

Decision 99-02-089

February 18, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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.

A. 94-11-015
(Filed November 8, 1994)

**ORDER GRANTING REHEARING
OF DECISION 98-11-068 AND DECISION 95-12-053**

I. Summary

The Utility Reform Network (TURN) has filed an application for the rehearing of D.98-11-068 in which the Commission denied its initial application for rehearing of D.95-12-053. The latter decision determined the revenue and rate changes for the 1995 Biennial Cost Allocation Proceeding (BCAP) of Pacific Gas and Electric Company (PG&E). TURN seeks rehearing on the grounds that: 1) in issuing D.95-12-053, the Commission committed a procedural error, in violation of Rule 77.6 of the Commission's Rules of Practice and Procedure, by not submitting to public comment a modification of the proposed decision of the Administrative Law Judge (ALJ) prior to voting on the decision, and 2) in denying rehearing of D.95-12-053 in D.98-11-068, the Commission did not address the correct substantive issue which was the subject of the procedural error and, therefore, did not properly resolve the question of a rule violation.

As we discuss below, TURN's initial application did not fully explain the subject matter of the modification it claimed was made without the prior publication of an alternate subject to public comment. However, in its present application, TURN has substantiated that there was an inadvertent error in the

Commission's process of adopting a modification of the ALJ's Proposed Decision regarding the allocation of a revenue shortfall between core and noncore customers. The modification was included in D.95-11-053 without first submitting it to public comment, as required by Rule 77.6. This procedural rule was added to Title 20 of the California Code of Regulations, effective October 10, 1995, as prescribed by Cal.Pub.Util.Code Section 311(e).

PG&E has filed a motion on January 25, 1999 requesting permission to file a late response to the present application for rehearing of D.98-11-068. Because TURN's application was filed on December 23, 1997, just before the extended holiday season, and PG&E's filing is but a few days late, we believe it reasonable to grant the motion and accept the response. PG&E agrees with TURN that an alternate was not circulated, but devotes its response to arguing the underlying revenue allocation issue. (PG&E Response, p.2.) PG&E's argument on the substantive issue is premature.

We now conclude, therefore, that as required by Cal.Pub.Util.Code Section 1732, TURN has demonstrated legal error arising from a critical error of fact in D.98-11-068 and a procedural rule violation in the issuance of D.95-12-053. Accordingly, limited rehearing will be granted. Parties will be permitted, if they wish, to file written comments on the question of the allocation of the revenue shortfall resulting from the "migration" of throughput volumes from core to noncore customers as tracked in the relevant account reviewed in the 1995 PG&E BCAP, A. 94-11-015.

II. Discussion

On November 20, 1995, the presiding ALJ issued a proposed decision on a myriad of BCAP rate and allocation issues. Prevailing in this BCAP was the application of the Commission's long-run marginal cost (LRMC) methodology that had been adopted in 1992 for setting regulated prices for natural gas utilities.

(D.92-12-058.) There was, in addition, a focus on the effects of an emerging competitive market for the procurement of natural gas by large commercial customers who were generally designated as noncore customers and classified separately from primarily residential ratepayers constituting the core class of ratepayers.

One of the numerous issues reviewed was the allocation of revenue responsibilities between core and noncore customers. More specifically, the issue of concern to TURN was the allocation of the revenue responsibility resulting from the migration of throughput (i.e., natural gas volumes transported) from higher core rates to the lower noncore rate. PG&E sought an adjustment in its rates to compensate for this reduction in the revenues PG&E had been expected to collect under the Commission's previous rate order.

In the proposed decision, the ALJ recommended the adjustment proposed by TURN whereby the revenue shortfall resulting from the throughput migration would be allocated between core and noncore customers on an equal cents per therm formula. This formula was recommended, according to the ALJ, because the record indicated that it would produce a result close to the result in the BCAP for Southern California Gas Company (SoCalGas), even though the method adopted for the revenue shortfall for SoCalGas was not an equal cents per therm calculation. The calculation that had been adopted for SoCalGas relied on adjusting the throughput forecast of the preceding BCAP according to the actual migration of volumes experienced by SoCalGas. (Proposed Decision, November 20, 1995, pp.52-53.)

When the decision on PG&E's BCAP issued on December 20, 1995, however, a change had been made to the proposed decision pursuant to a Commissioner recommendation. Instead of adopting the equal cents per therm formula set forth in the proposed decision, the Commission decided that the

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revenue shortfall should be allocated between core and non-core according to the methodology adopted for SoCalGas. (D.95-12-053, mimeo, pp.53-54, 63 Cal.P.U.C.2d414,,447-448 (December 20, 1995). The decision also offered a rationale different from that of the proposed decision, consistent with the allocation methodology adopted.

TURN then timely filed an application for rehearing claiming that the proposed decision had been modified without an alternate having been published and subject to public review and comments. TURN relied on Rule 77.6 of the Commission's Rules of Practice and Procedure and Cal. Pub. Util. Code Section 311. However, TURN did not fully explain the substance of the modification it claimed had been made. Our response to this initial rehearing application thus considered the integrally related throughput issue discussed under the heading "Core/Noncore Migration Volumes." (D.95-12-053, mimeo, p.41, 63 Cal.P.U.C.2d, at p.444.) In this part of the decision, we adopted TURN's proposal to correct the noncore demand forecast and to continue to monitor the account treatment for customers who "migrated." Because our order on this particular matter reflected TURN's proposal, we found that TURN had improperly filed for rehearing and, consequently, the Commission did not reach the procedural question of a Rule 77.6 violation.

The present rehearing application more clearly focuses the subject matter of concern to TURN, which is not the throughput forecast as affected by migration from core to noncore, but rather the effect of the throughput migration, as recorded in the 1995 BCAP accounts, on the revenue responsibility allocation between core and noncore customers. With this clarification, and upon further review of the record, we recognize that a substantive change from the ALJ's proposed decision was made in D.95-12-053 based on a Commissioner

recommendation, and that the change should have been presented in an official alternate and made subject to the procedural requirements of Rule 77.6.

Accordingly, the Commission believes that the parties should now be given the opportunity to file written comments on the rationale and conclusion reached on the question of PG&E's revenue shortfall allocation. The revenue shortfall in question is limited to that amount tracked in the relevant account reviewed in PG&E's 1995 BCAP. The comments shall be filed in accordance with Rule 77.6(d).

IT IS THEREFORE ORDERED that:

1. A limited rehearing shall be granted .
2. Parties to the above-captioned proceeding may file comments pursuant to Rule 77.6(d) on the changes made under the heading "Revenue Shortfalls from Core to Noncore Migration" at D.95-12-053, mimeo, pp.53-54, 63 Cal. P.U.C. 2d 414, 447-448, relevant to the discussion and conclusion set forth under the same heading in the ALJ Proposed Decision of November 20, 1995, at pages 52-53 .
3. The revenue shortfall in question shall be limited to that amount calculated from the migration shortfall tracking account considered in PG&E's BCAP, A.94-11-015.
4. Pursuant to Rule 77.6(d) and Rule 77.2, any party wishing to file comments on the changes described above shall make the filing within 20 days of the mailing date of this decision. All other requirements for filing comments as made applicable by Rule 77.6(d) shall also be met.

This order shall be effective immediately.

Dated February 18, 1999 at San Francisco, California.

RICHARD A. BILAS

President

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners