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Decision 98-05-002 May 7, 1998

ORIGINAL
BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to revise the time schedule for the Rate Case Plan and fuel offset proceedings.

Rulemaking 87-11-012
(Filed November 13, 1987)

OPINION

Summary

The joint petition for modification of the rate case plan (RCP) filed on March 6, 1998, by petitioners Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (Edison) is denied in part. The requested scheduling changes are premature at this time.

A prehearing conference (PHC) is scheduled for June 8, 1998, at which time the Commission will consider the need for rate case plan (RCP) scheduling changes to accommodate proper development of the unbundled cost of capital for petitioners.

Background

Petitioners seek a modification in the RCP as set forth in Decision (D.) 89-01-040 due to the additional need to address the unbundling of the cost of capital. Cost of capital applications for energy utilities have typically been governed by the RCP as set forth in Appendix C to D.89-01-040 (30 CPUC2d 576, 610).

In D.97-08-056 we ordered petitioners to file applications on May 8, 1998 to set their authorized rate of return beginning on January 1, 1999. We also stated that we would consider unbundling utility cost of capital in the generic cost of

capital review proceedings initiated by those applications, as proposed by PG&E and SDG&E.

In D.97-12-089 we stated that for 1998 the utilities' cost of capital filings would propose unbundling of long-term debt, preferred stock, and shareholders' equity to reflect the business realities of 1998 when largely regulated distribution assets must be separated from largely deregulated generation assets. Workshops were ordered to consider unbundling cost of capital, but did not resolve the issues relevant to unbundling.

Petitioners state that the current schedule for annual cost of capital proceedings in the RCP does not allow time to develop an adequate record on which to base a decision this year, since many issues that are not normally considered need to be addressed. Many of these issues were discussed in the workshops which spanned three days, but none of the issues were resolved. Thus it is apparent that more time for preparation and filing of rebuttal testimony and for hearings will be needed than is provided for in the current RCP.

Petitioners note that the current RCP sets hearings to begin ten days after intervenors file testimony, and that ten days is the period available to the utilities to seek discovery of intervenors' testimony and prepare rebuttal testimony. However, the actual time is less than ten days since rebuttal testimony must be filed in advance of the hearings to allow intervenors time to prepare for cross-examination of the rebuttal testimony. Thus the practical available time of only three to five days is not sufficient, and without making additional time available the Commission will not have a complete record on which to base a decision.

Petitioners also argue that the five days of hearings allowed in the RCP will not be adequate in 1998 year due to the additional issues and their complexity, considering that unbundling of cost of capital has never been done before. Petitioners propose that the schedule allow 12 days of hearings instead of

the current five days. The current schedule would be followed through the date when intervenors would file testimony; after that date the RCP would be extended, resulting in a Commission decision 28 days later than under the current RCP. The time periods allowed for opening briefs, reply briefs, and other procedural matters remain the same as under the current RCP.

Petitioners further request that the parties be required to serve other active parties by overnight mail including workpapers supporting their testimony. Data requests should be expedited by use of faxes and overnight delivery, with responses to data requests required on the fifth working day after receipt of the data request.

Responses

James Weil

Weil's response is generally supportive of the Petition, but he believes that the increased scope of issues may also require additional writing time for the administrative law judge (ALJ). Additionally, Weil believes that the ten days proposed for review and discovery regarding rebuttal testimony prior to hearings is inadequate. Considering that the Office of Ratepayer Advocates (ORA) and intervenors will need to study rebuttal testimony from at least four utilities, two weeks should be allowed instead of ten days.

Weil agrees with the need for overnight mail, but believes that this can be handled without Commission action, and e-mail likewise can be worked out informally by the parties or by ALJ ruling.

Weil opposes adoption of deadlines for discovery responses, especially by Commission order, since the Commission's current procedures for handling discovery disputes by the law and motion ALJ function adequately.

Weil suggests changes to the scheduling suggested by petitioners. The cost of capital decision needs to be scheduled before the last Commission

meeting of the year, since the Energy Division needs the adopted costs of capital to incorporate into other decisions. Additionally, scheduling this decision for the second meeting in November, which has often been done, would allow the Commission to hold the proposed decision to consider revisions or alternate orders. It might also be reasonably scheduled for the first meeting in December.

Finally, Weil notes that while petitioners wish to insert five weeks into the schedule to handle rebuttal, the May 8 filing date ordered by D.89-01-040 would remain unchanged, which would reduce the time available to the ALJ and the Commission. If petitioners' request is granted to allow time for rebuttal, fairness requires that the filing date be moved forward nine days, making the filing on April 29, 1998. If the Commission modifies the proposal to allow more time for the ALJ, the filing date should be moved forward a corresponding amount. If the utilities cannot file until May 8, then the schedule should be changed to indicate a Commission decision in January 1999, rather than late 1998.

ORA and The Utility Reform Network (TURN)

ORA and TURN filed a joint response opposing the Petition on two grounds. First, they believe that the Petition is premature, and second, the Petition seeks relief that is clearly unbalanced in favor of petitioners, to the detriment of other parties.

The Petition is premature because the unbundling of the cost of capital adds significant complexity to past cost of capital proceedings. By asking that a modified RCP be adopted now, petitioners are asking the Commission to determine how complex the proceeding will be without benefit of necessary input from the parties. It is clear that it will be difficult if not impossible to maintain the current schedule in the RCP for determining the unbundled cost of capital. However, the Commission will be in a better position at the PHC to consider the extent of complexity and how best to deal with it. The Commission

will then be better prepared to consider altering the RCP to insure that a complete evidentiary record is developed.

Petitioners have identified the effect of the increased complexity on them, but failed to consider the impact on other parties, the ALJ, and the Commission. Petitioners' concern that time be allocated for them to develop rebuttal testimony does not adequately consider the time needed for other parties to react to the rebuttal testimony. ORA also states that it may need to use consultants for this proceeding because of the complexity of issues, which would necessitate additional time.

ORA and TURN note some of the reasons that this year's proceeding will be different and more complex. First, the Commission has never unbundled cost of capital for electric utilities. Also, Edison and SDG&E have been excused from previous cost of capital proceedings because of effect of performance based ratemaking (PBR) mechanisms, potentially adding issues peculiar to utilities that have been operating in a PBR environment.

Finally, ORA and TURN note that the electric rate freeze under Public Utilities Code Section 368(a) is likely to still be in effect in late 1998 and early 1999, thus allowing the Commission greater flexibility in adopting the new cost of capital to be reflected in rates effective January 1, 1999.

The PHC should be scheduled to allow parties sufficient time to review the applications and to determine their needs. Holding the PHC on June 8 allows 30 days for the parties to be adequately prepared. This date is earlier than the June 19 PHC date proposed by petitioners.

Discussion

It is apparent that there is a widely perceived need to allow additional time for determining petitioners' unbundled cost of capital for 1999. However, as noted by ORA and TURN, the Commission cannot properly revise the RCP

schedule for this matter at this time. The Petition does not adequately consider the needs of intervenors. The schedule proposed by Weil is an improvement, but it too may prove to be deficient once the detailed needs of the parties are better known.

The Commission is entering a new area in determining the unbundled cost of capital for use in the 1999 rates. While we realize that scheduling changes may be necessary in order for us to have an adequate record on which to base a decision in this matter, we also realize that premature changes in scheduling will be of little value and may ultimately result in a delay in handling this matter. We agree with ORA and TURN that if we were to make the scheduling changes suggested by petitioners or by Weil, we likely would find that further changes would shortly be necessary. We believe it to be more efficient to make no changes now except for the PHC schedule, and to consider the needs of the parties at the PHC. Any changes made as a result of better understanding the parties' needs will allow this proceeding to progress in a more efficient manner, and will eliminate the need for further scheduling changes and delays.

We agree with ORA and TURN that a PHC should be scheduled no sooner than 30 days after the utilities' filings which are due on May 8.

Therefore we will deny the Petition's request for scheduling changes, except for scheduling a PHC to be held on June 8, 1998 (i.e., day 30 rather than day 42, as called for in the RCP), at 10 a.m. at the Commission Courtroom in San Francisco.

When the schedule for the cost of capital proceedings is firmed up, at or after the PHC, parties may seek any needed deviations from the RCP from the Executive Director, as authorized in Ordering Paragraph 9 of D.89-01-040 (30 CPUC2d at 595).

Findings of Fact

1. Petitioners seek changes to the RCP primarily to allow time for their rebuttal testimony.
2. Petitioners' request would not allow other parties adequate preparation time for effective participation in this matter.
3. Changes made to the RCP schedule now would be premature and most likely not avoid further changes once the parties have reviewed the utilities' filings.
4. A PHC should be scheduled earlier than called for in the RCP to allow parties adequate time to review the utilities' filings and to consider the need for further RCP schedule changes to accommodate their needs.

Conclusions of Law

1. The Petition should be denied except for scheduling a PHC earlier than called for in the RCP.
2. The PHC should be scheduled on June 8, 1998.

O R D E R

IT IS ORDERED that:

1. A prehearing conference shall be held on June 8, 1998, at 10 a.m. at the Commission Courtroom at 505 Van Ness Avenue in San Francisco, at which time the parties may suggest scheduling changes they deem necessary in order to participate effectively in developing the unbundled costs of capital for Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company.

2. In all other respects, the Joint Petition for Modification of the Rate Case Plan as Set Forth in Decision 89-01-040, filed on March 6, 1998, is denied.

This order is effective today.

Dated May 7, 1998, at San Francisco, California.

RICHARD A. BILAS
President
P. GREGORY CONLON
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

Commissioner Jessie J. Knight, Jr.,
being necessarily absent, did not
participate.