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Decision 04-04-038 April 22, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion for the Purpose of Considering Policies and Rules Governing Utility Construction Contracting Process.	Rulemaking 03-09-006 (Filed September 4, 2003)

INTERIM OPINION CHANGING PROCEEDING RESPONDENTS AND GRANTING MOTIONS FOR CONFIDENTIALITY

This decision resolves petitions to modify Rulemaking (R.) 03-09-006 and motions that seek to change the named respondents to this proceeding. It also grants motions for confidentiality filed by several utilities.

Petitions to Excuse Utilities from list of Respondents to this Rulemaking

Several parties have filed motions or petitions to modify R.03-09-006, seeking to be excused from the requirements of this rulemaking that apply to respondents.

On October 16, 2003, AT&T Wireless Services of California, LLC; Pacific Bell Wireless, LLC dba Cingular Wireless; Nextel of California, Inc.; Sprint Spectrum L.P. d/b/a Sprint; Omnipoint Communications, Inc. dba T-Mobile; and Verizon Wireless (Wireless Carriers) filed a Joint Motion to Narrow the Scope of the Proceeding (Joint Motion). The Joint Motion asks the Commission to excuse wireless carriers as respondents to the proceeding. It argues that the Commission derives its authority to regulate contracting

processes from its ratemaking authority, and the Commission has no ratemaking authority over wireless carriers. Its regulation of contracting processes, therefore, is not relevant to its oversight of wireless carriers. It also argues that the rulemaking imposes burdens on wireless providers, other parties, and the Commission by requiring the provision of information about specific construction contract bids that is not readily available and the disclosure of which may compromise a carrier's competitive position.[1]

Similarly, Wild Goose Storage, Inc. and Lodi Gas Storage (Wild Goose) jointly filed a petition for modification of R.03-09-006 on December 5, 2003 asking to be exempted from the requirements of the order. Like Wireless Carriers, Wild Goose argues that since the Commission does not regulate its rates and services, there would be no public benefit from regulating its contracting processes. It argues that providing the information would be burdensome and without the prospect of providing offsetting public benefits.

California Water Association (CWA) filed a motion on November 13, 2003, seeking to exclude as respondents all B, C, and D water utilities. CWA argues that these companies are so small that their construction contracting processes are unlikely to have any impact on the public. CWA observes that these companies have fewer than 10,000 service connections and many have only one or two employees.

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[1] On December 5, 2003, Wireless Carriers filed a related motion that would permit them to file comments late in the event the Commission denies the motion to narrow the scope of the proceeding. The Assigned Commissioner granted this motion in the Scoping Memo for this proceeding filed December 29, 2003.

Mountain Utilities filed a similar request on December 11, 2003, observing that it serves only a handful of customers in a remote location and the administrative cost of participating in this proceeding would be burdensome and would not provide any potential public benefit. The state's small telephone utilities[2] filed a petition to modify R.03-09-006 on December 18, 2003 to be excused from the requirements of the proceeding on the basis that the Commission has not identified a problem and the costs of participating are considerable in light of potential benefits.

Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCalGas) jointly filed a response to the petition of Wild Goose, objecting to its request to be exempted from the requirements of the proceeding. These utilities suggest that the Commission conduct its fact-finding with the participation of all utilities and mitigate administrative burdens by phasing the proceeding rather than excusing certain utilities as respondents.

Discussion. Our objective in this proceeding is to determine whether and the extent to which certain types of construction contracting practices may compromise utility rates or the quality of utility service. To that end, we have sought information about utility contracting practices and solicited the parties' views on whether the Commission should adopt related rules. R.03-09-006

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[2] Cal-Ore Telephone Co.; Calavaras Telephone Company; Ducor Telephone Company; Evans Telephone Company; Foresthill Telephone Co.; Happy Valley Telephone Company; Hornitos Telephone Company; Kerman Telephone Company; Pinnacles Telephone Co.; Sierra Telephone Company, Inc.; The Ponderosa Telephone Co.; The Siskiyou Telephone Company; Volcano Telephone Company; and Winterhaven Telephone Company.

directed all jurisdictional utilities to file such information and made all jurisdictional utilities respondents to this rulemaking.

Since the issuance of R.03-09-006, we have become better informed about the potential administrative costs of our inquiry. Some of the larger utilities state that the contracting information they have provided the Commission may need to be supplemented after they have a better understanding of the Commission's information needs. They suggest that, depending on what the Commission seeks, they may need to conduct research and develop extensive databases. Some of the smaller companies, who have so far not submitted contracting information, state that collecting and presenting the information may be burdensome or may not be available.[3]

We are always mindful of the administrative costs of our regulatory oversight and here, as in other proceedings, we balance those costs with the likelihood that they will be offset by improved utility services, lower rates or other benefits on behalf of consumers and the public. We are convinced in this case that the burden of requiring small utilities to participate in this proceeding is not justified at this juncture. We believe a survey of larger companies' contracting practices, in those industries where the large companies provide an adequate representation of industry practice, will provide enough information for us to determine whether to take additional action in this matter. In the case of the respective motions of CWA, wireless carriers, Mountain Utilities and the small telephone utilities, the larger utilities in each of those industries should

[3] By Scoping Memo and Ruling dated December 29, 2003, the Assigned Commissioner suspended the date for filing contracting information for wireless carriers, water companies except those designated as Class A water companies, and utilities with annual California revenues less than $500 million pending resolution of the motions and petitions of parties seeking to be excused as respondents to this proceeding.

provide adequate information. We therefore excuse most of the smaller utilities as respondents from this proceeding at this time.

