

Decision 00-12-060 December 21, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into Implementation of Assembly Bill 970 Regarding the Identification of Electric Transmission and Distribution Constraints, Actions to Resolve those Constraints, and Related Matters Affecting the Reliability of Electric Supply.

Investigation 00-11-001
(Filed November 2, 2000)

OPINION ON APPEAL OF CATEGORIZATION

Summary

The Commission denies the appeal of the California Independent System Operator (ISO) and affirms the categorization of this proceeding as a “ratesetting” proceeding. We also classify, for the present time, the status of the ISO as an interested party, not a respondent, to this proceeding. Should it become necessary in the future for purposes of the Commission receiving the information necessary to carry out its duties, the Assigned Commissioner to this proceeding may later reclassify the ISO as a respondent through ruling.

Background

Under Pub. Util. Code § 1701.1 et. seq. and Article 2.5 of the Commission’s Rules of Practice of Procedure, the procedures applicable to a particular proceeding are dependent on how the proceeding is categorized. Rule 5 and Pub. Util. Code § 1701.1 define three categories of Commission proceedings: adjudicatory, ratesetting and quasi-legislative proceedings.

In the Order Instituting Investigation (OII), issued on November 2, 2000, the Commission categorized this proceeding as a “ratesetting” case.¹ The ISO has filed a timely appeal of this categorization pursuant to Rule 6.4 of the Commission’s Rules of Practice and Procedure. No responses to the ISO’s appeal were filed.

Position of the ISO

The ISO objects to the characterization of this proceeding as ratesetting, “to the extent this characterization is premised on California Public Utilities Commission...determinations as to wholesale or transmission tariffs and rates.” (ISO Appeal, p. 1.) In addition, the ISO argues that it should not be named a respondent in this case because the activities of the ISO are subject to the jurisdiction of the Federal Energy Regulatory Commission, and not the Commission.

Discussion

The basic thrust of this proceeding is to determine the most cost-effective ways of easing electric transmission constraints and associated generation shortfalls that affect each of the California investor-owned utilities and their ratepayers, both in the short term and longer term. This proceeding will involve an evidentiary inquiry into the facts, circumstances and cost impacts of addressing existing electric system constraints. Moreover, as discussed in the OII, this inquiry will serve to “identify whether there is a need for new power plants and whether the Commission should order regulated utilities to construct them or contract for them at prices that approximate costs.” (OII, p. 6.) This

¹ Investigation (I.) 00-11-001, mimeo., p. 6.

proceeding will therefore involve issues that affect the rates of the respondent investor-owned utilities, and is appropriately designed as ratesetting under our rules. In particular, Rule 5(c) provides:

“Ratesetting” proceedings are proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities). “Ratesetting” proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future. For purpose of this Article, other proceedings may be categorized as ratesetting, as described in Rule 6.1(c).

Similarly, Pub. Util. Code § 1701.1(c)(3) provides:

“Ratesetting cases, for purposes of this article, are cases in which rates are established for a specific company, including but not limited to, general rate cases, performance-based ratemaking, and other ratesetting mechanisms.”

This proceeding may also develop policies related to how the Commission ensures that existing electric transmission and distribution constraints are remedied. However, even if some incremental policy making will occur in this proceeding, the Investigation is still properly categorized as ratesetting under our Rules of Practice and Procedure, wherein the Commission has determined that ratesetting is the default category (Rule 6.1(c)). In line with this determination, as we have previously stated, the procedures applicable to the ratesetting category are most appropriate for cases in which there is a mix of fact finding and policy making, especially where the policy setting aspects of the case are relatively minor:

“[A] proceeding that primarily implements policy, rather than establishing it, and looks at facts specific to a particular utilit[y]... as in this case is more appropriately handled under the procedure[s]

applicable to ratesetting rather than those established for policy making.” (Decision 97-06-071, mimeo., p. 7.)

For the above reasons, we affirm the categorization of this proceeding as ratesetting and deny the ISO’s appeal on this issue. In doing so, we point out that the categorization of a proceeding affects our internal procedures. It does not imply Commission jurisdiction over subject matter or entities. We have no intention of engaging in extra-jurisdictional ratemaking in this proceeding.

In its appeal, the ISO has volunteered to participate in this proceeding as an interested party, stating that it will “appear as an interested party and looks forward to continuing constructive work with the [Commission]...” (ISO Appeal, p. 3.) We therefore find the issue of whether the ISO is properly classified as a respondent to be moot at the present time, as our intent was to ensure that the ISO participates in the proceeding.

We modify Ordering Paragraph 1 of the OII, accordingly. In doing so, we emphasize that one of the duties of the Commission is to assure a full, fair and public hearing of factual issues relevant to electric resource planning in California. We intend to use all of the procedural and legal tools available to us to obtain the information we need for our investigation, and expect the full cooperation of the ISO in our mutual endeavor to protect the State’s interest in these matters. Should it become necessary in the future for purposes of the Commission receiving the information necessary to carry out its duties to reclassify the ISO as a respondent, the Assigned Commissioner may do so through a ruling.

Pursuant to Pub. Util. Code § 1701.1(a), this decision must be issued within 30 days. Therefore, we are waiving public review and comment consistent with Rule 77.7(f)(9) but:

“ ‘Public necessity’ includes, without limitations, circumstances where failure to adopt a decision before expiration of the 30-day review and comment period would place the Commission . . . in violation of applicable law . . .”

Findings of Fact

1. This proceeding involves the identification of constraints to the electric transmission and distribution system, and associated generation supplies, that affect each of the California investor-owned utilities and their ratepayers, both in the short term and longer term. It will involve an evidentiary inquiry into the facts, circumstances and cost impacts of addressing existing these electric system constraints. In particular, the investigation will serve to identify whether there is a need for new power plants and whether the Commission should order regulated utilities to construct them or contract for them at prices that approximate costs.

2. In this proceeding the Commission is looking at ratesetting mechanisms for the electric investor-owned utilities in the context of a broader inquiry into electric transmission and distribution constraints.

3. This proceeding may also develop policies related to how the Commission ensures that existing transmission and distribution constraints are remedied.

4. The ISO objects to being named a respondent and has expressed its willingness to participate in this investigation as an interested party.

Conclusions of Law

1. The ratesetting category applies to proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn set the rates for a specifically named utility (or utilities).

2. Proceedings that do not clearly fall within a single category, that involve a mix of policy making and fact finding relating to a particular public utility or utilities are generally best handled under the procedures applicable to ratesetting as the Commission has previously determined in adopting Rule 6.1(c).

3. The Commission's categorization of this proceeding as ratesetting, as set forth in the OII I.00-11-001 is reasonable and should be affirmed.

4. The ISO's willingness to participate in this investigation as an interested party makes moot for the present time, the issue of whether or not it is properly named a respondent in the OII. Under either classification, the Commission is assured of the ISO's participation in this proceeding.

5. Should it become necessary in the future for purposes of the Commission receiving the information necessary to carry out its duties to reclassify the ISO as a respondent, the Assigned Commissioner should be allowed to do so through a ruling.

6. Ordering Paragraph 1 of I.00-11-001 should be modified to clarify that the ISO will participate in this proceeding as an interested party.

7. The ISO's appeal to the ratesetting categorization of this proceeding should be denied.

O R D E R

IT IS ORDERED that:

1. The Appeal of the California Independent System Operator To "Ratesetting" Categorization and Related Comments, dated November 13, 2000, is denied.

2. Ordering Paragraph 1 of Order Instituting Investigation 00-11-001, dated November 2, 2000 is deleted and replaced with the following:

Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E) are made respondents to this investigation at this time. The California Independent System Operator (ISO) will participate in this investigation as an interested party. Should it become necessary in the future for purposes of the Commission receiving the information necessary to carry out its duties to reclassify the ISO as a respondent, the Assigned Commissioner may do so through a ruling.

This order is effective today.

Dated December 21, 2000, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
CARL W. WOOD
Commissioners