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Decision 98-09-075 September 17, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting rulemaking on the Commission's Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation.	R.94-04-031 (Filed April 20, 1994)
Order Instituting Investigation on the Commission's Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation.	I.94-04-032 (Filed April 20, 1994)

ORIGINAL

ORDER REOPENING PROCEEDINGS AND DENYING REHEARING OF DECISION 96-12-025

I. SUMMARY

This order denies the application for rehearing of Decision (D.) 96-12-025 (Decision) filed by Pacific Gas & Electric Company (PG&E). The application failed to demonstrate legal error in the Decision.

II. BACKGROUND

In the Decision, we established electric deferred refund accounts (EDRAs) for Pacific Gas & Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) pursuant to Public Utilities (PU) Code Section 453.5. We ordered the utilities to credit to the newly formed EDRAs, overcollections that resulted from refunds and

disallowances from which all classes of current ratepayers would benefit. Those types of overcollections had, for convenience, previously been disposed of in the utilities' Energy Cost Adjustment Clause (ECAC) and Electric Revenue Adjustment Mechanism (ERAM) balancing account proceedings.

D.96-12-025 was issued on December 9, 1996. PG&E filed its application for rehearing of the decision on January 10, 1997. In its application, PG&E challenges the legality of our creation of the EDRAs in D.96-12-025. The Utility Reform Network (TURN) and the Office of Ratepayer Advocates (ORA) filed timely responses in opposition to PG&E's application on January 27, 1997.

PG&E first argues that D.96-12-025 erroneously relies on Public Utilities (PU) Code Section 453.5 for authority to create the EDRA. Second, it claims that even if the EDRA was lawfully established under PU Code Section 453.5, the Decision arbitrarily and capriciously reassigns disallowances and settled amounts in reasonableness disputes to the EDRA and not the ECAC, in contravention of the electric restructuring framework adopted in Assembly Bill (AB) 1890.[1] This, PG&E argues, is because newly added PU Code Section 368(a) (AB 1890, Ch. 854, Stats. 1996) provides that "any overcollections recorded in ECAC and ERAM balancing accounts, as of 12/31/96, shall be credited to the recovery of transition costs."

Third, PG&E claims that the Decision violates PU Code Section 1705 by failing to include findings of fact and conclusions of law concerning the meaning of the phrase "any over-collections" in PU Code Section 368 (a).

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[1] Section 1.(a) of AB 1890 states that "[I]t is the intent of the Legislature to ensure that California's transition to a more competitive electricity market structure allows its citizens to achieve the economic benefits of industry restructuring at the earliest possible date ...." Section 1.(b) states that "[I]t is the further intent of the Legislature that during a limited transition period ending March 31, 2002, to provide [among other things] ... [a]ccelerated, equitable, non-bypassable recovery of transition costs associated with uneconomic utility investments and contractual obligations."

PG&E's fourth argument is that the Decision's requirement that electric disallowances be credited to the EDRA is overly broad in that it does not differentiate between disallowances related to a finding of utility imprudence and disallowances where no utility imprudence is found.

PG&E next claims that the Decision errs by ordering that refunds in the form of rebates from pipelines subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC) be placed in the EDRA while not providing for a surcharge in the event that during the transition period, the FERC determines that PG&E owes FERC-jurisdictional pipelines payments in excess of those currently included in rates charged by those pipelines.

PG&E's sixth argument is that the Decision's crediting of settlement amounts in reasonableness proceedings to the EDRA is contrary to the Commission's policy favoring settlements and will discourage utilities from entering into such settlements.

Our review of PG&E's allegations indicates that the applicant has failed to demonstrate legal error, as required by PU Code Section 1732. It simply reiterates in its application for rehearing a number of arguments that we rejected previously. We therefore deny PG&E's application for rehearing.

III. DISCUSSION

PG&E first claims that D.96-12-025 commits legal error by relying on PU Code Section 453.5 for authority to create the EDRAs.[2] It contends that the California Supreme Court, in California Manufacturers Association v. Public Utilities Commission (1979) 24 Cal.3d 836, determined that the term "refunds" as used in Section 453.5 was limited to the distribution of supplier rebates, and not

[2] PU code Section 453.5 provides in pertinent part: "Whenever the Commission orders rate refunds to be distributed, the Commission shall require public utilities to pay refunds to all current utility customers, and, when practicable, to prior customers, on an equitable pro rata basis without regard as to whether or not the customer is classified as a residential or commercial tenant, landlord, homeowner, business, industrial, educational, governmental, nonprofit, agricultural, or any other type of entity."

the treatment of disallowances or settled amounts resulting from reasonableness disputes."

Contrary to PG&E's claim, the Court in that case never set that limitation. Nor did it hold that "refunds" as used in that code section do not apply to the treatment of disallowances or settled amounts resulting from reasonableness disputes. In fact, the Court found that there is strong evidence that the Legislature acted with specific reference to the rebates at issue in that case and viewed them as "included within the separate, limited category of 'rate refunds'." (Id., at 846). The Court does not describe what other types of refunds were under consideration by the Legislature, but that does not change the obvious conclusion that the term "rate refunds" under Section 453.5 encompasses more than just supplier rebates. As the Court noted, it was simply "defining 'rate refunds' within the context of the case before [it]." (Id. at p. 848.)

The decision to place the disallowances in the EDRA was not, as PG&E makes it appear, solely based on PU Code Section 453.5. We also cited PU Code Section 451 in the Decision as authority. That section obligates us to ensure that rates are just and reasonable. We noted in the Decision that we would be in violation of Section 451 if we allowed the use of such disallowances to help the utility collect Competition Transition Charges (CTCs) rather than refunding those disallowances directly to the customers. This is because such a use would contravene the purpose of the disallowances, which is to benefit customers through reduced rates and to discourage imprudent activities. This intention is frustrated if the utility is able to utilize that money to offset a different type of cost. Accordingly, we concluded that establishing the EDRA to track disallowances and refunds is reasonable and consistent with Section 451.

PG&E next argues that even if the EDRA was lawfully established under PU Code Section 453.5, the Decision arbitrarily and capriciously reassigns disallowances and settled amounts in reasonableness disputes to the EDRA and not

the ECAC in contravention of the electric restructuring framework adopted in AB 1890.

We find no support for the contention that we acted arbitrarily. We have the discretion, pursuant to PU Code Sections 451 and 453.5, to place refunds and disallowances in whatever type of balancing account we conclude would be most efficient. AB 1890 does not affect our discretion as to the treatment of those funds. Nor has PG&E shown that the Legislature intended that the refunds and disallowances at issue here be used to allow utility recovery of transition costs. Furthermore, there is no language on the face of AB 1890's Section 368(a),[3] or elsewhere in the legislation, that places a restriction on our treatment of the ECAC and ERAM balancing accounts. As explained in D.96-12-025, refunds and disallowances have traditionally been placed in the ECAC or ERAM balancing accounts simply as a matter of convenience. This was so that refunds could be credited to ratepayers through adjusted rates, to be implemented at a convenient later date as part of an annual rate change.

As noted, using refunds and disallowances to pay transition costs would contravene the purposes of those funds. Therefore, in D.96-12-025, we appropriately used our discretion to create a new mechanism to ensure that those funds are returned to ratepayers as intended.

One issue here is the treatment of disallowances that resulted from settlement agreements adopted by the Commission in Application (A.) 89-04-001 et al. (D.96-08-033) and in A.94-11-015 (D.96-09-042).[4] As we noted in Finding of Fact No. 4 of the Decision, the impact of AB 1890 was not raised on the record in the proceedings resulting in those settlement agreements. There was no evidence

[3] PU Code section 368(a) states that "any overcollections recorded in Energy Cost Adjustment Clause and Electric Revenue Adjustment Mechanism balancing accounts, as of December 31, 1996, shall be credited to the recovery of the [transition] costs."

[4] EDRA is also established to provide a mechanism for future refunds as well.

presented that the Legislature, this Commission, or any of the parties ever anticipated that the dollars involved in Commission-approved disallowances and/or reasonableness settlements would be diverted back to the utilities as a result of the language in Section 368(a) of AB 1890. Had PG&E or any other utility suggested that this was intended, other parties to the proceedings have indicated that they would have challenged PG&E's stance before us as well as before the Legislature.

PG&E also erroneously asserts that all signatories to the Gas Accord Settlement Agreement were knowledgeable regarding the ramifications of AB 1890 when they entered that Agreement. PG&E filed the Gas Accord Settlement Agreement on August 21, 1996. AB 1890 was passed by the Legislature on August 30, 1996, and signed into law on September 23, 1996. Both of those events occurred after PG&E filed the Gas Accord Agreement. Thus, the timing of the Gas Accord negotiations and the passage of AB 1890, and the denial by TURN and ORA that they were notified, or the record augmented, about the potential ramifications of the enacted legislation during the proceedings, proves otherwise.

Third, PG&E argues that the Decision violates PU Code Section 1705[5] by failing to include findings of fact and conclusions of law concerning the meaning of the phrase "any overcollections" in PU Code Section 368 (a).

PG&E first mistakenly claims that the interpretation of the phrase "any overcollections" is the material issue in this proceeding, and that this is why a specific finding of fact as to the meaning of that phrase is necessary. That is incorrect. The material issue in the proceeding was how to develop a mechanism that will accomplish the larger purpose of reimbursing ratepayers for imprudently

[5] PU Code Section 1705 provides in pertinent part: an order or decision "shall contain, separately stated, findings of fact and conclusions of law by the commission on all issues material to the order or decision."

incurred costs now that ECAC and ERAM balancing account proceedings have been given a new purpose by the Legislature, to pay transition costs.

PG&E then argues that by the phrase "any overcollections," the Legislature intended to encompass all dollars currently in the ECAC and in the ERAM balancing accounts and any other dollars which the Commission under its then-existing practices would have placed in these balancing accounts by December 31, 1996. PG&E, however, failed during the proceeding, and fails now, to provide convincing evidence that supports that interpretation of Section 368 (a).

As previously noted, our decision to remove refunds and disallowances from the ECAC and ERAM balancing accounts, and place them in the EDRA, was based upon an exercise of our discretion as permitted by PU Code Sections 451 and 453.5, and not on PU Code Section 368 (a). The Decision's Findings of Fact 3 and 4, read in context, sufficiently address the material issue in the proceeding, fulfilling the purposes of PU Code Section 1705.[6]

Finding of Fact 3, states: "Crediting refunds for disallowances, settlements of reasonableness disputes, and utility cost refunds based on regulatory actions against electric transition costs would be unfair to customers for whom the refunds were intended."

We provided the basis for that finding on page 4 of the Decision:

> "In the normal course of our ratemaking procedures, the current overcollections in the ECAC and ERAM balancing accounts consist of both overcollections due to inevitable forecasting errors and refunds and disallowances from which all classes of current ratepayers would benefit. For convenience, refunds and disallowances have traditionally been disposed of in ECAC and ERAM balancing account proceedings.

[6] In California Motor Transport v. CPUC (1963) 59 Cal.2d 270, 273-74, the California Supreme Court held that Section 1705 serves to provide a rational basis for judicial review, assist the parties in preparing for administrative rehearing or judicial review, and help the Commission avoid careless or arbitrary action.

> The intended purpose of these disallowances was to benefit customers through reduced rates." (Emphasis added.)

Finding of Fact 4 states: "The impact of AB 1890 was not raised on the record in the proceedings resulting in settlement agreements adopted by the Commission in Application (A.)89-04-001 et al. (D.96-08- 033) and in A.94-11-015 (D.96-12-025, p. 9)."

Thus, Findings of Fact 3 and 4, and the underlying discussions in the body of the decision that support those findings, adequately explain the basis for transferring the funds at issue to a ratemaking mechanism that is consistent with their intended purpose.

PG&E's fourth argument is that the requirement in our Decision that electric disallowances be credited to the EDRA is overly broad in that it does not differentiate between disallowances related to a finding of utility imprudence and disallowances where no utility imprudence is found. PG&E misses the point. Equity requires that ratepayers recover all disallowances, regardless of whether they resulted from an "honest" mistake or not. (PU Code 451.) Captive ratepayers should not be forced to pay for the utility's mistakes.

PG&E has also failed to show that we erred by ordering in the Decision that refunds in the form of rebates from pipelines subject to the jurisdiction of the FERC must be placed in the EDRA. It contends that we erred by not providing for a surcharge in the event that during the transition period, the FERC determines that PG&E owes FERC-jurisdictional pipelines payments in excess of those currently included in rates charged by those pipelines. AB 1890 does not address the way we are to treat FERC-ordered refunds and other funds that might otherwise go in the utilities' balancing accounts. AB 1890 does nothing more than provide the utilities with a fair opportunity to recover their transition

costs. It does not guarantee their recovery. Nor does it require us to insulate the utilities from the risks associated with a competitive market.

Finally, PG&E has also failed to substantiate its claim that we erred by assigning all settlement amounts in reasonableness proceedings to the EDRA. It argues that D.96-12-025 unlawfully creates the impression that the utility has been found to have acted unreasonably. Such treatment, it states, will discourage utilities from entering into settlement agreements in future reasonableness proceedings. We previously rejected this argument in D.96-10-035. Furthermore, PG&E's assertions seem to be contrary to common practice. The utility would have the same incentive to settle potential disallowance cases that it has now. Utilities often settle reasonableness cases because there have been allegations of imprudence, and the company finds that it is in its best interests to settle on an amount of disallowance that is typically well below its potential litigation risk.

IV. CONCLUSION

Accordingly, upon reviewing each and every allegation of error raised by the applicants, we conclude that sufficient grounds for the rehearing of D.96-12-025 have not been shown.

THEREFORE, IT IS ORDERED that the Application for Rehearing of Decision 96-12-025 is denied.

This order is effective today.

Dated September 17, 1998, at San Francisco, California.

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