

JUL 18 1997

Decision 97-07-052 July 16, 1997

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and )  
Electric Company for Authority to )  
Adjust its Electric Rates Effective )  
January 1, 1997, and for Commission )  
Order Finding That Electric and Gas )  
Operations During the Reasonableness )  
Review Period from January 1, 1995 )  
to December 31, 1995 Were Prudent. )

Application 96-04-001  
(Filed April 1, 1996)

(See Decision 96-12-080 for Appearances.)

SECOND INTERIM OPINION

Summary

The decision approves the treatment of electric operations reasonableness issues presented in an exhibit (joint exhibit) containing joint testimony of Pacific Gas and Electric Company (PG&E) and the Office of Ratepayer Advocates (ORA). The joint exhibit resolves almost all electric operations reasonableness issues for the review period from January 1, 1995 to December 31, 1995. According to the joint exhibit, PG&E agrees to reduce its Energy Cost Adjustment Clause (ECAC) balancing account by \$15.9 million, and ORA agrees to compromise on certain issues set forth in its ECAC reasonableness testimony.

Procedural Background

On April 1, 1996, PG&E filed this application requesting authority to adjust its electric rates and for a reasonableness review of its electric and gas operations during 1995. Along with its application, PG&E filed its testimony and related workpapers in accordance with the rate case plan adopted in Decision (D.) 89-01-040. As required by the rate case plan, on June 11, 1996, PG&E served its June Update and related workpapers, which updated PG&E's sales forecast, resource mix, gas costs,

qualifying facilities (QFs) expenses, and recorded balancing account balances.

The Commission issued D.96-12-030 in the forecast phase of this proceeding. This decision reviews the reasonableness of PG&E's electric operations for the year 1995. Review of PG&E's gas operations will be covered in a separate phase of this proceeding.

ORA evaluated the reasonableness of PG&E's operations and issued its report on November 27, 1996. PG&E filed its rebuttal testimony to ORA's.

PG&E and ORA are the only active parties in this phase of the proceeding.

#### Hearing

In accordance with the adopted schedule for the reasonableness phase of this proceeding, Administrative Law Judge (ALJ) Garde convened a prehearing conference (PHC) on February 6, 1997. Evidentiary hearing in the reasonableness review phase was held on February 27, 1997. The matter was submitted on February 28, 1997 upon receipt of the transcript.

At the PHC, PG&E stated that there were five outstanding issues between PG&E and ORA and that PG&E and ORA are attempting to resolve them.

#### Resolution of the Issues

The five outstanding issues between PG&E and ORA are:

1. Economy energy sales and backdown order.
2. 1990 Campbell fire.
3. Electric direct refund of \$49.7 million.
4. Utility electric generation's (UEG) Transwestern contract charge.
5. Yolo QF charge.

During the evidentiary hearing, PG&E and ORA offered a joint exhibit (Exhibit 50) which contains joint recommendations

regarding resolution of the outstanding issues between PG&E and ORA.

Other than the issues discussed in the joint exhibit, ORA recommends that the Commission find PG&E's electric operations for 1995 to be reasonable.

Following is a brief discussion of each issue.

Economy Energy Sales and Backdown Order

Economy energy is the energy purchased by one utility from another when it is more cost-effective to buy energy than to generate it using the purchasing utility's own system, given the available resource mix. Economy energy is nonfirm and is subject to interruption. PG&E both buys and sells economy energy. Because of good hydro conditions, during the 1995 record period, PG&E's economy energy sales were 532,266 megawatt-hours (MWh).

ORA contends that PG&E economy energy sales were unreasonable because PG&E made its economy energy sales during hydro spill conditions, which is contrary to the terms of the Diablo Canyon Nuclear Power Plant (Diablo Canyon) settlement agreement.

The settlement agreement refers to the rate case settlement that adopted performance-based ratemaking instead of traditional cost-based ratemaking for Diablo Canyon. Paragraph 11 of Appendix C of the settlement agreement provides the following:

"PG&E shall have the right and obligation to purchase all Diablo Canyon output, except to during the hydro spill conditions. During hydro spill conditions, ratepayers shall not pay for Diablo Canyon output to the extent of the hydro spill. PG&E shall, however, have the right during such conditions to sell Diablo output."

The above provision of the settlement agreement prohibits PG&E from charging ratepayers for power generated at Diablo Canyon during hydro spill conditions. During hydro spill conditions, PG&E may

either backdown power production at Diablo Canyon or sell excess Diablo Canyon power output to entities other than ratepayers.

ORA contends that hydro spill conditions existed during 1995 and that while PG&E was selling low-cost hydro energy off-system, it continued to charge ratepayers for more expensive power from Diablo Canyon. ORA recommends a disallowance of \$13.2 million.

ORA's predecessor, the Division of Ratepayer Advocates (DRA), made a similar recommendation in Application (A.) 94-04-002, for the reasonable review of PG&E's electric operations during the 1993 record period.

While PG&E disagrees with ORA's position regarding economy energy sales and backdown of power production at Diablo Canyon, it does not dispute the calculation of proposed disallowance at issue.

A Commission decision is pending in A.94-04-002. PG&E recommends that the Commission defer ruling on PG&E's economy energy sales for the 1995 record period until the Commission rules on the same issue in A.94-04-002.

ORA and PG&E agree that the policy adopted regarding this issue in A.94-04-002 be applied in this proceeding.

Campbell Fire

In PG&E's 1991 record year ECAC proceeding (A.92-04-001) the Commission deferred consideration of PG&E's responsibility and liability for a 120-acre fire which occurred in August 1990 (the Campbell fire). The California Department of Forestry and Fire Protection (CDF) brought a lawsuit against PG&E alleging that "PG&E's failure to maintain proper clearance of vegetation from around a transmission line resulted in the discharge of electricity to the tree. This caused the tree and vegetation to ignite."

The Commission issued D.94-03-074 in A.92-04-001. Conclusion of Law 4 of that decision states that:

"The reasonableness of PG&E's operation of its intertie involved in the 1990 Campbell fire

should be addressed in a future reasonableness proceeding following resolution of the lawsuit brought by the California Department of Forestry and Fire Protection."

PG&E reached a settlement with CDF in August 1994. ORA contends that since the CDF lawsuit has been settled, PG&E should have addressed the reasonableness of its actions in connection with the transmission intertie involved in the Campbell fire in this proceeding.

PG&E states that while the CDF lawsuit has been settled, there are other lawsuits<sup>1</sup> brought against PG&E in connection with the Campbell fire. PG&E recommends that a review of PG&E's actions in connection with the Campbell fire be deferred until the currently pending lawsuits are resolved.

In the joint exhibit, ORA agrees with PG&E that this issue should be deferred. However, PG&E and ORA disagree on where the issue should be addressed. ORA states that the underlying issue is PG&E's prudence in its tree trimming practice and recommends that the reasonableness review of PG&E's operations of its interties be consolidated with the tree trimming issue in PG&E's 1999 general rate case. PG&E recommends that the operation of the intertie affected by the Campbell fire be addressed in an electric reasonableness proceeding subsequent to resolution of outstanding litigation and claims. PG&E agrees that ORA is free to raise appropriate base revenue issues related to the Campbell fire in the 1999 general rate case; however, PG&E disagrees with ORA's proposal to consolidate electric reasonableness issues in the 1999 general rate case.

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<sup>1</sup> The United States Government has filed a claim associated with the Campbell fire for \$3 million. Also, the California State Automobile Association is requesting \$18,000 for damage caused by the fire to one of its buildings.

In D.94-03-074, the Commission has concluded that this issue should be addressed in a future reasonableness proceeding. Accordingly, we expect this issue to be addressed in a reasonableness proceeding. However, ORA may raise any base revenue issues related to the Campbell fire in PG&E's 1999 general rate case.

Electric Direct Refund of \$49.7 Million

ORA recommends that PG&E refund \$49.7 million of disallowance related to UEG's portion of Canadian gas purchases for the 1988-1990 period directly to the ratepayers.

On December 9, 1996, the Commission issued D.96-12-025, which ordered the electric utilities to establish electric deferred refund accounts (EDRA) to refund any reasonableness disallowances directly to the customers, replacing the then-existing practice of crediting refunds to utility balancing accounts. Pursuant to that order, PG&E has established its EDRA and placed the disallowance at issue in that account, thus making ORA's recommendation moot.

In the joint exhibit, ORA agrees that this issue is moot.

UEG's Transwestern Contract Charges

On July 13, 1990, PG&E signed an agreement with Transwestern Pipeline Company (Transwestern) to enter into a 15-year contract for firm gas transportation capacity on Transwestern's mainline expansion and the San Juan Lateral. The Commission, in D.95-12-046, found that PG&E's action in entering into its contract with Transwestern was unreasonable. D.95-12-046 disallowed PG&E recovery of the cost associated with the Transwestern contract for 1992 and for each subsequent year of the 15-year contract "--unless it establishes in a reasonableness filing that customers to whom it would allocate these costs have received, or will receive, benefits directly attributable to the subscription that outweigh the requested cost recovery." (Ordering Paragraph 3, D.95-12-046.)

Since D.95-12-046 was not issued until December 1995, PG&E has booked \$20.8 million related the Transwestern contract in its ECAC balancing account. However, PG&E has not recovered these booked costs in rates.

In a related matter, on August 21, 1996, ORA and PG&E entered into the Gas Accord Settlement Agreement. In summary, the Gas Accord is a proposal to significantly restructure the way PG&E provides natural gas to California consumers by increasing competition and customer choice. The Gas Accord settles all major outstanding gas regulatory issues. The Gas Accord is a negotiated compromise on a number of issues related to many proceedings, including the issue of the Transwestern contract. The Gas Accord is being addressed in A.92-12-043 et al. The Commission has not issued its decision on the Gas Accord.

ORA recommends that if the Gas Accord is adopted, PG&E be directed to remove a net amount of \$15.9 million of UEG costs associated with the Transwestern contract from its ECAC balancing account.

If the Gas Accord is not approved by the Commission, ORA recommends that this issue be addressed in the reasonableness review of PG&E's gas operations.

In the joint exhibit, PG&E agrees with ORA's recommendation.

#### Yolo QF Contract

PG&E had a long-term Power Purchase Agreement for energy and capacity with Yolo Energy Partners, Inc. (Yolo Energy) regarding the Yolo landfill project facility.

In mid-1992 (PG&E has no exact record), PG&E orally agreed to modify the terms of the PPA by extending the probationary period for Yolo Energy.

While PG&E admits that it failed to memorialize in writing its decision to extend the probationary period, PG&E

asserts that the oral modification of the terms of the probationary period was made in accordance with the terms of the PPA.

In meetings and discussions with ORA, PG&E has indicated that the extension of time it granted Yolo Energy was influenced by "Yolo's new owners' urgent need to perform deferred maintenance and repairs."

While ORA is unable to quantify the amount of disallowance associated with PG&E's oral modification of a written contract, ORA recommends that the Commission find that the practice of modifying terms of QF contracts by oral agreement is imprudent. ORA also recommends that the Commission explicitly prohibit PG&E from such action in the future.

During the 1995 review period PG&E terminated its PPA with Yolo energy through a buyout.

In the joint exhibit, PG&E agrees that its action of modifying a written contract by oral agreement was imprudent. ORA and PG&E agree that extension of probation granted to Yolo Energy was prudent. ORA and PG&E also agree that PG&E's buyout of its PPA with Yolo Energy was reasonable.

#### Special Electric Memorandum Account

In addition to the issues discussed in the joint exhibit, PG&E requests that it be allowed to eliminate the special electric memorandum account established by Commission Resolution E-3017 dated January 28, 1987. Resolution E-3017 required that PG&E calculate and submit a memorandum account for its special electric agreements until the reasonableness of these agreements could be reviewed.

PG&E and ORA agree that this requirement should be eliminated since the agreements have been reviewed in previous ECAC proceedings. We will eliminate this requirement.

#### Comments on ALJ's Proposed Decision

ALJ's proposed decision was filed and mailed to the parties on May 15, 1997. PG&E and ORA have filed comments and



reply comments on the proposed decision. Based on the comments we have modified the decision to: (1) find PG&E's electric operations in 1995 to have been reasonable with the possible exception of issues deferred to either a later phase of this proceeding or to another proceeding; (2) clarify portions of the decision setting forth PG&E's position on various issues; (3) correct the description of the Commission's previous decision on the Transwestern issue; and (4) eliminate the special electric memorandum account.

Findings of Fact

1. PG&E and ORA are the only active parties in the reasonableness review phase of the proceeding.
2. ORA agrees that, with the exception of those issues discussed in the joint exhibit sponsored by PG&E and ORA, PG&E's operation of its electric system in calendar year 1995 was reasonable.
3. ORA contends that PG&E was imprudent in making economy energy sales during the 1995 record period and recommends a disallowance of \$13.2 million.
4. ORA's predecessor, DRA, made a similar recommendation regarding economy energy sales in A.94-04-002.
5. The Commission has not issued a decision in A.94-04-002.
6. While PG&E disagrees with ORA's position on the recommended disallowance regarding economy energy sales, it does agree with ORA's calculation that \$13.2 million is the amount at issue.
7. ORA and PG&E agree that the resolution of the issue of economy energy sales should be deferred until the Commission rules on the same issue in A.94-04-002.
8. ORA and PG&E agree that resolution of the issue related to the Campbell fire should be deferred until the currently pending lawsuits against PG&E in connection with that fire are resolved.

9. ORA recommends that the issues related to the Campbell fire be consolidated with the tree trimming issue in PG&E's 1999 general rate case.

10. PG&E recommends that the issues related to the Campbell fire be resolved in a future reasonableness review proceeding.

11. PG&E is not opposed to resolution of any base revenue issues related to the Campbell fire in its 1999 general rate case.

12. The Commission, in D.94-03-074, has concluded that the issues related to the Campbell fire should be resolved in a future reasonableness proceeding.

13. In its report on the reasonableness of PG&E's electric operations, ORA had recommended that PG&E should refund directly to the ratepayers the \$49.7 million of disallowance related to UEG's portion of Canadian gas purchases.

14. ORA and PG&E agree that because of the establishment of EDRA by D.96-12-025, the issue of direct refund to ratepayers of the disallowance related to UEG's portion of gas purchases is moot.

15. ORA and PG&E agree that if the Commission adopts the Gas Accord in A.92-12-043 et al., PG&E should remove from its ECAC balancing account a net amount of \$15.9 million of UEG costs associated with the Transwestern contract.

16. If the Gas Accord is not adopted by the Commission, ORA recommends that the issue of Transwestern contract be addressed in the reasonableness review of PG&E's gas operations.

17. PG&E orally agreed to extend the 15-month probationary period for the QF contract with Yolo Energy.

18. ORA believes that PG&E acted prudently in modifying the performance requirements for the Yolo Energy project. PG&E agrees with ORA that it should have memorialized its oral agreement to extend the probationary period for the QF contract with Yolo Energy.

19. ORA recommends that PG&E should be directed not to modify written QF contracts through an oral agreement.

20. ORA and PG&E agree that the Power Purchase Agreement buyouts and amendments in 1995 and future payments under those agreements were prudent and are recoverable.

21. ORA and PG&E agree that the special electric memorandum account established by Commission Resolution E-3017, dated January 28, 1987, should be discontinued.

Conclusions of Law

1. PG&E's electric operations in calendar year 1995 were reasonable with the possible exception of those issues we are deferring to a future phase of this application or to another proceeding.

2. Resolution of the issue of economy energy sales should be deferred until the Commission rules on the issue in A.94-04-002.

3. The issues related to the Campbell fire should be addressed in a future reasonableness review following the resolution of the currently pending lawsuits against PG&E in connection with the fire.

4. ORA should be allowed to raise any base revenue issues related to the Campbell fire in PG&E's 1999 general rate case.

5. If the Commission approves the Gas Accord in A.92-12-043 et al., PG&E should be directed to remove a net of \$15.9 million from its ECAC balancing account.

6. PG&E should be directed to keep a written record of any material modifications to written QF contracts, either through written amendments or other written records.

7. The Purchase Power Agreements that PG&E restructured in 1995 and all future year payments specified in those agreements are reasonable, prudent, and recoverable in ECAC, or any other cost recovery ratemaking mechanism that may be in effect in the future to recover PG&E's QF power purchase costs.

8. The requirement to maintain the special electric memorandum account established by Commission Resolution E-3017, dated January 28, 1987, should be eliminated.

O R D E R

IT IS ORDERED that:

1. The reasonableness of Pacific Gas and Electric Company's (PG&E) action in connection with economy energy sales during the 1995 record period shall be addressed after the Commission has ruled on a similar issue in Application (A.) 94-04-002, for the 1993 record period.

2. The reasonableness of PG&E's action in connection with the 1990 Campbell fire shall be addressed in a future reasonableness review proceeding following the resolution of the lawsuits brought against PG&E in connection with fire.

3. If the Commission adopts the Gas Accord which is being addressed in A.92-12-043 et al., PG&E shall remove \$15.9 million from its Energy Cost Adjustment Clause balancing account.

4. PG&E shall not modify its contracts with qualifying facilities through an oral agreement.

5. PG&E need not continue to maintain and submit for reasonableness review the special electric memorandum account established by Commission Resolution E-3017, dated January 28, 1987.

This order becomes effective 30 days from today.  
Dated July 16, 1997, at San Francisco, California.

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

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either backdown power production at Diablo Canyon or sell excess Diablo Canyon power output to entities other than ratepayers.

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A Commission decision is pending in A.94-04-002. PG&E recommends that the Commission defer ruling on PG&E's economy energy sales for the 1995 record period until the Commission rules on the same issue in A.94-04-002.

ORA and PG&E agree that the policy adopted regarding this issue in A.94-04-002 be applied in this proceeding.

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#### Special Electric Memorandum Account

In addition to the issues discussed in the joint exhibit, PG&E requests that it be allowed to eliminate the special electric memorandum account established by Commission Resolution E-3017 dated January 28, 1987. Resolution E-3017 required that PG&E calculate and submit a memorandum account for its special electric agreements until the reasonableness of these agreements could be reviewed.

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#### Comments on ALJ's Proposed Decision

ALJ's proposed decision was filed and mailed to the parties on May 15, 1997. PG&E and ORA have filed comments and

reply comments on the proposed decision. Based on the comments we have modified the decision to: (1) find PG&E's electric operations in 1995 to have been reasonable with the possible exception of issues deferred to either a later phase of this proceeding or to another proceeding; (2) clarify portions of the decision setting forth PG&E's position on various issues; (3) correct the description of the Commission's previous decision on the Transwestern issue; and (4) eliminate the special electric memorandum account.

Findings of Fact

1. PG&E and ORA are the only active parties in the reasonableness review phase of the proceeding.

2. ORA agrees that, with the exception of those issues discussed in the joint exhibit sponsored by PG&E and ORA, PG&E's operation of its electric system in calendar year 1995 was reasonable.

3. ORA contends that PG&E was imprudent in making economy energy sales during the 1995 record period and recommends a disallowance of \$13.2 million.

4. ORA's predecessor, DRA, made a similar recommendation regarding economy energy sales in A.94-04-002.

5. The Commission has not issued a decision in A.94-04-002.

6. While PG&E disagrees with ORA's position on the recommended disallowance regarding economy energy sales, it does agree with ORA's calculation that \$13.2 million is the amount at issue.

7. ORA and PG&E agree that the resolution of the issue of economy energy sales should be deferred until the Commission rules on the same issue in A.94-04-002.

8. ORA and PG&E agree that resolution of the issue related to the Campbell fire should be deferred until the currently pending lawsuits against PG&E in connection with that fire are resolved.

9. ORA recommends that the issues related to the Campbell fire be consolidated with the tree trimming issue in PG&E's 1999 general rate case.

10. PG&E recommends that the issues related to the Campbell fire be resolved in a future reasonableness review proceeding.

11. PG&E is not opposed to resolution of any base revenue issues related to the Campbell fire in its 1999 general rate case.

12. The Commission, in D.94-03-074, has concluded that the issues related to the Campbell fire should be resolved in a future reasonableness proceeding.

13. In its report on the reasonableness of PG&E's electric operations, ORA had recommended that PG&E should refund directly to the ratepayers the \$49.7 million of disallowance related to UEG's portion of Canadian gas purchases.

14. ORA and PG&E agree that because of the establishment of EDRA by D.96-12-025, the issue of direct refund to ratepayers of the disallowance related to UEG's portion of gas purchases is moot.

15. ORA and PG&E agree that if the Commission adopts the Gas Accord in A.92-12-043 et al., PG&E should remove from its ECAC balancing account a net amount of \$15.9 million of UEG costs associated with the Transwestern contract.

16. If the Gas Accord is not adopted by the Commission, ORA recommends that the issue of Transwestern contract be addressed in the reasonableness review of PG&E's gas operations.

17. PG&E orally agreed to extend the 15-month probationary period for the QF contract with Yolo Energy.

18. ORA believes that PG&E acted prudently in modifying the performance requirements for the Yolo Energy project. PG&E agrees with ORA that it should have memorialized its oral agreement to extend the probationary period for the QF contract with Yolo Energy.

19. ORA recommends that PG&E should be directed not to modify written QF contracts through an oral agreement.

20. ORA and PG&E agree that the Power Purchase Agreement buyouts and amendments in 1995 and future payments under those agreements were prudent and are recoverable.

21. ORA and PG&E agree that the special electric memorandum account established by Commission Resolution E-3017, dated January 28, 1987, should be discontinued.

Conclusions of Law

1. PG&E's electric operations in calendar year 1995 were reasonable with the possible exception of those issues we are deferring to a future phase of this application or to another proceeding.

2. Resolution of the issue of economy energy sales should be deferred until the Commission rules on the issue in A.94-04-002.

3. The issues related to the Campbell fire should be addressed in a future reasonableness review following the resolution of the currently pending lawsuits against PG&E in connection with the fire.

4. ORA should be allowed to raise any base revenue issues related to the Campbell fire in PG&E's 1999 general rate case.

5. If the Commission approves the Gas Accord in A.92-12-043 et al., PG&E should be directed to remove a net of \$15.9 million from its ECAC balancing account.

6. PG&E should be directed to keep a written record of any material modifications to written QF contracts, either through written amendments or other written records.

7. The Purchase Power Agreements that PG&E restructured in 1995 and all future year payments specified in those agreements are reasonable, prudent, and recoverable in ECAC, or any other cost recovery ratemaking mechanism that may be in effect in the future to recover PG&E's QF power purchase costs.



8. The requirement to maintain the special electric memorandum account established by Commission Resolution E-3017, dated January 28, 1987, should be eliminated.

O R D E R

IT IS ORDERED that:

1. The reasonableness of Pacific Gas and Electric Company's (PG&E) action in connection with economy energy sales during the 1995 record period shall be addressed after the Commission has ruled on a similar issue in Application (A.) 94-04-002, for the 1993 record period.

2. The reasonableness of PG&E's action in connection with the 1990 Campbell fire shall be addressed in a future reasonableness review proceeding following the resolution of the lawsuits brought against PG&E in connection with fire.

3. If the Commission adopts the Gas Accord which is being addressed in A.92-12-043 et al., PG&E shall remove \$15.9 million from its Energy Cost Adjustment Clause balancing account.

4. PG&E shall not modify its contracts with qualifying facilities through an oral agreement.

5. PG&E need not continue to maintain and submit for reasonableness review the special electric memorandum account established by Commission Resolution E-3017, dated January 28, 1987.

This order becomes effective 30 days from today.

Dated July 16, 1997, at San Francisco, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners