

Decision **DRAFT DECISION OF ALJ SIMON** (Mailed 4/18/2005)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Establish Policies and Criteria to Authorize an Increase in the Rate of Return Allowed an Electrical Corporation on its Electric Plant Due to Sustainable Land and Resource Management Practices pursuant to Pub. Util. Code § 454.3.

Rulemaking 03-03-015
(Filed March 13, 2003)

OPINION CLOSING PROCEEDING**Summary**

Because it no longer makes sense to consider implementation of Pub. Util. Code § 454.3 in its own proceeding, we close this proceeding, while retaining our discretion to consider these issues in the future, as appropriate.

Procedural History

This proceeding was initiated in March 2003. It was preliminarily categorized as quasi-legislative. A prehearing conference was held on May 20, 2003. In accordance with the Ruling Specifying Initial Inventory Requirements (July 18, 2003), respondents Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company, and Southern California Edison filed inventories of their land holdings at the end of September 2003.¹ The Ruling of

¹ We appreciate the efforts of the utilities and Commission staff in compiling these inventories.

Assigned Commissioner and Administrative Law Judge Staying Proceeding (December 8, 2003) stayed this matter until the earlier of June 1, 2004 or the effective date of the confirmed plan of reorganization for PG&E's bankruptcy. No hearings have been held.

We confirm the categorization of this proceeding as quasi-legislative, without the need for any hearings.

Discussion

This proceeding has been overtaken by events. In the Order Instituting Rulemaking (OIR), we expressed our intention to set standards for implementing Pub. Util. Code § 454.3.² We proposed to begin by examining the

² Section 454.3 provides:

The commission may, after a hearing, approve an increase of from one-half of 1 percent to 1 percent in the rate of return otherwise allowed an electrical corporation on its electric plant for investment by the corporation in facilities meeting one of the following requirements:

(a) The facility is designed to generate electricity from a renewable resource, including, but not limited to, solar energy, geothermal steam, wind, and hydroelectric power at new or existing dams; the facility is subject to Resource Agency review of its environmental impacts and determination that the facility is environmentally acceptable; its capital costs, when added to its costs of operation and maintenance, result in a cost of electricity generated over the useful life of the facility less than that of electricity generated by existing facilities utilizing nuclear power or fossil fuel; and the facility is used and useful.

(b) The facility is capable of meeting the then applicable environmental pollution standards; its capital costs, when added to its costs of operation and maintenance, result in a cost of electricity generated over the useful life of the facility less than that of electricity generated by existing facilities utilizing nuclear power or fossil fuel; and the facility is used and useful.

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land management practices of the respondent utilities, considering incentives to improve the utilities' environmental stewardship, and exploring incentives to encourage the utilities to use environmentally beneficial technologies.

Circumstances have changed substantially since the OIR was issued. First, in the settlement related to PG&E's bankruptcy, which we modified and approved in Decision 03-12-035, PG&E made a number of land conservation commitments. These commitments, which will be implemented under the aegis of the Pacific Forest and Watershed Lands Stewardship Council, address some of the issues that we would have considered in this proceeding. Second, we have reorganized our approach to utility procurement of electricity, instituting a process for considering procurement issues that includes an "umbrella" proceeding (currently, Rulemaking 04-04-003) to coordinate the numerous proceedings that affect procurement.

In this context, a proceeding devoted only to § 454.3 no longer makes sense. However, the Commission retains its discretion to consider these issues in the future, as appropriate.

Comments on Draft Decision

The draft decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure.

(c) The facility is experimental and is, in the determination of the commission, reasonably designed to improve or perfect technology for the generation of electricity from renewable resources or to more efficiently utilize other resources in a manner which will decrease environmental pollution and lower the costs of the electricity generated.

Assignment of Proceeding

Michael R. Peevey is the assigned commissioner and Anne E. Simon is the assigned administrative law judge.

Finding of Fact

1. Circumstances have changed significantly since this OIR was issued.

Conclusions of Law

1. The issues identified in this proceeding may be considered in the future, as appropriate.
2. In order to avoid ambiguity about the status of this proceeding, this order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Standards for implementing Pub. Util. Code § 454.3 may be considered, as appropriate, in another proceeding in the future.
2. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.