

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**ENERGY DIVISION**

**RESOLUTION E-3541  
JULY 2, 1998**

**RESOLUTION**

**RESOLUTION E-3541. PACIFIC GAS AND ELECTRIC COMPANY (PG&E) SEEKS APPROVAL OF A GENERATING FACILITY OPERATIONS & MAINTENANCE (GFOM) ACCOUNT FOR DIVESTED PLANTS. APPROVED.**

**BY ADVICE LETTER 1731-E, FILED ON JANUARY 14, 1998.**

---

**SUMMARY**

1. By Advice Letter 1731-E, filed on January 14, 1998, Pacific Gas and Electric Company (PG&E) requests approval to establish a *Generating Facility Operations and Maintenance Account (GFOM)* pursuant to Decision (D.) 97-09-046.
2. A timely protest was filed by Mr. James Weil on January 23, 1998.
3. Mr. Weil protests PG&E's proposal to calculate excess revenue on an aggregate basis for all of the plants sold rather than individually for each plant.
4. This resolution grants PG&E's request to establish a *GFOM* account and denies Mr. Weil's protest.

**BACKGROUND**

1. On November 15, 1996, PG&E filed Application (A.)96-11-020, *Application of Pacific Gas and Electric Company for Authorization to Sell Certain Generating Plants and Related Assets Pursuant to Public Utilities Code Section 851*.
2. D.97-06-060 granted, among other things, the establishment of a Transition Cost Balancing Account (TCBA) for the purposes of collecting the Competition Transition Charge (CTC).

3. D.97-09-046 allowed PG&E to commence an auction of the Morro Bay, Moss Landing, and Oakland Power Plants (collectively known as the WAVE 1 plants) and to apply the accounting and ratemaking treatment described in its application.
4. On January 14, 1998, PG&E filed Advice Letter 1731-E pursuant to D.97-09-046 requesting authorization to establish a *Generating Facility Operations and Maintenance Account (GFOM)*. The *GFOM* account would track revenues and expenditures associated with the O&M agreements of the divested plants. Any revenue collected in excess of the costs would be credited to the CTC while any losses would be borne by shareholders.

### NOTICE

1. In accordance with Section III, Paragraph G, of General Order No. 96-A, PG&E mailed copies of this advice letter to other utilities and interested parties and service list of A.96-11-020. Public notice of this filing has been made by publication in the Commission's calendar.

### PROTESTS

1. A timely protest was filed by Mr. James Weil on January 23, 1998.
2. Mr. James Weil contends that "the issue herein is whether excess revenues credited to the CTC account, if there are any, should be calculated as an aggregate balance for all of the plants sold or as individual balances for the three plants."<sup>1</sup> Mr. Weil argues that neither PG&E's application requests nor Commission decisions approve the aggregation of excess revenues associated with the O&M agreements as PG&E has proposed in its advice letter. Mr. Weil points to language found in PG&E's application and in Commission decisions that support his protest:

The contracts associated with the sales will also require additional ratemaking changes. PG&E proposes that it retain all revenues from the legislatively-mandated O&M Agreement up to the actual costs incurred. If the revenues over the two-year life of the contract exceed costs, PG&E will credit the excess to the CTC Revenue Account for the benefit of ratepayers. PG&E will be at risk for any shortfall of revenues compared to expenses. (A.96-11-020, p.29, Mr. Weil's emphasis)

PG&E will be at risk to recover its costs for performing under the terms of the O&M Agreement through payments called for in the agreement, and will retain all revenues from the agreement up to the amount of costs incurred. If

---

<sup>1</sup> Protest of Mr. James Weil, p.1

over the two-year period, revenues exceed costs, PG&E will credit the excess to the CTC Revenue Account. At the end of the two-year period, PG&E will no longer incur O&M or A&G expenses directly associated with the operations of the divested plants. (Testimony Supporting Authorization to Sell Certain Generating Plants and Related Assets Pursuant to Public Utilities Code § 851, p. 4-8, Mr. Weil's emphasis)

Finally, PG&E proposes to retain revenues from the required two-year operations and maintenance contract for each plant, up to its actual costs. PG&E would absorb any deficiency and credit any excess to the CTC Revenue Account. (D.97-09-046, discussion at mimeo, p. 13, Mr. Weil's emphasis)

3. PG&E filed a response to Mr. Weil's protest on February 2, 1998.

- PG&E also looks to its application and to decisions to validate its position that it indeed had always intended to "aggregate costs and revenues under the O&M Agreements."<sup>2</sup>

PG&E will establish a one-way balancing account to track the revenues received under the O&M Agreement and PG&E's O&M expenses associated with the divested power plants. The proposed Generating Facility Operation and Maintenance Account (*GFOM*) will record revenues received and actual expenses incurred under the contracts for all four divested plants.

At the end of each plant's two-year O&M Agreement, the accumulation of revenues and expenses will cease. At the conclusion of the last O&M Agreement, if the revenues received under the terms of the O&M Agreement are greater than the expenses incurred, PG&E will credit the excess to the CTC Revenue Account, so that PG&E will collect no more than the actual expense incurred to provide service under the agreement. (Chapter 2 of Addendum 4, p.2-3, PG&E's emphasis)

- Furthermore, in its reply to Mr. James Weil, PG&E contends that his attempt to "litigate this issue by means of a protest to PG&E's advice filing"<sup>3</sup> goes counter to a recent Commission finding that a "protest to a compliance advice letter filing is not the appropriate way to contest an issue that has already been decided by Commission decision."<sup>4</sup> PG&E points out that in D.97-09-046,

---

<sup>2</sup> PG&E reply, p.1

<sup>3</sup> PG&E reply, p.2

<sup>4</sup> PG&E reply, p.2

Findings of Fact 6, the Commission recognized that “no party disputes PG&E’s proposed accounting and ratemaking treatment of the sales.”<sup>5</sup>

## DISCUSSION

1. Mr. James Weil’s protest raises the issue of whether excess revenues collected under the O&M Agreements, if any, should be calculated as an aggregate for all plants divested or individually.
2. Both the protest and the reply look to the language of the application and Commission decisions to support their positions. While both arguments are compelling, the issue in this resolution is to clarify the intent of D.97-09-046 and, where necessary, use previously Commission-adopted ratemaking treatments.
3. Public Utilities Code §363 requires that “in order to ensure the continued safe and reliable operation of ... electric generating facilities”, any public utility selling a generating facility under §851, continue to “operate and maintain the facility for at least two years.” The purpose of this requirement is solely to ensure the continued reliable operation of the electrical facility. PG&E’s proposal ensures that it will not be made better or worse by the O&M agreements with the new owners. Rather, it simply satisfies the requirements of Assembly Bill 1890 and California Public Utilities Code §363.
4. In D.97-11-074 (the interim Transition Cost Decision) the Commission agreed “that market revenues from all sources that are in excess of costs should ultimately offset transition costs.”<sup>6</sup> The Commission further detailed the manner in which tracking memorandum accounts for non-must-run and for must-run plants will be implemented. “Any excess revenues will be credited to offset transition costs on an annual basis, in the following fashion. The revenues will be tracked in the memorandum account on a monthly basis and will be available to apply to costs incurred in other months...”<sup>7</sup> because it recognizes “the utilities’ concerns that monthly postings of excess revenues to the transition cost balancing account could impact the recovery of costs incurred during plant outages when there may not be revenues to offset these costs.”<sup>8</sup>
5. In a similar manner, PG&E has proposed in its application that the excess revenues from the *GFOM* tracking account be used to credit the TCBA. PG&E states that “...because unplanned outages may occur in one location as opposed to another, PG&E had planned and expected that it would be able to aggregate revenues and

---

<sup>5</sup> D.97-09-046, slip opinion, p.14

<sup>6</sup> D.97-11-074, slip opinion, p.53

<sup>7</sup> D.97-11-074, slip opinion, p.53

<sup>8</sup> D.97-11-074, slip opinion, p.53

costs for the various locations.”<sup>9</sup> Further, PG&E points out that it has “voluntarily proposed to retain O&M revenues only up to its actual costs, and willingly forfeited the opportunity for profit from the agreements.”<sup>10</sup>

6. PG&E’s O&M Agreements with the new owners calls for reimbursement only of personnel expenses. The *GFOM* tracking account would ensure that the expenses associated with the plants match as closely as possible to the revenues. As the net sum gain is expected to be zero, the risk involved for the utility, shareholders, and ratepayers is minimal.
7. The issue of Mr. Weil’s protest was not decided nor clarified by previous Commission decisions. The language of PG&E’s application was not explicit. Additionally, the issue at hand is of such detailed nature that it was not previously anticipated in the proceedings leading up to the decision. Therefore, it is appropriate to clarify the issue in this advice letter.
8. Energy Division agrees with PG&E’s Advice Letter 1731-E.

### **FINDINGS**

1. PG&E filed Advice Letter 1731-E on January 14, 1998, pursuant to D.97-09-046 requesting approval to establish a Generating Facility Operations and Maintenance Account effective February 23, 1998.
2. A timely protest was filed by Mr. James Weil.
3. Mr. Weil protests PG&E’s proposal to calculate excess revenue on an aggregate basis for all of the plants sold rather than individually for each plant.
4. PG&E responded to Mr. Weil’s protest on February 2, 1998.
5. PG&E contends that it had always intended to aggregate costs and revenues under the O&M Agreements. PG&E’s proposal to aggregate O&M revenues from across all plants is similar to the ratemaking treatment the Commission adopted for must-run and non-must-run power plants in D.97-11-074.
6. Mr. Weil’s protest should be denied.
7. PG&E’s Advice Letter 1731-E should be granted.

---


<sup>9</sup> PG&E reply to Mr. Weil’s protest, p. 3

<sup>10</sup> PG&E reply to Mr. Weil’s protest, p. 3

**THEREFORE, IT IS ORDERED THAT:**

1. PG&E's Advice Letter 1731-E is approved.
2. Mr. Weil's protest is denied.
3. This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on July 2, 1998, the following Commissioners voting favorably thereon:

  
WESLEY M. FRANKLIN  
Executive Director

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