



**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298

**FILED**  
12-28-10  
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December 28, 2010

**Agenda ID #10067**  
**Adjudicatory**

TO PARTIES OF RECORD IN CASE 10-05-017

This is the proposed decision of Administrative Law Judge (ALJ) Hallie Yacknin. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov). Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Yacknin at [hsy@cpuc.ca.gov](mailto:hsy@cpuc.ca.gov) and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov).

/s/ MICHELLE COOKE for  
Karen V. Clopton, Chief  
Administrative Law Judge

HSY:avs

Attachment

Decision PROPOSED DECISION OF ALJ YACKNIN (Mailed 12/28/2010)

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

Modesto Irrigation District, Merced Irrigation  
District,

Complainants,

vs.

Pacific Gas and Electric Company (U39E),

Defendant.

Case 10-05-017  
(Filed May 19, 2010)

**DECISION APPROVING SETTLEMENT AGREEMENT**

**1. Summary**

This decision approves the settlement between the Modesto Irrigation District, the Merced Irrigation District, and Pacific Gas and Electric Company (PG&E) resolving this complaint. Pursuant to the settlement, PG&E represents and warrants that it has not recovered and will not recover from ratepayers the costs of customer retention activities during the periods subsequent to the issuance of the Commission decisions resolving PG&E’s 2003 and 2004 general rate case applications. The proceeding is closed.

**2. Background**

The complaint alleges that the defendant, Pacific Gas and Electric Company (PG&E), has violated certain terms of the settlement of the revenue requirement phase of PG&E’s 2007 general rate case (GRC), Application

(A.) 05-12-002, which the Commission approved in Decision (D.) 07-03-044. According to the complainants, the settlement agreement “disallowed PG&E from spending ratepayer funds for Customer Retention Activities.” Complainants rely on ¶ 19 of the settlement agreement, which appears on pages 8-9 of Appendix C to D.07-03-044 and provides in full:

PG&E’s distribution Customer Services 2007 expenses will be \$431.1 million for electric and gas distribution. This compares to PG&E’s litigation position set forth in the Comparison Exhibit (at 2-4 and 2-15, lines 9 and 11) of \$437.7 million. This reflects a “zero” allocation in expenses for the “customer retention” component of PG&E’s Customer Retention and Economic Development Program. (This compares to the \$2.03 million originally sought by PG&E and reflected in Ex. PG&E-5, at 9-1, Table 9-1, L:1.)

Complainants allege that PG&E has spent nearly \$5 million of ratepayer dollars on customer retention activities between 2007 and 2009, and that such expenditures are in breach of the GRC settlement agreement. As relief, they seek an injunction prohibiting PG&E from spending any further ratepayer dollars on customer retention activities during the time the 2007 settlement remains in effect, as well as fines to deter future violations by PG&E of Commission orders.

PG&E filed its answer on June 28, 2010, asserting that the “zero” allocation provision did not restrict PG&E from engaging in customer retention activities, or limit PG&E from charging such costs to above the line accounts, or to use such above the line accounts to support claims of rate recovery in future rate cases. Moreover, PG&E asserts that the 2007 GRC settlement agreement explicitly grants PG&E authority to engage in customer retention activities as it sees fit.

The assigned Commissioner's August 24, 2010, scoping memo and ruling identified the following issues to be addressed in this proceeding:

1. Does ¶ 19 of the settlement agreement approved in D.07-03-044 preclude PG&E from booking, to above-the-line accounts used to set future rates, any funds spent by it to retain customers, including customers that it may compete with complainants to serve?
2. At the time they entered into the settlement agreement approved in D.07-03-044, were complainants aware of PG&E's position that ¶ 19 of the settlement agreement would not preclude PG&E from seeking recovery from ratepayers of customer retention expenses in future GRCs?
3. Did the complainants, by their conduct during the settlement negotiations or after the issuance of D.07-03-044, and before the filing of this complaint, manifest acceptance of the PG&E position described above?
4. Has PG&E's conduct since the issuance of D.07-03-044 been consistent with the position it took during the settlement negotiations as to its rights under ¶ 19 of the settlement agreement?

The scoping memo and ruling set the matter for evidentiary hearing beginning December 13, 2010, and directed the parties to report to the administrative law judge whether they wished to pursue alternative dispute resolution by no later than October 6, 2010. In response to the parties' timely report in which they represented that they anticipated reaching a settlement of the case, the administrative law judge suspended the procedural schedule by ruling dated October 8, 2010.

By joint motion filed November 15, 2010, the parties moved for adoption of their settlement agreement.<sup>1</sup> The settlement provides that PG&E warrants and represents that (a) it has not recovered from ratepayers the costs of customer retention activities during the periods subsequent to D.07-03-044 (the 2007 GRC application decision) and D.04-05-055 (thee 2003 GRC application decision) because the costs of those activities were not included in PG&E's approved GRC revenue requirements and were not recovered in any other regulatory proceeding, balancing account, memorandum account, or other similar manner, and (b) it did not have a balancing account revenue requirement, or any other ratemaking mechanism to recover such costs during those periods.

### **3. Discussion**

Pursuant to Rule 12.1(d), the Commission will not approve the settlement unless it is reasonable in light of the whole record, consistent with law, and in the public interest.

Given PG&E's assurance that neither its authorized revenue requirement nor any other ratemaking mechanism allows it to recover the disallowed requested costs of customer retention activities, the remaining dispute in this case is whether the GRC settlement agreements bar PG&E from engaging in customer retention activities at its own, above-the-line expense and from using such expenses to support future GRC requests. While both parties face litigation risk as to whether their respective positions will prevail, PG&E's interpretation of its rights under the GRC settlement agreements is consistent with usual

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<sup>1</sup> The parties concurrently filed a joint motion requesting shortening of time for filing comments on the settlement. As there are no parties other than the settling parties, and as the time for filing comments on the settlement has passed (and the parties have not filed any comments), that motion is moot and therefore denied.

ratemaking procedure. The settlement agreement to resolve this complaint on PG&E's assurance that it has not recovered the disallowed costs in rates reasonably reflects the litigation risk faced by the parties.

Nothing in the settlement agreement contravenes any statute or Commission decision or rule. The settlement agreement is therefore consistent with applicable law.

The settlement agreement avoiding the time, expense and uncertainty of further litigating and resolving the matter and, by requiring a settlement payment, affirms the importance of adherence to the Commission's rules and orders. The settlement agreement is therefore in the public interest.

#### **4. Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner and Hallie Yacknin is the assigned Administrative Law Judge (ALJ) in this proceeding.

#### **5. Comments on Proposed Decision**

The proposed decision of ALJ Yacknin in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code, and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on \_\_\_\_\_ and reply comments were filed on \_\_\_\_\_ by \_\_\_\_\_.

#### **Findings of Fact**

1. Complainants and PG&E dispute whether PG&E is in breach of the settlement agreements in PG&E's 2003 GRC application (approved in D.04-05-055) and 2007 GRC application (approved in D.07-03-044) by having engaged in customer retention activities at its own, above-the-line expense and using such expenses to support future GRC requests.

2. PG&E represents that neither its authorized revenue requirement nor any other ratemaking mechanism allows it to recover the disallowed requested costs of customer retention activities.

3. PG&E's interpretation of its rights under the GRC settlement agreements is consistent with the Commission's usual ratemaking practice.

4. Based on the whole record, both parties face substantial litigation risk as to whether their respective positions will prevail.

5. The settlement agreement avoids the time, expense and uncertainty of further litigating and resolving the matter and, by requiring a settlement payment, affirms the importance of adherence to the Commission's rules and orders.

### **Conclusions of Law**

1. The settlement agreement reasonably reflects the litigation risk faced by the parties.

2. Nothing in the settlement agreement contravenes any statute or Commission decision or rule.

3. The settlement agreement is in the public interest.

4. The settlement agreement should be approved.

5. Case 10-05-017 should be closed.

**O R D E R**

**IT IS ORDERED** that:

1. The settlement agreement is approved.
2. There is no longer a need for hearings in this case.
3. Case 10-05-017 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**INFORMATION REGARDING SERVICE**

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated December 28, 2010, at San Francisco, California.

/s/ ANTONINA V. SWANSEN  
Antonina V. Swansen

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event.

\*\*\*\*\* PARTIES \*\*\*\*\*

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C1005017 LIST**

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