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ORIGINAL

Decision 83 06 064 JUN 15 1983

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion re the sale by Pacific
Gas and Electric Company of certain
real property in Carbon County, Utah.

OII 82-05-01
(Filed May 4, 1982)

(See Decision 82-12-121 for appearances.)

SECOND INTERIM OPINION

By Decision (D.) 82-12-121, dated December 30, 1982, the Commission ordered Pacific Gas and Electric Company (PG&E) to refund a portion of the gain resulting from its sale of certain Utah coal properties. The amount of the gain was about \$147.5 million. The after-tax gain was estimated as \$94.4 million. The amount ordered to be refunded was calculated as \$59.6 million. Treatment of the remainder of the after-tax gain was deferred until the decision in PG&E's next general rate case.

By Advice Letter No. 948-E filed on April 14, 1983 and served on all parties to D.82-12-121, PG&E requests authority to adjust the amount of the gain to be distributed and Advice Letter No. 949-E filed on April 14, 1983 offers a plan for payment to its ratepayers by way of a bill credit. PG&E's plan is attached as Appendix A. PG&E points out that this is not actually a "refund", because the amounts that accrue to customers were not derived from revenues previously collected by PG&E.

The original decision recognized that the issue of state tax liability on the gain was unresolved, particularly whether the California capital gains tax would apply. The distribution ordered in D.82-12-121 assumed that no California capital gains tax would be paid on the transaction and that the total state tax liability would be to Utah and at a rate of four (4) percent. The decision, however, recognized the uncertainty whether California capital gains tax would ultimately be imposed on the transaction and further recognized that the resolution of that issue may be unknown for several years.

Subsequent to the issuance of D.82-12-121, PG&E was audited by the Utah State Tax Commission. In the course of this audit, Utah auditors informed PG&E that the profits from the coal transaction would be considered by Utah to constitute "unitary business income" on the grounds that the properties were acquired and used in the taxpayer's trade or business operation.

The determination by the Utah authorities has several consequences not reflected in D.82-12-121. Unitary business income must be apportioned and taxed by the various states in which PG&E conducts its business in proportion to PG&E's unitary business operation conducted in each of these states. This apportionment reduces the actual tax to be paid Utah to less than the 4% assumed by the decision. The actual percentage to be paid Utah is .0032%.

Utah's finding that the profits are "unitary business income" strongly suggests that California authorities would similarly find that the profits represent "business income" and are therefore taxable in California. Moreover, it would be inconsistent for PG&E to accept the lesser tax rate in Utah on the grounds that the profits were "unitary business income", but then resist California taxation by asserting the profits were not business income. Thus, by

accepting Utah's determination that the proceeds represent "unitary business income" and paying lesser Utah taxes on that basis, PG&E would effectively concede that California may tax the proceeds on the apportionment rules generally applicable to the taxation of "unitary business income".

PG&E believes that the interests of its ratepayers are best protected by accepting the determination by the Utah tax authorities that the proceeds are "unitary business income", paying the lesser Utah tax, and paying California taxes. This course of action will yield a lower effective state tax rate (9.37%) than the 13.6% effective rate assumed by PG&E in its original submission and also provide an expeditious and definitive resolution of this matter. The effect of the recalculation is to reduce the amount to be distributed from \$59.4 million to \$57.3 million.

We find PG&E's proposal appealing. The Commission staff has reviewed the distribution plan filed by PG&E and recommends approval.

We observe that Paragraph 11 of the plan provides that each recipient of an adjustment will receive an explanatory notice including the following statement: "This Electric Rate Adjustment Credit is pursuant to an order of the California Public Utilities Commission." We find this provision inadequate under the circumstances, and instead direct that the following language appear on the face of the customer bill:

"This Electric Rate Adjustment Credit ordered by the Public Utilities Commission results from the sale of out-of-state coal property no longer needed by PG&E."

In all other respects the distribution plan is reasonable.

Findings of Fact

1. The Utah State Tax Commission has informed PG&E that profits from the coal transaction would be considered by Utah to constitute "unitary business income".

2. The amount reasonably distributed to ratepayers is \$57.3 million.

3. The distribution is reasonably made by way of a credit to customer bills as proposed by PG&E.

Conclusion of Law

The coal sale transaction is subject to the tax treatment proposed by PG&E.

SECOND INTERIM ORDER

IT IS ORDERED that:

1. Advice Letter No. 948-E and 949-E filed by Pacific Gas and Electric Company (PG&E) as modified is approved. Upon the effective date of this order PG&E shall implement its Electric Rate Adjustment Plan.

2. PG&E shall include the following language on the face of each customer bill:

"This Electric Rate Adjustment Credit ordered by the Public Utilities Commission results from the sale of out-of-state coal property no longer needed by PG&E."

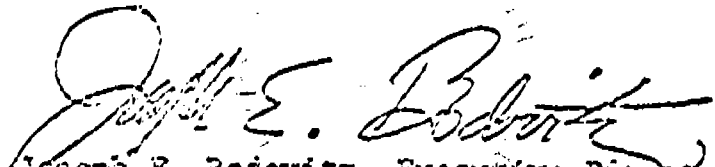
This order becomes effective 30 days from today.

Dated June 15, 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

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


Joseph E. Bodovitz, Executive Director

Appendix A

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PACIFIC GAS AND ELECTRIC COMPANY
ELECTRIC RATE ADJUSTMENT PLAN

1. Purpose:

The purpose of this plan is to distribute to Pacific Gas and Electric Company's (Company) electric customers the amounts ordered by the California Public Utilities Commission (Commission) in its Decision No. 82-12-121, dated December 30, 1982, OII No. 82-05-01, the Commission investigation related to "the sale of certain real property in Carbon County, Utah" (see also Decision No. 83-03-062, dated March 16, 1983).

2. Total Amount to be Distributed:

The total amount to be distributed to Company's California jurisdictional electric customers consists of:

- (a) The portion of the gain from the sale of Company's Utah coal properties which the Commission determined to be attributable to the portion of the investment which was included in rate base as Plant Held for Future Use. Said amount, after revision to reflect later information on the total California and Utah capital gains tax to be paid on the transaction as reported to the Commission in Advice No. 948-E, totals \$57,296,000 in principal and interest through May 31, 1982, plus

(b) Additional interest at the rates prescribed by Decision No. 91269, dated January 29, 1980, to the date distribution begins.

3. Allocation of Amounts to Classes of Service:*

The total amount of the distribution shall be allocated to each class of service in proportion to the revenues billed each class of service during the 12 billing months of 1982, excluding revenues billed to the Department to Water Resources under contracts.

4. Allocation of Amounts to Customers:

Distributions will be made only to customers of record in the billing month which begins no sooner than 15 days from the effective date of the Commission Resolution authorizing this Plan.

For each such customer the adjustment amount will equal the number of kilowatt-hours billed in the 12-month period ending with the current billing** times the adjustment rate. The adjustment rate shall be determined by dividing the amount allocated each class pursuant to Section 3 by the total number of kilowatt-hours estimated to be utilized

*The entire usage of CPUC jurisdictional customers who may be supplied in part by PGandE and in part by the City and County of San Francisco will be considered to be furnished by PGandE for the purpose of allocation to classes and for the receipt of rate adjustment amounts.

**Twelve months' kilowatt-hours will be developed, based on recorded experience, for those customers with less than twelve months' service.

in computing adjustments for that class. The adjustment computed for PGandE employees billed on Schedule No. DE will be reduced by 25 percent.

5. Credits and Payments:

The distribution to customers will generally be by credit to the customer's account and shown on the bills, but may be made by check. The words "Electric Rate Adjustment Credit" will appear in line with the amount shown on the bill, followed by a subtotal designated "total utility charges" representing the net utility charge for the current month after adjustment. Utility users tax, where applicable, will be calculated on the net utility charge. For example, in the case where utility users tax is applicable, the detailed bill will show:

GAS (therm) 36	\$17.18
ELEC (kWh) 510	32.03
ELEC RATE ADJ CREDIT	6.73-
TOTAL UTILITY CHARGES	42.48
ENERGY COMMISSION TAX	.10
CITY TAX 5.0%	2.12
TOTAL CURRENT CHARGES	\$44.70

6. Distribution to Submetered Residential Tenants:

Submetered residential tenants shall benefit from the electric rate adjustment. Notices will be mailed to all master-meter customers who submeter to residential tenants. They will be advised of their obligation to distribute to, or credit to the account of, each current tenant user, a portion of the electric rate adjustment credit. The credit shall be prorated according to the ratio that the quantity of

Appendix A

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electricity used by the tenant during the last billing bears to the total quantity billed to the master-meter customer during the same period.

7. Adjustments Upon Customer's Inquiry:

Through January 1, 1984, if a customer contends that the distribution he received under this plan is not appropriate, the Company will investigate and make an adjustment wherever appropriate. No adjustment will be made on inquiries from former customers who were not customers of record during the adjustment month.

8. Uncashed Checks:

Any uncashed checks from this plan will remain a liability of the Company in the manner provided by law. The claim of any person legally entitled to one of the uncashed checks (whether returned to the Company or at large) will be honored. Where a check has been returned, the Company will make every reasonable effort to locate the payee.

9. Undistributed Amount:

The difference between the total amount to be distributed, computed pursuant to Section 2, and the amount actually distributed, computed pursuant to Section 4, shall be recorded in the Company's Energy Cost Adjustment Account for amortization.

10. Coordination with Electric Tariff Provisions:

Computations made under Part E of the Preliminary Statement of the electric tariff, entitled Electric Revenue Adjustment Mechanism (ERAM), will be modified to exclude revenue distributed under this plan.

11. Statement Regarding Electric Rate Adjustment Credit:

Each recipient of an adjustment will receive an explanatory notice on the face of the bill including the statement.

"This Electric Rate Adjustment Credit is made by order of the Public Utilities Commission."

(END OF APPENDIX A.)

accepting Utah's determination that the proceeds represent "unitary business income" and paying lesser Utah taxes on that basis, PG&E would effectively concede that California may tax the proceeds on the apportionment rules generally applicable to the taxation of "unitary business income".

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"This Electric Rate Adjustment Credit results from an investigation instituted by the California Public Utilities Commission and a Commission order. Further credits may be allowed when the investigation is completed."

In all other respects the distribution plan is reasonable.

2. PG&E shall include the following language either on the face of each customer bill or on a separate billing envelope insertion:

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