

Decision 99-12-052 December 16, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking for Electric
Distribution Facility Standard Setting.

Rulemaking 96-11-004
(Filed November 6, 1996;
Petition for Modification
filed April 28, 1999)

ORDER DENYING PETITION TO MODIFY DECISION 98-03-036

On April 28, 1999, the California Municipal Utilities Association (CMUA) filed a petition to modify Decision (D.) 98-03-036, and to vacate D.98-10-059. D.98-10-059 denied CMUA's application for rehearing of D.98-03-036.

On August 13, 1999, Administrative Law Judge (ALJ) O'Donnell issued a ruling directing CMUA to correct certain deficiencies in its petition.

On September 13, 1999, CMUA filed its revised petition. The revised petition seeks to modify D.98-03-036 such that General Order (GO) 165 would not be applicable to municipal and publicly-owned utilities. CMUA seeks to do so on the following grounds:

1. The decision is inconsistent with a subsequent Commission decision (D.98-07-097) involving distribution system maintenance practices of publicly-owned utilities.
2. The decision was adopted on the basis of the incorrect factual premise that the state's publicly-owned utilities were respondents in the subject rulemaking docket for all purposes.
3. The decision purports to impose operational regulation on utilities outside the jurisdiction of the Commission, even though such utilities did not have a full and fair opportunity to protest the exercise of the Commission's jurisdiction.

4. The decision is contrary to the express legislative mandates concerning electric distribution system maintenance standards contained in the Public Utilities Code provisions adopted in AB 1890.
5. The decision is contrary to sound public policy.

1. D.98-03-036 is consistent with D.98-07-097

In D.98-03-036, the Commission applied the maintenance standards adopted in D.97-03-070 (GO 165) to publicly-owned utilities.

In D.98-07-097, the Commission adopted emergency standards for investor owned utilities (GO 166). D.98-07-097 did not contain a discussion of the jurisdictional limits of the Commission. It merely stated that D.98-03-036 "did not find that the Commission's adopted emergency response rules would apply to publicly-owned utilities."¹ In Conclusion of Law 3 of D.98-07-097, the Commission stated that the adopted rules "do not apply to publicly-owned and municipal utilities."

Appendix A of D.98-07-097 contains the text of GO 166. Page 1 contains the following language.

"Applicability: This General Order applies to all electric utilities subject to the jurisdiction of the CPUC with regard to matters relating to electric service reliability and/or safety."

"Purpose: The purpose of these standards is to insure that jurisdictional electric utilities are prepared for emergencies and disasters in order to minimize damage and inconvenience to the public which may occur as a result of electric system failures, major outages, or hazards posed by damage to electric distribution facilities. The standards will facilitate the

¹ D.98-07-097, at p. 8.

Commission's investigations into the reasonableness of the utility's response to emergencies and major outages. Such investigations will be conducted following every major outage, pursuant to and consistent with Public Utilities Code Section 364(c) and Commission policy."

CMUA asserts that, when Conclusion of Law 3 of D.98-07-097 is considered with the applicability portion of the standards adopted in the decision, it is clear that the Commission has concluded that publicly-owned utilities are generally not subject to the jurisdiction of the Commission regarding electric service reliability and/or safety. CMUA, therefore, concludes that D.98-03-036 and D.98-07-097 are inconsistent with regard to the Commission's jurisdiction.

In D.98-07-097, we adopted GO 166 pursuant to Pub. Util. Code § 364(b).² This code section requires the Commission to adopt certain standards for investor-owned utilities. The Commission did not intend to consider such standards for publicly-owned utilities and did not do so. The language in D.98-07-097 stating that GO 166 would not apply to publicly-owned utilities was put in simply because CMUA and others asked for clarification of D.98-03-036.

CMUA bases its conclusions on the language in D.98-07-097 and the "Applicability" portion of GO 166. It, however, fails to mention the "Purpose" section of GO 166. That section makes it clear that the general order is intended to address only the requirements of Pub. Util. Code Section 364(b). There is no contradiction between D.98-03-036 and D.98-07-097.

² All statutory references are to the Pub. Util. Code, unless otherwise noted.

2. Allegations of Legal Error

Rule 86.1 of our Rules of Practice and Procedure requires that applications for rehearing specifically set forth the grounds on which the applicant considers the order or decision to be unlawful or erroneous.

