

Decision 00-01-024

January 6, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC
COMPANY to Report Assessments of Inventory
Balances and to Address Appraisal of Retained
Generation Assets. (U 39 E)

Application 98-05-022
(Filed May 1, 1998)

ORDER DENYING REHEARING
OF DECISION (D.) 99-07-031

I. INTRODUCTION

In Decision (D.) 99-07-031, we adopted for purposes of transition cost recovery various proposals for market valuation of materials and supplies inventories, fuel-oil inventories, common and general plant, and land associated with the power plants belonging to Pacific Gas and Electric Company. ("PG&E"). (D.99-07-031, p. 1.) With respect to generation-related lands that will not remain with the power plants, we determined that the disposition of such lands would be addressed in separate Public Utilities Code Section 851 applications to be filed by PG&E following market valuation of the associated power plants. (D.97-07-031, pp. 2, 8, 10 [Finding of Fact No. 5], and 11 [Ordering Paragraph No. 4].)

PG&E timely filed an application for rehearing of D.99-07-031. In this rehearing application, it alleges that the Commission erred in directing PG&E to file an application under Public Utilities Code Section 851 to market value all current generation lands that will not remain with its power plants following their market valuation. PG&E argues that this mandate is inconsistent with Public Utilities Code Section 367(b), which it claims permits the utility to market value these lands by different means, not all of which require the filing of a Section 851 application. PG&E offers four proposed language changes to cure the legal defects that it alleges in its application for rehearing. (Application for Rehearing, pp. 2 & 7.)

The Office of Ratepayer Advocates ("ORA") and The Utility Reform Network ("TURN") jointly filed a response. In their response, ORA and TURN generally oppose the application for rehearing. However, they agree with PG&E's proposal to change Finding of Fact No. 5 to eliminate the phrase "P.U. Code Section 851." They also agree that Ordering Paragraph No. 4 should be changed, but recommend different language for modifying this ordering paragraph. (See Response, pp. 15-16.)

We have reviewed each and every allegation raised by the application for rehearing. We are of the opinion that good cause does not exist for the granting of PG&E's rehearing application. In this decision, we provide an explanation for our denial.

II. DISCUSSION

In its rehearing application, PG&E alleges that we erred in requiring the utility to file an application under Public Utilities Code Section 851 to market value all current generation lands that will not remain with its power plants following their market valuation. (Application for Rehearing, p. 2.) PG&E argues that Assembly Bill ("AB") 1890 does not require the filing of a Section 851 application to accomplish the market valuation and subsequent disposition of the assets. It further claims that mandating this requirement is inconsistent with AB 1890. (Application for Rehearing, pp. 2 & 5.) PG&E cites to Public Utilities Code Sections 216(h), 330(1)(2), 367(b) and 377 to support this position.

Public Utilities Code Section 216(h) provides: "Generation assets owned by any public utility prior to January 1, 1997, and subject to rate regulation by the [C]ommission, shall continue to be subject to regulation by the [C]ommission until those assets have undergone market valuation in accordance with procedures established by the [C]ommission." (Pub. Util. Code, §216, subd. (h).)

Public Utilities Code Section 330(1)(2) states: "Generation of electricity should be open to competition and utility generation should be transitioned from regulated status to unregulated status through means of commission-approved market valuation mechanisms." (Pub. Util. Code, §330, subd. (1)(2).)

Public Utilities Code Section 367 prescribes how the Commission's identification and determination of those costs and categories of costs for generation-related assets and obligations, consisting of generation facilities, generation-related regulatory assets, nuclear settlements, and power purchase contracts, . . . will be calculated. (Pub. Util. Code, §367.) Public Utilities Code Section 367(b) provides that the calculation of those costs would:

“[b]e based on a calculation mechanism that nets the negative value of all above market utility-owned generation-related assets against the positive value of all below market utility-owned generation related assets. For those assets subject to valuation, the valuations used for the calculation of the uneconomic portion of the net book value shall be determined not later than December 31, 2001, and shall be based on appraisal, sale, or other divestiture. The [C]ommission's determination of costs eligible for recovery and of the valuation of those assets at the time the assets are exposed to market risk or retired, in a proceeding under Section 455.5, 851, or otherwise, shall be final,” (Pub. Util. Code, §367, subd. (b).)

Public Utilities Code Section 377 provides: “The [C]ommission shall continue to regulate the nonnuclear generation assets owned by any public utility prior to January 1, 1997, that are subject to [C]ommission regulation until those assets have been subject to valuation in accordance with procedures established by the [C]ommission. . . .” (Pub. Util. Code, § 377.)

Neither the specific statutes PG&E relies upon nor the other statutes in AB 1890 preclude this regulatory body from directing PG&E to file an Section 851 application to market value all current lands that will not remain with its power plants following their market valuation. In fact, Public Utilities Code Section 216(h), 330(l)(2) and 377 leaves the mechanisms for market valuation for generation assets, including generation lands, for our determination. The Legislature in Public Utilities Code Sections 216(h) and 377 expressly states that the market valuation will be “in accordance with procedures established by the [C]ommission.” (Pub. Util. Code, §§216, subd. (h) & 377.)

Further, Public Utilities Code Section 330(l)(2) makes reference to “[C]ommission-approved market valuation mechanisms. In addition, Public Utilities Code Section 367(b) implies that the market valuation could be accomplished in a Section 851 proceeding. This statutory provision states: “the valuation of those assets at the time the assets are exposed to market risk or retired, in a proceeding under Section . . . 851, . . . shall be final.” (Pub. Util. Code, §367, subd. (b).) Accordingly, the Commission has the authority to direct PG&E to file an Section 851 application to market value all current lands that will not remain with its power plants following their market valuation, and lawfully exercised this authority in D.99-07-031.

Thus, we acted consistently with AB 1890 in making our determination that PG&E should file Section 851 applications, especially in light of the PG&E’s intention not to retain any of its generation-related lands in the distribution utility. (D.99-07-031, p. 7.) Accordingly, PG&E’s reliance on Public Utilities Code Sections 216(h), 330(l)(2), 367(b), and 377 is misplaced.

PG&E also argues that we erred by interpreting AB 1890 differently in two previous decisions: Application of Southern California Edison Company to Report on the Valuation Process for Certain Generation-Related Assets Pursuant to D.97-11-074. (“Order Correcting Error in Decision (D.) 99-06-078”) [D.99-08-014] (1999) ___ Cal.P.U.C.2d ___ and Application of Pacific Gas and Electric Company for Authorization to Sell Certain Generating Plants and Related Assets Pursuant to Public Utilities Code Section 851 (“Interim Opinion Related to the Mitigated Negative Declaration for PG&E’s Divestiture Application”) [D.97-10-058] (1997) ___ Cal.P.U.C.2d ___. PG&E’s arguments are without merit, because these two decisions are distinguishable and not controlling.

D.99-08-014 is an order correcting an error in D.99-06-078. In this decision, we stated that we had erred in requiring Southern California Edison Company to file a Section 851 application and to seek our approval for the sale and transfer of the residential lands at issue because the lands were previously removed from rate base by

the Commission in D.97-11-074. (Order Correcting Error in Decision [D.99-08-014], supra, at p. 1 (slip op.))

In the instant case, the generation-related lands held by PG&E have not been removed from rate base and there has been no showing that the lands are no longer necessary and useful. (See D.99-07-031, p. 8.) In fact, during the proceeding, PG&E contended that lands related to PG&E's power plants are currently used and useful. (D.99-07-031, p. 9.) Thus, the determination made in D.99-08-014 to not require a Section 851 application is not controlling since the facts are different. Accordingly, our determination in D.99-07-031 to subject the lands to a Section 851 review was appropriate. Public Utilities Code Section 851 prohibits a public utility from selling or otherwise disposing of or encumbering any utility property that is "necessary or useful in the performance of its duties to the public" without first having obtained Commission approval. (Pub. Util. Code, §851, emphasis added.) AB 1890 did not eliminate this requirement.

PG&E also argues that we adopted a different view about market valuation in D.97-10-058 that is inconsistent with our determination in D.99-07-031. D.97-10-058 involves PG&E's application for authorization to sell three plants. To support its argument, PG&E cites to a reference in the Initial Study of the Mitigated Negative Declaration that states: "Once market valuation occurs, the plants could be sold without CPUC approval." (Application for Rehearing, p. 6, quoting from the Initial Study of the Mitigated Negative Declaration, at p. 3.4.)

This argument has no merit. In D.97-10-058, we did not take a different view of market valuation from the one that we adopted in D.99-07-031. In fact, D.97-10-058 makes no determination regarding market valuation; rather we only made determinations regarding whether environmental requirements under the California Environmental Quality Act have been satisfied in our adoption of the Mitigated Negative Declaration. (See generally the text of Interim Opinion Related to the Mitigated Negative Declaration for PG&E's Divestiture Application [D.97-10-058], supra.) Although there is a statement about market valuation in the Initial Study of the Mitigated Negative

Declaration, we did not adopt this view in D.97-10-058.¹ Also, this statement in the Initial Study is one made by the Energy Division consultant and not by us. Accordingly, PG&E's argument that D.97-07-031 is inconsistent with D.97-10-058 on the issue of market valuation is without merit.

III. CONCLUSION

As discussed above, PG&E's legal arguments have no merit, and thus, we reject the modifications to D.99-07-031 proposed by the utility in its application for rehearing. We also do not adopt the modifications agreed to by ORA/TURN. Accordingly, PG&E's application for rehearing of D.99-07-031 is without merit, and is denied.

THEREFORE, IT IS ORDERED that rehearing of D.99-07-031 is hereby denied.

This order is effective today.

Dated January 6, 2000, at San Francisco, California.

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

I abstain.

/s/ LORETTA M. LYNCH
Commissioner

¹ In its rehearing application, PG&E maintains that under AB 1890, the generation lands are freed from Commission regulation after market valuation. (Application for Rehearing, pp. 2-4.) We do not find it necessary to address the merits of this interpretation. The specific determination in D.99-07-031 that PG&E has challenged is focused on the Commission's authority to order PG&E to file Section 851 applications to market value all current generation lands that will not remain with its power plants. (See Application for Rehearing, p. 1.) D.99-07-031 does not deal with the issues of what happens after market valuation. Furthermore, we note that PG&E's interpretation of AB 1890 appears to be overly broad. (See Pub. Util. Code, §377, for one example of continuing Commission regulation even after market valuation.)