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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U39M) San Diego Gas & Electric Company (U902M), Southern California Edison Company (U338M), and Southern California Gas Company (U904G) for Authority to Increase Electric and Natural Gas Rates and Charges to Recover California Air Resources Board Assembly Bill 32 Cost of Implementation Fee.

Application 10-08-002
(Filed August 2, 2010)

And Related Matter.

Application 11-03-010

ASSIGNED COMMISSIONER'S RULING AND SCOPING MEMO

1 Summary

This scoping memo identifies the issues to be considered in this consolidated proceeding, sets a procedural schedule and determines the category of the proceeding and the need for hearings pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure (Rules)¹. It determines that hearings are not necessary and that the proceeding will be submitted upon filing reply briefs.

¹ See Commission's website (<http://www.cpuc.ca.gov/>), "Laws, Rules, Procedures."

2 Background

Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (SCE), and Southern California Gas Company (SoCalGas) (collectively, the Joint Applicants) request authority for increases to their electric and gas rates and charges to collect the costs of fees imposed by the California Air Resources Board (Board) pursuant to Assembly Bill (AB) 32 (Stats. 2006, ch. 488) from their respective end-use gas transportation and bundled electric generation customers. Subsequently, on March 17, 2011, Southwest Gas Corporation (Southwest) filed a similar application seeking a memorandum account to record AB 32 fees pending final disposition of the request based on merit and the law in a general rate case likely to be filed in late 2012 for a 2014 test year. (Southwest Application at 3.)

3 Categorization and Need for Hearings

This scoping memo confirms the Commission's categorizations of these consolidated proceeding as ratesetting as preliminarily determined in Resolutions ALJ-136-3259 and ALJ-136-3271. This determination is appealable under the provisions of Rule 7.6. This scoping memo determines that hearings are not necessary and therefore modifies the preliminary determination in the resolutions. (See Rule 7.5.) The consolidated applications appeared on the Commission's daily calendar.

4 Standard of Review

Applicants bear the burden of proof to show that the regulatory relief they request is just and reasonable.

5 Record and Restrictions on *Ex Parte* Communications

This Scoping Memo adopts a schedule that excludes formal hearings. (See Rules 7.1(a) and 7.3(a) and Rule 7.5.) The record will be composed of all

documents filed and served on parties. The record therefore includes any testimony and exhibits served by the applicants concurrent with the filed applications or by later filing.

In a ratesetting proceeding excluding hearings *ex parte* communication is permitted without reporting, pursuant to Rule 8.3(d). We chose however to impose the usual reporting requirements (*See* Pub. Util. Code § 1701.3(c) and Rules 8.2, 8.3, and 8.5) which are applicable to ratesetting proceedings with evidentiary hearings. That is, notice, reporting requirements and equal time requirements, remain in effect for this proceeding. Parties shall electronically serve the assigned Commissioner and Judge all three-day notices required by Rule 8.2(c)(2) for all *ex parte* meetings with decisionmakers.

6 Scope

The scope of this proceeding is to determine whether the applicants should be allowed to recover as requested the costs of fees imposed by the Board pursuant to AB 32 from their respective end-use gas transportation and bundled electric generation customers. The principal question to resolve is whether the request is either consistent with, or distinguishable from, the Commission's most recent position on adjusting rates in between rate cases adopted in Resolution L-411A which established memorandum accounts to reflect tax relief legislation.² This resolution established a one-way memorandum account for all cost-of-service rate regulated utilities that do not address the New Tax Law in a 2011 or 2012 test year general rate case, to track the impacts of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 ("New

² http://docs.cpuc.ca.gov/WORD_PDF/FINAL_RESOLUTION/137872.PDF.

Tax Law” or “Tax Relief Act”). Those utilities with either a 2011 or 2012 test year general rate case were required to address the New tax Law in those proceedings. SCE, SDG&E, and SoCalGas were exempted from creating a memorandum account whereas PG&E was not. (Resolution L-411A at 8.) Southwest is not mentioned in the resolution.

7 Schedule and Submission

All applicants have authorized memorandum accounts in place while this consolidated proceeding is pending. There are no disputed issues of fact; therefore evidentiary hearings are not necessary. All issues to be resolved are questions of policy or law and may be briefed.

No further action is necessary after opening and reply briefs, described below, are filed before the Commission may act on these consolidated applications and therefore this proceeding is deemed submitted upon filing of reply briefs. Pursuant to Pub. Util Code § 1701.5, this proceeding will be concluded within 18 months of the issuance of this scoping memo.

