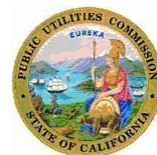


BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Application of Pacific Gas and Electric
Company for Authority to Establish the
Wildfire Expense Memorandum
Account. (U39E)

A.17-07-011
(Filed July 26, 2017)

**PROTEST OF THE OFFICE OF RATEPAYER ADVOCATES
TO THE APPLICATION OF PACIFIC GAS
& ELECTRIC COMPANY**

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I. INTRODUCTION

Pursuant to Rule 2.6 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure ("Rules"), the Office of Ratepayer Advocates ("ORA") files this protest to Application (A.) 17-07-011 filed by Pacific Gas and Electric Company ("PG&E"). In this application, PG&E asserts that the insurance it carries for wildfire claims may be insufficient to cover all claims, particularly in light of the increased fire risk caused by drought related conditions and recent application by the courts of the inverse condemnation legal doctrine to hold utilities liable for damages caused by their facilities. PG&E therefore requests that the Commission: 1) establish a Wildfire Expense Memorandum Account ("WEMA") to track wildfire-related costs to preserve its right to seek recovery through a future application; 2) approve its proposed WEMA-E and WEMA-G tariffs ("WEMA tariffs"; and 3) set the effective date for the WEMA as of the date of the filing of the Application.

ORA opposes PG&E's request for authority to establish a WEMA. The Application raises several areas of concern that warrant further investigation by the Commission. This protest provides a non-exhaustive identification of issues that ORA will examine in this proceeding. ORA anticipates that some issues may be resolved, and other new issues may arise, as discovery proceeds. ORA expects that hearings may be necessary to resolve the issues raised in the Application.

II. BACKGROUND

On August 31, 2009, PG&E, along with San Diego Gas & Electric Company, (SDG&E) Southern California Gas Company (SoCal Gas), and Southern California Edison Company (SCE), filed A.09-08-020 (the WEBA application proceeding) requesting a Wildfire Expense Balancing Account (WEBA). Prior to the WEBA application, these same four utilities sought to establish a wildfire memorandum account via separate Advice Letter filings, which were granted by the Commission by in Resolution E-4311 issued on

July 29, 2010. Resolution E-4311 authorized the four utilities to begin recording certain categories of wildfire costs in memorandum accounts, effective July 29, 2010, subject to the outcome of the WEBA application proceeding.

On January 3, 2012, the Commission granted PG&E's (and SCE's) motion to withdraw from the WEBA application proceeding, and denied their request to maintain an ongoing memorandum account.

In December 2012, the Commission issued Decision (D.) 12-12-029, which denied the two remaining utilities' request for a WEBA, but allowed them to keep open their memorandum accounts established in Resolution E-4311. SDG&E later filed A.15-09-010, which sought recovery of costs recorded in its WEMA. A Proposed Decision denying the requested relief issued on August 22, 2017.

On July 26, 2017, Pacific Gas and Electric Company (PG&E) filed the instant A.17-07-011, requesting authority to establish a new Wildfire Expense Memorandum Account (WEMA) to track wildfire liability costs. PG&E concurrently filed a motion requesting that the proposed WEMA be made effective as of the date of its application, which ORA responded to on August 20, 2017.¹

III. ISSUES

A. PG&E's Request for Unlimited Authority to Book Wildfire Costs in a Memorandum Account is Unsupported, Overly Broad and Inconsistent with Commission Policy

PG&E's proposed WEMA tariff contains an overly broad definition of costs that may be recorded in the account, and the tariff language is not associated with any specific wildfire event. PG&E's Application requests authority to track "incremental unreimbursed wildfire liability costs," including payments to satisfy wildfire claims, deductibles, and other insurance costs (in excess of costs

¹ ORA subsequently filed a motion for party status, on August 16, 2017.

authorized in the GRC), legal costs, and costs of financing these amounts.² While PG&E requests a retroactive effective date, the end date for recovery of costs is open-ended, and PG&E vaguely requests recovery of “all costs of third-party claims paid by Pacific Gas and Electric Company (PG&E) resulting from wildfires that would have been covered by insurance, as well as costs that would not have been incurred if insurance were available...”³ Thus PG&E is requesting to establish a generic and unlimited memorandum account including any claims arising from any wildfires for which it does not currently have sufficient insurance coverage. While PG&E makes specific reference to claims resulting from the Butte Fire in its application, the tariff language is not limited to this one event.

