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Decision 98-11-068 November 19, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Gas and Electric Company, for Authority to Revise its Gas Rates and Tariffs to be Effective by September 15, 1995, Pursuant to Decision Nos. 89-01-040, 90-09-089, 91-05-029, 93-12-058 and 94-07-024.

Application 94-11-015
(Filed November 8, 1994)

ORIGINAL

ORDER DENYING APPLICATIONS FOR REHEARING OF DECISION 95-12-053 FILED BY PACIFIC GAS AND ELECTRIC COMPANY, CALIFORNIA INDUSTRIAL GROUP AND CALIFORNIA MANUFACTURERS' ASSOCIATION AND TOWARD UTILITY RATE NORMALIZATION

On December 20, 1995, the Commission issued D.95-12-053, 63 CPUC2d 414 (the Decision) in PG&E's Biennial Cost Allocation Proceeding. The Decision adopted a 2.9% annual increase in gas revenues. The approved cost allocation of the gas revenue requirement shifted a small amount of the cost responsibility from noncore customers to core customers. In doing so, the Commission reexamined whether its long-run marginal cost (LRMC) methodology served the regulatory objective of developing a pricing system that represented the prices that would be observed in a competitive market while continuing to meet the regulatory mandate of ensuring that monopoly customers receive reliable service at reasonable rates. We found that our prior LRMC methodology could lead to unfair cost shifting and sometimes produce illogical results and the Decision therefore adopted changes in the LRMC methodology and identified other marginal cost issues for later review.

Applications for rehearing were filed by Pacific Gas and Electric Company (PG&E), California Industrial group and California Manufacturers' Association (Association) and Toward Utility Rate Normalization (TURN).

Applications of PG&E and the Association

The principal argument made by both PG&E and the Association is that the Commission erred in its calculation of marginal cost. However, it is not necessary for the Commission to reach these arguments because the entire issue of marginal cost pricing for gas has become moot by virtue of the Gas Accord agreed to by the parties and finalized in D.97-08-055, signed August 1, 1996. Under the Accord, marginal costs are based on the embedded cost of service. However, also under the Accord, the LRMC methodology will continue to be used to allocate distribution costs between core and noncore classes. The Accord at pages 45 and 46 at Appendix A of D.97-08-055 states as follows:

> "2. Distribution Cost Allocation
>
> a. The initial distribution revenue requirement will be allocated to end-users on an Equal Percent of Marginal Cost (EPMC) basis, using distribution and customer marginal cost revenues consistent with PG&E's BCAP Decision 95-12-053.
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> b. PG&E will continue to have BCAPs or GRCs or successor proceedings to update the allocation of costs. The methodology for allocating the distribution revenue requirement between core and noncore will not be changed for the term of the Gas Accord although the allocation itself may change due to, among other things, changes to throughput forecasts or marginal costs. The allocation of revenues within the core will be addressed in future BCAPs." (D.97-08-055, Appendix A, pp. 45-46)

At page 41 of the Accord is the following discussion of transmission costs:

> "c. The local transmission charge varies by core and noncore customer class. Local transmission costs are allocated to core and noncore based on LRMC methodology from PG&E's BACP Decision 95-12-053."

The Accord was signed by the parties on August 21, 1996, after many months of negotiations. The applications for rehearing of D.95-12-053 were filed on January 25, 1996. The language quoted above makes it clear that the parties agreed that there would be no change in the methodology for allocating revenues between the core and noncore parties for the five year period of the agreement other than in future BCAPs. Assuming, arguendo, that Applicants' arguments were meritorious, and rehearing were granted, a successful result for Applicants would be a prospective rate change in violation of the Accord. Further, it is settled in California that a settlement by the parties subsequent to an appeal moots that appeal. Bank of America v. Zeising (1994) 104 Cal. 238; Tulare v. Lindsay-Strathmore Irr. Dist. (1935) 3 Cal.2d 489; Leroy v. Bellevista Inv. Co. (1963) 222 Cal. App. 2d 369. The Applicants' arguments are moot and therefore without merit.

PG&E further argues that the Commission committed "an error of policy" by ordering the direct assignment of Demand Side Management (DSM) and Customer Account Costs to the customer classes for whom the programs are designed because DSM programs benefit all ratepayers. The only legal error alleged is that there was insufficient evidence to support the change in violation of Public Utilities Code § 1705, which requires that findings and conclusions of the Commission be supported by the evidence.

A review of the record in this proceeding demonstrates that the change in DSM allocation was supported not only by the evidence but by precedent. TURN proposed the change, relying on the Commission's previous decision in

Southern California Gas Co.'s last general rate case. In that decision, as here, the Commission elected to allocate all DSM and marketing costs directly to the classes targeted by the programs. (D.93-12-043, pp. 131, 132, 52 CPUC 471) As the Division of Ratepayer Advocates (DRA) points out in its Response to PG&E's application, at page 4, PG&E spends six pages in its application discussing policy issues without a single reference to the record in this case, other than the testimony offered by TURN to support its recommendation. These points should have been made on the record rather than in an application for rehearing.

Applicants allege that the decision is contrary to Calif. Man. Assn. v. Public Utilities Commission (1979) 24 Cal.3rd 263. In that proceeding, the Court annulled the Commission's decision on conservation rate design because of the "absence of any evidence" and because "nothing exists" to justify the Commission's findings and conclusions. (24 Cal.3rd, 668) In the present case, the Commission's decision was based on testimony presented by TURN in its Exhibit 46, at pages 28-29, as set out by Applicant at page 8 of its Application and by the precedent discussed above. The Commission, at page 39 of the Decision, after pointing out that PG&E made no showing on the issue, stated that it was adopting TURN's recommendation. Finding of Fact 27 reflects that conclusion. There were sufficient evidence and Findings of Fact to justify the Commission's action. PG&E could have submitted its own testimony, either in its direct showing or on rebuttal, but chose not to. The company should not be allowed to argue this matter for the first time in an application for rehearing. The argument is without merit.

PG&E's final argument is that allocating $1.6 million of customer accounting costs to noncore customers is discriminatory and in violation of Public Utilities Code § 453. These expenses relate to services provided directly to customers in the form of bill processing, credit and collections, billing and rate information and accounting, and amount to $86 million annually for the gas department. (Application of PG&E, page 12) PG&E's argument appears to be that

the order is discriminatory because noncore customers pay $1.6 million in addition to a portion of the core customers' accounting costs. As DRA points out in its Response to the Application, at page 5, this does not constitute discrimination. This is because the core's accounting costs are allocated by equal percent of marginal cost (EPMC). The $1.6 million in costs at issue here are only a portion of noncore accounting costs and they were formerly included in the DSM and marketing budget. (Ex. 45, p. 25) Allocating them directly to the noncore is equitable since all core DSM costs are allocated directly to the core. Allocating them by EPMC, as apparently advocated by PG&E, would truly lead to a discriminatory outcome since the core would wind up paying 100% of core DSM costs as a result of a direct allocation and 90% of the $1.6 million in customer accounts as a result of an EPMC allocation. (Response of DRA, page 5) The argument is therefore without merit.

Application of TURN

TURN claims that certain procedural requirements were not met in the issuance of the decision. Specifically, Applicant complains that the final decision adopted by the Commission contained alternate pages in addition to the ones mailed to the parties that changed the result of the Proposed Decision on one contested issue: the allocation of the revenue shortfall resulting from core to noncore migration. TURN alleges that this constitutes a violation of Public Utilities Code § 311(e) and Commission Rule 77.6.

TURN's complaint, even if accepted as accurate, is difficult to understand because the Decision adopted TURN's position on the very issue complained of. At 60 CPUC 442 the Decision states:

> "B. Core/Noncore Mitigation Volumes.
>
> TURN testified that PG&E's methodology had not fully captured the effects of the core to noncore

> migration in the noncore demand forecast. PG&E agreed with TURN. We adopt TURN's proposal, as set forth in Exhibit 50, to correct the noncore demand forecast in this proceeding and to continue tracking account treatment for all customers who migrated during 1993 or thereafter until PG&E's next BCAP."

Further, this is the very same position that TURN took in the previous SoCalGas BCAP proceeding, and that was adopted by the Commission in D.95-05-044, 60 CPUC 14. (Response of PG&E, page 4) Here, TURN appears only to be complaining of the procedure used to reach the Commission's ultimate decision, but not the rightness of the decision itself, which adopted TURN's position. It is well settled in California that a party has no right to appeal a decision where it prevailed on the issue. 69 A.L.R.2d 701; Hensley v. Hensley (1987) 190 Cal.App.3d 895, 235 Cal.Rptr. 684; United Railroads of San Francisco v. Colgan (1908) 153 Cal. 53, 94 P. 245; Widener v. Hartnett (1938) 12 Cal.2d 287, 83 P.2d 718; In re Hughes' Estate (1947) 80 Cal.App.2d 550, 182 P.2d 253; Burgermeister Brewing Corp. v. Superior Court In and For Butte County (1961) 195 Cal.App.2d 368, 15 Cal.Rptr. 751.

TURN's argument is without merit and its Application should be denied.

Conclusion Of Law:

1. PG&E and the Association's agreement to the Gas Accord as finalized by D.97-08-055 made moot their arguments relating to the calculation of marginal costs.

Therefore, **IT IS ORDERED** that no legal or factual error having been presented, the Applications for rehearing are denied.

1. Application No. 94-11-015 is closed.

This order is effective today.

Dated November 19, 1998, at San Francisco, California.

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