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09-12-06
03:39 PM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Concerning
Relationship Between California Energy
Utilities And Their Holding Companies And
Non-Regulated Affiliates.

Rulemaking 05-10-030
(Filed October 27, 2005)

**ADMINISTRATIVE LAW JUDGE'S RULING
PROPOSING DRAFT RULES FOR WORKSHOP DISCUSSION**

Summary

The draft rules appended to this ruling have been developed by Commission staff for discussion at the workshop to be held September 21, 2006, beginning at 9:00 a.m., in Training Room B at the Commission's San Francisco offices. The draft rules consist of proposed revisions to (1) the Commission's Affiliate Transaction Rules and (2) General Order (GO) 77-L, which governs reporting of executive compensation and other information by public utilities. If subsequently adopted by the Commission, the draft rules will apply only to Respondents, California's major energy utilities and their holding companies: Southern California Edison Company (SCE)/Edison International, Pacific Gas and Electric Company (PG&E)/PG&E Corporation, and Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E), both owned by Sempra Energy.

Additional information about the workshop can be found below.

Procedural Background

Decision (D.) 06-06-062, the Commission opinion which amended the scope and schedule for this rulemaking, includes, at Section 3.3 of the decision, conceptual discussion of “possible solutions” to identified problems with the Affiliate Transaction Rules and with GO 77-L. The discussion below follows that basic subject matter organization. In developing the draft rules, Commission staff have reviewed the comments and reply comments filed in response to D.06-06-032.

Proposed Revisions to the Affiliates Transaction Rules

As this Commission and jurisdictional public utilities enter the post-PUHCA world, the proposed amendments to the Affiliates Transaction Rules seek to ensure fair energy markets and fair utility rates. At their essence, the proposed amendments arise from two primary concerns. One is the very real conflict of interest that creates an impetus for preferential treatment, unfair competitive advantage, or the sharing of competitively sensitive confidential information within the partly regulated, mostly unregulated corporate family. Competitive abuses resulting from this conflict of interest create financial risks for energy markets and for captive ratepayers. The second concern is the potential threat to a utility’s financial health and ability to meet its public service obligations unless it is adequately insulated from the financial risks and debts of its unregulated parent and affiliates. D.06-06-062 observes that given the “substantial profits or risks at stake, there are strong incentives within the holding company structure to take advantage of confidential utility information or use ratepayer-subsidized utility facilities, whether to help affiliates maximize their profits or bail them out from risks.” (D.06-06-032, p.11, slip op.)

Respondents' comments argue that these concerns are largely speculative, that the electric energy crisis is now behind us, and that recent audits of utility compliance with the Affiliates Transaction Rules have reported few, relatively minor violations. Commission staff do not agree that the audit findings are as innocuous as Respondents portray. However, Staff are mindful that D.06-06-032 plainly states: "We are not interested in conducting additional discovery in this rulemaking or litigating, here, what happened in the past." (D.06-06-032, p. 10, slip op.)

On balance, Commission staff maintain that the existence of the conflicts of interest highlighted above, together with the undisputed incentives to exercise them, warrant modifications to the Affiliate Transaction Rules. The proposed revisions clarify limitations on a utility's ability to engage in preferential treatment or anticompetitive conduct, and provide a stronger means for the Commission to know if and when the Rules are being violated or circumvented.

Respondents also argue that any increased monitoring of utility/holding company/affiliates interactions by the Commission will burden corporate relations and prevent compliance with various state and federal laws, particularly tax laws. Nothing in the proposed revisions to the Affiliate Transaction Rules (or in the existing Rules) precludes the holding company from receiving information from the utility in order to comply with state corporate law, federal securities laws, federal or state tax laws, or Sarbanes-Oxley.

The draft rules attached as Appendix A propose the following major changes to the Affiliate Transaction Rules.

1. Add a new Rule IX, containing provisions previously articulated in various Commission decisions, to protect and preserve the utility's financial health through "Ring-fencing" - i.e., insulate

the financial health of a utility from any financial risks posed by its holding company or affiliates.

- Require utility to retain the capital structure authorized by the Commission and to file an advice letter or application for waiver whenever a financial event reduces utility's equity ratio by at least 1% below the Commission-approved ratio. (Required in PG&E's holding company decision, D.96-11-017 (Nov. 6, 1996), 69 CPUC 2d 167.)
 - Require utility to annually update its capital budget report. (First ordered by the October 27, 2005 Order Instituting Rulemaking in this proceeding, the Commission asked for information on Respondents' intentions regarding future capital investment in the utility, particularly energy infrastructure development, and for information on the process by which corporate policy is implemented, including how capital is allocated among or between a utility and its affiliates by the parent holding company.)
 - Prohibit utility from becoming or remaining liable for indebtedness of affiliates without Commission approval. (Required in the Commission approval of the PacifiCorp merger, D.06-02-033.)
 - Prohibit utility from issuing dividends or repurchasing stocks if and when its senior, unsecured long-term debt rating were to decrease to the lowest investment grade. (Required in the Commission approval of the PacifiCorp merger, D.06-02-033.)
2. Clarify - to address apparent confusion - that a utility's parent holding company must adhere to the fundamental principle that the utility shall not provide preferential treatment to utility affiliates.
- Proposed Rule II.C. unequivocally states the basic rule, which prohibits a holding company or any of a utility's affiliates from causing the utility to violate the Affiliate Transaction Rules, including prohibitions against the

utility providing preferential treatment, unfair competitive advantages, or confidential information to its affiliates if the information would materially advantage the affiliate over competitors.

- Proposed Rule IV.C. requires a utility to provide reports semiannually to the Commission disclosing any meetings or discussions between the utility and its holding company addressing non-public information pertaining to six subjects which could give the utility's affiliate an unfair competitive advantage over competitors.
3. Provide more separation between the utility and its affiliates by further limiting the sharing of personnel in areas particularly prone to conflicts of interest.
- Proposed revision to Rule V.E. would exclude financial planning, regulatory affairs, lobbying, legal, and/or risk management from permissible shared services between utility and its affiliates.
 - Proposed revision to Rule V.G. would prohibit the same consultants or contractors from working for utilities and their affiliates at the same time (except as permitted in Rule V.E. Corporate Support).
4. Prohibit utility procurement from affiliates without prior Commission approval.
- Proposed revisions in Rule III.B. create additional pre-approval requirements to review a utility's procurement strategies, to the extent that the utility's affiliates sell in the same market or benefit from utility sales in the market.
5. Strengthen (and close gaps) in the Commission's regulatory oversight.
- Proposed revisions to Rule VI.A and B. require advice letter filings for the Commission to determine which affiliates are covered by the Rules.
 - Proposed revisions to Rule VI.C. require Commission staff, rather than the utility, to direct the annual Affiliate Transaction Rules compliance audits.

Commission staff note that Respondents' comments concede two of these proposed changes, recognizing that the Commission, rather than the utility, should determine whether a new utility affiliate is covered by the Affiliates Transaction Rules (Rule VI.A and B) and that it is reasonable for the Commission to take a lead role in selecting the auditor hired to perform the annual utility audits (Rule VI.C.).

Proposed Revisions to GO 77-L

Largely following suggestions in D.06-06-062, the draft rules propose to amend GO 77-L to provide a more complete and accurate picture of Respondent's compensation practices while protecting reasonable privacy interests. The draft rules, attached as Appendix B, require:

- reporting of total compensation, by category and in the aggregate, for all utility Executive Officers and employees with a base salary of \$250,000. (For employees earning a base salary of more than \$125,000 but less than \$250,000, the draft rules clarify that the current practice continues to be adequate, i.e., reporting all compensation and expenses but excluding pension and benefits.);
- reporting of total compensation, by category and in the aggregate, for all Executive Officers of the utility's holding company for whom compensation disclosures must be made in the holding company's proxy statement;
- disclosure of the proportion of utility or holding company Executive Officer compensation paid, directly or indirectly, by a utility's ratepayers; and
- a statement explaining the method for determining compensation to a utility's executive officers and employees and explaining how that method avoids tying compensation to the profitability of the utility's holding company.

In addition, the draft rules propose to amend GO 77-L to include a provision adopted in D.04-08-055 and D.05-04-030, which issued in

Rulemaking 03-08-019, the Commission's last review of GO 77. That provision authorizes a utility to report names of highly compensated individuals in conditional access reports on condition that any utility that chooses this option also files a report for public inspection from which the individual names have been redacted. The public version is available for review by members of the public without qualification.

The specific reporting provisions have been drawn, in significant part, from Commission decisions in the last general rate cases (GRCs) for PG&E and SCE and from recent orders of the Securities and Exchange Commission (SEC) that require public disclosure of the total compensation awarded a corporation's top executives and others.

The GRC decisions require several things. D.04-05-055 directs PG&E to supplement its GO 77 report with a separate list showing the total compensation awarded to all of its officers and to those top officers of its holding company for whom compensation disclosures must be made in the holding company's proxy statement. The decision also requires PG&E to include an independent auditor's letter verifying that all elements of compensation are fully disclosed, clearly described and totally comprehensive. Further, the decision requires PG&E to include an internet site-link to all documents filed with the SEC that relate to any elements of executive compensation.¹ D.06-05-016 requires SCE's next GO 77 report to follow the PG&E model.

¹ Ordering paragraph 12 of D.04-05-055 states:

PG&E shall file in its GO 77-K reports a separate tab listing the total compensation of the top executive officers of the utility's holding company whose compensation is listed in the holding company's proxy statement as

Footnote continued on next page

On July 26, 2006, the SEC voted to amend its rules governing disclosure of compensation to directors and top officers and determined to take additional comment on extending these disclosures to three other highly compensated employees. The SEC released a final version of the new disclosure rules for directors and for the principal executive officer, principal financial officer, and three other highest paid executive officers on August 11. The SEC's new rules require comprehensive tabular disclosure of total compensation for each of the past three years, including holdings of outstanding equity-related interests received as compensation that are a source of future gains, and retirement plans, deferred compensation, and other post-employment payments and benefits. The

well as the total compensation of all other utility officers. This additional information shall include not only compensation received in the prior year as now required by GO 77-K [the predecessor of GO 77-L] but also compensation awarded in the last year but not yet received, including but not limited to stock option grants. PG&E shall also include an independent auditor's letter verifying that all elements of compensation as required are fully disclosed, clearly described, and totally comprehensive. Disclosure shall include internet site links to all documents filed with the Securities and Exchange Commission that relate to any and all elements of executive compensation as required herein.

Though Ordering Paragraph 12 refers to "total compensation" (and a comprehensive definition of that term is discussed in D.04-05-055 at Section 10.3.1), GO 77 traditionally has sought disclosure of annual compensation only (e.g. salary, expense accounts, and contingent fees, excluding pension or benefits), and has not necessarily captured short- or long-term incentive payments. While Ordering Paragraph 12 clearly seeks disclosure of incentive payments, its intent to require disclosure of total compensation may have been less clear. Review indicates that PG&E's 2005 report continues to exclude pensions and benefits. Note also the directive in SCE's most recent GRC decision, D.06-05-016, that SCE not only follow the PG&E model for GO 77 reporting but also, in its next GRC "provide full transparent and understandable information on the present and future market value of the retirement severance benefits of its top executives." (D.06-05-015, Conclusion of Law 31.)

tabular format requires reporting of the value of all components of the compensation package, as well as a single figure total. The tabular disclosure must be accompanied by a narrative disclosure, in plain English.

Workshop

All interested parties are welcome to participate in the September 21, 2006 workshop, which will be facilitated by the assigned ALJ and other Commission staff working on this rulemaking. The goals of the workshop are a candid, informed exchange about the draft rules, focusing on their objectives, the perceived burden or other implementation problems, and potential alternatives. The workshop will not be reported or recorded and no transcript or workshop report will be produced.

Parties who wish to prepare a pre-workshop statement addressing the draft rules released today may do so; however, the statement shall be no more than 15 pages and shall be filed and served on the service list by September 19, 2006. Post-workshop statements will be permitted as long as they are no more than 15 pages and filed and served by September 29, 2006. Workshop statements should not repeat arguments previously filed in comments on D.06-06-062; comments that do so may be stricken.

Therefore, **IT IS RULED** that:

1. The draft rules in Appendix A and Appendix B, developed by Commission staff, will be the subject of discussion at the September 21, 2006 workshop.
2. Any party that wishes to prepare a pre-workshop statement addressing the draft rules may do so, but must file the statement and serve it on the service list by September 19, 2006.
3. Any party that wishes to prepare a post-workshop statement may do so, but must file the statement and serve it on the service list by September 29, 2006.

4. Workshop statements should not repeat arguments previously filed in comments on D.06-06-062; comments that do so may be stricken.

Dated September 12, 2006, at San Francisco, California.

 /s/ JEAN VIETH
Jean Vieth
Administrative Law Judge

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I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a copy of the Notice of Availability to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the copy of the Notice of Availability is current as of today's date.

Dated September 12, 2006, at San Francisco, California.

/s/ ELVIRA NIZ

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