STATE OF CALIFORNIA GRAY DAVIS, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

January 14, 2003 Agenda ID #1648

TO: PARTIES OF RECORD IN PETITION 02-07-051

This is the draft decision of Administrative Law Judge (ALJ) Ryerson. 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. 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/ CAROL A. BROWN
Carol A. Brown, Interim Chief
Administrative Law Judge

CAB:tcg

Attachment

Decision **DRAFT DECISION OF ALJ RYERSON** (Mailed 1/14/2003)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of CAlifornians for Renewable Energy, Inc. (CARE) for a Commission Order Instituting Rulemaking to Adopt, Amend or Repeal Regulations Pursuant to California Public Utilities Code § 1708.5 to Implement PUC regulatory authority over California's retail and wholesale energy markets, on the basis of cost.	Petition 02-07-051 (Filed July 25, 2002)

DECISION DENYING PETITION

Pursuant to Pub. Util. Code § 1708.5, CAlifornians for Renewable Energy, Inc. (CARE) has filed a petition requesting the Commission to issue an Order Instituting Rulemaking (OIR) to adopt regulations to implement regulatory authority over California's retail and wholesale energy markets on the basis of cost. Inasmuch as the Commission is already exercising its authority over electric power markets and is considering many factors in doing so, including costs, CARE's petition is inappropriate. We therefore deny the petition.

Background

CARE filed this petition on July 25, 2002. A response was filed on August 26, 2002 by Pacific Gas and Electric Company (PG&E).

CARE is a nonprofit corporation that represents ratepayer interests in California on certain matters relating to the consequences of the State's deregulation of electric power markets. In its present petition, CARE asks the Commission to issue an OIR effectively to repeal [sic] or amend our final

decisions in Application (A.) 99-01-016, A.99-01-019, and A.99-01-034; to end the rate-freeze; implement post rate freeze ratemaking; and thereafter to increase retail rates. CARE identifies the following decisions addressing rate increases as the subject of its petition:

- D.01-01-018 allowing a temporary system wide one-cent rate increases for PG&E and Edison customers.
- D.01-03-082 approving a system wide three-cent increases for PG&E and Edison customers.
- D.01-05-064 setting PG&E and Edison rate structures.
- D.01-09-059 approving SDG&E 1.46 cent system wide increase and setting its rate structure.

In addition, CARE asks us to order, and pursue at the Federal Regulatory Commission (FERC), refunds from all sellers into California's wholesale electric markets during May 2000 through June 2001; declare void and unenforceable the contracts entered into by the California Department of Water Resources (DWR); order the agencies or judicial tribunals in charge of licensing and permitting the construction and operation of generating facilities in California to revoke all licenses and permits of any generator that is found to have manipulated the wholesale energy market during May 2000 through June 2001; certify that all charges demanded or received by any public utility are based on cost plus margin; and return rates to "pre-rate-freeze" retail rates, ordering that refunds be passed on to customers in the form of rebates from their respective investor-owned utilities.

Discussion

These requests duplicate matters now being pursued by the Commission on various fronts to remedy the causes and consequences of California's energy crisis following deregulation. The Legislature and this Commission have both

declared that a petition under Section 1708.5 is not a proper vehicle for asking us to reconsider any or all of our decisions on recently decided matters where there has been no change in circumstances, nor existing law or Commission orders or rules that are duplicative of the petition's subject matter. Stats. 1999 ch. 568, Section 1(c); Decision (D.) 00-07-035 in Petition 00-02-018, *Petition by Starline Tours of Hollywood, Inc. to Institute a Rulemaking Procedure to Establish Rules Governing Sightseeing Carriers in the City of Los Angeles.*

CARE requests that the Commission order refunds from sellers into California's wholesale generation market and pursue those refunds at FERC. It is not necessary for the Commission to initiate a rulemaking to determine what, if any, action to take in connection with the activities in the wholesale energy market during May 2000 through June 2001, because the Commission has already issued a decision initiating an investigation into the wholesale electric market, I.00-02-008. That investigation remains an open proceeding. In D.00-07-035, the Commission stated that, "a proposed rule that is duplicative of any law, order or rule of the Commission is not appropriate subject matter for a petition." (*Mimeo.*, p. 5.) The Commission may issue any findings or orders addressing the wholesale energy market based on the record developed in that proceeding; conducting a rulemaking would be redundant.

Recently we authorized the continued use of surcharge revenues and lifted the restrictions on their use. D.01-01-018, D.01-03-082. *See* D.02-11-026. In the latter decision we observed that:

> [Assembly Bill] X1-6 clearly and expressly confer[s] on the Commission jurisdiction over regulation of the utilities' retained generation assets, including rates. Such jurisdiction includes, for example, authority to determine whether and to what extent the utilities may recover in rates their investments in these retained generation assets. Moreover, by conferring

> upon the Commission the authority to continue to regulate the utilities' retained generation under a cost-of-service approach, and deleting provisions requiring generation to be transitioned from regulated to unregulated status, these provisions removed any danger that the investment in such assets 'may become uneconomic as a result of a competitive generation market. [Citation omitted.] In other words, the investment in these assets no longer is a stranded or transition cost within the meaning of AB 1890. Thus, recovery of these investments is no longer barred by AB 1890's prohibition on the recovery of stranded costs after the end of the rate freeze. Accordingly, now that the rate freeze is over, our authority to authorize the utilities to use surcharge revenues is not limited to use for prospective power procurement costs only. (*Mimeo.*, at pp. 13-14.)

This further addresses a concern raised by CARE in its petition.

CARE also requests that the Commission require energy sellers to price their energy based on cost plus margin. For investor-owned utilities like PG&E, the Commission has already taken this action. In D.02-04-016, the Commission adopted generation revenue requirements for each utility based on cost-of-service ratemaking principles. Because we have already issued a decision addressing the subject matter of CARE's request, instituting a rulemaking would unnecessarily duplicate our existing order.

Conclusion

For the foregoing reasons, CARE's petition will be denied.

Comments on Draft Decision

The draft decision of the administrative law judge (ALJ) 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 filed on _____ and reply comments were filed on _____.

Assignment of Proceeding

Michael Peevey is the Assigned Commissioner and Victor Ryerson is the assigned Administrative Law Judge in this proceeding.

Finding of Fact

CARE's petition is, in fact, a vehicle for asking the Commission to reconsider recently decided matters where there has been no change in circumstances.

Conclusion of Law

CARE's petition should be denied.

O R D E R

IT IS ORDERED that:

1. The Petition of CAlifornians for Renewable Energy, Inc. (CARE) for a Commission Order Instituting Rulemaking to Adopt, Amend, or Repeal Regulations pursuant to California Public Utilities Code Section 1708.5 is denied.
2. Petition 02-07-051 is closed.

This order is effective today.

Dated _____, at San Francisco, California.