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Mail Date
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Decision 00-04-037 April 6, 2000

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.	Rulemaking 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.	Investigation 94-04-032 (Filed April 20, 1994)

ORDER DENYING REHEARING OF DECISION 99-11-025

I. SUMMARY

On July 1, 1999, several Qualifying Facilities (QFs) filed a motion requesting the Commission's approval for short-run avoided cost (SRAC) energy payments to be based on the Power Exchange (PX) market-clearing price for those QFs that voluntarily elect such an option. The motion was based on Public Utilities Code, section 390 (c). (Unless otherwise indicated, all statutory references are to the Public Utilities Code.) In D.99-11-024 (the decision) we granted the motion on an interim basis. Conclusion of Law 7 of the decision provides:

> "7. The one-time election cannot take place prior to the effective date of this order, although notice can be provided prior to that date."

Applicant's only allegation of error in the decision is that this Conclusion of Law is in error.

II. DISCUSSION

D.99-11-025 became effective on November 4, 1999, the date of signature. Applicant made its one-time election to receive PX market-clearing prices for its electricity on June 28, 1999, specifying July 1, 1999 as the effective date of its election, and now alleges that it was entitled to receive the new rates as of that date, rather than the effective date of the decision.

Applicant argues that, because section 390 (c) only requires "appropriate notice" to the utility of the QF's election, that the exercise of the election is not conditioned on any action or prior approval of the Commission. In its response to the Application, PG&E points out that section 390 (a) provides:

> "Subject to applicable contractual terms, energy prices paid to nonutility power generators...shall be determined as set forth in subdivisions (b) and (c)."

And section 390 (e) provides:

> "Nothing in this section shall be construed to affect, modify or amend the terms and conditions of existing nonutility power generators' contracts with respect to the sale of energy or capacity or otherwise."

PG&E further points out that Fairhaven's power purchase agreement with PG&E permits PG&E to pay only the prices that have been approved by the Commission. Also, it is clear from the language of the motion filed by the Independent Energy Producers that resulted in the decision that the movants clearly contemplated that Commission approval of a PX-based "clearing price" would be required before utilities could begin paying that energy price to the QFs. At page 4 of the original motion, the following language appears:

> "It is typical for power purchase agreements to define SRAC energy payments as being PUC approved prices..."

The Office of Ratepayer Advocates (ORA) points out that section 390 (c) provides that a QF, in making its one-time option to elect PX-based prices, must do so subject to the important statutory limitation of "appropriate notice" to the utility, and that the Commission had the "inherent" legal authority to determine that this notice could not take place until the effective date of its order.

Applicant has cited no legal authority whatsoever for its argument that July 1, 1999 should be the effective date of its election. Nor does section 390 provide any support. Moreover, Applicant made the identical argument during the course of the proceedings, which we addressed at page 10 of the decision:

> "Fairhaven disagrees and contends that it gave notice to PG&E on June 28 for a one-time election effective July 1. Fairhaven believes that this notice must stand and that its one-time option should be effective on the date requested. We disagree. The Commission must determine what constitutes appropriate notice and must specify the particular market-clearing price to apply. While we agree that the voluntary election is unilateral on the QFs' part, we cannot agree that two-days notice is appropriate. Therefore, such an election cannot take place prior to the effective date of this Order, although notice can certainly be provided prior to that date."

Section 390 (c) makes it clear that QFs may only make their one-time election to change to PX market-clearing prices with "appropriate notice." The Commission determined in the decision that this notice shall be a minimum of fifteen days after the date of the decision. Applicant has cited no authority for its argument that the Commission lacked the authority to make this determination. Further, as discussed above, PG&E's contract with Applicant provides that only those energy prices approved by the Commission can be paid to the Applicant. There are limits to the Commission's authority over contracts made by regulated utilities. However, the Commission does have the authority to grant or deny a

utility the authority to include in its rates the price paid for energy, which is certainly one of the reasons that the QFs sought the Commission's approval of their motion in this proceeding, as well as the utility contractual limitations.

III. CONCLUSION

For the foregoing reasons, we deny rehearing.

THEREFORE, IT IS ORDERED that:

1. Rehearing of D.99-11-025 is hereby denied.

This order is effective today.

Dated April 6, at San Francisco, California.

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