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Decision 98-12-053 December 17, 1998

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PacifiCorp (U901-E) For Approval of PacifiCorp's Transition Plan.	Application 97-05-011 (Filed May 5, 1997)
Application of Sierra Pacific Power Company for Approval of its Transition Plan.	Application 97-06-046 (Filed June 27, 1997)
Application of Kirkwood Gas & Electric Company (U906-E) For Compliance with the Requirements of AB 1890.	Application 97-07-005 (Filed July 3, 1997)
Application of Southern California Water Company for Certain Exemptions to California Public Utilities Commission Decisions 97-05-039, 97-05-040, and Related Order Instituting Rulemaking (OIR) 94-04-031, and Order Instituting Investigation (OII) 94-04-032.	Application 97-08-064 (Filed August 22, 1997)

ORDER IN RESPONSE TO THE PETITION OF SIERRA PACIFIC POWER COMPANY FOR MODIFICATION OF DECISION 97-12-093

Summary

Pursuant to § 368 of the Public Utilities Code, in Decision (D.) 97-12-093, the Commission required Sierra Pacific Power Company (Sierra) to reduce its rates for residential and small commercial customers by 10% during the transition period defined in other portions of Assembly Bill (AB) 1890. In addition, the Commission rejected Sierra's request to track the revenues "lost" due to the 10% rate reduction in a balancing account for recovery after the

transition period. The Commission found that while the statute did provide for recovery of such "lost" revenues through the sale of rate reduction bonds, it did not allow for recovery in other ways. The Commission found this to be true even though some other means of recovery might make more economic sense for ratepayers.

In its Petition for Modification of D.97-12-093 filed September 24, 1998, Sierra asks the Commission to reverse its earlier decision and allow Sierra to recover the "lost" revenues through a balancing account. Sierra has failed to demonstrate that such recovery would be lawful. In this decision, we deny Sierra's petition for modification.

Background

AB 1890 sets forth the framework under which California's electrical corporations will move toward and function within a restructured electric industry. In D.97-12-093, the Commission determined how AB 1890 would apply to Kirkwood Gas and Electric Company, Southern California Water Company Bear Valley Division, PacifiCorp, and Sierra. These are the multi-jurisdictional and comparably smaller regulated electric utilities serving California customers. Sierra is a multi-state utility that conducts a small fraction of its retail electric business in California. AB 1890 does not mention Sierra, or any of the other three smaller or multi-jurisdictional electrical corporations, by name. At issue in D.97-12-093 was whether the Commission could or should relieve a utility of the need to comply with provisions of AB 1890 where the utility could demonstrate the existence of special circumstances. The Commission found nothing in the statute that would allow for a less than even-handed application of its major provisions to all electrical corporations.

> "Where the Legislature wished to carve out exceptions, it did so explicitly. We are not free to create exceptions where the Legislature has provided for none. Thus, each of these companies is required to unbundle its rates into components that reflect its underlying cost for generation, transmission, distribution and public purpose programs. Where a company is seeking to recover any uneconomic cost of generation, it must reflect the resulting transition charges on its bills to all customers, track its collection of transition costs in a balancing account, undergo a market valuation process, surrender control of its jurisdictional transmission facilities to the Independent System Operator (ISO), freeze its rates at June 10, 1996 levels and provide a 10% rate reduction for residential and small commercial customers. A company that does not seek the recovery of transition costs has no transition period. Its rates need not be frozen and it need not offer a 10% rate reduction. However, such a company forgoes its opportunity to collect transition costs and must charge its bundled customers for its actual cost for providing generation services, as opposed to its imbedded cost."

Discussion

Sierra is seeking the recovery of transition costs and has reduced its rates for residential and small business customers by 10%. In the proceeding that led to D.97-12-093, both PacifiCorp and Sierra sought permission to track in a balancing account the revenues forgone as result of the 10% rate reduction. These utilities proposed to recover the forgone revenues through rates after the transition period. The Commission rejected this proposal, stating:

> "The provisions of AB 1890 state that, with limited exceptions, transition costs can be recovered only during the transition period. An exception is the recovery of remaining fixed transition amounts as defined in § 840(d). Costs stemming from rate recovery bonds (as defined in § 840(e)), which PG&E, SDG&E, and Edison have been permitted to issue, are an example of fixed transition amounts. As we explained in D.97-09-054, for fixed transition amounts to be recoverable, we must so designate them in a financing order (as defined in § 840(c)) if we determine, as part of our findings in connection with the financing order, that the designation of the fixed

transition amounts would reduce rates that residential and small commercial customers would have paid if the financing order were not adopted.

