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Decision 92-02-072 February 20, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Petition of
Pacific Gas & Electric Company for
Modification and Clarification of
Resolution E-3239.

Application 92-01-014
(Filed January 14, 1992)

ORIGINAL

O P I N I O N

On February 24, 1981, Pacific Gas and Electric Company (PG&E) filed a request for authority to refund approximately \$30 million to its gas, electric, and steam customers (Refund Plan 13). The corpus of Refund Plan 13 comprised the balance of Gas Refund Plan 12, and refunds PG&E had itself received.¹ On March 17, 1981, we granted the requested authority in Resolution G-2417. In keeping with our practice at the time and with the holding of the California Supreme Court in California Manufacturers' Association (CMA) v. CPUC (1979) 24 Cal. 3d 836, we provided that any unrefunded amounts from Refund Plan 13 would be subject to future refund plans. Some under- and over-refunds were likely because many of the rates used in calculating the refunds under the Plan were based on figures which were not certain figures, and which therefore had to be forecast.

In May of 1981, PG&E proceeded to make the initial refunds under Refund Plan 13. On December 30, 1981, before Refund Plan 13 could be completed, we issued Decision 93896, ordering what was then Pacific Telephone and Telegraph Co. to spread \$6 million in undeliverable refund checks to its remaining current customers. The Office of the State Controller objected to this decision and

¹ More particularly, Refund Plan 13's fund consisted of amounts received from El Paso Natural Gas Company and from Federal income tax refunds, in addition to the balance from Gas Refund 12.

appealed to the California Supreme Court, saying that the undeliverable funds should be made payable to the state under § 1519.5 of the Unclaimed Property Law, Code of Civil Procedure §§ 1500-1582. The outcome of that appeal was Cory v. CPUC (1983) 33 Cal. 3d 522, holding that the Unclaimed Property Law did apply to unclaimed refund amounts.

Effective January 1, 1985, and retroactive to January 1, 1977, the Legislature amended § 1519.5 to specifically provide that refunds ordered by a court or agency "including, but not limited to, the Public Utilities Commission" will escheat to the state if unclaimed by the rightful owners for more than one year after the date of the "final determination or order providing for the refund." In 1985, the balance of Refund Plan 13 resulting from the over- and under-refunding due to forecasting uncertainties amounted to \$128,723.81, including interest through January 31 of that year.

Because it was uncertain as to how to proceed, PG&E did not include the balance of Refund Plan 13 monies in its Refund Plan 14, filed in 1985 and approved in Resolution G-2632 (April 3, 1985).² We noted there that the leftover funds from Refund Plan 13 had been excluded "due to the possible conflict with Cory v. CPUC 33 Cal. 3d 522 (1983) and the potential effect of CCP Section 1519.5." However, Refund Plan 14 was also partly based on forecasts; in addition, the \$81.7 million refundable amount included a contingency fund of \$0.2 million in response to our specific order.

Thus, both Refund Plans contained considerable amounts which were unrefunded but which did not fit Cory's definition of

² The refund amount came from PG&E's natural gas suppliers, mainly El Paso Natural Gas Company and some California producers. More than half the total became due as a result of a change in the methodology of measuring heat content.

escheatable unrefundable monies.³ However, in February 1986, the Division of Unclaimed Property of the Controller's Office initiated an audit of the remaining funds from both plans. PG&E quite properly waited to begin to the next step in the refund process for the conclusion of the audit. The Controller's Office advised PG&E of the end of this audit in April 1991. At that time, the Controller's Office claimed the escheat of nearly \$9 million, with interest of \$4.5 million,⁴ for a total of \$13.5 million.

The basis of the Controller's claim was that part of the Unclaimed Property Law which provides that sums held as Commission-ordered refunds "which have remained unclaimed by the owner for more than one year after becoming payable in accordance with the final determination or order providing for the refund" will escheat to the state. (Code of Civil Procedure § 1519.5, emphasis added.) The chief disagreement between PG&E and the Controller's Office on this interpretation was that the funds, resulting from our orders to hold a contingency amount, and from under- or over-forecasting, had not yet become, or been determined, "payable."

On May 6, 1991, PG&E asked the Controller's Office for an informal hearing for review of the audit findings. Shortly thereafter, on May 31, PG&E filed its Advice Letters 1649-G, 1358-E, and 97-H with us, asking for approval of its Refund Plan 15 (encompassing Gas Refund Plan 15, Electric Refund Plan 7, and Steam Refund Plan 7), and in addition asking for authority to distribute the residual amounts from Refund Plans 13 and 14. We could not act

³ In Cory, the funds available for escheat consisted of checks which were returned undelivered or which had been delivered but never cashed.

⁴ Although PG&E had already included tariff-set interest in its accounts, the Controller's Office mistakenly applied an additional 12% interest to the undelivered monies in making its claim.

on these advice letters while the Controller's claims were still pending.

On July 31, the Controller's Office held the hearing on Refund Plans 13 and 14, and on August 7, the Controller's Office asked us to further delay any action on the disposition of the residual funds. Our Legal Division recommended that we agree, but asked PG&E to amend its filing, separating Refund Plan 15 from the residuals so that we could consider the current plan without waiting for the Controller's decision on the older ones. On September 6, the Controller's Office ruled in PG&E's favor, allowing the refunding plan to proceed. On September 18, PG&E filed supplemental Advice Letters 1649-G-A and 1358-E-A as it had been asked to do. On November 6, 1991, however, we mistakenly issued Resolution E-3239, approving the earlier, consolidated advice letters without recognizing that the supplemental ones had been filed. Later, on November 8, we indicated by letters that we would approve the supplemental advice letters.

PG&E now asks us to modify Resolution E-3239 to approve only the later, supplemental advice letters. In addition, PG&E asks us to correct several factual misstatements in the Resolution. We have reviewed PG&E's discussion and agree; accordingly, we modify Resolution E-3239 today.

Finally, Petition asks us to delete Ordering Paragraph 2 of Resolution E-3239, in which we directed PG&E to file an application within 90 days, asking for direction in its disposal of amounts withheld for contingency purposes. We have reviewed Ordering Paragraph 2 and find the request reasonable.

Findings of Fact

1. PG&E first filed a request for authority to refund money to its ratepayers under Refund Plan 13 on February 24, 1981.
2. PG&E began implementing Refund Plan 13 in May of 1981.

3. Before Refund Plan 13 could be completed, the California Supreme Court decided Cory v. CPUC (1983) 33 Cal. 3d 522, holding that the Unclaimed Property Law applies to unclaimed or undeliverable refund amounts. This holding was reinforced by the Legislature's retroactive amendment in 1984 of § 1519.5 of the Code of Civil Procedure.

4. PG&E filed for authority to implement Refund Plan 14 in 1985.

5. Both plans were based partly on forecasts of rates, so that both over-refunding and under-refunding resulted, and there were substantial amounts left over after the initial implementation of the Plans.

6. Contingency amounts, which we had ordered PG&E to include in case of underestimates, were also left over.

7. The Controller's Office conducted an audit of the funds left over from both Plans from 1986 through April 1991, further delaying completion of the Plans.

8. In May 1991, PG&E asked the Controller's Office for an informal hearing.

9. On May 31, PG&E filed Refund Plan 15, including amounts left over from Plans 13 and 14. At the Controller's request, we delayed action pending the Controller's decision.

10. At the request of our Legal Division, PG&E amended its filing for Refund Plan 15 so that we could consider the current refund without waiting for the Controller's decision. In response, PG&E filed Advice Letters 1649-GA and 1358-EA.

11. On September 6, 1991, the Controller ruled in PG&E's favor.

12. In Resolution E-3239, approving Refund Plan 15, we approved the earlier, consolidated advice letters rather than the supplemental ones.

Conclusions of Law

1. In Cory v. CPUC (1983) 33 Cal. 3d 522, the California Supreme Court held that refund moneys which were undeliverable or unclaimed were subject to the Unclaimed Property Law, Code of Civil

Procedure §§ 1500-1582, and would escheat to the state under § 1519.5 if they remained unpaid after a year from the date on which they became payable.

2. The Controller's Office has ruled that the residual funds remaining from Refund Plans 13 and 14, which result from imprecise rate forecasts and from contingency amounts which we had ordered PG&E to include, are not escheatable as undeliverable refunds under the rule in Cory.

3. Our approval of the original, consolidated advice letters rather than the supplemental advice letters was mistaken.

4. PG&E's request for modification of Resolution E-3239 is reasonable.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company's Petition for Modification is hereby granted.

2. Resolution E-3239 is hereby modified as follows:

a. The caption of the resolution is modified to add the following language:

SUPPLEMENTED BY ADVICE LETTERS 1649-G-A AND 1358-E-A, FILED SEPTEMBER 18, 1991.

b. Paragraph 1 of the Summary is modified to read as follows:

Pacific Gas and Electric Company (PG&E) requests approval of proposals to return to its customers refunds received from its suppliers of natural gas, and to include in this refund monies from prior refund proposals. In the supplemental advice letters, PG&E has withdrawn its request with respect to the prior proposals, which will be dealt with separately in the future.

- c. Paragraph 2 of the Summary is modified to read:

Advice Letter 97-H is for the refund of \$281,284.18 to the steam customers of PG&E. Advice Letter 1358-E as supplemented is for the refund of \$10,165,722.93 to the electric customers of PG&E. Advice Letter 1649-G as supplemented is for the refund of \$24,868,602.97 to the natural gas customers of PG&E. The dollar amounts were estimated as of March 31, 1991. Interest has been accruing on these amounts since that date.

- d. Paragraph 2 of the Background section is modified to read as follows:

PG&E now proposes to refund the latest refund received from natural gas suppliers less a contingency reserve.

- e. The third sentence of Paragraph 1 of the Discussion section is deleted.

- f. Paragraph 2 of the Discussion section is modified to read as follows:

The Controller's protest alleges that PG&E's proposed disposal of amounts remaining from Refund Plans 13 and 14 does not comply with Section 1519.5 of the California Code of Civil Procedure as interpreted in Cory v. CPUC (1983) 33 Cal. 3d 522, 189 Cal. Rptr. 386, 658 P. 2d 749, and that the monies from those Plans should escheat to the state. By supplemental advice letters, PG&E has withdrawn its request herein for authority to distribute those particular funds. Further, the Controller, by letter of September 6, 1991, accepted PG&E's explanation that the monies from the previous Plans are not yet ripe for escheat. For both of these reasons, the Controller's protest is moot in this advice letter proceeding.

- g. Paragraph 4 of the Discussion section is deleted.

- h. Finding 2 is modified to read as follows:

Distribution of the amounts from the current refund by the advice letter procedure is appropriate.

- i. Ordering Paragraph 2 is modified to read as follows:

Having withdrawn its request for direction with respect to Refund Plans 13 and 14 by its supplemental advice letters, PG&E is directed to review those Plans with an eye to distributing the money as soon as practicable. If any further direction from us is necessary to effect a prompt and lawful distribution of this money, PG&E shall file its request for that direction, by advice letter, or by application if PG&E believes it necessary, within 90 days of the effective date of this advice letter.

- j. Ordering Paragraph 3 is hereby modified to read as follows:

Advice Letters 1358-E-A, 1649-G-A, and 97-H shall be marked to show that they have been approved by Commission Resolution E-3239.

k. Ordering Paragraph 4 is deleted.

This order is effective today; however, the effective date of the Resolution will be the first day of the month following this decision.

Dated February 20, 1992, at San Francisco, California.

DANIEL Wm. PESSLER
President
JOHN B. OHANIAN
NORMAN D. SHUMWAY
Commissioners

Commissioner Patricia M. Eckert,
being necessarily absent, did not
participate.

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


NEAL J. SHULMAN, Executive Director