

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



August 1, 2005

Agenda ID #4836
Quasi-Legislative

TO: PARTIES OF RECORD IN RULEMAKING 99-11-022

This is the draft decision of Administrative Law Judge (ALJ) Bruce DeBerry. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at

[http://www.cpuc.ca.gov/PUBLISHED/RULES PRAC PROC/44887.htm](http://www.cpuc.ca.gov/PUBLISHED/RULES%20PRAC%20PROC/44887.htm).. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN

Angela K. Minkin, Chief
Administrative Law Judge

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Attachment

Decision **DRAFT DECISION OF ALJ DeBERRY** (Mailed August 1, 2005)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**Order Instituting Rulemaking into
Implementation of Public Utilities Code
Section 390.Rulemaking 99-11-022
(Filed November 18, 1999)**OPINION GRANTING PACIFIC GAS AND ELECTRIC COMPANY'S
PETITION TO MODIFY DECISION 01-03-067****Summary**

This decision grants Pacific Gas and Electric Company's (PG&E) Petition for Modification of Decision (D.) 01-03-067, and applies PG&E's requested relief to other California investor owned utilities (IOU). This modification relieves IOUs of the obligation to pay Qualifying Facilities (QF), that have power purchase agreements (PPA) with the IOUs, within 15 days of the end of the QF billing period. This modification is estimated to save PG&E's ratepayers \$7.5 million annually, and save ratepayers for other IOUs comparable amounts.

Procedural Background

On January 17, 2001, the Governor of California declared that a state of emergency existed due to shortages of energy available to California utilities. On March 27, 2001, the Commission adopted D.01-03-067, which addressed modification of the formula for calculating utility energy payments to QFs. In D.01-03-067, the Commission noted that it was "aware that ongoing disputes between utilities and their suppliers and creditors has resulted in QFs not being

paid, in some cases for months.”¹ In response to this problem, the Commission ordered that:

Southern California Edison Company, PG&E, and San Diego Gas and Electric Company (SDG&E) shall pay QFs for energy deliveries made on or after the effective date of this decision within 15 days of the end of the QFs billing period. QFs may establish a fifteen-day billing period. (D.01-03-067, mimeo., p. 35, Ordering Paragraph 10.)

On December 15, 2004, PG&E filed its Petition to modify D.01-03-067 to the extent that D.01-03-067 requires a payment within 15 days, rather than the 30-day payment schedule existing prior to adoption of D.01-03-067.² PG&E explains that Ordering Paragraph 10 (D.01-03-067) changed the timing of payments as specified in PG&E’s PPAs with QFs. Those PPAs require PG&E to make payment to QFs not later than 30 days after the end of each monthly billing period.³ However, in compliance with D.01-03-067, PG&E has continued to pay QFs according to the altered schedule (within 15 days of the end of the billing period).

PG&E estimates that it has paid \$1.5 billion to QFs during the last two years, and that as result of the 15-day payment required by D.01-03-067 and the

¹ See, D.01-03-067, mimeo., p. 25.

² PG&E requests that the Section and text entitled “Payment of QFs Going Forward” (Mimeo., pp. 25-26), Conclusions of Law, Nos. 21 and 22, and Ordering Paragraphs 10 and 11 be deleted from the decision.

³ PG&E states that it reads the QF meters electronically on a calendar month basis, and therefore payments would normally become due on the 30th of the following month.

time value of money, PG&E's ratepayers have paid approximately \$7.5 million⁴ more each year than would have been paid if payments were paid using a 30-day period. In addition, PG&E contends the accelerated billing schedule reduces the time for PG&E to review, validate, and approve metering data for all QFs, and to process, approve, and submit the QF billing statements to PG&E's accounting department, thereby adversely affecting the resolution time for problem accounts and quality control.

PG&E argues that the emergency conditions that induced the Commission to alter the payment timing provisions of PG&E's PPAs no longer exist, and therefore the Commission should permit PG&E and the QFs to return to their agreed-upon payment schedule. PG&E also argues that in D.02-01-033⁵ the Commission already has allowed Southern California Edison Company (Edison) to alter its QF payment terms in the context of approving a contract amendment.

Compliance with Rule 47(d)

Rule 47(d)⁶ provides in part that "If more than one year has elapsed [since the effective date of the decision proposed to be modified], the petition must also explain why the petition could not have been presented within one year of the effective date of the decision." PG&E explains that during the 2000-2001 energy crisis the Commission altered the payment provisions of PG&E's PPAs, and that

⁴ PG&E's estimate is based on a pre-tax rate of return of 12.25% adjusted for income tax effects.

⁵ Mimeo., p. 8, Finding of Fact 5 and Conclusion of Law 1.

⁶ All references are to the Commission's Rules of Practice and Procedure, unless otherwise noted.

the Governor did not rescind the January 17, 2001 state of emergency declaration until November 13, 2003. PG&E further explains that it appeared PG&E should not move to modify D.01-03-067 until PG&E emerged from bankruptcy. As PG&E has now emerged from bankruptcy it has filed this petition.

Responses to PG&E's Petition

On January 14, 2005, Juniper Generation, LLC (Juniper)⁷ and PE Berkeley, Inc. (Berkeley)⁸ submitted a joint response to PG&E's Petition. Juniper and Berkeley (Respondent QFs) state that revised payment schedules for PPAs were negotiated with PG&E allowing Juniper and Berkeley to be paid on the 15th of each month,⁹ thus providing timely payment of gas bills and good credit with gas suppliers. Respondent QFs contend that good reasons continue to exist for allowing PG&E to pay QFs on the 15th of each month, including maintaining QF credit ratings, and positive effects on the QF's ability to produce energy.

Respondent QFs disagree with PG&E's contention that it could not file its Petition earlier as a consequence of the Governor's emergency declaration, and PG&E's bankruptcy. Respondent QFs note that PG&E filed numerous other documents during this time period, and that there was nothing to prevent PG&E from filing its Petition months or even years ago. Therefore, Respondent QFs contend the Commission should deny PG&E's Petition as untimely.

⁷ Juniper owns and operates eight gas-fired QFs who have PPAs with PG&E.

⁸ Berkeley is a QF that owns and operates a facility on the University of Berkeley campus, and has a PPA with PG&E.

⁹ Juniper and Berkeley note that natural gas bills from suppliers are due for payment on or before the 25th of each month.

On January 18, 2005, Edison submitted a response to the Petition. Edison states that although it has resolved payment issues with QFs under contract with Edison, Edison fully supports PG&E's Petition.

On January 31, 2005, PG&E replied to the objections of the Respondent QFs. PG&E points out that the arguments of Respondent QFs are indicative of the financial problems and extraordinary events that affected the timing of PG&E's Petition. Thus, PG&E notes that the "fragile credit relationships" used as an argument by Respondent QFs, would have been worse if the Petition was filed earlier, and Respondent QF objections would be greater. Furthermore, PG&E contends it is reasonable to assume that the end of the energy crisis is a starting point from which the Commission would take an initiative to return parties to pre-crisis contract payment terms.

Secondly, PG&E argues that potential problems with Respondent QF credit relationships do not justify the estimated \$7.5 million¹⁰ in ratepayer costs incurred under the current payment terms. PG&E expects that Respondent QFs would apply prudence to future gas supplier contractual relationships given the knowledge that contract payment terms might return to the original PPA payment schedules.

¹⁰ The \$7.5 million amount is calculated using a pre-tax rate of return of 12.25%, which is PG&E's authorized return on rate base, adjusted for the income tax gross-up on the equity rate of return (Declaration of Marc L. Renson, PG&E Manager of Counterparty Contract Settlements, attached to PG&E's Application).

Finally, PG&E contends there are no contractual impediments to return parties to their originally agreed-upon payment schedules as demonstrated by the following language from the agreements between PG&E and Juniper:¹¹

¹¹ PG&E states that similar language appears in PG&E's agreements with Berkeley.

“Monthly Payments under the Contract. Beginning January 1, 2002 and continuing for the remaining term of the Contract, PG&E shall pay QF once a month for energy and capacity deliveries under the payment terms set forth in the Contract. Notwithstanding the foregoing and unless otherwise directed by the California Public Utilities Commission, PG&E shall make payments to QF within 15 days of the end of each monthly billing period. (Emphasis added.)

PG&E contends this language further demonstrates that, to the extent the parties addressed the Commission-altered payment schedule at all, they plainly recognized that payments would be made on this altered schedule “unless otherwise directed by” the Commission. Thus, PG&E argues there is no contractual restriction prohibiting the return of the contract to the originally agreed-upon schedule.

An assigned Administrative Law Judge (ALJ) ruling on March 1, 2005, provided an opportunity for parties to comment on the issues in this proceeding, and to request hearings if necessary.

On March 11, 2005, SDG&E submitted comments stating that five QFs providing energy to SDG&E have agreements providing for semi-monthly payments. SDG&E contends the semi-monthly payments result in additional administrative burdens to SDG&E, the potential for errors in payment, and cost ratepayers an additional estimated \$136,000 annually due to the time value of money. Therefore, SDG&E recommends that the Commission grant the Petition and apply the decision to all QFs under contract to California utilities.

In response to SDG&E’s comments, an assigned ALJ ruling on May 17, 2005 provided parties an opportunity to comment on SDG&E’s request that PG&E’s Petition be applied to all California IOUs. On May 31, 2005, Edison

filed comments supporting SDG&E's request to apply any modifications of D.01-03-067 to all QFs under contract with California IOUs.

No other comments were received and no party has requested hearings.

Discussion

Our adoption of a revised payment schedule in D.01-03-067 was one means of addressing the energy crisis, and the disputes between utilities and QFs, particularly the withholding of payments from utilities to QFs. As we stated in D.01-03-067:¹² "Prompt payment by the utilities for energy delivery by the QFs given current conditions is key and critical to maintaining energy reliability." Thus, we accelerated payments for energy deliveries to a 15-day schedule. However, as PG&E notes, and as confirmed by the Governor's November 13, 2003 pronouncement, the energy crisis has passed. In addition, PG&E has now resolved its Chapter 11 bankruptcy, thus clarifying PG&E's financial status, and as Edison points out, payment schedule changes have already been resolved for many agreements between QFs and utilities.

Given these changes, we believe it is reasonable to grant PG&E's Petition and allow all California IOUs to return to the agreed upon terms of their PPAs, by removing the requirement for a 15-day payment schedule from D.01-03-067. In granting PG&E's Petition we note that the estimated savings to ratepayers of \$7.5 million for PG&E's customers is not inconsequential, and that savings for other utilities and their customers will also occur. Furthermore, allowing the utilities and the QFs to return to their original payment schedule will reduce utilities' administrative burden and potential billing errors.

¹² See, mimeo., p. 25.

We are aware of the need for QFs to maintain good relationships with their gas suppliers, but we expect that allowing the utilities and QFs to return to their original payment schedules will not significantly disrupt the financial standing of the QFs. Should subsequent events have disruptive effects on the ability of QFs to provide energy to utilities, we will be willing to consider solutions.

In granting PG&E's Petition, we have considered PG&E's arguments regarding compliance with Rule 47(d), and agree that it was reasonable for PG&E to wait until the energy crisis was over and PG&E had resolved its bankruptcy before requesting its Petition. Therefore, we find that PG&E has met the requirement under Rule 47(d) to explain why the Petition could not have been presented within one year of the effective date of D.01-03-067.

Conclusion

For all of the foregoing reasons, PG&E's Petition to delete the section and text of D.01-03-067 entitled "Payment of QFs Going Forward" on pages 25-26 (mimeo.), and to delete Conclusions of Law 21 and 22, and to delete Ordering Paragraphs 10 and 11 should be granted.

Comments on Draft Decision

The draft decision of ALJ DeBerry in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were received on _____.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Bruce DeBerry is the assigned ALJ in this proceeding.

Findings of Fact

1. On January 17, 2001, the Governor of California declared that a state of emergency existed due to shortages of energy available to California utilities.
2. D.01-03-067 required that utilities pay QFs within 15-days of the end of the QFs' billing period, rather than the 30-day period existing prior to D.01-03-067.
3. On November 13, 2003, the Governor rescinded the January 17, 2001, state of emergency declaration.
4. PG&E has now emerged from bankruptcy.
5. Using a 30-day payment period, rather than the current 15-day payment period, for PG&E's QF payments is estimated to save PG&E's ratepayers \$7.5 million annually.
6. The 15-day payment period, rather than a 30-day payment period, adds to utilities administrative burden, and increases the chance of billing errors regarding QF payments.
7. The contract agreements between PG&E and the Respondent QFs provides for changes in the monthly payment schedule.
8. SDG&E also has QF agreements providing for semi-monthly payments, and thus SDG&E ratepayers would also benefit if the current 15-day payment schedule returns to a 30-day payment schedule for SDG&E's QF payments.
9. D.02-01-033 allowed Edison to alter QF payment schedules.
10. No party has requested a hearing.

Conclusions of Law

1. PG&E has complied with Rule 47(d).
2. D.01-03-067 should be modified to delete the section and text entitled "Payment of QFs Going Forward" on pages 25-26 (mimeo.), to delete Conclusions of Law 21 and 22, and to delete Ordering Paragraphs 10 and 11.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company's Petition to modify Decision (D.) 01-03-067 and delete the section and text entitled "Payment of QFs Going Forward" on pages 25-26 (mimeo.), to delete Conclusions of Law 21 and 22, and to delete Ordering Paragraphs 10 and 11 should be granted.
2. The modification of D.01-03-067 shall apply to all California investor owned utilities.

This order is effective today.

Dated _____, at San Francisco, California.