

APR 11 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish Standards of Conduct Governing Relationships Between Energy Utilities and Their Affiliates.

FILED
PUBLIC UTILITIES COMMISSION
APRIL 9, 1997
SAN FRANCISCO OFFICE
RULEMAKING 97-04-011

Order Instituting Investigation to Establish Standards of Conduct Governing Relationships Between Energy Utilities and Their Affiliates.

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ORDER

By this order, we open a rulemaking and a companion investigation to establish standards of conduct governing relationships between California's natural gas local distribution companies and electric utilities and their affiliated, unregulated entities providing energy and energy-related services, and to determine whether the utilities should be required to have their nonregulated or potentially competitive activities conducted by their affiliate companies. This order follows on Decision (D.) 97-04-041, adopted today, wherein we granted the motion of Enron Capital and Trade Resources, New Energy Ventures, Inc., the School Project for Utility Rate Reduction and the Regional Energy Management Coalition, The Utility Reform Network, Utility Consumers' Action Network, and XENERGY, Inc. (Petitioners) for such a rulemaking. In this order, we discuss generally the need for and purpose of rules governing the interactions between energy utilities and their affiliates, announce the basic standards such rules should contain and provide policy guidance, notice a prehearing conference (PHC), and require the interested parties to report back to us with proposed rules for further consideration by June 1, 1997. In addition, we identify the rulemaking and investigation as candidate proceedings for purposes of our Senate Bill (SB) 960 Experiment.

manufacturing, or demand-side management services, for example, would also be covered. Energy utility interactions with affiliates engaged in businesses unrelated to energy services would not be covered by the standards of conduct.

Entry by the energy utilities and their affiliates into the unregulated market for energy products and services should be on an equal footing with respect to regulatory posture. SCG has before us a proposal for flexibility in introducing new products and services, contained in its Performance-based Ratemaking Application (A.) 95-06-002. That case is submitted.¹ The question of whether energy utilities, generically, should be required to conduct unregulated or potentially competitive activities, like the marketing of new products and services discussed in SCG's proposal, through affiliate companies, and if so, under what rules and criteria, should be addressed by the parties as they discuss utility-affiliate standards of conduct. While we expect to issue a decision on SCG's proposal this spring, we put SCG on notice that our decision in the PBR docket on flexibility in introducing new products and services may be interim.

The regulated energy utilities should participate in this rulemaking and investigation as respondents. We recognize that some of the energy utilities subject to our jurisdiction may not have any affiliation with companies providing energy or energy-related services. Given the many changes underway in the energy marketplace, however, that too could change. Any respondent with no affiliates providing energy or energy-related services that wishes to be excused from participating in the development of these standards of conduct, and our consideration of whether certain activities should be conducted by affiliates, may file a motion pursuant to Rule 45. The motion shall be filed on or before April 25, 1997. In the motion, the utility shall state its grounds for seeking to be excused. Responses to such a motion shall be filed on or before May 2, 1997. Although the Commission may excuse a utility from participating in this proceeding, we will not excuse that utility from abiding by the rules we adopt here if

¹ SCG describes its proposal in Exhibit 7, section E.

utility transactions with energy and energy-related marketing affiliates. Alternatively, the Commission may completely supplant or replace an existing rule with a rule adopted here. Either remedy may require notice and an opportunity to be heard pursuant to Public Utilities (PU) Code § 1708.

The Basic Standards the Rules Should Contain

From our prior experience in developing utility/affiliate rules, and the Petitioners' motion and related responses, we know that new rules should contain certain basic standards.

Nondiscrimination Standards The proposed rules should provide that preference should not be accorded to customers of affiliates, or requests for service from affiliates, relative to nonaffiliated suppliers and their customers.

Disclosure and Information Standards The proposed rules should prohibit disclosure of utility and utility customer information with the exception of customer-specific information where the customer has consented to disclosure. The proposed rules should address whether the utilities should be prohibited from providing leads to marketing affiliates, and whether there should be a prohibition on affiliates trading upon, promoting, or advertising their affiliation with utilities.

Separation Standards The proposed rules should provide for the utility's and the affiliate's operations to be separate to prevent cross-subsidization of the marketing affiliate by the utility customers. The proposed rules should require the utility and affiliate to maintain separate books of accounts and records.

We recognize, however, that interested parties may differ on how extensively each of these standards should be applied. For example, some parties may regard it necessary, in order to appropriately apply the disclosure and information standard, to prohibit joint marketing and bar the utility from providing leads to affiliates. Parties may regard it necessary, in order to appropriately apply the separations standard, to prohibit the utility from sharing information systems. We ask the parties to attempt to

CORRECTION !!

*THE PREVIOUS DOCUMENT(S) MAY HAVE
BEEN FILMED INCORRECTLY*

RESHOOT FOLLOWS

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O R D E R

By this order, we open a rulemaking and a companion investigation to establish standards of conduct governing relationships between California's natural gas local distribution companies and electric utilities and their affiliated, unregulated entities providing energy and energy-related services, and to determine whether the utilities should be required to have their nonregulated or potentially competitive activities conducted by their affiliate companies. This order follows on Decision (D.) 97-04-041, adopted today, wherein we granted the motion of Enron Capital and Trade Resources, New Energy Ventures, Inc., the School Project for Utility Rate Reduction and the Regional Energy Management Coalition, The Utility Reform Network, Utility Consumers' Action Network, and XENERGY, Inc. (Petitioners) for such a rulemaking. In this order, we discuss generally the need for and purpose of rules governing the interactions between energy utilities and their affiliates, announce the basic standards such rules should contain and provide policy guidance, notice a prehearing conference (PHC), and require the interested parties to report back to us with proposed rules for further consideration by June 1, 1997. In addition, we identify the rulemaking and investigation as candidate proceedings for purposes of our Senate Bill (SB) 960 Experiment.

Purpose of and Need for Utility/Affiliate Rules

Fundamental marketplace changes are underway in the electric and gas markets in California. Some of these changes are maturing relatively slowly, but at our urging, as in the case of competitive natural gas procurement. Others are planned to begin soon, as in the case of consumer's direct access to competitive electric supply. Competition among service providers is now an expected characteristic of the energy market. Market players, including the regulated utilities, are taking responsive and preparatory actions in the face of these changes. For example, new ventures and mergers have been proposed.

We acknowledged in our Updated Roadmap decision (D.96-12-088) that it may be appropriate to review our affiliate transaction rules to determine whether they must be modified given potential self-dealing and cross-subsidization issues that may arise as a result of electric utility restructuring. We recognize that the existing rules governing utility relations with affiliates differ among the companies, and that the present rules may not address the manner in which electric and gas utilities and their affiliates may market services and interact in a marketplace now characterized by increasing competition. Utility entities competing to provide energy services should face uniform rules so that no advantage or disadvantage accrues to a player simply because of differing regulations. It is therefore necessary to develop new rules or standards of conduct which will govern energy utility relations with their energy affiliates. We open a rulemaking and companion investigation for this purpose. The standards of conduct or rules should 1) protect consumer interests, and 2) foster competition.

The rulemaking and investigation should establish standards of conduct for utilities and their affiliates providing gas and electric services, both those affiliates in existence today and those that may be created after the adoption of final rules. It is our intention that interactions between utilities and their affiliates marketing energy and energy-related services be covered by these standards of conduct. Clearly, the standards of conduct would apply to utility interactions with an affiliate that markets gas or electric power. Interactions with an affiliate that provides power plant construction and permitting services, energy metering services, energy billing services, energy products

manufacturing, or demand-side management services, for example, would also be covered. Energy utility interactions with affiliates engaged in businesses unrelated to energy services would not be covered by the standards of conduct.

Entry by the energy utilities and their affiliates into the unregulated market for energy products and services should be on an equal footing with respect to regulatory posture. SCG has before us a proposal for flexibility in introducing new products and services, contained in its Performance-based Ratemaking Application (A.) 95-06-002. That case is submitted.¹ The question of whether energy utilities, generically, should be required to conduct unregulated or potentially competitive activities, like the marketing of new products and services discussed in SCG's proposal, through affiliate companies, and if so, under what rules and criteria, should be addressed by the parties as they discuss utility-affiliate standards of conduct. While we expect to issue a decision on SCG's proposal this spring, we put SCG on notice that our decision in the PBR docket on flexibility in introducing new products and services may be interim.

The regulated energy utilities should participate in this rulemaking and investigation as respondents. We recognize that some of the energy utilities subject to our jurisdiction may not have any affiliation with companies providing energy or energy-related services. Given the many changes underway in the energy marketplace, however, that too could change. Any respondent with no affiliates providing energy or energy-related services that wishes to be excused from participating in the development of these standards of conduct, and our consideration of whether certain activities should be conducted by affiliates, may file a motion pursuant to Rule 45. The motion shall be filed on or before April 25, 1997. In the motion, the utility shall state its grounds for seeking to be excused. Responses to such a motion shall be filed on or before May 2, 1997. Although the Commission may excuse a utility from participating in this proceeding, we will not excuse that utility from abiding by the rules we adopt here if

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the utility's circumstances change in the future and it has affiliates providing energy and energy-related services.

The Process for Developing Proposed Rules

In response to the Petitioners' motion addressed in D.97-04-041, a number of parties indicated a readiness to work cooperatively with the Commission and interested parties to develop the rules. Below, and in D.97-04-041, we provide guidance and focus the effort needed to develop the rules. We have defined the scope of the rules (only affiliates which market energy and energy-related services) and their applicability (gas and electric utilities). We are aware of a number of good models, from FERC and other states, on which the parties could tailor California utility-affiliate transactions rules. We now look to the parties to work cooperatively and propose rules for our consideration pursuant to Article 13.5 of our Rules of Practice and Procedure.

These proposed rules, developed through discussion among respondents and interested parties, should be jointly filed with the Commission, accompanied by a motion which includes argument supporting their adoption, no later than June 1, 1997. Any party wishing to separately present proposed rules and supporting argument should file a separate motion no later than June 1, 1997. Comments and reply comments on the proposed rules and accompanying arguments will be allowed as provided under Rule 51.4.

Many of the present utility/affiliate rules were developed when new corporate structures were approved and therefore govern *all* of a utility's relations with its affiliates, and not just its relations with energy affiliates. As we point out in D.97-04-041, adopted today, the proposed rules which supplement existing rules may place a utility in the untenable position of being obligated to comply with competing rules on the same issue. Therefore, any party proposing a rule intended to address an issue or circumstance for which there already exists a rule applicable to one or more utilities should identify the specific circumstance, the existing rule and its shortcomings, and propose a remedy. The Commission may, for example, determine that any rule adopted here will supplant any competing rule previously adopted, but only with respect to

utility transactions with energy and energy-related marketing affiliates. Alternatively, the Commission may completely supplant or replace an existing rule with a rule adopted here. Either remedy may require notice and an opportunity to be heard pursuant to Public Utilities (PU) Code § 1708.

The Basic Standards the Rules Should Contain

From our prior experience in developing utility/affiliate rules, and the Petitioners' motion and related responses, we know that new rules should contain certain basic standards.

Nondiscrimination Standards The proposed rules should provide that preference should not be accorded to customers of affiliates, or requests for service from affiliates, relative to nonaffiliated suppliers and their customers.

Disclosure and Information Standards The proposed rules should prohibit disclosure of utility and utility customer information with the exception of customer-specific information where the customer has consented to disclosure. The proposed rules should address whether the utilities should be prohibited from providing leads to marketing affiliates, and whether there should be a prohibition on affiliates trading upon, promoting, or advertising their affiliation with utilities.

Separation Standards The proposed rules should provide for the utility's and the affiliate's operations to be separate to prevent cross-subsidization of the marketing affiliate by the utility customers. The proposed rules should require the utility and affiliate to maintain separate books of accounts and records.

We recognize, however, that interested parties may differ on how extensively each of these standards should be applied. For example, some parties may regard it necessary, in order to appropriately apply the disclosure and information standard, to prohibit joint marketing and bar the utility from providing leads to affiliates. Parties may regard it necessary, in order to appropriately apply the separations standard, to prohibit the utility from sharing information systems. We ask the parties to attempt to

reach agreement on each of these standards, and, absent agreement, to individually propose rules.²

Additional Policy Guidance

We expect our above discussion will help focus the parties in their efforts to propose standards of conduct for energy utilities in their interactions with their affiliates providing energy and energy-related services. From our own experience and various responses to the Petitioners' motion, we have additional policy guidance parties should consider. Together with our above discussion and D.97-04-041, we will use this additional guidance to assist us in evaluating the proposed rules ultimately recommended by parties.

Uniformity of rules is appropriate in a competitive market. It is in the public interest to establish rules which ensure utility affiliates do not gain unfair advantage over other market players, and to ensure utility ratepayers are not somehow subsidizing unregulated activities. Utility affiliates competing with other utility affiliates to provide energy services should face substantially uniform rules so that no advantage or disadvantage accrues to an affiliate simply because of differing regulations.

Utility affiliates should not be disadvantaged relative to competitors. The purpose of the standards of conduct is to ensure utility affiliates do not gain unfair advantage over other market players, and to ensure utility ratepayers are not somehow subsidizing unregulated activities. Within this framework, the rules should foster confidence among market players that competitors have equal opportunities to gain market share.

Proposed rules should be within the power of the Commission to enforce. We recognize that enforcement is critical to fostering competition. The Commission should not be asked to adopt rules which it is not lawfully able to enforce.

² With respect to disclosure and information standards, parties are encouraged to consider our treatment of marketing leads or referrals and use by an affiliate of its affiliation in marketing in our telecommunications regulation and to argue why like or dissimilar treatment is appropriate.

Proposed rules should not conflict with the Federal Energy Regulatory Commission's (FERC's) standards, and, when taken together with the FERC's rules, should create seamless regulation. FERC has adopted rules applicable to energy companies and their affiliates consistent with its jurisdictional responsibilities. Any rules proposed for this Commission's consideration should not conflict with these FERC standards. Rules proposed to this Commission should pick up where FERC's rules and jurisdiction leave off so that the federal and state rules applicable to affiliate transactions leave no gaps in regulation. Rules proposed for this Commission's consideration should also create no overlap with or duplication of the FERC's standards.

SB 960 (Ch.96-0856)

We are currently conducting an experimental implementation of procedures that will become mandatory for our proceedings, effective January 1, 1998, pursuant to SB 960. We propose to consider these proceedings under the Experimental Rules and Procedures, adopted in Resolution ALJ-170.

Pursuant to Experimental Rule 2(e), we identify this rulemaking and this investigation as candidate proceedings to be processed under the experimental rules. We preliminarily determine the categorization of the rulemaking proceeding to be "quasi-legislative," and the investigation proceeding to be "ratesetting," as those terms are defined in Experimental Rule 1(e) and (d), respectively. In the rulemaking we will consider the rules proposed by parties for applicability to a class of regulated entities in the context of the guidance we provided earlier in this order. We propose to reserve the investigation for the consideration of issues which rescind, alter, or amend a Commission decision, which decisions we expect will involve a specifically named utility.³ Commissioners Bilas and Knight and Administrative Law Judge (ALJ) Econome are assigned to this proceeding.

³ As we discussed earlier, we expect the existing utility-specific rules governing transactions with affiliates may be affected by the proposed rules which may, in turn, make evidentiary hearings pursuant to PU Code § 1708 necessary.

A PHC for both proceedings will be held on Monday, April 21, 1997, at 2:30 p.m., at the Commission Courtroom, State Building, 505 Van Ness Avenue, San Francisco, California. At this conference, we will establish a service list.

Interested parties should file PHC statements with the Commission Docket Office no later than April 17, 1997. Copies should also be served on the assigned Commissioner and ALJ that day. The PHC statements shall provide a proposed scoping memo, as described in Experimental Rule 3(c). Experimental Rule 2(e) provides for comments and objections to the inclusion and categorization of a proceeding in the first responsive pleading. Any party wishing to set forth any comments or objections regarding inclusion in the sample and the categories for the proceedings shall include them in the PHC statement. All parties filing PHC statements should bring 30 extra copies to the PHC.

O R D E R

IT IS ORDERED that:

1. A rulemaking and companion investigation are instituted to establish standards of conduct governing relationships between California's natural gas local distribution companies and electric utilities and their affiliated, unregulated entities providing energy and energy-related services, and to determine whether the utilities should be required to have their nonregulated or potentially competitive activities conducted by their affiliate companies.

2. Kirkwood Gas and Electric Company, PacificCorp, Pacific Gas and Electric Company, San Diego Gas & Electric Company, Sierra Pacific Company, Southern California Edison Company, Southern California Gas Company, Southern California Water Company, Southwest Gas Company, and Washington Water and Power Company are respondents.

3. Proposed rules, developed pursuant to Article 13.5 of the Commission's Rules of Practice and Procedure, shall be jointly filed with the Commission, accompanied by a motion which includes argument supporting their adoption, no later than June 1, 1997.

Any party wishing to separately present proposed rules and supporting argument should file a separate motion no later than June 1, 1997. Comments and reply comments on the proposed rules and accompanying arguments will be allowed as provided under Rule 51.4.

4. A prehearing conference for both proceedings will be held as expeditiously as possible, at which time the service list for the consolidated proceedings will be established.

5. Pursuant to Rule 2(e) of the Experimental Rules and Procedures to Gain Experience, Where Practicable, With Management of Commission Proceedings Under Requirements of Senate Bill 960, adopted in Resolution ALJ-170, we identify this rulemaking and this investigation as candidate proceedings to be processed under the experimental rules. We preliminarily determine the categorization of the rulemaking proceeding to be "quasi-legislative," and the investigation proceeding to be "ratesetting," as those terms are defined in Experimental Rule 1(e) and (d), respectively.

6. The Executive Director shall cause a copy of this order to be immediately served upon all electric and gas utilities, and all interested persons in Rulemaking 94-04-031/Investigation 94-04-032, Application (A.) 96-04-030, A.96-03-031, A.92-10-017, A.95-06-002, and A.96-08-043.

This order is effective today.

Dated April 9, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners