



STATE OF CALIFORNIA

GAVIN NEWSOM, Governor
FILED

PUBLIC UTILITIES COMMISSION

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SAN FRANCISCO, CA 94102-3298

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August 2, 2022

Agenda ID #20833
Adjudicatory

TO PARTIES OF RECORD IN CASE 10-10-010:

This is the proposed decision of Administrative Law Judge Peter Wercinski. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's September 15, 2022 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ W.A. COLBERT for

Anne E. Simon

Chief Administrative Law Judge

AES:jnf

Attachment

Decision PROPOSED DECISION OF ALJ WERCINSKI (Mailed 8/2/2022)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Michael Hetherington and
Janet Hetherington,

Complainants,

vs.

Case 10-10-010

Pacific Gas and Electric Company
(U39E),

Defendant.

**DECISION GRANTING IN PART AND DENYING IN PART
THE PETITION FOR MODIFICATION OF
PACIFIC GAS AND ELECTRIC COMPANY**

Summary

We grant that portion of the Petition for Modification (PFM) of Decision (D.) 16-03-013 filed by Pacific Gas and Electric Company (PG&E) to relieve PG&E of its obligations to compile data and prepare and provide monthly usage monitoring reports regarding electric usage at the residence of complainant Michael Hetherington (Hetherington). We deny that portion of PG&E’s PFM that requests authorization to remove the test meter located 1.5 miles from Mr. Hetherington’s residence. We also deny Mr. Hetherington’s request to export

solar power to PG&E because that request is outside the scope of D.16-03-013 and the PFM.

This proceeding is closed.

1. Background

In a Complaint accepted for filing by the California Public Utilities Commission (Commission) on October 13, 2010, Michael Hetherington (Hetherington) alleged the wrongful metering of electric usage at his residence in San Mateo County by Pacific Gas and Electric Company (PG&E) and PG&E's wrongful relocation of a billing meter at his residence. In Decision (D.) 16-03-013 effective March 17, 2016, the Commission ordered PG&E to relocate the billing meter to Mr. Hetherington's home, ordered the installation of a test meter at PG&E's service delivery point 1.5 miles from Mr. Hetherington's home, and ordered PG&E to provide Mr. Hetherington with online access to data from the test meter and the billing meter so that he could monitor any variances in usage recorded from the test meter and the billing meter near his home. The Commission also ordered PG&E to compile data and prepare and provide monthly monitoring reports for the five-year period from 2016 through 2020 reflecting data from both the test meter and the billing meter, and allowed PG&E to file a petition after the five-year period to modify the monthly reporting requirement.¹

On February 11, 2022, PG&E filed the instant Petition for Modification (PFM) requesting two modifications to D.16-03-013: to (1) authorize PG&E to conclude the monthly monitoring program and (2) approve the removal of the

¹ D.16-03-013 at 77-78, Ordering Paragraphs 8-9.

test meter. On March 8, 2022, Mr. Hetherington filed a Response to the PFM² that included a request to export solar power to PG&E. PG&E filed a Reply on March 15, 2022, and Mr. Hetherington filed a supplemental response on April 4, 2022.

2. Standard of Review

Public Utilities (Pub. Util.) Code Section 1708 provides that the Commission may “rescind, alter, or amend any order or decision made by it.” Modifying an existing decision is an extraordinary remedy that must be carefully applied because Pub. Util. Code Section 1708 represents a departure from the standard that settled expectations should be allowed to stand undisturbed.³

Under Commission Rule of Practice and Procedure (Rule) 16.4, a PFM may be filed to ask the Commission to make changes to an issued decision.⁴ However, a claim that a Commission decision is unlawful or erroneous must be made through an application for rehearing, not a PFM.⁵

Although the Commission will not consider issues that are simply the re-litigation of issues previously decided by the original decision, allegations of new or changed facts may be raised in a PFM.⁶ However, allegations of new or changed facts must be supported by an appropriate declaration or affidavit.⁷

A PFM generally must be filed and served within one year of the effective date of the decision to be modified. If more than one year has elapsed, the PFM

² Michael Hetherington and Janet Hetherington were the two complainants in this proceeding. However, only Michael Hetherington filed the Response to the PFM.

³ D.21-10-003 at 3.

⁴ Rule 16.4(a).

⁵ Rule 16.1(c).

⁶ D.21-10-003 at 3.

⁷ Rule 16.4(b).

must explain why it could not have been presented within one year of the effective date of the decision.⁸

3. Discussion

3.1. Good Cause for Delay in Filing PFM

PG&E's PFM was filed in February 2022, more than five years after the March 2016 effective date of D.16-03-013. In its PFM, PG&E explains that the Commission's decision in D.16-03-013 specifically provided for the filing of a PFM only after the end of the five-year period of monthly monitoring reports mandated by that decision.⁹ We find that PG&E acted with reasonable diligence in filing the PFM after that five-year period, and therefore PG&E established good cause under Rule 16.4(d) in not filing the PFM within one year of the effective date of D.16-03-013. As a result, we turn to the merits of the PFM.

3.2. Monthly Monitoring Obligations

PG&E requests the Commission to end PG&E's obligations as set forth in subparagraphs c and d on page 78 of D.16-03-013 that require PG&E to compile data and prepare and provide monthly monitoring reports reflecting data from both the test meter and the billing meter. PG&E states that those reports are no longer needed because PG&E's analysis of the data has not detected any anomalies or deviations to indicate there was any power diversion from Mr. Hetherington's service line.¹⁰ Mr. Hetherington states that he is not opposed to relieving PG&E of its reporting obligations.¹¹ As a result, we grant PG&E's request to relieve it of its obligations set forth in subparagraphs c and d on

⁸ Rule 16.4(d).

⁹ PFM at 3.

¹⁰ Declaration of Patrick Mulshine in Support of PFM (Mulshine Declaration) Paragraph 3.

¹¹ Response at 1, 4.

page 78 of D.16-03-013 to compile data and prepare and provide monthly monitoring reports.

3.3. Removal of Test Meter

PG&E also requests authorization to remove the test meter. PG&E asserts that the test meter is only used in connection with the monitoring program and does not serve a billing function.¹² Although D.16-03-013 found no evidence of previous power diversion from Mr. Hetherington's service line, it ordered PG&E to install the test meter at the service delivery point 1.5 miles from Hetherington's residence and to provide Hetherington online access to test meter data. Thus, the test meter serves the useful function of allowing Mr. Hetherington to compare usage data at both ends of his service line to address his ongoing concerns about possible unauthorized diversion.¹³

PG&E argues that it "normally" provides only a single meter for a single family residence. PG&E also claims that "[t]he expense and resources necessary to maintain a second SmartMeter for this service is [sic] unwarranted."¹⁴ As noted above, Rule 16.4(d) requires that allegations in a PFM be supported by an appropriate declaration or affidavit. Although PG&E has provided a declaration that supports the cessation of the requirement to provide monitoring reports, it fails to provide any evidentiary support to quantify or otherwise describe the burden to PG&E in maintaining the test meter. Therefore, particularly in light of the long record in this case detailing the issues leading to the requirement that a test meter be installed, PG&E has not established good cause for removal of the

¹² PFM at 3 and Mulshine Declaration Paragraph 4.

¹³ D.16-03-013 at 77.

¹⁴ Reply at 3.

test meter. As a result, we deny PG&E's request to remove the test meter from Mr. Hetherington's service delivery point 1.5 miles from his residence.

3.4. Mr. Hetherington's Request to Export Solar Power to PG&E

In his Response to the PFM, Mr. Hetherington requests that the Commission allow him to export solar power to PG&E. However, PG&E's PFM does not mention solar power, and Mr. Hetherington's export of solar power to PG&E is not referenced in D.16-03-013. Under Rule 16.4(a), a PFM "asks the Commission to make changes to an issued decision," and Rule 16.4(f), which sets a 30-day deadline for filing a response to a PFM, does not state that the response can address matters not included in the PFM. Nothing in the Commission's rules allows either a PFM or a response to a PFM to include issues that have not been addressed by an issued decision. Therefore, we deny Mr. Hetherington's request to export solar power to PG&E because that request is outside the scope of D.16-03-010 and the PFM.

4. Comments on Proposed Decision

The proposed decision of Administrative Law Judge (ALJ) Peter Wercinski was mailed to the parties in accordance with Pub. Util. Code Section 311, and comments of the parties were allowed under Rule 14.3. Comments were filed on _____ by _____, and reply comments were filed on _____ by _____.

5. Assignment of Proceeding

John Reynolds is the assigned Commissioner and Peter Wercinski is the assigned ALJ in this proceeding.

Findings of Fact

1. On March 18, 2016, the Commission issued D.16-03-013 in this proceeding. The decision provides, at page 78, that (a) PG&E shall compile data from the test

meter located at the service delivery point 1.5 miles from Mr. Hetherington's residence and from the billing meter located at Mr. Hetherington's residence and prepare and provide to Mr. Hetherington monthly monitoring reports regarding any differences in power usage at the two locations and (b) PG&E shall provide the monthly reports from 2016 through 2020 and that PG&E may then petition the Commission for modification of the reporting obligations.

2. On February 11, 2022, PG&E filed a PFM requesting modifications to D.16-03-013 to (a) be relieved of its monthly monitoring obligations and (b) be allowed to remove the test meter located at PG&E's service delivery point 1.5 miles from Mr. Hetherington's residence.

3. PG&E acted reasonably in waiting to file the PFM until after the end of the period in which it was required to provide the monthly monitoring reports.

4. PG&E's data from the test meter and the billing meter do not reflect that there has been any power diversion from Mr. Hetherington's service line.

5. The test meter allows Mr. Hetherington to compare usage data at both ends of his service line to address his ongoing concerns about possible unauthorized power diversion.

6. D.16-03-013 and the PFM do not address Mr. Hetherington's export of solar power to PG&E.

Conclusions of Law

1. PG&E's PFM should be decided on the merits because PG&E established good cause for not filing the PFM within one year of the effective date of D.16-03-013.

2. Good cause exists to grant that portion of PG&E's PFM requesting that the Commission relieve PG&E of its obligations under subparagraphs c and d at page 78 of D.16-03-013 to compile data and provide monthly monitoring reports.

3. That portion of PG&E's PFM requesting that the Commission allow PG&E to remove the test meter should be denied because PG&E has not established good cause to grant the request.

4. Mr. Hetherington's request to export solar power to PG&E is not within the scope of D.16-03-013 and the PFM and should be denied.

5. This decision should be effective immediately.

6. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The Petition for Modification of Decision (D.) 16-03-013 filed by Pacific Gas and Electric Company (PG&E) is granted to the extent that PG&E is relieved of its obligations under subparagraphs c and d on page 78 of D.16-03-013 and is otherwise denied.

2. The request of Michael Hetherington to export solar power to Pacific Gas and Electric Company is denied.

3. This decision is effective immediately.

4. Case 10-10-010 is closed.

This order is effective today.

Dated _____, at Fresno, California.