PG&E conditional authority to use natural gas-based financial instruments to manage price and revenue risks associated with its natural gas transmission and storage assets.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is waived.

PG&E's Request

PG&E requests that modifications be made in the text so that the text conforms to Ordering Paragraph 1(d). As currently written, the first full paragraph on page 15 reads as follows:

"Because shareholders are shouldering the risk of these activities, we will allow PG&E to engage in OTC transactions as well, but expect that PG&E will include enough information in its quarterly reports to allow us to assess whether such transactions should continue. We put PG&E on notice that we will be closely monitoring these transactions and the effect on the intrastate transmission market. However, PG&E is restricted from entering into financial transactions directly with its customers or affiliates. This restriction will ensure that OTC transactions are anonymous, so PG&E would not be able to directly and intentionally impact a particular customer, which could have anticompetitive impacts if PG&E enters into contracts with counterparties. We will require that PG&E include language in any risk management contract to ensure that the other party to the instrument is not a PG&E customer or affiliate. PG&E may engage in OTC transactions through a broker only if these offers and subsequent contracts are mutually anonymous."

PG&E requests that the underlined words be deleted from this paragraph, because these limitations are greater than those required by Ordering Paragraph 1.d and 1.d.iii. Ordering Paragraph 1(d) states that PG&E shall not enter into any risk management contracts directly with its customers or affiliates. Ordering Paragraph 1.d.iii requires anonymity "to the extent possible." PG&E explains that because all over-the-counter transactions utilize bilateral contracts between the parties, absolute anonymity is impossible to achieve.

PG&E also requests that we modify Finding of Fact 10 by deleting the overall requirement for anonymity. Finally, PG&E asks that we modify Ordering Paragraph 1d by deleting the anonymity requirement from subsequent contracts. PG&E explains that all OTC transactions, even if they are initially made anonymously, are eventually memorialized by a bilateral contract between the two principal parties.

Discussion

We find PG&E's proposed modifications to be reasonable. The changes to the text and findings ensure that the text is compatible with our orders and will clarify the decision. PG&E acknowledges that the requirement that PG&E use brokers to arrange these financial transactions will fulfill our intent that PG&E not target customers in the OTC market and thereby intentionally affect the physical transportation market in California.

In Resolution ALJ 176-2991 dated April 23, 1998, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Given this status, public hearing is not necessary and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-2991.

Findings of Fact

1. It is not feasible for PG&E to achieve an overall requirement of anonymity in OTC transactions; however, it is reasonable to ensure that PG&E should be restricted from entering into contracts with customers or affiliates directly.

2. These modifications will not alter our intent that PG&E not target customers in the OTC market and thereby intentionally affect the physical transportation market in California. The fact that PG&E uses brokers to arrange these financial transactions will fulfill this requirement.

Conclusions of Law

1. PG&E's petition to modify D.98-12-082 should be granted.

2. This is an uncontested matter in which the decision grants the relief requested; therefore, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is waived.

3. This order should be effective today so that PG&E may be able to exercise the authority previously granted in D.98-12-082.
4. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The first full paragraph on page 15 of Decision (D.) 98-12-082 shall be modified to read as follows:

"Because shareholders are shouldering the risk of these activities, we will allow PG&E to engage in OTC transactions as well, but expect that PG&E will include enough information in its quarterly reports to allow us to assess whether such transactions should continue. We put PG&E on notice that we will be closely monitoring these transactions and the effect on the intrastate transmission market. However, PG&E is restricted from entering into financial transactions directly with its customers or affiliates. This restriction will ensure that OTC transactions are anonymous, so PG&E would not be able to directly and intentionally impact a particular customer, which could have anticompetitive impacts if PG&E enters into contracts with counterparties. PG&E may engage in OTC transactions through a broker."

2. Finding of Fact 10 shall be modified to read as follows:

"It is reasonable to ensure that PG&E should be restricted from entering into contracts with customers or affiliates directly."

3. Ordering Paragraph 1.d. shall be modified to read as follows:

"d. PG&E shall not enter into any risk management contracts directly with its customers or affiliates. PG&E may offer OTC transactions through a broker if these offers are indeed mutually anonymous. PG&E shall adhere to the following requirements:

"i. PG&E shall not direct any agent or broker to any particular party. PG&E may direct an agent or broker to negotiate

price, terms, and conditions of the financial instruments and to select among the contracts and transactions identified by the broker or agent;

- "ii. PG&E shall direct its agent or broker not to discuss any element of a customer's gas usage, nor may any term or condition of the financial instrument contract reference, mention or otherwise be tied to any aspect of a customer's gas usage; and
- "iii. The transaction shall be verified by PG&E to the extent possible as being mutually anonymous, i.e., both PG&E and the counter-party are unaware of the identity of each other. PG&E shall verify its lack of knowledge of the counter-party in writing, shall include language in its contracts that it has not directed any party to the broker or vice versa, or made any party aware of the existence of its offer, and shall include language that its broker may not divulge the identity of PG&E in any manner; and that the broker itself is financially disinterested in the transaction, other than the collection of the brokerage fee."

4. Application 98-04-008 is closed.

This order is effective today.

Dated April 1, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners