

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish Policies and Cost Recovery Mechanisms for Generation Procurement and Renewable Resource Development.

Rulemaking 01-10-024
(Filed October 25, 2001)

**INTERIM OPINION REGARDING EMERGENCY
MOTION OF PACIFIC GAS AND ELECTRIC COMPANY**

On January 29, 2003, Pacific Gas and Electric Company (PG&E) filed an “Emergency Motion for Suspension of Standard of Conduct No. 7 In D.02-10-062 for April 1 – September 30, Inclusive.” In its motion, PG&E requests the Commission shorten time for responses to February 5, 2003, and that the Commission act on the motion no later than its February 13, 2003, Business Meeting.¹

Standard of Conduct #7 (Standard #7) states:

In order to exercise effective regulatory oversight of the behavior discussed above, all parties to a procurement contract must agree to give the Commission and its staff reasonable access to information

¹ On February 3, 2003, PG&E filed a correction to its motion, changing the requested dates on the first page of its pleading from April 1 – June 30, 2003, inclusive to April 1 - September 30, inclusive.

within seven working days, unless otherwise practical, regarding compliance with these standards.

PG&E states that good cause exists to grant its motion because absent the requested relief, PG&E's customers may lose the opportunity to execute contracts for the second and third quarters of 2003 that would help to assure low, stable rates and that would otherwise be consistent with PG&E's approved 2003 procurement plan. Attached to PG&E's motion is the Declaration of Roy M. Kuga, PG&E's Lead Director of Gas and Electric Supply. The motion also urges the Commission grant the applications for rehearing of Decisions (D.) 02-10-024 as soon as possible and eliminate Standard Seven entirely.

By Administrative Law Judge ruling dated January 31, 2003, PG&E's request to shorten response time was granted and on February 3, 2003, the motion was notice for the Commission's February 13, 2003, meeting.

Responses to the motion were timely filed by the Independent Energy Producers Association (IEP), the Office of Ratepayer Advocates (ORA), San Diego Gas & Electric Company (SDG&E), Sempra Energy Resources (SER), and Southern California Edison Company (Edison). The Utility Reform Network (TURN) filed on February 10, 2003. All responding parties support PG&E's request. Both SDG&E and Edison state that they continue to encounter reluctance by counterparties to transact forward power deals beyond March 31, 2003. In addition, SDG&E recommends that the Commission suspend Standard

#7 for all 2003 deliveries for contracts of less than 12 months in order to maximize the utilities' ability to secure least cost resources for their customers.²

The parties have presented uncontested assertions that the market has been tested and that obstacles remain. We find it would be prudent to extend the interim suspension in order to allow the applications for rehearing requesting elimination of Standard #7 to be decided and for the Commission to consider alternative language to address its concerns in the long-term procurement plan hearings scheduled for summer, 2003. In granting an interim extension, we reaffirm that the Commission remains committed to retaining the regulatory oversight and jurisdiction necessary to ensure adequate and reliable utility service at just and reasonable rates. Granting an extension through the end of 2003, as recommended by SDG&E, would be consistent with our treatment of Standard #6. See D.02-12-074 at page 55. However, recognizing that we also state in D.02-12-074 at page 8 that utility procurement of early 2004 needs should not await a final Commission decision of long-term procurement plans, we should extend our interim suspension of Standard #7 through the end of the first quarter of 2004 for Edison, PG&E, and SDG&E.

Pursuant to Rule 77.7(f)(2) of the Commission's Rules of Practice and Procedure, we waive the 30-day period for public review and comment on this draft decision because it is an uncontested matter where we grant the relief requested.

² IEP also requests the Commission simultaneously address its November 22, 2002, Petition for Modification of D.02-10-062 here. The Commission has already considered the merits of this petition. See D.02-12-074, mimeo at 47.

Assignment of Proceeding

Loretta M. Lynch is the Assigned Commissioner and Christine M. Walwyn is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. PG&E presents evidence that members of its procurement staff in late January 2003, contacted seven market participants that are currently active in the western electricity market, six of whom have been viable and active counterparties of PG&E in the first quarter of 2003, and all indicated to PG&E, on a confidential basis, that they would not enter into a contract at this time that includes Standard #7.

2. SDG&E states that it continues to encounter reluctance by counterparties to transact forward power deals beyond March 31, 2003.

3. Edison states that its own queries about Standard #7 corroborate PG&E's findings and form a basis upon which Edison supports the motion.

Conclusions of Law

1. It is reasonable as an interim measure to extend the exemption to Standard #7 we granted in D.02-12-080 for those procurement contracts entered into by Edison, PG&E, and SDG&E to satisfy procurement requirements from April 1, 2003 through March 31, 2004, inclusive.

2. Granting this exemption will allow the Commission to more fully assess the applications for rehearing on this standard and to consider alternative language to address its concerns in the long-term procurement plan hearings scheduled for this summer, 2003.

3. Pursuant to Rule 77.7(f)(2), we waive the 30-day period for public review and comment because it is an uncontested matter where we grant the relief requested.

O R D E R

IT IS ORDERED that:

1. The January 31, 2003, emergency motion of Pacific Gas and Electric Company, as corrected on February 3, 2003, is granted, as modified herein.
2. As an interim measure, we extend the exemption to Standard #7 granted in Decision 02-12-080 through March 31, 2003.

This order is effective today.

Dated _____, at San Francisco, California.