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Decision 97-05-034 May 8, 1997

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the Utility Reform)
Network for Rehearing and)
Immediate Stay of Resolution)
G-3205)
_____)

Application 97-03-039
(Filed March 24, 1997)

OPINION

Summary

By this order we resolve the issues raised by The Utility Reform Network (TURN) in its application for rehearing of Resolution (Res.) G-3205 which modified portions of Pacific Gas and Electric Company's (PG&E) Advice Letter (AL) 1987-G.

This order resumes the refund of the Purchased Gas Account (PGA) overcollection, amortizes the Core Fixed Cost Account (CFCA) undercollection balance as of April 30, 1996 over 12 months, and credits those customers who were charged gas rates adopted by Res. G-3205. The amortization of the CFCA will result in an increase in gas rates of 9.5% for residential customers.

Background

By Res. G-3205 (March 18, 1997), we approved with modifications AL 1987-G, filed November 15, 1996, by PG&E. The Resolution ordered a one-time refund due to an overcollection in the PGA account, together with an increase in gas rates to core customers of approximately 22% for residential customers and of approximately 31% for large commercial core customers, to recover an undercollection in the CFCA. Specifically, the modifications were:

1. A change in the Weighted Average Cost of Gas (WACOG) from the \$1.41/decatherm requested in the AL to \$1.71/decatherm, the estimate previously adopted in Decision (D.) 95-12-053.

2. A direct refund of the PGA as recommended by Protestants Enserch Energy Services, Incorporated (Enserch) and Enron Capital Trading Resources (Enron), instead of the amortization proposed by PG&E.
3. Amortization of the Core Fixed Cost Account (CFCA) over 9 months (end of year 1997) rather than twelve months to March 1998.

PG&E began implementation of Res. G-3205 on March 26, 1997.

On March 24, 1997 TURN filed an application for immediate stay of that order and for rehearing. TURN alleged that notice and an opportunity to be heard were not provided as required by General Order 96-A and Public Utilities Code (PU Code) §454 because the Resolution resulted in an order not requested or contemplated by the parties to AL 1897-G.

The Office of Ratepayer Advocates (ORA) filed a Response in Support of TURN's Application on March 28, 1997. A response was also filed by PG&E on March 31, 1997. We issued a stay of the Resolution pending further action on March 31, 1997.

Before the stay was implemented, PG&E had made refunds to approximately one million customers, and they had billed some customers the increased rates for one to seven days, depending on where the customer was in the billing cycle.

On April 9, 1997, we issued D. 97-04-052 which extended our stay of March 31, 1997 pending further action by the Commission and granted rehearing of Res. G-3205. In addition, all parties were ordered to file comments on Res. G-3205 on or before 12 noon on April 25, 1997. Those parties requesting an oral hearing were to identify, in detail, the precise issues for which they believed an evidentiary hearing would be required and to state the reasons why they believed such a hearing would be necessary.

Timely comments were filed by Amoco Production Company and Amoco Energy Trading Corporation (Amoco); Enserch; and jointly by PG&E, ORA, and TURN (Joint Parties). No commentator requested evidentiary hearings.

Positions of the Parties

Amoco

Amoco urges the Commission to direct a one-time refund of the PGA overcollection and to ensure that the prospective core portfolio price is based on a forecast that reasonably reflects market conditions.

They argue the one-time refund of the PGA overcollection does not produce an unfair result for core customers. As to the mitigation of the rate impact of the CFCA, Amoco urges the Commission to "consider all reasonable alternatives to mitigate the impact on core customers."

Enserch

Enserch makes two points in its comments.

First, the Commission should affirm its decision to order PG&E to make a one-time refund of the overcollected balance in its core PGA by adhering to its policy of sending correct and accurate market signals to its customers and market participants.

Second, the Commission should ensure that the forecast annual WACOG reflects current price forecasts for 1997. Enserch notes that the current overcollection in PG&E's core PGA is attributable to the forecast annual WACOG approach. Enserch urges the Commission to approve expeditiously PG&E's application to consider core gas sales on a monthly basis (Application (A.) 97-02-005).

PG&E, TURN, and ORA (Joint Parties)

The joint parties make the following comments:

1. Do not recoup the refund (PGA) from customers who have already received it.
2. Continue the refund (PGA) starting at the same place in the billing cycle in June where it stopped on April 1, 1997.
3. Adopt a 12-month amortization of the April 30, 1996 balance in the CFCA shown as Option (5) which was attached to the Joint Parties comments.

4. Adopt \$1.63 per decatherm WACOG which reflects a more recent forecast for 1997, and not the \$1.41 per decatherm originally proposed in AL 1987-G.

The Joint Parties acknowledge that Option (5) will leave a substantial undercollection in the CFCA for the period after April 30, 1996. The Joint Parties recommend the recovery of this undercollection be considered in PG&E's Biennial Cost Allocation Procedure (BCAP) (A. 97-02-005) which has had its schedule delayed until the Commission acts on PG&E's Gas Accord filing (A. 92-12-043 et al.).

Finally the Joint Parties ask clarification of how to treat PG&E's gas customers who were billed at the higher rates adopted in Res. G-3205 from March 26, 1997 through April 1, 1997.

The Joint Parties offer two alternatives for the Commission to consider:

1. Order a retroactive billing adjustment to the approximately one million gas customers who were billed during this period at the rates adopted in Res. G-3205.
2. Make no rebilling adjustment to the bills of these one million customers for gas use during the period March 26, 1997 through April 1, 1997.

The Joint Parties part ways on whether the Commission should adopt either Alternative 1 or 2. PG&E points to the difficulty and cost of manual billing adjustments which would take about six months to implement fully.

TURN and ORA, though sympathetic with the burden of refunding bills to the one million gas customers, believe that alternative 2 is both unlawful and unfair. As to the legality, they cite in part the Commission's own language:

"...(n)either the parties to this proceeding nor PG&E's customers were given sufficient notice that a substantial increase in gas rates to the company's core and large commercial customers would result" (D.97-04-052, slip opinion at p.1).

TURN and ORA argue that since the gas rate increase ordered by Res. G-3205 was unlawful, so too were the rates collected pursuant to that order. TURN and ORA cite PU Code §1736 and Commission orders¹. As to unfairness, TURN and ORA believe it is not right that customers should be disadvantaged only because their billing cycles occurred during the period from March 26 to April 1.

PG&E says that it "does not necessarily endorse TURN and ORA's position [on the retroactive billing adjustment]. PG&E has been unable to find similar historical circumstances that may provide guiding [precedent]... [PG&E does ask for reliance on] the Commission's interpretation of the intent of PU Code §§ 451, 453, 532 and 728."

Discussion

When we issued Res. G-3205 on March 18, 1997, we were concerned about the rate increase. Since then, we have stayed Res. G-3205 on March 31, 1997 and invited comments on Res. G-3205 on April 9, 1997.

We now have a record and parties have been noticed and heard. We are now ready to reconsider Res. G-3205. The issues we need to consider are:

1. The PGA overcollection and its disposition.
2. The CFCA undercollection and its disposition.
3. The forecasted WACOG for the rest of 1997.
4. Treatment of the customers billed at the gas rates adopted in Res. G-3205 from March 26, 1997 through April 1, 1997.

PGA

No party disputes our allowing customers to retain the PGA refunds provided from March 26, 1997 through April 1, 1997 or directing PG&E to resume the refund as soon as practicable after we issue this order. We will allow those customers who have received a

¹ D. 95-05-005, Conclusion of Law 1, p.9 and pp.5-8; D. 87827, 82 CPUC 517, 523.

refund to keep it. We will also order the PGA refund to resume within 30 days and to continue until all eligible customers have received their refund.

CFCA

The Joint Parties offered the most substantive commentary on recouping the CFCA undercollection. They offer a 12 month amortization rather than the nine month amortization that we adopted in Res. G-3205.

We agree with the Joint Parties that a 12 month amortization period is appropriate. Circumstances have changed since March 18, 1997. PG&E will not be able to start rebilling until May or June. The rationale behind the 9 month amortization was to have the undercollection completed by the end of the year, prior to implementation of PG&E's BCAP for 1998 (A. 97-03-002). That point is now moot. PG&E's BCAP has been delayed until we consider PG&E's Gas Accord. Moreover, compressing the amortization into the remaining six months of 1997 only exacerbates the concerns about a dramatic rate spike affecting core gas customers.

We will adopt the Joint Parties recommendation for recovery of the CFCA undercollection.

Forecasted WACOG

The Joint Parties recommend a forecasted WACOG of \$1.63/decatherm. Amoco and Enserch do not recommend a specific amount in their comments, but, urge the Commission to reflect current market conditions. We will adopt the Joint Parties recommendation of \$1.63/decatherm for the WACOG, since it is based on later information on gas prices.

Customer Billings (March 26 through April 1)

In the Joint Parties' comments, TURN and ORA argue that PG&E should grant a billing adjustment to those customers who were charged at the gas rates adopted in Res. G-3205 from March 26 to April 1. PG&E does not necessarily endorse TURN and ORA's position. PG&E, however, is unable to cite any specific Commission decisions supporting its position. PG&E does cite the intent of PU Code §§ 451, 453, 532 and

728². As explained in the preceding footnote, the references cited by the parties tend to support ORA and TURN, rather than PG&E. Accordingly, we will order PG&E to credit those customers who were billed at the rates adopted in Res. G-3205 with the difference between the G-3205 gas rates and the gas rates in effect on March 25, 1997. PG&E should credit these customers' bills within 6 months.

Findings of Fact

1. In response to D. 97-04-052, timely comments were filed by Amoco; Enserch, and jointly by PG&E, the ORA, and TURN (Joint Parties).
2. No commentor requested evidentiary hearings.
3. Amoco urges a direct one-time refund of the PGA overcollection.
4. Enserch also asks a one-time refund of the PGA overcollection.
5. Enserch requests the adoption of the WACOG that reflects current price forecasts for 1997.
6. The Joint Parties ask:
 - a) Not to recoup the refund (PGA) from customers who have already received it.
 - b) To continue the refund (PGA) starting at the same place in the billing cycle in June where it stopped on April 1, 1997.
 - c) To adopt a twelve month amortization of the April 30, 1996 balance in the CFCA shown as Option (5) which was attached to the Joint Parties comments.

² Section 451 requires just and reasonable rates; Section 453 requires non-discriminatory rates; Section 532 requires the collection of tariffed rates, unless the Commission grants an exception; and Section 728 in certain situations requires the Commission to set rates on a prospective basis only. The cases cited by ORA and TURN and City of Los Angeles v. Public Utilities Commission (1975) 15Cal.3d, 680, 705-06 show that rate orders issued in response to applications for rehearing may go back to the date of the original decision. See also Southern Cal. Edison Co. v. Public Utilities Commission (1978) 20.Cal.3d 813 (limiting rule against retroactive rate making).

- d) To adopt \$1.63 per decatherm WACOG which reflects a more recent forecast for 1997, and not the \$1.71 per decatherm adopted in Res. G-3205.
7. The Joint Parties offer two alternatives for treating gas customers billed from March 26, 1997 through April 1, 1997:
- a) Order a retroactive billing adjustment to the approximately one million gas customers who were billed during this period at the rates adopted in Res. G-3205.
 - b) Make no rebilling adjustment to the bills of these one million customers for gas use during the period March 26, 1997 through April 1, 1997.

Conclusions of Law

1. PG&E should not recoup the PGA refund from customers who have already received it.
2. PG&E should resume the PGA refund within 30 days and continue it until all eligible customers have received their refund.
3. Beginning on or before July 1, 1997, PG&E should amortize over a 12 month period, in gas rates, the undercollection balance in the CFCA as of April 30, 1996.
4. PG&E should establish a core WACOG of \$1.63 per decatherm.
5. PG&E should credit those gas customers who were billed at the gas rates adopted in Res. G-3205 during the period March 26, 1997 through April 1, 1997 within six months of the effective of this order.
6. This order should be made effective immediately to expedite the refunds, billings, and crediting to PG&E's gas customers.

IT IS ORDERED THAT:

1. Pacific Gas and Electric Company (PG&E) shall:
 - a) not recoup the Purchase Gas Account (PGA) refund from customers who have already received it.
 - b) resume the PGA refund within 30 days.
 - c) amortize over a twelve month period, in gas rates, the undercollection balance as of April 30, 1996 in the Core Fixed Cost Account.
 - d) establish a core Weighted Average Cost of Gas of \$1.63 per decatherm.
 - e) credit those gas customers who were billed at the gas rates adopted in Resolution Res. G-3205 during the period March 26, 1997 through April 1, 1997, within six months of the effective date of this order.
2. PG&E shall file an Advice Letter on or before July 1, 1997 with gas rates that implement this order. The Advice Letter shall be effective on filing.
3. PG&E shall submit a PGA refund report to the Director of the Energy Division within 60 days after completion of the refund.
4. PG&E shall submit a report to the Director of the Energy Division on the rebilling of the customers from March 26, 1997 through April 1, 1997 within 60 days of the completion of the rebilling.
5. Application 97-03-039 is closed.

This order is effective today.

Dated May 6, 1997 at San Francisco, California

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners