

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric
Company for Authority, Among Other Things,
to Increase Rates and Charges for Electric and
Gas Service Effective on January 1, 2014
(U39M).

Application 12-11-009
(Filed November 15, 2012)

And Related Matter.

Investigation 13-03-007

**REPLY COMMENTS OF
THE OFFICE OF RATEPAYER ADVOCATES
ON THE PROPOSED DECISION OF
ADMINISTRATIVE LAW JUDGE THOMAS R. PULSIFER**

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I. INTRODUCTION

Rule 14.3(d) of the Commission’s Rules of Practice and Procedure says that, “Replies to comments ... shall be limited to identifying misrepresentations of law, fact or condition of the record contained in the comments of other parties.” Below, the Office of Ratepayer Advocates (ORA) addresses some of the arguments Pacific Gas and Electric Company (PG&E) and the Coalition of California Utility Employees (CUE) make in their Comments. Silence on any argument of any party should not be interpreted as agreement.

II. ORA’s REPLY TO COMMENTS OF PG&E AND CUE

A. PG&E’s Executive Summary Misstates the Condition of the Record

PG&E says that its recommended changes, not including depreciation, would increase the 2014 revenue requirement by approximately \$131 million.¹ According to PG&E, “[e]ffecting these changes will still keep residential customers’ bills substantially below the national average.”² The citation PG&E gives for this argument is PG&E’s direct testimony which compared the proposed test year increases for “a typical residential gas customer and residential electric customer to various publications.”³ But the comparison PG&E made in its direct testimony no longer accurately reflects the condition of the record. During cross examination by The Utility Reform Network (TURN), PG&E’s witness agreed that these comparisons do not include the increases PG&E proposed for the attrition years. Nor do they include the increases PG&E is seeking in its Gas Transmission & Storage case.⁴ PG&E’s Comments omit these material facts and its conclusions should not be the basis of any finding by the Commission.

B. It is PG&E’s Comments That Fail to Give Full Effect to SB 705

PG&E fails to provide the full quote from the PD or Pub. Util Code § 963(b)(3), enacted by SB 705, and cited by the PD: “We have previously adopted the Legislature’s overall policy statement: ‘It is the policy of the state that the commission and each gas corporation place safety of the public and gas corporation employees as the top priority. *The commission shall take all reasonable and appropriate actions necessary to carry out the safety priority policy of this*

¹ PG&E Comments, p. 2.

² PG&E Comments, p. 2.

³ Hearing Ex.1 (PG&E-1), p. 5-2.

⁴ 13 RT 1094-1103, Sharp/ PG&E.

paragraph consistent with the principle of just and reasonable cost-based rates.”⁵ PG&E’s argument fails to include or mention the second, highlighted sentence of this statute,⁶ literally failing to give full effect to the statutory language enacted by SB 705. PG&E’s editorial suggestions⁷ regarding the PD’s use of “priority” on page 18 and its suggested language for Conclusion of Law 1⁸ should be rejected, as the PD’s language comports with the statute.

C. PG&E Has Not Established that the PD Erred In Adopting a Five-Year Leak Survey Cycle

PG&E asserts that because there is “...undisputed evidence that 30% of operators survey their systems for leaks *at least* once every three years,”⁹ meeting PG&E’s self-defined threshold of 25% for a “best practice,” the Commission must fund a Three-Year leak survey cycle as PG&E requested. The PD’s discussion on pp. 76-77 rejected such evidence as insufficient by itself to establish that a three-year leak survey cycle was a “best practice” that PG&E must adopt pursuant to law. While PG&E criticizes the PD’s purported failure to acknowledge the limitations of the approved advanced leak detection measures of cluster surveying and deploying Picarro,¹⁰ PG&E fails to acknowledge the PD’s holistic, balanced approach concluding that “the more relevant benchmark of industry best practice for leak surveys is performance based on optimization of all of techniques and strategies used to detect and repair leaks.”¹¹

D. PG&E’s Comments Identify No Errors in the PD’s Description of Deferred Maintenance

PG&E says the PD’s “description of deferred maintenance is out of balance and unlawful,¹² citing to language in the PD denying recovery for pole inspection work. The language says that PG&E offered “...no satisfactory explanation as to why ... it couldn’t have funded BOTH higher priority projects AND the pole inspections funded by ratepayers.”¹³

⁵ Proposed Decision (“PD”), pp. 17-18 and fn. 5, *citing* Pub. Util. Code § 963(b)(3) (emphasis added).

⁶ PG&E Comments, pp. 2-3 and fn. 2, *citing* PD, p. 17.

⁷ PG&E Comments, p. 3.

⁸ PG&E Comments, p. A-13.

⁹ PG&E Comments, p. 7 (emphasis in original) and fn. 25, *citing* Ex. 53 (PG&E-18 v1), p. 6-12.

¹⁰ *See* PG&E Comments, p. 7.

¹¹ PD, p. 76.

¹² PG&E Comments, p. 3.

¹³ PD, p. 187, emphasis in the original cited in PG&E Comments, p. 3.

PG&E’s argument that the PD’s entire reasoning on deferred maintenance is “unbalanced” is curious given PG&E’s subsequent citation to a “Commission precedent which ...conveyed a balance.”¹⁴ The precedent which PG&E endorses holds that, “for activities that were deferred and are now being requested, [PG&E] shall *fully explain* why they are needed now when they were able to be deferred before.”¹⁵ This “balance” is exactly the standard the PD applies. The PD shows this when it begins by saying that “PG&E offers no *satisfactory* explanation” for the deferred maintenance in GRC cycles before 2011.¹⁶ Moreover, PG&E’s statement that it provided an explanation that was “uncontroverted” misstates the condition of the record. ORA did challenge PG&E’s “explanation,” as noted in the PD.¹⁷

PG&E then argues that the “PD runs counter to the U.S. Supreme Court *Hope* and *Bluefield* decisions that ensure regulated utilities are given a reasonable opportunity to recover their prudently-incurred costs.”¹⁸ Apparently this is the basis of PG&E’s claim that the PD is “unlawful,” but the sole support PG&E offers is that “[i]n the current proceeding, CPUC staff members concede that they generally expect PG&E to incur costs additional to those the Company has forecasted.”¹⁹ While true, costs PG&E has incurred for work have also been *less* than PG&E’s forecasts. As the Commission has held in the past:

If the adopted forecast overestimates expenses, we do not ask a utility to return funds to ratepayers. Similarly, if an adopted forecast underestimates expenses, we do not go back and give the utility funds to complete projects that should have been adopted in the prior GRC cycle.²⁰

The PD’s treatment of deferred maintenance is consistent with law and policy.

E. PG&E’s Comments on the Cost Estimating Tool Misstate the PD

PG&E says that “[t]he PD misapplies the record evidence” in supporting ORA’s recommendation that there should be a 14% deduction from IT application development

¹⁴ PG&E Comments, p. 4.

¹⁵ PG&E Comments, p. 4, citing PG&E’s Reply Brief Section 1.1.2 citing D.11-05-018, mimeo, p. 99-100 (Ordering Paragraph 43), emphasis added by PG&E.

¹⁶ PD, p. 187.

¹⁷ PD, p. 184. See also Hearing Ex. 73 (DRA-5), p. 37.

¹⁸ PG&E Comments, p. 4.

¹⁹ PG&E Comments, p. 5.

²⁰ D.09-03-025, pp. 3-5.

projects.²¹ PG&E is merely re-arguing policy, not identifying legal or factual error.

The PD gave a reasoned and independent analysis for adopting the 14% reduction for IT forecasts based on the Concept Estimating Tool. Primarily, the PD concluded that a 14% deduction was reasonable because PG&E tended to defer and cancel some forecasted projects after they had been approved by the Commission. The Commission should adopt the PD's 14% reduction for IT forecasts based on the Concept Estimating Tool.

F. Comments on the PD's Adoption of a 5% Variance for Total Compensation Identify No Errors

Both PG&E and CUE object to the PD's adoption of ORA's "...recommendation to bring PG&E's overall total compensation within a 5% variance of the market in order to 'remain consistent with more recent Commission policy.'" ²²

CUE argues that the PD is vague in its reference to "more recent Commission policy." According to CUE, "the last four PG&E GRC decisions have resulted in settlements and range from approving 107.52% to 104.71% over market median."²³ The Test Year 2000 decision allowed PG&E compensation over 5%, but the Commission clearly stated that it accepted the higher variance because of four problems specific to that particular study, which do not apply to this one.²⁴ To ORA's knowledge, no Commission decision since 2000 has ordered ratepayer funding of a compensation variance over 5%. In fact, in its most recent General Rate Case decision for the Sempra utilities, the Commission affirmed the 5% range.²⁵

PG&E argues that the 5% variance is "arbitrary with no support in the record." This Comment misstates the condition of the record. As described in the PD, ORA's testimony notes that "...in more recent cases, the Commission has stated that a 5% variance should be the basis for a reasonable compensation level."²⁶ PG&E also argues that it "...is aware of no Commission decision that adopts a 5% limit where *the Study* has defined a different range (as here)..."²⁷ This

²¹ PG&E Comments, p. 16.

²² CUE Comments, p. 18; *See* PG&E Comments, pp. 17- 18.

²³ CUE Comments, p. 18.

²⁴ D.00-02-046, p. 126.

²⁵ D.13-05-010, p. 880.

²⁶ PD, p. 504, citing Ex. 82 (DRA-14), at 5, footnotes 13-17.

²⁷ PG&E Comments, p. 18, emphasis added.

is not error. In fact, it might actually be legal error if the Commission attempted to delegate its duty to determine reasonableness to “a Study.”

G. PG&E’s Comments on Depreciation Identify No Errors

PG&E’s claim that the PD’s reduction of its requested increases in net salvage parameters “is too gradual” and would burden future ratepayers with costs that should be borne by current ratepayers, neither identifies nor seeks to correct a factual or legal error.

As the PD noted, “...setting a provision for negative salvage and average service life is not a precise science, and experts differ in applying judgment in estimating these parameters.”²⁸ The PD then proceeds to adopt an account-by-account discussion of the adopted negative net salvage rates in Appendix E. Further, much of the PD’s analysis addresses intergenerational equity. “Our goal is therefore to balance the equities of current and future ratepayers.”²⁹ We are imposing new costs at a time when many customers have still not recovered from the severe economic recession that began in 2009.”³⁰ Absent factual or legal error, the fact that PG&E does not agree with a determination in the PD does not justify changing the PD.

H. PG&E’s Comments on Nuclear Fuel Identify No Errors

The PD rejects PG&E’s attempt to include nuclear fuel in rate base.³¹ PG&E and Southern California Edison (SCE) have asked that nuclear fuel be included in rate base, and the Commission has rejected the argument and included nuclear fuel in each utility’s ERRR account since 1986.³² The Commission has resolved this issue many times over, agreeing with ORA that ratepayers would unnecessarily be burdened by including Nuclear Fuel in rate base.³³ The PD does not need to be modified.

III. CONCLUSION

ORA asks that the Commission incorporate the changes in ORA’s Opening Comments.

²⁸ PD, p.585.

²⁹ PD, p.587.

³⁰ PD, p.588.

³¹ PD, p. 609.

³² See e.g. D. 09-03-025, mimeo, p. 361, and cases cited in Hearing Ex.89 (DRA-21).

³³ D.07-03-044, 2007 Cal. PUC LEXIS 173, *192-293 (March 2007).

Respectfully submitted,

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