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Decision 99-06-095 June 24, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for rehearing of Resolution E-3582 concerning internet billing	Application 99-02-027

ORDER CLARIFYING RESOLUTION E-3582 AND DENYING REHEARING

I. SUMMARY

In this order, we deny the application for rehearing of Resolution E-3582 filed by Pacific Gas & Electric (PG&E) alleging insufficient record support for selected conclusions and findings in the resolution. The order finds substantial evidence to support the resolution, but modifies the resolution to clarify selected statements bearing on the intent of the Ordering Paragraph (OP) 8.

II. BACKGROUND

Resolution E-3582 emanated from Ordering Paragraph 2 of D.98-09-070 in the Revenue Cycle Services (RCS) proceeding, which ordered Pacific Gas & Electric (PG&E), Southern California Edison (SCE), and San Diego Gas & Electric (SDG&E) to file advice letters to implement service fees for ESP consolidated billing services.[1] Accordingly, the utility distribution companies (UDCs) filed advice letters seeking authorization for service fees based loosely on the billing service cost offsets on the record in the RCS proceeding. Notice of the advice letter filings was published in the Commission's calendar. As directed by

[1] We note here that D.98-09-070 was the subject of rehearing. The rehearing applications were addressed in D.99-06-063. This resolution does not address the issues raised in those rehearing applications.

OP 2 of D.98-09-070, public workshops were held on October 16, 1998 and November 3, 1998.

On November 10, 1998, timely protests were filed to PG&E's Advice Letter (AL) 1811-E-A and to SCE's AL 1338-E-A by the Office of Ratepayer Advocates (ORA), TURN/UCAN, CellNet, and Enron/New Energy Ventures (NEV). ORA filed a separate protest to the original PG&E and SCE ALs 1811-E and 1338-E. On November 18, 1998, SCE filed a timely response to all four parties' protests. SDG&E filed a timely response to SCE's protest and a later response to Enron/NEV's protest. On November 23, 1998, PG&E filed a late response to the protests.

The draft Resolution was issued on December 21, 1998. Comments were filed on January 4, 1999 by PG&E and SDG&E. SCE filed late comments which were not considered because it did not follow the proper procedure for late-filed comments, as specified in the Energy Division's notice of December 21, 1998. Enron/NEV filed reply comments on January 11, 1998.

Resolution E-3582, establishing consolidated billing service fees for all three UDCs, was adopted on January 20, 1999, and mailed on January 22, 1999. PG&E filed a rehearing application on February 19, 1999, alleging that the Commission violated the substantial evidence rule with respect to certain findings, conclusions, and aspects of the Order pertaining to VAN transmission in comparison to Internet migration for EDI transactions.[2] On March 8, 1999, ORA, SDG&E, and SCE filed responses to PG&E's rehearing application.

III. DISCUSSION

PG&E asserts that Resolution E-3582 is legally flawed because of the lack of record support for selected findings and conclusions, in violation of the substantial evidence rule and Public Utilities (PU) Code 1757(a)(2) and

[2] EDI refers to the electronic exchange and flow through of data.

1757(a)(4).[3] PG&E's objections center around Finding of Fact (FOF) 31 and Ordering Paragraph (OP) 8. These provisions deal with the transmission of billing data by the Internet, and PG&E's concerns that it may not be able to recover its costs if it continues to use Value Added Network (VAN) services for billing purposes. PG&E alleges that there is a lack of record support to establish the efficiency of Internet migration, and that the alleged prohibition in OP 8 of the continued use of VAN, after six months, denies it due process. PG&E is mistaken about the record and has misconstrued the intent of OP 8.

A. The Record Amply Supports the Resolution's Findings and Conclusions.

The record at issue here consists of the advice letters ordered by D.98-09-070, protests to those advice letters and comments on the draft resolution. It is this record from which the Commission made its findings, drew its conclusions, and promulgated ordering paragraphs for Resolution E-3582. After careful review of the record, we find sufficient evidence to support the resolution, and PG&E's claim of the denial of due process on that basis is without merit. On matters relating to substantial evidence, the operative inquiry is whether the contested findings or conclusions are reasonable. We find both FOF 31 and OP 8 to be reasonable based on the record before us.

PG&E alleges that there is no basis for characterizing Internet migration costs as being less than VAN transmission for EDI transactions, as indicated in Finding of Fact 31:

> "Some parties present at the October 16 workshop expressed their lack of support for the UDCs' use of the more costly VAN transmission for EDI transactions. Migration to the internet would significantly reduce the cost of EDI transactions."

[3] PU Code Sections 1757(a)(2) and 1757(a)(4) provide, respectively, for court review if the Commission has not proceeded in the manner required by law, or the findings are not supported by substantial evidence in light of the whole record.

We disagree with PG&E that there is no record basis for FOF 31. This issue was addressed in workshops, as well as in written documents. The advice letter proceeding is essentially a paper proceeding; however, the use of this procedural vehicle does not diminish the weight to be given to *bona fide* Commission findings. An empirical study is not a legal requirement, as claimed by PG&E.[4] The Commission could well find, based on protests to the advice letters and comments on the draft resolution, that Internet migration is more efficient than VAN transmission. The following is a sampling of the written record that addresses the VAN transmission/Internet migration issue:

1. ORA protested PG&E's AL 1811-E, stating that "PG&E has generally stated an interest, in other contexts, to migrate all of its EDI from VAN to Internet. The use of the Internet would significantly reduce the per-transaction cost for EDI. If PG&E is allowed to institute a charge for its VAN costs, this charge should end when PG&E migrates its EDI to the Internet – a step that the Commission should encourage due to its long-term cost effectiveness." (ORA Protest to PG&E's AL 1811-E, dated 10/27/98, pp. 1-2.)
2. PG&E's Response on 11/23/98 to ORA's Protest, in a section entitled "Issues Relating to VAN and EDI," discusses the recovery of incremental costs associated with EDI billing. (PG&E Response to Protests of PG&E Advice Letters 1811-E and 1811-E-A, p. 4.)
3. SCE acknowledged in its Response to the protests of its advice letter, that "ORA is correct insofar as the variable cost of transmitting bill data over the Internet is less expensive than through a VAN." At the same time, SCE alleges that there are significant costs associated with establishing Internet capability, but that it "is investigating a

[4] PG&E Rehearing App. at 7. PG&E's reliance on *Mountain Lion Coalition v. Fish and Game Commission*, 214 Cal.App.3d 1043 (1989) *Mountain Lion* is inapposite in that scientific empirical evidence was absolutely required to meet the specific environmental impact report requirements of CEQA.

variety of more cost effective alternatives to the VAN, including Internet-based transactions." (SCE Response to Protests of AL 1338-E/E-A by TURN, Utility Consumers Action Network, ORA, CellNet Data Systems, and Enron Corporation/New Energy Ventures LLP (NEV), November 18, 1998, p. 7.)

4. As to the efficiency of Internet migration, Enron and NEV jointly stated: "While Enron and NEV believe that the move from VAN to the Internet for EDI transactions will lead to significant efficiency improvements, they are sympathetic with PG&E's concerns." (Enron/NEV's Reply Comments on draft resolution dated 1/11/99, p. 2)

PG&E's Rehearing Application alleges that rehearing is justified "because (i) the Commission's findings are not supported by substantial evidence in light of the whole record and (ii) the Commission has failed to proceed in the manner required by law. Public Utilities Code §§1757(a)(2) and (4)." (PG&E's Rehearing App. at 6.) While PG&E made a vague, passing reference to a denial of due process,[5] we note that PG&E specifically omitted citing Section 1757(a)(6) which sets forth as a ground for rehearing that "[t]he order or decision of the commission violates any right of the petitioner under the Constitution of the United States or the California Constitution."

We conclude that the resolution is supported by the findings, which are supported by substantial evidence in light of the whole record. As a state agency of constitutional origin with far-reaching duties and broad powers, the Commission's findings are accorded deference on questions of fact. The Commission's findings and conclusions on questions of fact, including ultimate facts, are final and shall not be subject to review except when a constitutional challenge is raised. (*SDG&E v. Sup. Ct. of Orange Co.* (1996) 13 Cal.4th 893,

[5] PG&E Rehearing App. at 2.

915.) PG&E's passing reference to due process does not constitute properly raising it as a ground for rehearing.

Moreover, we note that PG&E does not question whether the record is sufficient to establish service fees, an outcome favoring PG&E. As noted by ORA on page 3 of its Response to Rehearing, "[t]he workshop process resulting in the resolution produced the same level of findings on issues challenged by PG&E in this Application, internet billing and VAN charge provisions, and on issues which PG&E does not challenge in this Application, PG&E's service fees. Resolution E-3582 cannot partially fail, for lack of a record, on selected issues, when PG&E opposes the outcome, and survive on other issues favorable to PG&E's position."

PG&E further objects to OP 8 which PG&E misconstrues as prohibiting VAN transmission of data after six months:

> "Parties to applicable subgroups of the Direct Access Tariff Working Group shall expedite implementation of migration to the Internet for EDI transactions due to its long-term cost effectiveness. Within six months of the effective date of this Resolution, the charges related to Value Added Network (VAN) transmission included in adopted service fees shall no longer be mandatory upon ESPs for EDI transactions. The UDCs may eliminate VAN charges by filing advice letters if the timing of the 1999 RAP proceedings cannot accommodate this sunset date for mandatory VAN transmission charges."

PG&E is mistaken in its interpretation of OP 8, as Section B will explain. PG&E's mistake is compounded by a statement in Item 9 on page 18 of the resolution which appears to indicate that there is no record support for conclusions about the relative merits of Internet billing, as compared to VAN billing. As PG&E pointed out in its rehearing application, the Resolution states:

> "PG&E rightfully notes that 'in this proceeding, there has been no evaluation whatsoever of the relative merits associated with Internet, as opposed to VAN billing, let alone a technological and economic evaluation of the requisite commercial security

> measures for Internet billing. Thus, the Energy Division is without basis when it concludes that the 'use of the Internet would significantly reduce the per-transaction costs for EDI [Electronic Data Interchange]' and that Internet billing reflects 'long-term cost-effectiveness'." (PG&E App. at 4, citing page 18 of the Resolution.)

The resolution appears to concur with PG&E that Internet billing was not evaluated in the advice letter proceeding. However, our investigation into the circumstances surrounding the obvious conflict between the statement and OP 8 reveals that the words "in this proceeding" were intended in the Resolution to mean the RCS proceeding only, while PG&E apparently interpreted those words to refer to this advice letter proceeding. It is clear that the Commission intended the RCS proceeding to be separate from this advice letter proceeding, as evidenced by OP 2 of D.98-09-070. Recognizing that the issue of services fees needed to be dealt with separately from billing credits, the Commission promulgated OP 2 of D.98-09-070, which ordered the utilities to file advice letters, instructed the Energy Division to conduct workshops, and to prepare a resolution for the Commission's consideration. Thus, the advice letter proceeding was dedicated to the development of service fees to be paid by ESPs, while the RCS proceeding was devoted to developing billing credits granted to end-use customers.

Furthermore, this sentence, neither a finding of fact nor a conclusion of law, was simply intended to summarize PG&E comments.[6] Since the sentence was to be used for the limited purpose of summarizing PG&E's comments, we shall delete the word "rightfully."

B. PG&E Misconstrues Ordering Paragraph 8 and Thus Draws Erroneous Conclusions About Its Intent.

PG&E's concerns about OP 8 may well derive from PG&E's misinterpretation of the Order, rather than from its perception of insufficient

[6] PG&E's statement was made on pages 1-2 of its Comments on draft decision, dated 1/4/99.

evidence. PG&E asserts that OP 8 may be interpreted in two ways. On the one hand, PG&E claims that OP 8 prohibits it from offering VAN transmission after six months of the effective date of the resolution. (PG&E Rhg. App. at 5.) On the other hand, PG&E acknowledges that the Order could be understood to apply VAN charges only to those ESPs that continue to use VAN-based billing:

> "This provision may be interpreted not to prohibit outright the UDCs from charging for VAN services after six months. Rather, this paragraph could be understood to apply VAN charges only to those ESP that continue to use VAN-based billing. If this reading is correct, PG&E respectfully requests that the Commission modify this ordering paragraph in order to clarify that VAN charges would continue to apply to those ESPs that continue to use VAN-based billing after six months." (*Id.* at 5, footnote 5.)

The latter interpretation is correct, as readily discerned by SDG&E in its Rehearing Response: "SDG&E strongly believes that the Commission, by its choice or language in Ordering Paragraph 8, did not intend to prohibit a UDC from collecting VAN charges from ESPs who continue to use VAN services." (SDG&E Response, p. 2.) Nor did ORA appear to have difficulty interpreting OP 8. Nevertheless, to make clear our intent, and to eradicate any ambiguity surrounding the meaning of OP 8, we modify OP 8.

The intent of the Commission in issuing the Resolution was to require that the ESPs be given an opportunity to reduce the impact on UDC resources by changing the type of transaction they use. Resolution E-3582 specifically adopted a sunset date for mandatory VAN transmission charges, so that ESPs which expressed satisfaction with the Internet would not be forced to pay for a more expensive service. UDCs are directed to explore lower cost alternatives in their RAP proceedings. If the timing of the 1999 RAP proceedings cannot accommodate the sunset date for mandatory VAN transmission charges, the UDCs would be free to file Advice Letters in order to propose service fees for ESPs satisfied with internet transmission that excludes VAN charges. This

interpretation is consistent with OP 9, which provides for changes in fees to reflect efficiency improvements in RAPs, one of which would be EDI by Internet transmission. OP 8 was worded so that within six months of the effective date of this resolution, the charges related to VAN transmission included in adopted service fees shall no longer be *mandatory* upon ESPs for EDI transactions. This means that VAN service will not be required and, by inference, other options may be considered, consistent with the service fee guidelines. The Order does not rule out VAN transmission-related charges if, in prudently managing their operations, UDCs actually transmit their billing data using VAN. Consistent with another Policy Guideline for the Design of Fees, utilities should be allowed to recover their costs.[7] Nothing prevents VAN service with accompanying fees being offered as another service option for ESPs.

Therefore, we affirm the Commission's order that the utilities must offer Internet transmission of EDI with service fees that do not reflect VAN charges no later than July 20, 1999. ESPs that opt to continue using VAN transmission, if offered by the utility, do so with the understanding that they accept service fees that include the utility's justifiable incremental, recurring costs associated with this option.

In its response to PG&E's rehearing application, SCE expressed concern that the rehearing order may not apply to it.[8] In keeping with the policy guidelines requiring the adoption of consistent rate designs for services for each UDC so far as is possible, any modifications to the resolution will apply to PG&E, SDG&E, and SCE in an effort to ensure the equitable treatment of customers.

IV. CONCLUSION

PG&E has not demonstrated any legal error in Resolution E-3582 for which rehearing is warranted. We have reviewed PG&E's allegations and find

[7] *See* Resolution, p. 8. The Policy Guideline for the Design of Fees was derived from the Direct Access proceeding (D.97-10-087 in OIR 94-04-031/I.94-04-032).

[8] Response of Southern California Edison Co. to PG&E's Rehearing App. (3/8/99), p. 1.

that there is ample record support for the Commission's findings, conclusions, and OPs.

Accordingly, we deny rehearing, but modify the Resolution to clarify selected statements and OP 8.

IT IS THEREFORE ORDERED that:

1. Paragraph 1 under Discussion on page 4 should be modified to read as follows:

> PG&E and SCE requested proposed billing offsets during the proceeding that resulted in D.98-09-070. In this decision, the Commission did not adopt the offsets proposed by these utilities. Rather, the Commission allowed the utilities to recover through service fees the recurring costs associated with ESP consolidated billing. We noted that during the proceeding, SDG&E filed no billing offset proposal. In OP 2, the Commission ordered the UDCs to file advice letters to propose the service fees and ordered the Energy Division to conduct a workshop. PG&E and SCE filed ALs 1811-E-A and 1338-E-A, respectively. The service fees they proposed in the AL filings were loosely based on their billing cost offset proposals.

2. Paragraph 2 under Discussion on page 4 should be deleted and replaced by the following:

> A workshop was conducted pursuant to OP 2. During the workshop, the parties questioned the appropriateness of the advice letter process for establishing billing service fees, given the fact that the Commission in D.98-09-070 did not adopt specific fees (slip op., p. 16). This resolution neither addresses nor disposes of the issue concerning the appropriateness of the advice letter filing.

3. The first two sentences in Paragraph 4 on page 5 should be deleted and replaced with the following:

> During the proceeding that resulted in D.98-09-070 (the RCS proceeding), SDG&E did not propose any

billing cost offsets. In response to OP 2, SDG&E did make an AL filing.

4. On page 6, in Paragraph 7 after the sentence which states, "The decision is clear about how the Commission intends the UDC to recover costs related to ESP consolidated billing," the following should be inserted:

> SDG&E raised an issue regarding whether the recovery of ESP consolidated billing costs should be by means of a Section 376 proceeding or through this AL process. Obviously, the Commission in D.98-09-070, OP 2, determined that the recovery would be through service fees to be developed through the AL filing and workshop.

5. The following should be deleted from Paragraph 7 on page 6:

> Confusion arose due to the parties' differing interpretations of the Direct Access decision and the lack of billing cost offsets on the record for SDG&E. This section affirms Commission intent, as expressed in OP 2 of D.98-09-070 and addresses parties' concerns.

6. In Paragraph 8 on page 6, all but the first sentence should be deleted and replaced by the following:

> PG&E and SCE filed fees in their respective ALs based on billing cost offsets proposed in the RCS proceedings. During the RCS proceedings, SDG&E had proposed no billing offsets. Rather, it recommended that the recovery of costs should be accomplished through the PU Code Section 376 proceeding. In D.98-09-070, the Commission approved neither the offsets nor SDG&E's proposal. Instead, it adopted service fees for all three utilities for the recovery of ESP consolidated billing costs. The Commission mandated the same method of recovery for the following reasons: "The use of a common method will help ensure that customers and ESPs are treated equitably throughout the state and ... prevent distortions in prices which may create barriers to competition." (D.98-09-070, slip opinion, p. 6) Allowing ESPs to offer consolidated billing with

service fees in one UDC territory and without in another would create uneven incentives.

7. Page 13, Paragraph 32 should be modified to read:

> This context affords an opportunity to briefly address ORA's concern raised at the October 16 Workshop regarding consistency between how UDCs charge ESPs versus their retail end-use customers, specifically large customers. We direct the UDCs in their next RAP proceedings to show how the service fees they file are consistent with charges for comparable services provided to end-use customers. We hold the UDCs to the same standards of service for ESPs as for their own large end-use customers.

8. The following sentence in paragraph 9 on page 18 of Resolution E-3582 should be modified to read:

> "PG&E notes that 'in this proceeding, there has been no valuation whatsoever of the relative merits associated with the Internet, as opposed to VAN billing, let alone a technological and economic evaluation of the requisite commercial security measures for Internet billing. Thus, the Energy Division is without basis when it concludes that 'use of the Internet would significantly reduce the per-transaction cost for EDI [Electronic Data Interface] and that Internet billing reflects 'long-term cost-effectiveness'."

9. Finding of Fact 31 is modified to read:

> "Some parties present at the October 16 workshop express their lack of support for the UDCs' use of the more costly VAN transmission for EDI transactions. Some expressed the view that migration to the internet would significantly reduce the cost of EDI transactions."

10. Ordering Paragraph 8 is modified by deleting the last sentence in that paragraph and replacing it with the following so that it now reads:

> In the event that the 1999 RAP proceedings cannot accommodate the sunset date for mandatory VAN transmission charges, the UDCs may file advice letters

proposing a service fee alternative that includes no VAN charges.

11. This Order applies to all three UDCs, namely, Pacific Gas & Electric, Southern California Edison, and San Diego Gas and Electric.

12. The rehearing of Resolution E-3582, as modified herein, is denied in all other respects.

13. This proceeding 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
Commissioners

I abstain.

/s/ CARL W. WOOD
Commissioner