

Decision 07-03-025 March 15, 2007

**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.

Rulemaking 06-07-010  
(Filed July 20, 2006)

**OPINION REGARDING THE REQUEST OF THE CALIFORNIA DEPARTMENT OF WATER RESOURCES TO MODIFY THE SERVICING ORDERS****I. Summary**

Today's decision addresses the August 3, 2006 proposed modifications to the servicing orders that were approved in December 2002 between the California Department of Water Resources (CDWR) and the following three utilities, Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE). We adopt the modifications that CDWR proposed in its August 3, 2006 memorandum request. The servicing orders, as modified by today's decision, are attached to this decision as Appendix A, B, and C.

**II. Procedural Background**

In Decision (D.) 02-12-070, D.02-12-071, and D.02-12-072, the Commission approved the servicing orders between CDWR and SDG&E, SCE, and PG&E, respectively. Those three servicing orders set forth the terms and conditions under which the three utilities are to provide the transmission and distribution of CDWR-purchased electricity, as well as billing, collection, and related services on behalf of CDWR, and the compensation to the utilities for providing those services.

After the issuance of those three decisions, CDWR submitted a January 17, 2003 memorandum requesting that the three servicing orders be modified.<sup>1</sup> Before decisions on CDWR's request could be rendered, other Commission decisions were issued which affected the servicing orders and the petitions for modification.<sup>2</sup> CDWR subsequently held discussions with the utilities to discuss the needed modifications to the servicing orders.

The discussions between the utilities and CDWR resulted in the August 3, 2006 CDWR memorandum to Commissioner Geoffrey Brown and Administrative Law Judge (ALJ) Peter Allen in this proceeding. The memorandum requests that certain modifications be made to the three servicing orders. Accompanying the memorandum is the "Summary of Proposed Revisions to 2003 Servicing Orders," which describes CDWR's proposed revisions to the three servicing orders. The actual revisions that CDWR is requesting are contained in document files on three compact discs (CDs) which accompanied the memorandum and which were made available to any party requesting copies. According to the August 3, 2006 memorandum, all three of the affected utilities "concur with the proposed modifications to their respective 2003 Servicing Orders."

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<sup>1</sup> On January 23, 2003, CDWR's January 17, 2003 memorandum request to modify the three servicing orders was converted by ruling into the following three petitions for modification: (1) in Application (A.) 01-06-039, CDWR's petition to modify D.02-12-070; (2) in A.01-06-044, CDWR's petition to modify D.02-12-071; and (3) in the consolidated proceedings of A.00-11-038, A.00-11-056, and A.00-10-028, CDWR's petition to modify D.02-12-072. These three petitions for modification are discussed later in this decision.

<sup>2</sup> These decisions include the following: D.03-04-030, D.03-04-041, D.03-05-039, D.03-07-028, D.03-08-076, D.03-09-017, D.03-09-018, D.04-11-014, D.04-12-046, D.04-12-059, D.05-01-009, D.05-07-038, and D.05-12-041.

When this rulemaking was issued, the Commission stated that the issues relating to the servicing orders would be considered in this proceeding. In an August 10, 2006 ruling in this proceeding, CDWR's August 3, 2006 memorandum request was treated as a request by CDWR to modify D.02-12-070, D.02-12-071, and D.02-12-072. The ruling also stated that the request to modify these decisions would be addressed in this proceeding following the receipt of any responses to the August 3, 2006 memorandum request and any reply by CDWR.

