

SEP 6 1996

Decision 96-09-037 Septem̄ber 4, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC COMPANY for Authority to Increase Electric Rates to Recover a Portion of the Remaining Capital Costs for the Helms Pumped Storage Project and the Undercollection in the Helms Adjustment Account

ORIGINAL

Application 91-08-061 (Filed August 30, 1991)

The Helms Pumped Storage Project is located on the Kings River, is 20 miles east of Fresno on the Kings River, is 140-foot section of water conduit pipe which crosses Lost Canyon (Courtright Lake) and a lower reservoir (Lake Wishon). A powerhouse which is connected by tunnels to an upper reservoir hydroelectric project. The project consists of an underground... is the only portion of the plant which is not underground. Turbine-generator units located in the underground powerhouse are used to generate electricity as water flows through the units from the upper reservoir to the lower reservoir. The units are also used to pump water from the lower reservoir to the upper reservoir during off-peak periods. Westinghouse manufactured the generators. In 1973, PG&E filed an application requesting a certificate of public convenience and necessity (CPCN) for the Helms Project. The estimated total cost of the project (in 1973 dollars) was \$186,200,000. In June 1976, the Commission issued Decision (D.) 82910, granting a CPCN for Helms. PG&E originally estimated that the Helms Project would be completed in June 1980. By January 1982, the project was

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OPINION

Decision 86-09-037 September 4, 1986

This decision grants the Joint Motion for Adoption of a Settlement Agreement (the proposed settlement) between Pacific Gas and Electric Company (PG&E) and the Division of Ratepayer Advocates (DRA).

1. Background

1.1 History of Prior Helms Proceedings

The Helms Pumped Storage Project (Helms), located 50 miles east of Fresno on the Kings River, is PG&E's largest hydroelectric project. The project consists of an underground powerhouse which is connected by tunnels to an upper reservoir (Courtright Lake) and a lower reservoir (Lake Wishon). A 140-foot section of water conduit pipe which crosses Lost Canyon is the only portion of the plant which is not underground. Three pump/turbine-generator units located in the underground powerhouse are used to generate electricity as water flows through the units from the upper reservoir to the lower reservoir. The units are also used to pump water from the lower reservoir to the upper reservoir during off-peak periods. Westinghouse manufactured the generators.

In 1973, PG&E filed an application requesting a certificate of public convenience and necessity (CPCN) for the Helms Project. The estimated total cost of the project (in 1973 dollars) was \$186,500,000. In June 1976, the Commission issued Decision (D.) 85910, granting a CPCN for Helms.

PG&E originally estimated that the Helms Project would be completed in June 1980. By January 1982, the project was

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significantly behind schedule and over the original estimated cost. On January 5, 1982, the Commission issued an order instituting investigation (OII) of Helms. The purpose of the investigation was to review a preliminary report from staff on PG&E's management of construction of the Helms Project. On May 10, 1982, after nine days of hearings, the Commission suspended further hearings until the staff completed its review of the Helms Project. However, before further hearings were held in the OII, PG&E filed Application (A.) 82-04-12, requesting recovery of costs incurred for the Helms Project. PG&E requested that \$684 million be entered into rate base to reflect the commercial operation of Helms scheduled for October 1, 1982. The OII was consolidated with the application.

On September 29, 1982, the water conduit pipe crossing Lost Canyon failed during start-up testing of Helms. As a result of the accident, hearings were postponed until PG&E could estimate the costs of reconstructing the pipe.

On April 26, 1983, PG&E amended its application to request recovery of \$738.5 million in Helms' costs incurred prior to the Lost Canyon accident. The hearings resumed on May 23, 1983. PG&E completed repairs on Lost Canyon crossing in

June 1983 and notified the Commission that it planned to place Helms into commercial operation in October 1983. However, when PG&E resumed testing in October 1983, it experienced vibration problems with the generators and deferred start-up to June 1, 1984.

By mid-1984, PG&E had again raised its estimate of Helms costs to \$942 million, of which it estimated some \$204 million arose from a separate accounting of cost increases due to the Lost Canyon pipe crossing incident and various start-up problems. PG&E asked to defer review of the costs of the Lost

problems which paid accrued interest on the under or over collection associated with final reconciliation of the balancing account.

Canyon accident and various start-up problems until it had resolved all claims and litigation resulting from the accident.

In D.84-07-070, we granted interim rate relief in anticipation of Helms becoming commercially operable in mid-1984.<sup>1</sup> In granting interim relief, we expressed concern that PG&E could select too early an operating date, starting revenue accruals before adequate testing had been done:

We place PG&E on notice that they will bear an especially heavy burden of proof to justify their choice of commercial operation dates, and subsequent recovery of base revenues through the HAA, if any prolonged outage occurs after the commercial operating date due to a problem first identified by PG&E during the pre-commercial testing program. Second, a downward adjustment to the revenue requirement debited to the HAA may be ordered if we later determine in our final decision that PG&E has placed any of the Helms units into commercial operation before the unit was ready for commercial operation. Finally, during the first two years of commercial operation, should an event occur, resulting in an outage of one or more of the Helms units for a

June 1983 and notified the Commission that it planned to place <sup>1</sup> For interim ratemaking purposes, we authorized PG&E to establish a Helms Adjustment Account (HAA) balancing account. PG&E was directed to debit the HAA with the estimate of the plant's revenue requirement for 1984 submitted in the case (less the estimated \$204 million in a separate memorandum account) and to credit the HAA with the value of energy and capacity under a specified formula. PG&E was also authorized to debit its Energy Cost Adjustment Clause (ECAC) balancing account by amounts equal to the credits applied to the HAA affecting the value of energy and capacity actually produced by Helms. The plant's revenue requirement for 1985 was to be treated similarly in the event of additional plant delays. The ratemaking method was the same as that then (recently) adopted for PG&E's facility at Kerckhoff 2, which paid accrued interest on the under or over collection associated with final reconciliation of the balancing account.

period of thirty days or more, PG&E shall begin accruing effective the first day of outage the proportion of the revenue requirement associated with each unit out of operation for potential refund to ratepayers. (D.84-07-070, 15 CPUC2d 508, 514.)

Helms had suffered a series of delays, which indicated that the plant could suffer from major flaws. Thus, we advised PG&E to carefully test the Helms units for defects and to select a commercial operating date with this warning in mind.

D.84-07-070 also granted PG&E's request to account for the \$204 million cost increase due to the Lost Canyon pipe crossing incident and various start-up problems as a deferred debit in a memorandum account. We ordered PG&E to enter as a deferred debit in a memorandum account the \$204 million in increased cost due to the Lost Canyon pipe crossing incident and various start-up problems. Interest shall accrue at a rate equal to the AFUDC (allowance for funds used during construction) rate." (15 CPUC2d at 515.)

Helms was scheduled to become commercially operable on June 1, 1984. However, commercial operation was further delayed due to a vibration problem in the generators. PG&E declared Helms to be commercially operable on June 30, 1984.

Shortly thereafter, on September 13, 1984, PG&E discovered major damage to the generators. Closer inspection determined that the generators literally tore themselves apart. An adequate testing program should have disclosed the problem. Greater caution should have been exercised in light of the June startup problems. (D.85-08-102, 18 CPUC2d 700, 715.) As a result of the damage to the generators, a total of 438 generator days were lost to outages during repairs, 49.5 percent of Helms' total generating capacity through April 30, 1985. As ordered by

D.84-07-070, PG&E began to accrue the proportion of revenue requirement associated with each unit out of operation for potential refund to the ratepayers. All units were returned to service on April 30, 1985.

In D.85-08-102, we found that all (but \$22 million of the \$738 million (pre-Lost Canyon accident) Helms net plant addition requested by PG&E was prudently incurred.

As for the capital expenditures related to the reconstruction of the Lost Canyon pipe crossing, we stated:

(That PG&E should not look to ratepayers in the first instance to bear any portion of the Lost Canyon pipe reconstruction costs. If any of these costs are not recouped by PG&E from either its contractor or U.S. Steel, PG&E will bear a heavy burden of proof in any subsequent application related to such costs to establish that ratepayers are not being required to indemnify PG&E for losses arising from its own

negligence or the negligence of its contractor or project subcontractors.

Ratepayers are not responsible for bearing the consequences of negligence.

Further, we note that ratepayers lost the considerable capacity benefits which

Helms adds to PG&E's resources. Should PG&E file any application to recoup

Lost-Canyon related expenditures, we intend to consider an offset to revenues

to reflect the lost or deferred capacity benefits resulting from the delay of

commercial operation at Helms. (18 CPUC2d at 715-716.)

In D.85-08-102, we excluded the revenue requirement from the Westinghouse generator failure from rate recognition.

We held that it should not be the ratepayers' responsibility to indemnify PG&E against losses resulting from design defects in

the generators. However, PG&E was permitted to record the

revenue requirement in a deferred debit account and to file, by separate application, for rate recovery of this amount subject to the requirement that:

... it make a clear and convincing showing which demonstrates that these revenues should be charged to ratepayers. PG&E shall include in its showing that it prudently established the commercial operating criteria in light of the warnings set forth in Decision 84-07-070. PG&E must also demonstrate that the vibration problem which delayed commercial operation for one month was wholly unrelated to the generator defects which eventually caused the outage. More importantly, PG&E should also be prepared to address the question of whether ratepayers should be placed in the position of guarantors and warrantors of plant performance during initial operations. (18 CPUC2d at 715.)

#### 1.2 PG&E's Application 91-08-061

On August 30, 1991, PG&E filed A.91-08-061 to recover a portion of the costs (as of January 1, 1992) associated with Helms that are not yet reflected in rates. (A.91-08-061, p.11) PG&E amended its application on May 29, 1992, to restate its request as of January 1, 1993. In its application as amended, PG&E seeks to place in rate base an additional \$97,426,000 for capital costs associated with the start-up, installation and repair of generator/motors supplied by Westinghouse, and other "miscellaneous" costs. PG&E also requests the recovery of \$51,851,000, which represents the recorded balance in the HAA as of January 1, 1986 (\$48,409,000), plus interest from January 1, 1986 through December 31, 1992, (\$28,010,000), minus amounts paid to PG&E in its settlement with Westinghouse (\$24,568,000). PG&E also requests \$102,731,000 of prior year revenue requirement.

In its application and supporting testimony, PG&E argued that it was:

of diligent both in its selection of the contractor and in its contracting and administration practices. Further, PG&E performed timely and exhaustive investigations to determine the true causes of the Westinghouse generator/motor operational problems and to insure that they were rectified in an expeditious manner. It vigorously pursued all reasonable litigation avenues and ultimately concluded a highly advantageous settlement which involved a substantial contribution towards the consequential damages which were specifically excluded in the purchase contract. The testimonies of PG&E personnel and the distinguished experts presented in this application convincingly demonstrate that the unfortunate problems associated with Helms' generator/motors could not have been anticipated or prevented by PG&E and that PG&E should be permitted to recover in rates the additional costs requested in this application.

(PG&E Prepared Testimony, pp. 10-12)

On August 30, 1991, PG&E filed a bill to recover

In June 1993, DRA submitted testimony in opposition to PG&E's application. DRA argued that PG&E's request for rate recovery should be denied in its entirety because PG&E should be held liable for its own imprudence and its contractors' imprudence. (DRA's investigations) show that PG&E was imprudent or that PG&E failed to substantiate prudence; thus, all costs and revenues requested by PG&E should be disallowed.

DRA recommends a total plant cost disallowance because DRA takes issue with the claim costs, the time-related site support costs, the claim-related AFUDC costs, the project related AFUDC costs, the T-1 Gatehouse fire AFUDC

argued that it was:

costs, the Westinghouse litigation, the settling parties, the accounting treatment of the PG&E/Westinghouse settlement, and the ad valorem taxes....

DRA recommends a total prior-year revenue requirement disallowance because the Commission never authorized PG&E to establish a tracking account for such revenues and because allowing such rate recovery would violate the Commission's established policies regarding retroactive ratemaking.

DRA recommends a total HAA disallowance because PG&E has not met the tests established by the Commission in D.84-07-070 and D.88-08-102 as prerequisites for recovering the HAA revenues. (DRA Prepared Testimony, pp. 10-2 and 10-3.)

On January 27, 1994, PG&E submitted testimony in rebuttal to DRA's testimony.

**1.2.1 The Proposed Settlement**

Shortly after PG&E filed its rebuttal testimony, DRA and PG&E requested that hearings be deferred, in order to permit PG&E and DRA to discuss a possible settlement of the case. The request was granted.

On October 4, 1994, PG&E and DRA filed a Motion for Adoption of a Settlement Agreement. The proposed settlement would authorize PG&E to recover \$98.8 million of the \$252 million it had sought in its amended application. The settlement would result in a 1995 revenue requirement of \$14.5 million. The settling parties propose as part of the settlement that Helms rate base amounts would be offset by reductions in PG&E's other base rates for purposes of 1995 attrition and, second that these rate base amounts would be subject to depreciation and amortization in 1995, before inclusion in PG&E's 1996 rate base.

The settling parties assert that the proposed settlement meets the criteria for an all-party settlement established in D.92-12-019.

On October 28, 1994, Toward Utility Rate Normalization (TURN) filed comments on the proposed settlement. TURN contends that the proposed settlement is not an "all-party" settlement. TURN states that it is a party in this proceeding and does not support the settlement. TURN further asserts that PG&E and DRA have not demonstrated the reasonableness of the settlement. PG&E and DRA filed responses to TURN's comments.

On February 17, 1995, the Administrative Law Judge (ALJ) issued a ruling which held that as of the filing of the settlement, TURN was not an active party in the proceeding, nor had it signaled its intent to become an active party. Therefore, the ALJ ruled that the settlement should be reviewed as an all-party settlement because it has the unanimous sponsorship of all active parties. We agree with this ruling.

The ALJ also ruled that PG&E had not clearly set forth the authority under which it seeks recovery of costs associated with Helms. In order to determine whether the proposed settlement is consistent with statutes and prior Commission decisions, the ALJ posed a series of questions to PG&E and DRA. The settling parties responded to these questions on April 21, 1995. TURN filed comments on the response of the settling parties on May 19, 1995.

On September 22, 1995 the ALJ issued a proposed decision recommending that the Joint Motion be denied. PG&E, DRA, and TURN filed comments on the proposed decision. For the reasons which follow we decline to accept this recommendation.

rate base amounts would be subject to depreciation and amortization in 1995, before inclusion in PERE's 1996 rate base.

**2. Discussion**

The settlement proposes recovery of \$98,796,000.

Having agreed with the ALJ that we are confronted with an all-party settlement, both the scope and nature of our review is governed by our decision in Re San Diego Gas and Electric Company, D.92-12-019, 46 CPUC2d 538 (1992). There we declared:

We envision settlement as a vehicle for executing rather than formulating Commission policy. With this objective in mind, we are prepared to adopt a settlement that meets sponsorship and content criteria which pertain to the identity and capacity of the sponsoring parties and the terms of their recommendation. As a precondition to our approval the Commission must be satisfied that the proposed all party settlement:

- a. commands the unanimous sponsorship of all active parties in the instant proceeding;
- b. that the sponsoring parties are fairly reflective of the affected interests;
- c. that no term of the settlement contravenes statutory provisions or prior Commission decisions; and
- d. that the settlement conveys to the Commission sufficient information to permit us to discharge our future regulatory obligations with respect to the parties and their interests. (Id. at 550-551.)

Section 538 of the Public Utilities Code and the judicial construction given that provision in Pacific Tel. & Tel. Co. v. Public Utilities Comm., (1985) 63 Cal.2d 634, 647. There we learn that the standard is that of reasonableness. The

**2.1 Is the Settlement Sponsored by All Active Parties?**

Regarding the first of these criteria, the ALJ ruled that the proposed settlement has the unanimous sponsorship of all active parties. Although TURN protests the settlement, the ALJ found that TURN was not an active party during the first two years after the application was filed, including all of the period during which the settlement negotiations took place between PG&E and DRA. We agree with the ALJ and find that the settlement has the unanimous sponsorship of all active parties.

**2.2 Do the Sponsoring Parties Fairly Reflect the Affected Interests?**

We find that the settling parties, DRA (representing ratepayers) and PG&E (representing shareholders) are fairly reflective of the affected interests.

**2.3 Is the Settlement Consistent With Law?**

**2.3.1 The Relevant Law**

In the Joint Motion, the Settling Parties assert that the settlement does not contravene any statute or prior Commission decision. The learned ALJ disagreed concluding that certain provisions of the settlement contravened prior Commission decisions which form the procedural history of the instant matter. We disagree having concluded that matters deemed issues of law by the ALJ are, upon closer examination, questions of fact.

Two reference points govern our initial inquiry, Section 728 of the Public Utilities (PU) Code and the judicial construction given that provision in *Pacific Tel. & Tel. Co. v. Public Utilities Comm.*, (1965) 62 Cal.2d 634, 647. There we learn that "the...standard is that of reasonableness." The

Commission has the power to disallow expenditures it finds unreasonable and refuse to pass on those costs for materials or services to ratepayers. (Id.) The Commission has broad discretion in this regard. Judicial review of Commission findings and conclusions on questions of fact are final, with limited exceptions.

Further, the provision of section 1757, that the findings and conclusions of the commission on questions of fact shall be final, refers to findings and conclusions "arrived at from the consideration of conflicting evidence and undisputed evidence from which conflicting inferences may reasonably be drawn." Findings and conclusions drawn from undisputed evidence and from which conflicting inferences may not reasonably be drawn, present questions of law. (Southern Pac. Co. v. Public Utilities Com., supra, 41 Cal.2d 354, 362.) (Id.)

In examining the settlement, we will use the same standard to distinguish issues of law from questions of fact. Therefore, in examining an all party settlement, we defer to the settling parties on questions of fact, which are those issues arising from "conflicting evidence and undisputed evidence from which conflicting inferences may reasonably be drawn." We would reject a settlement term that contravenes the law if the issue was truly a question of statutory law as defined by the California Supreme Court: one that arises from undisputed evidence and from which conflicting inferences could not be reasonably drawn.

We note that, even if settlements contravene law, that derives from prior Commission decisions, considerable flexibility is given to the settling parties. As stated in San Diego Gas & Electric, in formulating the all party settlement criteria, we do not intend to preclude the sponsoring parties from suggesting changes in established Commission policy or precedent or in proposing policy in areas we have yet to address. However, we

Public Code Section 728 also contains a timing element. Rates may be set that include reasonable costs only after a hearing has been held. In order to review the consistency of the settlement with this aspect of the law, we need to first review our prior decisions and address any retroactive ratemaking issues.

PG&E first requested interim rate relief in A.82-04-12. The Commission held forty-three days of evidentiary hearings on that application as well as nine days of hearing on the consolidated OII. In the decision acting on that request, the Commission recognized a need for interim relief that would not prejudice a subsequent decision on the reasonableness and prudence of the Helms plant costs. (D.84-07-070, 15 CPUC2d at 510-511.) At this juncture, the Commission designed the ratemaking flexibility it needed to approve interim rates, and the application was left open for further proceedings, to set final rates after a more thorough reasonableness review and additional hearings.

Ordinarily, the Commission's practice is not to authorize increased utility rates to account for previously incurred expenses, unless, before the utility incurs those expenses, the Commission has authorized the utility to book those expenses into a memorandum or balancing account for possible future recovery in rates. This practice is consistent with the rule against retroactive ratemaking. (Re Southern California

expect the sponsoring parties to clearly identify those portions of any proposed all party settlement which would require modification of Commission policy or the formulation of heretofore unannounced policy. Our goal is to always make policy amendment a conscious decision of the Commission. Further, the sponsoring parties must understand that the Commission is perfectly free to reject the recommendation by adhering to established policy or refusing to go beyond it.

Water; D/92-03-094, 45 CPUC2d-596, 600, emphasis in original. When a major capital project is begun, costs are generally not included in rates until the project is used and useful in the provision of utility services. This delay does not, however, render all project costs ineligible for possible future recovery in rates. In D:85912, when the Commission authorized the construction of Helms and authorized PG&E to file for potential inclusion in rates the capital cost of Helms and related transmission facilities "within 18 months after the date the facility would be placed in operation" (D/85910, 80 CPUC 52, 67, emphasis added.) Consistent with law and the Commission's general practice, the magnitude of the costs for which PG&E was authorized to seek rate recovery upon commercial operation were estimated, and not capped or subjected to incentive ratemaking at the time of certification (1976). While the costs were accrued, they were placed in a construction work in progress (CWIP) account, in which all costs associated with the construction of a new utility facility are recorded until these facilities are placed in service and a prudence review conducted. By booking costs in a CWIP account, the utility is protected against exclusion of costs in rates on the basis of retroactive ratemaking, although costs may be excluded on other grounds specified in PU Code Section 728. Utilities are not allowed to recover after commercial operation but before completion of the full review necessary for setting reasonable rates. Consequently,

Since that time, both through the Helms case and other cases involving major additions, Commission practice developed to provide greater protection from cost overruns. PU Code Section 1005.5 was enacted in 1985 and requires the Commission set a maximum estimate at the time of certification, and provides for an application for increases above that maximum amount.

<sup>4</sup> Account #107, Construction work in progress - electric, provides for inclusion of "the total of the balances of work orders for electric plant in process of construction." (Emphasis added.)

place CWIP funds in rate base before the new facility is used and useful; however, they are allowed to accumulate financing costs through the allowance for funds used during construction (AFUDC) mechanism during that period. These accounting mechanisms are consistent with law and general accounting practices under the Uniform System of Accounts Prescribed for Public Utilities and Licensees, which we have adopted (See note (4)) to our

In 1985 and upon PG&E's request, the Commission found interim rate recovery appropriate with facilities

Interim relief is necessary since Helms is expected to begin commercial operation before this proceeding is submitted and before the Commission can issue a final ratemaking decision. Once commercial operation begins, PG&E

must transfer the plant from CWIP to plant in service and no longer

may accrue an Allowance for Funds Used During Construction (AFUDC). As a result, PG&E would not be

compensated for all the costs of owning, operating, and maintaining Helms unless some form of interim

relief is granted by the Commission. (D.85-07-070, 15 CPUC at 510-511.)

although costs may be excluded on other grounds

In seeking interim rate relief, PG&E was seeking rate recovery after commercial operation but before completion of the

full review necessary for setting reasonable rates. Consequently, both the timing of the commercial operation date and the total

cost of Helms were merely estimated when our interim decision issued. Nevertheless, retroactive ratemaking considerations were

from the date of the 1976 authorization to request construction funds for possible inclusion in rates as a basis for exclusion

of costs.

Account #107, Construction work in progress - electric, provides for inclusion of the total of the balances of work orders for electric plant in process of construction. (Exhibit

added.)

The then estimated cost of Helms was \$942 million, and the then estimated date for commercial operation was June 1, 1984. The Commission had previously designed a ratemaking method for addressing interim relief without prejudging the more complete reasonableness review. This mechanism did not hold out the prospect of disallowance on the basis of retroactive new ratemaking. Instead, it sought to preserve Commission authority over the final rates, while keeping the interim rates aligned with the benefits of operation to ratepayers. It also sought to protect ratepayers from further start-up problems. With the exception of the \$204 million estimate related to the Lost Canyon incident and various start-up problems, the HAA balancing account was to start with a debit reflecting the then estimated total costs of Helms. PG&E shall debit this account with its estimate of the plant's revenue requirement for 1984, as of the effective date of this decision. (15 CPUC2 at 512, 515; *emph. added.*) These costs were to be offset with the benefits of running Helms, both for energy and capacity. The interim ratemaking was based on the Commission's decision on another PG&E facility, Kerckhoff 2. (Id. Conclusion of Law No. 29) Under that treatment, the Commission recognized that the offsetting value of energy and capacity might be more or less, upon final balancing of the HAA, than the finally authorized prudent plant costs.

We recognize the possibility that the final balance in the HAA could show an overcollection, should Helms generate more energy and capacity benefits than expected or should our final cost prudence decision significantly reduce the revenue requirement debited to the HAA. We shall treat such an overcollection just as we are disposing of the overcollection in the Kerckhoff 2 balancing account, that is, by refunding the overcollection to ratepayers through ECAC. An undercollection would similarly

will be recovered by PG&E through the ECAC balancing account. (Id. at 512-513.)

In the Commission's decision on Kerckhoff 2, the 1981 overcollection, plus accrued interest, was credited to PG&E's ECAC account. (Id. at 512.) Consequently, once the interim rate went into place, the accrued and estimated costs of plant completion were moved from CWIP to the HAA (with the exception of the Lost Canyon and various start-up costs set aside in another account). At that time, AFUDC stopped accruing, and interest on the HAA balancing account began accruing. As is typical with the use of the ECAC balancing account, which is much more flexible than general ratemaking, retroactive ratemaking and considerations were eliminated. The prudence of costs remained to be examined. The Commission set difficult standards for that showing in the event of further start-up problems that might arise after commercial operation, if they were first identified by PG&E during the pre-commercial testing program. (Id. at 515, Ordering Par. 5.) It was explicit that the plant costs in the HAA were both estimated and subject to additional review as were the funds in the \$204 million balancing account.

2.3.3 Did The Settlement Resolve Any Issues Of Law?

PG&E's total requested amount was \$252 million, and the DRA's position was that the request should be denied in its entirety. The settlement agrees to include in rates \$98.8 million: \$48.94 million in plant costs, \$14.58 million in unamortized asset, and \$35.28 million from the HAA. In our

<sup>5</sup> Interest at the AFUDC rate continued to accrue on the \$204 million deferred debit placed in a memorandum account for costs due to the Lost Canyon pipe crossing incident and various start-up problems. (Id. at 505; Ordering Par. 4.)

opinion, the parties' agreed upon amount, reflects disputed facts, not law.

DRA's arguments resting upon imprudence are clearly fact based assessments of PG&E's conduct during construction. DRA's arguments that PG&E had not met the standards of proof established by the Commission are also factual issues. As established in D.84-07-070, PG&E had a "heavy burden of proof" to show costs due to outages after commercial operation were not related to a problem first identified by PG&E during the pre-commercial testing program. The issue of whether start-up problems (1) were identified and (2) were the cause of the later outages, are both factual inquiries. PG&E also had the burden to show, with respect to the interim reduction of HAA revenues by \$47,068 million, that it had prudently established the commercial operating criteria in light of the warnings set forth in D.84-07-070. PG&E must also demonstrate that the vibration problem which delayed commercial operations for one month was wholly unrelated to the generator defects which eventually caused the outage. The setting of operating criteria is a factual inquiry into reasonable engineering judgement under the factual circumstances. Similarly, the causal connection between the pre-operational vibration problems and the later discovered generator defects is factual in nature.

DRA's arguments that costs had been specified for various components of the request in incorrect amounts is a factual matter requiring investigation of the accounting treatment and support for specific costs. By "accounting treatment" we mean to include issues associated with the specific time at which costs were booked to accounts and whether those accounts were the appropriate ones, which would ordinarily be resolved by an accounting review of PG&E's books. Such issues settled legal issue is consistent with the law.

are severable, although related to the retroactive ratemaking objection discussed below.

DRA also raised a retroactive ratemaking objection with respect to certain portions of the request. However, that objection was either not valid, for the reasons outlined above, or it is a factual issue because the application of the law (PU Code Section 728 and our prior Helms decisions) to the particular costs involved were reasonably disputed by PG&E. We need not decide which is the case, since either outcome supports our conclusion that the settlement is consistent with the law in that the parties have settled either factual issues, as defined by the California Supreme Court in *Pacific Tel. & Tel.*, or are consistent with the law prohibiting retroactive ratemaking.

Had, in our view, the settlement both settled legal issues and done so in a way that contravened our prior decisions, we would at this juncture discuss whether departure from prior Commission decisions was adequately identified and justified by the settling parties. We need not do so given our conclusions above. However, in light of the alternate decision rejecting the settlement proposed by the ALJ, we merely take this opportunity to emphasize that we never intended our all-party settlement to

Although not necessary to our conclusion, we take judicial notice of DRA's letter to the ALJ of November 3, 1995, as it relates to DRA's intent with respect to the settlement of certain costs which were excluded under the Settlement. This intent reflects that, although reasonably disputed by PG&E, DRA adhered to its view of the applicable law in reaching a settlement. As the details underlying the settlement revealed in this letter are not details necessary for the Commission to approve this settlement, their omission is not in this instance problematic. However, we caution parties in the future against relying too heavily upon confidentiality of "bundled" settlement terms, as it may in some cases hinder our determination that a settled legal issue is consistent with the law.

standard to obstruct parties' ability to settle legal issues, and we understand that often such legal issues arise from varying interpretations of our decisions.

**2.4 Does the Settlement Convey Sufficient Information?**

As we explained in D.92-12-018, an all-party settlement must convey to the Commission sufficient information to permit us to discharge our future regulatory obligations. Part of this process involves making sure that we do not repeatedly approve revenues to meet a one-time cost. (46 CPUC2d at 555) The ALJ concluded that the showing in this case does not meet this requirements. The ALJ found that there is a potential for double counting in several cost categories including, but not limited to, installation costs, litigation costs, and ad valorem taxes. Because a portion of the costs requested by PG&E were incurred in the same time period as proceedings which are now closed and because the settling parties have failed to provide a specific accounting of costs recorded in the \$204 million memorandum account, the ALJ expressed a lack of confidence in the accuracy or reasonableness of these requested costs.

We think it sufficient for purposes of our future ratemaking needs to enhance our present record by granting the settling parties' motion for admission into evidence of the exhibits those parties contend adequately identify the costs potentially includable in PG&E's application, as well as the subset of those costs actually included in PG&E's application, which are by our approval of this settlement resolved and no longer susceptible to future rate recovery requests.

It is the nature of settlements to compromise disputed issues, and therefore it may not be possible to identify on a line item basis each of the numerous work orders associated with the construction of Helms (or a portion of each related cost) recovered through the settlement, and each cost (or portion of a

cost), implicitly not recovered through the settlement and thus permanently excluded from rates. By adopting the settlement we are making a final decision with respect to the HAA and the \$204 million account, plus any associated accrued charges. Therefore, any costs PG&E might have but did not request in its application are resolved by our adoption of the settlement and must be excluded from future rates. Although we believe that by granting the motion for admission of exhibits we will have sufficient information to perform future ratemaking obligations, both parties also have workpapers that support their evidence. Both parties are cautioned to maintain those records to assist the Commission in the unlikely event that costs are identified that may have been resolved by the settlement.

**2.5 Does The Settlement Require A Separate Finding That It Is In The Public Interest?**

Our review of the proposed all party settlement has determined that it succeeds in meeting all the criteria established in San Diego Gas & Electric Company, supra, and is, therefore, in the public interest.

**Findings of Fact**

1. PG&E seeks to place in rate base an additional \$97,426,000 for capital costs associated with the start-up, installation and repair of generator/motors supplied by Westinghouse and other miscellaneous costs.

2. PG&E also requests the recovery of \$51,851,000, which represents the recorded balance in the HAA as of January 1, 1986 (\$48,409,000) plus interest from January 1, 1986 through December 31, 1992 (\$28,010,000), minus amounts paid to PG&E in its settlement with Westinghouse (\$24,568,000). PG&E also requests \$102,731,000 of prior year revenue requirement.

3. PG&E and DRA filed a proposed settlement. The proposed settlement would authorize PG&E to recover \$98,796,000 of the \$252,000,000 it had sought in its amended application.

4. The settlement meets our all party settlement standards.

5. The settlement is in the public interest.

Conclusion of Law

The Joint Motion for Adoption of Settlement Agreement should be granted as it meets our all party settlement standards and is, therefore, reasonable in light of the whole record, consistent with law, and in the public interest as required by Rule 51.1(e).

O R D E R

IT IS ORDERED that:

1. The "Joint Motion for Adoption of Settlement Agreement Between Division of Ratepayer Advocates and Pacific Gas and Electric Company (PG&E) for Resolution of Application No. 91-08-061" is granted.

2. The rate adjustments relating to the Joint Motion which were made in Decision 94-12-047 are final.

Dated September 4, 1996, at San Francisco, California.

DANIEL Wm. FESSLER  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
Commissioners

President P. Gregory Conlon,  
being necessarily absent, did not  
participate.

APPENDIX A  
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1 BEFORE THE PUBLIC UTILITIES COMMISSION  
2 OF THE STATE OF CALIFORNIA

3 Helms Pumped Storage Project and the Undercollection  
4 in the Helms Adjustment Account

5 Application of PACIFIC GAS AND  
6 ELECTRIC COMPANY (for Authority To  
7 Increase Electric Rates to Recover  
8 a Portion of the Remaining Capital,  
9 Costs for the Helms Pumped Storage  
10 Project and the Undercollection  
11 in the Helms Adjustment Account  
12 (Electric) (U 39 E)

13 and were prudently incurred resulting in a requested  
14 revenue requirement of \$25.6 million to be determined  
15 by the Commission.

16 SETTLEMENT AGREEMENT

17 I. INTRODUCTION

18 1. In Decision No. 85-08-012, the California Public  
19 Utilities Commission (Commission) granted permanent rate  
20 recovery for the majority of the capital costs for the Helms  
21 Pumped Storage Project (Helms), but deferred certain costs for  
22 later review. Based upon the criteria established by the CPUC,  
23 PG&E first attempted to recover from Westinghouse all of the  
24 remaining Helms costs associated with the generator/motors  
25 through litigation. In May 1991, PG&E and Westinghouse reached  
26 a settlement in the litigation.

27 2. On August 30, 1991, PG&E filed Application No. 91-08-061

|    |   |             |
|----|---|-------------|
| 28 | Helms Plan (Gross)                              | \$2,000,000 |
| 29 | Less Helms Plan (Net)                           | \$1,000,000 |
| 30 | Helms Adjustment Account                        | \$1,000,000 |
| 31 | Settlement amounts received associated with the | \$2,000,000 |

32 generator/motors and other miscellaneous costs not previously  
33 considered by the Commission.

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Page 2  
1992

1 3. PG&E's application requests recovery of amounts for  
2 Helms Plant, prior year revenue requirements, and the Helms  
3 Adjustment Account.

4 4. PG&E filed testimony in support of its position that  
5 the amounts requested for Helms plant, including costs  
6 associated with the Westinghouse generator/motors, other  
7 startup claims and costs, ad valorem taxes, prior year revenue  
8 requirement and Helms Adjustment Account amounts are reasonable  
9 and were prudently incurred resulting in a requested 1992  
10 revenue requirement of \$35.6 million to be determined in  
11 Application No. 91-08-061.

12 5. On May 29, 1992, PG&E amended its application to  
13 reflect recovery of these Helms amounts beginning in 1993.  
14 This delay in recovery increased the first-year revenue  
15 requirement to \$38.1 million. PG&E's rebuttal testimony, filed  
16 January 27, 1994, updated the Helms costs to reflect recovery  
17 beginning in 1995. This second delay in recovery would have  
18 yielded a 1995 revenue requirement of \$39.5 million; however,  
19 PG&E proposed capping the first-year revenue requirement at  
20 \$38.1 million.

21 6. Assuming rate recovery would begin on  
22 January 1, 1995, these updated costs consisted of:

|    |                                   |               |
|----|-----------------------------------|---------------|
| 23 | Helms Plant (Gross)               | \$97,426,000  |
| 24 | Prior Years' Revenue Requirements | \$130,100,000 |
| 24 | Helms Adjustment Account          | \$55,194,000  |
| 25 | Total                             | \$282,720,000 |

25 The details of these amounts are included in Attachment A to  
26 this Settlement Agreement.

On June 30, 1993, the Division of Ratepayer Advocates (DRA) filed its Report. DRA filed testimony in support of its position that the amounts requested for the Helms plant, including costs associated with the Westinghouse generator/motors, other startup claims and costs, ad valorem taxes, prior year revenue requirement and Helms Adjustment Account amounts should be disallowed because they were not prudently incurred or are not recoverable for other rate-making reasons. If litigated and accepted by the Commission as correct, DRA's position would deny PG&E recovery of Helms costs from ratepayers as requested in A.91-08-061.

On January 27, 1994, PG&E filed its Rebuttal in response to the DRA Report to support PG&E's position that requested amounts for Helms plant were prudently incurred.

9. Each party has evaluated the positions which it presented, as well as the positions of the other party, and is prepared to accept the compromise resolution of Application No. 91-08-061 set forth herein.

As an additional agreement on the part of PG&E in connection with this compromise, PG&E agrees not to seek any recovery of costs associated with the Lost Canyon Crossing pipe failure estimated to be \$72.4 million in plant.

Although not necessarily concurring with the other party's reasoning for the determination of this settlement position, both parties agree the weighted-average net amount to be placed in PG&E's CPUC-jurisdictional rate base associated

1 with Helms plant will be \$48.94 million for 1995. The "net"  
 2 amount means the gross plant less the associated deferred  
 3 taxes, deferred investment tax credits, normalized tax  
 4 benefits, and depreciation reserve. (See Attachment A.)

5 12. Although not necessarily concurring with the other  
 6 party's reasoning for the determination of this settlement  
 7 position, both parties agree the weighted-average rate base of  
 8 prior years' revenue requirement to be placed in PG&E's rate  
 9 base as a regulatory asset will be \$14.40 million for 1995.  
 10 (See Attachment A.)

11 13. Although not necessarily concurring with the other  
 12 party's reasoning for the determination of this settlement  
 13 position, both parties agree the amount to be recovered through  
 14 the Helms Adjustment Account (HAA) will be \$35.28 million.  
 15 (See Attachment A.)

16 14. PG&E will freeze 1995 electric rates, but include the  
 17 Helms net rate base amounts as stated in paragraphs 11 and 12,  
 18 in its electric rate base for 1995. The 1995 amounts of Helms  
 19 net rate base will be subject to depreciation and amortization  
 20 in 1995 prior to being included in PG&E's 1996 General Rate  
 21 Case.

22 15. The Helms net rate base amounts will be included in  
 23 PG&E's electric rate base as of January 1, 1995, but will not  
 24 alter PG&E's commitment to freeze electric rates for 1995. The  
 25 revenue requirement associated with the Helms net rate base  
 26 will be placed in PG&E's CPUC-jurisdictional rate base.

1 will be included in PG&E's base revenue levels which will then  
2 be reduced by that amount to implement a rate freeze in 1995.  
3 The net amount of Helms rate base to be placed in  
4 PG&E's CPUC-jurisdictional rate base associated with Helms  
5 plant will be \$48.94 million for 1995 Attrition (and shall be  
6 subject to depreciation prior to inclusion in PG&E's 1996  
7 General Rate Case) which will be included in PG&E's 1995  
8 Attrition adjustment electric rate base consistent with PG&E's  
9 commitment to freeze electrical rates through 1995. (See  
10 Paragraph 14 above.) Inclusion of this amount in 1995 will  
11 have no impact on electric rates.  
12 The net amount of Helms prior year revenue  
13 requirements to be placed in PG&E's rate base will be \$14.58  
14 million as of January 1, 1995 or \$14.45 million weighted average  
15 for 1995 Attrition, and shall be subject to amortization prior  
16 to inclusion in PG&E's 1996 General Rate Case.  
17 The inclusion of the amount of \$14.58 million for  
18 1995 Attrition adjustment electric rate base, shall be  
19 consistent with PG&E's commitment to freeze rates for 1995.  
20 (See Paragraph 14 above.) Inclusion of this amount in 1995  
21 will have no impact on electric rates.  
22 The settlement amount (\$35.28 million) for the SHAA  
23 will be transferred to the Electric Revenue Adjustment  
24 Mechanism (ERAM) on January 1, 1995 for amortization over the  
25 remaining life of the Helms plant (through 2034). The initial  
26 ensure the adoption of this settlement agreement.

1 amortization amount will be \$270 million (based on a short-term  
2 commercial paper rate of 4.8 percent) as of December 31, 1995.  
3 Since the short-term commercial paper rate will vary  
4 over time, the annual HAA amortization amount will be  
5 periodically adjusted to reflect such changes, but will not  
6 change the time period for the amortization of the account. If  
7 the HAA balance is fully amortized before 2034, PG&E would end  
8 amortization through an advice letter filing.  
9 In the event the Commission approves this Settlement  
10 Agreement, but does not act in time to include the Helms  
11 amounts in its decision on PG&E's 1995 attrition filing, PG&E  
12 shall include Helms rate base amounts in its 1995 rates and  
13 rate base when the settlement is approved. These amounts will  
14 be offset by a reduction in operating expenses so that 1995  
15 rates are not increased thereby and PG&E continues its 1995  
16 rate freeze.  
17 This Settlement Agreement is indivisible and each  
18 part is interdependent with each and all other parts. Either  
19 party may withdraw from this Settlement Agreement if the  
20 Commission modifies, deletes from, or adds to the terms set  
21 forth herein. The settling parties agree, however, to  
22 negotiate in good faith with regard to any Commission-ordered  
23 changes in order to restore the Settlement Agreement to an  
24 acceptable compromise document.  
25 The parties agree to extend their best efforts to  
26 ensure the adoption of this Settlement Agreement.

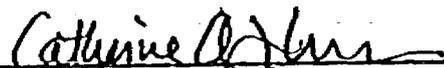
APPENDIX A

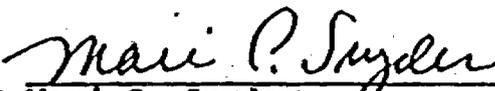
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23. The parties agree that the initial filing and the prepared testimony issued in this proceeding should be admitted into evidence by stipulation.

Dated this 4th day of October, 1994, at San Francisco, California.

Respectfully submitted,

  
Catherine A. Johnson  
Attorney at Law  
DIVISION OF RATEPAYERS  
ADVOCATES

  
Mari C. Snyder  
Attorney at Law  
PACIFIC GAS AND ELECTRIC  
COMPANY

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APPENDIX A

22. The parties agree that the initial filing and the prepared testimony issued in this proceeding should be admitted into evidence by stipulation.

Dated this 4th day of October, 1994, at San Francisco,

California.

Respectfully submitted,

*Marc C. Snyder*  
\_\_\_\_\_  
Marc C. Snyder  
Attorney at Law  
PACIFIC GAS AND ELECTRIC  
COMPANY

*Catherine A. Johnson*  
\_\_\_\_\_  
Catherine A. Johnson  
Attorney at Law  
DIVISION OF RATEPAYERS  
ADVOCATES

ATTACHMENT A

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PACIFIC GAS AND ELECTRIC COMPANY  
HELMS PROJECT WEIGHTED AVERAGE,  
BEGINNING OF YEAR RATE BASE AND HELMS ADJUSTMENT ACCOUNT

(Thousands of Dollars)

| LINE NO.  | DESCRIPTION                     | WEIGHTED AVERAGE |            |         | BEGINNING OF YEAR |            |         |         | LINE NO. |  |
|---|---------------------------------|------------------|------------|---------|-------------------|------------|---------|---------|----------|--|
|   |                                 | REQUEST          | SETTLEMENT |         | REQUEST           | SETTLEMENT |         |         |          |  |
|   |                                 | 1995             | 1995       | 1996    | 1995              | 1995       | 1996    | 1997    |          |  |
|   |                                 | (A)              | (B)        | (C)     | (D)               | (E)        | (F)     | (G)     |          |  |
| <b>WESTINGHOUSE</b>                             |                                 |                  |            |         |                   |            |         |         |          |  |
| 1   | Plant                           | 75,305           | 66,169     | 66,169  | 75,305            | 66,169     | 66,169  | 66,169  | 1        |  |
| 2   | Deferred Taxes                  | -3,003           | -1,376     | -1,475  | -2,900            | -1,326     | -1,426  | -1,524  | 2        |  |
| 3   | Deferred ITC                    | -1,277           | -525       | -510    | -1,250            | -532       | -518    | -503    | 3        |  |
| 4   | Normalized Tax Benefit          | -610             | -515       | -502    | -618              | -521       | -508    | -495    | 4        |  |
| 6   | Reserve                         | -17,939          | -15,728    | -17,183 | -17,111           | -15,000    | -16,456 | -17,911 | 6        |  |
| 7   | Rate Base                       | 52,476           | 48,025     | 46,499  | 53,426            | 48,790     | 47,261  | 45,736  | 7        |  |
| <b>OTHER PLANT COST UNRELATED TO LITIGATION</b> |                                 |                  |            |         |                   |            |         |         |          |  |
| 8   | Plant                           | 22,121           | 1,947      | 1,947   | 22,121            | 1,947      | 1,947   | 1,947   | 8        |  |
| 9   | Normalized Tax Benefit          | -10,197          | 0          | 0       | -10,326           | 0          | 0       | 0       | 9        |  |
| 10  | Reserve                         | -307             | -27        | -81     | 0                 | 0          | -54     | -108    | 10       |  |
| 11  | Rate Base                       | 11,617           | 1,920      | 1,856   | 11,795            | 1,947      | 1,893   | 1,839   | 11       |  |
| <b>TOTAL WESTINGHOUSE AND OTHER PLANT COST</b>  |                                 |                  |            |         |                   |            |         |         |          |  |
| 12  | Plant                           | 97,426           | 68,116     | 68,116  | 97,426            | 68,116     | 68,116  | 68,116  | 12       |  |
| 13  | Deferred Taxes                  | -3,003           | -1,376     | -1,475  | -2,900            | -1,326     | -1,426  | -1,524  | 13       |  |
| 14  | Deferred ITC                    | -1,277           | -525       | -510    | -1,250            | -532       | -518    | -503    | 14       |  |
| 15  | Normalized Tax Benefit          | -10,807          | -515       | -502    | -10,944           | -521       | -508    | -495    | 15       |  |
| 16  | Reserve                         | -18,246          | -15,755    | -17,264 | -17,111           | -15,000    | -16,510 | -18,019 | 16       |  |
| 17  | Total Rate Base                 | 64,093           | 49,945     | 48,365  | 65,221            | 50,737     | 49,154  | 47,575  | 17       |  |
| 18  | CPUC JURISDICTIONAL             | 62,741           | 49,938     | 47,334  | N/A               | N/A        | N/A     | N/A     | 18       |  |
| <b>UNAMORTIZED REGULATORY ASSET</b>             |                                 |                  |            |         |                   |            |         |         |          |  |
| 19  | Unamortized Regulatory Asset    | 132,357          | 14,780     | 14,406  | 134,032           | 14,967     | 14,593  | 14,593  | 19       |  |
| 20  | CPUC JURISDICTIONAL             | 128,474          | 14,396     | 14,032  | 130,100           | 14,578     | 14,214  | 14,214  | 20       |  |
| 21  | <b>HELMS ADJUSTMENT ACCOUNT</b> | N/A              | N/A        | N/A     | 65,194            | 35,280     | 34,973  | 34,652  | 21       |  |

Note: Shaded numbers are amounts discussed in paragraph 6.

Line 18, column B is referenced in paragraph 11.

Line 20, column B is referenced in paragraph 12.

Line 21, column E is referenced in paragraph 13.

(END OF APPENDIX A)