

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
ITEM 31 (Rev. 1)
AGENDA ID: 16978
RESOLUTION E-4963
December 13, 2018

ENERGY DIVISION

R E S O L U T I O N

Resolution E-4963. Commission Resolution to establish memorandum accounts to track compensation paid to an officer of an electrical or gas corporation pursuant to Senate Bill 901.

PROPOSED OUTCOME:

- This resolution requires gas and electric corporations to establish memorandum accounts to track officer compensation.

SAFETY CONSIDERATIONS:

- There is no impact on safety.

ESTIMATED COST:

- The resolution is expected to lead to reduced ratepayer costs by removing from the annual revenue requirement ratepayer funding for officer compensation.

By the Commission's own motion.

SUMMARY

This Resolution orders Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), Southern California Gas Company (SoCalGas), Bear Valley Electric Services, a division of Golden State Water Company (Bear Valley), Pacific Power, a division of PacifiCorp (PacifiCorp), Liberty Utilities/CalPeco Electric (Liberty), Southwest Gas, West Coast Gas Company, and Alpine Natural Gas Operating Company (collectively IOUs) to open memorandum accounts to track compensation paid to IOU officers pursuant to Public Utilities Code Section 706, as enacted by Senate Bill (SB) 901 (2018, Dodd).

BACKGROUND

Overview of Assembly Bill (AB) 1266

The California Legislature passed AB 1266 on September 11, 2015 and Governor Edmund Brown Jr. signed it into law on October 8, 2015. AB 1266 added Public Utilities Code Section 706, which provided in part:

(b) For a five-year period following a triggering event, no electrical corporation or gas corporation shall recover expenses for excess compensation from ratepayers unless the utility complies with the requirements of this section and obtains the approval of the commission pursuant to this section.

Public Utilities Code Section 706 defines both “excess compensation” and a “triggering event”¹ and directs the California Public Utilities Commission (Commission) to implement these provisions in General Rate Case (GRC) proceedings. Public Utilities Code Section 706(f) mandates that the Commission, “[i]n every decision on a general rate case, shall require all authorized executive compensation to be placed in a balancing account, memorandum account, or other appropriate mechanism so that this section can be implemented without violating any prohibition on retroactive ratemaking.”

¹ “‘Excess compensation’ means any annual salary, bonus, benefits, or other consideration of any value, paid to an officer of an electrical corporation or gas corporation that is in excess of one million dollars (\$1,000,000).” Pub. Util. Code § 706(a)(1).

“A ‘triggering event’ occurs if, after January 1, 2013, an electric corporation or gas corporation violates a federal or state safety regulation with respect to the plant and facility of the utility and, as a proximate cause of that violation, ratepayers incur a financial responsibility in excess of five million dollars (\$5,000,000).” Pub. Util. Code § 706(a)(2).

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In response to AB 1266, during the subsequent GRC proceedings for SDG&E, SoCalGas, Southwest Gas² and PG&E,³ the Commission required the utilities to establish memorandum accounts to track executive compensation.⁴ The Commission ordered SDG&E, SoCalGas, and PG&E to file Tier 2 Advice Letters (AL) in order to “track all monies authorized in today’s decision for the annual salaries, bonuses, benefits, and all other consideration of any value, set aside to be paid to the officers of the utility, and to track that against the salaries, bonuses, benefits, and all other consideration of any value, paid to its officers.”⁵ The Commission ordered Southwest Gas to file a Tier 2 AL to “track (i) the date and (ii) amount (or cash value) of all monies and other compensations, including but not limited to, annual salaries, bonuses, benefits, and all other consideration of any value, paid or owed to its officers.”⁶ SDG&E, SoCalGas and PG&E were also required to define the term “officers’ of each company who are subject to the provisions of Public Utilities Code Section 706.”⁷

SDG&E and SoCalGas filed AL 2904-E/2503-G on August 8, 2016 to establish the Officer Compensation Memorandum Accounts in accordance with D.16-06-054. To establish its Executive Compensation Memorandum Accounts (ECMA), PG&E filed AL 3586-G/5102-E on June 23, 2017 pursuant to D.17-05-013. These accounts track (1) the amounts authorized for compensation to executive officers of the utility in GRCs; and (2) the amounts paid to executive officers of the utility.

² In D.17-06-006, the Commission granted Southwest Gas’ petition to modify D.14-06-028, the Company’s Test Year 2014 decision, and allow Southwest Gas to file its next GRC on September 1, 2019 with a 2021 Test Year. D.17-06-006 directs Southwest Gas to establish a memorandum account to track executive compensation, pursuant to pre-SB 901 Pub. Util. Code § 706.

³ Due to the timing of SCE’s rate case cycle, the Commission had not directed SCE to open a similar memorandum account at the time SB 901 was enacted.

⁴ “Executive compensation” and “officer compensation” are frequently used interchangeably in GRC testimony and decisions.

⁵ D.16-06-054, Ordering Paragraph (OP) 9 and D.17-05-013, OP 13.

⁶ D.17-06-006, OP 5.

⁷ *Id.*

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Southwest Gas filed AL 1044-G on July 28, 2017 to establish its Officer Compensation Memorandum Account to track all compensation paid or owed to the company's officers, pursuant to D.17-06-006.

Overview of Senate Bill (SB) 901

On August 31, 2018, the California Legislature passed SB 901, and Governor Edmund Brown Jr. signed it into law on September 21, 2018. SB 901 repeals the language in Public Utilities Code Section 706, and adds new language prohibiting an electrical or gas corporation from recovering from ratepayers any annual salary, bonus, benefits, or other consideration of any value, paid to an officer of the electrical corporation or gas corporation, and requires that compensation instead be funded solely by shareholders of the utility. Revised Section 706 states:

(a) For purposes of this section, "compensation" means any annual salary, bonus, benefits, or other consideration of any value, paid to an officer of an electrical corporation or gas corporation.

(b) An electrical corporation or gas corporation shall not recover expenses for compensation from ratepayers. Compensation shall be paid solely by shareholders of the electrical corporation or gas corporation.

NOTICE

Notice of this Draft Resolution was made by publication on the Commission's Daily Calendar. This Draft Resolution was distributed to the Service List for proceedings Application (A.) 15-09-001, A.17-10-007, A.17-10-008, A.16-09-001, A.18-04-002, A.15-05-008⁸, A.17-05-004, A.12-12-024, and A.15-03-004.

⁸ Due to a typographical error, service was initially made to parties to A.15-08-008 in error; service should have been made to parties to A.15-05-008. Energy Division staff subsequently served notice to the parties to A.15-05-008. None of those parties had comments to the draft resolution.

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DISCUSSION

This resolution partially implements Public Utilities Code Section 706 as revised by SB 901, which requires, among other things, that all forms of compensation for officers of electrical or gas corporations shall be paid solely by shareholders.

The current authorized revenue requirement for the IOUs includes recovery for a portion of officer compensation. In order to remove ratepayer funding of officer compensation without violating the statutory prohibition against retroactive ratemaking, the Commission should first require all authorized officer compensation to be placed in a memorandum account. Sample tariff language is included in Appendix A: Sample Preliminary Statement for Officer Compensation Memorandum Account (OCMA). In accordance with Public Utilities Code Section 706, "compensation" means any annual salary, bonus, benefits, or other consideration of any value, paid to an officer of an electrical corporation or gas corporation. For the purposes of the memorandum accounts, the term "officer" shall mean those employees in positions with titles of Vice President or above, consistent with Rule 240.3b-7 of the Securities Exchange Act. The amounts reported in the memorandum accounts will be reviewed and refunded to ratepayers in future GRC proceedings, or as soon as feasible.

COMMENTS

Public Utilities Code Section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review. Please note that comments are due 20 days from the mailing date of this resolution. Section 311(g)(2) provides that this 30-day review period and 20-day comment period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day review and 20-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments on October 26, 2018.

The Utility Consumers' Action Network (UCAN) submitted comments on November 16, 2018. PacifiCorp, SDG&E, SoCalGas, SCE, PG&E, and Southwest Gas submitted comments on November 19, 2018. The comments are summarized below.

