L/mal

MAIL DATE
01/10/00

Decision 00-01-027 January 6, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of PG&E for Commission order finding that electric operations during the reasonableness review period from 1/1/96 to 12/31/96 were prudent.	A.97-04-001 (Filed July 26, 1999)

ORDER CLARIFYING DECISION 99-06-089 AND DENYING REHEARING OF THE DECISION AS CLARIFIED

PG&E has filed an Application for Rehearing challenging our denial of PG&E's request for a shareholder incentive award of $2.47 million for 1996, based upon PG&E's modification of QF contracts between December 20, 1995 and December 30, 1996. We believe that our decision to deny the request for incentives for this time period is correct, and see no merit in the arguments set forth in the application for rehearing. We will therefore deny rehearing. We will, however, also clarify the reasons for our decision.

(1) Reliance on our 1995 Proposed Policy Decision on Restructuring

PG&E contends that our decision to deny shareholder incentives for contracts renegotiated between December 20, 1995 and December 30, 1996 is inconsistent with our December 20, 1995 Proposed Policy Decision on Restructuring the Electric Services Industry (*Re Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation*

[D.95-12-063, 64 CPUC2d 1, as modified by D.96-01-009, 64 CPUC2d 228 and D.97-02-021, 71 CPUC2d 18] (the "PPD"), *rehearing denied* by D.97-02-021, 71 CPUC2d 18 (Feb. 5, 1997). (See Application for Rehearing, p. 8).

This argument rests on the incorrect assumption that in the PPD, we promised to allow the electric utilities to recover the incentives at issue (ten percent of the benefits to ratepayers resulting from the restructuring of power purchase contracts), for all contracts negotiated on or after December 20, 1995, and regardless of when an account for booking such incentives was established.

The PPD was a proposed policy decision, subject to possible environmental review and to modification by the Legislature. As we have stated on several occasions, "the Preferred Policy Decision represented an initial articulation of an electric restructuring proposal; it did not adopt one." (Order Denying Rehearing of D. 95-12-063 (the PPD) [D. 97-02-021, 71 CPUC2d 18, 61]) In the PPD itself, we pointed out "almost every topic addressed in this decision will need to be developed more fully as we move to implementation." (PPD, 64 CPUC2d at 83.). We announced that most implementation issues, including the recovery of transition costs, would be addressed in a subsequent "roadmap" decision, following review of the PPD by the Legislature. *Id.* at 80. [1] In contrast, we identified certain preliminary steps towards implementation that

[1] Implementation mechanisms for the QF contract modification incentives were, in fact, addressed in a series of subsequent decisions. See the "Roadmap I" decision [D.96-03-022, 65 Cal.P.U.C.2d 228 (Mar. 13, 1996)]; "Roadmap II" [D. 96-12-088, 70 Cal.P.U.C.2d 497 (Dec. 20, 1996)]; and the "Cost Recovery" decision [D.96-12-077, 70 Cal.P.U.C.2d 207 (Dec. 20, 1996), *modified by* D.98-05-046 (May 21, 1998); *rehearing denied,* D. 98-12-094, ___ Cal.P.U.C.2d ___ (Dec. 17, 1998)]. Some implementation issues, such as whether the incentives should be based on estimated benefit to ratepayers or actual benefit, were not resolved until early 1999. See Opinion on Qualifying Facility Contract Modification Issues [D.99-02-085, _____CPUC2d ___(Feb. 18, 1999)], clarifying that the Cost Recovery decision did not decide the issue of how the incentive should be calculated. (Slip op. at p. 28.]

should begin immediately. Establishing the accounts necessary to track potentially recoverable QF shareholder incentives was not among them. See id. at p. 81-82.

Moreover, in the PPD, we stated that "**none of the policy proposals presented in this decision are final**" because we believed them to be subject to environmental review. (PPD, Conclusion of Law 108.) Subsequently, we emphasized the provisional nature of those proposals by adding the following statement to Conclusion of Law 108: "In the event of any inconsistency with the discussion portion of this decision, this Conclusion of Law must be read as controlling." [D. 97-02-021, Ordering Paragraph 7, 71 CPUC2d at 63.]

In short, our PPD did not promise the utilities that they were entitled to recover QF incentives as of December 20, 1995. Therefore, any expectation on PG&E's part that it was entitled to the incentives as of December 20, 1995 was unreasonable.

PG&E's argument that it reasonably relied on the PPD in renegotiating QF contracts after December 20, 1995 fails for another reason. PG&E had a pre-existing duty to administer its QF contracts in the best interests of the ratepayers. We reminded the utilities of this obligation even as we announced the shareholder incentive proposal:

> The utility will retain its obligation to administer its QF contracts in the best interests of its customers and in a manner that maximizes sytemwide benefits and minimizes transition cost accrual.

PPD, 64 CPUC2d at 64. Thus, PG&E had a duty to minimize costs associated with QF contracts regardless of the shareholder incentive. In addition, as we pointed out in the PPD, the need for utilities to minimize costs in order to be competitive in the future should constitute an incentive to renegotiate any QF contracts likely to become uneconomic in a competitive environment. *Id.* Thus,

there were substantial reasons for PG&E to renegotiate at least some of its QF contracts independent of the shareholder incentive.

For all of these reasons, PG&E's argument that it should recover a shareholder incentives for the period between December 20, 1995 and December 30, 1996 because it reasonably relied on the PPD during that period fails.

(2) December 20, 1996 Cost Recovery Decision

We addressed the implementation of the QF incentive proposal in our "Cost Recovery" decision [D.96-12-077, 70 CPUC2d 207 (Dec. 20, 1996), *modified by* D.98-05-046 (May 21, 1998); *rehearing denied,* D. 98-12-094, ___ CPUC2d ___(Dec. 17, 1998). In that decision, we authorized the utilities to establish memorandum accounts for booking QF incentives. As we have explained in the decision in the instant case, we did not authorize PG&E to book QF incentives prior to the effective date of the memorandum account, which is December 30, 1996. We will not repeat that discussion here.

The record does not support PG&E's argument that in reaching this conclusion we ignored critical facts. (Application for Rehearing, p. 7). We are aware that PG&E "included language in its draft advice letter" expressing its "belief" that the effective date of the account should be December 20, 1995, and requesting that its advice letter filing be made effective as of that date. (PG&E's November 8, 1996 Advice Letter Draft, page 3 (copy submitted as an attachment to PG&E's June 1, 1996 Comments to the Proposed Decision). The fact remains that we did not approve this request.

(3) The instant decision

PG&E argues that our decision in the instant case not only is inconsistent with our previous decisions, but also is internally inconsistent.

Specifically, PG&E argues that we denied the incentives based on retroactive ratemaking principles despite the fact that we "apparently agree" with PG&E's argument that the prohibition against retroactive ratemaking is inapplicable. (Application for Rehearing, p. 6)

Once again, PG&E misunderstands our decision. We have not concluded that the prohibition against retroactive ratemaking does not apply to this case. Rather, we have concluded that we need not resolve this question in order to resolve this case.

As stated in Conclusions of Law 1 and 2, our decision to deny PG&E's request for QF incentives for contracts renegotiated prior to the date we authorized PG&E to establish a memorandum account to book QF incentives is consistent with our well-established policy and practice. See, for example, our Order Instituting Rulemaking authorizing the utilities to establish Catastrophic Event Memorandum Accounts on a prospective basis (Rulemaking No. 93-06-034, 1993 Cal. PUC Lexis 364 (June 23, 1993)). PG&E has failed to persuade us that there is a good reason to depart from our usual practice in this case. In addition, we denied PG&E's request for incentives for 1996 because it was based on unauthorized tariff language making PG&E's memorandum subaccount retroactive to December 20, 1995. See Conclusion of Law 3.

In the interest of clarifying that we do not, in this decision, reach the issue of whether the prohibition against retroactive ratemaking applies to the grant or denial of QF incentive awards, we will delete from Conclusion of Law 1 the reference to retroactive ratemaking. We will also add a Conclusion of Law stating that we do not find it necessary to reach the retroactive ratemaking issue.

Accordingly, **IT IS HEREBY ORDERED** that in order to clarify our decision of June 24, 1999, the following changes to that decision shall be made:

1. Conclusion of Law no. 1, on page 16, shall be deleted and replaced by the following:

   Usual Commission practice is to permit the accrual of charges in memorandum accounts only if the charges are incurred on or after the date on which the memorandum account is authorized.

2. The following new Conclusion of Law number 3 shall be inserted immediately following Conclusion of Law number 2:

   In this decision, we do not reach the issue of whether the rule against retroactive ratemaking applies to the award of shareholder incentives for restructuring QF power purchase contracts.

3. Conclusion of Law number 3 shall be renumbered Conclusion of Law number 4.

4. PG&E's Application for Rehearing of Decision 99-06-089, as modified by this order, is 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 abstained.

/s/ LORETTA M. LYNCH
Commissioner