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Decision 97-02-018 February 5, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CASSANDRA BALLESTERO, et al.,)
)
 Complainant,)
)
 vs.)
)
 PACIFIC GAS & ELECTRIC COMPANY,)
)
 Defendant.)
 _____)

ORIGINAL

Case No. 94-12-051
(Filed December 30, 1994)

ORDER DENYING REHEARING OF DECISION 96-10-018

Summary

This order denies the Application for Rehearing of Cassandra Ballestero of Decision (D.) 96—10-018, which denied a complaint against Pacific Gas & Electric Company (PG&E) that the company's baseline rates for Kern County residential customers are unlawful. Applicant has demonstrated no legal error in our previous decision, which held that the baseline rates in question are lawful.

Background

Ballestero and 171 other PG&E customers jointly filed this complaint on December 30, 1994 pursuant to Public Utilities (PU) Code Section 1702. The original complaint sought increased "baseline" quantities of electricity for residents of Kern County and lower rates. Baseline is a quantity of electricity which is discounted for residential customers. In its request for rate relief, the complaint cited the harsh climate of Kern county, PG&E's high residential rates, and PG&E's high profits. In its answer to

the complaint, PG&E argued that the complaint fails to state a cause of action and that the issues should be considered in its general rate case for the test year 1996.

On May 25, 1995, Ballestero amended her complaint. The amended complaint alleges that PG&E has not properly implemented PU Code Section 739, which governs the establishment of baseline rates, because it has failed to take into account climatic conditions in Kern County.

PG&E responded to the amendment stating that the Commission has approved PG&E's baseline quantities and that those quantities have been in the upper end of the range required by law.

Issues raised by this complaint are normally subjects of the general rate case, as PG&E observes. The Commission declined to consolidate this matter with the general rate case for the convenience of the complainant and because the relief sought by the complaint is for Kern County only.

The bulk of Applicant's argument concerns the alleged failure of the Administrative Law Judge (ALJ) to require PG&E to provide certain evidence during the hearing and the further failure of the decision to specifically address that evidence.

The Applicant first alleges that the Commission committed legal error by failing to address PG&E's failure to provide raw microfiche data showing natural energy consumption for Kern County. However, the record indicates that PG&E did provide a compilation of the raw customer usage data for Kern County from 1985 to 1995 in its Data Response BTRO-3, Ex-5, Attachments A, B, and C. The company's failure to provide raw microfiche data of individual customer usage, as requested by Applicant does not, in any event, rise to the level of legal error, and would not have been probative of the issues in this case. Further, compiling such data would have been unduly burdensome, requiring some 50,000 pages to print out each customer's usage for the years in question.

Applicant next argues that the decision is in error for failure to address Applicant's request that the seasons be based upon "actual consumption" using the raw

data from 1984-1995. However, the adoption of Applicant's recommendation would not significantly alter the company's calculation of total usage by customers.

Complainant requested that PG&E provide a data report for actual energy consumption for Territory W, Tier 1 separated into increments of the four seasons from 1982 through 1995 as follows:

Fall:	September 30 to November 30
Winter:	December 1 to February 28
Spring:	March 1 to April 30
Summer:	May 1 to September 29

At present, PG&E is able to split billing periods which straddle two seasons so that the proper usage is put in the correct season. Exh. 2, 180:11-15. In its response to Data Request No. BTRO-3, PG&E explained that it did not have electricity use data for 1982 through 1984, or gas use data for 1982 through 1986. Exh. 5, Data Response CTRO-3 at 1. PG&E further responded that the Tier 1 usage for each season did not exactly correspond to actual usage for that season because, for data before 1989, usage from any billing period which straddled PG&E's summer and winter seasons was assigned entirely to either the summer or winter season with regard to the actual number of days that fell within each season. PG&E was unable to make an accurate division of sales requested by the Applicant between summer and fall, fall and winter, and winter and spring, and was able to make an accurate division only between spring and summer, which were split between April 30 and May 1, as are PG&E's winter and summer seasons.

Applicant next complains that the decision fails to address her request for a 10% increase in baseline quantifies for the summer season due to the harsh weather patterns in Kern County and the severity of air pollution in the area. However, the decision specifically addresses Applicant's request for a baseline increase at page 5 of D.96-10-018:

"Section 739 does not permit the Commission discretion to provide customers a higher baseline quantity than PG&E is providing to Kern County residents. If it did, however, our inquiry could not stop there. We would still need to consider the effects of increasing Kern County baseline amounts on other PG&E customers [S]etting a higher baseline quantity for Kern County residents would require us to offset the revenue loss by increasing rates to other customers. Nothing in the record of this proceeding supports such a shift in liability."

We have reviewed the decision in light of this request and conclude that it has been adequately addressed. The allegation is without merit.

Applicant next argues that the Commission erred in failing to consider that PG&E did not provide the raw customer usage data in assessing whether PG&E complied with PU Code Section 739. This question was squarely addressed by ALJ Malcolm in response to Applicant's request that the Kern County usage data provided by PG&E be stricken because the witness could not verify it personally. At page 177 of the transcript, she specifically found PG&E's testimony to be reasonable and held that the burden of proof to demonstrate unreasonableness was on Applicant. The Commission committed no legal error in this regard.

Complainant next argues that PG&E's failure to provide the requested input data for the computer models used to generate the evidence of baseline usage (i.e., the raw data of actual usage of PG&E customers in Territory W) constituted a violation of Title 20 *California Code of Regulations* Rule 74.3(a). What PG&E provided and relied upon were numbers produced and generated from computer generated models. Rule 74.3 requires that any party who submits testimony or exhibits which are based, in whole or in part, on a computer model shall provide to all parties the following information: (1) A description of the source of all input data; and (2) The complete set of input data (input file) as used in the sponsoring party's computer run(s). First, PG&E's figures for actual customer usage from 1985 to 1995 in Attachments A, B, and C in Exhibit 5 were not based on a computer model, but were actual raw data compiled

from PG&E's historical billing system using SAD programs. (TR. 173). The computer model used to generate the normalized usage figures used to calculate current baseline quantities was provided to the Commission when PG&E filed its 1993 General Rate Case Phase 2 testimony pursuant to Rule 74.3(a) of the Commission's Rules of Practice and Procedure. There is nothing in Rule 74.3 which requires a party to provide actual raw data; it only states that actual input data must be provided. PG&E provided this data. We conclude that there is no legal error here.

Applicant argues that by not providing raw microfiche customer usage data, she was unfairly precluded from rebutting the evidence or performing independent calculations. PG&E provided its input data in Exhibit 5, Attachments A, B, and C. Although this data was not in the form preferred by the Complainant, i.e., raw microfiche customer usage data, it was available to the Complainant for independent calculations. The Complainant has not suffered any prejudice as a result of the form in which PG&E provided its input data.

Applicant also argues that "the figures presented by PG&E from various computer models lacked proper foundation". However, extensive evidence was provided describing how the customer usage data was compiled, how the data were "normalized", and how, ultimately, total usage and baseline quantities were calculated. See Exh.3 at 5. This argument is simply without merit.

PG&E provided a lengthy description of the process by which it calculated baseline quantities, including a description of how differentials in energy use by climatic zone and season were taken into account by "normalizing" the data. Exh.3 at 5. Moreover, ALJ Malcolm made it patently clear that it was the Complainant's burden of proof to show that the evidence PG&E provided regarding the customer usage data used was in error.

Applicants next argument also relates to the data base used by the company and cited in the decision. Specifically, PG&E provided, as a check on the reasonableness of its calculations, statistics showing that many Kern County residents used no more than the designated baseline quantities during both summer and winter

months. In fact, testimony indicated that 41% of the monthly bills for a 12 month period fell within the baseline quantities.

Applicants next contention also lacks merit. It is that the record does not support the conclusion that PG&E's profits are not affected by the level of baseline quantities. However, as the Commission took great pain to spell out at page 5 of the decision, baseline rates are completely unrelated to PG&E's profits. As the decision states at page 5:

"Neither the establishment of baseline quantities nor the level of baseline rates, however, affect PG&E's profits. Rather, customers as a whole assume the costs and risk of baseline rates and quantities. Consequently, setting a higher baseline quantity for Kern County residents would require us to offset the revenue loss by increasing rates to other customers. Nothing in the record of this proceeding supports such a shift in liability between customer groups".

Applicant's final argument, made for the first time in this Application, is that ALJ Malcolm should have recused herself because of similar rulings in prior proceedings involving PG&E.

Having ruled on similar issues in the past is not necessarily a basis for an administrative law judge to disqualify herself. People v. Yeager (1961) 53 C2d 374. In fact, ALJ Malcolm had not previously ruled on this issue with respect to PG&E. In PG&E's 1996 General Rate Case, ALJ Weissman ruled on baseline quantities proposed by PG&E. See Proposed Decision, A.94-12-005 (June 14, 1996). ALJ Malcolm ruled on the total revenue requirement in PG&E's 1996 General Rate Case but not baseline quantities. See Proposed Decision, A.94-12-005 (Oct. 31, 1995). As such, there was no need for her to disqualify herself from this proceeding.

Conclusion

Applicant has demonstrated no legal or factual error in our prior Decision No. 96-10-018 and her Application for Rehearing should be denied.

IT IS ORDERED that:

The Application for Rehearing is denied.

This order is effective today.

Dated February 5, 1997, at San Francisco, California.

P. GREGORY CONLON
President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners