

R.M. 2002

ALJ/JJJ/jva

Mailed 5/13/99

Decision 99-05-011 May 13, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion to Adopt Reporting Requirements for Electric, Gas, and Telephone Utilities Regarding Their Affiliate Transactions.

Rulemaking 92-08-008
(Filed August 11, 1992)

O P I N I O N

Summary

This decision closes Rulemaking (R.) 92-08-008 by leaving in place on an interim basis the interim affiliate reporting requirements for electric, gas, and telephone utilities as set forth in Decision (D.) 93-02-019, 48 CPUC2d 163, and as interpreted by subsequent Commission decisions and other types of Commission implementation. Because of many changes that have occurred since parties filed comments on the interim rules for both telecommunications and energy industries regarding transactions, we do not believe it is prudent to adopt final affiliate reporting requirements in a General Order at this time.

We anticipate opening a new Commission proceeding to review these interim reporting requirements contemporaneously with our anticipated proceeding to review the affiliate transaction rules which apply to energy utilities and certain of their affiliates. The Commission staff is instructed to prepare such a proceeding no later than December 31, 2000, and sooner if conditions warrant.

This decision closes this proceeding.

Background

This proceeding commenced when the Commission issued an Order Instituting Rulemaking (OIR) dated August 11, 1992. The OIR adopted interim reporting requirements, effective upon the issuance of the OIR, covering transactions between electric, gas, and telephone utilities on the one hand, and their subsidiaries, affiliates or controlling corporations on the other hand. The Commission implemented the interim reporting requirements pursuant to the statutory authority of Pub. Util. Code §§ 587 and 797.

The OIR stated that the purpose of this proceeding was to codify the interim reporting requirements into a Commission General Order, and specified that the interim reporting requirements were to be considered as the proposed General Order.

Staff drafted the draft interim reporting requirements for this proceeding after analyzing comments on a draft resolution proposing reporting requirements which circulated in 1991. At that time, comments were solicited from the gas, electric, and telephone utilities, as well as from other interested parties. The Commission reviewed all comments filed in response to the proposed resolution before drafting the OIR instituting this proceeding and the proposed General Order attached thereto. All of the major issues which the utilities and other interested parties raised were addressed in the policy discussion accompanying the OIR.

On November 6, 1992, we issued D.92-11-021, granting a partial stay of the OIR's interim reporting requirements, and on January 22, 1993, in D.93-01-052, we ordered all interim reporting requirements for all telephone utilities stayed until March 1, 1993.

Parties filed applications for rehearing and petitions for modification of the above decisions. In D.93-02-019, 48 CPUC2d 163, we denied rehearing of the OIR, superceded the partial stays granted by D.92-11-021 and D.93-01-052, and modified the text of the proposed General Order.

Even though the utilities and other interested parties had been given and exercised the opportunity to comment on the 1991 proposed resolution, the OIR provided an additional opportunity for these parties to submit comments on the interim reporting requirements. Many parties filed opening or reply comments.

Since the comment filings, many changes have occurred for both the telecommunications and energy utilities. These utilities and their affiliates now operate in a marketplace characterized by increasing competition. The Commission has also recently enacted other substantive rules addressing the interaction between the utilities and certain affiliates. For example, in December 1997, in D.97-12-088, as modified by D.98-08-035, the Commission adopted rules governing the relationship between California's natural gas local distribution companies and electric utilities and certain of their affiliates.

Discussion

Many changes in the telecommunications and energy industries have occurred since the parties filed comments on the interim rules. Because of these changes, we do not believe it is prudent to adopt a new General Order finalizing the requirements for reporting affiliate transactions without at least providing the opportunity for further comments. Furthermore, because of the changes that have occurred since the comments were filed, some of the parties' initial comments to the rules may be superceded by events. Because the Commission has recently adopted significant affiliate transaction rules for the energy utilities (see D.97-12-088, as modified by D.98-08-035), we believe it is prudent to delay the issuance of a new General Order finalizing affiliate reporting requirements in

order to gain additional experience in how the reporting requirements work in actual practice, and especially how they interact with the new affiliate rules for certain energy utilities.

We therefore keep in place the interim affiliate reporting requirements, as set forth in D.93-02-019, and as interpreted by subsequent Commission decisions and other types of Commission implementation (i.e., letters from the Executive Director). We anticipate that we will open a new Commission proceeding to review these interim reporting requirements contemporaneously with our anticipated proceeding to review the affiliate transaction rules which apply to certain energy utilities. The provisions of our Rules of Practice and Procedure are always available in appropriate circumstances if a party needs to modify the rules prior to our upcoming generic review.

We instruct Commission staff to prepare for our consideration a proceeding (i.e., an OIR or combined OIR/Order Instituting Investigation (OII) or other appropriate procedural vehicle) to review the interim affiliate reporting requirements as adopted in D.93-02-019. The document should be prepared for our consideration no later than December 31, 2000, and sooner if conditions warrant. This document should be prepared contemporaneously with the new proceeding that staff is directed to prepare regarding our review of the affiliate transaction rules for certain energy utilities, as directed in D.97-12-088, *slip op.* at p. 99, Ordering Paragraph 10.

Because there are no further issues to address in this proceeding, this proceeding is closed.

Comments on Draft Decision

The draft decision of Administrative Law Judge Econome 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 to the draft decision.

Findings of Fact

1. This proceeding commenced when the Commission issued an OIR dated August 11, 1992. The OIR adopted interim reporting requirements, effective upon the issuance of the OIR, covering transactions between electric, gas, and telephone utilities on the one hand, and their subsidiaries, affiliates or controlling corporations on the other hand.

2. Staff drafted the draft interim reporting requirements for this proceeding after analyzing comments on a draft resolution proposing reporting requirements which circulated in 1991.

3. Since the comment filings, many changes have occurred for both the telecommunications and energy utilities. These utilities and their affiliates now operate in a marketplace characterized by increasing competition. The Commission has also recently enacted other substantive rules addressing the interaction of the utilities and certain affiliates.

4. Because of these changes, which have occurred since the comments were filed, some parties' initial comments to the rules may be superseded by events.

5. It is prudent to delay the issuance of a new General Order finalizing affiliate reporting requirements in order to gain additional experience in how the reporting requirements work in actual practice, and especially how they interact with the new affiliate rules for energy utilities.

Conclusions of Law

1. The interim affiliate reporting requirements, as set forth in D.93-02-019, 48 CPUC2d 163, and as interpreted by subsequent Commission decisions and other types of Commission implementation (i.e., letters from the Executive Director), should remain in place on an interim basis.

2. The Commission anticipates opening a new proceeding to review these interim reporting requirements contemporaneously with our anticipated proceeding to review the affiliate transaction rules that apply to certain energy utilities.

3. Commission staff should prepare for our consideration a proceeding (i.e., an OIR or combined OIR/OII or other appropriate procedural vehicle) to review the interim affiliate reporting requirements as adopted in D.93-02-019, 48 CPUC2d 163. The document should be prepared for our consideration no later than December 31, 2000, and sooner if conditions warrant. This document should be prepared contemporaneously with the new proceeding staff is directed to prepare regarding our review of the affiliate transaction rules for certain energy utilities, as directed in D.97-12-088, *slip op.* at p. 99, Ordering Paragraph 10.

4. This proceeding is closed.

O R D E R

IT IS ORDERED that:

1. The interim affiliate reporting requirements, as set forth in Decision (D.) 93-02-019, 48 CPUC2d 163, and as interpreted by subsequent Commission decisions and other types of Commission implementation (i.e., letters from the Executive Director), shall remain in place on an interim basis and until further order from this Commission.

2. Commission staff shall prepare for our consideration a proceeding (i.e., an Order Institution Rulemaking (OIR) or combined OIR/Order Instituting Investigation or other appropriate procedural vehicle) to review the interim affiliate reporting requirements as adopted in D.93-02-019, 48 CPUC2d 163. The document shall be prepared for our consideration no later than December 31, 2000, and sooner if conditions warrant. This document shall be prepared

R.92-08-008 ALJ/JJJ/jva

contemporaneously with the new proceeding staff is directed to prepare regarding our review of the affiliate transaction rules for certain energy utilities, as directed in D.97-12-088, *slip op.* at p. 99, Ordering Paragraph 10.

3. This proceeding is closed.

This order is effective today.

Dated May 13, 1999, at San Francisco, California.

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