

Decision 98-04-069

April 23, 1998

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application for Rehearing of  
Resolution E-3516 Approving PACIFIC  
GAS AND ELECTRIC COMPANY'S  
Request For Its 1998 Base Revenue  
Increase Attributable to Public Utilities  
Code Section 368(e) and 381(c)

A.98-02-039

**ORDER DENYING REHEARING OF RESOLUTION E-3516****I. SUMMARY**

On February 20, 1998, Pacific Gas and Electric Company (PG&E) filed an application for rehearing of Resolution E-3516 in which we approved less than the amount by which PG&E sought to increase the revenues allocable to its safety and reliability projects as of January 1, 1998. PG&E sought an increase of approximately \$148.391 million. The Commission granted an increase of approximately \$86 million. As of March 31, 1998, when the Independent System Operator (ISO) began operating the State's transmission system under the jurisdiction of the Federal Energy Regulatory Commission (FERC), the \$86 million was reduced by approximately \$9 million for the remainder of the year.

PG&E contends that the Commission's decision was based on a misinterpretation of Section 368(e) of the California Public Utilities Code, one of the statutory provisions enacted under AB1890 which has restructured the electric

industry and significantly modified this Commission's regulation of the California's electric utilities as of January 1, 1998.<sup>1</sup> (AB1890-related statutory provisions were enacted in Sections 330-397, and 840-847.) PG&E believes that in calculating the increase of revenues allocable to its safety and reliability projects for 1998, the Commission was obliged to use the 1997 base revenue requirements as they existed prior to PG&E's operations in the restructured industry, and not as the ratemaking structure for 1998 base revenue requirements has been developed by the Commission in compliance with AB1890.

Oppositions to PG&E's application were timely filed by the Office of Ratepayer Advocates (ORA), James Weil, and The Utility Reform Network (TURN).

After considering all issues raised in the application of PG&E, and in the oppositions of ORA, Mr. Weil, and TURN, the Commission finds no legal error in our decision. Pursuant, therefore, to Section 1732, which requires that the applicant seeking rehearing specifically demonstrate the Commission's decision is unlawful, we hereby deny rehearing of Resolution E-3516.

## II. BACKGROUND

The subject of the application for rehearing is the amount by which the PG&E's revenue requirement for its safety and reliability programs is increased for 1998.

Previously, in 1996, the Commission received an application by PG&E (A.96-04-002) requesting a special increase of its safety and reliability revenue requirement to supplement the previous authorization made in PG&E's 1996 general rate case decision, D. 95-12-055. The Commission's review of this particular application was effectively mooted by the enactment of Section 368(e),

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<sup>1</sup> Unless otherwise noted, all statutory references herein shall be to the California Public Utilities Code.

which authorizes annual increases for safety and reliability expenses for 1997 and 1998, especially, as it appears, for PG&E. (See D.97-12-077, p. 29, fn. 12.)

Section 368(e) states that for purposes of restructuring, an electrical corporation's cost recovery plan must satisfy the provisions set forth in Section 368(a), which includes among other things the rate freeze, and :

“...shall also provide for annual increases in base revenues, effective January 1, 1997, and January 1, 1998, equal to the inflation rate for the prior year plus two percentage points, as measured by the consumer price index.”

Pursuant to Section 368(e)(1) and (2), the increases are to remain in effect until the 1999 revenues are re-established in PG&E's 1998 general rate case proceeding, and must be used to enhance the safety and reliability of the delivery of electricity. To the extent the 1997 and 1998 authorized funding is not expended for system safety and reliability, the excess must be credited against subsequent safety and reliability revenue requirements. (Section 368(e)(2).)

In response to the enactment of Section 368(e), PG&E filed Advice Letter 1612-E (October 8, 1996), amended by Advice Letter 1692-E-A (November 21, 1996), seeking an escalation of its safety and reliability revenue requirement of \$164.231 million. The Commission granted PG&E the \$164.231 million increase. (D.96-12-077, p. 30.) At the same time, the Commission ordered certain accounting requirements to ensure that the additional revenues authorized for allocation to safety and reliability activities would not overlap the authorizations already made for system safety and reliability in PG&E's test year 1996 general rate case proceeding. The accounting procedure is to facilitate an annual audit of PG&E's safety and reliability projects and the application of the project costs to the authorized revenue requirement. (D.96-12-077, pp. 29-31.)

Subsequently, on October 17, 1997, PG&E filed Advice Letter 1703-E under Section 368(e) requesting an increase of its safety and reliability revenue requirements for 1998. The request was for \$148.391 million. In Resolution E-3516, the subject of the present application for rehearing, the Commission approved \$86.079 million. The Commission arrived at the approved amount first by reducing the requested amount by approximately \$18 million as a result of updating 1997 data to determine the Consumer Price Index for the escalation factor applied. The remaining reduction of approximately \$44 million from the requested amount derived from the Commission's compliance not only with Section 368(e), but also with the ratemaking mechanisms it has developed to implement the statutory requirements enacted by AB1890.

In the present application for rehearing, PG&E contests the \$44 million reduction.

### III. DISCUSSION

The denial of approximately \$44 million of the \$184 million requested was based on the Commission's recognition of PG&E's base revenue requirement for 1998. Consistent with the unbundling of services and rates (Sections 330(k)(1), 368(b)), the adoption of procedures for permitting utilities a substantial opportunity to recover uneconomic transition costs, and other actions taken to effect restructuring of the industry, the Commission removed all transmission and generation-related costs from PG&E's base revenue requirement for 1998. (Resolution E-3516, p. 12.) In calculating the escalation of the revenue requirement attributable to safety and reliability programs in 1998, therefore, the Commission arrived at a result approximately \$44 million less than the amount PG&E requested for 1998.

Basically, in calculating the 1998 escalation under Section 368(e), the Commission applied the statutorily prescribed formula consistent with the

other mandates and directives of AB1890 which have necessarily changed the regulatory framework applicable to PG&E. Previously, in approving the \$164.231 million increase for 1997, the Commission recognized that PG&E had carried over the 1996 base revenues and applied the escalation factor prescribed by Section 368(e), that is, the inflation rate as measured by the Consumer Price Index (CPI) for all of 1996 plus two percentage points. (D.96-12-077, p. 30.) When reviewing PG&E's Advice Letter 1703-E for the requested \$148 million increase for 1998, the Commission carried over the 1997 base revenues, but necessarily adjusted them to reflect the new industry structure and the ratemaking realities of 1998.

First, with respect to transmission, as of March 31, 1998, the FERC will be establishing the revenue requirement to recover the costs of PG&E's ownership of its transmission system, and will set the transmission rate to be paid by customers to whom PG&E delivers power. This Commission, therefore, will not be setting PG&E's base revenue requirements for transmission. (See, Section 330(m); D.97-08-056, p. 15.)

In addition, starting in 1998 this Commission will no longer establish a revenue requirement for generation-related costs in determining PG&E's base revenue requirements. In particular, the utility's investment in generation plants will be recovered through the transition cost recovery mechanism established to implement Sections 367 and 368(a). The Commission, therefore, will not set the energy commodity rate billed to PG&E's customers.<sup>2</sup> PG&E's sales price for energy is to be determined by the competitive market and by the Power Exchange. (Sections 355 et seq.)

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<sup>2</sup> The function of determining a utility's base revenue requirement has been to set the appropriate customer rates. As of 1998, consistent with the unbundling of services and rates, this Commission will not set the rate either for the transmission portion or the energy portion of the customer's bill, although the bill will reflect a passthrough of rates determined by the FERC and the competitive generation market. The Commission will remain responsible for calculating and setting the distribution rate and for overseeing the utilities' recovery of transition costs.

Therefore, within the context of the various statutory provisions enacted by AB 1890, the Commission responded to PG&E's safety and reliability revenue request by applying the escalation factor prescribed in Section 368(e) to those 1997 revenue requirements that the Commission could carry over into the base revenue requirements for 1998, consistent with the new ratemaking framework that excludes transmission and generation revenue requirements.

PG&E argues that in making these exclusions for the 1998 escalation for safety and reliability programs, we have misinterpreted Section 368(e). PG&E's argument rests on invoking the principles of statutory construction. (Application, pp. 4-5.) However, PG&E fails to identify the language of the statute that would make our decision unlawful. As TURN, Mr. Weil, and ORA point out, the statute only prescribes a specific escalation factor, the prior year's CPI plus two percentage points, and directs that it be applied to "base revenues." (We note that the reference to "base revenues" is shorthand for "base revenue requirements," as we have been discussing the issue herein.) PG&E insists the reference to "base revenues" means the prior year's base revenue requirements, but offers no evidence of legislative intent in that regard, nor any language in the statute which expressly requires that the 1998 increase must be based on 1997 base revenues without regard for electric restructuring requirements.

Further, in implementing electric restructuring legislation, the most important principle of statutory construction calls for the interpretation of a particular statute in harmony with the statutory framework as a whole. Implementing the various complex statutes enacted under AB1890 consistent with one another is critical for restructuring to be achieved reasonably and fairly for all concerned.

PG&E recites but does not rationally apply this principle of construction in interpreting Section 368(e). Most pertinent in PG&E's analysis is the following statement:

"However, the words in Section 368(e) 'annual increases in base revenues' should be considered in the context of the entire section 368. Section 368 discusses the required elements of cost recovery plans that utilities must submit to the Commission in order to recover uneconomic costs of generation - related assets and obligations resulting from electric industry restructuring. The section sets forth the procedures for utilities to follow if they wish to recover their uneconomic generation-related costs over the transition freeze period.

"If the base revenue increase granted to PG&E in section 368(e) is viewed in the context of Section 368 in its entirety, it is clear that the increases in 1997 and 1998 should be over base revenues, including generation. Section 368(a) sets forth the conditions of the rate freeze, and it states that utilities are allowed to recover their uneconomic generation-related costs over the rate freeze period." (Application, pp. 5-6.)

We quote the statement at length because it reveals that in this particular filing PG&E has misunderstood the ratemaking mechanisms that have been established for the recovery of its uneconomic generation-related costs.

Because a rate freeze is in effect in 1998, the \$86 million increase, like the 1997 increase in safety and reliability revenue requirements, does not increase customer rates. Nor does it require that PG&E charge in rates less than

PG&E would want.<sup>3</sup> The increases allowed under Section 368(e) do, however, affect the calculation of the revenues collected by PG&E from customer billings which are to be applied to PG&E's base revenue requirements, and this in turn will affect the amount of excess revenues (referred to as the "headroom") to be credited against PG&E's authorized transition cost recovery. However, this series of ratemaking calculations does not support PG&E's contention that we unlawfully applied Section 368(e).

As we have described in several of our decisions devoted to adjusting our ratemaking procedures in light of restructuring, PG&E's recovery of its uneconomic generation-related costs is to be achieved from the bond financing authorized in (Section 330(w),<sup>4</sup> and the "headroom," the term we have adopted to mean the excess revenues collected by PG&E during the rate freeze over the base revenue requirements. The "headroom" is credited through the Transition Cost Balancing Account (TCBA ) to PG&E's transition costs, among which are PG&E's uneconomic generation costs. (See e.g. D.96-12-077, pp. 12-14, 19, and D.97-11-074.)

Most pertinent to addressing PG&E's contention, therefore, is the fact that it is only in the TCBA that PG&E's generation-related costs are considered for the purpose of allocating revenues collected during the rate freeze. PG&E's generation-related costs, as we have stated, are no longer included in base revenue requirements. Accordingly, when we apply the escalation factor

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<sup>3</sup> Pursuant to Section 368(a) and the Commission's decision, D.97-12-077, pp. 6-12, the rate freeze, based on PG&E's rates as of June 10, 1996, commenced on January 1, 1997 and will terminate upon PG&E's recovery of its authorized transition costs, but no later than March 31, 2002.

<sup>4</sup> As a condition of receiving financing of transition costs through the bond issuance, the electric utilities must provide for a rate reduction of no less than 10% for residential and small commercial customers from 1998 through 2002. (Section 368(a). See D. 96-12-077, p. 9.)



prescribed in Section 368(e) to the base revenue requirements of 1998, we have excluded generation as well as transmission revenue requirements.

Thus, in Resolution E-3516, we determined the 1998 escalation of base revenue requirements for PG&E's safety and reliability expenditures in the only way that rationally and coherently fits into the ratemaking process designed for the inaugural year of a restructured electric industry. We find nothing in Section 368(e) or in the other provisions of Section 369 which requires that the Commission abandon its 1998 ratemaking mechanisms solely for calculating an increase of the revenue requirement for PG&E.

Moreover, we have no evidence that the \$86 million increase is less than required by PG&E to assure the safety and reliability of its delivery of electricity. In addition to the revenue requirement set in PG&E's test year 1996 general rate case, PG&E has now been authorized in 1997 and 1998 alone a cumulative escalation of approximately \$405.9 million.<sup>5</sup> (We note, in this regard, that in Resolution E-3516, at page 14, item 14, the cumulative amount is incorrectly stated to be \$250,310,316, and we will order a correction herein.) PG&E, furthermore, has the opportunity in its current general rate case proceeding to demonstrate any need for further additions to the revenue required for system safety and reliability through the accounting evidence required by D.96-12-077, pp. 29-31, Attachment A, and by a presentation of specific evidence of individual projects completed and individual projects to be undertaken within the next three years.

In conclusion, we find that our decision in Resolution E-3516 complies with statutory law, is consistent with this Commission's ratemaking

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<sup>5</sup> The increase for 1997 is approximately \$164.4 million, which is carried over into 1998 and added to the approved increase of approximately \$86.6 million less approximately \$9 million as of March 31, 1998.  $(164.4 \times 2 = 328.8 + 86.1 = 414.9 - 9 = 405.9)$ .

authority and adopted ratemaking procedures, and affords adequate protection for the safe and reliable delivery of electricity to PG&E's customers.

**IT IS THEREFORE ORDERED:**

1. The application for rehearing of Resolution E-3516 filed by PG&E is denied.
2. A clerical error in Resolution E.-3516 shall be corrected by deleting in the second sentence in Item 14, on page 14, the amount "\$250,310,316" and replacing it with "\$405.9 million."
3. The above-captioned docket is hereby closed.

This order is effective today

Dated April 23, 1998, at Sacramento, California

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