

Decision 11-03-004 March 10, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider the Annual Revenue Requirement Determination of the California Department of Water Resources.

Rulemaking 09-06-018
(Filed June 18, 2009)

DECISION REGARDING THE REQUEST OF THE CALIFORNIA DEPARTMENT OF WATER RESOURCES TO MODIFY THE DECISIONS CONCERNING THE SERVICING AND OPERATING ORDERS AND AGREEMENTS

Summary

Today's decision adopts the modifications that the California Department of Water Resources proposed in its September 20, 2010 memorandum request to the Commission to modify the decisions which adopted the previous versions of the servicing and operating orders and agreements. The servicing orders and operating orders, as modified and clarified by today's decision, are appended to this decision as Attachments 2 through 7.¹

Procedural Background

In Decision (D.) D.07-03-025, the Commission approved the servicing orders between the California Department of Water Resources (CDWR) and Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company

¹ As explained in the Procedural Background section of this decision, Attachments 1 through 7 were originally appended to the September 29, 2010 ruling.

(SDG&E), and Southern California Edison Company (SCE).² Those three servicing orders set forth the terms and conditions under which the three utilities are to provide the transmission and distribution of CDWR-purchased electricity, as well as billing, collection, and related services on behalf of CDWR, and the compensation to the utilities for providing those services.

In D.02-12-069, the Commission approved the operating order applicable to SCE. The operating agreements applicable to PG&E and SDG&E were approved by the Commission in D.03-04-029, as modified by D.04-10-020. The operating order and operating agreements set forth the terms and conditions under which these utilities administer the CDWR power contracts and how they dispatch the electricity generating assets within their portfolios.

On September 20, 2010, California Energy Resources Scheduling division of CDWR sent a memorandum to President Michael R. Peevey and to the assigned Administrative Law Judge (ALJ) requesting that the Commission modify the servicing and operating orders and agreements between CDWR and the electric utilities.

Accompanying the September 20, 2010 memorandum request was the "Summary of Submitted Revisions to 2010 Servicing Orders," and the "Summary of Submitted Revisions to 2010 Operating Orders."³ CDWR's memorandum request was also accompanied by the updated versions of each of the servicing

² D.07-03-025 adopted modifications to the servicing orders that had originally been approved in D.02-12-070, D.02-12-071, and D.02-12-072.

³ CDWR requests that the 2010 operating orders applicable to PG&E and SDG&E replace the operating agreements for these two utilities which were approved in D.04-10-020.

and operating orders which incorporate the proposed modifications, as well as marked-up copies of the proposed modifications to the servicing orders and to the operating order and agreements. The proposed modifications reflect the agreements that CDWR reached with the three utilities in the Memorandum of Understanding (MOU), which the utilities were authorized to follow pursuant to the March 13, 2009 ruling in the prior rulemaking addressing CDWR's memorandum requests in Rulemaking (R.) 06-07-010, and in the subsequent revisions or clarifications to the MOU that CDWR and the utilities agreed upon.⁴

After receiving CDWR's September 20, 2010 memorandum request, a September 29, 2010 ALJ ruling was issued which treats CDWR's memorandum request as petitions to modify D.07-03-025, D.02-12-069, and D.04-10-020, and states that the issues raised by CDWR's memorandum request are to be addressed in this proceeding. The September 29, 2010 ruling appended the memorandum request and the summaries, and the updated versions of the servicing orders and operating orders, to the ruling as Attachments 1 through 7.⁵ All seven of these attachments are appended to this decision as Attachments 1 through 7.

⁴ The MOU described the changes to the operation and remittance procedures that were agreed to between CDWR and the three electric utilities as a result of the anticipated implementation of the Market Redesign and Technology Upgrade (MRTU) by the California Independent System Operator (CAISO).

⁵ The marked-up copies of the proposed modifications to the servicing orders and to the operating order and agreements were not attached to the September 29, 2010 ruling. However, the September 29, 2010 ruling informed the parties that copies of all of the documents could be obtained by contacting CDWR.

The September 29, 2010 ruling allowed interested parties to file a response to CDWR's September 20, 2010 memorandum request. The only response was filed by SCE on October 29, 2010, which supports CDWR's proposed modifications to SCE's servicing order and operating order.

Discussion

The September 20, 2010 memorandum of CDWR requests that the proposed modifications to the three servicing orders and to the operating order and agreements be adopted.

The summary of the revisions to the servicing orders describes CDWR's proposed modifications to the three servicing orders. Each of the servicing orders govern the relationship between CDWR and that particular electric utility. According to the summary, the proposed modifications to the servicing orders generally fall within one of the four following categories:

- Changes necessary to the servicing orders to reflect the CAISO's implementation of the MRTU, as noted in the MOU approved by the assigned Commissioner on March 13, 2009.
- Amendments, clarifications, or supplements to the MOU provisions, which occurred subsequent to the March 13, 2009 ruling, as agreed to by the electric utilities as limited agents of CDWR.
- Clarification that upon the novation of any contract covered by the servicing order, that the servicing order terminates as to such contract without further action.
- Corrections are made to references to sections, attachments, exhibits or appendices and other conforming changes as a result of the amendments contained in the updated 2010 operating orders.

The summary of the revisions to the operating orders describes CDWR's proposed modifications to the operating order and agreements. Each of the operating orders govern the relationship between CDWR and each particular

electric utility. According to the summary, the proposed modifications to the operating orders generally fall within one of the six following categories:

- Amendments, clarifications or supplements to the existing operating arrangements to reflect the CAISO's implementation of MRTU as noted in the MOU that was approved by the assigned Commissioner on March 13, 2009.
- Further amendments, clarifications or supplements to the provisions of the MOU as agreed upon by the investor owned utilities and CDWR.
- Clarification that upon the novation of any contract covered by the operating order, that the operating order terminates as to such contract without further action.
- Language to reflect that the updated operating orders are Commission orders, rather than agreements applicable to PG&E and SDG&E as adopted in D.04-10-020.
- Conforming changes to the original operating order adopted by the Commission in D.02-12-069 as applicable to SCE, to include provisions contained in the operating agreements of PG&E and SDG&E as adopted in D.04-10-020.
- Updated cross-references and any conforming changes as a result of the amendments contained in the updated 2010 servicing orders.

According to the September 20, 2010 memorandum request, CDWR worked with PG&E, SDG&E, and SCE to make the changes that are reflected in the updated servicing orders and operating orders, and all three utilities concur with the proposed modifications to their respective existing operating arrangements and servicing orders. No responses in opposition to CDWR's memorandum request were received.

We have reviewed the proposed modifications to the servicing orders and to the operating orders in light of the MRTU changes that were implemented by the CAISO. The proposed modifications have also been compared to the servicing orders that were adopted in D.07-03-025, to the operating order

applicable to SCE that was adopted in D.02-12-069, and to the operating agreements applicable to PG&E and SDG&E that were adopted in D.04-10-020. We have also compared the proposed changes for each of the utilities to each other.

Each of the three servicing orders and operating orders, as changed by CDWR's proposed modifications, contain substantially the same provisions, and vary with respect to the facts of how each servicing order or operating order or operating agreement was originally developed and the individual procedures that apply to each of the three utilities. The major differences between the three utilities are reflected in some of the attachments to each utility's servicing order and operating order.

Since CDWR and the electric utilities agree to the proposed modifications, and no one has objected to the September 20, 2010 memorandum request of CDWR to modify the servicing orders and operating order and agreements that were approved in prior Commission decisions, the request of CDWR is granted. The proposed modifications to the servicing orders and operating order and agreements, as reflected in the updated servicing orders and updated operating orders that are appended to this decision as Attachments 2 through 4, and Attachments 5 through 7, respectively, and as discussed below, are approved.

PG&E and CDWR point out in their comments to the proposed decision that some changes to the decision are necessary to reflect the impact of two Commission decisions that were issued after CDWR's September 20, 2010 memorandum request was submitted.

PG&E's comments point out that three of the CDWR contracts for which PG&E has operational responsibility, which are shown in Schedule 1 of Attachment 5 (2010 Operating Order applicable to PG&E) to this decision, have

been novated as of October 1, 2010. PG&E replaced CDWR as the counterparty, and the novation of the three contracts, referred to as Calpine 3, Calpine 2 - Los Esteros, and GWF - Phase I, II, and III, was approved in D.10-07-042.

In PG&E's comments to the proposed decision, PG&E stated that since these three contracts were novated, these "contracts are no longer technically 'DWR contracts' and therefore do not belong on Schedule 1." PG&E requested that a new finding of fact and conclusion of law be added to reflect that Schedule 1 is no longer applicable to the three contracts. PG&E also requested that a new ordering paragraph be added so that Schedule 1 of the PG&E Operating Order remove the three contracts to reflect the fact that they have been novated and that PG&E has replaced DWR as the counterparty.

In CDWR's January 24, 2011 memorandum reply to PG&E's comments to the proposed decision, CDWR agrees that the three "contracts were novated to PG&E effective October 1, 2010." CDWR also notes that the Calpine 2 and GWF contracts were to use a "modified remittance basis that became effective on February 1, 2010," as reflected in Schedule 1 under the "Remittance Basis" column and in the footnotes. CDWR states that "If these contracts were removed from Schedule 1 as requested by PG&E, the changes to the remittance basis for those two contracts would not exist in PG&E's Modified Operating Order." CDWR's memorandum further states that PG&E and CDWR "have agreed that rather than removing the three contracts listed from Schedule 1, a new footnote should be added to note that the [three contracts] have been novated to PG&E effective October 1, 2010." CDWR and PG&E have agreed that the following ordering paragraph would reflect their mutually agreed approach:

The request made by PG&E in its comments on the PD to modify Schedule 1 of the PG&E Operating Order to add a footnote to indicate that the Capine 3, Calpine 2 - Los Esteros, and GWF -

Phase I, II, III DWR contracts have been novated effective October 1, 2010 and PG&E has replaced DWR as the counterparty, is granted.

Today's decision acknowledges that the three contracts were novated such that PG&E replaced CDWR as the counterparty, and that the Commission approved the novation in D.10-07-042. Since two of the novated contracts were to use a certain remittance basis, as set forth in Schedule 1 of Attachment 5 to this decision, the agreed upon approach of PG&E and CDWR to add the footnote to Schedule 1 should be granted.

In CDWR's January 18, 2011 memorandum commenting on the proposed decision, CDWR notes that in D.10-11-011, the Commission "approved the nonbypassable charge agreement ... between the Modesto Irrigation District and the Merced Irrigation District and PG&E," and in so doing "the Commission adopted a specific exception to the remittance procedure established in the 2007 Servicing Orders (and the Modified Servicing Orders) as applicable to [municipal departing load] remittances subject to the bilateral agreement." The Commission declined in D.10-11-011 to make any changes to the Servicing Orders as a result of this kind of agreement because that proceeding was not the appropriate forum to consider such changes.

CDWR requests in its January 18, 2011 memorandum that "the Commission adopt a similar exception to the remittance procedures under the 2007 Servicing Orders (and the Modified Servicing Orders) as to amounts remitted to CDWR under bilateral agreements relating to [municipal departing load] Customers so that PG&E and SCE are required to remit such amounts to [C]DWR in accordance with the terms of the bilateral agreement entered into with the applicable publicly-owned utility." CDWR notes that such a "provision would allow a broader remittance procedure exception for existing and future

bilateral agreements as contemplated” in the Servicing Orders. CDWR also requests that remittances made to CDWR pursuant to any such bilateral agreement include four details about such remittances because these remittances do not conform to the data reporting templates in Attachment C of the Servicing Orders.

In PG&E’s January 24, 2011 reply comments to CDWR’s January 18, 2011 memorandum, PG&E contends that CDWR’s modifications should not be adopted because CDWR did not include such a request in its original September 20, 2010 memorandum request to modify the Servicing Orders, the proposed decision did not include any discussion about bilateral agreements about municipal departing load, and potential interested parties did not have any notice or opportunity to be heard on the proposed changes.

CDWR’s January 18, 2011 memorandum introduces a new issue about bilateral agreements concerning remittances for municipal departing load. Although the Commission approved a specific agreement between PG&E, Modesto Irrigation District, and Merced Irrigation District in D.10-11-011, CDWR did not propose in its September 20, 2010 request or in its January 18, 2011 memorandum, what specific parts of the Servicing Orders would need to be modified in order to reflect these kinds of bilateral agreements. Accordingly, we decline to modify the Servicing Orders as requested in CDWR’s January 18, 2011 memorandum. However, we acknowledge that in D.10-11-011 the Commission approved a nonbypassable charge agreement between PG&E and the two irrigation districts, and that such an agreement is an exception to the remittance procedure set forth in the Servicing Order. CDWR is free to submit another memorandum request to modify the Servicing Orders to reflect these kinds of bilateral agreements.

Rehearing and Judicial Review

This decision construes, applies, implements, and interprets the provisions of Assembly Bill 1 of the Legislature's First Extraordinary Session of 2001-2002 (AB 1X). Pursuant to Public Utilities Code Section 1731(c) any application for rehearing of this decision must be filed within 10 days of the date of issuance of this decision, and the provisions of Public Utilities Code Section 1768 are applicable to any judicial review of this decision.

Comments on Proposed Decision

The proposed decision of the ALJ in this matter was served on the parties in accordance with Public Utilities Code Section 311 and Rule 14.2 of the Rules of Practice and Procedure. Opening and reply comments on the proposed decision were filed by PG&E, and submitted by CDWR in two memorandums. The opening and reply comments have been reviewed and appropriate changes have been incorporated into this decision.

Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner, and John S. Wong is the assigned ALJ in this proceeding.

Findings of Fact

1. The Commission approved the servicing orders between CDWR and PG&E, SDG&E, and SCE, in D.07-03-025.
2. The Commission approved the operating order for SCE in D.02-12-069, and approved the operating agreements for PG&E and SDG&E in D.03-04-029 as modified by D.04-10-020.
3. CDWR submitted a September 20, 2010 memorandum requesting that the three servicing orders and the operating order and operating agreements be modified.

4. The September 29, 2010 ALJ ruling treats CDWR's request as petitions to modify D.07-03-025, D.02-12-069, and D.04-10-020, and states that the issues raised by CDWR's memorandum request are to be addressed in this proceeding.

5. SCE filed a response to the September 29, 2010 ruling in support of CDWR's proposed modifications to SCE's servicing order and operating order.

6. The summaries of the revisions to the servicing orders and to the operating orders describe CDWR's proposed modifications to these documents.

7. PG&E, SDG&E, and SCE concur with the proposed modifications to their respective servicing orders, operating agreements, and operating order.

8. The September 20, 2010 proposed modifications have been reviewed in light of the MRTU changes which triggered the modifications.

9. In D.10-07-042, the Commission approved the novation of the Calpine 3, Calpine 2 - Los Esteros, and GWF - Phase I, II, III contracts, as shown in Schedule 1 of Attachment 5 to this decision, such that PG&E replaced CDWR as the counterparty.

10. D.10-11-011 approved a nonbypassable charge agreement between PG&E and the two irrigation districts, which agreement is an exception to the remittance procedure set forth in the Servicing Order.

11. CDWR did not propose what specific parts of the Servicing Orders would need to be changed in order to reflect these kinds of bilateral agreements.

Conclusions of Law

1. CDWR's September 20, 2010 request to modify the servicing orders approved in D.07-03-025, to modify the operating order applicable to SCE that was approved in D.02-12-069, and to modify the operating agreements applicable to PG&E and SDG&E that were approved in D.03-04-029 as modified by D.04-10-020, should be granted.

2. CDWR's September 20, 2010 proposed modifications, as reflected in the updated servicing orders and updated operating orders which are appended to this decision as Attachments 2 through 7, and as clarified by today's decision, should be approved.

3. The agreement of PG&E and CDWR to add a footnote to Schedule 1 of Attachment 5 to this decision to reflect that the Calpine 3, Calpine 2 - Los Esteros, and GWF - Phase I, II, III contracts have been novated effective October 1, 2010, and that PG&E has replaced CDWR as the counterparty, should be granted.

4. CDWR's January 18, 2011 memorandum request to modify the Servicing Orders is not adopted.

ORDER

1. The September 20, 2010 memorandum request of the California Department of Water Resources, which was treated in the September 29, 2010 ruling as petitions to modify Decision (D.) 07-03-025, D.02-12-069, and D.04-10-020, is granted.

2. The servicing orders that were approved in Decision 07-03-025 for Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE), are approved as modified by the modifications contained in the updated servicing orders, which are appended to this decision as Attachment 2 for PG&E, Attachment 3 for SDG&E, and Attachment 4 for SCE.

3. The operating order that was approved in D.02-12-069 for Southern California Edison Company (SCE), and the operating agreements that were approved for Pacific Gas and Electric Company (PG&E) and San Diego Gas &

Electric Company (SDG&E) in D.03-04-029 as modified by D.04-10-020, are approved as modified by the modifications contained in the updated operating orders, which are appended to this decision as Attachment 5 for PG&E, Attachment 6 for SDG&E, and Attachment 7 for SCE.

4. The request of Pacific Gas and Electric Company (PG&E) and the California Department of Water Resources (CDWR) to modify Schedule 1 of the PG&E Operating Order, appended hereto as Attachment 5, to add a footnote to indicate that the Calpine 3, Calpine 2 - Los Esteros, and GWF - Phase I, II, III contracts have been novated effective October 1, 2010 and PG&E has replaced CDWR as the counterparty, is granted.

5. This proceeding remains open.

This order is effective today.

Dated March 10, 2011, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
CATHERINE J.K. SANDOVAL
Commissioners

I abstain.

/s/ MICHEL PETER FLORIO
Commissioner