

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Division of Water and Audits
Utility, Audit, Finance & Compliance Branch

San Francisco, California
Date: January 13, 2011
Resolution No. W-4867

RESOLUTION

**RESOLUTION ON THE COMMISSION’S OWN MOTION
REQUIRING ALL COST-OF-SERVICE RATE-REGULATED
UTILITIES TO ESTABLISH A MEMORANDUM ACCOUNT
TO RECORD ANY ADDITIONAL COSTS AND BENEFITS
RESULTING FROM THE TAX RELIEF, UNEMPLOYMENT
INSURANCE REAUTHORIZATION, AND JOB CREATION
ACT OF 2010 AND TO REFLECT SUCH ADDITIONAL
COSTS AND BENEFITS IN THEIR NEXT GENERAL RATE
CASE (GRC)**

BACKGROUND

On December 17, 2010, President Obama signed the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act Of 2010 (“New Tax Law”). It has come to the attention of the Commission that this law may provide tax relief to the utilities regulated by this Commission. Among other provisions, this law provides for accelerated bonus depreciation on certain business property put into service after September 8, 2010 and before December 31, 2013.¹ The intent of the bonus depreciation provisions of the New Tax Law is to encourage businesses, such as utilities, to invest in their infrastructure, thereby creating jobs and spurring the economy.

Provisions in the New Tax Law may reduce the utilities’ costs of providing service. Many of the utilities regulated by this Commission have their rates set on a cost-of-service basis that includes a determination of rate base. These utilities include, without limitation: water and sewer system corporations, small local exchange carrier telephone corporations, gas and electrical corporations, pipeline corporations, and heat corporations. However, the general rates of those utilities are typically reviewed only once every three to four years.

¹ Generally, the New Tax Law allows for bonus depreciation of 100% of the cost of qualifying property put into service in 2011, and 50% of the cost of qualifying property put into service in 2012.

This resolution applies only to CPUC-jurisdictional rate base and the effects of the New Tax Law on CPUC-jurisdictional infrastructure.

DISCUSSION

The Commission believes it is in the best interest of California’s utility customers and the general public for utilities to take advantage of the bonus depreciation provisions of the New Tax Law. However, because the various cost-of-service rate regulated utilities are at different points in their respective GRC cycles, the means to effectuate these ratepayer benefits will vary.

While existing ratemaking mechanisms likely will result in ratepayers benefiting from the tax benefits utilities receive under the New Tax Law in each utility’s next GRC, it is not clear that all of the tax benefits resulting from this new law will have an impact on rates under current mechanisms.² Consistent with our intent that utilities take advantage of the New Tax Law to benefit customers, improve their infrastructure, and help create jobs within California, we hereby require all cost-of-service rate-regulated utilities to establish a memorandum account to record any additional costs as well as benefits from the New Tax Law as of the effective date of this resolution until such additional costs and benefits can be reflected in their next GRC showings. -

The memorandum account shall be reviewed to determine whether any future rate reductions are appropriate to reflect impacts of the New Tax Law for the remainder of 2011, until the effective date of revenue requirement changes in each utility’s next GRC (“Memo Account Period”). We note that under cost-of-service ratemaking, we are effectively required to “normalize” the effects of accelerated depreciation, such as the bonus depreciation provisions of the New Tax Law, so the benefits of the bonus depreciation provisions will be passed through to ratepayers over the book life of the investments, which can range from 10-40 years.³

The memorandum account shall be used by each utility to record the additional costs and benefits of the New Tax Law during the Memo Account Period, reflecting the ratemaking effects of the New Tax Law. In determining appropriate ratemaking adjustments for the Memo Account Period, the Commission shall take into account, and each utility shall

² For example, many utilities have a deferred tax account that may capture, for ratepayers, benefits of the new tax law. However, if there is a lag in incorporating the actual amount of this account into rates, there may be some portion of the benefits that do not go to ratepayers. Meanwhile, utilities have previously included in rates benefits that will be lost as a result of the New Tax Law. Both should be considered in determining the net savings of a utility as a result of the New Tax Law. Additional spending on infrastructure by utilities is also likely to result in unrecovered additional property tax expense and depreciation expense. These additional expenses will reduce the levels of additional spending that the utilities can accommodate.

³ See D.93848, 1981 WL 165280 at *2 (“Of particular significance to ratemaking is that a normalization method of accounting must be used for ACRS and ITC applied to property placed in service after December 31, 1980”). These tax law requirements remain applicable to current property additions and specifically apply to the treatment of bonus depreciation.

record offsets to reflect, any additional utility spending associated with the bonus depreciation provisions of the New Tax Law. In each utility's next GRC, the Commission shall address the disposition of amounts recorded in the memorandum account and forecast for the remainder of the Memo Account Period, and determine the benefits, if any, that should be included in prospective rates.⁴ The memorandum account shall be terminated after the true-up of recorded benefits are provided in rates.

COMMENTS ON DRAFT RESOLUTION

Public Utilities Code section 311(g)(1) generally requires draft resolutions to be issued for comment at least 30 days before being voted on by the Commission. However, pursuant to Public Utilities Code section 311(g)(3), the Commission has adopted Rule 14.6(c)(9) of its Rules of Practice and Procedure which permits a reduction in the comment period here. More specifically, Rule 14.6(c)(9) permits the Commission to reduce the 30-day period for public review and comment in circumstances where the public interest in the Commission adopting a resolution before expiration of the 30-day review and comment period clearly outweighs the public interest in having the full 30-day period for review and comment. This resolution does not change utility rates, nor determine that utility rates ought to be changed. It only permits the Commission to consider those issues at a future date. On the other hand, delaying issuance of this resolution to allow for the full 30-day comment period might extend the period of time during which uncertainty about the Commission's treatment of the New Tax Law could be a concern. Accordingly, the public interest in adopting this resolution before expiration of a 30 day public comment period clearly outweighs the public interest in allowing for the full 30 day comment period. Accordingly, the draft resolution was issued for comment on December 30, 2010, served on all persons on the attached service list, and placed on the Commission's Agenda for January 13, 2011. Consistent with Rule 14.6(c)(9), there was a reduced comment period with comments due on January 7, 2011.

In comments on the Draft Resolution, PG&E, SDG&E, SoCalGas, and SCE made several legal, policy, and factual arguments opposing the Draft Resolution as originally drafted, and we have reflected those comments, where appropriate, in this resolution.

⁴ Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company have each filed applications for test year 2012 GRCs. We expect SCE, SDG&E, and SoCalGas to advise the Assigned Administrative Law Judges and Assigned Commissioners in their respective GRC dockets when such update submittals can be made (i.e., updated 2012 GRC testimony to reflect the New Tax Act and a forecast for the memorandum account through year-end 2011. We do understand that the Internal Revenue Service is in the process of promulgating regulations interpreting the New Tax Law and that the utilities will need some time to review those regulations, when issued, before complying with this directive.