

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding the Implementation of the Suspension of Direct Access Pursuant to Assembly Bill 1X and Decision 01-09-060.

Rulemaking 02-01-011
(Filed January 9, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
SCHEDULING PREHEARING CONFERENCE TO
ADDRESS MOTION FOR PROCEDURAL GUIDANCE**

This ruling schedules a prehearing conference (PHC) to address the issues identified in the motions, filed September 6, 2005, and December 22, 2005, respectively, by the Power and Water Resources Pooling Authority (PWRPA). In its motions, PWRPA requests "procedural guidance" relating to disposition of the Petition to Modify Decision (D.) 03-09-052 filed by Pacific Gas & Electric Company (PG&E) on July 18, 2005.

In D.03-09-052, the Commission addressed the "Cost Responsibility Surcharge" (CRS) obligations for "preference power customers"¹ under contracts with the Western Area Power Administration (WAPA).² The Commission

¹ "Preference power customers" are entities granted a preference by WAPA when contracting to sell surplus federal power, and include "municipalities and other public corporations or agencies; and also cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936 (7 USC 901 *et seq.*)"

² WAPA is a power marketing agency within the U.S. Department of Energy that sells capacity and energy generated by the U.S. Bureau of Reclamation at Central Valley Project (CVP) hydroelectric plants that is surplus to the CVP's own project power consumption.

determined that no cost responsibility surcharge (CRS) applied to preference power customers meeting their full power requirements through WAPA. The Commission, however, did not permit “split wheeling” customers to escape the CRS for the portion of their power procured through bundled service.

In its Petition for Modification of D.03-09-052, filed on July 18, 2005, PG&E sought confirmation that PG&E has the authority to bill and collect the CRS and other nobypassable charges from WAPA “new allottees.” PG&E defined “new allottees” as customers that discontinue or reduce their purchases of bundled or direct access electric service from PG&E to receive electricity from WAPA (or another similarly situated entity), not pursuant to Contract 2948A, but rather under a new contractual agreement. PG&E claims that the Commission intended to treat both split wheeling customers and “new allottees” the same with respect to CRS obligations. PG&E claims that it was merely due to an oversight that the Commission omitted an express authorization for PG&E to file a tariff with respect to “new allottees” in the ordering paragraphs of D.03-09-052. PG&E thus petitions for modification for the Commission to add an ordering paragraph to D.03-09-052 for this purpose.

PWRPA filed a response in opposition to PG&E’s Petition on August 17, 2005, and claimed that there was insufficient basis to grant it. PWRPA claimed that the Petition failed to define adequately the intended scope of the term “new allottee,” and lacked evidence to support the modification. PWRPA claimed that through discovery and other means, it anticipated obtaining further facts to show that an exception to CRS ought to be given to WAPA “new allottees.” PWRPA requested that PG&E be required to submit testimony and declarations of facts to support its Petition, with opportunity for evidentiary hearings.

PG&E filed a third-round reply on August 29, 2005, arguing that PWRPA's concerns should be addressed through written comments in response to the Petition for Modification and through the advice letter process. PG&E claimed that the record in this proceeding is adequate to grant its Petition. PG&E nonetheless attached the Declarations of Dennis Keane and Matthew Masters, to support assertions that PG&E did not adjust its forecast provided to DWR to reflect loss of load associated with "new allottees."

PWRPA subsequently filed a motion on September 6, 2005, seeking "procedural guidance" relating to PG&E's Petition for Modification. Specifically, PWRPA asked the Commission to provide the for the following measures:

1. Notice by PG&E to all parties that they may be affected by PG&E's amended definition of the term "new allottee;"
2. An opportunity for parties to respond to the Amended PG&E Petition as it relates to PG&E's new definition of the term "new allottee;"
3. An opportunity for parties to supplement the record with evidence relevant to the consideration of the Amended PG&E Petition; and
4. A PHC to address the scope and schedule for the Commission's consideration of PG&E's Amended Petition, the need for evidentiary hearings, and any other pertinent procedural matters.

PG&E filed a response on September 21, 2005, denying that evidentiary hearings are required as a basis to grant its Petition. PG&E claims that the PWRPA is attempting to "muddle" the Commission's examination by litigating various issues that have no relevance. PG&E describes the critical issue with respect to the Petition to Modify as being whether Department of Water Resources (DWR) reduced its purchases in expectation that WAPA "new

allottees” would not take service from PG&E. PG&E claims, however, that the record already demonstrates that DWR did not do so.

On December 22, 2005, PWRPA filed a second motion, again requesting “procedural guidance” on the manner in which the Commission will address the issues raised in the PG&E Petition, and seeking to place certain documents in the record in this proceeding. These documents, attached to the PWRPA motion, are the “Declaration of Stuart Robertson in Response to PG&E’s Petition to Modify Decision (D.) 03-09-052” (Robertson Declaration) and exhibits attached thereto. PWRPA claims that the Robertson Declaration provides facts and context to rebut assertions in the Declarations of Keene and Masters, submitted by PG&E as attached to its Reply. The Robertson Declaration also incorporates certain PG&E data responses relating to the Petition to Modify.

PG&E filed a response to the PWRPA motion on January 6, 2006. PG&E does not oppose supplementing the record with the Robertson Declaration and related exhibits attached to the PWRPA motion. PG&E, however, does oppose the PWRPA’s request for an administrative law judge (ALJ) ruling regarding additional procedures for addressing the issues raised in PG&E’s Petition. PG&E argues that PWRPA has provided no reason why the Commission should expend additional time and resources to issue a procedural ruling as PWRPA requests. PG&E reiterates its position that the Commission already has ample grounds to grant the relief requested in PG&E’s Petition to Modify.

Discussion

Given that there is no opposition to the request to supplement the record with the Robertson Declaration, PWRPA’s request to supplement the record is accordingly granted. Parties remain in dispute, however, concerning whether

the record needs to be developed further and whether additional procedures, including limited evidentiary hearings, may be needed.

In the interests of addressing the procedural concerns raised by PWRPA, a PHC is hereby scheduled, as directed below. At the PHC, PWRPA, and any other parties, will be provided the opportunity to present arguments on further specific procedural measures claimed to be necessary, as outlined in the PWRPA motion, to provide an adequate record for issuance of a Commission decision on the PG&E Petition for modification. Following the PHC, a determination will be made as to whether any additional procedural measures, such as proposed by PWRPA, need to be addressed prior to the Commission's decision on PG&E's Petition for Modification.

IT IS RULED that:

1. The motion of the Power and Water Resources Pooling Authority (PWRPA) is hereby granted to the extent that it seeks to place into the record the "Declaration of Stuart Robertson" attached to the PWRPA Motion for Procedural Ruling and related exhibits attached to the Motion.

2. A PHC is hereby scheduled for February 2, 2005 at 10:00 a.m. at the Commission's Hearing Room at 505 Van Ness Avenue, San Francisco to address the procedural issues identified in the PWRPA Motion and to hear parties' arguments on additional procedural measures, if any, needed as a basis for a Commission decision on PG&E's Petition for Modification of D.03-09-052.

3. Following the PHC, a determination will be made on the need for further procedural measures regarding disposition of PG&E's Petition for Modification of D.03-09-052.

Dated January 19, at San Francisco, California.

/s/ THOMAS R. PULSIFER

Thomas R. Pulsifer
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Scheduling Prehearing Conference to Address Motion for Proecdural Guidance on all parties of record in this proceeding or their attorneys of record.

Dated January 19, 2006, at San Francisco, California.

/s/ JANET V. ALVIAR

Janet V. Alviar

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.