"If Sierra or PacifiCorp were to seek post-transition period balancing account recovery for revenues forgone by the 10% rate reduction, they would be deferring the recovery of transition costs until after the transition period. Neither company has cited an exemption in AB 1890 that would allow for such recovery. In addition, Sierra's proposal has two features which may increase the burden on residential and small commercial ratepayers of the recovery of these costs. First, the company would have taken no steps to reduce the financing costs. Second, since the company would not begin to recover the costs until after the transition period, ratepayers would face higher costs in the period immediately thereafter. The fixed transition amounts that we approved for other utilities will be amortized over ten years, including the transition period, during which a portion of the otherwise-available headroom revenues will be devoted to this purpose.

"Sierra and PacifiCorp initially chose not to pursue rate reduction bonds, or any other financing mechanism. If either company wishes to recover the cost of the 10% rate reduction, it may file a financing order pursuant to § 841 seeking authority to established fixed transition amounts for this purpose. In so doing, the company must demonstrate that its proposed financing method will lead to a reasonable cost of debt, in light of the success other utilities have experienced in placing rate reduction bonds. In order to enable the utilities to seek effective recovery of its rate reduction costs, we will permit each company to track its forgone revenues in a memorandum account. If this commission approves the establishment of fixed transition amounts for these purposes, we will apply an amortization period similar to those adopted for PG&E, SDG&E, and Edison, presumed to begin with the onset of the transition period. Thus, to maximize its opportunity for recovery, we encourage the companies to file any such request as soon as possible."

Sierra now asks the Commission to reconsider its earlier decision and to allow it to create a balancing account leading to the post-transition recovery of the rate reduction revenues without benefit of rate reduction bonds. Fundamentally, Sierra argues that (1) the ban on post-transition-period recovery of revenues is limited to uneconomic costs (which include transition costs); (2) the recovery of rate reduction revenues is not transition cost, as define in § 840(f), nor is it uneconomic cost as defined in § 367; and therefore, (3) the law does not prohibit Sierra from recovering the lost revenues after the transition period using whatever mechanism seems most reasonable. Sierra argues that, even if this line of reasoning does not prevail, the company's balancing account proposal represents a form of financing. It argues that this proposal is better for ratepayers than the purchase of rate reduction bonds and that the Commission is empowered by § 701 to grant exceptions to AB 1890 under such circumstances.

We would gladly adopt Sierra's proposal if it were superior to the rate reduction bond approach, and if the law allowed us to do so. However, the law is unambiguous in precluding us from adopting Sierra's proposal. Sierra's argument in support of its proposal fails upon taking the first step. We do not agree that the limitations on recovery of costs after the transition period contained in AB 1890 only apply to the recovery of uneconomic costs. In D.97-10-057 (our "tariff streamlining" order), we determined that "no electric utility account used for the purpose of electric regulation or ratemaking shall include costs incurred or revenues collected during the rate freeze period for recovery at any time either during or after the rate freeze period except as expressly authorized in AB 1890 and implemented by Commission order." Sierra can cite no language in the statute that authorizes the recovery it seeks, while the entire framework of the legislation suggests just the opposite. In D.97-10-057, we also concluded that "consistent with AB 1890, the Commission should prohibit

the use of any regulatory account to accrue costs incurred or revenues collected during the rate freeze period for the purpose of affecting rates either during the rate freeze period or after it."

Whether or not these "lost revenues" or any other transition-period costs might be defined as something other than transition costs, it would be unlawful to allow for their recovery after the transition period because of the impact that would have on the utility's recovery of transition costs. A utility's obligation to use the "headroom" separating its costs from its revenues during the freeze period as its sole means for recovering uneconomic costs would be meaningless if the utility could tuck some of its costs into balancing accounts and simply recover them later. The Legislature addressed this point directly in § 368(a), where it established a rate freeze that must remain in effect for the entire transition period and said, "[t]he electrical corporation shall be at risk for those costs not recovered during that time period."

But for specific exceptions set forth in the legislation, the Commission cannot allow for cost recovery beyond the transition period. The statute provides an express exception for the recovery of costs related to rate reduction bonds if approved in a financing order as defined in § 840(c), but provides no discretion for the use of other approaches. Sierra has the option of recovering its "lost revenues" by issuing rate reduction bonds. We granted the company permission to do so in D.98-10-021.

Sierra argues that the Legislature in AB 1890 clearly intended to allow utilities to recover the full amount of all lost revenues associated with the rate reduction, implying that this intention empowers the Commission to create a vehicle for such recovery, even where rate reduction bonds are not economically sensible. To support this, Sierra cites §§ 1(b)(3) and 1(e). To provide context, we first look at § 1(b)(2), which states the Legislature's intent that there be "an

immediate rate reduction of no less than 10% for residential and small commercial ratepayers." Here are the sections of AB 1890 cited by Sierra:

> "Section 1(b)(3): [It is the intent of the Legislature to provide for] the financing of the rate reduction through the issuance of 'rate reduction bonds' that create no new financial obligations or liabilities for the State of California."
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> * * *
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> "Section 1(e): It is the intent of the Legislature that electrical corporations shall, by June 1, 1997, or on the earliest possible date, apply concurrently for financing orders from the Public Utilities Commission and rate reduction bonds from the California Infrastructure and Economic Development Bank in amounts sufficient to achieve a rate reduction in the most expeditious manner for residential and small commercial customers of not less than 10 percent for 1998 and continuing through March 31, 2002."

If we should conclude from this language that the Legislature "clearly" intends to permit the utilities to recover the revenues forgone through the rate reduction (and we do so conclude), then it is equally clear that the Legislature intended for rate reduction bonds to be the vehicle for gaining such recovery. It does not refer to using financial instruments "such as" rate reduction bonds. It only allows for rate reduction bonds. It does not provide any room for discretion by selecting another approach in the event that such bonds are not the economically preferred choice.

Sierra also seems to confuse the purpose of the revenue bonds. They are not meant to recover the 10% rate reduction. Instead, the proceeds are a credit against stranded costs, and Sierra has not yet filed a transition plan to recover such costs.

Faced with unsatisfactory language in AB 1890, Sierra asks the Commission to rely on its general powers under § 701 to rewrite the offending text.

Section 701 states:

> "The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction."

Sierra argues that this code section, which was in effect many years prior to AB 1890, empowers the Commission to ignore the limitations created in the later statute. Sierra cites the Commission's decision in City of Vernon v. Atchison, Topeka & Santa Fe Railroad, D.96-11-015, for the proposition that § 701 empowers the Commission to fill the interstices and gaps of statutes directing how public utilities shall be regulated. This is a fair characterization of at least part of the authority vested in this agency under § 701.

However, in City of Vernon, the Commission also acknowledged the guidance provided by the California Supreme Court in Assembly of the State of California v. Public Utilities Commission (1995) 12 Cal.4th 87, 103. Therein, the Court noted that § 701 does not confer upon the Commission powers contrary to other legislative directives or to express restrictions on its authority in the Public Utilities Code. Where, as here, the Legislature has set forth a detailed series of steps to follow and has listed the only applicable exceptions, the Commission is not left with room to craft creative solutions. In Vernon, the Commission found that the City had not demonstrated the existence of a specific gap that § 701 might properly fill. Similarly, Sierra has failed to show us an applicable gap in the statutory framework provided in AB 1890.

For all of these reasons, we must deny Sierra's petition for modification.

Finding of Fact

Sierra has not demonstrated that D.97-12-093 should be modified, as requested.

Conclusion of Law

The Petition to Modify should be denied.

O R D E R

IT IS ORDERED that:

1. The Petition of Sierra Pacific Power Company for Modification of Decision 97-12-093 dated September 24, 1998, is denied.

2. Application (A.) 97-05-011, A.97-06-046, A.97-07-005, and A.97-08-064 are closed.

This order is effective today.

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

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