

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-3480  
FEBRUARY 19, 1997

R E S O L U T I O N

RESOLUTION E-3480. PACIFIC GAS AND ELECTRIC COMPANY (PG&E) REQUESTS EXPEDITED APPROVAL OF A REFUND PLAN FOR AMOUNTS IN THE PG&E ELECTRIC DEFERRED REFUND ACCOUNT, AS ORDERED IN DECISION NO. 96-12-025. PG&E'S ADVICE LETTER 1644-E-A IS APPROVED.

BY ADVICE LETTER 1644-E FILED JANUARY 10, 1997 AND ADVICE LETTER 1644-E-A FILED JANUARY 22, 1997

SUMMARY

1. By Advice Letter 1644-E-A, dated January 22, 1997, Pacific Gas and Electric Company (PG&E) filed a proposed refund plan for amounts in its Electric Deferred Refund Account (EDRA), as ordered in Decision No. (D.) 96-12-025.
2. PG&E requests expedited approval of the refund plan to allow the refunds to be reflected in PG&E electric customers' March 1997 bills.
3. PG&E requests that the refunds be based on twelve months of customer usage, from March 1996 through February 1997, rather than 1996 calendar-year usage as ordered in D.96-12-025.
4. The San Francisco Bay Area Rapid Transit District (BART) protested Advice Letter 1644-E-A on the grounds that the proposed refund plan allegedly does not comply with D.96-12-025. BART protests that the refund to BART should be based on BART's usage during the disallowance time period, i.e. 1988 through May 1994. BART's protest is denied because the proposed refund is based on customer usage over the last year, in compliance with D.96-12-025, as modified by our decision today on PG&E's Second Petition.
5. This resolution approves the PG&E refund plan filed with Advice Letter 1644-E-A subject to the following modification: the EDRA amounts which will be refunded to ratepayers should not be reduced to allocate the disallowances between ECAC- and AER-related costs. Such a reduction essentially allows PG&E shareholders to receive some of the benefit of the disallowance we ordered in D.94-03-050. The interest associated with this amount should also be refunded to ratepayers.
6. On this same date, the Commission approved a PG&E Petition to Modify D.96-12-025 to allow the refunds to be based on the last

February 19, 1997

twelve months of customer usage, rather than 1996 calendar-year usage.

### BACKGROUND

1. In D.94-03-050, the Commission found PG&E unreasonable for its Canadian gas purchases for the years 1988 through 1990, and ordered a disallowance ("1988-90 disallowance"). The Commission specifically ordered that "Pacific Gas and Electric Company (PG&E) is denied recovery of \$90,133,000 plus interest in Canadian gas costs incurred during the period April 1, 1988 through December 31, 1990 on the basis of imprudence."

2. In D.95-12-053, a PG&E BCAP decision, the Commission deferred the actual allocation and refund of those disallowed dollars, and instead ordered that workshops be held to address the disposition of the disallowance.

3. In D.96-02-074, in response to separate Petitions to Modify D.95-12-053 filed by the Division of Ratepayer Advocates (DRA) and PG&E, the Commission found that the core portion of the refund should be made, as a one-time refund in core customers March, 1996 bill, based on therms billed over the March 1995 through January 1996 period.

4. In its response to DRA's petition, PG&E had requested that the Commission exclude the refund of the 1988-90 disallowance, because PG&E had filed an action in federal district court challenging the Commission's jurisdiction to issue the disallowance. In D.96-02-074, the Commission stated that it found "... no legal merit to PG&E's argument that we should delay refunding the disallowance ordered in D.94-03-050 until PG&E has exhausted all its avenues of appeal." The Commission further stated "We also find PG&E's proposal for further delay to be poor public policy as the core customers who paid the overcharges in the 1988-90 period may not be the same customers who will receive the refund now and further delay will exacerbate this mismatch."  
(p.6)

5. Core customers received their refunds on their March 1996 bills.

6. In D.96-08-033, the Commission conditionally approved a stipulation between DRA and PG&E under which PG&E would return to ratepayers \$67 million, related to post-1990 actions. The Commission required interest to be included in the disallowance ("post-1990 disallowance") for the stipulation to be adopted.

7. In D.96-09-042, the Commission ordered the refund of the disallowed 1988-90 dollars allocated to the UEG department, non-UEG core-elect customers, and core-transport customers. The Commission stated that the UEG department "refund will be made by crediting the Energy Cost Adjustment Clause (ECAC) balancing

February 19, 1997

account." The Commission noted that the amount of the refund to the UEG was \$33.78 million plus interest.

8. In a Motion for Clarification of D.96-02-074, PG&E had requested that the Commission modify D.96-02-074 to state that the 1988-90 disallowance may be subject to future recovery from customers pending the outcome of PG&E's challenge of the lawfulness of the Commission's disallowance in federal court. In D.96-09-042, the Commission denied PG&E-proposed "assurance language" related to its federal court case and found that PG&E should "implement in the most expeditious manner possible a one-time refund of the 1988-90 Canadian gas reasonableness disallowance ordered in D.94-03-050 for UEG, core-elect, and core transport customers."

9. In D.96-10-035, the Commission proposed to continue its policy of "refunding utility cost disallowances directly to customers" and to establish electric deferred refund accounts. The Commission allowed parties to file comments on the proposal.

10. In D.96-12-025, after reviewing the comments on the proposal made in response to D.96-10-035, the Commission established the electric deferred refund accounts (EDRA) for the three major California electric utilities, and ordered the utilities to file advice letters by December 20, 1996 to establish these accounts and list each refund and disallowance affected by the decision. The Commission ordered that the refunds be made through an annual refund, be based on each customer's average monthly energy usage for each calendar-year period, and be returned in accordance with a refund plan filed by advice letter on or before January 31 of the succeeding year.

11. In D.96-12-026, the Commission modified D.96-09-042 and ordered the PG&E electric department to book the refund, related to the 1988-90 disallowance, received from the gas department plus interest to the EDRA, not the ECAC balancing account.

12. In D.96-12-027, the Commission further modified D.96-08-033 to ensure that the stipulation requires PG&E to credit the portion of the disallowance, related to the post-1990 actions, which will be returned to retail electric customers to an EDRA.

13. In D.96-12-089, the Commission approved the modified DRA/PG&E stipulation, related to post-1990 actions, as anticipated in D.96-08-033 and D.96-12-027. The modified stipulation requires PG&E to credit the portion of the disallowance that will be returned to retail electric customers to PG&E's EDRA.

14. Pursuant to D.96-12-025, on December 19, 1996, PG&E filed Advice Letter 1639-E which created the PG&E EDRA and booked the refunds related to the 1988-90 and post-1990 disallowances for UEG customers. PG&E indicated that the total amount was \$75.7 million as of December 31, 1996. The PG&E EDRA amounts which PG&E booked with Advice Letter 1639-E are shown below:

February 19, 1997

PG&E EDRA Amounts as of December 31, 1996

|  |                     |
|--|---------------------|
| Canadian gas disallowance adopted in D.94-03-050 | \$50,798,133        |
| Settlement adopted in D.96-08-033                | <u>\$24,866,486</u> |
| Total  | \$75,664,619        |

15. Pursuant to D.96-09-042, on December 23, 1996, PG&E filed Advice Letter 1973-G-A, which submitted two refund plans, for core-elect and core transport customers, for the refund related to the 1988-90 disallowance. This advice letter also submitted PG&E's plan for the UEG refund transfer, from the gas department to the electric department.

16. On January 10, 1997, PG&E filed Advice Letter 1644-E which filed the PG&E proposed refund plan for the EDRA balance. PG&E asserted that the Commission "appears to recognize" in D.96-12-025 that the disallowance refund dollars for UEG customers related to the 1988-90 actions may not yet be subject to refund due to PG&E's federal district court case. PG&E also indicates that, because the Commission ordered in D.96-12-025 that the refunds should be based on calendar-year period usage, if the Commission is not able to approve the PG&E plan before February 1st, complications will arise resulting in a three- to four-month delay in providing the refunds. PG&E asserts that this is because PG&E only maintains 13 months of customer usage records.

17. On January 15, 1997, the Energy Division sent PG&E a letter which stated that the Energy Division had determined that Advice Letter 1644-E was not in compliance with D.96-12-025. The letter also recommended that PG&E take certain actions in order to comply with that decision.

18. On January 22, 1997, PG&E filed Advice Letter 1644-E-A, the supplement to Advice Letter 1644-E, and their Second Petition to Modify D.96-12-025. Advice Letter 1644-E-A requests expedited treatment, and that anyone who wished to protest that filing to do so within 10 days of the filing.

19. Advice Letter 1644-E-A includes the UEG portion of the 1988-90 disallowance in the proposed EDRA refund plan.

20. Advice Letter 1644-E-A also requests that the refund be based on customer usage from March 1996 through February 1997, rather than 1996 calendar-year usage as ordered in D.96-12-025.

21. The amounts which PG&E proposes to refund to its electric customers in Advice Letter 1644-E-A are not the same amounts which PG&E booked to the EDRA in Advice Letter 1639-E. With Advice Letter 1644-E-A, PG&E made the following adjustments to the EDRA amounts it booked with Advice Letter 1639-E:

- a) an adjustment of the 1988-90 disallowance to account for periods when the ECAC/AER split was in effect during the 1988-90 time frame. This has the effect of reducing the refund by \$1.8 million dollars plus interest.

February 19, 1997

- b) an adjustment of the 1988-90 disallowance for FERC jurisdictional amounts. This has the effect of reducing the refund by \$574,000.
- c) adding interest through February 28, 1997, rather than through December 31, 1996 for both the 1988-90 disallowance and the "\$67 million stipulation".
- d) adding franchise fees and uncollectible amounts for the 1988-90 disallowance. This has the effect of increasing the refund by \$466,000.
- e) deducting amounts from the 1988-90 disallowance and the \$67 million stipulation for "contingency and employee discount. This has the effect of reducing the total refund by \$252,000.

These amounts are shown in Table 1 of Advice Letter 1644-E-A.

22. The total amount which PG&E proposes to refund to customers, including interest through February 28, 1997, is \$73.2 million. The total refund related to the 1988-90 disallowance is \$48.2 million, while the total refund related to the \$67 million stipulation is \$25.0 million.

23. PG&E did not adjust the \$67 million stipulation disallowance for the ECAC/AER split, FERC jurisdictional amounts, or FF&U because the stipulation, conditionally adopted in D.96-08-033, required that the refunded amounts be credited 100% to the ECAC balancing account.

#### NOTICE

1. Advice Letter 1644-E-A was noticed in accordance with Section III of General Order 96-A by publication in the Commission Calendar and distribution to PG&E's Advice Letter filing mailing list.

#### PROTESTS

1. BART filed a protest on February 8, 1997. The protest was received within the time period allowed for protests of advice letters. BART protested that Advice Letter 1644-E-A was allegedly not in compliance with the requirement of D.96-12-025 to refund "... based upon each customer's average monthly usage..." BART indicates that PG&E's proposal is to base the refund of customer usage from March 1996 through February 1997.

2. BART states that PG&E's proposal disadvantages BART because BART's usage over the March 1996 through February 1997 period "was lower than it was during the years that are subject to refund (1988 through May 31, 1994)."

3. PG&E responded to BART's protest on February 13, 1997. PG&E states that although it is sympathetic to the arguments put forth by BART, PG&E believes its refund plan is in compliance with D.96-12-025.

February 19, 1997

**DISCUSSION**

1. PG&E filed its initial refund plan with its Advice Letter 1644-E, dated January 10, 1997. In its refund plan, PG&E proposed to exclude from the refund the amounts related to the 1988-90 Canadian gas purchase disallowance which the Commission ordered in D.94-03-050, because PG&E has requested a federal district court order to prohibit the refund of those amounts until resolution of the federal court case PG&E has brought against the Commission concerning that disallowance. PG&E only proposed to refund the EDRA amounts associated with post-1990 disallowances ordered in D.96-08-033, as modified by D.96-12-027 and D.96-12-089.
2. After reviewing the Advice Letter 1644-E, the Commission's Energy Division found that the letter was not in compliance with D.96-12-025. The Energy Division sent PG&E a letter on January 15, 1997 informing the Company of that finding, and recommended that PG&E file a supplemental advice letter which proposed a refund plan which complied with D.96-12-025.
3. The Energy Division letter correctly indicated to PG&E that the Commission has found that the refund of the disallowance ordered in D.94-03-050 was to be made in an expeditious manner and that the Commission has repeatedly rejected PG&E's arguments that the refunds should be delayed due to the PG&E federal district court case against this Commission.
4. On January 22, 1997, PG&E submitted Advice Letter 1644-E-A, a supplement to Advice Letter 1644-E which incorporated the Energy Division recommendations made in the January 15th letter. Advice Letter 1644-E-A submits an EDRA refund plan which includes most of the UEG portion of the 1988-90 Canadian gas disallowance, including interest through February 28, 1997.
5. PG&E proposes to base the refund on the last twelve months of customer usage, i.e. from March 1996 through February 1997. D.96-12-025 had ordered that the EDRA refunds be based on calendar-year usage. PG&E's record-keeping system only tracks customer usage for 13 months. However, because PG&E's initial Advice Letter 1644-E was not in compliance with our D.96-12-025, it was then difficult for PG&E to make a supplemental advice letter filing which proposed basing the refund on calendar-year usage.
6. On January 22, 1997 PG&E also filed a Second Petition to Modify D.96-12-025 which requested that the Commission modify D.96-12-025 to allow PG&E to base the proposed EDRA refund on March 1996 to February 1997 customer usage, and to allow the refund to occur with customers' March 1997 bills.
7. Today, in a separate decision, we granted PG&E a one-time modification of the requirements in D.96-12-025 that the refund be based on 1996 calendar-year usage and begin with February 1997 bills. The modification allows PG&E to base the refund on March

February 19, 1997

1996 through February 1997 usage, and to make the refund in customers' March 1997 bills.

8. In response to PG&E's Second Petition to Modify D.96-12-025 and PG&E's Request in Advice Letter 1644-E for expedited treatment, Commissioner Conlon issued an Assigned Commissioner's Ruling on January 27, 1997 which shortened the time period for responses to the Second Petition and the time period for PG&E's reply to protests.

9. We note that PG&E's Advice Letter 1644-E-A had requested expedited treatment and states that "Anyone wishing to protest this filing may do so by sending a letter within 10 days of the date of this filing." While PG&E certainly has the right to request expedited treatment of its advice letters, PG&E does not thereby have the right to require expedited protests absent a ruling from the Commission.

10. BART's protest incorrectly characterizes the intended requirement of D.96-12-025 regarding the customer usage on which EDRA refunds are to be based. In D.96-12-025, we ordered that EDRA refunds were to be made based on "average monthly customer energy usage for each calendar-year period". To clarify, this meant the previous calendar-year, which is not necessarily the same general time period associated with disallowances, and is not the same time period associated the PG&E disallowances at issue in Advice Letter 1644-E-A. It would be impractical to require that utilities go back to previous years' records to determine all of its previous customers and their usages to determine precisely which customers deserved refunds, and how much their refunds should be. PG&E's customer usage base as proposed in Advice Letter 1644-E-A is in compliance with D.96-12-025, as modified by our decision today on PG&E's Second Petition. If BART believes that decision's requirements are in error or unfair, it should file a petition to modify that decision.

11. PG&E adjusted the 1988-90 disallowance refund the UEG department received from the PG&E gas department, as discussed earlier. The amounts proposed for refund are lower than the amounts which PG&E stated it had booked to the EDRA in Advice Letter 1639-E. This is mainly because PG&E reduced the disallowance principal of the 1988-90 disallowance to account for what PG&E calls the "AER applicable amount", plus interest on the reduction. PG&E has assumed that when the AER was in effect during the 1988-90 time frame, the disallowance principal for the UEG should be reduced by 9%, the amount of costs which would have been subject to AER treatment, and not subject to ECAC balancing account treatment.

12. By reducing the disallowance in this manner, PG&E essentially allocates a portion of the EDRA refund to its own shareholders. The Commission never intended that any of the disallowance which it ordered in D.94-03-050 should be recovered by PG&E shareholders. The Commission specifically ordered that PG&E should be denied recovery of the \$90 million disallowance

February 19, 1997

principal plus interest. To now allocate some of that disallowance to PG&E shareholders would be counter to the Commission's order.

13. The Commission has the latitude to require that electric utility shareholders bear all of the imprudent costs incurred by utility management, even during periods when the AER was in effect, and has taken such action in the past. This is particularly appropriate in this case, where PG&E gas buyers (whose actions were found unreasonable) for the gas department were not separated from the gas buyers for the UEG department during the 1988-90 time frame. In fact, the UEG was entirely a core-elect customer during that time frame.

14. The Commission has also ordered full allocation of a disallowance to the ECAC balancing account in the past. For example, in D.90-09-028, the Commission ordered a disallowance of \$48 million against Southern California Edison, and ordered that the "ECAC account", i.e. the ECAC balancing account, be reduced to reflect the total disallowance.

15. In D.96-09-042, the Commission also ordered that the portion of the 1988-90 disallowance to be refunded to the UEG would be credited to the ECAC balancing account. The UEG department did in fact credit the entire transfer to the ECAC balancing account, and then transferred that amount to the EDRA, after D.96-12-025 was issued.

16. Further, when the Commission ordered that PG&E be denied recovery of any of this disallowance, if PG&E believed that its shareholders should receive a portion of the disallowance due to an AER allocation, it should have petitioned to have the order modified. The time for such a petition has long since passed.

17. Finally, one of the reasons the Commission established the EDRA in the first place was to assure that electric utilities bear the full costs of disallowances so that customers would benefit through reduced rates, and that imprudent activities would be discouraged. The Commission stated in D.96-12-025 that "Using such disallowances to help the utility collect transition costs would contravene the purpose of the disallowances. Disallowances are intended both to be equitable to ratepayers and to discourage imprudent activities. This incentive disappears if the utility is able to retain this money, albeit to offset a different type of cost."



February 19, 1997

**FINDINGS**

1. PG&E Advice Letter 1644-E-A requests approval of its proposed EDRA refund plan.
2. The proposed refund includes an adjustment for the "AER applicable amount" and for the interest associated with that reduction. Such a reduction would essentially allow PG&E shareholders to receive some of the EDRA refund.
3. PG&E should delete its adjustment for the "AER applicable amount" and for the interest associated with that reduction.
4. The proposed refund plan requires modification of D.96-12-025 to allow PG&E to base the refund on March 1996 through February 1997 customer usage, and to make the refund in customers March 1997 bills.
5. We have granted PG&E a one-time modification of D.96-12-025 to allow PG&E to base the 1997 EDRA refund on March 1996 through February 1997 usage, and to make the refund in customers' March 1997 bills.
5. With the granted modification, and with the exception of the AER adjustment, the refund plan submitted with PG&E Advice Letter 1644-E-A complies with the Commission's orders in D.96-12-025.
6. BART's protest of Advice Letter 1644-E-A incorrectly characterized the ordering requirements of D.96-12-025. BART's protest should be denied.
7. PG&E should file a supplemental advice letter that deletes the adjustment for the "AER applicable amount" and associated interest.

February 19, 1997

**THEREFORE, IT IS ORDERED that:**

1. The refund plan proposed in PG&E Advice Letter 1644-E-A is approved, subject to modification of the refund amount. The 1988-90 disallowance shall not be reduced for an "AER applicable amount" or for the interest associated with that amount.
2. PG&E shall refund to its electric customers the EDRA amounts with the above modification, including interest through the date of the refund.
3. Refunds shall be made to customers in their March 1997 bills.
4. The refund shall be based on customer usage from March 1996 through February 1997.
5. BART's protest of Advice Letter 1644-E-A is denied.
6. PG&E shall file a supplement to Advice Letter 1644-E-A to reflect the AER modification we require. PG&E shall file this supplemental advice letter within five days of the effective date of this resolution.
7. Supplemental Advice Letter 1644-E-b shall be marked to show that it was approved by Resolution E-3480.
8. This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on February 19, 1997. The following Commissioners approved it:

  
WESLEY FRANKLIN  
Executive Director

P. Gregory Conlon, President  
Jessie J. Knight, Jr.  
Henry M. Duque  
Josiah L. Neeper  
Richard A. Bilas  
Commissioners