

Decision 08-09-045

September 18, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Integrate Procurement Policies and Consider Long-Term Procurement Plans.	Rulemaking 06-02-013 (Filed February 16, 2006)
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**ORDER MODIFYING DECISION (D.) 07-12-052,
AND DENYING REHEARING OF DECISION, AS MODIFIED**

I. SUMMARY

In Decision (D.) 07-12-052 (or “Decision”), issued on December 21, 2007, we reviewed and adopted, with modifications, Pacific Gas & Electric Company’s (“PG&E”), Southern California Edison Company’s (“Edison”), and San Diego Gas & Electric Company’s (“SDG&E”) (collectively, the investor-owned utilities, or “IOUs”) Long-Term Procurement Plans (“LTPP”) for the 10-year period 2007-2016, and provided direction to the IOUs on preparing their conformed 2006 LTPP compliance filings. Our primary focus in reviewing the IOUs’ LTPPs was to determine whether the IOUs were procuring preferred resources as set forth in the Energy Action Plan (“EAP”), in the order of energy efficiency, demand response, renewables, distributed generation and clean fossil-fuel. Our analysis determined that all three of the IOUs’ LTPPs were deficient and spotty with respect to the issue of filling their net short positions with preferred resources from the EAP loading order and particularly inadequate in accounting for green house gas emission reductions. The IOUs’ LTPPs showed that the IOUs were, for the most part, filling and projecting to complete their projected net short positions with conventional resources without providing a highly developed analysis to support this strategy. We concluded that, although the 2006 LTPP filings substantially complied with the directives in the scoping memo, the IOUs should be required to conform their 2006 LTPPs through a compliance filing in order to reflect the modifications directed by the

Commission in D.07-12-052. We further required that subsequent LTPP filings for the IOUs not only conform to both the energy and environmental policies in place, but aim for even higher levels of performance. D.07-12-052 ordered the IOUs to make their compliance filings no later than 90 days from the date of issuance of the Decision. (D.07-12-052, p. 300 [Ordering Paragraph 1].)

A timely application for rehearing of D.07-12-052 was filed jointly by the IOUs, challenging D.07-12-052 on the ground that the Decision fails to consider need and cost, as required by the Public Utility Regulatory Policies Act of 1978 (“PURPA”) (16 U.S.C. § 824a-3 *et seq.*), in ordering the utilities to maintain their current Qualifying Facility (“QF”) capacity over the next decade. According to the IOUs, unless this error is corrected, the Decision exceeds our jurisdiction under Public Utilities Code Section 1757(a)(1)-(2),¹ is not supported by substantial evidence under Section 1757(a)(4), and does not contain sufficient findings and conclusions as required by Section 1705.

We have reviewed all of the allegations of error raised in the rehearing application, and determine that the Decision should be modified. As modified, rehearing of D.07-12-052 is denied.

II. DISCUSSION

As to the issue of cost, the IOUs are correct that, under PURPA, we may only require the IOUs to enter into QF contracts at prices equivalent to the IOUs’ “avoided costs.” (18 C.F.R. §§ 292.303(a), 292.304(b).) “Avoided costs” are defined as “the incremental costs to an electrical utility of electrical energy or capacity or both which, but for the purchase from the qualifying facility or facilities, such utility would generate itself or purchase from another source.” (18 C.F.R. § 292.101(b)(6).) As we noted in D.99-03-021, “avoided cost is not measured by what utilities are paid when they sell energy, but instead on what they must spend to produce or procure [that] energy in the absence of QFs.” (*In the Matter of the Application of San Diego Gas & Electric Co.* [D.99-03-021] (1999) 85 Cal.P.U.C.2d 263, 268.) The regulations further provide that

¹ Unless otherwise noted, all statutory references are to the Public Utilities Code.

the costs paid are to be fair and reasonable to the electric consumer of the electric utility and in the public interest and not be discriminatory against the QFs. (18 C.F.R. § 292.304(a).) The same regulation also provides that public utilities need not pay QFs more than their avoided costs. (18 C.F.R. § 292.304(a).) In a recent decision on QF pricing, we acknowledged that, under PURPA, we cannot require payments to QFs that exceed utility avoided costs. (*See Opinion on Future Policy and Pricing for Qualifying Facilities* [D.07-09-040] (2007) ___ Cal.P.U.C.3d ___, at p. 126 (slip op.); *see also Order Modifying Decision (D.) 07-09-040 and Denying Rehearing of Decision, as Modified* [D.08-07-048] (2008) ___ Cal.P.U.C.3d ___.)

As to the issue of need, the IOUs are correct that, under PURPA, we cannot require the IOUs to purchase unnecessary capacity from QFs. In *City of Ketchikan*, the FERC determined that, “while utilities may have an obligation under PURPA to purchase from a QF, that obligation does not require a utility to pay for capacity that it does not need.” (*City of Ketchikan, Alaska, et al.*, (2001) 94 FERC ¶ 61,293, at 62,062.) This requirement flows from PURPA’s mandate that rates must be just and reasonable to the utilities’ consumers, and in any event cannot exceed utility avoided costs. (16 U.S.C. § 824a-3(b); *see also* 18 C.F.R. § 292.304(a).) Acquiring and paying for unnecessary capacity could run afoul of both of these requirements.

While it may be implicit in the Decision, D.07-12-052 does not expressly acknowledge PURPA’s requirements regarding cost and need. Thus, we will modify the Decision to specifically acknowledge the requirements of PURPA. These modifications are detailed below.

Having dealt with the primary issue raised in the IOUs’ rehearing application, the other allegations of error are rendered moot. The IOUs’ rehearing application makes clear that their claims regarding Sections 1757(a)(1), 1757(a)(2), 1757(a)(4), and 1705 flow directly from their primary allegation regarding PURPA. As the PURPA issue has been resolved, no further discussion of the remaining issues is necessary.

III. CONCLUSION

D.07-12-052 is hereby modified as discussed above, and as set forth in the ordering paragraphs below. As modified, rehearing of D.07-12-052 is denied because no legal error has been demonstrated.

IT IS THEREFORE ORDERED THAT:

1. D.07-12-052 is modified as follows:
 - a. The fifth sentence of the first paragraph under Section 2.3.7 (“Discussion”) is modified to read as follows:

“Thus, we require the IOUs to at least maintain their current QF capacity over the next decade, subject to the requirements of the Public Utility Regulatory Policies Act of 1978 (“PURPA”) (16 U.S.C. § 824a-3 *et seq.*)”
 - b. Finding of Fact 36 is modified to read as follows:

“We find the IOUs treatment of QF resources for system reliability purposes to be reasonable given the information available to the IOUs at the time of their filing. However, on September 20, 2007, the Commission issued D.07-09-040 adopting pricing and policy mechanisms for the IOUs’ purchase of energy and capacity from the QFs and we require each IOU to maintain its current level of QF capacity throughout the planning cycle, subject to the requirements of PURPA. We anticipate that the IOUs will incorporate the new directives in subsequent LTPP filings.”
 - c. Conclusion of Law 20 is modified to read as follows:

“Treatment of QFs by the IOUs in their LTPPs was reasonable in light of the information available to the IOUs at the time of their filings, but QF policy and pricing issues are now established by D.07-09-040. To be consistent with the QF policies now established by D. 07-09-040, the IOUs shall modify their LTPPs to include maintenance of the current level of QF capacity, subject to the requirements of PURPA.”

2. Rehearing of D.07-12-052, as modified, is hereby denied.

This order is effective today.

Dated September 18, 2008, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners