

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**02/05/19
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February 5, 2019

Agenda ID #17209
RatesettingTO PARTIES OF RECORD IN APPLICATION A.18-03-015

This is the proposed decision of Administrative Law Judge (ALJ) Allen and ALJ Jungreis. It will appear on the Commission's February 21, 2019 agenda. 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.

Pursuant to Rule 14.6(c)(2), comments on the proposed decision must be filed within nine days (by Thursday, February 14) of its mailing and reply comments must be filed within fourteen days (by 10:00 a.m. on Tuesday, February 19) of its mailing.

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 Allen at peter.allen@cpuc.ca.gov and ALJ Jungreis at jason.jungreis@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.

/s/ ANNE E. SIMON

Anne E. Simon

Administrative Law Judge

AES:mph

Attachment

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company to Recover Costs Recorded in the Catastrophic Event Memorandum Account Pursuant to Public Utilities Code Section 454.9 and Forecasted Pursuant to Resolution ESRB-4. (U39E.)

Application 18-03-015

INTERIM DECISION GRANTING INTERIM RATE RELIEF AND DENYING RECOVERY OF FORECASTED COSTS**Summary**

This decision grants in part the request of Pacific Gas and Electric Company (PG&E) for interim rate relief. PG&E is authorized to recover a maximum of \$373 million in interim rates, subject to later reasonableness review by this Commission. PG&E's request for forecasted vegetation management costs is denied. This proceeding remains open.

1. Background

On March 30, 2018, Pacific Gas and Electric Company (PG&E) filed Application 18-03-015 (Application), seeking recovery of costs recorded in its Catastrophic Event Memorandum Account (CEMA). Cost recovery is sought for nine catastrophic events in 2016 and 2017. (Application at 2-3.) PG&E also seeks cost recovery for "forecasted" (*i.e.*, forward-looking and not yet incurred) tree mortality and fire risk reduction (vegetation management). (Application at 3, 6.) On May 4, 2018, Protests to the Application were filed by The Utility Reform

Network (TURN) and the Commission's Office of Ratepayer Advocates (renamed during the course of this proceeding as The Public Advocates Office (Cal Advocates)).

On July 10, 2018, a Pre-Hearing Conference was conducted. On August 10, 2018, the assigned Commissioner issued a Scoping Memo and Ruling. The Scoping Memo directed the parties to file briefs regarding the issue of forecasted costs (discussed further below).

1.1. Procedural Background: Interim Rate Relief

On July 25, 2018, PG&E filed a motion for interim rate relief, requesting interim rate relief with respect to its 2018 CEMA Application (Motion). PG&E sought to begin recovering approximately \$441 million or 75% of the approximately \$588 million it recorded in 2016 and 2017 CEMA costs, starting on January 1, 2019.¹ PG&E proposed that it would begin recovering the 75% of the recorded CEMA costs at issue through its Annual Electric True-up (AET) filing, pending a final resolution of the proceeding, and that "Any interim revenues would be subject to refund, with interest, to the extent the Commission's final decision awards a lower amount." (Motion at 2.)

On August 9, 2018, Cal Advocates and TURN filed a Joint Response to PG&E's Motion, arguing that the Motion failed to meet the standard for extraordinary need required for interim rate relief. In particular, they argued that PG&E had control of the timing of the CEMA Application's filing and that PG&E could have, in part, filed it sooner. They also argue that PG&E failed to establish a linkage between its CEMA Application and PG&E's alleged pressure

¹ The total revenue requirement requested by PG&E in its CEMA Application for recovery of its incurred costs is \$588.296 million: \$273.578 million for 2016, and \$314.717 million for 2017. PG&E also requested recovery of forecasted costs (i.e., costs not yet incurred) totaling \$554.696 million -- that request will be addressed later in this Decision.

regarding its cost of capital. On August 20, 2018, PG&E filed a Reply to the TURN/Cal Advocate Joint Response.

On November 2, 2018, by Administrative Law Judges' (ALJ) Ruling, PG&E's Motion was denied. The Ruling stated that "PG&E has failed to demonstrate the requisite harm to meet the demonstration of need for interim rate relief." (ALJ Ruling at 2.) The ALJ Ruling found that PG&E did not provide adequate support for its request and did not satisfy the criteria set forth in the one case that PG&E (as well as TURN and Cal Advocates) cited as relevant precedent. In addition, the ALJ Ruling found that the large cost balance recorded in the CEMA and being sought for recovery was in part due to PG&E's own delay in filing for recovery of such costs.

On December 4, 2018, PG&E filed a renewed motion for interim rate relief (Renewed Motion). PG&E stated that it was filing its renewed request "due to worsening financial conditions at PG&E since the Ruling and Original Motion." (Renewed Motion at 2.) PG&E's renewed request sought 100% of its recorded 2016 and 2017 CEMA costs (\$588.296 million), to go into rates on March 1, 2019.

On December 19, 2018, TURN and Cal Advocates filed a Joint Response to PG&E's Renewed Motion, arguing that PG&E had simply repeated its same arguments, and had again failed to present any "calculation, evidence, or support" regarding how the requested relief (or lack thereof) would impact PG&E's cost of capital or cash flow. (TURN/Cal Advocates Joint Response at 4.)

While continuing to vigorously argue that PG&E should not receive any interim rate relief, TURN and Cal Advocates presented an alternative proposal:

However, should the Commission decide to permit interim rate recovery of some amount here, it should be limited to a figure that ensures the overall impact of the 2019 Annual Electric True-up (AET) will be no increase as compared to revenue at present rates. (*Id.* at 11.)

TURN and Cal Advocates calculated that any interim rate recovery should be no more than \$373 million, and that the actual maximum figure would be determined after PG&E submitted a final version of its AET advice letter. (*Ibid.*)

On December 28, 2018, PG&E filed a Reply to the TURN/Cal Advocates Joint Response. PG&E stated a preference for 100% interim rate relief but expressed support for the TURN/Cal Advocates alternative proposal “as a reasonable compromise of the various positions.” (PG&E Reply at 2.)

1.2. Procedural Background: Forecasted Vegetation Management Costs

The Assigned Commissioner’s Scoping Memo and Ruling (Scoping Memo) issued in this proceeding identified several specific issues relating to PG&E’s request for forecasted vegetation management costs, and established a schedule for briefing on those issues. Concurrent opening briefs were filed and served by PG&E, TURN, and Cal Advocates on August 31, 2018, and concurrent reply briefs were filed and served on September 14, 2018. PG&E argued that it should receive rate recovery for forecasted vegetation management costs, while TURN and Cal Advocates opposed that request, arguing that PG&E is not entitled to recovery of forecasted vegetation management costs in this proceeding.

2. Analysis and Discussion: Interim Rate Relief

The November 2, 2018 ALJ Ruling reasonably determined that PG&E had not provided adequate support for its initial request for interim rate relief. As discussed in that Ruling, the PG&E Motion did not meet the criteria established in the seminal case of *TURN*.² In particular, PG&E's Motion failed to demonstrate a nexus between the relief sought and any real impact upon PG&E's financial condition.

TURN and Cal Advocates argue that PG&E's Renewed Motion exhibits similar deficiencies. TURN and Cal Advocates are correct that the Renewed Motion does in fact contain similar deficiencies.

However, we recognize that there has been a change in the circumstances in which we had examined the original Motion as compared to the circumstances in which we now examine the Renewed Motion. This proceeding can no longer qualify as "expedited" as required in Public Utilities (Pub. Util.) Code § 454.9(b). For this reason, interim rate relief may be granted.

Pub. Util. Code § 454.9(b) reads in pertinent part as follows: "The commission shall hold *expedited proceedings* in response to utility applications to recover costs associated with catastrophic events." (Emphasis added.) In early November 2018, it may have been reasonable to expect a relatively expedited final decision from the Commission approving recovery of the costs recorded in PG&E's CEMA accounts. But now, in February 2019, given that to date there is no indication in the record that the Commission has executed a contract with independent auditors as required by Resolution ESRB-4 and as otherwise

² *TURN v. PUC* (1988) 44 Cal.3d 870 (*TURN*).

required by the scope of the Application, this proceeding can no longer be considered expedited as required by Pub. Util. Code § 454.9(b).

Given that the purpose of a CEMA is to provide the utility with a way of tracking costs that have already been incurred, expediting review and rate recovery of those costs sets the utility back on a near-even footing as if it had not incurred those catastrophic event costs. Because Resolution E-3238, which authorizes utility recovery of catastrophic event costs, expressly rejects balancing accounts to achieve that recovery,³ a utility must rely upon expeditious treatment of its CEMA application in order to obtain its cost recovery. Accordingly, the statutory language requiring “expedited proceedings” is in furtherance of the Commission’s fundamental principle of assuring procedural fairness.⁴

Here, we can better comply with this principle by granting some interim rate relief that accelerates rate recovery. The alternative proposal of TURN and Cal Advocates to allow up to \$373 million in interim rate relief (equivalent to about 63% of the costs requested by PG&E) brings us closer to practical compliance with the goals of Pub. Util. Code § 454.9(b). Also, we note that the alternative proposal is intended to assure that there will be no rate increase as compared to revenue at present rates, and this rate-impact neutrality helps make it a reasonable compromise.

³ Resolution E-3238 at 4.

⁴ We note here, as did the November 2, 2018 ALJ Ruling, that PG&E’s delay in filing for rate recovery, particularly for expenses incurred in 2016, is inconsistent with the Commission’s ability to execute its responsibilities in keeping with this fairness principle. Delayed recovery could negatively impact both the utility and its ratepayers who may be shocked by a single large rate increase. Such delay, as well as the competency of a CEMA application, or any perceived effort to inundate the Commission with an unduly broad CEMA application, are factors the Commission may consider when deciding whether to grant interim rate relief in a CEMA proceeding regardless of whether or not that proceeding has been expedited.

Finally, we note that this outcome is not a conventional settlement, which is typically reached via off-the-record negotiations, but is instead a resolution of issues developed publicly and transparently by the parties through on-the-record filed pleadings.

This case presents the Commission with the following circumstances: the audit portion of the proceeding has not been expedited as required by Pub. Util. § 454.9(b), the natural back and forth of pleadings filed on the record in this adversary proceeding has identified a resolution that all parties accede to, and granting the interim rate relief the parties describe will result in no rate increase as compared to revenue at present rates. Given these circumstances, we find that it is appropriate to grant PG&E up to \$373 million in interim rate relief, consistent with the proposal of TURN and Cal Advocates.⁵ As noted in the proposal, the actual figure (up to \$373 million) would be determined after PG&E completes its AET process.

We consider this result to be based on the unique facts presented here, and we do not intend it to be considered precedential.

⁵ That proposal is described in full as follows: “However, should the Commission decide to permit interim rate recovery of some amount here, it should be limited to a figure that ensures the overall impact of the 2019 Annual Electric True-up (AET) will be no increase as compared to revenue at present rates. PG&E proposes that the revenue requirement associated with 2016 and 2017 recorded costs go into rates in conjunction with its March 1, 2019 AET. In its Advice Letter 5376-E, filed September 4, 2018, PG&E presented its preliminary Annual Electric True-up for 2019, including a forecast of a \$68.4 million increase to its 2019 electric revenue as compared to revenue at present rates. PG&E’s calculations at the time included recovery in 2019 of \$441 million associated with this 2018 CEMA application, representing the amount requested in its original motion seeking interim rate recovery. Removal of that figure, consistent with the ruling denying PG&E’s original motion yields a reduction of approximately \$373 million.” (TURN/Cal Advocates Response at 11.)

3. Analysis and Discussion: Forecasted Vegetation Management Costs

PG&E's application seeks rate recovery for "forecasted" vegetation management costs (*i.e.*, forward-looking, not-yet-incurred costs), and is based upon Resolution E-3238 and Resolution ESRB-4. Resolution E-3238 dates from 1991 and authorizes utilities to recover costs specifically incurred pursuant to declared catastrophes (such costs must be segregated into a specific Memorandum account). Resolution ESRB-4 dates from 2014, and authorizes vegetation management costs to be entered into CEMA accounts under specific conditions.

Resolution E-3238 authorizes utilities recovery of catastrophic event costs. Resolution E-3238 requires that, in order to recover for catastrophic costs, a utility must adhere to the following steps: 1. File a 30-day notice letter establishing a Catastrophic Event Memorandum account; 2. Inform the Commission's Executive Director within 30 days of a catastrophic event that it will book costs into that account, specifying the declared disaster, the date, time and location of services affected, and an estimate of the extraordinary costs anticipated; 3. Recover those costs after showing their reasonableness and after express Commission approval of the utility's next general rate case. This CEMA process has become familiar to California electric utilities.

Resolution ESRB-4, issued on the heels of calamitous fires in California, authorizes electric utilities to recover under CEMA specific costs incurred through adherence to a Commission directive to "take practicable measures necessary to reduce the likelihood of fires associated with their facilities" -- with two provisos.

First, utilities can recover costs in CEMAs:

To the extent that additional funding is reasonable, and not already included or recoverable in the Investor Owned Electric Utilities accounts... However, the Commission may analyze such costs to determine if they are truly incremental, and meet the other requirements of CEMA. Consistent with Commission practice, double collection of costs is strictly prohibited. (Resolution ESRB-4, Ordering Paragraph 4.)

Second, for a utility to recover such costs in CEMAs:

The Commission shall select independent auditors for the costs associated with this Resolution and to review the IOUs' other accounts to ensure there is no double recovery and that the costs therein are reasonable. (Resolution ESRB-4, Ordering Paragraph 5.)

In its Application, PG&E requests CEMA recovery for three fires in 2016, four sets of storms spanning 2016 -2017, and two years of vegetation management costs incurred in 2016 and 2017. (Application at 1-2). The total requested for these previously-incurred costs is \$588,296,000. (Application at 4.)

PG&E also requests CEMA recovery of "costs on a forecast basis -- for the years 2018 and 2019 -- for tree mortality and fire risk reduction pursuant to Resolution ESRB-4." (Application at 2.) The Application seeks forecasted costs totaling \$554,696,000. (*Id.* at 5.) Further, PG&E writes that "These [forecast] amounts are proposed to be subject to a two-way balancing account..." (*Id.* at 4.)

PG&E acknowledges that its Application for forecasted costs is novel: "this was the first time PG&E was seeking CEMA-eligible costs on a going-forward basis..." (Reply Brief of PG&E In Response To Issues In Scoping Memo at 2.) This Application is the third time the Commission has been asked to apply ESRB-4, and on each of the prior two occasions, the costs had already been incurred, and were able to be audited. (D.16-03-015, D.16-04-004.) Consequently, this Application poses a question of first impression for the Commission.

PG&E's Application seeks CEMA recovery for vegetation management costs that PG&E has not yet incurred. Parsing ESRB-4 reveals several factors for the Commission to consider. Each factor weighs against PG&E's Application proposal for forecasted costs.

ESRB-4 neither suggests nor implies that it is different than E-3238 in requiring any costs sought for recovery for a catastrophic reason to be actual, and not a mere forecast of a cost that would be incurred in the future. ESRB-4 Ordering Paragraph 4 expressly refers to cost "recovery," which necessitates a retrospective act after a cost is incurred and not a prospective act prior to a cost being incurred. PG&E has not attempted to explain how any language in ESRB-4 demonstrates an intention by the Commission for the Resolution to be read prospectively.

In addition, the Application proposes to employ a balancing account. With its proposed balancing account, PG&E would receive rate recovery now for its forecasted expenses, and then perform a true-up later to account for reasonable actual incurred costs. However, the plain reading of ESRB-4 precludes such an approach.

A CEMA is, as its name states, a Memorandum Account. CEMA authority derives from Resolution E-3238, which requires costs to be booked into an identifiable and segregated account. "The costs recorded in a utility's Catastrophic Event Memorandum Account may be recovered in rates **only after** a request from the affected utility, a showing of their reasonableness, and approval by the Commission." (E-3238, Ordering Paragraph 3, emphasis added.) Consequently, a balancing account is unavailable to PG&E as a means to seek anticipatory rate recovery for CEMA costs, because such an approach conflicts with the nature of a Memorandum Account.

The use of a balancing account for such emergency costs was expressly considered and rejected in E-3238. That resolution reads in pertinent part:

The utilities' desire to characterize CEMA as a balancing account, thus allowing them to include it in their income statements with implications of guaranteed recovery absent Commission action to the contrary, is understandable. However, our intention in establishing the CEMA mechanism is to resolve the problem of timely obtaining a Commission order following a catastrophic event to record costs which would otherwise be lost due to the retroactive ratemaking prohibition. The CEMA mechanism requires only that the utility link its costs to a declaration of a disaster in order to make entries. This is a far less rigorous test than any ECAC or ERAM and argues strongly for CEMA's characterization as a Memorandum account. (Resolution E-3238 at 4.)

This language clearly describes why we must ensure that CEMAs are in fact memorandum accounts and not, as PG&E has proposed, balancing accounts.

PG&E's Application also fails to demonstrate a necessary element of its CEMA showing under ESRB-4. There, Ordering Paragraph 4 expressly requires that a utility seek recovery of CEMA costs by showing that they are "reasonable, and not already included **or recoverable** in the [IOU] accounts" (emphasis added). Ordering Paragraph 4 concludes that "Consistent with Commission practice, double collection of costs is strictly prohibited."

In addition to ESRB-4's requirement to obtain the services of an auditor to ensure an "independent audit" of financial "accounts" and technical "reasonableness" of incurred expenses (Ordering Paragraph 5), it obligates PG&E to demonstrate that the costs it seeks to recover are not "already... recoverable" (Ordering Paragraph 4). In this regard, although PG&E has asserted that costs presented in its Application "are incremental and not requested through any other rate cases or proceedings" (Application at 9) --

i.e., PG&E has not otherwise as yet sought recovery -- PG&E has not asserted that the costs sought are not otherwise “recoverable” in any other mechanism for presenting such costs to the Commission.

Focusing solely on PG&E’s forecasted vegetation management cost application, PG&E acknowledges that such costs could be recovered elsewhere. In its “Opening Brief of [PG&E] In Response To Issues In Scoping Memo,” PG&E (citing to ESRB-4) observes that other avenues for such vegetation management recovery include “the Fire Hazard Prevention Memorandum Accounts” and “General Rate Cases (GRCs), including, specifically authorized vegetation management costs with a one-way balancing account.” (Opening Brief at 4.) In fact, PG&E’s GRCs do include Fire Hazard Prevention Memorandum Accounts and Vegetation Management Balancing Accounts.

Therefore, PG&E admits that it can, through other mechanisms, recover its vegetation management costs. If these costs are recoverable through other mechanisms, there is a question whether under the plain reading of ESRB-4 Ordering Paragraph 4, such recovery is precluded.

For these reasons, PG&E’s request for forecasted CEMA vegetation management cost recovery is denied.

4. Comment Period

Pursuant to Rule 14.6(b) of the Commission’s Rules of Practice and Procedure, the parties stipulated to a shortened comment period. The proposed interim decision 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 _____.

5. Assignment of Proceeding

Liane Randolph is the assigned Commissioner, and Peter V. Allen and Jason Jungreis are the assigned ALJs in this proceeding.

Findings of Fact

1. PG&E filed a motion requesting interim rate relief for approximately \$441 million or 75% of the approximately \$588 million it recorded in 2016 and 2017 CEMA costs.
2. After PG&E's motion for interim rate relief was denied, PG&E filed a renewed motion requesting interim rate relief for 100% of the approximately \$588 million it recorded in 2016 and 2017 CEMA costs, subject to reasonableness review.
3. TURN and Cal Advocates opposed PG&E's renewed motion, but also presented an alternate proposal to allow interim rate relief of up to \$373 million, so that the overall impact of PG&E's 2019 Annual Electric True-up (AET) would result in no increase as compared to revenue at present rates.
4. Under the alternate proposal, the actual amount of rate relief would be calculated after PG&E has completed its AET process.
5. PG&E expressed support for the alternate proposal of TURN and Cal Advocates as a reasonable resolution of the issues presented.
6. Because the Commission has not yet executed a contract with independent auditors as required by Resolution ESRB-4, this proceeding can no longer be considered an "expedited proceeding" pursuant to Public Utilities Code § 454.9(b).
7. PG&E's Application seeking rate recovery costs for "forecasted" (i.e., forward-looking and not yet incurred) vegetation management activities is based upon Resolution E-3238 and Resolution ESRB-4.

8. The CEMA process is based upon Resolution E-3238, which authorizes utility recovery of catastrophic event costs and spells out specific recovery request compliance requirements, and which is expressly not a balancing account.

9. Resolution ESRB-4 authorizes electric utilities to recover specific incurred vegetation management costs under CEMA.

10. PG&E proposes that the forecast vegetation management costs are to be subject to a two-way balancing account.

11. PG&E's General Rate Cases typically include cost recovery mechanisms such as Fire Hazard Prevention Memorandum Accounts and Vegetation Management Balancing Accounts.

12. PG&E's Application does not make clear that its forecasted vegetation management costs are not recoverable through other mechanisms.

Conclusions of Law

1. The alternative proposal of TURN and Cal Advocates to allow up to \$373 million in interim rate relief for PG&E's recorded 2016 and 2017 CEMA costs is reasonable and should be adopted.

2. PG&E's Renewed Motion should result in a grant of interim rate relief in an amount no greater than and possibly less than \$373 million and based on the finalization of PG&E's 2019 AET process such as to ensure that the overall impact would result in no rate increase as compared to revenue at present rates.

3. Resolution ESRB-4 does not support utility entitlement to forecasted vegetation management costs.

4. Neither Resolution E-3238 nor Resolution ESRB-4 supports recovery of forecasted costs using a balancing account.

5. PG&E's request for forecasted cost recovery through a CEMA fails to meet the requirements of Resolution E-3238.

6. That portion of PG&E's Application that requests forecasted costs should be denied.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) is authorized interim rate recovery, through its 2019 Annual Electric True Up process, of an amount totaling no more than \$373 million of its recorded 2016 and 2017 CEMA costs such that the overall impact on PG&E's 2019 Annual Electric True Up will result in no rate increase as compared to present rates.

2. PG&E shall refund, with interest, any excess rate recovery amount it obtained pursuant to Ordering Paragraph 1 in comparison to the final decision in this proceeding regarding the approved 2016 and 2017 CEMA costs total.

3. The request of PG&E for recovery of forecasted vegetation management costs is denied.

4. This proceeding remains open.

This order is effective today.

Dated _____, 2019, at San Francisco, California.