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Decision 97-04-047 April 9, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SIERRA PACIFIC POWER COMPANY, SIERRA PACIFIC RESOURCES, THE WASHINGTON WATER POWER COMPANY, AND RESOURCES WEST ENERGY CORPORATION for an order authorizing the merger of SIERRA PACIFIC POWER COMPANY AND WASHINGTON WATER POWER COMPANY into RESOURCES WEST ENERGY CORPORATION authorizing the issuance of securities, assumption of obligations, adoption of tariffs, and transfer of certificates of public necessity and convenience.

Application 94-08-043
(Filed August 29, 1994)

ORIGINAL

OPINION ON PETITION FOR MODIFICATION

1. Summary

By a joint petition filed on February 3, 1997, the Office of Ratepayer Advocates (ORA) and The Washington Water Power Company (WWP) request modification of Decision (D.) 96-05-059 to provide for a freeze of WWP's gas rates through December 31, 2000; an extension of the date for WWP to file a general rate case (GRC) application until January 2000; suspension of balancing account mechanisms; and a \$1 million customer billing credit. This order grants the joint petition, provided that the Commission may order changes in WWP's rates effective any time after 1999, following investigation of WWP's rates and charges on the Commission's own motion. In addition, provision is made for adjustments to WWP's rates in the event of certain uncontrollable and unforeseeable events, as defined.

2. Background

By D.96-05-059 dated May 22, 1996, the Commission ordered modifications to D.95-10-045, the underlying decision in this docket which conditionally authorized the merger of Sierra Pacific Power Company (Sierra), its parent Sierra Pacific Resources, and WWP into Resources West Energy Corporation. The merged company's rates were

ordered frozen through the end of 1999, and preexisting requirements that the merged company file GRC, cost of capital, and offset applications were waived until 1999.

D.95-10-045 also ordered Sierra and WWP to file GRC applications for test year 1997 in the event the merger was not consummated by March 31, 1996. Ordering Paragraph 11 of D.95-10-045 provided that WWP was to file such application not later than 30 days after March 31, 1996.

On November 29, 1995 the Federal Energy Regulatory Commission (FERC) ordered hearings on the proposed merger. Hearings were scheduled to commence in June 1996. Because FERC approval was required to consummate the merger, and such approval could not be obtained by March 31, 1996, the merger applicants filed a petition to modify D.95-10-045 to extend the time for consummation of the merger. That petition led to the issuance of D.96-05-059.

As applicable here, D.96-05-059 did several things. First, the deadline for rate filings required in the event the merger failed was extended until 60 days after the date of disapproval or cancellation of the merger.¹ Second, the Commission retained the rate freeze plan set forth in D.95-10-045, Appendix A, but modified the terms of that freeze by extending it for a year or two depending on the effective date of the merger. Finally, the Commission addressed its concerns with freezing the merged company's rates for an extended period by reserving the right to institute an investigation of WWP's rates and order changes in those rates after December 31, 1999.

On June 28, 1996, one day after FERC hearings on the merger were completed, WWP terminated its merger agreement with Sierra. By letter dated July 23, 1996, and in accordance with Rule 48(b) of the Rules of Practice and Procedure, WWP requested an extension of time to December 31, 1996 in which to file the required GRC application.

¹Specifically, as to WWP, Ordering Paragraph 5 of D.96-05-059 modified Ordering Paragraph 11 of D.95-10-045 to read as follows: "11. If the merger authorized by this order is disapproved or cancelled, WWP shall file a GRC application including a PBR [performance-based ratemaking] mechanism within 60 days of the date of disapproval or cancellation."

The Executive Director granted the extension by letter dated July 26, 1996. Upon WWP's request, the Executive Director granted further extensions pending this order.

3. Petition for Modification

WWP and ORA propose modifications to Ordering Paragraph 5 of D.96-05-059 to provide as follows:

1. WWP's current gas rates will be frozen through December 31, 2000.
2. WWP will file a GRC application, including a cost of capital filing and a Performance-Based Ratemaking Mechanism (PBR), by January 2000 for implementation January 2001.
3. WWP will refund to customers \$1,000,000 of balancing account over-collections through a one-time credit to customer bills within 2 months from the date of Commission approval of this petition. The credit shall be carried over from month to month until used.
4. Purchased Gas Adjustment, California Alternate Rates for Energy, and Conservation Financing Account balancing account balances and balancing rates shall be set to zero subsequent to the issuance to customers of the bill credit noted in Item 3 above, and the associated balancing account mechanisms will be suspended during the rate freeze.

4. Discussion

WWP and ORA are the only parties to the gas rate issues affected by the joint petition. The petition was served on Sierra, the only other active party to this proceeding, and was noticed on the Commission's calendar on February 5, 1997. No responses have been received. Hearings on the petition are not necessary.

Among other things, termination of the merger on June 28, 1996 triggered the GRC filing requirement of Ordering Paragraph 11 of D.95-10-045, as modified by D.96-05-059. Now, in lieu of the required GRC filing, WWP and ORA propose an extended four-year rate freeze (1997 through 2000) and a corresponding extension of the filing date for WWP's next GRC application. We note that if the Sierra/WWP merger had been consummated, a rate freeze would have been in effect through the end of either 2000 or 2001 depending on the effective date of the merger, and the rate case filing deadlines would have been extended accordingly. Joint petitioners in effect seek

approval of a rate freeze plan similar to that which would have been implemented with the merger.

In support of the proposal, joint petitioners assert that ORA conducted its own investigation into WWP's gas rates and determined that granting the petition would be in the public interest. Joint petitioners further assert that WWP's gas rates are at or near the lowest in the State of California, and that WWP is committed to maintain that relationship.

The \$1 million balancing account refund, to be implemented through a one-time billing credit, was not a component of the previously approved rate freeze plan. This credit represents an additional benefit to WWP's ratepayers not previously contemplated in this proceeding. We note that joint petitioners assert that the refund provision is consistent with Commission policy which favors refunding balancing account over-collections as a one-time refund.

We find the rate freeze and GRC deferral, combined with the refund provision, to be reasonable under the circumstances. We also find it consistent with the narrow proposal of the joint petitioners and therefore reasonable to include applicable terms and conditions of the previously-approved rate freeze plan. We explained in D.96-05-059 why simply freezing rates and forgoing comprehensive rate reviews do not necessarily benefit ratepayers. There, taking into account our interest in implementing PBR mechanisms as well as our concerns over the uncertain cumulative effects of forgoing GRCs, we declined to unconditionally approve the proposed rate freeze. Instead, we adopted

"an approach that we believe is more consistent with the merger decision. We will approve the extended gas and electric rate freezes but with the added provision that we may on our own motion initiate an investigation into the rates and charges of the merged utility, and order changes in those rates effective any time after December 31, 1999. Such investigation may include consideration of PBR mechanisms. In the absence of such investigation, it is our intention that the rate freezes will be extended as [proposed], subject to the limitation on the Commission's authority to bind future Commissions as stated in D.95-10-045, Finding of Fact 16." (D.96-05-059, p. 11.)

We will grant the joint petition using the same approach taken before in D.95-10-045 as modified by D.96-05-059.² Accordingly, we reserve the right to initiate an investigation and, based on such investigation, order rate changes effective any time after December 31, 1999. Also, as we did in D.96-05-059, we reserve the right to consider PBR mechanisms for WWP before the end of the rate freeze period and implement such mechanisms at the earliest date consistent with the rate freeze.

The rate freeze plan adopted by D.95-10-045 allowed the merged company to file requests with the Commission for recovery of costs related to unforeseeable and uncontrollable events which have a significant impact on the company, defined as having a 200 basis points or greater impact based upon WWP's 1995 recorded rate of return on its gas operation. The Division of Ratepayer Advocates (ORA's predecessor) was given the right to seek an adjustment to flow through to customers major decreases in unforeseeable and uncontrollable costs. Also, the rate freeze explicitly allowed the merged company to lower rates for any class of customers as long as rates for other customers remained frozen. D.96-05-059 continued these provisions in effect in large part while modifying other terms of the rate freeze plan.³ To provide for a comprehensive and balanced rate freeze plan which we believe is consistent with the intent of the joint petitioners, we will provide an off-ramp for unforeseeable and uncontrollable events based on that adopted for the merged company. We will also

² We also note that in many respects the instant petition is similar to a recent joint petition by ORA and Sierra for a freeze of Sierra's electric rates and deferral of regulatory filings by Sierra. That joint petition was approved, subject to additional provisions, by D.96-12-084 dated December 20, 1996. Today's order generally follows the same approach taken in D.96-12-084 with respect to these provisions.

³ The April 2, 1996 "Settlement Agreement and Joint Motion for Adoption of Settlement Agreement," considered as a joint petition and approved as such by the Commission (D.96-05-059, Ordering Paragraph 1), provided at page 5 that "[t]he terms of this section are intended to support the modification of D.95-10-045. Except in those instances where provisions of the Application Settlement Agreement (Appendix A [of D.95-10-045]) have been altered to support modification, the provisions of Appendix A remain in full force and effect as approved by the Commission." See also Ordering Paragraph 7 of D.96-05-059.

allow the utility to reduce rates for classes of customers as long as other customers' rates remain frozen.

With the reservations and clarification addressed in the foregoing discussion, we agree with ORA that approving the joint petition is in the public interest. Ordering Paragraph 5 of D.96-05-059 modified Ordering Paragraph 11 of D.95-10-045. As a technical matter, we will, for clarity, vacate Ordering Paragraph 5 of D.96-05-059 and order further modification of D.95-10-045, Ordering Paragraph 11.

Findings of Fact

1. On June 28, 1996 WWP terminated the Merger Agreement conditionally approved by D.95-10-045.
2. WWP is required to file a GRC application unless we modify D.96-05-059 to remove the requirement.
3. No responses to the joint petition of WWP and ORA have been received, and hearings on the petition are not necessary.
4. ORA conducted an investigation into WWP's gas rates and determined that granting the petition would be in the public interest.
5. By virtue of the proposed freeze of WWP's rates in combination with the \$1 million billing credit, WWP's ratepayers will receive benefits exceeding those that had been anticipated under the failed merger.
6. An unconditional rate freeze through the end of 2000 has not been shown to be justified or warranted.

Conclusions of Law

1. The rate freeze plan proposed by WWP and ORA, including the \$1 million billing credit, should be approved, provided that the Commission may modify or rescind the rate freeze and require regulatory filings as necessary and appropriate effective any time after 1999 following investigation of WWP's rates and charges on the Commission's own motion.
2. The joint petition should be granted as provided in the following order.

3. This order should be made effective on the date signed so that the rate freeze plan and billing credit adopted herein may become effective, and the GRC filing required by D.95-10-045, as modified, need not be made.

O R D E R

IT IS ORDERED that:

1. The joint petition of the Office of Ratepayer Advocates and The Washington Water Power Company (WWP) for modification of Decision (D.) 96-05-059 is granted as provided in this order.

2. Ordering Paragraph 5 of D.96-05-059 is vacated.

3. Ordering Paragraph 11 of D.95-10-045 is modified to read as follows:

"11. If the merger authorized by this order is disapproved or cancelled, the following rate plan is adopted for WWP:

"a. WWP's California gas rates will remain frozen through December 31, 2000, provided that the Commission may modify or rescind the rate freeze as may be necessary and appropriate effective any time after December 31, 1999 following investigation on the Commission's own motion.

"b. Subject to further order of the Commission modifying generic rate case filing requirements applicable to gas corporations, WWP shall file a General Rate Case application which includes a cost of capital filing and a Performance-Based Ratemaking Mechanism by January, 2000 for implementation January 1, 2001.

"c. WWP will refund to its California customers \$1,000,000 of balancing account over-collections through a one-time credit to customer bills within 2 months from the date of Commission approval of this petition. The credit shall be carried over from month to month until used.

"d. WWP's Purchased Gas Adjustment, California Alternate Rates for Energy and Conservation Financing Account balancing account balances and balancing rates shall be set to zero subsequent to the issuance to customers of the bill credit noted above, and the associated balancing account mechanisms will be suspended during the rate freeze.

"e. Notwithstanding the rate freeze adopted by this order, WWP may file for recovery of costs related to unforeseeable and uncontrollable events which have a significant impact on the company, defined as having a 200 basis points or greater impact on WWP's 1995 recorded rate of return for gas operations, and as set forth in D.95-10-045, Appendix B; and the Office of Ratepayer Advocates may file for an adjustment to flow through to customers major decreases in costs as set forth in D.95-10-045, Appendix B.

"f. Notwithstanding the rate freeze adopted by this order, WWP may file to lower rates for any class of customers as long as rates for other customers remain frozen."

4. Application 94-08-043 is closed.

This order is effective today.

Dated April 9, 1997, at San Francisco, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners