

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION ★

RESOLUTION E-3622
July 22, 1999

RESOLUTION

Resolution E-3622. Pacific Gas and Electric Company (PG&E) requests an extension of time to complete certain Research, Development and Demonstration (RD&D) projects. Denied. PG&E is ordered to return the unspent RD&D funds through its Electric Deferred Refund Account (EDRA) or similar account.

By Advice Letter 2126-G/1833-E filed on December 21, 1998.

SUMMARY

On December 21, 1998, Pacific Gas and Electric Company (PG&E) filed Advice Letter 2126-G/1833-E. This Advice Letter requests an extension of time to complete certain Research, Development, and Demonstration (RD&D) projects. The projects are: the Underground Cable Testing Project, the Building Performance Monitoring and Analysis Project, the Energy Efficient Building Systems Technology Project, the Residential Space Conditioning Research Project, the Food Services Technology Center Project, the Advanced Building and End-Use Control Systems Project, and the Small-scale Natural Gas Liquifier Project.

This Resolution denies Advice Letter 2126-G/1833-E and directs PG&E to return \$2.998 million in unspent RD&D funds. Commission policy, as outlined in Decision (D.) 87-07-021, D. 92-12-057 and D. 97-10-057, directs the utility to return any unspent RD&D funds to the ratepayer at the end of the ratecase cycle. The resolution process is not the proper vehicle in which to request a modification to a Commission Decision.

On January 21, 1999, the Office of Ratepayer Advocates (ORA) filed a protest to the Advice Letter. ORA requested that PG&E's request be denied based on the fact that it contradicts Commission policy regarding the disposition of unspent RD&D funds. In addition, utility-managed RD&D projects are winding down (per Assembly Bill (AB) 1890¹). ORA also expressed concerns that PG&E is

¹ AB 1890 (Stats. 1996, Ch.854) provides for the transfer of all RD&D funds, other than those for research related to transmission and distribution functions, to the California Energy Commission.

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requesting to retain the majority of 1998 funds, with the intention of completing the projects using shareholder funds, if necessary. ORA also points out that six of the seven projects PG&E is requesting to retain appear to have no direct application within the regulated utility, thus raising the issue of conflicts arising from the competitive advantage an incumbent utility may wield in the deregulated market. ORA also asserts that PG&E did not provide adequate documentation of benefits of these particular programs, plans for how the results would be used, or plans for ensuring that royalties or other benefits of commercialization would accrue to ratepayers. ORA also advocates crediting the unspent RD&D to the Transition Cost Balancing Account (TCBA) as a way to hasten progress towards the start of the post-transition period.

PG&E responded to ORA's protest on January 28, 1999. The response argues that this request does not contradict Commission policy and that the benefits will accrue to the people of California via information which will be available free of charge. PG&E also disputes ORA's assertion that it did not explain the benefits of these projects.

BACKGROUND

In Decision (D.) 87-07-021,² the Commission ordered PG&E to establish a separate expense account for research, development and demonstration funds. PG&E was ordered to implement a one-way balancing account with the provision that any unexpended funds at the end of a ratecase cycle would be returned to ratepayers. Prior to the start of electric restructuring, this was accomplished by crediting the Electric Revenue Adjustment Mechanism (ERAM) account. The use of the ERAM account ensures that funds are spent on RD&D or returned to ratepayers.

In D. 92-12-057 the Commission reiterated the guidelines on the one-way balancing account, including the position that any unspent RD&D funds are to be returned to ratepayers. The utility would be allowed to carry over unspent RD&D funds from one year to the next within the three-year ratecase cycle, with any unspent funds being returned to the ratepayer at the end of this cycle. In this way, the Commission preserves the principle of returning unspent funds to the ratepayer while maintaining flexibility in the timing of research expenditures. No subsequent decision has altered this policy.

² In A.85-12-050/I.86-07-032, dated July 8, 1987.

D.97-10-057 (the "Streamlining Decision") ordered PG&E to eliminate its ERAM effective January 1, 1998.³ This Decision also discussed the importance of maintaining separate accounts for certain funds, such as those for Demand Side Management (DSM) and RD&D. D. 97-10-057 reiterated that these accounts are designed to ensure that the authorized funding is either spent on the specified programs or returned to ratepayers. This Decision ordered the utilities to retain these accounts for the purpose of tracking costs and as a method of assuring that the funds are actually used for their intended purpose.

In the past, the Commission's desire to ensure that refunds and disallowances are returned directly to ratepayers has been accomplished through credits to balancing accounts. These monies would eventually be refunded to ratepayers. Under the rate freeze, electric balancing account credits may not reach customers but may instead reduce the utility's transition costs. In D. 96-12-025 the Commission established the Electric Deferred Refund Account (EDRA) to ensure ratepayers received direct refunds for amounts related to electric disallowances and certain refunds made to the utility. The Commission has used the EDRA as a vehicle for directly refunding both amounts related to disallowances, as well as, refunds which were not a result of any imprudent action by the utility.⁴ We see the EDRA, or similar account, as an appropriate mechanism to ensure the under-expenditures from RD&D programs reach the ratepayers absent the ERAM.

The enactment of Assembly Bill (AB) 1890 (Stats. 1996, Ch. 854) marked a change in the kind of ratepayer funded RD&D projects the utilities would be managing. The statute provides for the transfer of all RD&D funds, other than those for research related to transmission and distribution functions, to the California Energy Commission (CEC). Consequently, PG&E has been winding down its RD&D activities. Commission Resolution E-3550, dated February 4, 1999, approved PG&E's request to disband its Research and Development Department and disperse remaining RD&D functions into various business unit organizations within the regulated utility.

³ D. 97-10-057, dated October 22, 1997, discussed how some of the regulatory accounts created over the last two decades conflict with newer policy objectives established with the passage of AB 1890. At the very least, the usefulness of these accounts in the transitional environment has changed. The ERAM was conceived during a period when the utility was the sole provider of power and a primary provider of conservation technologies and information. The ERAM was designed to reduce the conflict between the Commission's policy of promoting conservation and utilities' objective to increase revenues and profits through higher sales.

⁴ Commission Resolution E-3520, dated January 21, 1998, provided for a refund from the EDRA of \$61 million, \$1.1 million of which resulted from a refund from Pacific Gas Transmission. In Resolution E-3525, dated March 12, 1998, SCE returned monies (\$4.011 million plus interest) via the EDRA, which were from a PG&E refund.

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PG&E filed Advice Letter 2126-G/1833-E requesting retention of unexpended RD&D funds associated with seven projects from the 1996 General Rate Case cycle. PG&E proposed retaining the funds and attempting to complete these projects in 1999 as opposed to returning these funds to ratepayers, as per established Commission policy.

NOTICE

Advice Letter 2126-G/1833-E was served on other utilities, government agencies, and to all interested parties who requested such notification, in accordance with the requirements of General Order 96-A. Public notice of this filing has been made by publication in the Commission's calendar.

PROTESTS

On January 21, 1999, the Office of Ratepayer Advocates (ORA) filed a protest to the Advice Letter. ORA's concerns are as follows:

1. The PG&E request contradicts established Commission policy regarding the disposition of unspent RD&D funds. The "unspent funds in the RD&D one-way balancing account are scheduled to be refunded to ratepayers, absent Commission direction to do otherwise."
2. Utility-managed RD&D programs are winding down as intended by AB1890. PG&E did not request funding for RD&D programs, other than legislatively mandated Public Purpose RD&D, in the 1999 General Rate Case.
3. With only 33% of the funds expended, PG&E would retain the majority of the funds and fund the projects to completion with shareholder funds if ratepayer funds were not sufficient.
4. Six of the seven projects for which PG&E requested an extension of time (and retention of ratepayer funds) are associated with Customer Services. This seems contrary to the intent of AB1890 in removing the RD&D programs from utility oversight in an attempt to curtail any competitive advantage of an incumbent utility in the deregulated electricity market. None of these projects are deployable within the regulated utility, as they have no application to transmission or distribution functions.
5. There is no technical justification for continuation of these studies, such as cost-benefit analyses, or justification as to the value of these projects to the regulated utility and its ratepayers. No plan is presented as to how the results of these projects will be reported or used. And, since there are no agreements in place, there is no guarantee that royalties or other benefits from commercialization will accrue to ratepayers.

6. "If PG&E's request is approved, the effect would be to prolong the Competitive Transition Charge (CTC), all other things being equal." If the monies were returned to ratepayers by crediting the Interim Transition Cost Balancing Account (ITCBA), the CTC (or headroom revenues) would be reduced thus hastening the start of the post-transition period.

PG&E responded to ORA's protest on January 28, 1999:

1. PG&E argues that this request does not contradict Commission policy regarding utility managed RD&D because AB1890 does not place limits on research that utilities can conduct. Commission policy does not allow utilities to conduct generation-related research, but none of these projects are generation related.
2. PG&E corrects ORA's statement that "PG&E states that if projects remain unfinished once these funds are depleted, shareholders will cover the costs." What PG&E actually said was: "should the projects be funded through October 31, 1999, and yet remain unfinished by that date, any further expenditures will come from either shareholder dollars or operating budgets."
3. PG&E explains that these projects are performed to benefit ratepayers not shareholders. In addition, the projects associated with customer service are producing results, which are fully in the public domain. No proprietary information or products are being developed and "results have been, and will be disseminated through a variety of media, including workshops, seminars, research reports free to ratepayers, and free internet sites."
4. PG&E replies to the ORA assertion that they "provide no discussion or explanation on why these projects are important for the regulated utility and its ratepayers" by stating that the benefits to ratepayers were outlined in the Advice Letter.

DISCUSSION

This Resolution denies Advice Letter 2126-G/1833-E. Commission policy, as outlined in D. 87-07-021, D. 92-12-057 and D. 97-10-057, directs the utility to return any unspent Research, Development and Demonstration (RD&D) funds to the ratepayer at the end of the ratecase cycle. We will first describe Commission precedent regarding the disposition of unexpended RD&D funds. Next we will briefly address ORA's concerns, although given Commission precedent on this issue most of the protest is moot. Finally, since the account used historically to return the unexpended funds to ratepayers has been closed, we will propose a mechanism which will provide for direct refund of unexpended RD&D funds.

As required in D. 87-07-021 and D. 92-12-057, the utility established a one-way balancing account with any unspent RD&D funds being returned to the ratepayer

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at the end of the ratecase cycle. In discussing the one-way RD&D balancing account, the decision states that "any unspent funds would be returned to ratepayers in the form of a credit to the ERAM balancing account."

D. 97-10-057 reiterates Commission policy with regards to RD&D funds by stating that the purpose of the RD&D account is to assure "...that either authorized funding is spent on the program or is *returned to ratepayers* (emphasis added)." The decision also emphasizes that nothing regarding the operation of the RD&D account is altered.⁵

ORA's protest describes several conditions which, in addition to Commission precedent, make the case for denying PG&E's request. We grant ORA's protest in part. ORA's first point asserts that PG&E's request contradicts Commission policy regarding unspent RD&D funds. We grant this portion of ORA's protest based on the discussion above.

ORA points out that utility management of RD&D projects is winding down, per AB 1890, thus PG&E no longer has a centralized Research and Development (R&D) department. Given the changed regulatory environment, and the fact that PG&E will no longer be managing ratepayer funded research, PG&E has not requested funding for new research in 1999. It has dissolved its central Research and Development department and transferred the RD&D functions to "various business unit organizations" within the regulated utility (AL 2076-G-A/1759-E-A, Resolution E-3550 dated February 4, 1999). With the passage of AB 1890, the CEC was charged with the responsibility of managing all Public Purpose RD&D funding. AB 1890 further states that "only those research and development funds for transmission and distribution functions shall remain with the regulated public utilities". We agree with ORA that these factors strengthen the case for returning the funds to ratepayers, although this point is moot given that the request is denied based on Commission precedent.

ORA raises the issue of PG&E's intention to complete these ratepayer funded projects using shareholder or operational funds as potentially troublesome. The intention to invest shareholder funds raises the specter of ratepayer subsidization, especially given that six of the seven projects have no direct application within the regulated utility. If PG&E filed to offer any of the projects as non-tariffed offerings it may interfere with the development of a competitive

⁵ D. 97-10-057, October 22, 1997, Ordering Paragraph 4: "PG&E shall retain the regulatory accounts relating to DSM, CARE, and RD&D programs. Nothing in this order changes the operation of those programs or accounts, or amounts to be included in the accounts authorized by Commission orders."

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market for these services. This point is also moot for the purposes of this Resolution.

ORA is also concerned that PG&E did not document specifically how these technologies apply to operations within the regulated utility, nor did it supply any technical analyses or cost-benefit analyses to demonstrate the value of these particular projects to the ratepayers. Additionally, PG&E has not proposed a plan, or entered into any agreement which would ensure that the ratepayers would share in any future proceeds from commercialization or deployment of the ratepayer funded technologies. These are important considerations and would need to be addressed if PG&E was going to be retaining these funds and continuing these projects, but because we deny the request based on past decisions, we need not address this issue here.

Prior Commission Decisions require unexpended RD&D funds to be returned to ratepayers via a credit to Electric Revenue Adjustment Mechanism (ERAM) account at the end of the ratecase cycle. The Commission directed PG&E to eliminate its ERAM account by January 1, 1998 in D. 97-10-057.

In D. 96-12-025, the Commission ordered the utilities to establish electric deferred revenue accounts (EDRAs) and specified that entries made to this account shall include "all amounts identified in Ordering Paragraph 2⁶ that are already recorded in each utility's Energy Cost Adjustment Clause and Electric Revenue Adjustment Mechanism, but have not been amortized in rates, as well as *any pending or future refunds or disallowances (emphasis added).*"

D. 96-10-035 states:

"we propose to continue our policy of refunding utility cost disallowances directly to customers. In the past this was accomplished through credits to balancing accounts where it would ultimately be refunded to ratepayers. Under the rate freeze, balancing account credits may not reach customers but would offset transition costs. This would be unfair to customers and would negate the incentive for each utility to manage its expenditures prudently."

This statement conveys the Commission preference for returning monies directly to ratepayers versus allowing the utilities to use these funds to reduce the

⁶ D.96-12-025, dated December 9, 1996, O.P. 2 reads: "The electric deferred refund account will accumulate credits for electric disallowances ordered by this Commission, utility electric generation (UEG) shares of gas disallowances ordered by this Commission or FERC electric and UEG amounts resulting from the settlement of reasonableness disputes at his Commission or FERC."

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transition costs. The example cited above specifically references disallowances but the Commission has credited the EDRA in cases where no imprudent action by the utility was indicated. For instance, in Commission Resolution E-3520 (dated January 21, 1998), the Commission approved PG&E's plan to refund \$61 million from the EDRA, a portion of which was a refund resulting from a PGT ratecase. In Resolution E-3525 (dated March 12, 1998) SCE refunded, via the EDRA, \$4.011 million resulting from refunds received from PG&E. We view the treatment of refunds for RD&D "under-expenditures" similarly. While we believe the EDRA could be used to record the electric portion of the refund, we will give PG&E the option of using the EDRA or creating another account which would allow a direct refund.

ORA's protest suggests crediting the refund to the Transition Cost Balancing Account (TCBA)⁷ but we feel the EDRA⁸, or a similar account, is the most direct mechanism to ensure ratepayers receive these funds. The ratepayer funds were collected in the 1996 General Ratecase for the purpose of funding RD&D projects. If the funds are not used for the intended purpose, they should be returned directly to ratepayers, consistent with Commission precedent.

The Commission decisions are clear that unexpended RD&D funds are to be returned to the ratepayer at the end of the ratecase cycle. Since the ERAM is no longer available, we need to establish another vehicle for achieving this end. The TCBA is not a direct path back to the ratepayer and therefore we do not feel it is an appropriate solution. In addition, there is no evidence that AB 1890 intended that these refunds would pay for transition costs. Using refunds to pay transition costs would contravene the purposes of those funds. The funds were not collected to offset transition costs. PG&E should credit the electric portion of the unexpended RD&D funds to the EDRA, or a similarly designed account. Refunds will then be issued to ratepayers based on energy usage.⁹ We see the EDRA, or similar account, as the appropriate mechanism for the return of the electric portion of the unexpended RD&D funds. The gas portion should be credited to the Core Fixed Cost Account (CFCA) and the Noncore Customer Class Charge Account (NCA).

⁷ ORA refers to the Interim Transition Cost Balancing Account (ITCBA) in its protest but that account has been replaced by the TCBA.

⁸ In D. 96-12-025, Ordering Paragraph 1, PG&E was instructed to establish an electric deferred refund account (EDRA) to consolidate various refund amounts into customer refunds made annually. Ordering Paragraph 4 of D. 96-12-025, directs the utilities to "return refunds and disallowances, including appropriate interest, to customers through an annual refund based on each customer's average monthly energy usage for each calendar-year period, and which shall be returned in accordance with a refund plan filed by advice letter on or before January 31 of the succeeding year."

⁹ Similar to the methodology for the EDRA refunds, as outlined in D. 96-12-025.

COMMENTS

The draft resolution of the Energy Division in this matter was mailed to the parties in accordance with PU Code Section 311(g). Comments were filed on July 6, 1999 by Pacific Gas and Electric Company (PG&E). In its comments, PG&E notes that the dollar amount of unexpended funds from the seven specified projects should be \$2.998 million, not \$3.371 million as submitted in AL 2126-G/1833-E.¹⁰ This difference is due to "limited funds for the Small-scale Natural Gas Liquefier Project." The corrected dollar amount is noted herein. PG&E comments that crediting the electric portion of the unspent RD&D funds to an EDRA, or similar account, is inconsistent with PG&E's request in AL 2144-G/1856-E and will create "additional technical complexity." AL 2144-G/1856-E requests that all remaining unspent RD&D funds be credited to the Transition Revenue Account (TRA). This comment attempts to reargue a point which has already been considered and pre-supposes an unknown outcome on a pending Advice Letter which is separate and distinct. Therefore, this Resolution will not be amended to incorporate this argument.

PG&E also points out that it is no longer making entries to the Noncore Fixed Cost Account except to amortize the balance in it. PG&E suggests that reducing the balances in the Core Fixed Cost Account (CFCA) and the Noncore Customer Class Charge Account (NCA) will serve to return the gas portion of the unspent RD&D funds to ratepayers. This correction is reasonable and will be incorporated in this Resolution.

FINDINGS

1. Pacific Gas and Electric Company (PG&E) filed Advice Letter 2126-G/1833-E on December 21, 1998, requesting an extension of time to spend the funds allocated to seven Research, Development and Demonstration (RD&D) projects.
2. The Office of Ratepayer Advocates (ORA) filed a protest on January 21, 1999.
3. PG&E filed a response to the ORA's protest on January 28, 1999.

¹⁰ The \$2.998 million figure is also referenced in Advice Letter 2144-G/1856-E which requests approval for return of unspent RD&D funds, excluding these seven projects, via a credit to the Transition Revenue Account (TRA).

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4. Commission precedent is to require the utilities to return unexpended RD&D funds at the end of the applicable ratecase cycle.
5. The Advice Letter process is not the appropriate vehicle for requesting a modification to Commission Decisions.
6. PG&E should return the unexpended RD&D funds pertaining to the specified seven projects to ratepayers (\$2.998 million).
7. Commission Decision 96-12-025 ordered PG&E to establish an electric deferred refund account (EDRA).
8. Commission Decision 97-10-057 ordered Pacific Gas and Electric Company to close its Electric Revenue Adjustment Mechanism (ERAM) account effective January 1, 1998.
9. PG&E should use its EDRA, or a similarly designed account, for the purpose of refunding the electric portion of the unexpended RD&D funds from the 1996 General Rate Case Cycle.
10. The gas portion of the unexpended RD&D funds should be credited to the Core Fixed Cost Account (CFCA) and the Noncore Customer Class Charge Account (NCA).
11. The protest filed by the ORA is granted to the extent PG&E's request contradicts Commission policy regarding unspent RD&D funds.

THEREFORE, IT IS ORDERED that:

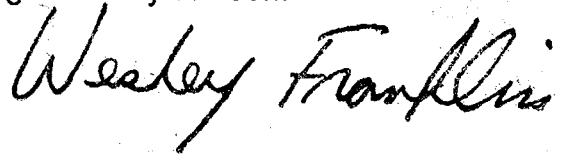
1. Pacific Gas and Electric Company shall return the unexpended Research, Development and Demonstration funds associated with the seven projects specified in the subject Advice Letter (\$2.998 million plus interest).
2. Pacific Gas and Electric Company shall credit its Electric Deferred Refund Account, or a similarly designed account, for the purpose of returning the electric portion of the unexpended Research, Development and Demonstration funds to the ratepayers.
3. Pacific Gas and Electric Company shall credit the Core Fixed Cost Account and the Noncore Customer Class Charge Account for the gas portion of the unexpended Research, Development and Demonstration funds.

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4. If Pacific Gas and Electric Company elects to implement the refund through its Electric Deferred Refund Account, it shall follow established procedure for implementing the refund plan.
5. If Pacific Gas and Electric Company elects to establish an account similar to its Electric Deferred Refund Account, it shall establish the account via an advice letter within 20 days of this Resolution.
6. Office of Ratepayer Advocates' protest regarding the Advice Letter's contradiction to Commission policy is granted, the protest regarding disposition of funds is denied, and the remainder of the protest is moot for the purposes of this Resolution.

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 22, 1999, the following Commissioners voting favorably thereon:



WESLEY M. FRANKLIN
Executive Director

RICHARD A. BILAS
President

HENRY M. DUQUE

JOSIAH L. NEEPER

JOEL Z. HYATT

CARL W. WOOD

Commissioners