
PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

November 27, 2017

TO PARTIES OF RECORD IN APPLICATION 12-04-015 ET AL.:

At the Commission Meeting of July 13, 2017, President Michael Picker stated that he would file a concurrence to Decision 17-07-005. The decision was mailed on July 17, 2017.

The concurrence of President Picker is now available and is attached herewith.

/s/ ANNE E. SIMON

Anne E. Simon,
Acting Chief Administrative Law Judge

AES:lil

Attachment

Decision 17-07-005
Application 12-04-015 et al.

**CONCURRENCE OF PRESIDENT MICHAEL PICKER ON ITEM 5 ON THE
COMMISSION VOTING MEETING AGENDA OF JULY 13, 2017,
DECISION REGARDING JOINT PETITION FOR
MODIFICATION OF DECISIONS 12-12-034 AND 13-03-015**

Decision 17-07-005 (issued July 17, 2017) grants the Joint Petition for Modification of Decision 12-12-034 and Decision 13-03-015 filed by Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (SCE), Southern California Gas (SoCalGas), Office of Ratepayer Advocates (ORA) and The Utility Reform Network (TURN) (collectively the Joint Parties). I support this decision with reservations which I note in detail in this concurrence.

This decision adopts modifications proposed by the Joint Parties. Specifically it:

- Extends the date for each of the utilities' next cost of capital application from April 2017 to April 2019;
- Reduces the return on equity as requested by the parties;
- Resets the authorized cost of long term debt and preferred stock beginning in the test year 2018 for each utility; and
- Requires testimony on specific factual questions to be provided in the utilities next round of cost of capital filings.

Although the adoption of these modifications is based on an analysis of the proposal's merits, which are addressed in this decision, I must note that I am uneasy and troubled about this Petition.

The Joint Parties failed to include material information about a side agreement to the Petition when it was submitted to the Commission. The Joint Parties negotiated terms and submitted the Petition, but in subsequent filings it became apparent to the Commission that the Joint parties had withheld part of

their agreement. Because the Petition is presented as being a compromise between ratepayer advocates and the utilities, it is essential that the Commission be presented with all of the material terms of that compromise. Here, the Joint Parties omitted the fact that a side agreement calls for the utilities to provide \$5 million for a program to be controlled by TURN and ORA. The Commission only learned about this due to a subsequent filing of a party. Although the Commission eventually learned about the \$5 million payment, the parties provided little to no information about the proposed program funded by the payment. Because of the lack of information, I cannot speak to the merits of the proposed program.

The Commission is thus placed in a position of knowing that as part of this cost of capital agreement submitted for our consideration, the utilities provided \$5 million to be controlled by the ratepayer advocates. The Commission has no record to evaluate the merit of the proposed program and how it should be considered in the broader cost of capital discussion. And because it was not include in the Petition and is funded by shareholder dollars, the Commission cannot address it in this decision.

Frankly, without additional information, this could be perceived as a bribe from utilities to ratepayer advocates. In the short term, the failure to disclose the \$5 million in the Petition could be addressed as a Rule 1 violation against all of the parties, although we have decided not to pursue it in this proceeding. However, perhaps the longer term issue is that in future proceedings where agreements are presented I will wonder whether a side agreement exists between parties and has strategically been omitted from an agreement.

The agreement reached by parties in this proceeding is not a settlement. A settlement is when opposed parties reach agreement on material disputed facts

within the scope of an active proceeding. Rule 12 of the Commission's Rules of Practice and Procedure requires parties to file a motion which describes "a statement of the factual and legal considerations adequate to advise the Commission of the scope of the settlement."

Here, there was no compromise on material disputed facts because it was a closed proceeding and thus there were no disputed issues to resolve. Second, even if the Petition were to be evaluated under Rule 12, it would be inadequate because the Petition provided an incomplete statement of factual and legal considerations - specifically the omission of the \$5 million payment.

I note the Joint Parties also chose to use a petition to modify a prior decision instead of filing an application to present this agreement to the Commission. This is a distinction with important differences. An application would allow other groups to participate in the process as parties, including public hearings, testimony, and, if applicable, a settlement conference. Here, such a process did not occur and the Commission was provided with less information.

As a Commission, we are tasked with evaluating policy from a comprehensive perspective. To that end, parties are required by law to not mislead the Commission and provide the Commission with all material information. Here, the parties failed to do so. To avoid any damage to the integrity of the settlement process at the Commission, I think it is important that parties in future proceeding certify that all terms and consideration of any agreement are disclosed in the agreement. Side agreements, like the one today, are inappropriate. The use of a petition to modify instead of an application should be avoided whenever possible because it provides the Commission and the public less of an opportunity to probe the agreement.

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Despite these issues and my misgivings about this Petition, I reviewed the proposed modifications and found them to be the best course forward in the next couple of years. I expect the Commission will address cost of capital in a regular application proceeding in 2019.

Dated November 15, 2017, at San Francisco, California.

/s/ MICHAEL PICKER

Michael Picker
President