

Decision 98-03-074

March 26, 1998

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company, for authority to (i) establish its authorized rate of return on common equity, (ii) establish its authorized capital structure, and (iii) establish its overall rate of return for Calendar year 1998.

**ORIGINAL**A.97-05-016  
(Filed May 8, 1997)**ORDER DENYING REHEARING AND MODIFYING  
DECISION NO. 97-12-089**

Each year, PG&E applies to the Commission for authority to establish its authorized rate of return on common equity (ROE), its authorized capital structure and its overall rate of return (ROR). In D.97-12-089 (the decision) we authorized an ROR of 9.17% for PG&E, which resulted in a decrease of \$41.3 million for the electric department and a decrease of \$12.8 million for the gas department, for a total decrease of \$54.1 million. PG&E had sought an ROE of 12.25%, or 65 basis points above the 1997 return, which would have resulted in an increase of \$40.9 million for the electric department and an increase of \$12.7 million for the gas department for a total requested increase of \$53.6 million.

TURN alleges myriad errors in the decision, most of which have already been argued in its opening comments to the proposed decision. (TURN Application, page 1). Further, the decision ordered workshops to be held beginning in February of this year to address many of TURN's concerns. (D.97-65-016, Finding of Fact 9, Conclusion of Law 2)

TURN's first argument is that the decision violates Public Utilities Code Section 1705 for failure to make separately stated findings of fact and conclusions of law on all material issues. (Unless otherwise indicated, all statutory references are to the Public Utilities Code). Specifically, TURN complains that the decision is silent on the subject of whether the legal standards enunciated by the U.S. Supreme Court in Bluefield Water Works and Improvement Co. v. West Virginia Public Service Commission (1923) 262 U.S. 679, Federal Power Commission v. Hope Natural Gas Co., (1944) 320 U.S. 591 and Duquesne Light Co. v. Barasch (1989) 489 U.S. 299 are complied with. PG&E points out in its response to the application that the above cases only apply to situations where rates are so low that shareholders' interests are unlawfully harmed. However, as TURN points out in its application, the three decisions do provide broad guidelines for selecting rates of return that are commensurate with the risks taken by investors in similar enterprises.

The evidence of record in this proceeding supports the conclusion that the authorized rate of return complies with the guidelines established in Bluefield, Hope and Duquesne, supra, and a conclusion of law to that effect is added.

TURN's principal argument is that the decision fails to adequately identify the utility assets and services that will be subject to the adopted ROR because the incremental method used by the Commission cannot accomplish this.

The incremental method complained of begins with the last authorized ROR then uses recognized financial models and other pertinent information about the direction and magnitude of ROE changes that would be appropriate in light of current conditions. (PG&E Response, page 2) The Commission has consistently used this methodology in recent years. Further, as TURN points out in its application at page 4, "there is no dispute that the PG&E assets and operations subject to the ROE adopted in this proceeding are a very limited subject of

PG&E's overall utility assets and operations." The Commission was presumably aware of this fact when it issued the decision. TURN's argument that use of the incremental method assumes that utility operations and assets do not change from year to year is without merit.

TURN next argues that the Commission erred by considering the ROE adopted in last year's all party settlement in the instant decision. TURN did not participate in that proceeding. The argument is that this violates rule 51.8 of the Commission's Rules of Practice and Procedure, which provides:

**51.8. (Rule 51.8) Adoption Binding, Not Precedential.**

"Commission adoption of a stipulation or settlement is binding on all parties to the proceeding in which the stipulation or settlement is proposed. Unless the Commission expressly provides otherwise, such adoption does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding."

The argument is without merit. The Commission cannot issue decisions in a vacuum. Certainly, the very first consideration in arriving at an appropriate ROR is the ROR a company is presently earning. This does not constitute a legal precedent and no party was limited in the arguments they made because of the use of last year's proceeding as a starting point for the 1998 analysis. TURN's approach would effectively forbid the Commission from even acknowledging the results of the last proceeding. This would be a completely unrealistic approach to ratemaking.

Next, TURN argues that the Commission erred for failing to unbundle ROR for the results adopted for 1998. We determined to address this issue in the ROR filings for calendar year 1999. In fact, the decision orders that workshops by

all parties be held on this issue and the preliminary report is due in mid-March of this year. TURN complains that the failure to unbundle rate of return in this proceeding has the effect of overstating PG&E's risk of doing business. PG&E in its Response naturally argues that the failure to unbundle understates its risk.

The decision points out at page 7 that TURN offered "no quantitative evidence" to support its contention that a total ROE study, including the results of unbundling, should have been used rather than the incremental method previously adopted. The decision finds that there is insufficient evidence to substantiate TURN's argument. However, the Commission did find that TURN's approach may have merit and may be presented in next year's proceeding, although the decision specifically declines to address the issue in the present proceeding. TURN has presented no factual or legal error in the Commission's decision to defer its argument until next year's proceeding and should be rejected.

Finally, TURN argues that the rates authorized by the decision should be set subject to subsequent adjustment to "cure the deficiencies" therein. However, since no deficiencies have been demonstrated, the argument should be rejected.

No legal or factual error having been presented, the Application should be denied. However, the decision should be modified to include the following additional conclusion of law.

**Additional Conclusion of Law:**

1. The rate of return of 9.17% adopted for PG&E for calendar year 1998 is consistent with the principles enunciated by the US Supreme Court in Bluefield, Hope and Duquesne, supra.

**IT IS ORDERED that:**

1. The Application for rehearing by TURN is denied.

2. Decision No. 97-12-089 is modified by adding the following conclusion of law:

The rate of return of 9.17% adopted for PG&E for calendar year 1998 is consistent with the principles enunciated by the US Supreme Court in Bluefield, Hope and Duquesne, *supra*.

3. This order is effective today.
4. This proceeding is closed.

Dated March 26, 1998, at San Francisco, California

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