

Decision PROPOSED DECISION OF ALJ KENNEY (Mailed 12/24/2010)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
(U39G) to Modify Decision 07-06-013.

Application 10-10-006
(Filed October 7, 2010)

**DECISION EXTENDING CONFIDENTIAL TREATMENT FOR PACIFIC GAS
AND ELECTRIC COMPANY'S 2007-2008 WINTER HEDGING PLAN**

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**DECISION EXTENDING CONFIDENTIAL TREATMENT FOR PACIFIC GAS
AND ELECTRIC COMPANY'S 2007-2008 WINTER HEDGING PLAN**

1. Summary

Today's decision grants Pacific Gas and Electric Company's (PG&E) request to keep its 2007-2008 Winter Hedging Plan under seal for an additional three years. PG&E may request a future extension of the protective order granted by today's decision by filing an application at least six months prior to the expiration of today's decision.

2. Background

Decision (D.) 07-06-013 approved a settlement agreement under which Pacific Gas and Electric Company (PG&E) will submit an annual plan to hedge the cost of natural gas, with a focus on winter gas, for its core gas procurement customers. Once an annual plan is approved, PG&E may purchase gas hedges consisting of (1) call options on monthly gas indices traded in over-the-counter markets, and (2) fixed-for-floating swaps. Ratepayers will pay for the hedges and receive all the benefits.¹ Of particular relevance to today's decision, D.07-06-013 determined that PG&E's annual hedging plans are confidential and will be placed under seal for three years.²

¹ D.07-06-013 at 10 and 12.

² D.07-06-013 at 13, Conclusion of Law 6, and Ordering Paragraph 2.

PG&E submitted its confidential 2007-2008 Winter Hedging Plan for Commission approval in Advice Letter 2841-G, dated June 8, 2007.³ The advice letter was deemed effective on June 26, 2007, pursuant to a letter to PG&E from the Director of the Commission's Energy Division dated June 29, 2010.

3. PG&E's Application

PG&E filed A.10-10-006 on October 7, 2010.⁴ Notice of A.10-10-006 appeared in the Daily Calendar on October 12, 2010. PG&E also served a copy of A.10-10-006 on the service list for A.06-05-007, the docket in which D.07-06-013 was issued. There were no protests or responses.

In A.10-10-006, PG&E asks the Commission to keep PG&E's 2007-2008 Winter Hedging Plan under seal for an additional three years. PG&E also asks for authority to request future extensions of confidential treatment by filing a motion. To achieve these objectives, PG&E proposes that the Commission adopt an ordering paragraph that states as follows:

PG&E's 2007-2008 Winter Hedging Plan shall remain sealed for a period of three years as provided in this Order. Within 30 days of the expiration of this protective order, PG&E may file and serve a motion requesting an extension of the protective order authorized herein.

PG&E states that it is necessary to keep its 2007-2008 Winter Hedging Plan under seal to ensure that market-sensitive information does not fall into the wrong hands. PG&E asserts that sophisticated gas traders could use the detailed

³ Advice Letter 2841-G refers to an "Annual Core Hedge Implementation Plan for 2007," while Application 10-10-006 refers to a "2007-2008 Winter Hedging Plan." We assume that both references are to the same plan.

information in its 2007-2008 Winter Hedging Plan to predict PG&E's hedging behavior. Armed with this information, market participants could position themselves to extract higher prices from PG&E's hedging activity.

PG&E cites four Commission precedents for its application. First, in Rulemaking 08-06-025, the assigned Administrative Law Judge (ALJ) denied a motion by Shell Energy North America, L.P. (Shell) to obtain PG&E's and Southern California Gas Company's (SoCalGas) confidential 2005-2006 winter hedging plans. The ALJ's ruling stated:

The Commission has previously recognized that natural gas hedging plans contain commercially sensitive information that should be protected from public disclosure. For example, as noted in D.08-09-005, in reference to the SoCalGas hedging plan, the Commission stated:

If some or all of the proposed plan were made public, or otherwise became known to market participants, this could inflate the market prices for the hedging instruments purchased by SoCalGas on behalf of the core customers of SoCalGas and SDG&E.

As a reason to support disclosure, Shell argues that it is not seeking a current hedging plan, and that because the 2005-2006 hedging plans do not reflect current market conditions, their disclosure now would not present competitive harm.

Shell has not justified disclosure of the referenced gas hedging plans, however, merely because of the passage of time. The fact that the hedging plans are now over three years old does not mean that the information contained in those plans no longer is commercially sensitive.

In their filed responses, the utilities persuasively argue that their 2005-2006 hedging plans continue to be commercially

⁴ PG&E originally filed a petition to modify D.07-06-013, but the Docket Office directed PG&E to re-file the petition as a new application.

sensitive even though the information therein is more than three years old. Disclosure of the older hedging plans could provide Shell, as a market participant, with a road map of how each of the utilities approaches winter hedging, including the timing and strategy for hedging. (ALJ's Ruling in R.08-06-025, at 3-7 (July 8, 2009). (Footnotes omitted.))

The second precedent cited by PG&E is D.07-06-027. There, the Commission placed SoCalGas's 2007-2008 Winter Hedging Program under seal for three years and authorized SoCalGas to file a motion to extend confidential treatment at least 30 days before the expiration of D.07-06-027.⁵

The third precedent is Resolution ALJ-255, issued on September 3, 2010, which granted a motion by SoCalGas to extend confidential treatment for its 2007-2008 Winter Hedging Program. PG&E believes the Commission's reasoning in ALJ-255 also applies to PG&E's 2007-2008 Winter Hedging Plan:

SoCalGas has provided ample evidence for extension of the protective order. As illustrated in the assigned ALJ ruling in R.08-06-025 discussed above, the Commission found that hedging programs from prior periods contain market sensitive information, disclosure of which could be detrimental to the utility or its customers. (ALJ-255 at 2.)

The final precedent is D.10-01-023. There, the Commission reiterated that utility hedging plans are confidential and should be shielded from disclosure:

We reject Shell's claim that utility hedge plans should be provided to third parties, including gas marketers. As stated in past decisions, the utility hedging plan is to remain confidential, presumably containing highly sensitive market information which, if released, could work toward the

⁵ D.07-06-027, Ordering Paragraph 12. the Commission uses slightly different terminology for SoCalGas (Winter Hedging Program) versus PG&E (Winter Hedging Plan).

detriment of ratepayers... Shell fails to justify why utilities, buying gas for core customers, should be compelled to establish a ... "full disclosure" solicitation protocol for hedge products, while the rest of the market would not be covered within this protocol. (D.10-01-023 at 34.)

4. Discussion

The Commission has broad discretion under Pub. Util. Code §§ 583 and 701 to decide if information submitted to the Commission by public utilities should be available to the public.⁶ In exercising this discretion, Gov. Code § 6255(a) directs the Commission to consider whether "the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record."

The Commission's General Order (GO) 66-C explains how to obtain records in the Commission's possession. It also lists the types of documents not open to public scrutiny, including "[r]eports, records, and information requested or required by the Commission which, if revealed, would place the regulated company at an unfair business disadvantage."⁷ Public utilities submitting reports, records, and information to the Commission have the burden of demonstrating that such material should be shielded from disclosure.

We find that PG&E has met its burden to demonstrate that its 2007-2008 Winter Hedging Plan should remain under seal for three more years. We agree with PG&E that public disclosure of the 2007-2008 Winter Hedging Plan at this time would place PG&E at an unfair business disadvantage, since sophisticated

⁶ D.06-06-066, as modified by D.07-05-032, Ordering Paragraph 1.

⁷ GO 66-C, Section 2.2.b.

traders of hedges could use the Plan to gain insight into PG&E's hedging strategy, including the timing and triggers for hedge acquisitions and liquidations. Traders could then use this information to front run PG&E, resulting in worse prices for PG&E and its customers.

We decline to grant PG&E's request for authority to seek an extension of the protective order granted by today's decision by filing a motion. We prefer that PG&E file an application for this purpose. PG&E should file the new application at least six months prior to the expiration of today's protective order so as to provide sufficient time for the Commission to review the application and issue a decision before the expiration of today's protective order.

We do not intend for PG&E's 2007-2008 Winter Hedging Plan to remain under seal in perpetuity. In order to achieve the fundamental goals of full public participation and regulatory transparency,⁸ we will require PG&E to justify in its next application, if one is filed, why its 2007-2008 Winter Hedging Plan needs to remain under seal more than six years after the Plan has expired. At some point the Plan will become obsolete and no longer eligible for confidential treatment. PG&E's application should identify when it expects that to occur.

5. Categorization and Need for Hearing

In Resolution ALJ 176-3262, issued on October 14, 2010, the Commission preliminarily determined that the category for this proceeding is ratesetting and that there is no need for a hearing. Based on the record of this proceeding, we affirm that this is a ratesetting proceeding and that there is no need for a hearing.

⁸ Gov. Code § 6250 provides "that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."

6. Comments on the Proposed Decision

The proposed decision of the ALJ was mailed to the parties in accordance with Pub. Util. Code § 311, and comments were allowed in accordance with Rule 14.3 of the Commission's Rules of Practice and Procedure. ~~Comments were PG&E filed on _____ by _____. Reply comments were filed on _____ by _____. comments on January 13, 2011, expressing support for the proposed decision. There were no reply comments.~~

7. Assignment of the Proceeding

Michael R. Peevey is the ~~Assigned~~assigned Commissioner and Timothy Kenney is the assigned ALJ in this proceeding.

Findings of Fact

1. PG&E filed its 2007-2008 Winter Hedging Plan at the Commission via Advice Letter 2841-G, dated June 8, 2007. The 2007-2008 Winter Hedging Plan was deemed confidential and placed under seal at the Commission for a three-year period pursuant to D.07-06-013.

2. Public disclosure of PG&E's 2007-2008 Winter Hedging Plan at this time would place PG&E at an unfair business disadvantage with respect to sophisticated traders of gas hedges.

3. PG&E's 2007-2008 Winter Hedging Plan will likely become obsolete at some point in the future and subject to public disclosure at that time.

Conclusions of Law

1. The public interest served by not disclosing PG&E's 2007-2008 Winter Hedging Plan outweighs the public interest served by disclosure of the Plan.

2. PG&E's 2007-2008 Winter Hedging Plan at the Commission should remain under seal until three years from the effective date of the following order.

3. PG&E should be authorized to file an application to seek an extension of the protective order granted by today's decision. The application should (i) be filed at least six months prior to the expiration of today's decision, and (ii) state when PG&E expects its 2007-2008 Winter Hedging Plan will be obsolete and no longer eligible for confidential treatment.

4. The following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company's 2007-2008 Winter Hedging Plan at the Commission shall remain under seal until three years from the effective date of this order. While under seal, the document shall not be provided or disclosed to anyone other than the Commission and its staff, except upon further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the Law and Motion ALJ.

2. Pacific Gas and Electric Company (PG&E) may seek to extend the protective order granted by today's decision by filing an application at least six months prior to the expiration of today's decision. The application shall state when PG&E expects its 2007-2008 Winter Hedging Plan will be obsolete and no longer eligible for confidential treatment.

3. Application 10-10-006 is granted and denied to the extent set forth in the previous ordering paragraphs.

4. Application 10-10-006 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

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