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Tariff Language

SDG&E, SoCalGas, SCE, PG&E, and Southwest Gas seek modification of the draft resolution's sample tariff language requirement to track actual officer compensation. They say there is no need to account for actual compensation, because ratepayers will only pay the amount the Commission has authorized to be recovered in rates. The sample tariff language models the existing SDG&E and SoCalGas' OCMA's and PG&E's ECMA. The language is intended to ensure all forms of ratepayer-funded officer compensation costs, as defined by Public Utilities Code Section 706, are tracked in the OCMA. This needs to be done by tracking both compensation for officers authorized in GRCs and resolutions as well as compensation as defined by Public Utilities Code Section 706. Therefore, we deny the utilities' suggestion to revise Appendix A: Sample Preliminary Statement for Officer Compensation Memorandum Account.

UCAN requests the language in the resolution clarify that ratepayer funds will not be used to compensate officers of utility holding companies. Similarly, SCE recommends the definition be broadened to include officers of its parent company, EIX. We reject these suggestions by UCAN and SCE because they are unsupported by statute.

SCE also suggests that the definition of "officers" be incorporated into sample tariff language in Appendix A of the final resolution. We accept this suggestion; Appendix A is revised to include the definition of "officers."

Implementation of Revenue Requirement Reductions

PacifiCorp seeks to forego the establishment of a memorandum account and to include an adjustment to comply with SB 901 in their currently filed GRC. PacifiCorp states that in rebuttal testimony scheduled for filing on November 20, 2018, they will update the proposed rates to remove officer compensation, thereby eliminating the need to establish a memorandum account. We do not object to PacifiCorp's effort to remove officer compensation from its request in the currently filed GRC. However, the request to make this adjustment in lieu of a memorandum account is denied. This resolution seeks to implement SB 901's prohibition on ratepayer funding of officer compensation as of January 1, 2019. Given PacifiCorp's GRC will not be completed before January 1, 2019, a

memorandum account should be in place to avoid the possibility of retroactive ratemaking.

PG&E also seeks to eliminate the proposed OCMA. Instead, PG&E offers to remove officer compensation values previously adopted for rate recovery from its 2019 revenue requirement through an advice letter filing. PG&E also agrees to exclude officer compensation costs from its 2020 GRC request, remove officer compensation costs from its 2019 Gas Transmission and Storage (GT&S) rate case request through supplemental testimony, and exclude recovery of officer compensation costs as required by Public Utilities Code Section 706 from any future rate case requests. We acknowledge PG&E's effort to propose a methodology that implements the requirements of Public Utilities Code Section 706 expeditiously. However, there is not sufficient time to allow for a thorough examination of the revenue requirement to remove all officer compensation before January 1, 2019. As discussed in relation to PacifiCorp's request, a memorandum account should be in place to avoid the possibility of retroactive ratemaking. PG&E's request to eliminate the OCMA is denied.

Additional Issues Raised

Southwest Gas is concerned the language in the resolution is overly broad and recommends modifications to the resolution for clarification.

Southwest Gas suggests that the definition of officers should be specific to those employees in positions that existed at the time of the utility's last general rate case proceeding, and for which compensation was authorized. This suggestion is denied because SB 901 does not distinguish between officers that existed or did not exist at the time of the utility's last general rate case proceeding.

Southwest Gas also suggests additional language to clarify that in the case of multi-jurisdictional utilities, the OCMA applies only to the portion of officer compensation applicable to California operations. We accept this suggestion and modify the resolution accordingly.

In addition, Southwest Gas points out that in D.17-06-006 the Commission required the utility to establish a memorandum account to track executive compensation consistent with pre-SB 901 Public Utility Code Section 706. The Southwest Gas Officer Compensation Memorandum Account was approved in

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Southwest Gas Advice Letter 1044 and contains pre-SB 901 provisions similar to those in the memorandum accounts established by SDG&E, SoCalGas and PG&E. Upon consideration of these requests by Southwest Gas, we are denying the closure of existing officer compensation memorandum accounts for all utilities in this resolution, including Southwest Gas, as there may be a chance that those accounts will carry non-zero balances and would be closed prematurely. The resolution is modified accordingly.

FINDINGS

1. Senate Bill (SB) 901 was signed into law on September 21, 2018, implementing revised Public Utilities Code Section 706.
2. SB 901 requires, among other things, that all forms of compensation for officers of electrical or gas corporations shall be paid solely by shareholders.
3. SB 901 applies to all electrical and gas corporations, regardless of size.
4. In accordance with Public Utilities Code Section 706, "compensation" means any annual salary, bonus, benefits, or other consideration of any value, paid to an officer of an electrical corporation or gas corporation.
5. The term "officer" means those employees of the investor owned utilities in positions with titles of Vice President or above, consistent with Rule 240.3b-7 of the Securities Exchange Act.
6. Pursuant to SB 901, the Commission should require the IOUs to establish memorandum accounts to track officer compensation, as defined by Public Utilities Code Section 706, so that such amounts may be refunded to ratepayers through future proceedings. In the case of multi-jurisdictional utilities, this Ordering Paragraph applies only to the portion of officer compensation applicable to California operations.

THEREFORE IT IS ORDERED THAT:

1. San Diego Gas & Electric Company, Southern California Gas Company, Pacific Gas and Electric Company, Southern California Edison Company, Bear Valley Electric Services, PacifiCorp, Liberty Utilities, Southwest Gas, West Coast Gas Company, and Alpine Natural Gas Operating Company shall establish Officer Compensation Memorandum Accounts consistent with the

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language in Appendix A: Sample Preliminary Statement for Officer Compensation Memorandum Account (OCMA).

2. San Diego Gas & Electric Company, Southern California Gas Company, Pacific Gas and Electric Company, Southern California Edison Company, Bear Valley Electric Services, PacifiCorp, Liberty Utilities, Southwest Gas, West Coast Gas Company, and Alpine Natural Gas Operating Company shall file Tier 1 Advice Letters implementing their respective Officer Compensation Memorandum Accounts no later than 10 days from the date of this resolution.
 - a. For each utility, the Advice Letter shall have an effective date of January 1, 2019.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on December 13, 2018; the following Commissioners voting favorably thereon:

ALICE STEBBINS
Executive Director

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APPENDIX A: Sample Preliminary Statement for Officer Compensation Memorandum Account (OCMA)

1. PURPOSE:

The OCMA is a memorandum account established pursuant to Public Utilities Code Section 706, as enacted by Senate Bill 901 (2018, Dodd). Public Utilities Code Section 706 requires, among other things, that all forms of compensation for officers of electrical or gas corporations shall be paid solely by shareholders. The purpose of the OCMA is to track the difference between (1) compensation for officers of the utility that is authorized in General Rate Cases (GRCs) or resolutions and; (2) all compensation as defined by Public Utilities Code Section 706. The term “officer” shall be defined as those employees of the investor owned utilities in positions with titles of Vice President or above, consistent with Rule 240.3b-7 of the Securities Exchange Act.

2. APPLICABILITY:

The OCMA is effective January 1, 2019 until closed at the direction of the Commission.

3. ACCOUNTING PROCEDURE:

The OCMA consists of two sub-accounts:

The “Authorized Compensation Sub-Account” tracks salaries, bonuses, benefits, and all other consideration of any value paid to officers in rates as authorized in [DECISIONS OR RESOLUTIONS AUTHORIZING RATES FOR 2019 AND BEYOND].

The “Total Compensation Sub-Account” tracks salaries, bonuses, benefits, and all other consideration of any value paid to officers.

Salaries: [FILL IN AS APPROPRIATE, e.g. Payroll data for Executive Officer base salaries]

Bonuses: [FILL IN AS APPROPRIATE, e.g. Variable Pay/Incentive Compensation Plan (ICP).]

Benefits: [FILL IN AS APPROPRIATE, e.g. Employer portion of health and welfare premiums.]

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Other Consideration: [FILL IN AS APPROPRIATE, e.g. Executive perquisites in payroll data and/or invoices, 401(k) company match, deferred compensation company match.]

[UTILITY] shall maintain this account by making monthly entries (or annual entries where applicable and monthly data is not available) as follows:

A. Authorized Compensation Sub-Account

1. A credit entry equal to the salaries, bonuses, benefits, and all other consideration of any value set aside to be paid to its officers as authorized in [DECISIONS OR RESOLUTIONS AUTHORIZING RATES FOR 2019 AND BEYOND].

B. Total Compensation Sub-Account

1. A debit entry equal to the salaries, bonuses, benefits, and all other consideration of any value paid to its officers.

4. DISPOSITION

Amounts tracked in the OCMA may be addressed in [Utility Name's] GRC or other appropriate Commission proceeding and should be refunded to customers in rates.