7.1 Required Briefing – Joint Applicants

Joint Applicants are required to reconcile the apparent inconsistency in position taken herein by the Joint Applicants in this proceeding and the opposite positions argued by them in January 7, 2011 responses to a Proposed Resolution W-4867 (Proposed Resolution) which preceded Resolution L-411A. In their three separate responses concerning the resolving, the Joint Applicants opposed a refund mechanism being implemented in between routinely scheduled general rates cases.

At the prehearing conference in this proceeding, three exhibits were identified by the Judge as ALJ-1, ALJ-2, and ALJ-3. At this time those three documents are received into the record:

ALJ-1: Comments of Pacific Gas & Electric Company on Proposed Resolution W-4867 to Make rates Subject to Refund to Reflect New Tax Law, dated January 7, 2011, signed by Jane Yura, Vice President Regulation and Rates.

ALJ-2: Comments on Draft Resolution W-48-67, dated January 7, 2011, signed by Lee Schavrein, Senior Vice President Finance, Regulatory and Legislative Affairs (for San Diego Gas & Electric Company and Southern California Gas Company).

ALJ-3: Comments of Southern California Edison Company On Draft Resolution W-4867 Making The Rates Of Cost-Of-Service Rate-Regulated Utilities Subject to Refund For The Limited Purpose of Allowing Whatever Changes, If Any, Should Be Made To The Rates Of Those Utilities To Reflect The Benefits Of The Tax Relief, Unemployment Insurance Reauthorization, And Job Creation Act Of 2010, dated January 7, 2011 and signed by Akbar Jazayeri, Vice President of Regulatory Operations.

In Exhibits ALJ-1, ALJ-2 and ALJ-3, the Joint Applicants argue that they should not be required to make rates subject to refund in between routinely scheduled general rates cases. In ALJ-1 PG&E argued:

“[The Commission] has never to PG&E’s knowledge adjusted rates within a rate case cycle to reflect changes in deferred taxes. ... When rates are established in a [general rate case] they are generally set ... for a three year period. There are sound policy reasons why the Commission limits the adjustments that may be made between rate cases and why, in this particular case it should not make any generic adjustments ... Foremost among these reasons is the fact that changes go in both directions”
(ALJ- 1 at 4. Emphasis in original omitted.)

In ALJ-2 SDG&E and SoCalGas argue that the Commission cannot adjust rates in between routinely scheduled general rates cases:

Both SDG&E and SoCalGas have fixed 2011 revenue requirements which were established by the Commission in their 2008 [general rate case] proceedings. See Decision (D.) 08-07-046 (and specifically Appendices 3 and 4), as modified by D.09-06-052. This decision and the underlying settlements provide that attrition year revenue requirements (including 2011) are not subject to any true-ups.³ **Providing that SDG&E and SoCalGas rates would be subject to refund in 2011 would be inconsistent with D.08-07-056 and the underlying settlements it adopted.** (ALJ-2 at 5, emphasis added.)

In ALJ-3 SCE similarly argues that the Commission cannot adjust rates in between routinely scheduled general rates cases:

SCE has an authorized revenue requirement for 2009, 2010 and 2011, established in its 2009 General Rate Case (GRC) proceeding, and commission precedent is to not revise revenue requirements between test years unless specified criteria are met. Under SCE's post-test year ratemaking mechanism, these criteria are known as "Z-Factors." The 2010 Act does not qualify as a Z-Factor."

And later:

In addition to the preceding concerns [about the Proposed Resolution] ... it would be unfair to limit its scope [the proposed memorandum account] to ratepayer benefits without allowing consideration of cost increases that SCE must otherwise absorb between test years. (ALJ-3 at 2 and 7.)

In the Joint Application the parties argued:

[They] could not have anticipated and forecasted revenue requirements for the AB 32 Cost of Implementation Fee in their most recent General Rate Cases, because the ARB had not

³ Footnote 5 from ALJ-2: "there is an exception for Z-factors; however the bonus depreciation [subject of the Proposed Resolution] in the 2010 Act does not appear to meet all the [Commission] tests to qualify as a Z-factor."

adopted its regulation at the time they filed their most recent GRC applications. [Footnote omitted] Therefore, the recovery of the fees in rates as proposed in this Application prior to future GRCs is fully justified and reasonable. (A.10-08-002 at 4.)

In concurrent proceedings the Joint Applicants argue both sides of the same coin: here, that rates should be adjusted in between rates cases because costs have changed by the implementation of AB 32; and in response to the proposed resolution, that rates should not be adjusted because costs have changed by the adoption of new federal tax legislation. In both instances Joint Applicants appear to argue neither change to costs (taxes or AB 32) otherwise qualify as a Z-Factor which is the Commission's long-standing mechanism to redress anomalies in between rate cases.

The Joint Applicants and Southwest argue that the request to recover AB 32 implementation fees in between routinely scheduled general rates cases does not meet the eligibility requirements to be recoverable as a Z-Factor. SCE provided a lengthy description of the purpose and evolution of the Z-Factor (ALJ-3) which, in short, states that the Z-Factor is intended to allow for recovery of significant changes which are not otherwise recoverable in between routinely scheduled general rates cases. There are specific criteria and all applicants assert that the AB 32 implementation fees do not qualify as a Z-Factor.

As noted in the Resolution L-411A; "When a utility begins to experience a large and unexpected increase in costs, it sometimes requests authority from the Commission to establish a memorandum account. [The Resolution cited] in D.10-04-031:

A memorandum account allows a utility to track costs arising from events that were not reasonably foreseen in the utility's last general rate case. By tracking these costs in a memorandum account, a utility preserves the opportunity to seek recovery of

these costs at a later date without raising retroactive ratemaking issues. However, when the Commission authorizes a memorandum account, it has not yet determined whether recovery of booked costs is appropriate, unless so specified.

Therefore Joint Applicants must brief the questions of policy and law as to why they are reasonably entitled to recover implementation costs imposed by AB 32 through the memorandum accounts in place before their next general rate case. Joint Applicants must specifically address the issue of Z-Factor limitations imposed by their most recent general rate case decisions and the most recent recovery policy described in Resolution L-411A.

A single brief by the Joint Applicants is due no later than October 14, 2011. The brief is limited to 50 pages. Anyone wishing to reply to this brief must reply no later than October 28, 2011. This scoping memo and required briefing supersedes all other direction from the assigned judge during the prehearing conference.

7.2 Required Brief - Southwest Gas

Southwest may be in a unique position: it did not file in response to the proposed resolution and therefore has no inconsistency in its statements on cost recovery; and Southwest may not be in a set cycle of general rate cases. Therefore Southwest must brief why it may or may not be in a different position than the Joint Applicants and is eligible to recover the AB 32 implementation fees. Further, we find that Southwest must provide its best arguments now for recovery and not defer the issue to its next general rate. We will decide now for Southwest, along with the Joint Applicants, whether they should be allowed to recover AB 32 implementation fees now.

Southwest must brief whether it has any Z-Factor limitations on cost recovery between general rates, including any relevant arguments on the rate

cycle applicable to Southwest, and the relevance, if any of the most recent recovery policy described in Resolution L-411A.

Southwest must file an opening brief due no later than October 14, 2011. The brief is limited to 50 pages. Anyone wishing to reply to this brief must reply no later than October 28, 2011. This scoping memo and required briefing supersedes all other direction from the assigned judge at the prehearing conference.

8 Final Oral Argument

Pursuant to Rule 13.13(b), a party in a ratesetting proceeding has the right to make a final oral argument before the Commission if the final oral argument is requested within the time and manner specified in the scoping memo or later ruling. However, no hearings were held in this proceeding and Rule 13.13(b) indicates that a party's right to make a final oral argument ceases to exist when there are no hearings. As provided for in Rule 13.13(a), the Commission may still, on its own motion or upon the recommendation of the assigned Commissioner or Administrative Law Judge, schedule a final oral argument.

9 Presiding Officer

Pursuant to Rule 13.2, Administrative Law Judge Douglas M. Long is designated as the presiding officer.

Therefore, **IT IS RULED** that:

1. This proceeding is categorized as ratesetting. This ruling is appealable within 10 days under Rule 7.6.
2. The Commission's preliminary determination that hearings are necessary is modified; hearings are not needed. This change in preliminary determination will be addressed by the Commission in a subsequent resolution or in the decision, pursuant to Rule 7.5.

3. The proceeding is submitted upon submission of reply briefs or automatically on October 28, 2011 if there are no reply briefs.
4. Rules 8.2, 8.3, and 8.5 governing *ex parte* communications continue to apply to this proceeding.
5. The issues to be considered are those described in this ruling.
6. Administrative Law Judge Douglas M. Long is designated as the presiding officer.

Dated September 16, 2011, at San Francisco, California.

/s/ MARK J. FERRON

Mark J. Ferron
Assigned Commissioner