

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
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October 31, 2011

Agenda ID #10798
Ratesetting

TO PARTIES OF RECORD IN RULEMAKING 11-03-006.

This is the proposed decision of Administrative Law Judge (ALJ) Seaneen M. Wilson. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. 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.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

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 Seaneen M. Wilson at smw@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/ MARYAM EBKE for KVC

Karen V. Clopton, Chief
Administrative Law Judge

KVC:lil

Attachment

Decision **PROPOSED DECISION OF ALJ WILSON** (Mailed 10/31/2011)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider
the Annual Revenue Requirement
Determination of the California Department
of Water Resources and related issues.

Rulemaking 11-03-006
(Filed March 10, 2011)

**DECISION ALLOCATING THE REVISED 2012 REVENUE
REQUIREMENT DETERMINATION OF THE CALIFORNIA
DEPARTMENT OF WATER RESOURCES**

1. Summary

In accordance with the Rate Agreement between the California Department of Water Resources (DWR) and this Commission, DWR submitted its 2012 revenue requirement determination of \$931 million to this Commission on August 4, 2011. DWR then updated and made some changes to its revenue requirement and submitted a revised 2012 revenue requirement determination on October 27, 2011. The revised determination is for a revenue requirement of \$923 million, a decrease of \$8 million as compared to the August 4, 2011 submission.

In today's decision, we allocate DWR's revised 2012 revenue requirement determination of \$923 million to the electricity customers of Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California

Edison Company using the allocation methodology adopted in Decision (D.) 05-06-060, as modified by D.08-11-056.¹ The allocation will result in DWR recovering its electric power costs and bond-related financing costs for 2012 from the electric customers of these three utilities. As shown in Appendix A of this decision, the Power Charges of \$71 million, to provide the necessary funds to cover DWR's 2012 energy costs, are allocated to the customers of Pacific Gas and Electric Company and San Diego Gas & Electric Company at \$0.08475 and \$0.04083 per kilowatt-hour, respectively. The Bond Charge of \$852 million is allocated to the customers of all three utilities at \$0.00513 per kilowatt-hour.

2. Background

The California Department of Water Resources (DWR) submitted its 2012 revenue requirement determination to the Commission on August 4, 2011. This submission consisted of the August 4, 2011 "Determination of Revenue Requirements for the Period January 1, 2012 Through December 31, 2012," the August 4, 2011 "Notice of Determination of Revenue Requirements," and an August 4, 2011 memorandum from John Pacheco of DWR to President Michael R. Peevey of the Commission. The memorandum notified the Commission of DWR's 2012 revenue requirement determination, and requested "that the Commission calculate, revise and impose Bond Charges in accordance with Article V of the Rate Agreement..." and "that the Commission calculate, revise and impose Power Charges in accordance with Article VI of the Rate Agreement..."²

¹ See D.08-12-056 at 7-8.

² The terms "Bond Charge" and "Power Charges" are defined in Article I of the Rate Agreement that was adopted in Decision (D.) 02-02-051.

On August 25, 2011, Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE) filed Prehearing Conference Statements regarding issues of interest to each of them. On September 1, 2011, the Commission held a prehearing conference (PHC) to discuss the processing of DWR's 2012 revenue requirement determination. At the PHC, DWR informed the Administrative Law Judge (ALJ), that it was planning to submit a revised 2012 revenue requirement determination to the Commission in October 2011.

In addition to the determination of a 2012 revenue requirement, parties raised other related issues in their PHC statements and at the PHC, including the following:

1. As DWR contracts expire and are novated, DWR's required operating reserves are also reduced. With the novation of these contracts, utilities will experience a "negative revenue requirement", which will require operating reserves to be returned to the investor-owned utilities' (IOU) customers, resulting in a reduction of customer rates. PG&E requests that the method for determining and returning the negative revenue requirement authorized in Decision (D.) 10-12-006 at Ordering Paragraph 1.a., should be reaffirmed for it in the current proceeding. SCE requests that the Commission allow DWR and each of the IOUs to develop a plan for returning those monies for the benefit of customers. In particular, SCE requests that DWR institute a monthly payment to the IOUs (to be refunded to customers) in the amount of the negative revenue requirement.
2. SCE raised the issue of how to allocate \$130 million of the funds paid to DWR by Sempra for the 2010 global settlement, which resolved the 2000-2001 California Energy Crisis claims by the California Parties³ against RBS Sempra Commodities

³ California Attorney General, DWR (through the California Energy Resources Scheduling), the Commission, PG&E, SCE, and San Diego Gas & Electric Company.

(Sempra).⁴ In particular, the Sempra Settlement resolved claims related to the long-term energy delivery contract between Sempra Generation and DWR, which was administered by SCE. SCE proposes that these funds should be allocated to the California Parties using a two-step process. The first step of SCE's proposal would be to determine a rate (dollar amount) per megawatt-hour (MWh) contracted, by taking the total benefit amount (\$130 million) and dividing by the total number of MWhs stipulated throughout the life of the contract. The next step of SCE's proposal would be to determine the allocation of MWhs across the contract delivery period, which is complicated by differing cost allocation methodologies during different timeframes of the contract.⁵

3. PG&E and SCE each raise the issue of how to allocate the discount funds addressed by the Sempra Continental Forge class action settlement (Continental Forge funds) of approximately \$269 million. These funds represent amounts unrelated to the California Energy Crisis Claims concerning the Sempra contract discussed in Item 2 above. PG&E is concerned that DWR has received but not distributed the Continental Forge funds for the period 2006-2011. PG&E proposes that these Continental Forge funds should be distributed to the IOUs using the permanent allocation percentages authorized in D.08-11-056. SCE proposes that the parties meet to discuss how to resolve the allocation of Continental Forge funds.

Pursuant to the *Scoping Memo and Ruling Regarding the Request of the California Department of Water Resources to Allocate its 2012 Revenue Requirement Determination and Related Issues* (Scoping Memo) dated September 7, 2011, the

⁴ For the remainder of this decision, this settlement is referred to as the Sempra settlement.

⁵ There are four time periods associated with the duration of the contract, which started in May 2001. For each time period, SCE believes refunds should be allocated among the three IOUs according to how costs were allocated.

filing of Opening and Reply Briefs regarding allocation of Sempra Settlement funds and Continental Forge funds was set for September 22 and 30, 2011, respectively. Opening and Reply Briefs were timely filed by PG&E, SCE, and SDG&E.

Pursuant to the ALJ's ruling dated October 18, 2011, a workshop was scheduled for November 21, 2011 to begin the process of resolving the three issues listed above, involving current and future IOU negative revenue requirement disposition, and allocation of the Sempra Settlement funds and the Continental Forge funds. A Workshop Report on these issues will be issued shortly after the workshop by the Commission's Energy Division. We anticipate issuing a separate decision on the workshop issues in the near future.

On October 17, 2011, DWR initiated its revision of the 2012 revenue requirement by issuing a "Proposed Revision to the Determination of Revenue Requirements." The deadline for submitting comments with DWR through its administrative process was October 24, 2011. DWR did not receive any comments on its proposed revision.

On October 27, 2011, DWR submitted its revised 2012 revenue requirement determination to the Commission.⁶ This submission consists of the October 27, 2011 "Revision to the Determination of Revenue Requirement for the Period January 1, 2012 Through December 31, 2012," and the October 27, 2011 "Notice of Determination of Revenue Requirements," and DWR's October 27,

⁶ On September 30, 2011, DWR sent a memorandum to Commissioner Michel Peter Florio and the assigned ALJ, correcting some technical errors in the outline of settlements submitted by PG&E in Attachment A to its Opening Brief. These corrections will be addressed when the issues are addressed in a separate decision.

2011 memorandum to President Michael R. Peevey titled “Notification of Revised Revenue Requirement Determination for 2012.” DWR stated in its revised 2012 determination that it may propose further revisions to its 2012 revenue requirement, given the potential for significant or material changes in the California energy market. These changes in the market could include forecasted fuel costs, DWR’s associated obligations and operations, novation of its power contracts, and many other events that may materially affect the realized or projected financial performance of the Power Charge or Bond Charge accounts.

In her ruling dated October 27, 2011, the ALJ announced the procedure for the filing of a protest or objection to the allocation of the revised 2012 revenue requirement determination. Shortly after DWR submitted and served its revised determination, the ALJ reminded the service list by e-mail of this procedure and directed that any protest or objection to the allocation of the revised 2012 revenue requirement determination be filed by noon on October 31, 2011. Since no protests or objections were filed, we conclude there are no protests concerning DWR’s request to allocate its revised determination.

3. Allocation of the Revised 2012 Revenue Requirement Determination

3.1. Background

The Commission’s obligation is to calculate, revise, and impose the Bond Charge and Power Charges on the customers of the three electric utilities. This obligation is contained in the Rate Agreement that was adopted by the Commission in D.02-02-051, and Water Code §§ 80110 and 80134. We perform these calculations using the allocation methodology that we adopted in

D.05-06-060, as modified by D.08-11-056, the results of which appear in Appendix A of this decision.

The revised 2012 revenue requirement determination updated the information contained in the August 4, 2011 submission by incorporating DWR's preliminary actual operating results through September 30, 2011 and projected operating results through the end of 2011. In addition, the revised determination used: 1) Updated actual Electric Power Fund and Bond Account operating results through September 30, 2011; 2) Updated natural gas price forecasts and related assumptions; 3) Updated projections of direct access and bundled load volumes in PG&E's service territory based on updated information provided by PG&E; and 5) Updated debt service cost projections after an August 2011 refunding transaction.

According to DWR, the revised 2012 revenue requirement determination results in a total decrease of \$8 million as compared to the original determination that was submitted on August 4, 2011, which is entirely comprised of a decrease in DWR's Bond Charge Revenue Requirement. As a result of the revisions, the Department plans to return \$94 million more to customers than planned in the August 4, 2011 filing. The increased return of excess amounts is attributable to the net effects of an \$11 million decrease in contract costs due to a decrease in the gas price forecast for the remainder of 2011 and 2012, and an \$83 million increase to the forecasted ending 2011 cash balances from the August 4, 2011 filing forecast, as power costs continue to be below projections.

DWR's revised 2012 revenue requirement determination contains the information needed to recover the revenue requirement from the utilities' customers for calendar year 2012. The revised 2012 revenue requirement determination is based on the assumptions contained in Section D of DWR's

revised determination. DWR considered a number of assumptions, including retail customer load, power supply, natural gas prices, and administrative and general expenses, as well as other considerations affecting DWR's revenues and expenses.

3.2. Bond Charge

DWR requests that the Commission calculate, revise and impose the Bond Charge on the three utilities so as to satisfy the Rate Covenant in Article V of the Rate Agreement between DWR and the Commission. The Bond Charge is designed to recover DWR's costs associated with its bond financing activities from the utilities' customers.

DWR's revised 2012 revenue requirement determination states that its 2011 revenue requirement for bond-related costs is \$852 million. DWR's modeling in support of its revised determination indicates that it will receive the required \$852 million if the Commission sets the Bond Charge at \$0.00513 per kilowatt-hour (kWh). We adopt DWR's requested 2012 Bond Charge, and the Bond Charge rate of \$0.00513 per kWh shall be allocated to the electric customers of PG&E, SCE, and SDG&E.

3.3. Power Charges

DWR requests that the Commission calculate, revise and impose Power Charges on the three utilities. The Power Charges are designed to provide the funds necessary to satisfy DWR's revised 2012 revenue requirement determination for the cost of electric power sold to the utilities' customers.

DWR's revised determination states that its 2012 revenue requirement for the Power Charge is \$71 million.⁷ We adopt DWR's requested 2012 Power Charge, and the Power Charges shall be calculated and allocated to the customers of PG&E and SDG&E as shown in Appendix A of this decision. The Power Charges allocated to the customers of PG&E and SDG&E are \$0.08475 and \$0.04083 per kWh, respectively.

4. Rehearing and Judicial Review

This decision construes, applies, implements, and interprets the provisions of Assembly Bill (AB) 1X (Chapter 4 of the Statutes of 2001-2002 First Extraordinary Session), and relates to the implementation of DWR's revenue requirement and the establishment and implementation of the Bond Charge and Power Charges necessary to recover that revenue requirement. Therefore, pursuant to Public Utilities Code Section 1731(c), any application for rehearing of this decision is due within 10 days after the date of issuance of this decision. The procedures contained in Public Utilities Code Section 1768 apply to the judicial review of a Commission order or decision that interprets, implements, or applies the provisions of AB 1X.

5. Comments on Proposed Decision

The proposed decision of ALJ Seaneen M. Wilson in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed pursuant to Rule 14.3 of the Commission's Rules of

⁷ In 2012, DWR is forecast to collect approximately \$15 million from PG&E's customers, \$31 million from SCE customers, and \$24 million from SDG&E's customers. The \$31 million being collected from SCE customers results from receipt of lagged payments made by SCE customers for SCE assigned contracts that expired during 2011.

Practice and Procedure. Opening comments were filed by _____ on _____. Reply comments were filed by _____ on _____. Those comments have been considered and incorporated into this decision.

6. Assignment of Proceeding

Michel Peter Florio is the assigned Commissioner, and Seaneen M. Wilson is the assigned ALJ in this proceeding.

Findings of Fact

1. DWR submitted its 2012 revenue requirement determination to the Commission on August 4, 2011.
2. A PHC was held on September 1, 2011 to discuss the processing of DWR's 2012 revenue requirement determination.
3. DWR's revised 2012 revenue requirement determination was submitted to the Commission on October 27, 2011.
4. The main difference between the August 4, 2011 determination of \$931 million and the October 27, 2011 revised 2012 revenue requirement determination of \$ 923 million is due to a decrease in the Bond Charge Revenue Requirement of \$8 million.
5. DWR's revised 2012 revenue requirement determination contains the information needed to determine the revenue requirement allocated to utility customers for calendar year 2012.
6. The Bond Charge is designed to recover DWR's costs associated with its bond financing activities from the utilities' customers.
7. DWR's revised 2012 revenue requirement for bond-related costs is \$852 million, which results in a Bond Charge of \$0.00513 per kWh.

8. The Power Charges are designed to provide the funds necessary to satisfy DWR's revised 2012 revenue requirement for the cost of electric power sold to the utilities' customers.

9. DWR's revised 2012 revenue requirement for the Power Charge is approximately \$71 million, which results in the allocated Power Charges to the customers of PG&E, SCE, and SDG&E as shown in Appendix A. In 2012, DWR is forecast to collect approximately \$15 million from PG&E's customers, \$31 million from SCE customers, and \$24 million from SDG&E's customers. The \$31 million being collected from SCE customers results from receipt of lagged payments made by SCE customers for SCE assigned contrasts that expired during 2011.

Conclusions of Law

1. The Commission's obligation is to calculate, revise, and impose the Bond Charge and Power Charges on the customers of the three electric utilities.

2. DWR's requested 2012 Bond Charge should be adopted and allocated to the customers of PG&E, SCE, and SDG&E.

3. DWR's requested 2012 Power Charge should be adopted and allocated to the customers of PG&E and SDG&E.

4. This decision construes, applies, implements, and interprets the provisions of AB1X, and relates to the implementation of DWR's revenue requirement and the establishment and implementation of the Bond Charge and Power Charges necessary to recover that revenue requirement.

5. The following issues should be addressed in a subsequent decision:

- a. As DWR contracts expire and are novated, DWR's required operating reserves are also reduced. With the novation of these contracts, utilities will experience a "negative revenue requirement", which will require operating reserves to be

returned to the IOU customers, resulting in a reduction of customer rates. PG&E requests that the method for determining and returning the negative revenue requirement authorized in D.10-12-006 at Ordering Paragraph 1.a., should be reaffirmed for it in the current proceeding. SCE requests that the Commission allow DWR and each of the IOUs to develop a plan for returning those monies for the benefit of customers. In particular, SCE requests that DWR institute a monthly payment to the IOUs (to be refunded to customers) in the amount of the negative revenue requirement.

b. SCE raised the issue of how to allocate \$130 million of the funds paid to DWR by Sempra for the 2010 global settlement, which resolved the 2000-2001 California Energy Crisis claims by the California Parties against Sempra. In particular, the Sempra Settlement resolved claims related to the long-term energy delivery contract between Sempra Generation and DWR, which was administered by SCE. SCE proposes that these funds should be allocated to the California Parties using a two-step process. The first step of SCE's proposal would be to determine a rate (dollar amount) per MWh contracted, by taking the total benefit amount (\$130 million) and dividing by the total number of MWhs stipulated throughout the life of the contract. The next step of SCE's proposal would be to determine the allocation of MWhs across the contract delivery period, which is complicated by differing cost allocation methodologies during different timeframes of the contract.

c. PG&E and SCE each raise the issue of how to allocate the discount funds addressed by the Sempra Continental Forge class action settlement of approximately \$269 million. These funds represent amounts unrelated to the California Energy Crisis Claims concerning the Sempra contract discussed in Item b above. PG&E is concerned that DWR has received but not distributed the Continental Forge funds for the period 2006-2011. PG&E proposes that these Continental Forge funds should be distributed to the IOUs using the permanent allocation percentages authorized in D.08-11-056. SCE proposes that the

parties meet to discuss how to resolve the allocation of Continental Forge funds.

O R D E R

IT IS ORDERED that:

1. The allocation to Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company, as shown in Appendix A of this decision, of the California Department of Water Resources' 2012 revenue requirement determination as revised on October 27, 2011, is \$923 million.
 - a. As shown in Appendix A of this decision, the 2012 Power Charges allocated to the electric customers of Pacific Gas and Electric Company and San Diego Gas & Electric Company are set at \$0.08475, and \$0.04083 per kilowatt-hour, respectively, and shall go into effect on January 1, 2012.
 - b. The 2012 Bond Charge allocated to the electric customers of Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company is set at \$0.00513 per kilowatt-hour, and shall go into effect on January 1, 2012.
2. Within ten days of today's date, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall file Tier 1 advice letters, as provided for in General Order 96-B, with revised tariffs that reflect the adopted Bond Charge. These new tariff shall be effective beginning January 1, 2012.
3. Within ten days of today's date, Pacific Gas and Electric Company and San Diego Gas & Electric shall file Tier 1 advice letters, as provided for in

General Order 96-B, with revised tariffs that reflect the adopted Power Charges. These new tariffs shall be effective beginning January 1, 2012.

4. Public Utilities Code Section 1731(c) (applications for rehearing are due within 10 days after the date of issuance of the order or decision) and Public Utilities Code Section 1768 (procedures applicable to judicial review) are applicable to this decision.

5. The following issues will be addressed in a subsequent decision:

a. As California Department of Water Resources contracts expire and are novated, California Department of Water Resource's required operating reserves are also reduced. With the novation of these contracts, utilities will experience a "negative revenue requirement", which will require operating reserves to be returned to the investor-owned utilities' customers, resulting in a reduction of customer rates. Pacific Gas and Electric Company requests that the method for determining and returning the negative revenue requirement authorized in Decision 10-12-006 at Ordering Paragraph 1.a., should be reaffirmed for it in the current proceeding. Southern California Edison Company requests that the Commission allow California Department of Water Resources and each of the investor-owned utilities' to develop a plan for returning those monies for the benefit of customers. In particular, Southern California Edison Company requests that California Department of Water Resources institute a monthly payment to the investor-owned utilities' (to be refunded to customers) in the amount of the negative revenue requirement.

b. Southern California Edison Company raised the issue of how to allocate \$130 million of the funds paid to California Department of Water Resources by Sempra for the 2010 global settlement, which resolved the 2000-2001 California Energy Crisis claims by the California Parties against Sempra. In particular, the Sempra Settlement resolved claims related to the long-term energy delivery contract between Sempra Generation and California Department of Water Resources, which was

administered by Southern California Edison Company. Southern California Edison Company proposes that these funds should be allocated to the California Parties using a two-step process. The first step of Southern California Edison Company's proposal would be to determine a rate (dollar amount) per megawatt-hour contracted, by taking the total benefit amount (\$130 million) and dividing by the total number of megawatt-hours stipulated throughout the life of the contract. The next step of Southern California Edison Company's proposal would be to determine the allocation of megawatt-hours across the contract delivery period, which is complicated by differing cost allocation methodologies during different timeframes of the contract.

c. Pacific Gas and Electric Company and Southern California Edison Company each raise the issue of how to allocate the discount funds addressed by the Sempra Continental Forge class action settlement of approximately \$269 million. These funds represent amounts unrelated to the California Energy Crisis Claims concerning the Sempra contract discussed in Item b above. Pacific Gas and Electric Company is concerned that California Department of Water Resources has received but not distributed the Sempra Continental Forge class action settlement funds for the period 2006-2011. Pacific Gas and Electric Company proposes that these Sempra Continental Forge class action settlement funds should be distributed to the investor-owned utilities' using the permanent allocation percentages authorized in Decision 08-11-056. Southern California Edison Company proposes that the parties meet to discuss how to resolve the allocation of Sempra Continental Forge class action settlement funds.

6. Rulemaking 11-03-006 remains open.

This order is effective today.

Dated _____, 2011, at San Francisco, California.