

Decision 99-03-062

March 18, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Pacific Gas and Electric Company, for rehearing of Resolution E-3528 re: Stanislaus County's request for a Commission opinion on the effect of the proposed reorganization of Patterson Water District within Pacific Gas and Electric Company's service territory.

Application 98-05-044
(Filed May 26, 1998)

ORDER DENYING REHEARING OF RESOLUTION (RES.) E-3528

On May 26, 1998, Pacific Gas and Electric Company (PG&E) filed an application for rehearing of Resolution (Res.) E-3528. Res. E-3528 concludes that the proposed reorganization of the Patterson Water District (PWD) will not substantially impair PG&E's ability to provide adequate service at reasonable rates to the remainder of its customers. We provided this opinion pursuant to the requirements of Government Code section 56131, in response to the request of the Stanislaus County Local Agency Formation Commission (LAFCO).

We have carefully considered all the arguments presented by PG&E, and are of the opinion that legal error has not been demonstrated. Therefore, we are denying PG&E's application.

PG&E's primary concern is about language in the Resolution explaining the beneficial effect of duplicative facilities on competition. PG&E argues that these statements violate Public Utilities Code sections 1705 and 1708

because they alter previous Commission orders without the opportunity for an evidentiary hearing. In addition, PG&E alleges that the statements violate the California Environmental Quality Act (CEQA) (Pub. Resources Code § 21000 et seq.) because the environmental impacts of duplication of distribution facilities have not been considered. PG&E's arguments are unconvincing.

We issued Res. E-3528 to comply with the Government Code section 56131 requirement that the Commission provide an opinion regarding whether a reorganization proposal will substantially impair the ability of a utility to provide adequate service at reasonable rates. Language regarding the benefits of duplication is *dicta*. It is not essential to the holdings of the Resolution. Moreover, those statements do not order anything, or serve as precedent. Because the statements in question do not rescind, alter or amend any previous Commission order, there is no violation of sections 1705 or 1708.

Similarly, the Resolution does not violate CEQA. The environmental review mandates of CEQA only apply to "discretionary projects to be carried out or approved by public agencies..." (Pub. Resources Code § 21080 (a).) Nothing is being carried out or approved by the Commission in its statements about duplication. The statements are simply non-binding expressions of opinion, and therefore the CEQA requirements do not apply.

Significantly, we have addressed PG&E's concerns about having an opportunity to address the issue of duplication in a generic proceeding by issuing the Distribution/Generation OIR last December. (R.98-12-015.) At the same time, we are required by the Government Code to issue opinions regarding substantial impairment within 90 days after they are requested. There is no error in our compliance with this requirement.

PG&E also maintains that the Resolution is mistaken in its assumption that only \$50,000 in revenue is at risk in the PWD proposal.

According to PG&E, a \$4 million figure is more accurate when PWD's future plans are considered.

We find that PG&E's argument does not demonstrate error in the Resolution. First, the Resolution was fairly based on the record before us. The future operation and additional revenue at stake is speculative. Further, even if PG&E is correct about the \$4 million dollar figure, that amount would still not substantially impair PG&E's rates or services, as PG&E acknowledges in its application. (PG&E App. for Rehearing, at p. 14.) PG&E is more concerned about the "unfairness" of allowing duplication (Ibid.) which can be more properly addressed in R.98-12-015.

Therefore, **IT IS ORDERED** that:

1. Rehearing of Res. E-3528 is denied.
2. This proceeding is closed.

This order is effective today.

Dated March 18, 1999, at San Francisco, California.

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