L/cdl

Date of Issuance
December 19, 2011

Decision 11-12-055 December 15, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion to Consider Alternative-Fueled Vehicle Tariffs, Infrastructure and Policies to Support California's Greenhouse Gas Emissions Reduction Goals.	Rulemaking 09-08-009 (Filed August 20, 2009)

ORDER DISMISSING REHEARING APPLICATIONS OF DECISION (D.) 10-07-044

I. INTRODUCTION

In this Order we dispose of the applications for rehearing of Decision (D.) 10-07-044 ("Decision") filed by Pacific Gas and Electric Company ("PG&E") and The Utility Reform Network ("TURN").

The Decision resolved Phase 1 of Rulemaking (R.) 09-08-009.[1] The Rulemaking was opened in 2009 to consider the impacts electric vehicles ("EVs") may have on the State's electric infrastructure and what actions the Commission should take consistent with Commission and State policy goals including The Global Warming Solutions Act of 2006 (AB 32 (Stats. 2006, ch. 488, effective September 27, 2006), codified in Division 24.5 of the Health and Safety Code.)[2] Among other things, the Rulemaking was intended to develop statewide policies and standards to guide and

[1] *Order Instituting Rulemaking to Consider Alternative-Fueled Vehicle Tariffs, Infrastructure and Policies to Support California's Greenhouse Gas Emissions Reductions Goals*, R.09-08-009, issued August 24, 2009

[2] See R.09-08-009, at pp. 2-3.

encourage development of EV metering, home EV charging infrastructure, commercial and public charging infrastructure, tariff schedules, and potential incentive program.

In Phase 1 the Commission specifically addressed whether the sale of EV charging services to the public made a corporation or person a public utility within the meaning of Public Utilities Code Section 216,[3] solely because of that sale, ownership or operation.[4] In rendering its determination, the Commission considered Sections 740.2[5] and 740.3,[6] and determined that under then existing law the Commission did not have the authority to broadly regulate EV charging service providers as public utilities.[7]

PG&E and TURN both filed timely applications for rehearing of the Decision. PG&E challenges the Decision on the grounds that: (1) Sections 740.2 and 740.3 do not repeal the Commission's authority to regulate the sale of electricity by EV

---

[3] All subsequent section references are to the Public Utilities Code unless otherwise stated.

[4] D.10-07-044, at p. 2. In Phase 2 the Commission will further address policies to overcome barriers to the widespread use of EVs and will develop a policy approach that makes optimal use of the Commission's regulatory authority to achieve these goals. (*Ibid.*)

[5] Section 740.2 provides in pertinent part:

> The commission, in consultation with the Energy Commission, State Air Resources Board, electrical corporations, and the motor vehicle industry, shall evaluate policies to develop infrastructure sufficient to overcome and barriers to the widespread deployment and use of plug-in hybrid and electric vehicles….

(Pub. Util. Code, § 740.2.)

[6] Section 740.3 provides in pertinent part:

> (a) The commission, in cooperation with the State Energy Conservation and Development Commission, the State Air Resources Board, air quality management districts and air pollution control districts, regulated electrical and gas corporations, and the motor vehicle industry, shall evaluate and implement policies to promote the development of equipment and infrastructure needed to facilitate the use of electric power and natural gas fuel to low-emission vehicles….

(Pub. Util. Code, § 740.3, subd. (a).)

[7] See D.10-07-044, at pp. 18-21, 39 [Finding of Fact Numbers 4, 5, 6 & 7], & p. 40 [Conclusion of Law Number 4].

service providers; and (2) the Commission's policy reasoning for not regulating the sale of electricity by EV service providers was flawed.

TURN challenges the Decision on the grounds that: (1) the plain language of Sections 216, 217, and 218 make clear that EV service providers are public utilities subject to Commission regulation; and (2) the Commission erred in concluding Sections 740.2 and 740.3 do not confer authority to regulate EV service providers.

Responses to the applications for rehearing were filed by: the Natural Resources Defense Council; the EV Service Provider Coalition; and the Western States Petroleum Association.

For the reasons discussed below, we find the rehearing applications to be moot. Therefore, we dismiss the rehearing applications.

II. DISCUSSION

As indicated above, the rehearing applications challenge whether the Commission properly interpreted the Public Utilities Code to find that the existing law did not authorize the Commission to regulate the sale of EV service providers as public utilities. Legislation enacted after D.10-07-044 makes it unnecessary to address the arguments raised in the rehearing applications.

On October 5, 2011, Assembly Bill ("AB") 631 was signed into law. AB 631 specifically amended Section 216 to provide that the EV service providers contemplated in D.10-07-044 are exempt from Commission regulation as public utilities. Specifically, Section 216, as amended, provides:

> (i) The ownership, control, operation, or management of a facility that supplies electricity to the public only for use to charge light duty plug-in electric vehicles does not make the corporation or person a public utility within the meaning of this section solely because of that ownership, control, operation, or management. For purposes of this subdivision, "light duty plug-in electric vehicles" includes light duty battery electric and plug-in hybrid electric vehicles. This subdivision does not affect the commission's authority under Section 454 or 740.2 or any other applicable statute.

(Pub. Util. Code, § 216, subd. (i).)

As a consequence of this amendment to Section 216, the applications for rehearing are rendered moot. Accordingly, the applications for rehearing of D.10-07-044, filed by PG&E and TURN are dismissed.

III. CONCLUSION

For the foregoing reasons, we find the rehearing applications of D.10-07-044 to be moot.

THEREFORE, IT IS ORDERED that:

1. The rehearing applications of D.10-07-044 are dismissed, as moot.
2. This order is effective today.

Dated December 15, 2011, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners

I abstain.

/s/ MICHEL PETER FLORIO
Commissioner