

Decision 96-09-042 September 4, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
PACIFIC GAS AND ELECTRIC COMPANY,)
for Authority to Revise its Gas)
Rates and Tariffs to be Effective)
by September 15, 1995, Pursuant to)
Decision Nos. 89-01-040, 90-09-089,)
91-05-029, 93-12-058 and 94-07-024.)

ORIGINAL

Application 94-11-015
(Filed November 8, 1994)

(U 39 G)

O P I N I O N

Summary

This decision implements a one-time refund of the 1988-1990 Canadian gas reasonableness disallowance ordered in Decision (D.) 94-03-050 for Pacific Gas and Electric Company's (PG&E) core-elect and core transport customers. The refund, to include interest up to the month of refund, will be approximately \$76.7 million.

We direct PG&E to complete this refund process in the most expeditious manner possible. Core customers have already received a refund of \$52.95 million, consisting of \$37.15 million in principal and \$15.8 million in interest.

We deny PG&E's requests that: (1) we should delay refunding this disallowance until PG&E has exhausted all its avenues of legal challenge to D.94-03-050 or (2) if we order PG&E to refund the disallowance prior to it exhausting all avenues of legal challenge, we should include in our decision specific assurance language proposed by PG&E. PG&E's request is speculative and premature. If PG&E should prevail in its legal challenge, it can then request appropriate relief.

Background

In D.94-03-050, the Commission denied PG&E recovery of \$90,133,000, plus interest, in Canadian gas costs incurred during

the period April 1, 1988 through December 31, 1990 on the basis of imprudence. We ordered that adjustments in revenue requirement, revenue allocation, rate design, and appropriate accounting entries associated with this disallowance should be considered in PG&E's next scheduled Biennial Cost Allocation Proceeding (BCAP).

In its next BCAP application, Application (A.) 94-11-015, PG&E proposed to refund the Canadian disallowance to customers in an inconsistent manner: core customers would receive a refund within the BCAP period while core transportation and core-elect customers would have their refund withheld until PG&E had exhausted all its legal challenges. No party addressed this inconsistency in its testimony and when the matter came to the Commission's attention in the comment period we decided, in D.95-12-053, that the issue should be examined further and addressed in a separate decision.

In D.96-02-074, in response to separate Petitions to Modify D.95-12-053 filed by PG&E and the Division of Ratepayer Advocates (DRA), we found it would be more efficient and timely to include the Canadian disallowance in the core's one-time refund of Purchased Gas Account (PGA) overcollections scheduled for March 1996 and to then proceed to a prehearing conference (PHC) to quickly address the consistency of treatment for core transportation and core-elect customers.

In D.96-02-074, we also discussed PG&E's argument that we should delay refunding the disallowance ordered in D.94-03-050 until PG&E had exhausted all its legal challenges.¹ We concluded that there was no legal merit to PG&E's position and, further, that it was poor public policy to allow any additional delay in

¹ PG&E presently has pending before the federal district court in San Francisco a suit challenging the Commission's exercise of authority in D.94-03-050.

refunding to customers the disallowed costs from the period of 1988 through 1990.

On February 27, 1996, PG&E filed a Motion for Clarification of D.96-02-074 on an Ex Parte or Shortened Response Basis. This motion requests that the Commission modify D.96-02-074 by March 13, 1996, to state that the disallowance is being refunded to customers although the refund may be subject to future recovery from customers pending the outcome of PG&E's challenge of the lawfulness of the Commission's disallowance in federal court. The Commission did not grant this motion. Core customers received refunds of \$51,317,000, plus applicable interest, on their March 1996 bills.

The refund procedure for core transportation and core-elect customers was discussed at PHCs on March 29 and April 26, 1996. The assigned administrative law judge directed PG&E to file a specific refund plan by May 10, 1996.

On May 10, 1996, PG&E filed its proposal in a "Motion for Inclusion of Assurance Language in the Commission's Decisions 95-12-053 and 96-02-074 And Any Future Decisions Ordering Refunds Pertaining to the 1988-1990 Disallowance Amount Ordered in D.94-03-050." DRA timely filed a response on June 10, 1996.

PG&E's Proposal

PG&E's refund plan is based on the methodology submitted in its original BCAP testimony. Refund amounts will include interest up to the month of the refund. PG&E provides three customer categories in its plan: its electric generation department (UEG); non-UEG core-elect customers; and core transport customers. PG&E's allocation methodology is shown in Appendix A.

The UEG refund amount was developed using the UEG's gas procurement amounts for the period of May 1988 through December 1990. The principal amount of \$33.78 million has accrued interest through May 1996 of an additional \$15.43 million. The refund will

be made by crediting the Energy Cost Adjustment Clause (ECAC) balancing account.

The non-UEG core-elect refund amount was developed based on its gas procurement amount during May 1988 through December 1990. The refund for each customer will be based on that customer's procurement amount in the same 1988-1990 period. Each customer's PG&E bill will be credited for the refund beginning within eight months of the Commission's approval of the refund plan.² In the event that a core-elect customer is no longer served by PG&E, that customer will receive a check for its refund amount. The principal amount is \$18.90 million, with \$8.14 million in accrued interest through May 1996.

The core transport refund is calculated in reference to the core customer refund made in March 1996. The total core portion, including core transport, of the 1988-1990 disallowance is based on the core's usage during the May 1988 through December 1990 period. The refund was allocated between core procurement and core transport customers and refunded to core procurement customers based on their most recent 11 months of usage, March 1995 through January 1996. PG&E proposes to use these same 11 months to calculate the core transport refund so that core transport customers who were procurement customers during the March 1995-January 1996 period do not receive refunds for more or less than 11 months of usage.

The refunds for core transport customers will be credited to each customer's bill on the first billing cycle after the refund plan is approved. The core transport principal is \$0.30 million, with \$0.14 million in accrued interest through May 1996.

² An eight-month period for processing the refund may be excessive but we have no record here to challenge it.

PG&E requests that the Commission include its proposed assurance language from its February 27, 1996 motion in any decision we issue that orders a refund of the remaining 1988-1990 disallowance. Specifically, PG&E requests that we modify the findings of D.95-12-053, D.96-02-074, and any future decision ordering a refund to include the following language:

1. the 1988-90 Canadian gas reasonableness disallowance ordered in D.94-03-050 is being refunded with the recognition that a review of the lawfulness of the CPUC's action in disallowing this amount for recovery through rates is being sought by PG&E in a case pending in federal court (Civil No.C944381); and that
2. the amounts refunded or to be recovered are amounts subject to recovery in rates through the operation of applicable balancing accounts. In the event that an applicable balancing account does not exist, PG&E may rebill its customers for the previously refunded amounts.

PG&E proposes that if the Commission does not include in its decision its requested assurance language, the core-elect and core transport refund amounts will be transferred to an escrow account pending the final outcome in federal court. PG&E states the UEG refund could be made with or without assurance language since the refund will be credited to the ECAC balancing account.

DRA filed its response to PG&E's proposal on June 10, 1996. It states PG&E should be required to refund, without further delay, the remainder of the Canadian disallowance and its refund plan, without assurance language, should be immediately implemented.

DRA opposes PG&E's request for assurance language. As in DRA's response to PG&E's earlier motion, DRA's position is that D.96-02-074 needs no further clarification. PG&E is not entitled to a contingency plan in the event it prevails in its federal court challenge of the Canadian disallowance and the Commission should not hold open the opportunity for PG&E to put into rates costs which we expressly found unreasonable in D.94-03-050.

Discussion

We agree with DRA that the Commission should deny PG&E's request to modify the findings of D.95-12-053, D.96-02-074, and this decision to include its proposed assurance language. Contrary to PG&E's assertions, there is no confusion about the intent and effect of our refund orders. PG&E's request is speculative and premature. If it should prevail in its legal challenge of D.94-03-050, it may then request appropriate relief.

Further, we are concerned that PG&E continues to propose delaying this refund, despite the Commission's warnings in D.96-02-074 (mimeo., page 5). Refunds to customers should be done in as timely a manner as possible. (See Federal Power Commission v. Tennessee Gas Transmission Company (1962) 371 U.S. 145, 155 83 S.Ct. 211, 9 L.Ed.2d 199.)

Therefore, we find PG&E should implement in the most expeditious manner possible a one-time refund of the 1988-1990 Canadian gas reasonableness disallowance ordered in D.94-03-050 for UEG, non-UEG core-elect, and core transport customers. The refund plan proposed by PG&E, without its proposed assurance language, is reasonable.

Findings of Fact

1. PG&E's request to modify the findings of D.95-12-053, D.96-02-074, and this decision to include its proposed assurance language is speculative and premature.

2. The refund plan proposed by PG&E, without any assurance language, is reasonable.

Conclusions of Law

1. PG&E's request for assurance language should be denied.
2. PG&E should refund in the most expeditious manner possible the disallowance ordered in D.94-03-050, with accrued interest up to the month of the refund, to its core-elect and core transport customers.

ORDER

IT IS ORDERED that Pacific Gas and Electric Company shall file an Advice Letter within 10 days to implement the one-time refund to core-elect and core transport customers in the manner set forth in this decision.

This order is effective today.

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

**MOTION OF PACIFIC GAS AND ELECTRIC COMPANY
FOR INCLUSION OF ASSURANCE LANGUAGE
IN THE COMMISSION'S DECISIONS NOS. 95-12-053 AND 96-02-074
AND ANY FUTURE DECISIONS ORDERING REFUNDS
PERTAINING TO THE 1988-1990 DISALLOWANCE AMOUNT
ORDERED IN D. 94-03-050**

TABLE A

Allocation of the Disallowance: Interest Updated Through May 1996

	<u>Principal</u>	<u>Interest to May 31, 1996</u>	<u>Total</u>
Core Transport	\$ 0.30 million	\$ 0.14 million	\$ 0.44 million
Core PGA	37.15 million	*	*
Core Elect PGA (non UEG)	18.90 million	8.14 million	27.04 million
Core Elect PGA (UEG)	<u>33.78 million</u>	<u>15.43 million</u>	<u>49.21 million</u>
Total Principal	<u>\$ 90.13 million</u>		
Total Pending Refunds	<u>\$ 52.98 million</u>	<u>\$ 23.71 million</u>	<u>\$ 76.69 million</u>

* The Core PGA amount was refunded in March 1996 per Advice Letter 1939-G.

(END OF APPENDIX A)