L/AKM:lz *

Decision 83 04 089 APR 20, 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC COMPANY for authority to decrease its electric rates and charges effective August 1, 1982, and to establish an annual energy rate and to make certain other rate changes in accordance with the energy cost adjustment clause as modified by Decision No. 92496 and its electric tariffs.	Application 82-06-08 (Filed June 3, 1982)
Application of PACIFIC GAS AND ELECTRIC COMPANY for authorization to carry out the terms and conditions of an amendment dated February 8, 1982 to an agreement dated May 26, 1965 with CHEVRON, U.S.A., INC. (gas)	Application 82-06-20 (Filed June 3, 1982)

ORDER CLARIFYING AND MODIFYING
DECISION 82-12-109 AND DENYING REHEARING

Petitions for rehearing of Decision (D.) 82-12-109 have been filed by the Pacific Gas and Electric Company (PG&E) and by Chevron, U.S.A., Inc. (Chevron). We have thoroughly examined every allegation of error and have determined that good cause for granting rehearing has not been shown. However, we find that D.82-12-109 should be modified to provide additional clarification of the Commission's position on several issues.

Moreover, our review of these petitions and the record in this case has convinced us that we should clarify and reaffirm our

rule concerning the burden of proof in reasonableness proceedings. In D.92496, wherein we instituted an annual review of reasonableness of energy and fuel costs, we stated:

> "Of course, the burden of proof is on the utility applicant to establish the reasonableness of energy expenses sought to be recovered through ECAC. We expect an affirmative showing by each utility with percipient witnesses in support of all elements of its application, including fuel costs and plant reliability."

This statement conforms to the fundamental principle of public utility regulation that the burden rests heavily upon a utility to prove it is entitled to rate relief. It is not the job of the Commission, its staff, any interested party, or protestant to provie the contrary. (Suburban Water Co., 60 CPUC 768 (1963) rev. denied; SoCal Gas, 58 CPUC 57 (1960); So. Counties Gas Co., 58 CPUC 27 (CPUC); Citizens Utilities Co., 52 CPUC 637 (1953)). Unless PG&E meets the burden of proving, with clear and convincing evidence, the reasonableness of all the expenses it seeks to have reflected in rate adjustments, those costs will be disallowed (In re Southern Counties Gas Co., 51 CPUC 533 (1952)).

IT IS ORDERED that:

1. D.82-12-109 is modified as follows:

The second and third paragraphs on page 19a are modified to read:

> "As staff noted in its opening brief, one aspect of the reasonableness issue is whether the facility charge represents a reasonable cost to avoid uncertainties of litigating the terms of the 1976 LSFO contract. Such litigation, of which we hereby take official notice, is now in progress between Chevron and Southern California Edison Company over a similar LSFO supply contract (see Chevron

U.S.A. v. Southern California Edison Co., S.F. No. 793861). While we recognize that each case is governed by its own facts, we are concerned that hasty approval of rate recovery for PG&E contract costs not clearly proven reasonable might mislead the parties to the Edison-Chevon litigation into anticipating our acquiescence in unrealistic terms of settlement.

"In view of the importance of the issue and the far-reaching consequences of a decision, we will not reach a decision today on the reasonableness of including PG&E's projection of facility charge costs in the calculation of an AER rate. As in D.82-12-056, we will permit PG&E to record such costs incurred from the date of this decision in its ECAC balancing account. However, in order to ensure that we provide no incentive to either Edison or Chevron, we will not allow recovery of these costs subject to refund. The reasonableness of such costs will be subject to further, thorough review in PG&E's next ECAC reasonableness review. The record developed in the instant proceeding as to the facility charge issue will be incorporated into the record of that future proceeding. In addition, we expect PG&E to be prepared to develop that future record as fully as possible on factors pertinent to a determination of reasonableness."

2. Rehearing of D.82-12-109 as modified above is denied.

This order is effective today.

Dated APR 20, 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
DONALD VIAL
Commissioners

Commissioner Priscilla C. Grew, being necessarily absent, did not participate in the disposition of this proceeding.

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

Joseph E. Bodovitz, Executive Director

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EX-9

ORIGINAL

Decision 83 04 083 APR 20 1983

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC COMPANY for authority to decrease its electric rates and charges effective August 1, 1982, and to establish an annual energy rate and to make certain other rate changes in accordance with the energy cost adjustment clause as modified by Decision No. 92496 and its electric tariffs.	Application 82-06-08 (Filed June 3, 1982)
Application of PACIFIC GAS AND ELECTRIC COMPANY for authorization to carry out the terms and conditions of an amendment dated February 8, 1982 to an agreement dated May 26, 1965 with CHEVRON, U.S.A., INC. (gas)	Application 82-06-20 (Filed June 3, 1982)

ORDER CLARIFYING AND MODIFYING
DECISION 82-12-109 AND DENYING REHEARING

Petitions for rehearing of Decision (D.) 82-12-109 have been filed by the Pacific Gas and Electric Company (PG&E) and by Chevron, U.S.A., Inc. (Chevron). We have thoroughly examined every allegation of error and have determined that good cause for granting rehearing has not been shown. However, we find that D.82-12-109 should be modified to provide additional clarification of the Commission's position on several issues. Therefore,

IT IS ORDERED that:

1. D.82-12-109 is modified as follows:

The second and third paragraphs on page 19a are modified to read:

"As staff noted in its opening brief, one aspect of the reasonableness issue is whether the facility charge represents a reasonable cost to avoid uncertainties of litigating the terms of the 1976 LSFO contract. Such litigation, of which we hereby take official notice, is now in progress between Chevron and Southern California Edison Company over a similar LSFO supply contract (see Chevron U.S.A. v. Southern California Edison Co., S.F. No. 793861). While we recognize that each case is governed by its own facts, we are concerned that hasty approval of rate recovery for PG&E contract costs not clearly proven reasonable might mislead the parties to the Edison-Chevon litigation into anticipating our acquiescence in unrealistic terms of settlement.

"In view of the importance of the issue and the far-reaching consequences of a decision, we will not reach a decision today on the reasonableness of including PG&E's projection of facility charge costs in the calculation of an AER rate. As in D.82-12-056, we will permit PG&E to record such costs incurred from the date of this decision in its ECAC balancing account. However, in order to ensure that we provide no incentive to either Edison or Chevron, we will not allow recovery of these costs subject to refund. The reasonableness of such costs will be subject to further, thorough review in PG&E's next ECAC reasonableness review. The record developed in the instant proceeding as to the facility charge issue will be incorporated into the record of that future proceeding. In addition, we expect ~~all concerned parties~~ PG&E to be prepared to develop that future record as fully as possible on factors pertinent to a determination of reasonableness."

2. Rehearing of D.82-12-109 as modified above is denied.
This order is effective today.
Dated APR 20 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
DONALD VIAL
Commissioners

Commissioner Priscilla C. Grew, being necessarily absent, did not participate in the disposition of this proceeding.