PG&E’s request is not consistent with the Commission’s usual standards for authorizing memorandum account treatment. In general, the Commission has authorized memorandum accounts to track limited, defined set of costs or categories of costs, for example, a routine utility cost that arises outside of the general rate case process, or implementation costs for a utility program or upgrade authorized by the Legislature or a Commission decision. The cases cited by PG&E⁴ as precedent illustrate this general rule. For example, a memorandum account was authorized to record expenses incurred to pay the Greenhouse Gas Emission fees assessed by the Air Resources Board pursuant to Assembly Bill (AB 32). The memorandum account was authorized in an interim Decision (D.10-12-026), which was part of a joint application by the utilities to recover AB32 costs in rates in A.10-08-002. In addition, the ruling cited by PG&E authorizing memorandum account treatment for SDG &E’s Customer Service Information Replacement Program was also issued in the context of an application for recovery of those specific costs. The Commission has never granted the type of stand alone, non-specific memorandum account authority that PG&E requests

² PG&E Application, p. 2.

³ PG&E Application, Attachment A, (Proposed WEMA Tariff Sheet 1, par. 1.)

⁴ PG&E Application at pp. 4-5.

here, where there has been no showing why those costs should ever be recovered from ratepayers.

PG&E maintains that it “does not seek authorization to recover any costs in this application – only to track costs in a memorandum account.”⁵ At the same time, PG&E urges expedited treatment and a retroactive effective date for its requested WEMA, so that it may begin recording costs before the application is even approved. Such claims are inconsistent, and lack clarity regarding PG&E’s intentions for the requested memorandum account. While the establishment of a memorandum account may not guarantee recovery of the costs recorded therein, it is clearly the first step in the process for requesting subsequent reasonableness review of the costs and potential recovery from ratepayers.

PG&E argues that the requested WEMA is consistent with the Commission’s previous guidance in Resolution E-4311 and other decisions authorizing memorandum accounts. As explained in the background section PG&E was briefly authorized to have a wildfire memorandum account from 2009-2012, but again, this was authorized in the context of the pending WEBA (balancing account) application proceeding. Further, to ORA’s knowledge no costs were ever booked into this account, and ultimately PG&E withdrew from that proceeding and the Commission ordered its memorandum account closed. To date, neither PG&E, nor any of the utilities have been authorized to recover any costs for wildfire expenses through a wildfire memorandum account.

B. Any WEMA Should Not Include the Butte Fire or Any Wildfire Events that Predate the Filing of this Application

PG&E argues that establishing a WEMA is necessary because of “increased wildfire risk caused by the drought conditions” and argues that recent changes in the application of inverse condemnation law to private utilities exposes PG&E

⁵ PG&E Application at p. 1.

to greater damages liability.⁶ PG&E cites a Sacramento County Superior Court ruling, which holds PG&E liable for all property damage claims in the Butte Fire litigation.

PG&E's contentions raise questions of fact and law which would need to be further determined in this proceeding. For example, whether weather patterns, drought conditions, and wildfire risks are worsening, or possibly improving with mitigation measures or occurring on a cyclical pattern rather than a straight trajectory, is a factual question. PG&E has presented no argument why it should be authorized to record payments for claims as a result of the Butte Fire or any other wildfires occurring prior to the date of this application. In the event this application is approved, only costs incurred for events that occur after the filing date should be eligible for recovery through a WEMA. ORA has previously briefed the reasons why PG&E is not entitled to a retroactive effective date for its requested memorandum account, and for brevity's sake will not repeat those arguments here.⁷

There is also a factual question raised by PG&E's assertion that coverage under its pre-existing insurance policies would be inadequate. To the contrary, PG&E's latest quarterly report states that it expects to incur losses of (at least) \$750 million, but has liability insurance from various insurers to pay claims related to the Butte Fire up to \$900 million.⁸ Recovery of insurance premiums and legal expenses, have already been determined in previous general rate cases. Thus, it would violate the rule against retroactive ratemaking for the utilities to seek insurance premiums or claims expenses for prior events.

⁶ PG&E Application at p. 3.

⁷ See *Response of the Office of Ratepayer Advocates to the Motion of Pacific Gas and Electric Company (U39E) Requesting an Order Setting the Effective Date of Its Requested Wildfire Expense Memorandum Account* filed August 10, 2017.

⁸ Pacific Gas & Electric Company Quarterly Report to the Securities and Exchange Commission (Form 10-Q) for the period ending June 30, 2017, p. 35.

Further, notwithstanding PG&E’s argument that courts have increasingly applied the doctrine of inverse condemnation law to utilities, regardless of fault, under the theory that the utilities’ cost may “be socialized via rates,” ratepayers should not be expected to pay for claims that arise from a utilities’ negligence or violation of Commission authority, or state or federal law. The Commission has a different standard for whether it allows such “socialization” or passing through of costs to utility ratepayers. That standard is the prudent manager standard. When the Commission performs a reasonableness review of utility costs, it will consider whether the utility exercised reasonable judgment in light of the facts known at the time.²

In light of the fact that the Commission’s Safety and Enforcement Division has issued a final Incident Investigation Reports regarding the Butte Fire, concluding that PG&E violated Commission General Orders and directives, and that PG&E’s facilities created “a dangerous condition that caused a fire,”¹⁰ any purported trends in the application of a “no-fault” inverse condemnation theory would appear to be of little consequence in any Commission reasonableness review. Cal Fire’s final investigative report similarly concluded that the Butte Fire was caused by a failure of PG&E’s maintenance practices.¹¹ PG&E has paid the Commission citation fines, but maintains in this application that it was not negligent; however, PG&E has not appealed either the Commission’s or CalFire’s findings.¹² ORA objects to any requests to have ratepayers pay for any insurance claims or premium costs due to a utility’s negligent conduct in maintaining their facilities, or a failure to comply with GO 95 requirements, or other applicable federal or state rules, regulations or statutory requirements.

² *In Re Southern California Edison* (D.94-03-039) 1994 Cal PUC LEXIS 158, *19.

¹⁰ CPUC Safety and Enforcement Division, Electric Safety and Reliability Branch *Incident Investigation Report* (March 29, 2017), Incident Numbers E 2015091601.

¹¹ Cal Fire *Investigation Report* (September 9, 2015), Case Number 15CAAEU024918.

¹² PG&E Application at 8.

C. Legal and Financing Costs Should Not be Recorded in WEMA

PG&E's request to recover legal costs incurred in the defense of wildfire claims, and financing costs is unreasonable and potentially results in a double recovery of costs. In cases where a wildfire was caused by PG&E's own imprudent management practices, such as the Butte Fire, ratepayers should not be asked to cover costs of the defense. To allow memorandum account treatment for litigation expenses for a specific need, when the Commission has already approved a forecasted amount for litigation expenses generally, contravenes the policy of utilizing forecast-based ratemaking. Further, allowing recovery of both forecasted litigation expenses through the GRC and memorandum account treatment for specific wildfire related litigation costs would be unjust and unreasonable since there is no parallel mechanism where ratepayers can be credited savings should a utility not need the amount forecasted in the GRC.

IV. CATEGORIZATION, NEED FOR HEARINGS AND PROPOSED SCHEDULE

ORA agrees that this proceeding should be categorized as ratesetting. Since there will likely be disputed issues of fact, such as the state of the drought, current wildfire risks, and the amount of PG&E's exposure to insurance claims, hearings will be necessary.

PG&E fails to adequately support its proposed expedited schedule, especially since it seeks to deviate from the Commission's usual standards for authorizing memorandum account treatment. ORA objects to the proposed expedited schedule, which does not provide for a prehearing conference, discovery, preparation of testimony, or hearings. ORA proposes that Intervenor Testimony be served in February 2018.

V. CONCLUSION

ORA opposes the application as filed and will assist the Commission in determining the proper disposition. ORA reserves the right to raise other issues as the proceeding develops.

Respectfully submitted,

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