

Decision 99-04-045 April 22, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint application of Pacific Gas and Electric Company, San Diego Gas and Electric Company, and Southern California Edison Company for Ex Parte Interim Approval of a Loan Guarantee and Trust Mechanism to Fund the Development of an Independent System Operator (ISO) and a Power Exchange (PX) Pursuant to Decision 95-12-063 et al.

Application 96-07-001
(Filed July 9, 1996)

O P I N I O N

Summary of Decision

In this decision, we close this proceeding and discuss the winding down of two trusts executed by Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (Edison) (jointly, Applicants) for funding the development of the Power Exchange (PX) and Independent System Operator (ISO).

Background

In Decision (D.) 96-08-038, we approved a method for funding initial development of the ISO and the PX. As provided in D.96-08-038 and D.96-10-044, that method involved authorizing PG&E, Edison, and SDG&E to guarantee up to \$250 million in loans to be taken out by two trusts. The ISO Restructuring Trust and the PX Restructuring Trust were established for the purpose of overseeing the preliminary development of the ISO and the PX, respectively. D.97-09-053 approved an amended and restated trust agreement

for each Trust. In D.97-11-077, we responded to a petition to modify D.96-08-038 by authorizing a \$50 million increase in the loan guarantee. D.97-11-042 discussed the applicability of § 376 treatment to these costs and defined funding in this context. D.98-12-027 partially modified D.97-12-042 by enlarging upon its analysis of § 376's language regarding utility funding of development costs. This analysis did not change D.97-12-042's conclusions and rehearing was denied in all other respects.

Ordering Paragraph 1(o) of D.96-08-038 requires that each Trust wind down Trust business no later than one year after the ISO and PX have begun operations. On October 6, 1998, the assigned Administrative Law Judges (ALJ) issued a ruling requesting comments on whether the trusts are on schedule to wind-down business no later than March 31, 1999, whether the ISO and PX have obtained replacement financing that does not require Applicants' loan guarantees, the current accounting for the tracking and memorandum accounts, and whether this application can be closed. Applicants and the trusts (jointly), The Utility Reform Network (TURN), and California Large Energy Consumers Association (CLECA), California Manufacturers Association (CMA), California Industrial Users (CIU), Energy Producers and Users Coalition (EPUC), Cogeneration Association of California (CAC), and the California Farm Bureau (Farm Bureau), jointly (collectively referred to as Large Customers) filed timely comments.

Trusts

In response to D.96-08-038 and D.96-10-044, PG&E, Edison, and SDG&E executed two Trusts. Each trust established two different sunset dates: a one-year sunset date for Trust activities regarding asset development and a five-year sunset date for Trust activities regarding financing. In D.97-09-053, we

approved an Amended and Restated Trust Agreement for each Trust that continued the same approach of having two sunset dates. These agreements were approved in conjunction with the transfer of ISO and PX assets from the Trusts to the ISO and PX, respectively. Effective upon the issuance of D.97-09-053, the trusts transferred responsibility for hardware and software development to the ISO and PX. On December 24, 1997, the Trusts transferred ownership of Trust Assets to the ISO and PX. The first sunset date was met well before the ISO and PX commenced commercial operations in March 1998. The Trusts are no longer conducting any business activities regarding the Trust Assets.

D.97-09-053 modified the second sunset date that applies to all financial operations of the Trusts and will occur no later than September 4, 2002, five years after the effective date of the Asset Transfer Arrangements. Each Trust is scheduled to wind down its financial operations before this sunset date. The Trusts each currently have in place loans that are guaranteed by the Applicants. Each Trust has a different schedule for repaying its loan and thus extinguishing the guarantees when it receives the necessary funds from its corresponding corporation. When a Trust repays the loan, it will complete its remaining purposes and terminate.

Loan Guarantees

The ISO and PX Corporations each have different circumstances regarding permanent financing. The ISO has completed permanent financing in an amount sufficient to pay off the loan to the ISO Trust and extinguish the guarantees. Certain conditions must be satisfied that will allow the ISO to draw on the proceeds of its permanent financing. These conditions will be satisfied when a settlement is reached at the Federal Energy Regulatory Commission (FERC)

regarding regulatory must-run plants. That issue is expected to be resolved in the near future, at which point the loan to the ISO Trust will be repaid, the loan guarantees will be extinguished and the ISO Trust will begin winding down.

The PX filed an amended rate filing with FERC (ER-98-210) that includes an Initial Charge component. The Initial Charge constitutes permanent financing of the PX. Pursuant to a settlement proposal filed at FERC, Initial Charge payments are to be paid by PG&E, Edison, and SDG&E in four installments on April 5, 1998, January 4, 1999, January 3, 2000, and January 2, 2001. The settlement is currently pending before FERC, but the proposed revisions were accepted for filing subject to refund. As of January 2, 2001, assuming the settlement is adopted, we expect the loan will be paid in full, the loan guarantees will be extinguished, and the PX Trust will wind down.

It has not been necessary to call on Applicants' loan guarantees. Applicants and the Trusts recommend that we keep intact the current five-year financial sunset date approved in D.97-09-053. The ISO and PX Corporations make all decisions regarding their asset development and financing plans. The Trusts are in a passive position, holding the notes of the ISO and PX until repayment.

Accounting

D.96-08-038 established tracking accounts to track costs associated with establishing both trusts, including the costs associated with obtaining and administering the loan guarantees and the amounts recorded in memorandum accounts created pursuant to Resolution E-3459 between July 17, 1996 and August 2, 1996, when D.96-08-038 superceded the authority granted under the Resolution. There are no balances in the tracking accounts. The ISO and PX Trusts reimbursed the tracking account expenditures.

D.96-08-038 also created memorandum accounts to record development costs if rejected by FERC and costs and liabilities arising from the loan guarantees. No development costs have been disallowed by FERC and no liabilities have been incurred. There are no balances in the memorandum accounts. Such costs could be recorded anytime up to January 2001 at which time Applicants would seek recovery of costs in accordance with Ordering Paragraph 6 of D.96-08-038.

Closing the Proceeding

Applicants recommend that this docket remain open as a procedural vehicle for the Trusts to make final filings to complete their wind-down. Applicants expect that the Commission will play the supervisory role often played by a state court, in which a court-appointed trustee would seek court approval of a final accounting and distribution of assets. When the ISO and PX complete its permanent financing, the corresponding Trust will file for approval of a final accounting and wind-down. Applicants expect that the Trusts will make this Commission filing at separate times, given the different timing of the permanent financing arrangements.

We have issued D.97-12-028, which addresses the application for rehearing filed by the Large Customers. By letter dated (a copy of this letter is attached to this order as Appendix A) November 16, 1998, TURN has withdrawn its application for rehearing of D.96-08-038. TURN lends its support to the position that the time is not yet ripe to remove the loan guarantees. TURN recommends that we can close this docket even if the trusts or loan guarantees continue or some period of time.

TURN also asks that we confirm the success of the trusts and their related advisory committees, including the Western Power Exchange (WEPEX) Steering Committee, in achieving the successful startup of the ISO and PX.

Discussion

The immediate purpose of this application was to establish a trust and loan guarantee mechanism to fund the development of the ISO and PX. We do not anticipate filings requesting the wind-down and termination of the Trusts in the near future. Although permanent financing arrangements are complete for the ISO, the reliability must-run issues are still pending before FERC. We cannot know when FERC will address these issues. Similarly, there are pending issues related to PX financing that rely on FERC determination. We recognize that the loan guarantees will continue until the loans are repaid. At that point the loan guarantees will be extinguished and the Trusts can be terminated.

As discussed in the ALJ ruling, Senate Bill (SB) 960 (Stats. 1996, ch. 856) includes a statement of legislative intent that Commission proceedings should be resolved within 18 months of their inception. While this proceeding is not subject to SB 960, we will adhere to the spirit of the statute and close this proceeding. This docket need not remain open in order to ensure the loan guarantees remain in place. Those guarantees have been effectuated. We have disposed of all applications for rehearing. Therefore, Application (A.) 96-07-001 should be closed.

Applicants should file a new application to request the wind-down and termination of each Trust. Because applicants expect that the timing of this request will be different, separate applications should be filed. We will not delegate this authority to an advice letter process. We must act in a supervisory role in approving the wind-down of the Trusts, due process considerations will

be better served by instituting a formal proceeding is in place to ensure that all remaining Trust assets and liabilities are properly transferred and accounted for. As we observed in D.97-09-053, in many ways, the powers granted to the Commission by the Trust Agreements exceed the normal jurisdiction of the Superior Court over other trusts. (D.97-09-053, mimeo. Conclusion of Law 5 at p. 13.)

In D.98-10-030, we discussed intervenor compensation for WEPEX activities:

"We agree with TURN that the WEPEX working group presents a unique set of circumstances (relative to the other electric restructuring working groups), but we do not agree that this set of circumstances allows for the broad interpretation of the statute necessary to arrive at TURN's result. Neither TURN nor UCAN demonstrate a substantial contribution to a "decision," as that term has traditionally been applied in evaluating intervenor compensation requests under the governing statutes, resulting from its participation in the WEPEX working group. As ORA and Edison allude, this Commission is not the decision making body on the implementation of the ISO and PX endorsed in the Preferred Policy Decision. The Commission clearly stated the same in August, 1996, when it established the Trust Advisory Committees and addressed interim funding for the yet-to-be-approved ISO and PX.

"We made it clear then that we were a party to the FERC proceedings wherein ISO and PX final policy and implementation details were being established. However, in our role of shepard, we solicited and received comments from parties in this docket on the ISO and PX applications filed by the utilities before FERC. These comments were relied upon by the Commission in preparing its August 14 comments to FERC. We agree with UCAN and, for purposes of evaluating the compensability of WEPEX working group activities, regard our August 14, 1996, comments to FERC as an "order or decision" under § 1802(h).

"TURN's interpretation of § 1802(h) strays too far from a plain reading of the statute. It would have the Commission compensate

participation occurring after August 14, 1996, without any link to a future Commission product against which substantial contribution could be evaluated. That being said, we do not rule out the possibility that such a product exists or may come to exist in the future. Therefore, we will deny without prejudice compensation requested for ISO, PX, and WEPEX activities which occurred after our August 14, 1996, filing to FERC." (D.98-10-030, mimeo. at pp. 19 -20.

In D.96-08-038, we determined that collaborative development efforts were critical prior to the establishment of a new market in order to maintain the viability of the ISO and PX. In particular, the development of the necessary hardware and software required additional lead-time to implement entities that did not exist prior to March 31, 1998. We therefore endorsed an industry-led consensus building approach to electric restructuring. The trust advisory committee (TAC) was an integral element in our approval of Applicants' initial request for establishing the loan guarantees and respective Trusts. We affirmed the benefits of collaboration achieved by the WEPEX and determining that WEPEX Steering Committee members be given first choice on the TACs by the Trustee. The advisory committees included representatives of interests affected by restructuring and were given substantial responsibilities (D.96-08-038, mimeo. at pp. 27 -30.) The Trusts were necessary to fund the development of the ISO and PX, two key institutions in the Commission's (and later the Legislature's) vision of a new industry structure.

In D.97-09-053, we modified the Trust Agreements and determined that the TACs should be phased out, because the rights and duties of the respective advisory committees were assumed by the respective governing boards of the ISO Corporation and the PX Corporation. The decision was issued on September 3, 1997 and the Amended and Restated Trust Agreements were executed with the Trustee on September 4, 1997. While we confirm the assistance

provided by the TACs, including that of the WEPEX Steering Committee, in achieving the successful start-up of the ISO and PX, this assistance ended as of September 4, 1997.

Comments on Draft Decision

The ALJ's draft decision in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 (g) and Rule 77.1 of the Rules of Practice and Procedure. No parties filed comments on the draft decision.

Findings of Fact

1. We previously authorized Applicants to establish the ISO Restructuring Trust and the PX Restructuring Trust.

2. Each trust established two different sunset dates: a one-year sunset date for Trust activities regarding asset development and a five-year sunset date for Trust activities regarding financing.

3. The first sunset date was met well before the ISO and PX commenced commercial operations in March 1998. The Trusts are no longer conducting any business activities regarding the Trust assets.

4. D.97-09-053 modified the second sunset date that applies to all financial operations of the Trusts and will occur no later than September 4, 2002, five years after the effective date of the Asset Transfer Arrangements.

5. The ISO has completed permanent financing in an amount sufficient to pay off the loan to the ISO Trust and extinguish the guarantees; however, certain conditions must be satisfied that will allow the ISO to draw on the proceeds of its permanent financing. These conditions will be satisfied when a settlement is reached at the Federal Energy Regulatory Commission (FERC) regarding regulatory must-run plants.

6. The PX filed an amended rate filing with FERC (ER-98-210) that includes an Initial Charge component to be paid by PG&E, Edison, and SDG&E in four installments on April 5, 1998, January 4, 1999, January 3, 2000, and January 2, 2001. The Initial Charge constitutes permanent financing for the PX.

7. As of January 2, 2001, assuming the settlement pending before FERC is adopted, we expect the loan will be paid in full, the loan guarantees will be extinguished, and the PX Trust will wind down.

8. It has not been necessary to call on Applicants' loan guarantees.

9. The Trusts are now in a passive position, holding the notes of the ISO and PX until repayment.

10. There are no balances in the tracking accounts. The ISO and PX Trusts reimbursed the tracking account expenditures.

11. There are no balances in the memorandum accounts. Such costs could be recorded anytime up to January 2001 at which time Applicants would seek recovery of costs in accordance with Ordering Paragraph 6 of D.96-08-038.

12. When the ISO and PX complete their respective permanent financing arrangements, the corresponding Trust will file for approval of a final accounting and wind-down. Given the different timing of the permanent financing arrangements, Applicants expect that the Trusts will make these filings at separate times,

13. We recognize that the loan guarantees will continue until the loans are repaid. At that point the loan guarantees will be extinguished and the Trusts can be terminated.

14. In a letter dated November 16, 1998 TURN requested withdrawal of its application for rehearing of D.96-08-038.

15. We have disposed of all other applications for rehearing in this docket.

16. Applicants should file a new application to request the wind-down and termination of each Trust. Because applicants expect that the timing of this request will be different, separate applications should be filed.

17. The trust advisory committee was an integral element in our approval of Applicants' initial request for establishing the loan guarantees and respective Trusts.

18. We affirmed the benefits of collaboration achieved by the WEPEX and determined that WEPEX Steering Committee members should be given first choice on the TACs by the Trustee.

19. The TACs included representatives of interests affected by restructuring and were given substantial responsibilities.

20. In D.97-09-053, we modified the Trust Agreements and determined that the TACs should be phased out, because the rights and duties of the respective advisory committees were assumed by the respective governing boards of the ISO Corporation and the PX Corporation.

21. While we confirm the assistance provided by the TACs, including that of the WEPEX Steering Committee, in achieving the successful start-up of the ISO and PX, this assistance ended as of September 4, 1997.

Conclusions of Law

1. SB 960 (Stats. 1996, ch. 856) includes a statement of legislative intent that Commission proceedings should be resolved within 18 months of their inception.

2. While this proceeding is not subject to SB 960, we will adhere to the spirit of the statute and close this proceeding. This docket need not remain open in order to ensure the loan guarantees remain in place.

3. Because we must act in a supervisory role in approving the wind-down of the Trusts, due process considerations will be better served by instituting new,

A.96-07-001 ALJ/ANG/avs

formal proceedings to ensure that all remaining Trust assets and liabilities are properly transferred and accounted for.

4. A.96-07-001 should be closed.

O R D E R

IT IS ORDERED that:

1. The application for rehearing of Decision 96-08-038 is filed by Toward Utility Rate Normalization (TURN) is dismissed at TURN's request.

2. Application 96-07-001 is closed.

This order is effective today.

Dated April 22, 1999, at San Francisco, California.

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



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November 16, 1998

Wesley M. Franklin
Executive Director
California Public Utilities Commission
505 Van Ness Avenue, Rm. 5222
San Francisco, CA 94102

Re: TURN's Application for Rehearing of D.96-08-038

Dear Mr. Franklin:

In September of 1996, TURN¹ filed an application for rehearing of the Commission's decision establishing certain loan guarantees and setting up funding mechanisms for the development of the Independent System Operator (ISO) and Power Exchange (PX). To date, the Commission has taken no action on that application.

TURN wishes to withdraw our application at this time. While we still believe the issues raised in our application have merit, we have reached the conclusion that they have been largely rendered moot with the passage of time since we filed the application. Therefore we ask that the Application Of Toward Utility Rate Normalization For Rehearing Of Decision No. 96-08-038 be withdrawn at our request.

As always, if you have any questions about this request, please let me know at your earliest convenience.

Yours truly,

Bob Finkelstein
Staff Attorney

cc: Service List for A.96-07-001
Geoffrey Dryvynsyde, Legal Division

¹ The application for rehearing was filed under our previous name of "Toward Utility Rate Normalization," rather than our current name of The Utility Reform Network.

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