

Decision 98-12-003

December 3, 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.

ORIGINAL

Application 94-11-015
(Filed December 21, 1994)

ORDER DENYING REHEARING OF DECISION NO. 96-12-026

Decision 96-12-026 (the decision) modified a previous decision (D.96-09-042) in which the Commission had found reasonable a plan whereby PG&E proposed to credit certain moneys to its utility electric generation department (the "UEG credit") by booking the credit to PG&E's Energy Cost Adjustment Clause (ECAC) balancing account. In Decision 96-12-026, the Commission ordered that the UEG credit be made by booking it to the Electric Deferred Refund Account (EDRA) which the Commission established in Decision 96-12-025, rather than the ECAC balancing account.

PG&E alleges the following errors in the decision:

- A. The decision undermines the Commission's settlement rules by effectively prejudging separately a major element of an integrated settlement.

- B. The decision is arbitrary and unreasonable because it alters established commission policy, thereby frustrating settled expectations.
- C. The decision modified Decision 96-09-042 without providing parties an opportunity to be heard in violation of section 1708.
(PG&E's Application, page i)

The decision was issued on December 9, 1996 and the Application for Rehearing was filed on January 10, 1997. On August 1, 1997, the Commission issued D.97-08-055, which approved the Gas Accord, which had been entered into on August 21, 1996, after many months of negotiations by the parties, including PG&E. Application 94-11-015, which is the subject of this application, is listed in the caption among the 19 proceedings which are the subject of D.97-08-055. Indeed, at page 68 of the Accord, under the heading "Regulatory cases addressed by the Accord" appears: "6. BCAP Phase II (A.94-11-015)".

PG&E itself states, in describing the Gas Accord (proposed, at that time): "A comprehensive settlement that will, if approved, not only resolve all major gas cases presently pending before the Commission ..." (PG&E's Application, page 3).

As already pointed out, D.96-12-026 and PG&E's Application for Rehearing were filed before the Gas Accord was approved in D.97-08-055, dated August 8, 1997. As PG&E points out, at page 1 of its application, the Accord specifically addresses the issues of the amortization of balancing accounts relating to PG&E's interstate transmission cost surcharge balancing account, the subject of PG&E's present application for rehearing. (PG&E application, page 1)

It is therefore clear that PG&E's subsequent agreement to the Gas Accord has made moot the arguments it previously made in this application. It is settled in California, as we recently pointed out in D. 98-11-068, involving a similar Application by PG&E filed before the Gas Accord, that a settlement by the

parties subsequent to an appeal moots that appeal. Bank of America v. Zeising (1894) 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 therefore moot and without merit.

CONCLUSION:

No legal error having been demonstrated, the Application should be denied.

THEREFORE, IT IS ORDERED that:

1. The Application for Rehearing of D. 96-12-026 is denied.

This order is effective today.

Dated December 3, 1998, at San Francisco, California.

RICHARD A. BILAS
President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners