

Decision 99-06-085 June 24, 1999

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company to Recover 1997 and 1998 Non-Nuclear Generation Capital Additions in the Competition Transition Charge Pursuant to PU Code Section 367.

(U 39 E)

Application 98-07-058  
(Filed July 30, 1998)

Application of San Diego Gas & Electric Company (U 902-E) for Competition Transition Charge ("CTC") Recovery of Capital Additions.

Application 98-08-012  
(Filed August 7, 1998)

**O P I N I O N**

**Summary**

This decision adopts a settlement filed by Pacific Gas and Electric Company (PG&E), the Office of Ratepayer Advocates (ORA), and The Utility Reform Network (TURN) that resolves the issues surrounding PG&E's request for recovery of non-nuclear generation capital additions for 1997 and the first quarter of 1998. The settlement would reduce by \$4.9 million the amount PG&E is permitted to recover by way of the competition transition charge (CTC) for capital additions from the requested amount of \$133.4 million.

This decision also adopts a joint recommendation filed by San Diego Gas & Electric Company (SDG&E), ORA, and TURN resolving the issues surrounding SDG&E's request for recovery of non-nuclear generation capital additions for 1997 and the first quarter of 1998. The settlement would grant SDG&E's request for \$22.3 million in capital additions.

## **Background**

PG&E filed this application on July 30, 1998 seeking to recover 1997 and first quarter 1998 non-nuclear generation capital additions in the CTC pursuant to Pub. Util. Code § 367.<sup>1</sup> The application requests recovery in the Transition Cost Balancing Account (TCBA) of \$133.4 million for capital additions made in 1997 and the first quarter of 1998.

SDG&E filed its capital additions application on August 7, 1998 requesting recovery of \$22.35 million for capital additions during the same period. ORA protested certain aspects of both applications. ORA raised concerns that certain capital additions should not be recoverable through the TCBA as Applicants requested. TURN also filed a protest.

Subsequently, the Commission held a prehearing conference during which the parties addressed the scope of the proceeding and a schedule for resolving outstanding issues. The assigned Commissioner issued a scoping memo and ruling on October 27, 1998 specifying the scope of the proceeding and establishing a schedule. On November 20, 1998 ORA and TURN served testimony recommending certain disallowances. PG&E met with TURN and ORA to settle issues and filed a motion to adopt a settlement on January 8, 1999. No party opposes the motion or the associated settlement.

On March 15, 1999, SDG&E and ORA filed a settlement resolving outstanding issues. The Commission held a one-day hearing at the initiation of the Administrative Law Judge (ALJ) on April 13, 1999 to receive additional information about the terms of the settlements. The assigned ALJ presided over

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<sup>1</sup> All statutory cites are to the Public Utilities Code, unless otherwise noted.

the hearing and the assigned Commissioner attended. No party cross-examined the settlement witnesses.

### **PG&E's Application**

PG&E's application seeks \$133.4 million for capital additions made during 1997 and 1998. Most of the costs are related to repairs and improvements to its hydroelectric plants, upgrades to comply with environmental regulation and electric industry restructuring. PG&E asks that the Commission permit these costs to be included in the TCBA and recoverable in the CTC, consistent with the Commission's treatment of these costs in Decision (D.) 98-03-055 for PG&E's 1996 capital additions.

ORA submitted written testimony recommending a disallowance of \$49.8 million. Most of the proposed disallowance concerns work on hydroelectric plant that ORA believes was not cost-effective.

TURN also submitted testimony and proposed additional disallowances of \$12.5 million on the basis that the associated capital additions were not cost-effective. Most of the proposed disallowance is associated with hydroelectric plant.

### **SDG&E's Application**

SDG&E's application seeks \$22.3 million for capital additions made during 1997 and 1998. It asks that the Commission permit these costs to be included in the TCBA and recoverable in the CTC, consistent with the Commission's treatment of these costs in D.98-03-055 for SDG&E's 1996 capital additions.

No party opposes SDG&E's request. ORA's written testimony states that ORA evaluated the costs and proposes no associated disallowances.

## Overview of the Settlements

PG&E. The settlement between PG&E, ORA, and TURN provides the following:

1. Disallowance. PG&E agrees to reduce its request for recovery of capital additions costs by \$4.9 million. The disallowance does not identify any particular costs or projects although PG&E may allocate the entire amount to hydroelectric generation. PG&E will exclude the \$4.9 million from the net book value of designated hydroelectric assets in seeking a Commission finding regarding the assets' market value.
2. Recovery of Restructuring Implementation Costs. The settlement separates costs related to restructuring implementation into two categories. Category 1 assets are those plants for which the Commission has issued findings regarding market value as of the date of the Commission's approval of the settlement. Category 2 assets are those for which the Commission has not issued findings regarding market value as of the date the settlement is approved. For Category 1 assets, PG&E will add the restructuring implementation costs to the net book value of the plants for purposes of market valuation and transition cost recovery of these additions. For Category 2 assets, PG&E assumes the risk for recovery from the market and will debit memorandum accounts accordingly. At the time of market valuation, the remaining net book value of the restructuring related capital additions (excluding the at-risk current costs as of March 31, 1998) will be added to the net book value of the plants for purposes of market valuation and transition cost recovery of these additions.

In general, the settlement permits PG&E to recover all but \$4.9 million of its requested capital additions funding in the same way it recovered 1996 costs, with one exception. For electric restructuring costs that are associated with plant for which the market has not established a value (termed "Category 2" assets in the settlement), PG&E assumes some market risk. This market risk would occur when PG&E's generation revenues are less than the full value of the plant. In

those cases, PG&E's shareholders would bear a portion of the cost during the period prior to the plant's market valuation. After that plant has an established market value, PG&E would be able to recover the costs through the TCBA and thus the CTC.

SDG&E. The joint recommendation between SDG&E and ORA permits SDG&E to recover its subject capital additions costs the same way SDG&E recovered 1996 costs. The joint recommendation provides for the same ratemaking mechanism applied to PG&E's "Category 2" assets; however, SDG&E testified in the hearing that it will not have any such plants by the date of the Commission's decision in this proceeding.

### **Discussion**

Section 367 states in pertinent part:

The Commission shall identify and determine those costs and categories of costs for generation-related assets and obligations, consisting of generation facilities...(including) the appropriate costs incurred after December 20, 1995 for capital additions to generating facilities existing as of December 20, 1995, that the Commission determines are reasonable and should be recovered provided that these additions are necessary to maintain the facilities through December 31, 2001.

In the context of the associated statutory provisions, § 367 permits the utilities to recover capital additions approved by the Commission by way of the CTC rather than assume the risk of recovering them through market prices.

D.99-03-055 elaborates further on our interpretation of the statute and the criteria upon which we judge the reasonableness of capital additions investments that are subject to the statute.

PG&E, ORA, and TURN have agreed that PG&E should create an elaborate incentive mechanism for the costs of implementing electric

restructuring associated with plant for which the Commission has not approved a market value. They also agree to a disallowance of \$4.9 million of the \$133.4 million PG&E requests. Their settlement otherwise concurs with the relief PG&E's application seeks.

SDG&E and ORA agree that SDG&E should be subject to an incentive mechanism like the one included in the PG&E settlement. However, because SDG&E will have no plant that would be subject to the incentive, the settlement is effectively an approval of SDG&E's application.

The settlements filed in this proceeding are reasonable, consistent with the law, and in the public interest. No party has protested either settlement and we adopt them.

### **The Use of the Scoping Memo**

In this proceeding, a procedural anomaly occurred which deserves comment here. The scoping memo in this proceeding, issued October 27, 1998, determined that "the Commission will not in this proceeding authorize recovery of any costs which are related to 'programs to accommodate implementation of direct access, the Power Exchange, and the Independent System Operator (ISO) ...'" and stated the Commission's intent to review such costs in the utilities' § 376 applications. The scoping memo addressed this matter in response to a motion by ORA and TURN.

Following issuance of the scoping memo, PG&E, ORA, and TURN filed the settlement for PG&E. Concerned that the settlement permitted recovery of direct access implementation costs, the assigned ALJ issued a ruling seeking clarification of whether such costs were the subject of the settlement, among other things. The parties' written response failed to clarify the matter. Accordingly, the assigned ALJ scheduled a hearing to better understand the implications of the settlement provisions. At the hearing, the PG&E witness

admitted that the settlement permitted PG&E to recover "electric industry restructuring costs" which would not have been incurred "(b)ut for the establishment of the ISO and the Power Exchange..." The SDG&E settlement also permits recovery of such costs. Both settlements, therefore, resolve issues that the scoping memo explicitly excluded from consideration in this proceeding.

Section 1701.1 requires the Commission to issue a scoping memo "that describes the issues to be considered and the applicable timetable for resolution" in relevant proceedings. The scoping memo serves two important purposes. It provides parties' with notice of the range of issues the Commission will consider in the proceeding and is a document upon which parties should be able to rely in deciding whether and how to participate in a proceeding. The scoping memo is also a planning tool that permits the Commission and the parties to allocate time and resources among proceedings. As a planning document, it also mitigates the possibility that an issue would be litigated unnecessarily in more than one forum.

In this case, the parties could have compromised both purposes of the scoping memo by ignoring one of its elements. Parties who did not engage in settlement discussions should have been able to rely on the Commission's decision to review electric industry restructuring costs in the § 376 applications. Instead, three parties filed a settlement that preempted review in § 376 applications. This outcome could have deprived parties of their opportunity to be heard on the issue and required them to litigate a matter in another proceeding in vain. In this particular case, we do not believe any party's rights are compromised because the active parties in this proceeding and the § 376 applications are the same. Nevertheless, the settling parties' failure to draw the matter to the Commission's attention required the assigned ALJ and Commission

staff to pursue the issue independently by way of a written pleading and a hearing which might not have been otherwise required.

We can envision situations that would justify changing the scoping memo. To be sure, the Commission's proceedings should be conducted in ways that recognize changes in circumstances. The method for changing the scope of a proceeding, however, is not to proceed without regard for the scoping memo but to move for a change in the scoping memo. We encourage the parties to do so in future cases where circumstances warrant.

### **Waiver of Comment Period**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

In Resolution ALJ 176-2999 dated September 3, 1998, the Commission preliminary categorized this application as ratesetting, and preliminarily determined that hearings were necessary. In order to understand the terms of the settlement, an informational hearing was convened by the ALJ, but this matter did not proceed to evidentiary hearing. Therefore, the preliminary hearing determination is changed.

### **Findings of Fact**

1. PG&E, ORA, and TURN filed a settlement in this proceeding resolving all outstanding issues for PG&E. The settlement is unopposed. It is consistent with the law and the record of this proceeding.

2. SDG&E and ORA filed a joint recommendation in this proceeding resolving all outstanding issues for SDG&E. The settlement is unopposed. It is consistent with the law and the record of this proceeding.

**Conclusions of Law**

1. The Commission should adopt the settlement filed in this proceeding on January 8, 1999 by PG&E, ORA, and TURN.
2. The Commission should adopt the joint recommendation filed in this proceeding on March 15, 1999 by SDG&E and ORA.

**O R D E R**

**IT IS ORDERED** that:

1. The Motion of Pacific Gas and Electric Company, Office of Ratepayer Advocates (ORA), and The Utility Reform Network for Approval of Settlement Agreement filed on January 8, 1999 is approved.
2. The Joint Recommendation of San Diego Gas & Electric Company and the ORA filed on March 15, 1999 is approved.
3. Application 98-07-058 is closed.
4. Application 98-08-012 is closed.

This order is effective today.

Dated June 24, 1999, at San Francisco, California.

RICHARD A. BILAS  
President  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
JOEL Z. HYATT  
CARL W. WOOD  
Commissioners