

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.

FILED
PUBLIC UTILITIES COMMISSION
JUNE 18, 2009
SAN FRANCISCO, CALIFORNIA
RULEMAKING 09-06-018

ORDER INSTITUTING RULEMAKING

Summary

This Order opens a new rulemaking as the successor docket to Rulemaking (R.) 06-07-010, to consider issues related to the allocation of the annual revenue requirement determination of the California Department of Water Resources in connection with its procurement of energy for the electricity customers of Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company. R.06-07-010 is closed.

Background

Prior to the initiation of this rulemaking, Rulemaking (R.) 06-07-010 was opened to address the annual revenue requirement determination of the California Department of Water Resources (DWR) and issues related to the DWR power contracts. Before the opening of R.06-07-010, DWR's annual revenue requirement determinations were addressed in the consolidated proceedings of Application (A.) 00-10-028, A.00-11-056 and A.00-11-038. Since the opening of that rulemaking, we have issued five decisions in that docket regarding DWR's

revenue requirements and related issues.¹ Today, we close R.06-07-010 and open this proceeding as its successor. We transfer the record from R.06-07-010 to this new proceeding and bring forward limited remaining issues.

Initiation of Rulemaking

This rulemaking should address the future requests by DWR to allocate its annual revenue requirement determinations, and to address any issues concerning the servicing orders, the operating order, and the operating agreements between DWR and the three electric utilities.

In addition, this rulemaking should address the issues identified in D.03-12-015 about the size and form of the deposit requirement that an electric service provider (ESP) must have, and whether that deposit requirement should be used to cover the ESP's financial responsibility for any reentry fee.² Those deposit and reentry fee issues were previously commented upon, but have not been addressed because the provisioning of electricity to customers by ESPs was suspended on February 1, 2001 as a result of Water Code § 80110.

The above issues and any other issues relating to DWR's annual revenue requirement determination will be addressed in this rulemaking.

¹ See Decision (D.) 06-12-035, D.07-03-025, D.07-12-030, D.08-04-051, and D.08-12-006.

² Alternatively, this rulemaking could identify another proceeding in which the deposit and reentry fee issues could be addressed. For example, the conditions under which the direct access suspension can be lifted are being addressed in Phase II of R.07-05-025. Depending on the outcome of Phase II, Phase III of R.07-05-025 is to address the rules governing a reinstated direct access market. (See D.08-02-033 at 5, D.08-11-056 at 4.)

Preliminary Scoping Memo

The purpose of this rulemaking is to consider the annual revenue requirement filing of DWR and issues related to DWR's power contracts.

The Commission is required to accept DWR's determination of the annual requirement once DWR has determined that the revenue requirement is just and reasonable. However, the Commission determines how to recover the revenue requirement from the customers of the investor-owned utilities, and allocates the DWR revenue requirement to the electric customers of Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE). Consistent with the prior DWR submissions, we expect that DWR's 2010 revenue requirement determination will be submitted to us sometime around August 2009, and that a revised determination will be submitted around October 2009.

We also anticipate that in the near future, DWR and the affected utilities will submit proposed amendments to the applicable servicing orders, operating order, and operating agreements as a result of the changes instituted by the California Independent System Operator concerning its Market Redesign and Technology Upgrade (MRTU).³

This rulemaking will also address the deposit requirement and reentry fee issues identified in D.03-12-015, or identify another proceeding in which these issues can be addressed.

³ See the March 13, 2009 ruling in R.06-07-010 concerning the agreement of DWR and the utilities to adhere to the operations and remittance procedures set forth in the Memorandum of Understanding that was agreed upon to accommodate the MRTU changes.

To facilitate our efforts in this rulemaking, we transfer the record in R.06-07-010 into this docket and incorporate that record by reference.

This rulemaking may also address how to allocate the monies associated with an early release of the DWR operating reserves if the DWR power contracts are terminated through novation.⁴ The February 4, 2009 ruling in R.07-05-025 at page 18 ruled that the “Disposition as to how to allocate the early release of DWR operating reserves is an issue that shall be addressed through the annual proceedings to determine and allocate the DWR revenue requirement.” However, the allocation of any early release of the DWR operating reserves is dependent on how much progress is achieved in R.07-05-025 and the timing of the submission of DWR’s 2010 revenue requirement determination.

Category of Proceeding

The Commission’s Rules of Practice and Procedure (Rules) require that an Order Instituting Rulemaking preliminarily determine the category of the proceeding and the need for hearing.⁵ As a preliminary matter, we determine that this proceeding should be categorized as ratesetting because our consideration, approval, and allocation of the DWR revenue requirement will impact the electric rates of PG&E, SDG&E and SCE.⁶ In the recent annual requests of DWR to allocate its revenue requirement determinations, evidentiary hearings were not necessary. However, interested parties will have an

⁴ The Commission is pursuing the novation of these power contracts in Phase II(a)(2) of R.07-05-025.

⁵ Rule 7.1(d).

⁶ Rule 1.3(e).

opportunity to request evidentiary hearings in all future requests by DWR to allocate its annual revenue requirement determination, so evidentiary hearings may be needed.

As provided for in Rules 7.1(d) and 7.6, any party may file and serve an appeal of the assigned Commissioner's scoping memo on categorization within 10 days of such a ruling.

Preliminary Schedule

DWR is expected to serve its 2010 revenue requirement determination in August 2009. Based on an August 2009 submission date, and DWR's likely submission of a revised determination sometime in October 2009, a Commission decision on the allocation of that revenue requirement determination should be issued no later than December 2009 to comply with the 120-day time limit specified in the Rate Agreement between the Commission and DWR. A prehearing conference will be held shortly after the service of DWR's 2010 revenue requirement determination to identify the issues and establish a more detailed schedule for this portion of this proceeding.

A separate schedule to address the proposed changes to the servicing agreements, operating order, and operating agreements, as a result of the MRTU changes, will be issued after the proposed changes are filed with the Commission.

Parties and Service List

The Commission's Process Office shall create an initial service list for this proceeding and post it on the Commission's website. PG&E, SCE, and SDG&E are made respondents to this rulemaking, and will appear on the official service list. Since this proceeding is the successor to R.06-07-010, we will continue the service list from R.06-07-010, including the existing categories (e.g., party, state

service, information only). The Process Office shall serve this rulemaking on the respondents and on the service list in R.06-07-010.

Any person not on the service list interested in participating as a “party” to this proceeding shall comply with Rule 1.4. In accordance with Rule 1.4(c), the assigned Administrative Law Judge may, where circumstances warrant, deny party status or limit the degree to which a party may participate in the proceeding.

Any person interested in monitoring this rulemaking should send a request to the Commission’s Process Office, State Office Building, 505 Van Ness Avenue, San Francisco, California 94102 (or by e-mail to Process_Office@cpuc.ca.gov) asking that his or her name be placed on the official service list for this proceeding as “information only,” or “state service.” (See Rule 1.9(e).)

Any person interested in participating in this rulemaking, but who is unfamiliar with the Commission’s procedures, should contact the Commission’s Public Advisor toll free at (866) 849-8390 or in San Francisco at (415) 703-2074, or send an e-mail to public.advisor@cpuc.ca.gov. Deaf or hard of hearing persons may call the TTY line toll free at (866) 836-7825.

***Ex Parte* Communications**

This ratesetting proceeding is subject to Pub. Util. Code § 1701.3(c) and Rules 8.2, 8.3 and 8.4, which prohibit *ex parte* communications unless certain requirements are met. An *ex parte* communication is defined as “any oral or written communication between a decisionmaker and a person with an interest in a matter before the commission concerning substantive, but not procedural issues, that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter.” (Pub. Util.

Code § 1701.1(c)(4).) Rule 8.1 define the terms “decisionmaker” and “interested person.”

Therefore, **IT IS ORDERED** that:

1. This Order Instituting Rulemaking is initiated on the Commission’s own motion to consider the allocations of the future revenue requirement determinations of the California Department of Water Resources, and issues related to Department of Water Resources’s power purchase activities.

2. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company are made respondents to this proceeding.

3. The issues to be considered in this proceeding are set forth in the Preliminary Scoping Memo section of this rulemaking.

4. The record from Rulemaking 06-07-010 is transferred into this proceeding and incorporated by reference.

5. The category of this proceeding is preliminarily determined to be “ratesetting” as that term is defined in Rule 1.3 of the Commission’s Rules of Practice and Procedure, and evidentiary hearings may be needed.

6. As provided for in Rule 7.6, any appeal as to the categorization of this rulemaking shall be filed no later than 10 days after the date of an assigned Commissioner’s scoping memo and ruling on the categorization.

7. The Process Office shall cause this rulemaking to be served on the respondents and on the service list in Rulemaking 06-07-010.

8. The service list shall be all the persons now on the service list for Rulemaking 06-07-010 and in the same category (i.e., party, state service, information only). Persons who are not on the Rulemaking 06-07-010 service list but who are interested in this proceeding shall follow the procedures specified in

the “Parties and Service List” section of this rulemaking. An initial service list for this proceeding shall be created by the Process Office and posted on the Commission’s website.

9. *Ex parte* communications in this rulemaking are governed by Pub. Util. Code § 1701.3(c) and Rules 8.2, 8.3 and 8.4.

10. Rulemaking 06-07-010 is closed.

This order is effective today.

Dated June 18, 2009, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners