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Decision 91-12-024 December 4, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SALZ LEATHERS, INC., A California
Corporation,

Complainant,

PACIFIC GAS AND ELECTRIC COMPANY,

Defendant.

ORIGINAL

Case 90-04-030
(Filed April 19, 1990)

ORDER GRANTING LIMITED REHEARING
OF DECISION (D.) 91-08-009

Pacific Gas & Electric Company ("PG&E") filed an application for rehearing of Decision (D.) 91-08-009. In its application, PG&E alleged that the Commission committed legal error in its interpretation of the Transport Agreement in favor of Salz Leathers, Inc. ("Salz"), and factual error regarding the Commission's finding that PG&E's gas transportation rates are set on a forecast basis, without balancing account protection against sales or expense forecast inaccuracies.

The Commission has reviewed PG&E's contention regarding alleged error in its interpretation of the Transport Agreement in light of the principles of contract interpretation. (Civ. Code, §§ 1635, et seq.) We are convinced that our interpretation is consistent with these principles. Accordingly, the Commission has committed no error in its interpretation of the Transport Agreement in favor of Salz, and thus, PG&E's allegation that the Commission committed legal error has no merit.

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However, PG&E has correctly pointed out an error in Finding of Fact No. 18.¹ This finding reads as follows:

"PG&E's gas transportation rates are set on a forecast basis, without balancing account protection against sales or expense forecast inaccuracies." (Id. at p. 11 (slip op).)

We recognize that PG&E enjoyed limited balancing account protection from May 1988 to April 1990, through the Negotiated Revenue Stability Account ("NRSA"). (See Cal.P.U.C. Sheet Nos. 12634-G (Effective May 1, 1988), 12635-G (Effective May 1, 1988), 12853-G (Effective April 12, 1989) and 13208-G (Effective April 19, 1991).) However, NRSA protections existed only if the difference between certain expenses and revenues exceeded an earnings threshold which was specified in the NRSA tariff.

A review of the record indicates that there is no evidence as to whether PG&E was above or below the NRSA earnings limit at the time of the utility's contractual dispute with Salz. Accordingly, limited rehearing shall be granted to take evidence on the status of the NRSA account. The issues on rehearing shall be limited specifically to whether the PG&E's NRSA balance exceeded the earnings limit or not; and after determining the status of the NRSA account, whether the amount refunded to Salz should be recovered from ratepayers or shareholders.

Because Finding of Fact No. 18 is incorrect, the Commission will modify D.91-08-009 to remove this error. Because Conclusion of Law No. 5 flows from this finding, it will also be deleted.

1. It is noted that PG&E did not dispute this finding in its comments to the administrative law judge's proposed decision, and has raised this factual error for the first time in its application for rehearing. In the future, PG&E should be more conscientious about identifying errors of fact in its comments to proposed decisions, rather than waiting until after the Commission decision has been issued.

We also take this opportunity to correct a typographical error on page 7, line 28 of D.91-08-009. The word "Considerated" should be replaced by "Considered."

IT IS ORDERED that:

1. A limited rehearing is granted to take evidence on whether PG&E was above or below the Negotiated Revenue Stability Account earnings limit at the time of its dispute with Salz, and to determine whether the amount refunded to Salz should be recovered from ratepayers or assigned to shareholders.

2. The Assigned Administrative Law Judge shall schedule and conduct a hearing on the issues set forth above, as soon as is practicable.

3. D.91-08-009 shall be modified as follows:

(a) At page 2 of D.91-08-009, the third full paragraph shall be revised to read:

"During the time of PG&E's dispute with Salz, PG&E rates for transportation service were generally set on a forecast basis, without balancing account protection against sales or expense forecast inaccuracies. However, if the difference between certain expenses and revenues exceeded a threshold based on PG&E's after-tax earnings, then ratepayers were at risk for forecast inaccuracies. This was accomplished through the workings of the Negotiated Revenue Stability Account (NRSA). There is no evidence on the record of whether PG&E was above or below the earnings limit."

(b) At page 11 of D.91-08-009, Finding of Fact No. 18 shall be revised to read:

"During the time of PG&E's dispute with Salz, PG&E rates for transportation service were generally set on a forecast basis, without balancing account protection against sales or expense forecast inaccuracies. However, if the difference between certain expenses and revenues exceeded a threshold based on PG&E's after-tax earnings, then ratepayers were at risk for forecast inaccuracies, through the workings of the NRSA."

- (c) On page 11 of D.91-08-009, Conclusion of Law No. 5 shall be deleted.
- (d) On page 12 of D.91-08-009, Ordering Paragraphs 3 & 6 shall be deleted.
- (f) On page 7, line 28, the word "Considerated" shall be replaced by the word "Considered".

IT IS FURTHER ORDERED that except as provided in this order, rehearing of D.91-08-009 is denied.

The Executive Director shall serve a copy of this order on the parties in Case 90-04-030.

This order is effective today.

Dated December 4, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

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


NEAL J. SHULMAN, Executive Director
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