

Decision **PROPOSED DECISION OF ALJ VIETH** (Mailed 6/25/2007)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Wild Goose Storage, LLC,

Complainant,

vs.

Pacific Gas and Electric Company,

Defendant.

Case 07-01-023
(Filed January 11, 2007)

OPINION DISMISSING COMPLAINT

Summary

The complaint is dismissed without prejudice. If it chooses to pursue the prospective relief sought here (i.e., modification of Decision (D.) 06-07-010), Wild Goose Storage, LLC (Wild Goose) may file a petition for modification, which will provide notice to all affected parties and an opportunity to be heard, as required by Pub. Util. Code § 1708.

Procedural Background

Pacific Gas and Electric Company (PG&E) timely filed an Answer to the Complaint on February 21, 2007 and with the leave of the assigned administrative law judge (ALJ), Wild Goose filed a Response on March 2, 2007. By ruling on May 14, 2007, the ALJ set forth several issues to be discussed at a prehearing conference (PHC) held on June 11, 2007. The Assigned

Commissioner's Scoping Memo and Ruling issued on June 14, 2007, following the PHC.

Discussion

Wild Goose and PG&E agree that the single issue in dispute between them is what credit requirements apply to independent gas storage providers that desire to participate in a *future* Request for Offers (RFO) to supply incremental gas storage services for PG&E's core. The assumption underlying the dispute is that D.06-07-010 will govern a future RFO, just as it governed PG&E's recent RFO. Though Wild Goose declined to bid in that RFO and in this Complaint alleges that PG&E imposed excessive and uncompetitive credit requirements, Wild Goose "is not requesting that the Commission disrupt the currently ongoing RFO process." (Complaint at 3.) Rather, Wild Goose seeks *prospective* relief.

If the Commission were to find for Wild Goose on the merits of this Complaint, substantive revision of D.06-07-010 would result since the Commission would need to interpret and/or clarify the applicable credit requirements. The Commission need not examine the wisdom or propriety of issuing such an advisory opinion, however, because other procedural considerations militate for dismissal of this Complaint. If Wild Goose chooses to pursue the matter, a Petition for Modification (Rule 16.1) is a better procedural vehicle for review of the relief sought.

The reasons are as follows. Wild Goose is not the only independent gas storage provider in California with the locational ability to serve PG&E and it was not the only such entity with party status in Application (A.) 05-03-001, the proceeding in which D.06-07-010 issued. Pub. Util. Code § 1708 requires notice and opportunity to be heard before the Commission may "rescind, alter, or

amend” a prior order. Wild Goose essentially seeks a *prospective* change in a decision of broad application through the vehicle of this two-party dispute. Not only will a Petition for Modification provide notice to all parties governed by D.06-07-010, but the Petition will provide greater specificity as to the relief requested, since Wild Goose will need to set forth exactly how the existing language in D.06-07-010 should be modified (Rule 13.4(b)).

Motion to File Under Seal

By motion filed concurrently with the Complaint on January 11, 2007, Wild Goose seeks to file under seal certain figures (dollar amounts) in Exhibits 2, 3, and 4 to the Complaint on the basis that these figures are commercially sensitive. Wild Goose redacted the figures from the public version of the exhibits to the Complaint. The figures have substantive but not procedural relevancy; because we dismiss the Complaint without prejudice for procedural reasons, and do not reach the merits, we need not decide Wild Goose’s motion. Accordingly, within 15 days of the effective date of today’s decision Wild Goose shall contact Elderine Castillo (415-703-2388) of the Commission’s Central Files and either retrieve the sealed envelope containing unredacted information which was submitted to the Docket Office with its motion or request that Central Files destroy the envelope and its contents. Wild Goose shall confirm its election in writing, which Central Files shall place with the correspondence in the formal file for this proceeding.

Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 1701.2 and Rule 14.2(a) of the Commission’s Rules of Practice and Procedure. No comments were filed.

Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Jean Vieth is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Wild Goose seeks interpretation and clarification of D.06-07-010 for the purpose of prospective application to a future RFO.
2. Wild Goose is not the only independent gas storage provider in California with the locational ability to serve PG&E and it was not the only such entity with party status in A.05-03-001, the proceeding in which D.06-07-010 issued.
3. Wild Goose should either collect the sealed envelope containing unredacted material filed with its January 11, 2007 motion or ask that the envelope and its contents be destroyed.

Conclusions of Law

1. Pub. Util. Code § 1708 requires notice and opportunity to be heard before the Commission may “rescind, alter, or amend” a prior order.
2. A petition for modification of D.06-07-010 (under Rule 13.4), unlike this Complaint, would provide notice to all parties governed by D.06-07-010. It also would provide greater specificity as to the relief requested (Rule 13.4(b)).
3. This Complaint should be dismissed without prejudice.
4. Wild Goose’s January 11, 2007 motion is moot.

O R D E R

IT IS ORDERED that:

1. Case 07-01-023 is dismissed without prejudice.
2. The following motion, filed on January 11, 2007, is moot and will not be decided on the merits: *Wild Goose Storage, LLC’s Motion to File Under Seal and*

Maintain Confidentiality of Certain Information; Confidential Material Attached and Filed Under Seal, Namely Portion of Exhibit 2 [Report by RMG Financial Consulting, Inc.], Exhibit 3 [Calculation of Wild Goose Storage, LLC Required Credit Posting], and Exhibit 4 [Declaration of Krishna K. Yadav] to Complaint Filed Concurrently Herewith.

3. Within 15 days of the effective date of today's decision, Wild Goose Storage, LLC shall contact Elderine Castillo (415-703-2388) of the Commission's Central Files and either retrieve the sealed envelope containing unredacted information which was submitted to the Docket Office with the January 11, 2007 motion or request that Central Files destroy the envelope and its contents. Wild Goose shall confirm its election in writing, which Central Files shall place with the correspondence in the formal file for this proceeding.

This order is effective today.

Dated _____, at San Francisco, California.