We decline at this time to excuse as respondents Wild Goose or Lodi Gas Storage. This conclusion is premised upon the important role that independent gas storage facilities play in California's energy industry. As Wild Goose points out in its motion, the practices and obligations of independent storage providers can be very different from the traditional natural gas utilities. Without the participation of Wild Goose and Lodi Gas Storage, this record will not reflect the views and experience of this important segment of our energy infrastructure. We are mindful that California's two independent storage providers have relatively smaller operations and resources than the natural gas utilities, and we will endeavor to ensure that their participation in this proceeding does not impose a significant administrative burden on its respondents. In recognition of that burden and its relatively small size, we excuse Wild Goose and Lodi Gas Storage from the requirement of R.03-09-006 that the utility provide five years worth of data about individual contracts and contracting procedures. Instead, we will direct the utility to provide a declaration with regard to its contracting procedures more generally.

This procedural step is not irrevocable and does not imply any particular limitations on scope of our authority to regulate contracting procedures. We reject the suggestion that our inquiry would under no circumstances be relevant to companies whose rates we do not regulate. The Commission's authority and duty to the public extends beyond strict ratemaking activities. Construction contracting practices may affect aspects of utility operations in ways that implicate our obligations to promote safe, reliable and high quality service, competition or other public interests. Whether contracting practices might affect

matters over which we have regulatory authority is a factual matter that we have not so far explored or resolved in this proceeding.

We retain our authority to make any or all jurisdictional utilities respondents at a later date if, on the basis of the evidence or policy concerns, we decide to broaden our inquiry or develop rules or policies that might apply to utilities other than those remaining as respondents. This might occur, for example, following the Commission's consideration of testimony about the potential impacts of construction contracting practices.[4]

Finally, although we excuse certain types of utilities as respondents to this proceeding, a utility that declines to participate in the proceeding, even if it is not a respondent, assumes the risk that the record in this proceeding will provide the foundation of the Commission's policy in this area without the benefit of that utility's record views. We therefore welcome the participation of any and all on issues that might be relevant to their operations.

With these clarifications, we grant the petitions and motions of Wireless Carriers, Mountain Utilities, CWA and small telephone companies to remove them as respondents to this proceeding to the extent we herein excuse all utilities with annual California revenues less than $500 million. We modify R.03-09-006 accordingly and excuse these companies from the information requirements of that order. Any utility that is no longer a respondent and wishes to remain on the service list of this proceeding must contact the Administrative

[4] The schedule in this proceeding provided for opening testimony to be served February 4, 2004 and for responsive testimony or declarations to be served February 25, 2004.

Law Judge (ALJ) Process Office. Those that do not contact the Process Office will be removed from the service list.

Motions to File Confidential Material Under Seal

SDG&E, SoCalGas (jointly, Sempra Companies), Pacific Bell Telephone Company (SBC), and AT&T Communications of California, Inc. (AT&T) filed motions to file certain information in this proceeding under seal. All of these parties state that their respective reports filed in this proceeding contain proprietary information about competitive activities. AT&T and SBC offer to provide the information to any party signing a standard nondisclosure agreement.

We grant the motions of Sempra Companies, SBC and AT&T to retain certain information they filed under seal. Any party who wishes to review the information may do so pursuant to a nondisclosure agreement. If the parties cannot agree on the terms of such an agreement, they should refer their dispute to the assigned ALJ.

Comments on Draft Decision

The draft decision of the 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. Parties filed comments on March 15, 2004. This decision makes only a minor change to the ALJ's draft decisions in this case by reducing the reporting requirements imposed on Wild Goose and Lodi Gas Storage Company.

Assignment of Proceeding

Loretta M. Lynch is the Assigned Commissioner and Kim Malcolm is the assigned ALJ in this proceeding.

Findings of Fact

1. Excusing as respondents, small utilities will not compromise the Commission's inquiry in this proceeding at this time.

2. For some small utilities, the administrative cost of participating in this proceeding, as set forth in R.03-09-006, may be greater than the potential benefits to the public.

3. The Commission's inquiry in this proceeding will not be compromised by retaining certain utility information under seal as long as parties may review the information pursuant to a nondisclosure agreement.

Conclusions of Law

1. The motions and petitions for modification of Wireless Companies, CWA, small telephone companies and Mountain Utilities should be granted to the extent as set forth herein.

2. R.03-09-006 should be modified to excuse the following types of utilities from the obligations of respondents: wireless carriers; water utilities designated as Class B, C, or D, and utilities with annual California revenues less than $500 million, except for independent storage providers.

3. The motions to retain certain information under seal filed by Sempra Companies, AT&T and SBC should be granted as set forth herein.

4. Wild Goose and Lodi Gas Storage should be excused from the reporting requirements of R.03-09-006. Instead, the company should be required to provide a sworn declaration that describes their contracting procedures and identifies whether it has ever employed "bid shopping" or "reverse auctions" as those terms are described in R.03-09-006 and, if so, in what types of transactions.

INTERIM ORDER

IT IS ORDERED that:

1. The following jurisdictional utilities are excused from obligations as respondents to this proceeding: all water utilities designated as Class B, C, or D, and all utilities except independent storage providers with annual California revenues less than $500 million.

2. Wild Goose and Lodi Gas Storage is excused from the reporting requirements of Rulemaking (R.) 03-09-006. Instead, the company shall file, no later than May 15, 2004, a sworn declaration that describes the company's contracting procedures and identifies whether it has ever employed "bid shopping" or "reverse auctions" as those terms are described in R.03-09-006 and, if so, in what types of transactions.

3. The motions to retain certain information under seal filed by San Diego Gas and Electric Company, Southern California Gas Company (jointly, Sempra Companies), Pacific Bell Telephone Company, and AT&T Communications of California, Inc. are granted as set forth herein.

This order is effective today.

Dated April 22, 2004, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners