

PROPOSED DECISION OF COMMISSIONER RANDOLPH (Mailed 3/25/2019)

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). PG&E seeks recovery of \$588,296,000 for costs incurred following nine catastrophic events in 2016 and 2017. (Application at 2-3.) PG&E also seeks recovery of \$544,696,000 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 argue that

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.

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 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 fact pattern established in the case of *TURN*², where there was a substantial “delta” between both the immediate capital costs and future cost savings and between the periods when the costs were incurred and when future costs would be saved.³ The Ruling found that 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.

We are now facing a renewed request from PG&E, based in part on the deterioration of its financial condition that was evident on December 4, 2018, subsequent to the November 2, 2018 ruling. In responding to this renewed request, we will consider the extremely rare and unique facts that apply to PG&E’s financial condition and this Commission’s authority to grant interim rate relief.

The Commission’s authority to grant interim rate relief is well established. In *Toward Utility Rate Normalization v. Public Utilities Commission*, (44 Cal.3d 870) (1988), TURN contended that the Commission could not authorize interim relief unless failure to do so would result in a financial emergency or unless the reasonableness of the investment costs covered by the utility’s rates is undisputed. The Supreme Court recognized that the Commission had granted interim rate relief under those standards in the past, but noted: “[f]rom the existence of those two exceptions, however, it does not follow that no other circumstances can justify an interim increase.” (44 Cal.3d at 875).

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

³ ALJ Ruling (11/22/18), p.6.

Subsequently, the Commission has granted interim rate increases to promote fairness to both the utility and public (D.02-07-031, mimeo., at 13-14); to reduce the potential for rate shock (D.16-08-003 at 9); and to preserve the financial integrity of a utility, minimize costs incurred by ratepayers, and ensure rate stability (D.88-05-074, mimeo., at 14). The utility's continued viability need not be on the line before interim rate relief may be granted, it is sufficient "where there is a showing that fairness to both the public and the utility require immediate action." (D.91.-02-035 at 10.)

Here, PG&E has justified its request for interim rate recovery as a means to "partially smooth rate impacts on customers."⁴ As the costs that PG&E seeks to recover were incurred in 2016 and 2017, some level of interim rate relief would result in improved intergenerational equity, as vegetation management costs would be allocated to ratepayers in a manner that more closely aligns with the timing of when the costs were incurred. Interim rate relief is also likely to avoid a potentially far larger rate increase on customers after the reasonableness review by this Commission that will be undertaken later in this proceeding. We are also persuaded, in light of PG&E's financial condition and the perception of that condition represented by rating agency reports, that it would be unreasonable to continue to require PG&E to wait for recovery of these amounts.⁵ In light of these circumstances, interim recovery is warranted to promote fairness, minimize costs to ratepayers, and promote rate stability.

⁴ PG&E Renewed Motion at 7.

⁵ Declaration of David S. Thompson at 6.

We find that the amount of \$373 million (equivalent to about 63% of the costs requested by PG&E), initially introduced by TURN and Cal Advocates based on an analysis of the impact of PG&E's 2019 AET, represents a reasonable midpoint within the range of amounts for interim rate relief provided by the parties. This amount, subject to independent audit as required by Resolution ESRB-4 and subject to refund, with interest, to the extent the Commission's final decision in this matter awards PG&E a lower amount, reasonably balances the objective of mitigating sharp rate increases with the need for Commission review of utility costs prior to collection from ratepayers. This grant of interim rate relief does not create any presumptions or inferences for the subsequent reasonableness review of PG&E's 2016 and 2017 CEMA costs.

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.)

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, which would also be subject to reasonableness

review by the Commission. 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), PG&E has not asserted that these costs are not otherwise recoverable via any other mechanism.

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

4. Comment Period

The alternate 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 timely filed on April 15, 2019 by PG&E and jointly by TURN and Cal Advocates. Reply comments were filed on April 22, 2019 by PG&E. Non-substantive changes have been made based on comments, where appropriate.

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 recommended that if the Commission decided to permit interim rate recovery of some amount, that figure should be limited to a figure that ensures the overall impact of the 2019 Annual Electric True-up (AET) will be no increases as compared to revenue at present rates.
4. TURN and Cal Advocates calculated that based on PG&E's preliminary figures, provided in September 2018, the interim rate recovery figure should be no more than \$373 million.5. Interim rate relief of \$373 million, subject to later reasonableness review by the Commission, and subject to refund, with interest, to the extent the Commission's final decision in this matter awards PG&E a lower amount, reasonably balances the objective of mitigating sharp rate increases with the need for Commission review of utility costs prior to collection from ratepayers.
5. Interim rate relief of \$373 million, subject to later reasonableness review by the Commission, and subject to refund, with interest, to the extent the Commission's final decision in this matter awards PG&E a lower amount, represents a reasonable midpoint within the range of amounts for interim rate relief provided by the parties

6. 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.
7. 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.
8. Resolution ESRB-4 authorizes electric utilities to recover specific incurred vegetation management costs under CEMA.
9. PG&E proposes that the forecast vegetation management costs are to be subject to a two-way balancing account.
10. PG&E's General Rate Cases typically include cost recovery mechanisms such as its Vegetation Management Balancing Account.
11. 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 Commission has the authority to set interim rates.
2. In *TURN v. PUC*, the California Supreme Court held that the Commission could set interim rates as long as the rate is subject to refund and sufficiently justified.
3. Granting PG&E's Renewed Motion for Interim Rate Relief to an amount of \$373 million is reasonable and should be adopted.
4. Resolution ESRB-4 does not support utility entitlement to forecasted vegetation management costs.
5. Neither Resolution E-3238 nor Resolution ESRB-4 supports recovery of forecasted costs using a balancing account.

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

7. 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 is authorized interim rate recovery of an amount totaling no more than \$373 million of its recorded 2016 and 2017 CEMA costs.

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 Pacific Gas and Electric Company 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.