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Decision 97-09-125 September 24, 1997

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company to Identify and Separate Components of Electric Rates, Effective January 1, 1998. (U 39-E)	Application 96-12-009 (Filed December 6, 1996)
Application of San Diego Gas & Electric Company (U 902-M) for Authority to Unbundle Rates and Products.	Application 96-12-011 (Filed December 6, 1996)
In the Matter of the Application of Southern California Edison Company (U 388-E) Proposing the Functional Separation of Cost Components for Energy, Transmission, and Ancillary Services, Distribution, Public Benefit Programs and Nuclear Decommissioning To Be Effective January 1, 1998 in Conformance with D.95-12-036 as Modified by D.96-01-009, the June 21, 1996 Ruling of Assigned Commissioner Duque, D.96-10-074 and Assembly Bill 1890.	Application 96-12-019 (Filed December 6, 1996)

ORDER DENYING REHEARING OF DECISION (D.) 97-08-056

I. Introduction

In D.97-08-056, the Commission rejected the utilities' proposals to calculate the competitive transition charge ("CTC") as a residual charge, whereby "the CTC would be equal to the difference between the rate at the rate freeze levels and the combination of all other costs – the [Power Exchange ("PX")] price, the

distribution rate, the transmission rate, the public purpose program surcharge and the nuclear decommissioning surcharge," and whereby "each customer would be charged for the CTC according to individual demand on an hourly basis." (D.97-08-056, p. 37 (slip op.).) The Commission rejected the utilities' proposals because the calculation of the CTC residually on an hourly basis would result in masking or severely distorting price signals and creating system inefficiencies. (D.97-08-056, pp. 39-41 (slip op.).)

Instead, the Commission adopted in D.97-08-056 the averaged CTC approach by which an averaged CTC would be calculated for all customers on a monthly billing cycle basis. The Commission determined that this approach would be simpler and would be consistent with the goals of this Commission and Assembly Bill ("AB") 1890 (Stats. 1996, Ch. 854) to promote competition, including customer choice and efficiencies. (D.97-08-056, p. 40 (slip op.).)

Pacific Gas and Electric Company ("PG&E") and Southern California Edison Company ("Edison") timely filed separate applications for rehearing of D.97-08-056. In their rehearing applications, both utilities essentially make similar arguments. They allege that the averaged CTC approach adopted in D.97-08-056 violates the statutory provisions set forth in Public Utilities Code Sections 368(b) and 367(e)(2), and further has undesirable public policy implications, including distortions in the market place and impairment of the utilities' ability to fully recover transition costs and to end the rate freeze.

Responses to these rehearing applications were filed by the California Energy Commission; Center for Energy Efficiency and Renewable Technologies, Enron, Environmental Defense Fund, Green Mountain Energy Resources LLC, Mock Energy Services, Inc., New Energy Ventures, Office of Ratepayer Advocates, Onsite Energy Corporation, and Power Resource Managers, LLC (jointly); and The Utility Reform Network and Utility Consumer Action Network

(jointly). The Responses request that the Commission deny the applications for rehearing.

We have reviewed each and every allegation raised in these applications for rehearing filed by PG&E and Edison, and find them without merit for the reasons stated below. Accordingly, good cause does not exist for the granting of a rehearing.

II. Discussion

A. The Averaged CTC Approach Does Not Violate Public Utilities Code Section 368(b).

PG&E and Edison argue that the averaged CTC approach violates Public Utilities Code Section 368(b), which provides, in relevant part:

> "The cost recovery plan shall provide for identification and separation of individual rate components such as charges for energy, transmission, distribution, public benefit programs, and recovery of uneconomic costs. The separation of rate components required by this subdivision shall be used to ensure that customers of the electrical corporation who become eligible to purchase electricity from suppliers other than the electrical corporation pay the same unbundled component charges, other than energy, a bundled service customer pays. . . ." (Pub. Util. Code, §368, subd. (b), emphasis added.)

In their rehearing applications, PG&E and Edison provide some examples of when they think using the averaged CTC approach could result in direct access customers not paying the same actual hourly non-energy charge of full service customers (namely, bundled service customers), and thus, they claim that Public Utilities Code Section 368(b) is violated. These examples narrowly assume that these unbundled component charges, including the CTC, must be calculated on a hourly basis. In this way, PG&E and Edison are essentially arguing that the statute

requires calculation of each billing component for every hour of the day. We disagree with this statutory interpretation.

Neither Public Utilities Code Section 368(b) nor any other statutory provision enacted as AB 1890 (Stats. 1996, Ch. 854) imposes such a requirement. Further, if this Commission were to read this requirement into Section 368(b), and thus, essentially adopt the utilities' proposals for calculating the CTC, the results would be the masking or distortion of price signals and the creation of system inefficiencies, "especially among those customers who may be able to shift loads and thereby reduce peak system demand." (D.97-08-056, p. 39 (slip op.).) As discussed below, such results would be inconsistent with the outcome desired by this Commission and mandated by AB 1890.

In interpreting a statute, this Commission, like the courts, may not add to or alter a statute to accomplish a purpose that was not intended by the Legislature. To do so would violate the fundamental rules of statutory construction. (See California Teachers Assn. v. San Diego Community College Dist. (1981) 28 Cal.3d 692, 698; Public Utilities Com. v. Energy Resources Conservation & Dev. Com. (1984) 150 Cal.App.3d 437, 444.) Further, " ' "[s]tatutes must be given a reasonable and common sense construction in accordance with the apparent purpose and intention of the lawmakers – one that is practical rather than technical, and will lead to a wise policy rather than to mischief or absurdity." ' " (People v. Aston (1985) 39 Cal.3d 481, 492.) In addition, such matters as " 'context, the object in view, the evils to be remedied, the history of the times and of legislation upon the same subject, public policy and contemporaneous construction,' " should be taken into account in construing a statute. (Cossack v. City of Los Angeles (1974) 11 Cal.3d 726, 733.)

In enacting AB 1890, the Legislature wanted to ensure that:

> "California's transition to a more competitive electricity market structure allows its citizens and

> businesses to achieve the economic benefits of industry restructuring at the earliest possible date, creates a new market structure that provides competitive, low cost and reliable electric service, provides assurances that electricity customers in the new market will have sufficient information and protection, ..." (Stats. 1996, Ch. 854, §1, emphasis added.)

The Legislature further noted in AB 1890 that "in order to achieve meaningful wholesale and retail competition in the electric generation market, it is essential to . . . . [p]ermit all customers to choose from among competing suppliers of electric power." (Pub. Util. Code, §330, subd. (k)(2).)[1]

Consequently, in rejecting the utilities' proposals, and in adopting an approach that would prevent the masking or distortion of price signals and provide system efficiencies, we were effectuating the purposes of the Legislature in enacting AB 1890. Accordingly, we have appropriately followed the rules for statutory construction, and have correctly interpreted Public Utilities Code Section 368(b).

Moreover, nothing in the law, including AB 1890, prohibits this Commission from averaging the CTC so long as at the end of the monthly billing cycle the non-energy charges for both direct access customers and full service customers are the same, as required by Public Utilities Code Section 368(b).[2]

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[1] Recently, in Senate Bill 477, the Legislature reiterated these goals of alleviating barriers to entry and providing customers with information on electric rates. (See Stats. 1997, Ch. 275, §§8, 10 & 20.) For example, the Legislature added Public Utilities Code Section 391(e), which states: "It is important to create a market structure that will not unduly burden new entrants into the competitive electric market, or California may not receive the full benefits of reduced electricity costs through competition." (Stats. 1997, Ch. 275, §8.)

[2] Furthermore, Public Utilities Code Section 367(e)(1) provides that transition costs would be allocated "in substantially the same proportion as similar costs [were] recovered as of June 10, 1996." (Pub. Util. Code, §367, subd. (e)(1).) We note there was no hourly billing or metering as of that date. Thus, costs were necessarily averaged.

Rather, the Legislature has left the responsibility of determining the appropriate method of calculating the CTC to the Commission, which has the authority, as well as the expertise, to make such a determination in implementing electric restructuring in accordance with the mandates in AB 1890.

Therefore, based on the above discussion, PG&E and Edison are wrong that Public Utilities Code Section 368(b) requires all billing components, including the CTC, to be calculated for every hour of the day. Accordingly, the allegation that we have violated Public Utilities Code Section 368(b) is without merit.

B. The Averaged CTC Approach Does Not Violate Public Utilities Code Section 367(e)(2).

In their applications for rehearing, PG&E and Edison assert that the averaged CTC approach violates Public Utilities Code Section 367(e)(2), which states:

> "Individual customers shall not experience rate increases as a result of the allocation of transition costs. However, customers who elect to purchase energy from suppliers other than the Power Exchange through a direct transaction, may incur increases in the total price they pay for electricity to the extent the price for the energy exceeds the Power Exchange price." (Pub. Util. Code, §367, subd. (e)(2).)

The examples provided by the rehearing applicants to support this allegation focus on looking at the total price on a hourly basis. As discussed above, the language in the statute does not require such a narrow reading, and we rejected this reading because of our concerns for market distortions and inefficiencies.

In its rehearing application, PG&E also points to the following discussion in D.97-08-056, p. 41 (slip op.) to argue that the Commission "implicitly concedes that . . . some customers could pay larger total charges under

direct access than under full service in violation of Section 367(e)(2) . . . ." (PG&E's Application for Rehearing, pp. 5-6.)[3]

> ". . . . For bundled-service customers of the utilities, rates will not rise above frozen levels. We find this design is consistent with the rate freeze provisions of AB 1890. We do not consider instances where customers voluntarily select a service option, like direct access or virtual direct access, that sometimes produce rates exceeding the rate they would have paid on June 10, 1996 to be in conflict with AB 1890. Customers always have the option of returning to a frozen-rate schedule if they wish." (Emphasis in original.)

However, PG&E has misread the meaning of this discussion in D.97-08-056. By this discussion, we did not mean that the increased rates would be the result of using the averaged CTC approach. Rather, we meant that the result would be caused, not by our regulation, but by the voluntary actions of the direct access customers in exercising their customer choices, e.g., choosing a supplier whose energy charges are higher than the PX price.

Further, we have mandated that utilities implement the averaged CTC "method in such a way that customers receiving service under [time-of-use ("TOU")] schedules continue to experience their respective frozen time-differentiated total rate levels," and that "[f]or unbundled-service customers of utilities, rates will not rise above frozen levels." (D.97-08-056, pp. 40-41 (slip op.).) This is in accord with Public Utilities Code Section 367(e)(2).

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[3] PG&E also points to this same language in D.97-08-056 to argue that the Commission implicitly admits that "some customers may pay higher . . . non-energy charges under direct access than under full service in violation of Section 368(b). . . ." (PG&E's Application for Rehearing, pp. 5-6.) Again, PG&E misconstrues this language. In adopting the averaged CTC approach, we never intended that direct access customers would not pay the same "unbundled component charges, other than energy," that full service customers pay.

C. Contrary to PG&E's and Edison's Allegations, the Averaged CTC Approach Constitutes Sound Public Policy, and Is Consistent with the Goals of the Commission and AB 1890.

In D.97-08-056, we explained our reasoning for rejecting the utilities' proposals for calculating the CTC residually, based on a hourly demand:

> "We understand the concerns raised by the parties with regard to the utilities' proposals to set the CTC residually. It appears that in fact the result will be to mask or severely distort price signals, creating system inefficiencies, especially among those customers who may be able to shift loads and thereby reduce peak system demand. (The price signals incorporated in existing time-of-use rates of course would be preserved.) And customers will fail to realize cost savings from more efficient use of energy, an outcome which is contrary to our intent and to the intent of AB 1890." (D.97-08-056, p. 39 (slip op.).)

With the averaged CTC approach, customers would have the necessary market information, e.g., price signals, to make their choices in their energy purchases, including shifting load and selecting their energy providers. In facilitating customer choices, we are "prevent[ing] any potential barriers to entry of prospective non-utility energy providers and . . .ensur[ing] implementation of effective time-differential price signals," which are "paramount goals of our electric restructuring initiatives." (D.97-08-056, pp. 39-40 (slip op.); see also, Order Instituting Rulemaking on the Commission's Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation, Etc. ("Preferred Policy Decision") [D.95-12-063, as modified by D.96-01-009, pp. 5-7 (slip op.)] (1996) ___ Cal.P.U.C.2d ___.) These are also goals set forth by the Legislature in AB 1890. (See generally, Stats. 1996, Ch. 854, §1; Pub. Util. Code, §330, sub. (d); Pub. Util. Code, §330, subd. (k)(2).) The adoption by the Commission of the averaged CTC approach, which meets the goals of our electric

restructuring and the intent of AB 1890 for a competitive market and which permits customer choices and produces efficiencies, constitutes sound public policy making, and complies with the law.

However, the rehearing applicants argue that the averaged CTC approach gives energy service providers an arbitrage opportunity, and thus, will result in market distortions. According to PG&E and Edison, this is because under the averaged CTC approach, energy service providers have more of a financial incentive to serve customers who have a "better-than-average" load profile, "meaning the customer uses more electricity during off-peak hours and less during on-peak hours relative to its rate group." (PG&E's Application for Rehearing, p. 7; Edison's Application for Rehearing, p. 6.)

We do not view this situation as one of market distortion but as the result of introducing competition into the market place and producing system efficiencies. Customers motivated to shift their load from on-peak hours to off-peak hours so that they can receive lower energy rates produce exactly the type of efficiencies which are desirable. Consequently, we disagree that the averaged CTC approach has unsound policy implications.

Further, PG&E and Edison argue that the averaged CTC approach will affect their ability to fully recover transition costs before the end of the transition period, or if they do fully recover, there will be a substantial delay in ending the rate freeze. In their rehearing applications, PG&E and Edison merely make these assertions without much discussion. We view these assertions as an expression of the utilities' desire for the Commission to guarantee full recovery of transition costs. The law does not require such a guarantee; it requires that Commission provide the utilities only with an opportunity to recover. (See Order Modifying and Denying Rehearing of Decision 95-12-063 as modified by Decision 96-01-009 [D.97-02-021, pp. 28-29 (slip op.)] (1997) ___ Cal.P.U.C.2d ___; see also, Pub. Util. Code, §§330, subd. (s) & 368, subd. (a).) PG&E and Edison have not

demonstrated how this opportunity has been thwarted by our adoption of the averaged CTC approach.

Further, we can not agree with the assertion that the averaged CTC approach will result in substantial delay in ending the rate freeze. The mere assertion by PG&E and Edison in their rehearing applications is not persuasive to convince us that such a result would indeed occur.

III. Conclusion

For the above reasons, we find the allegations raised in the rehearing applications without merit. Good cause does not exist for the granting of a rehearing.

THEREFORE, IT IS ORDERED that rehearing of D.97-08-056 is denied.

This order is effective today.

Dated September 24, 1997, at San Francisco, California.

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

President P. Gregory Conlon being necessarily absent, did not participate.