

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
ENERGY DIVISION
ITEM # 6 I.D. # 6460
RESOLUTION E-4072
May 3, 2007

R E S O L U T I O N

Resolution E-4072. Pacific Gas and Electric Company (PG&E). This Resolution approves PG&E's Advice Letter 2954-E with modifications relating to how PG&E shall seek recovery of the amounts recorded in the proposed Land Conservation Plan Implementation Account.

By Advice Letter 2954-E Filed on December 15, 2006.

SUMMARY

This resolution approves PG&E's Advice Letter 2954-E with modifications relating to how PG&E shall seek recovery of the amounts recorded in the proposed LCPIA.

In Advice Letter (AL) 2954-E, PG&E requests approval to establish the Land Conservation Plan Implementation Account (LCPIA). PG&E proposes to record in the LCPIA costs incurred by PG&E to implement Land Conservation Commitment (LCC) established by the Commission in D.03-12-035. PG&E would seek recovery of costs recorded in the LCPIA in a separate proceeding. In AL 2954-E, PG&E has suggested that the disposition of the amounts in the account shall be determined in the Annual Electric True-up (AET) advice letter process. This resolution approves the creation of LCPIA but finds that Commission review and approval for recovery of any amounts recorded in the LCPIA shall be determined in a formal proceeding, not through the AET advice letter process. However PG&E will be allowed to use the AET process to recover those costs incurred by the Commission and billed to PG&E (e.g., costs for consultants hired by the Commission for environmental impact studies) if it submits with the AET advice letter written verification from the Commission that the Commission actually billed the costs to PG&E. After the Commission has reviewed and authorized for recovery any amounts recorded in the LCPIA,

PG&E may consolidate the Commission approved amounts with other revenues authorized for recovery, in the AET process.

BACKGROUND

D.03-12-035 approved a Modified Settlement Agreement in PG&E's bankruptcy proceeding and established a Lands Stewardship Council to carry out environmental enhancement activities.

On July 1, 2003 PG&E filed and served the Proposed Settlement Agreement (PSA) concerning PG&E's emergence from bankruptcy protection under Chapter 11 of the Bankruptcy Code. The PSA included the Land Conservation Commitment (LCC), which established provisions to permanently protect the approximately 140,000 acres of PG&E's watershed lands associated with its hydroelectric system, plus the 655-acre Carizzo Plains property in San Luis Obispo County.

On September 25, 2003, PG&E, the Division of Ratepayer Advocates (DRA), and certain other parties and non-parties filed a Stipulation Resolving Issues Regarding the Land Conservation Commitment (Stipulation) which resolved the majority of issues related to the Land Conservation Commitment including specifications for the development of a Land Conservation Plan (LCP). The Stipulation also stated mutually agreeable terms for implementation of the Land Conservation Commitment in Paragraph 17 and Appendix E to the PSA.

On December 18, 2003, the Commission issued D.03-12-035, which approved a modified version of the PSA, the Modified Settlement Agreement (MSA). The MSA approved by D.03-12-035 established a non-profit corporation named the Pacific Forest and Watershed Lands Stewardship Council (Stewardship Council or Governing Board) to oversee the implementation of the Land Conservation Commitment and to carry out environment enhancement activities.

The MSA required PG&E to fund the Stewardship Council with \$70 million over 10 years to cover both administrative expenses and the cost of environmental enhancement to the protected lands. Neither the Stipulation nor D.03-12-035 specifies all of the items included in administrative expenses and the costs of environmental enhancements.

The LCC requires the Stewardship Council to prepare a Land Conservation Plan (LCP). To implement the LCP, PG&E is required to seek regulatory approval from the California Public Utilities Commission (CPUC or Commission) and the Federal Energy Regulatory Commission (FERC).

PG&E filed AL 2954-E to ensure that it recovers costs associated with regulatory approval associated with the LCP.

On December 15, 2006 PG&E filed AL 2954-E to request approval for the creation of a Land Conservation Plan Implementation Account (LCPIA). PG&E would record in this account costs incurred to process applications before the CPUC and the FERC necessary to implement the LCP. PG&E would seek Commission approval to recover in rates costs recorded in the account in a separate proceeding.

Specifically, PG&E proposes that the LCPIA records four categories of costs:

- a) Costs incurred by PG&E for outside consultants or experts necessary to assist in the preparation or processing of the Section 851 or FERC applications and components thereof, such as any required Proponent's Environmental Assessments;
- b) Costs incurred by the CPUC in the review and approval of the Section 851 applications and ordinarily passed through for reimbursement from PG&E, such as staff time to review and process applications and costs incurred for outside consultants or experts necessary to perform environmental assessment and develop final environmental documents in accordance with the California Environmental Quality Act (CEQA);
- c) Costs incurred by the FERC in the review and approval of the proposed applications and filings at FERC required to implement the LCP and ordinary passed through for reimbursement from PG&E, such as staff time to review and process applications and costs incurred for outside consultants or experts necessary to perform environmental assessments and develop final environmental documents in accordance with the National Environmental Policy Act (NEPA); and

- d) Costs incurred by PG&E for other similar items related to the development of and regulatory review and approval of applications for transactions necessary to implement the LCP that are not explicitly delineated in the Settlement and Stipulation or authorized in PG&E's General Rate Case.

Along with the advice letter PG&E has submitted a Preliminary Statement EK-LCPIA. The EK-LCPIA states that:

- a) LCPIA shall apply to all customer classes, except for those specifically excluded by the Commission;
- b) Disposition of the amounts in the account shall be determined in the Annual Electric True-up Proceeding or other proceeding authorized by the Commission;
- c) LCPIA shall not have a rate component;
- d) PG&E will make the following entries to the LCPIA:
 - 1) a monthly debit equal to the amount billed to PG&E by outside consultants or experts necessary to assist in the preparation of the Section 851 or FERC applications and components thereof;
 - 2) a monthly debit equal to the amount billed to PG&E by the CPUC for reimbursement of the costs incurred by the CPUC to review and process the applications for transactions required to implement the Land Conservation Plan;
 - 3) a monthly debit equal to the amount billed to PG&E by the FERC for reimbursement of the costs incurred by the FERC to review and process the applications for transactions required to implement the Land Conservation Plan;
 - 4) a monthly debit equal to costs incurred by PG&E for other similar items related to the development and regulatory review and approval of the applications for transactions required to implement the Land Conservation Plan.

PG&E proposes that after review or audit of the amounts in the LCPIA, a credit entry be made to transfer the remaining balance of the LCPIA to the Utility Generation Balancing Account (UGBA) for recovery in rates.

NOTICE

Notice of AL 2954-E was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

PROTESTS

No protests to PG&E Advice Letter 2954-E were filed.

DRA and the Stewardship Council recommend that PG&E's advice letter be approved.

The Stewardship Council has expressed that the approval of PG&E's Advice Letter 2954-E will resolve differences between PG&E and the Stewardship Council regarding the implementation of the Land Conservation Commitment.

DRA believes that the approval of the LCPIA is necessary for PG&E to recover its costs of implementing the LCP.

DISCUSSION

Energy Division has reviewed PG&E's Advice Letter 2954-E. We will grant PG&E's request to establish the LCPIA, with modifications relating to how PG&E shall seek recovery of the amounts recorded in the account.

In AL 2954-E PG&E requests approval for the creation of a Land Conservation Plan Implementation Account (LCPIA) to allow it to recover from customers a portion of the costs incurred by PG&E to process applications before the CPUC and FERC of transaction necessary to implement Land Conservation Commitment (LCC) established by the Commission in D.03-12-035.

PG&E may establish the LCPIA, but shall seek recovery of amounts recorded in that account in a formal proceeding, not through the AET advice letter process.

The LCPIA is necessary to ensure that PG&E recovers the costs that it reasonably incurs to implement the LCP. The MSA approved by D.03-12-035 requires, in part, that PG&E provide \$70 million to its Environmental Enhancement

Corporation to cover administrative expenses and costs of environmental enhancements to the Watershed Lands and Carizzo Plains. Certain costs that PG&E incurs to obtain regulatory approvals necessary to implement the LCP may be outside the \$70 million amount referenced in the MSA. We therefore grant PG&E's request to establish the LCPIA, with modifications. Any amounts recorded in this account shall be subject to our review and approval in a formal proceeding initiated by an application that PG&E files prior to PG&E's recovery of these amounts in rates. This review shall not take place in the AET advice letter process with the following exception: PG&E may use the AET advice letter process to recover those separately identifiable costs recorded in the LCPIA that are incurred by the Commission and billed to PG&E, e.g., costs for consultants hired by the Commission for environmental impact studies and paid for by PG&E. PG&E may recover these costs through the AET on the condition that PG&E submits with the AET advice letter, written verification from the Commission that the Commission actually incurred the costs and has billed the costs to PG&E. PG&E shall seek to recover all other costs recorded in the LCPIA (i.e., those not incurred by the Commission and paid for by PG&E), through a formal application.

In AL 2954-E, PG&E has requested that the disposition of the amounts in the account shall be determined in the AET advice letter or other proceeding authorized by the Commission. The AET advice letter process is not an appropriate forum for PG&E to request Commission review and approval of the amounts recorded in the LCPIA. In Resolution E-4032 we addressed PG&E's annual electric true-up Advice Letter 2895-E filed in September 2006, in which PG&E requested consolidated revenue requirements and electric rate changes effective January 1, 2007. In that resolution we specifically found that the AET is "a forum for PG&E to recover costs recorded in memorandum accounts which have been reviewed and approved for recovery by the Commission in a separate proceeding, or are pending review in a separate proceeding that is scheduled to be completed prior to the end of the year." (Resolution E-4032, Finding 1).

The LCPIA is a memorandum account. After the Commission reviews amounts recorded in the LCPIA and authorizes PG&E to recover any of those amounts in rates, i.e., in a formal proceeding separate and not the AET process, PG&E may consolidate those Commission approved amounts with other Commission authorized revenue requirements in a future AET advice letter. PG&E shall modify the tariffs it proposed in AL 2952-E as specified in the Ordering

Paragraphs of this resolution to reflect how it shall seek recovery of amounts recorded in the LCPIA.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and be subject to at least 30 days public review and comment prior to a vote of the Commission. Accordingly a draft of this resolution was issued to all parties for review and comment at least 30 days prior to being considered by the Commission.

On April 2, 2007 PG&E filed a Comment arguing that formal Commission proceeding for recovery of the amounts recorded in the LCPIA is not necessary because the overwhelming majority of the costs recorded in the LCPIA will be initially incurred by the Commission and billed to PG&E (e.g., costs of consultants the Commission may use to perform CEQA or NEPA analysis and process the applications). In addition, PG&E argued that a large part of the costs in question have been or will be considered in other proceedings.

Modifications have been made based on PG&E's comments related to costs in the LCPIA that have been incurred by the Commission and billed to PG&E.

FINDINGS

1. PG&E filed Advice Letter (AL) 2954-E on December 15, 2006 to request approval for the creation of a Land Conservation Plan Implementation Account (LCPIA) to allow PG&E to recover the costs incurred by PG&E to implement Land Conservation Commitment (LCC) established by the Commission in D.03-12-35.
2. DRA and the Stewardship Council submitted responses in support of AL 2954-E.
3. In Advice Letter 2954-E, PG&E has suggested that the disposition of the amounts in the account shall be determined in the Annual Electric True-up Proceeding or other proceeding authorized by the Commission.
4. Establishment of the LCPIA is necessary for PG&E to recover costs of implementing the LCP.

5. The LCPIA is a memorandum account. Prior to recovery of any amounts it records in the LCPIA, PG&E must seek Commission review and approval for recovery of those amounts.
6. The AET advice letter process is not the proper forum for PG&E to seek Commission review and approval for recovery of any amounts recorded in the LCPIA, except as specified herein. PG&E should request such Commission review and authorization in a formal proceeding separate, not through the AET advice letter process.
7. Separately identifiable costs recorded in the LCPIA that are incurred by the Commission and billed to PG&E (e.g., costs for consultants hired by the Commission for environmental impact studies) may be recovered by PG&E through the AET AL process. PG&E should only be allowed to recover such costs through the AET AL process if it submits with the AET AL written verification from the Commission that the specific costs PG&E seeks to recover through the AET were actually incurred by the Commission and that the Commission has billed to PG&E.

THEREFORE IT IS ORDERED THAT:

1. As described herein PG&E is authorized, with modifications, to create a Land Conservation Plan Implementation Account (LCPIA) to allow PG&E to recover the costs incurred by PG&E to implement Land Conservation Commitment (LCC) established by the Commission in D.03-12-035.
2. Within 10 days of today's date PG&E shall file a supplement to Advice Letter 2954-E to make the following change to the tariffs proposed in AL 2954-E:

Preliminary Statement Part EK.3. shall be revised so that it reads:

"Revision Date: PG&E shall file an application to request that the Commission review and approve for recovery in rates, any amounts recorded in the LCPIA with the following exception: PG&E may request recovery through the Annual Electric True-Up (AET) advice letter process, of those separately identifiable costs recorded in the LCPIA that are incurred by the Commission and billed to PG&E, with written verification of those costs provided to Commission staff and available upon request to other parties."

The supplemental advice letter required by this Order shall replace PG&E's AL 2954-E in its entirety, and shall be effective on today's date, subject to Energy Division determining that it is in compliance with this Order.

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 May 3, 2007; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director