No one filed any response to CDWR's request to modify the servicing orders. On September 22, 2006, CDWR submitted a memorandum which recognized that no responses had been filed and stated that the Commission should proceed to issue a decision approving the proposed modifications. The September 22, 2006 memorandum also made the following request:

"In connection with any decision approving the proposed modifications to the 2003 Servicing Orders, CDWR requests that the Commission direct the [investor-owned utilities] IOUs to provide CDWR with copies of relevant workpapers supporting any request for authority to modify, or which would have the effect of modifying, remittance rates for CDWR charges. As part of the proposed modifications to the 2003 Servicing Orders, a paragraph has been included in Attachment B of each IOU's Servicing Order that would require the IOU to notify CDWR of any such requests. [Footnote omitted.] Under the proposed modifications, relevant supporting papers for such remittance rate revisions would be provided to CDWR only if the Commission directed that the IOU work collaboratively with CDWR. CDWR requests that the Commission clarify that the IOUs should work collaboratively with CDWR and provide all relevant supporting papers *whenever* an IOU requests authority to revise remittance rates for CDWR charges, or seeks other relief which would have the effect of revising these remittance rates." (CDWR, September 22, 2006 Memorandum, p. 1.)

SCE and PG&E sought and received permission to file responses in opposition to CDWR's September 22, 2006 request, which were filed on October 3, 2006 and October 20, 2006, respectively.

### **III. Discussion**

The August 3, 2006 memorandum of CDWR requests that the proposed modifications to the three servicing orders be adopted. The proposed modifications are contained in three separate CDs, one for each utility. The CDs contain the original servicing orders and attachments, as adopted in D.02-12-070, D.02-12-071, and D.02-12-072. In addition, the CDs include a redlined version of the proposed changes to the servicing orders and to the attachments, as well as "clean" copies of the servicing orders and attachments which incorporate all of the August 3, 2006 proposed modifications. A summary of the proposed revisions was also attached to the August 3, 2006 memorandum, which describes the proposed revisions to the various sections of the servicing orders and to the attachments.

The proposed modifications to the servicing orders and related attachments primarily address remittance procedures and reporting requirements that are needed as a result of the Commission's adoption of cost responsibility surcharge obligations on various classes of customers, and the treatment of revenues from surplus energy sales. The other proposed modifications address minor changes to reflect that the servicing orders are Commission orders rather than agreements between CDWR and the utilities, and to make conforming changes to various provisions of the three servicing orders to make the provisions consistent among all three utilities.

The August 3, 2006 memorandum states that each of the three utilities concurs with the proposed modifications. The memorandum also notes that, as

contemplated in Section 10(a) of the servicing orders, CDWR and the utilities were involved “in an extensive meet and confer process over the last 12 months to discuss proposed modifications to the 2003 Servicing Orders in an effort to meet the operational needs of both CDWR as well as the IOUs.” (CDWR, August 3, 2006 Memorandum, p. 2.)

The proposed modifications have been compared to the original servicing orders and attachments in D.02-12-070, D.02-12-071, and D.02-12-072. We have also compared the proposed changes for each of the utilities to each other. Each of the three servicing orders, as changed by the proposed modifications, contains substantially the same provisions, and varies with respect to the facts of how each servicing order was developed and the individual procedures that apply to each of the three utilities. The major differences between the three utilities are reflected in some of the attachments to each utility’s servicing order.

With the exception of the issue of supplying the work papers in all circumstances, as we discuss below, the three utilities do not oppose the changes as proposed by CDWR in its August 3, 2006 memorandum request. We have reviewed the proposed changes, in light of the Commission decisions which triggered the modifications, and approve of the proposed changes with two minor non-substantive changes. The first minor change is to replace the references to the “2006 Servicing Order” with the phrase “2007 Servicing Order,” to reflect the year in which we approve these modified servicing orders. The second minor change is to Appendix C-2 of Attachment B to the PG&E servicing order. The citation in the first sentence of the first paragraph to “Decision 030-04-041” should be replaced by “Decision 03-04-041.”

We now address CDWR’s request in its September 22, 2006 memorandum that the Commission direct the utilities to provide CDWR with copies of the

relevant workpapers whenever the utility requests authority to revise the remittance rates for CDWR charges or other relief which would have the effect of revising the remittance rates.

In the September 22, 2006 memorandum, CDWR states that as part of the August 3, 2006 proposed modifications to the servicing orders, a paragraph was included in Attachment B of each of the three servicing orders that requires the utility to notify CDWR of any request for authority to modify, or which would have the effect of modifying, the remittance rates for the CDWR charges.<sup>3</sup> CDWR acknowledges that under the proposed modification as submitted on August 3, 2006, the “relevant supporting papers for such remittance rate revisions would be provided to CDWR only if the Commission directed that the IOU work collaboratively with CDWR.” (CDWR, September 22, 2006 Memorandum, p. 1.)

SCE opposes the September 22, 2006 request of CDWR regarding the provisioning of work papers. SCE points out that the September 22, 2006 request was never raised during the 12-month period when the utilities and CDWR negotiated the new and modified provisions of the servicing orders. The paragraph in Attachment B of the servicing order that was negotiated and incorporated into the August 3, 2006 proposed modifications would require the utility to provide CDWR “with the relevant workpapers supporting all filing impacting DWR charges, but requires those workpapers to be shared in advance

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<sup>3</sup> The proposed modification appears in paragraph I of Attachment B of PG&E’s proposed modified servicing order, in paragraph J of Attachment B of SDG&E’s proposed modified servicing order, and in paragraph H of Attachment B of SCE’s proposed modified servicing order.

of the filing only under appropriate circumstances (where the Commission has deemed it necessary for SCE and DWR to work together to determine a DWR rate change.)” (SCE, October 3, 2006 Response, pp. 2-3.) For other filings, SCE contends that it must share the workpapers with CDWR, upon request, after the filings have been made.

SCE contends that the effect of CDWR’s September 22, 2006 request would require the utilities to provide CDWR with a copy of the workpapers before the filing of advice letters regarding the collection of CDWR charges or the cost responsibility surcharges. SCE does not object to working collaboratively with CDWR on appropriate issues, but believes that collaboration should not be forced when it is unnecessary. SCE points out that until the advice letter is filed, the workpapers are subject to modification. If SCE is required to supply the workpapers to CDWR in advance, the workpapers might only be preliminary drafts. If SCE is required to provide preliminary workpapers to CDWR, SCE will need to devote time and resources to respond to any questions CDWR may have before the advice letter is filed and the corresponding workpapers are finalized. Instead of adopting a requirement to provide CDWR with workpapers in advance in all situations, SCE recommends that the Commission make such a determination on a case-by-case basis.

SCE also points out that under the August 3, 2006 proposed modification, it will provide CDWR with advance notice of an advice letter filing that has an impact on CDWR charges, and that CDWR can readily obtain any workpaper within days of any advice letter filing.

PG&E’s October 20, 2006 response states that during the discussions with CDWR about proposed modifications to the servicing order, the parties discussed Paragraph I to Attachment B in at least two telephone conference calls,

but differed on how to handle the issue of workpapers. A compromise on this issue was reached, which was incorporated into Paragraph I of Attachment B to PG&E's servicing order as part of the August 3, 2006 proposed modifications.

PG&E recommends that the Commission deny CDWR's September 22, 2006 request that the utility automatically provide CDWR with advance copies of all work papers that support any request for authority to modify, or which would have the effect of modifying, remittance rates for CDWR charges.

PG&E agrees with SCE's arguments and reasoning. In addition, PG&E contends that CDWR's September 22, 2006 request is not a clarification of the August 3, 2006 proposed modifications to the servicing orders, but instead is "a change to the proposed language on a point on which the parties had already reached agreement after full discussion." (PG&E, October 20, 2006 Response, p. 4.) PG&E contends that under the proposed language as set forth in the August 3, 2006 proposed modifications, CDWR will have automatic access to the workpapers whenever the Commission directs the utility and CDWR to work collaboratively on the CDWR charge revision. Furthermore, CDWR can readily obtain copies of any other workpapers after the filing of any advice letter. PG&E asserts that CDWR has not demonstrated why PG&E should be required to provide advance copies of other workpapers, which could apply to a wide range of filings by PG&E.

We have reviewed Paragraph I of Attachment B to PG&E's servicing order, Paragraph J of Attachment B to SDG&E's servicing order, and Paragraph H of Attachment B to SCE's servicing order, as proposed in CDWR's August 3, 2006 memorandum request. After reviewing those provisions, we agree with SCE and PG&E that we should not require PG&E, SDG&E, and SCE "to provide CDWR with copies of relevant workpapers supporting any request for authority to

modify, or which would have the effect of modifying, remittance rates for CDWR charges” in all instances. (See CDWR, September 22, 2006 Memorandum, p. 1.) As proposed in CDWR’s August 3, 2006 memorandum, the pertinent paragraphs of Attachment B only require the workpapers to be provided to CDWR in advance if the Commission has directed the utility to work in collaboration with CDWR on the revisions to the CDWR charges. Adopting CDWR’s September 22, 2006 request would require the utilities to provide CDWR in advance with workpapers whenever an advice letter is contemplated that could have an impact on the CDWR charges or on the cost responsibility surcharges. Instead of requiring the workpapers to be provided in advance for every situation of that kind, the August 3, 2006 proposed provision in the applicable paragraphs of Attachment B of the three servicing orders provides the utilities with more flexibility. The August 3, 2006 proposed paragraph is also appropriate and will not hinder CDWR. CDWR can readily obtain any workpapers after any advice letter filing is made. Adopting these paragraphs in Attachment B, as proposed in the August 3, 2006 memorandum request, is also consistent with the spirit of the servicing orders which encourages the utilities and CDWR to discuss issues relating to the servicing order.<sup>4</sup> Accordingly, CDWR’s September 22, 2006 memorandum request to interpret the applicable paragraph of Attachment B of each servicing order as recommended by CDWR should be denied.

Since there are no other objections to the August 3, 2006 proposed modifications to the servicing orders, we adopt those modifications and incorporate them into the servicing orders that were adopted in D.02-12-070,

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<sup>4</sup> See Section 10 of the servicing orders.

D.02-12-071, and D.02-12-072. Attached to this decision as Appendix A, Appendix B, and Appendix C, respectively, are the 2007 servicing orders of PG&E, SDG&E, and SCE. The attached servicing orders incorporate all of the changes as proposed in the August 3, 2006 memorandum, including the two minor changes referenced earlier.

As a result of today's adoption of the modifications set forth in CDWR's August 3, 2006 request to modify the servicing orders, the January 23, 2003 requests of CDWR to modify D.02-12-070 in A.01-06-039, D.02-12-071 in A.01-06-044, and D.02-12-072 in the consolidated proceedings of A.00-11-038, A.00-11-056, and A.00-10-028, are now moot. Those three petitions to modify are moot because the August 3, 2006 modifications to the servicing orders supersede the modifications that CDWR had proposed in those three petitions to modify.<sup>5</sup> For that reason, the January 23, 2003 petitions to modify D.02-12-070 in A.01-06-039, D.02-12-071 in A.01-06-044, and D.02-12-072 in A.00-11-038, A.00-11-056, and A.00-10-028 should be dismissed.

#### **IV. Comments on Proposed Decision**

The proposed decision of the ALJ in this matter was served on the parties in accordance with Pub. Util. Code § 311 and Rule 14.2 of the Rules of Practice and Procedure. CDWR and SCE submitted comments in support of the proposed decision.

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<sup>5</sup> The language that CDWR proposed to add in its January 23, 2003 petitions to modify does not appear in any of the August 3, 2006 proposed modifications. Upon review, it appears that the January 23, 2003 proposed language has been replaced by the August 3, 2006 workpaper language, as discussed earlier, that appears in Attachment B of the three servicing orders.

## **V. Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner, and John S. Wong is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. The Commission approved the servicing orders between CDWR and SDG&E, SCE, and PG&E in D.02-12-070, D.02-12-071, and D.02-12-072, respectively.
2. CDWR submitted a January 17, 2003 memorandum requesting that the three servicing orders be modified, which was converted in a January 23, 2003 ruling to petitions for modification of each of the three servicing orders.
3. Before a decision could be rendered on the January 2003 petitions for modification, other Commission decisions were issued which affected the servicing orders and the petitions for modification.
4. CDWR held discussions with the utilities to discuss needed modifications to the servicing orders, which resulted in the August 3, 2006 memorandum requesting that certain modifications be made to the three servicing orders.
5. The August 10, 2006 ruling treated CDWR's August 3, 2006 memorandum request as a request to modify D.02-12-070, D.02-12-071, and D.02-12-072, and ruled that the memorandum request is to be considered in this proceeding.
6. The August 3, 2006 memorandum request states that each of the three utilities concurs with those proposed modifications.
7. On September 22, 2006, CDWR submitted a memorandum requesting that the Commission clarify proposed Attachment B of each servicing order so as to require the utilities to work collaboratively with CDWR and provide all relevant supporting papers whenever a utility requests authority to revise remittance

rates for CDWR charges, or seeks other relief which would have the effect of revising those remittance rates.

8. SCE and PG&E filed responses in opposition to CDWR's September 22, 2006 memorandum request.

9. CDWR acknowledges in its September 22, 2006 memorandum request that the relevant workpapers for remittance rate revisions are to be provided to CDWR only if the Commission directs the utility to work collaboratively with CDWR.

10. Adopting CDWR's September 22, 2006 request would require the utilities to provide CDWR in advance with workpapers whenever an advice letter is contemplated that could have an impact on the CDWR charges or on the cost responsibility surcharges.

11. The August 3, 2006 provision in the applicable paragraphs of Attachment B of the three servicing orders provides the utility with more flexibility as to when workpapers should be provided to CDWR.

12. CDWR can readily obtain any workpapers after any advice letter filing is made.

### **Conclusions of Law**

1. The August 3, 2006 proposed modifications have been reviewed in light of the decisions which triggered those modifications, and those proposed modifications should be adopted, along with the two non-substantive changes noted in this decision.

2. CDWR's September 22, 2006 memorandum request to interpret the applicable paragraph of Attachment B of each servicing order as recommended by CDWR should be denied.

3. The servicing orders adopted in D.02-12-070, D.02-12-071, and D.02-12-072 should be modified by the modifications proposed in CDWR's August 3, 2006 memorandum request.

4. The January 23, 2003 requests of CDWR to modify D.02-12-070 in A.01-06-039, D.02-12-071 in A.01-06-044, and D.02-12-072 in the consolidated proceedings of A.00-11-038, A.00-11-056, and A.00-10-028 are moot because the August 3, 2006 modifications supercede the January 23, 2003 proposed modifications.

5. The January 23, 2003 petitions to modify should be dismissed.

## **O R D E R**

### **IT IS ORDERED** that:

1. The August 3, 2006 memorandum request of the California Department of Water Resources (CDWR), which was treated in the August 10, 2006 ruling as a request by CDWR to modify Decision (D.) 02-12-070, D.02-12-071, and D.02-12-072, is granted.

- a. The modifications contained in the August 3, 2006 memorandum request, together with the two changes discussed in this decision, are adopted.
- b. The servicing orders adopted in D.02-12-070, D.02-12-071, and D.02-12-072 for San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (SCE), and Pacific Gas and Electric Company (PG&E), respectively, shall be modified by the modifications adopted in today's decision.
- c. The servicing orders for PG&E, SDG&E and SCE, as modified, are attached to this decision as Appendix A, Appendix B, and Appendix C, respectively.

2. CDWR's September 22, 2006 memorandum request to interpret the applicable paragraph of Attachment B of each servicing order as recommended by CDWR is denied.

3. The January 23, 2003 request of CDWR to modify D.02-12-070 in Application (A.) 01-06-039, D.02-12-071 in A.01-06-044, and D.02-12-072 in the consolidated proceedings of A.00-11-038, A.00-11-056, and A.00-10-028 is dismissed.

This order is effective today.

Dated March 15, 2007, at San Francisco, California.

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