Rule 85 requires that applications for rehearing be filed within 30 days after the date of issuance.

Items 2, 3, and 4, that CMUA cites as grounds for this petition allege legal error. To a large extent, these issues were raised in CMUA's application for rehearing of D.98-03-036. D.98-10-059 denied that application. CMUA does not raise new or changed facts that would persuade us to deviate from our determination in D.98-10-059. Allegations that D.98-03-036 was unlawful or erroneous should have been raised in CMUA's application for rehearing.

3. The Decision is Not Contrary to Sound Public Policy

CMUA argues that D.98-03-036 improperly segregates cost issues and ratemaking authority, imposes costs on publicly-owned utilities. CMUA states that it is contrary to sound public policy for the Commission to impose costs without having the commensurate ratemaking authority.

We addressed this issue in D.98-10-059 as follows:

"Contrary to CMUA's position, the rules reflect sound public policy. The rules ensure the continued safety and reliability of the State's electrical systems. Public safety is best served if electric utilities are subject to uniform standards and operational protocols. As pointed out by ORA, emergencies or power outages within a municipal utility's service area can have effects on the State's grid that are not confined to that utility's electric system. There is also no evidence of an unreasonable financial burden associated with implementing the rules. A publicly-owned utility may seek an exemption from specific rules by way of an advice letter which

demonstrates active local regulatory oversight over the relevant activities and that the utility's program is reasonable in light of prevailing industry standards. Moreover, the rules are not rate regulations simply by virtue of an indirect effect on rates. *See, e.g., Morrison v. Viacom* (1997) 52 Cal.App.4th 1514, 1523-1527; modified at 53 Cal.App.4th 1266; *Total TV v. Palmer Communications* (9th Cir. 1995) 69 F.3d 298, 301."

Again, CMUA has provided nothing that convinces us that our previous determinations were in error.

4. Other Procedural Flaws

Rule 47 of our Rules of Practice and Procedure requires that a petition for modification be filed within one year of the effective date of the decision proposed to be modified. If more than a year has elapsed, the petition must explain why it could not have been filed within one year. The Commission may reject the petition if late submission has not been justified.

D.98-03-036 was effective March 12, 1998. This petition was filed April 28, 1999, over a year after the effective date. CMUA argues that its late filing is justified because of the following:

- a. CMUA's application for rehearing was not acted upon until six months after it was filed.
- b. It took a lot of time to respond to legal issues raised in the order denying rehearing.
- c. CMUA sought more (unspecified) practical solutions to its dispute of the Commission's jurisdiction.
- d. CMUA was invited, during legislative hearings on the reorganization of California's energy regulatory structure, by President Bilas to submit a request for revision of D.98-03-036.

None of these arguments demonstrate that CMUA could not have filed on time. The Commission can deny the petition for this reason alone.

5. Conclusion

For all of the above reasons, we will deny CMUA's petition to modify D.98-03-036.

6. Comments on Draft Decision

The draft decision of the ALJ 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. Comments were filed by CMUA on November 29, 1999. No reply comments were filed. No substantive changes were made to this decision.

Findings of Fact

1. D.98-03-036 is consistent with D.98-07-097.
2. CMUA's legal arguments were addressed in D.98-10-059 which denied CMUA's application for rehearing of D.98-03-036.
3. CMUA has provided no new or changed facts that convince us that D.98-03-036 is contrary to sound public policy.
4. CMUA has not provided adequate justification why its petition for modification of D.98-03-036 was not filed within one year of the effective date as required by Rule 47.

Conclusions of Law

1. Allegations that D.98-03-036 was unlawful or erroneous should have been raised in CMUA's application for rehearing filed pursuant to Rules 85 and 86.1.
2. CMUA's petition to modify D.98-03-036 should be denied.

IT IS ORDERED that the petition of the California Municipal Utilities Association to modify Decision 98-03-036 is denied.

This order is effective today.

Dated December 16, 1999, at San Francisco, California.

HENRY M. DUQUE
JOEL Z. HYATT
CARL W. WOOD
Commissioners

I will file a dissent.

/s/ RICHARD A. BILAS
Commissioner

I dissent.

/s/ JOSIAH L. NEEPER
Commissioner