

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMISSION ADVISORY
AND COMPLIANCE DIVISION
Energy Branch

RESOLUTION E-3444*
March 13, 1996

R E S O L U T I O N

RESOLUTION E-3444. SOUTHERN CALIFORNIA EDISON COMPANY, PACIFIC GAS AND ELECTRIC COMPANY, AND SAN DIEGO GAS & ELECTRIC COMPANY FOR ADDITION OF COMPETITION TRANSITION CHARGE RESPONSIBILITY TO PRELIMINARY STATEMENT, IN COMPLIANCE WITH D.95-12-063, AS MODIFIED BY D.96-01-009.

BY ADVICE LETTER Nos. 1145-E, 1561-E, and 977-E respectively, filed on January 19, 1996.

SUMMARY

1. In the advice letters, Southern California Edison Company (Edison), Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E) submit proposed additions to their Preliminary Statements to notify customers of the Commission's intent to authorize collection of retail transition costs in compliance with the requirement for notice set forth in Decision 95-12-063 as modified by D.96-01-009 (referred to herein only by D.95-12-063).
2. Timely protests were filed by 14 parties. The following eleven parties protested all three advice letters: Agricultural Energy Consumers Association (ACEA), Association of California Water Agencies (ACWA), California Department of General Services jointly with California State University System (DGS/CSU), California Farm Bureau (Bureau), California Industrial Users (CIU), California Manufacturers Association (CMA), Energy Producers and Users Coalition (EPUC), Independent Energy Producers (IEP), Toward Utility Rate Normalization (TURN), and University of California (UC). The California Large Energy Consumers Association (CLECA) and California Retailers Association (CRA) protested the filings by Edison and PG&E, and The City and County of San Francisco (City) protested only PG&E's advice letter.
3. This resolution requires the utilities to refile the advice letters with modified language consistent with D.95-12-063 and as described herein and defers establishment of a definition of departing customers to competition transition charge (CTC) implementation proceedings.

BACKGROUND

1. In D.95-12-063, the Commission ordered the utilities to file advice letters to modify the Preliminary Statements of their tariffs "to provide all current and new customers with notice of our intent to authorize collections of retail transition costs. ... The CTC shall be a percentage surcharge on the bill of each customer of the distribution utility, including those served under contracts with nonutility suppliers." (Ordering Paragraph 28, p.226.) This order was further described in the text of the decision to apply to "all customers who are retail customers on or after the date of this decision, whether they continue to take bundled service from their current utility or pursue other options." (p.110) The decision also stated that "[i]ssues surrounding enforcement and collection of the CTC for departing customers will also be referred to the Working Group to develop consensus recommendations if possible." (p.141) D.95-12-063 did not further define departing customers.

2. On January 19, 1996, PG&E, SDG&E and Edison filed advice letters (1561-E, 977-E, 1145-E respectively) to add a new section to their preliminary statement to provide all current and new customers with notice of the Commission's intent to authorize collection of retail transition costs associated with electric industry restructuring. All three requested January 19, 1996 effective dates. The language used in the three advice letters is essentially identical. None of the utilities included information about how to file a protest to the advice letter.

3. In addition to providing the required notice in their advice letters, the utilities defined departing customers. In the advice letters, a departing customer is defined as a customer who, for a portion of or all of its load, on or after December 20, 1995: (1) discontinues or reduces its purchases of electricity from the utility; (2) purchases or consumes power supplied by a source other than the utility; and (3) remains physically located at the same location or within the utility's service territory. The advice letters go on to further describe departing customers to include customers able to bypass the utility's distribution and transmission system, customers served by a new or expanding municipal utility or similar agency, or customers formerly served by the utility who self-generate or take "over the fence" generation.

NOTICE

The Advice Letters were noticed in accordance with section III of General Order 96-A by publication in the Commission Calendar and distribution to the advice filing service list for each utility. Copies were also served on the service list for the Electric Restructuring proceeding, R.94-04-031/I.94-04-032.

PROTESTS

1. The Commission Advisory and Compliance Division (CACD) received timely protests from 14 parties. The following eleven parties protested all three advice letters: Agricultural Energy Consumers Association (ACEA), Association of California Water Agencies (ACWA), California Department of General Services jointly with California State University System (DGS/CSU), California Farm Bureau, (Bureau), California Industrial Users (CIU), California Manufacturers Association (CMA), Energy Producers and Users Coalition (EPUC), Independent Energy Producers (IEP), Toward Utility Rate Normalization (TURN), and University of California (UC). The California Large Energy Consumers Association (CLECA) and California Retailers Association (CRA) protested the filings by Edison and PG&E, and The City and County of San Francisco (City) protested only PG&E's advice letter. The Kern County Board of Supervisors (Kern) submitted a letter to the Commission President recommending that the PG&E and Edison Advice Letters not be implemented. In addition, CACD received a late filed protest from NASA - Ames Research Center on PG&E's Advice Letter.

2. Edison responded to the protests of CLECA, CMA and IEP on February 15, 1996 and the protests of DGS/CSU and UC on February 16, 1996. Edison responded to the protests of ACEA, ACWA, Bureau, CIU, EPUC, TURN, CRA, and Kern on February 20, 1996. PG&E responded to all protests on February 16, 1996. SDG&E responded to all protests on February 16, 1996.

3. Themes of the protestants are basically the same: the utilities have gone far beyond the purpose and scope of what was ordered in D.95-12-063. Protestants generally object to the portion of the preliminary statement modification which describes the "Applicability" of the CTC. Primary concerns are with the definition of departing customers, the specification that customers as of December 20, 1995 will be required to pay a CTC even though direct access is not available until January 1, 1998, and the apparent requirements to pay CTC for reduced loads and on transactions that do not include a distribution component. Protestants quote page 141 of D.95-12-063, "[i]ssues surrounding enforcement and collection of the CTC for departing customers will also be referred to the Working Group," as an indication that the Commission has not yet determined the precise applicability of the CTC charge.

4. In addition, some parties object to the description of the "Purpose" and reference to what will be included in the CTC calculation. They state that the precise elements to be included have not yet been specified and the tariff language is deceiving because it does not indicate certain elements, like rate of return as part of the CTC calculation. One party indicates that customers have no effective notice because the tariff language does not alert customers to the relevant costs they may be required to pay.

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5. Several parties raise the concern that the proposed tariff language changes were nearly identical and therefore represent an exercise of the utilities' market power and ask the Commission to consider this fact in future market power discussions.

6. EPUC, UC, and DGS/CSU all indicate their belief that the Public Utility Regulatory Policies Act (PURPA) prevents application of a stranded investment charge to Qualifying Facilities (QFs).

7. The City requested an exemption from requirement to pay CTC for loads used to serve San Francisco because of its existing statutory and contractual rights under the Raker Act.

8. CIU and IEP also noted that the Advice Letters did not include information about how to protest the filings.

9. IEP protested the utilities' inclusion of customers "receiving any other service subject to the Commission's jurisdiction" in the applicability language submitted in compliance with the Conclusion of Law 54 requirement that direct access customers be required to sign an agreement to pay their share of transition costs as a condition of the utilities' retail distribution tariff.

10. In their responses to the protests, the utilities identified their concern of not being able to retroactively provide notice to certain customers as one of the reasons they believe it is appropriate to define departing customers. PG&E and Edison both indicate that the definition of departing customers is designed to be illustrative of the types of customers who will be required to pay CTC. All utilities responded that the tariff language was not intended to define the scope of retail transition costs. SDG&E and PG&E both refute the argument of EPUC, DGS/CSU, and UC regarding CTC applicability to QFs. PG&E and Edison responded to the allegations of collusion raised by TURN, AECA, and Bureau.

DISCUSSION

1. D.95-12-063 stated that the CTC "should be assessed on all customers who are retail customers on or after the date of this decision, whether they continue to take bundled service from their current utility or pursue other options" (Conclusion of Law 57, page 210-211) and that each utility should "file an advice letter to modify the Preliminary Statement of its tariffs to provide all current and new customers with notice of our intent to authorize collections of retail transition costs" (Ordering Paragraph 28, page 226). This language does not exempt customers from the CTC, nor does it define specific transactions to which the CTC would apply. By defining departing customers, the utilities' advice letter filings move beyond simple compliance filings to raise policy, legal, and

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jurisdictional issues. The definition of applicability should be consistent with the language in Conclusion of Law 57.

2. In their responses to the protests, the utilities raise the concern of not being able to retroactively provide notice to certain customers as one of the reasons they believe it is appropriate to define departing customers. CACD disagrees. Attempting to establish specific definitions of departing customers requires additional legal and jurisdictional analysis which is more appropriately handled in other procedural fora. We recommend that the issues raised by the utility definitions of departing customers be considered as part of the transition cost implementation proceedings. In that forum, the parties and the Commission can fully explore the policy, legal, and jurisdictional implications of specific definitions of applicability. In addition, D.95-12-063 specifically referred certain issues surrounding departing customers to working group activities (see page 141). Issues raised by the City regarding applicability of CTC to San Francisco loads, and the issues raised surrounding applicability to QFs can be addressed in the CTC implementation proceedings as well. Therefore, this aspect of the protests by the City, EPUC, DGS/CSU, and UC should be denied without prejudice.

3. In order not to narrow the scope of applicability of the CTC, CACD recommends that the utilities refile their Advice Letters using the language set forth in Attachment 1 which does not include a definition of departing customers. This language puts **all** customers on notice that the Commission intends to collect transition costs from customers taking service from the utilities on or after December 20, 1995; no further definition is necessary for proper notice to be given. The language in Attachment 1 is consistent with D.95-12-063 **without establishing specific definitions or exemptions as would the proposed utility language**. This recommendation addresses the issues raised by CLECA, AECA, CRA, UC, DSG/CSU, CIU, Bureau, EPUC, IEP, CMA, and ACWA regarding the definition of departing customers.

4. The language in Attachment 1 provides a separate section in the tariff entitled "Direct Access Customers" to respond to Conclusion of Law 54, instead of including that language in the Applicability section. Attachment 1 removes the following language: "or of receiving any other service subject to the Commission's jurisdiction." This language was submitted only by PG&E and Edison. This expanded language is not consistent with D.95-12-063. CACD recommends that this language be removed consistent with this aspect of IEP's protest.

5. Some protestants took issue with the language proposed by utilities that the CTC would be assessed on customers of record on or after December 20, 1995, even though customers are not eligible for direct access until January 1, 1998. Protestants indicate that this language implies that options that are available prior to the onset of direct access would be subject to CTC and would discourage customers from pursuing their available options. This aspect of the utility filings is

clearly in compliance with the Commission's order (see Conclusion of Law 58, pages 210-211). This aspect of the protests of AECA, CRA, UC, DGS/CSU, CIU, EPUC, IEP, CMA, and CLECA are more appropriately raised in an application for rehearing and CACD recommends that the protests on this issue be denied without prejudice.

6. The language in Attachment 1 clarifies that that magnitude of the CTC and the elements considered to make up transition costs are the subject of future Commission proceedings. This language addresses concerns raised by UC, DGS/CSU, TURN, CIU, Bureau, and EPUC about the elements of transition costs.

7. CACD agrees with PG&E's response to protests that it was appropriate for the utilities to confer regarding notice language for the filings in order to ensure that customers in different service territories receive consistent notice and to minimize enforcement concerns. This aspect of the protests of AECA, TURN, and Bureau should be denied.

8. CACD noted the absence of language advising how to protest the Advice Letters pointed out by IEP and CIU. This lack of information does not appear to have affected protests from being filed. General Order 96 does not include a requirement to include this advisory language but a review of recent utility compliance filings indicates that it is general practice for utility compliance filings to include this notice.

9. CACD recommends that the Commission order PG&E, SDG&E, and Edison to refile Advice Letters 1561-E, 977-E, and 1145-E, respectively, consistent with Attachment 1, to comply with this resolution. CACD recommends that specific definitions of departing customers be deferred to CTC implementation proceedings and working group activities.

FINDINGS

1. On January 19, 1996, PG&E, SDG&E and Edison filed advice letters (1561-E, 977-E, 1145-E respectively) to add a new section to their preliminary statement to provide all current and new customers with notice of the Commission's intent to authorize collection of retail transition costs associated with electric industry restructuring.

2. D.95-12-063 ordered PG&E, SDG&E, and Edison to file Advice Letters to provide notice of the Commission's intent to authorize collection of retail transition costs.

3. D.95-12-063 stated that the competition transition charge was to be assessed on all utility customers who are retail customers on or after the date of this decision, whether they continue to take bundled service from their current utility or pursue other options. This aspect of the protests of AECA, CRA, UC, DGS/CSU, CIU, EPUC, IEP, CMA, and CLECA should be denied.

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4. The language set forth in Attachment 1 provides notice consistent with D.95-12-063 without narrowing the scope of applicability or establishing a specific definition of departing customers. This language addresses the issues raised by CLECA, AECA, CRA, UC, DSG/CSU, CIU, Bureau, EPUC, IEP, CMA, and ACWA regarding the definition of departing customers. This language also addresses concerns raised by UC, DGS/CSU, TURN, CIU, Bureau, and EPUC about the elements of transition costs. The language in Attachment 1 removes the specific language protested by IEP regarding direct access customers.

5. PG&E, SDG&E, and Edison should refile Advice Letters 1561-E, 977-E, and 1145-E, respectively, consistent with the language set forth in Attachment 1.

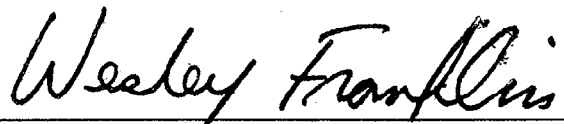
6. Specific definitions of departing customers should be deferred to CTC implementation proceedings and working group activities. Issues raised by the City regarding applicability of CTC to San Francisco loads, and the issues raised surrounding applicability to QFs can be addressed in the CTC implementation proceedings as well. Therefore, this aspect of the protests by the City, EPUC, DGS/CSU, and UC should be denied without prejudice.

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THEREFORE, IT IS ORDERED that:

1. Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company are ordered to refile Advice Letters 1145-E, 1561-E, and 977-E, respectively, as supplemental Advice Letters, in conformance with the language set forth in Attachment 1 within 15 days of adoption of this resolution.
2. Supplemental Advice Letters containing the language set forth in Attachment 1 shall be marked to show they were approved by Commission Resolution E-3444, and shall be effective upon filing.
3. Except as described herein, the protests are denied without prejudice.
4. This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities commission at its regular meeting on March 13, 1996. The following Commissioners approved it:



WESLEY M. FRANKLIN
Executive Director

DANIEL Wm. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, Jr.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

ATTACHMENT 1

COMPETITION TRANSITION CHARGE RESPONSIBILITY

PURPOSE: The Competition Transition Charge (CTC) is designed to recover retail transition costs incurred as a result of the shift to a more competitive market structure adopted in D.95-12-063, as modified by D.96-01-009.

APPLICABILITY: The Commission has stated that the CTC should be assessed on all customers who are retail customers on or after December 20, 1995, whether they continue to take bundled service from their current utility or pursue any other options.

CTC CALCULATION: In D.95-12-063, as modified by D.96-01-009, the Commission has identified principles and procedures for quantifying and implementing a CTC. The Commission will determine the ultimate magnitude of the CTC, the appropriate mechanism for collection of CTC, and the method of payment for customers as part of future Commission orders.