

Decision 88 03 017 MAR 09 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 PACIFIC GAS AND ELECTRIC COMPANY for)
 authority, among other things, to)
 accrue the costs of certain)
 environmental compliance projects)
 for subsequent review and recovery,)
 as appropriate, in future ECAC or GAC)
 (or successor) proceedings.)

Application 87-10-019
 (Filed October 12, 1987)

INTERIM OPINION

Summary of Decision

We authorize Pacific Gas and Electric Company (PG&E) to record in an interim memorandum account certain expenses related to its environmental compliance projects.

Background

On October 12, 1987, PG&E filed Application

(A.) 87-10-019 requesting Commission approval to accrue in a memorandum account the cost of 22 separate environmental compliance projects for future rate recovery. These projects are estimated to cost approximately \$19 million. PG&E proposes to recover the costs accrued for these projects in rates in its next ECAC/ERAM AER reasonableness or GAC/SAM (or successor) proceedings. PG&E requests an ex parte approval of the application or in the alternative an expedited hearings process as contemplated in Decision (D.) 86-12-095 in PG&E's last general rate case (GRC).

On December 3, 1987, the Division of Ratepayers (DRA) filed a motion to accept its late filed protest to PG&E's request for ex parte relief. Although it was not filed on a timely basis, DRA's request is granted since a hearing in this proceeding is scheduled and no additional delay results from the late filing.

On December 22, 1987, PG&E filed a motion requesting interim relief authorizing it to establish a memorandum account to

accrue \$15.44 million costs for environmental compliance projects incurred in connection with A.87-10-019. The \$15.44 million figure reflects a reduction for projects included in PG&E's original application.

A prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Garde on December 30, 1987. At the PHC, PG&E explained that of the original 22 projects submitted in its application, it had withdrawn Projects 9, 13, 16, 18 and 19 from further consideration. In addition PG&E reduced its funding for Project 4 by \$110,000. A list of the original 22 projects is attached at Tab A to A.87-10-019, and included herein by reference.

DRA filed its response to PG&E's motion on January 19, 1988.

A public participation hearing is scheduled to begin on March 21, 1988. Evidentiary hearings will begin after the conclusion of the public participation hearing.

PG&E proposes the following conditions for the establishment of the memorandum account:

1. There should be a cap on the amount that PG&E can bill into this interim account of \$15,440,000.
2. Authority to implement this account should be effective immediately. In the unlikely event that the order in this proceeding is not effective prior to June 30, 1988, PG&E will file a separate request for extension of this interim account.
3. Expenses recorded in the interim memorandum account will be subject to subsequent reasonableness review.
4. Expenses recorded in the interim memorandum account will not be recovered in rates until so ordered by the Commission.
5. PG&E should be authorized to include in the memorandum account only those types of expenses set forth in its list of

environmental compliance projects, attached at Tab A to A.87-10-019, and included herein by reference.

6. All the expenses incurred and work done by PG&E are to be consistent with the program guidelines set forth in D.86-12-095. Certain aspects of this work and certain portions of these expenses may involve expenditures incurred prior to court, agency orders, or regulatory deadlines mandating that such expenses be incurred or work be done. As noted supra, these and all other expenses will be subject to a reasonableness review by the Commission.
7. The requested relief should be interim in nature. The granting of this relief should not be taken by any party to indicate prejudgment of any issues in this case. It is merely intended to simplify the recovery of costs that are incurred now and are found later by the Commission to have been prudently incurred.
8. PG&E does not by this filing in any way waive any of its rights of arguments or remedies that have been previously requested in this proceeding. Specifically, PG&E does not concede that there is any prohibition against, or limit to, the recovery in rates of expenses that have been prudently incurred to date, as requested in PG&E's application.

PG&E contends that the proposed terms and conditions outlined above for its interim memorandum account are consistent with the guidelines endorsed by the Commission in D.86-12-095 and the recent Southern California Gas Company (SoCal) decision (D.87-09-078) regarding creation of interim account to record hazardous waste compliance efforts.

According to PG&E, major environmental compliance projects, particularly historic hazardous waste site cleanups, are best resolved in cooperative agreements with other responsible private parties and public agencies using a non-adversarial

approach whenever possible. PG&E maintains that its proposed interim account is also consistent with DRA's position that it is appropriate to allow utilities to record certain expenses related to environmental compliance projects in a memorandum account.

PG&E believes that the relief requested herein will protect the interest of the ratepayers, by allowing rate recovery of only those costs found to be prudent by the Commission. According to PG&E, its request will also protect the interest of its shareholders by assuring it the opportunity to recover prudently incurred costs, and will promote the Commission's goal of establishing an efficient hazardous substance cleanup program.

PG&E maintains that virtually all of the current compliance efforts selected for interim memorandum account treatment are mandated by one or more environmental laws or regulations. Many of these projects, contends PG&E, are driven by the numerous, so-called "hammer" penalty provisions contained in the Federal Resource Conservation and Recovery Act which requires the state agency seeking authorization to administer the federal program, and regulated company, to attain compliance by specific deadlines. Substantial penalties and other actions which would jeopardize the operation of the affected power plant or other operating facility will likely result if the utility fails to meet such mandatory deadlines. According to PG&E, allowance of the memorandum account treatment of these expenses facilitates prompt utility compliance with statutorily-imposed obligations in a manner consistent with Commission recommendations in this area.

DRA's Position

While DRA believes that it is appropriate to allow PG&E to record in an interim memorandum account expenses related to environmental compliance programs, it objects to the scope of PG&E's request. DRA believes that portions of the request are not entitled to interim relief because they are inconsistent with the terms and conditions of D.86-12-095.

DRA recommends that PG&E be authorized to record no more than \$8.3 million in the memorandum account on an interim basis. A project-by-project summary of DRA's recommendation is contained in Appendix A. In making its recommendation, DRA relied on D.86-12-095 and applied the following guidelines:

- A. Memorandum treatment should apply only to those projects which meet Commission-adopted criteria in D.86-12-095.
- B. No costs incurred prior to the effective date of the order granting interim relief should be included in the memorandum account.
- C. In order to qualify for memorandum account treatment there must be a showing that the project is necessary.
- D. In order to qualify for memorandum account treatment the project must be accompanied by some evidentiary support regarding proposed project activities and expenditures.
- E. All expenditures must be consistent with the project documentation that has been submitted.
- F. The utility is entitled to no return on projects booked to the memorandum account until after the project expenditures have been approved for recovery through rates.

DRA contends that a significant part of PG&E's environmental program has already been funded through base rates in PG&E's GRC.

PG&E has reduced the funding request for Project 4 by \$110,000 because it was partially funded through base rates. DRA opposes interim memorandum account treatment for the entirety of Project 4 because the project deals with hazardous waste management (Account CO-79). D.86-12-095 did not authorize memorandum account treatment for this account.

DRA also opposes interim memorandum account treatment for Project 8, a \$150,00 surface impoundment project (Account CO-80), on the same grounds. D.86-12-095 did not authorize memorandum treatment for this account.

DRA recommends that no memorandum account treatment be allowed for approximately \$5 million which has already been spent on these projects. According to DRA, permitting PG&E to recover costs incurred prior to receiving funding authorization would violate the rule against retroactive ratemaking. DRA contends that since these funds cannot ultimately be recovered from the ratepayers, recording them in the memorandum account would be an idle act.

DRA contends that PG&E has provided inadequate documentation in support of Projects 2, 12, 17, and 22. According to DRA, this is inconsistent with the requirements of D.87-09-78 which authorized SoCal to establish an interim memorandum account for environmental compliance projects.

DRA maintains that there is no detailed documentation for either Project 12, a \$100,000 best management practice program, or Project 22, a \$150,000 operating equipment upgrade. Therefore, DRA recommends a complete denial of memorandum account treatment for these two projects¹.

DRA recommends interim memorandum account treatment for only a portion of the total costs for Projects 2 and 17 because PG&E furnished insufficient documentation in justification of these projects. Project 2 is a \$1.3 million oil sludge sump closure program involving six different power plants and Project 17 is a \$900,000 asbestos removal program at four power plants.

¹ DRA is also recommending a denial of interim relief for Project 22 to the extent that the funds have already been expended. (See Appendix A.)

DRA claims that PG&E furnished documentation for Project 2 addresses activities at only two of the six plants, Pittsburgh and Morro Bay. DRA recommends that memorandum account treatment, therefore, be limited to these two plants in the amount of \$818,000. DRA also claims that PG&E furnished documentation for Project 17 relates to just one of the four plants involved, Hunters Point. Therefore DRA recommends that interim relief for Project 2 should be limited to this single plant in the amount of \$58,000².

In its motion, PG&E proposes that it should be authorized to include in the interim memorandum account only those types of expenses set forth in its list of environmental compliance projects, attached a Tab A to A.87-10-019. DRA contends that by this proposal PG&E is seeking generic authority to record up to \$15 million in the interim memorandum account for projects which are similar to those listed in the application. DRA maintains that PG&E is entitled to no more than what it requested in this application. Therefore, DRA recommends that any approval must be limited to the 22 specific projects listed in the application. According to DRA, this treatment is similar to the treatment applied to the interim relief granted to SoCal in D.87-09-078.

In its protest opposing ex parte treatment for this application, DRA had expressed concern regarding the following PG&E ratemaking proposal in the application:

"PG&E proposes that plant additions for these environmental compliance projects will be maintained in a separate memorandum account. The revenue requirement for these projects would be calculated each month and charged to the ECAC/ERAM or GAC/SAM subaccount. The revenue requirement amount that accrues in the balancing account between a project's operative

² The recommendation for Project 17 assumes that all of the \$146,000 spent to date on this program was spent at the Hunters Point facility.

date and the beginning of the next ECAC/ERAM/AER or GAC/SAM period together with short-term interest on the unrecovered balance would be recovered through the ECAC/ERAM or GAC/SAM." (A.87-10-019, p. 2.)

DRA contends that under this proposal a project could earn both full rate of return (i.e. "revenue requirement") as well as the short-term interest until it has been approved for recovery through the balancing account. According to DRA, since there would be no revenue from balancing account, the utility would be earning both its authorized rate of return plus balancing account interest on a growing undercollection. In DRA's opinion, D.86-12-095 did not contemplate this type of treatment.

PG&E's motion for interim relief is silent on this issue raised by the application. However, DRA believes that this matter should be resolved only after careful consideration through the hearing process. DRA recommends that the decision granting interim relief should make it clear that the ratemaking treatment proposed in the application is not being authorized for the interim period.

DRA recommends that the order granting interim relief should include the following terms and conditions:

1. PG&E may record in an interim memorandum account up to \$8,312,120 for Projects 2, 5, 6, 7, 11, 14, 15, 17, 20, and 21. Interim memorandum account treatment applies only to these projects.
2. Authority to implement this account is effective on the date of this order. No costs or expenses paid or incurred prior to the date of this order shall be included in the account.
3. All expenditures shall be consistent with the project documentation that has been set forth in the showing filed by PG&E in this proceeding on December 22, 1987, as supplemented by the discovery process.

4. Expenses recorded in the account shall be subject to subsequent reasonableness review, and shall not be placed into rates until after such review and so ordered by the Commission.
5. PG&E shall not be entitled to earn a return or receive balancing account type interest on projects booked to the interim memorandum account.
6. The relief granted herein is interim in nature, and shall not be construed to indicate prejudgment of any issue in this case.

Discussion

Because of the prohibition against retroactive ratemaking, PG&E will be unable to recover any of its currently incurred expenses for environmental compliance programs without the establishment of a Commission-approved memorandum account.

Therefore, PG&E's request to create an interim memorandum account is justified. Since PG&E is currently expending funds for environmental compliance programs, it is necessary to establish an interim memorandum account to record those expenses prospectively.

We agree with DRA that PG&E's interim relief should be consistent with the terms and conditions of D.86-12-095 and be in accordance with the following guidelines:

- A. Memorandum treatment should apply only to those projects which meet Commission-adopted criteria in D.86-12-095.
- B. No costs incurred prior to the effective date of the order granting interim relief should be included in the memorandum account.
- C. In order to qualify for memorandum account treatment there must be a showing that the project is necessary.
- D. In order to qualify for memorandum account treatment the project must be accompanied

by some evidentiary support regarding proposed project activities and expenditures.

- E. All expenditures must be consistent with the project documentation that has been submitted.
- F. The utility is entitled to no return on projects booked to the memorandum account until after the project expenditures have been approved for recovery through rates.

DRA's recommendation to exclude from the interim memorandum account, either partially or wholly, funding for Projects 2, 4, 8, 12, 17, and 22 is consistent with the above guidelines and should be adopted.

We share DRA's concern regarding PG&E's proposed treatment of plant additions for environmental compliance which could allow certain projects to earn both full rate of return as well the short-term interest until they have been approved for recovery through balancing account. As DRA recommends, this matter should be resolved after a hearing. Therefore, by approving this interim relief we are not adopting PG&E's proposal regarding the treatment of plant additions for environmental compliance.

DRA's proposed terms for granting interim relief are consistent with its proposed guidelines and should be adopted as part of granting this order except Condition 5 which states that:

"PG&E shall not be entitled to earn a return or receive balancing account type interest on projects booked to the interim memorandum account."

We believe that the condition, as proposed by DRA, will deny PG&E an opportunity to earn either a rate of return or balancing account type interest on the projects booked to the interim memorandum account. We realize that the issue of interest on the projects booked to the interim memorandum account is to be

resolved after a hearing. However, in order avoid possible problems of retroactive ratemaking, we believe that in the interim PG&E should be allowed to accrue interest at the 3-month commercial paper rate on the amounts booked in the memorandum account. The disposition of the accrued interest will be determined during the hearing beginning March 21, 1988. Therefore, we will modify Condition 5 as follows:

"PG&E shall be authorized to accrue interest at the 3-month commercial paper rate on the amounts booked in the interim memorandum account."

Findings of Fact

1. PG&E filed A.87-10-019 requesting Commission approval to accrue in a memorandum account the cost of its environmental compliance program.
2. PG&E is currently incurring expenses for its environmental compliance projects.
3. On December 22, 1987, PG&E filed a motion requesting interim relief authorizing it to establish a memorandum account to accrue \$15.44 million costs for environmental compliance projects incurred in connection with A.87-10-019.
4. PG&E will not be able to recover any of its currently incurred expenses for environmental compliance programs without the establishment of a Commission-approved interim memorandum account.
5. DRA supports the establishment of an interim memorandum account to record expenses for PG&E's environmental compliance program.
6. DRA recommends that PG&E's interim relief should be consistent with the terms and conditions of D.86-12-095.
7. DRA recommends that environmental compliance costs incurred before the effective date of this order should not be included in the interim memorandum account.

8. DRA recommends that PG&E be authorized to record up to \$8,312,120 in an interim memorandum account.

9. A project-by-project summary of DRA's recommendation is contained in Appendix A.

10. DRA proposes a set of conditions for granting interim relief.

11. DRA's proposed conditions for granting interim relief are consistent with its proposed guidelines except for Condition 5.

12. Condition 5 will deny PG&E an opportunity to earn either a rate of return or balancing account type interest on the projects booked to the interim memorandum account.

Conclusions of Law

1. PG&E's request to establish an interim memorandum account to record its expenses for environmental compliance program should be granted subject to terms and conditions proposed by DRA.

2. DRA's proposed Condition 5 for granting interim relief should be modified.

3. This order should be made effective immediately.

INTERIM ORDER

IT IS ORDERED that Pacific Gas and Electric Company's (PG&E) request to establish an interim memorandum account to record expenses for its environmental compliance program is granted subject to the following terms and conditions:

1. PG&E may record in an interim memorandum account up to \$8,312,120 for Projects 2, 5, 6, 7, 11, 14, 15, 17, 20, and 21 described in Appendix A. Interim memorandum account treatment applies only to these projects.
2. Authority to implement this account is effective on the date of this order. No costs or expenses paid or incurred prior to the date of this order shall be included in the account.

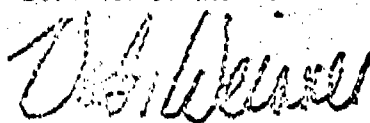
3. All expenditures shall be consistent with the project documentation that has been set forth in the showing filed by PG&E in this proceeding on December 22, 1987, as supplemented by the discovery process.
4. Expenses recorded in the account shall be subject to subsequent reasonableness review, and shall not be placed into rates until after such review and so ordered by the Commission.
5. PG&E shall be authorized to accrue interest at the 3-month commercial paper rate on the amounts booked in the interim memorandum account.
6. The relief granted herein is interim in nature, and shall not be construed to indicate prejudgment of any issue in this case.

This order is effective today.

Dated MAR 09 1988, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
C. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Victor Weisser, Executive Director

APPENDIX A

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PROJECT NUMBER	PROJECT TITLE	PROJECT BUDGET	AMOUNT SPENT	RECOMMENDED FOR INTERIM RELIEF	EXPLANATION
1	Morro Bay Compliance Work	\$175,000	\$200,000	\$0	Total project budget already spent; no prior CPUC approval.
2	Oil Sludge Sump Closures at 6 Power Plants	\$1,300,000	\$31,000	\$817,620	\$817,620 is the amount for sump closures at Pittsburg and Morro Bay; no documentation given for the other four plants. See Note 1.
3	Morro Bay Waste Handling Equipment Upgrade	\$49,000	\$40,000	\$0	Project is near completion and over 80% of budget has been spent; no prior CPUC approval.
4	Waste Facility Upgrades at 4 Power Plants	\$440,000	\$380,000	\$0	This is a CO-79 project. The GRC decision authorized mem. account treatment only for CO-81 and CO-82 capital projects.
5	Modify Oily Water Separator at Contra Costa	\$900,000	\$79,000	\$821,000	\$821,000 represents the portion of the project budget that has not yet been spent.
6	Circulating Water System Improvements	\$7,501,000	\$3,141,000	\$4,360,000	\$4,360,000 represents the portion of the project budget that has not yet been spent.
7	Pollution Abatement Equip. at Contra Costa	\$2,300,000	\$859,500	\$1,440,500	\$1,440,500 represents the portion of the project budget that has not yet been spent.
8	Hydrogeolog. Assessment for Contra Costa	\$150,000	\$75,000	\$0	This is a CO-80 project. The GRC decision authorized mem. account treatment only for CO-81 and CO-82 capital projects.
10	Groundwater Investigation at Moss Landing	\$231,000	\$170,000	\$0	Project will be done 2-1-88 and most of money has been spent; no prior CPUC approval.
11	Modify Oily Water Separator at Moss Landing	\$225,000	\$90,000	\$135,000	\$135,000 represents the portion of the budget that has not yet been spent.

APPENDIX A
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PROJECT NUMBER	PROJECT TITLE	PROJECT BUDGET	AMOUNT SPENT	RECOMMENDED FOR INTERIM RELIEF	EXPLANATION
12	Best Management Practice Plan at Moss Landing	\$100,000	\$0	\$0	No documentation of project activities.
14	Hazard. Material Storage Building at Pittsburg	\$165,000	\$20,000	\$145,000	\$145,000 represents the portion of the budget that has not yet been spent.
15	Modify Steam Cleaning Pit at Pittsburg	\$100,000	\$5,000	\$47,000	\$47,000 is based on cost estimate in Tab 37 less the amount already spent.
17	Asbestos Insulation / Removal at 4 Power Plants	\$900,000	\$146,000	\$58,000	\$58,000 is the amount for Hunters Point. No documentation for the other three plants. See Note 2.
20	PCB Removal from Transformers at 3 Power Plants	\$470,000	\$17,000	\$453,000	\$453,000 is the amount for the Geysers. No documentation for the other two plants. See Note 3.
21	Groundwater Protection at Humboldt Bay	\$100,000	\$60,300	\$35,000	\$35,000 represents the amount that is to be spent on the remaining activities. See Note 4.
22	Equipment Upgrade at Compressor Stations	\$150,000	\$90,000	\$0	No documentation given and the majority of the budget has been spent.
TOTAL		\$15,256,000	\$5,383,800	\$8,312,120	

NOTES:

- 1 This assumes that the \$31,000 already spent was for Pittsburg and Morro Bay.
- 2 The recommended amount is based on the Hunters Point budget and assumes the \$146,000 was spent entirely on Hunters Point. This assumption is based on data provided in response to data request CPUC-PGE-WW2-002.
- 3 This assumes that the \$17,000 already spent was for the Geysers.
- 4 The \$35,000 for the remaining activities is based on the response to data request CPUC-PGE-WW2-014 and is subject to the California Regional Water Quality Board's approval of PG&E's project design.