

Decision 88 10 061 OCT 26 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
MANEC

Investigation on the Commission's)
 own motion into the methods to be)
 utilized by the Commission to)
 establish the proper level of)
 expense for ratemaking purposes)
 for public utilities and other)
 regulated entities due to the)
 changes resulting from the 1986)
 Tax Reform Act.)

OCT 26 1988

I.86-11-019

(Filed November 14, 1986)

(See Decisions 87-09-026 and 88-01-061 for appearances.)

OPINION ON PACIFIC BELL'S
PETITION FOR MODIFICATION OF D.88-01-061

Decision (D.) 88-01-061 issued January 28, 1988, was this Commission's order requiring all respondent utilities to file calculations on the effects of the Tax Reduction Act of 1986 (TRA 86) and Senate Bill 572 (S.B. 572) on 1987 and 1988 revenue requirements in conformance with the methodologies adopted in that decision. On May 18, 1988, Pacific Bell filed this Petition for Modification requesting certain clarifications regarding 1) the Omnibus Budget Reconciliation Act of 1987 and 2) the development of IDC (interest during construction) and/or AFUDC (allowance for funds used during construction) rates. No party has formally responded to Pacific Bell's petition, and there is apparently no opposition to its requests.

Omnibus Budget Reconciliation Act of 1987

Pacific Bell notes that D.88-01-061 included the following finding of fact:

"Congress is currently considering legislation which would increase taxes on corporations, including utilities. If such legislation is adopted, it is likely to have ratemaking impacts." (Finding of Fact 34.)

D.88-01-061 also concluded that:

"Utility rates for 1988 shall be calculated subject to refund or adjustment to reflect any Federal tax legislation which is adopted for that year. Utilities shall file adjustments to their rates which reflect such legislation through the advice letter process, using principles consistent with those adopted in this decision." (Conclusion of Law 11.)

Pacific Bell notes that the Federal tax legislation adopted on December 22, 1987 as part of the Omnibus Budget Reconciliation Act of 1987 ("OBRA") is generally effective in 1988. Pacific Bell believes that the Commission intended that OBRA tax changes, even though enacted in 1987, be governed by Conclusion of Law 11. In support of its argument, Pacific Bell notes that the issue of pending legislation, including the Budget Reconciliation Act of 1987, was raised by at least one respondent in comments filed on the proposed decision of the assigned administrative law judge during December 1987. In response to these comments, the Commission adopted the above-referenced finding and conclusion exactly as proposed in the comments. Pacific Bell regards this as a clear statement that the Commission was granting the requested relief, and concludes that the Commission intended that utility rates for 1988 be adjusted to reflect any Federal tax law changes effective for 1988 as a result of OBRA.

Pacific Bell's conclusion is correct, and we will modify Conclusion of Law 11 accordingly. As noted previously, this modification is noncontroversial. The change, of course, applies to all utilities otherwise subject to D.86-11-019, Conclusion of Law 11.

The IDC/AFUDC Rate Ceiling

Pacific Bell requests that the decision be clarified to indicate that any existing decisions or resolutions imposing a ceiling on the IDC or AFUDC rate are superseded. Specifically, Pacific Bell notes the Commission adopted the Division of Ratepayer

Advocates' recommendation that the "gross rate for borrowed funds" be used in calculating the AFUDC rate. There was general agreement on this issue during the proceedings which culminated in D.88-01-061. In fact, Ordering Paragraph 6 of that decision provides in part as follows:

"Gas, electric, telephone utilities and water utilities with an authorized AFUDC rate shall use a gross of tax interest rate in calculating the AFUDC or IDC rate and Option 3-income tax normalization to account for the increased income tax expense occasioned by TRA 86 provisions requiring the capitalization of interest during construction for income tax purposes..."

Pacific Bell points to Commission Resolution RF-4 dated November 18, 1980, which provides the method in use today for determining Pacific Bell's IDC rate. Resolution RF-4 directs Pacific Bell to use a net (after tax) IDC rate, and also provides that "...the rate shall be limited to the ceiling of Pacific's latest rate of return authorized by the Commission, less 1/2 of 1%."

Pacific Bell states that the methodology prescribed in Resolution RF-4 develops both a gross (before tax) and a net (after tax) IDC rate. Pacific Bell believes that it is the Commission's intent that Pacific Bell continue using the methodology described in Resolution RF-4, but that it use the gross IDC rate instead of the net IDC rate. However, because the gross rate will be higher than the net rate previously used, the ceiling imposed by the decision (the latest authorized rate of return less 1/2 of 1%), makes the use of the gross rate impossible. Therefore, Pacific Bell requests that the Commission clarify that it is permissible to use the methodology prescribed in the existing resolution to determine the IDC rate, but to use the gross rate determined thereby, without regard to the ceiling imposed by the resolution.

This modification is also unopposed, and we will make the clarification Pacific Bell requests by adding Ordering Paragraph 6a to the decision.

Findings of Fact

1. The Omnibus Budget Reconciliation Act of 1987 was adopted in December 1987, but its revenue provisions are generally effective in 1988. It was the intent of this Commission, expressed in D.88-01-061, Conclusion of Law 11, that the OBRA tax changes, even though enacted in 1987, be reflected in utility rates in 1988.

2. Resolution RF-4 directs Pacific Bell to use an after-tax IDC rate, but the methodology prescribed by that resolution develops both a before-tax and an after-tax IDC rate. Pacific Bell proposes to use the methodology prescribed in the existing resolution to determine the IDC rate, but to use the gross rate determined thereby, without regard to the ceiling (the latest authorized rate of return, less 1/2 of 1%) imposed by Resolution RF-4.

3. No party has formally responded to Pacific Bell's Petition for Modification of D.88-01-061, and there does not appear to be any opposition to Pacific Bell's requests.

Conclusion of Law

Pacific Bell's Petition for Modification of D.88-01-061 should be granted, consistent with the Ordering Paragraphs which follow:

ORDER

IT IS ORDERED that:

1. Conclusion of Law 11 of D.88-01-061 is modified by adding the following phrase at the conclusion of the first sentence:

"including the provisions of the Omnibus Budget Reconciliation Act of 1987."

As modified, Conclusion of Law 11 now reads:

"11. Utility rates for 1988 shall be calculated subject to refund or adjustment to reflect any Federal tax legislation which is adopted for that year, including the provisions of the Omnibus Budget Reconciliation Act of 1987. Utilities shall file adjustments to their rates which reflect such legislation through the advice letter process, using principles consistent with those adopted in this decision."

2. Ordering Paragraph 6a is added to D.88-01-061, as follows:

"6a. Pacific Bell shall continue to use the methodology of Resolution RF-4, dated November 18, 1980, to develop its IDC rate. Pacific shall use the gross IDC rate for accounting and intrastate ratemaking purposes, without regard to the ceiling limitation contained in Resolution RF-4."

This order is effective today.

Dated OCT 26 1988, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
JOHN B. QHANIAN
Commissioners

Commissioner G. Mitchell Wilk
being necessarily absent, did
not participate.

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

Victor Weiss
Victor Weiss, Executive Director