

Decision **PROPOSED DECISION OF ALJ LONG** (Mailed 4/24/2007)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC COMPANY to Recover Incremental Costs Related to the 2005-2006 New Year's Storms and July 2006 Heat Storm Recorded in the Catastrophic Event Memorandum Account (CEMA) Pursuant to Public Utility Code Section 454.9.

Application 06-11-005
(Filed November 13, 2006)

OPINION DENYING APPLICATION IN PART

TABLE OF CONTENTS

Title	Page
OPINION DENYING APPLICATION IN PART	1
1. Summary	2
2. Background: General Ratemaking and CEMA	2
2.1. General Ratemaking	3
2.2. CEMA.....	3
2.2.1. Prohibition Against Retroactive Ratemaking	5
3. Procedural History	7
4. Position of the Parties	8
4.1. PG&E.....	8
4.2. Edison.....	9
4.3. DRA	9
4.4. TURN	10
5. Discussion.....	10
5.1. Ineligibility Under Resolution E-3238 and PG&E’s Tariff	11
5.2. Section 454.9 Did Not Supersede Resolution E3248	11
5.3. Competent State or Federal Authorities	16
5.3.1. Contents of a Competent Declaration.....	18
5.4. Conclusion.....	19
6. Comments on Proposed Decision.....	19
7. Assignment of Proceeding	20
Findings of Fact.....	20
Conclusions of Law	21
ORDER	21

Appendix A - Table 1 - Recent CEMA Proceedings

Appendix B - List of Appearances

OPINION DENYING APPLICATION IN PART

1. Summary

During the hot weather of July 2006, certain equipment of Pacific Gas and Electric Company (PG&E) failed. In part of this application, PG&E characterizes this event as catastrophic and seeks to have its expenses and investments in repairing the damage given the extraordinary ratemaking treatment allowed under certain circumstances through its Catastrophic Event Memorandum Account (CEMA). We find that PG&E has not satisfied the applicable eligibility standards for CEMA ratemaking treatment. We therefore deny the application.

Our denial means only that the expenses and investment do not qualify for CEMA treatment. Repairs for severe weather damage are expected to occur and are handled as a matter of course in general rate cases. This proceeding remains open, however, to consider the other part of the application, namely, PG&E's request to recover any incremental costs for the 2005-2006 new year's storms pursuant to its CEMA tariff.

2. Background: General Ratemaking and CEMA

To help understand this application, we briefly discuss and contrast the two types of ratemaking that provide necessary background. Historically, the Commission sets rates on the basis of test year forecasts; we call this "general ratemaking" and we discuss it first.

We then discuss CEMA, which responds to some of the limited circumstances where the Commission calculates rates not on a forecast basis as in general ratemaking, but on the basis of recorded costs. We explain CEMA's rationale and trace its exposition in Commission resolution, PG&E's tariff and enactment by the California Legislature.

Finally, we discuss the prohibition against retroactive ratemaking, which sharply limits the circumstances in which the Commission may use recorded costs to set rates.

2.1. General Ratemaking

Under general ratemaking principles, the Commission allows a utility such as PG&E to file a general rate case application to recover in base rates a forecast of its operating costs to provide customers safe and reliable service.¹ The Commission adopts a test year forecast based on the best information about expected future events and historical trends. By using a prospective forecast methodology PG&E has an opportunity to recover its costs and earn a return (profit) on its investment in plant in service. PG&E is expected to exercise discretion to expertly manage its operations during the test year and adapt as necessary to differences between the forecast and actual events. Included in the test year forecast are allowances for damages to plant, accidents, and general maintenance and repairs. Every subsequent general rate case allows PG&E to reflect its prior actual investment in plant as a part of the forecast for the next test year. Thus when PG&E spends more money than forecast for capital projects during the prior test-period, it adjusts the new test year forecast to include the actual investment in utility plant.

2.2. CEMA

In the aftermath of the October 17, 1989 Loma Prieta earthquake, the Commission adopted Resolution E-3238, dated July 24, 1991, which ordered that any utility, as defined by Pub. Util Code § 216, was authorized to establish a

“Catastrophic Event Memorandum Account.” (Ex. 4.)² The resolution described the conditions for invoking CEMA and its general operation. In compliance, PG&E filed advice letter 1367-E (for the electric department) on August 7, 1991. PG&E’s initial CEMA tariff was effective on August 7, 1991.³

Resolution E-3238 described as the purpose of CEMA:

... to record costs of: (a) restoring utility service to its customers; (b) repairing, replacing or restoring damaged utility facilities; and (c) complying with government agency orders resulting from declared disasters. (*Mimeo.*, p. 1.)

The resolution discussed the need for an established account which would ensure there was no issue of retroactive ratemaking – that an in-place mechanism would provide a legitimate vehicle to recover eligible costs.

The resolution specifically discussed eligibility:

Because the intent of such [CEMA] is to capture for consideration for later recovery only those costs associated with truly unusual, catastrophic events such as the Loma Prieta earthquake, their use will be restricted to events declared disasters by competent state or federal authorities. Other events not so officially designated are outside the scope and intent of this authority and will not be considered for recovery under this mechanism. (Resolution E-3238, *mimeo.*, p. 2.)

PG&E’s current tariff similarly states:

The purpose of the CEMA is to recover the costs associated with the restoration of service and PG&E facilities affected by a

¹ The Commission decided PG&E’s most recent general rate case in Decision 07-03-044 dated March 15, 2007.

² A catastrophe is “an event causing great damage or suffering.” (Compact Oxford English Dictionary.)

³ PG&E’s current CEMA tariff is included in Ex. PG&E-2, pp. 1-1 and 1-2.

catastrophic event declared a disaster or state of emergency by competent federal or state authorities. (Ex. PG&E-2, p. 1-1.)

In 1994 the California Legislature enacted Senate Bill (SB) 1456 (1994 Legislative Session (Chapter 1156)), which added § 454.9 to the Pub. Util. Code:⁴

(a) The commission shall authorize public utilities to establish catastrophic event memorandum accounts and to record in those accounts the costs of the following: (1) Restoring utility services to customers. (2) Repairing, replacing, or restoring damaged utility facilities. (3) Complying with governmental agency orders in connection with events declared disasters by competent state or federal authorities.

(b) The costs, including capital costs, recorded in the accounts set forth in subdivision (a) shall be recoverable in rates following a request by the affected utility, a commission finding of their reasonableness, and approval by the commission. The commission shall hold expedited proceedings in response to utility applications to recover costs associated with catastrophic events.

2.2.1. Prohibition Against Retroactive Ratemaking

There was a specific need for the Commission to create a CEMA mechanism to avoid retroactive ratemaking issues.

It is a well established tenet of the Commission that ratemaking is done on a prospective basis. The Commission's practice is not to authorize increased utility rates to account for previously incurred expenses, unless, before the utility incurs those expenses, the Commission has authorized the utility to book those expenses into a memorandum or balancing account for possible future recovery in rates. This practice is consistent with the rule against retroactive ratemaking. (43 CPUC2d 596, 600.)

⁴ All statutory references are to the Pub. Util. Code, unless otherwise stated.

The courts have recognized this problem and found:

If the prohibition against retroactive ratemaking is to remain a useful principle of regulatory law and not become a device to fetter the commission in the exercise of its lawful discretion, the rule must be properly understood. In [PacTel⁵] . . . we construed Public Utilities Code section 728 to vest the commission with power to fix rates prospectively only. But we did not require that each and every act of the commission operate solely in future; our decision was limited to the act of promulgating “general rates.” (Southern California Edison Co. v. Public Utility Commission, 20 Cal. 3d 813 (1978) at 816.)

Under § 728, the Commission is allowed to create various mechanisms that ensure that it meets its obligation to approve costs for recovery as well as to anticipate the unknown.⁶ Essentially, no utility can recover any cost without Commission approval. This approval takes several forms, for example: adopting forecast costs in general rate cases; adopting a balancing account to allow recovery of actual reasonable costs that cannot be accurately forecast; or in the case of catastrophic events, when we cannot predict when, or the nature of, an event which may happen, establishing a trigger mechanism and a process to recover reasonable costs.

⁵ *Pacific Telephone & Telegraph Co. v. Public Utilities Commission*, 62 Cal. 2d 634.

⁶ “Whenever the commission, after a hearing, finds that the rates or classifications, demanded, observed, charged, or collected by any public utility for or in connection with any service, product, or commodity, or the rules, practices, or contracts affecting such rates or classifications are insufficient, unlawful, unjust, unreasonable, discriminatory, or preferential, the commission shall determine and fix, by order, the just, reasonable, or sufficient rates, classifications, rules, practices, or contracts to be thereafter observed and in force.” Pub. Util. Code § 728.

3. Procedural History

On August 21, 2006, PG&E notified the Commission's Executive Director that it was implementing its CEMA in response to the hot weather experienced during July 2006. (Ex. PG&E-2, pp. 1-3 - 1-5.) On September 12, 2006, the Executive Director replied to PG&E that "PG&E's current tariff does not authorize recovery of such costs unless there has been a formal disaster declaration by the Governor or a competent federal authority." (Ex. PG&E-5, p. 1.)

PG&E subsequently filed this application on November 13, 2006. At the January 4, 2007 prehearing conference, the Administrative Law Judge (ALJ) indicated that he found the application was unclear on the basis for PG&E's request to recover costs for the hot weather in July 2006 as a catastrophic event, pursuant to PG&E's tariff (Ex. PG&E-2, pp. 1-2 and 1-2) and Resolution E-3238 (Ex. 4). PG&E provided an explanation of its justification.⁷ After consultation with the assigned Commissioner, an ALJ ruling was issued on January 17, 2007 finding that based upon the preliminary review of the application, supporting exhibits, and the prehearing conference statements and transcript, PG&E had not proven its case and did not appear likely to demonstrate that the hot weather in July 2006 was an eligible catastrophic event.⁸ Nevertheless, the ruling provided for further round of argument. Pursuant to the ruling, PG&E filed further argument on January 31, 2007 and on February 9, 2007 the Division of Ratepayer

⁷ TR. pp. 8 - 11.

⁸ See Cal. Evid. Code § 500: Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting.

Advocates (DRA), The Utility Reform Network (TURN), and Southern California Edison Company (Edison) filed replies.⁹

4. Position of the Parties

4.1. PG&E

PG&E seeks to recover \$44.58 million in electric distribution and generation revenue requirements for the period 2005 - 2010 due to the \$61.96 million in costs it claims to have incurred or expects to incur to respond to these two events (\$22.86 million for the new year's storms and \$39.1 million for the July 2006 heat wave).

PG&E's January 31, 2007 brief asserts why the hot weather of July 2006 is a CEMA-eligible event:

1. By the plain language of the statute, Public Utilities Code § 454.9 already permits the Commission to authorize recovery of the reasonable costs of restoring service and repairing damage to utility facilities in the wake of any catastrophic event.
2. The July 2006 "heat storm" also meets the requirements of Resolution E-3238 in that it was the subject of disaster declarations by competent state and federal authorities.

⁹ Notice of the application appeared in the Commission's Daily Calendar on November 16, 2006. The Commission preliminarily categorized it as ratesetting in Resolution ALJ 176-3183, dated November 30, 2006 and also determined that hearings were necessary. DRA and TURN filed timely protests on December 18, 2006. PG&E replied timely on January 2, 2007. By a ruling dated December 1, 2006, PG&E was directed to serve copies of any and all documentation that support the assertion of government-declared disasters relating to the 2005-2006 New Year's Storms and the July 2006 Heat Storm. In response to the ALJ's telephone request, PG&E served the relevant volume of workpapers on November 30, 2006 before service of the ruling. (Ex. PG&E-2.)

3. PG&E's costs meet the legal standard for recovery and should be recoverable on a public policy basis, as both PG&E and the Commission want PG&E to be able to provide the best possible service to customers. The costs are eligible for CEMA recovery.

4.2. Edison

Edison supports PG&E's position. Edison argues that the hot weather of July 2006 was a statewide problem, and it cites operational impacts on its own system as well as the statewide electric transmission system operated by the California Independent Operating System (CAISO). (Edison Reply, pp. 3 - 4.) Edison notes that the CAISO declared several Stage 1 Emergency conditions and one Stage 2 condition, both of which have prescribed impacts on the transmission system and customers.

4.3. DRA

DRA opposes applying CEMA to PG&E's July 2006 weather-related problems. It made this point in its reply:

If there were no specific criteria for the type of catastrophic events that implicate CEMA-eligibility, such as disaster declarations by competent state or federal authorities, then PG&E could file for recovery of costs between rate cases any time it merely alleges that a catastrophic event occurred. Thus, after a Commission decision approving a rate case settlement or a ruling in favor of DRA or other consumer advocates on various issues in a litigated decision, PG&E could file to recover costs it simply had not forecasted, attempt to double recover costs, or not spend ratepayer-funded amounts on certain items, and then claim these items in a CEMA account for repairing, replacing or restoring damaged utility facilities. Consequently, absent this specific criteria for a catastrophic event, PG&E could nullify the benefit to PG&E's ratepayers of a compromise, which PG&E agreed to in a rate case settlement, or the favorable rulings for ratepayers in a litigated rate case. Conversely, there

is no remedy for ratepayers between rate cases for decreasing PG&E's rates if it forecasted higher costs than what it subsequently incurred. (DRA Reply, p. 13.)

4.4. TURN

TURN opposes PG&E's application of CEMA to the events of July 2006. First, TURN argues the Commission has always interpreted § 454.9 to require a declaration by some competent authority. TURN contends § 454.9 did not remove or override the declaration requirement.

TURN makes this argument about the purpose of CEMA:

It is not the purpose of CEMA to allow cost recovery for damaged properties. For example, if a fire destroyed only PG&E's building and damaged very expensive computer equipment, such damage would not at all qualify for CEMA cost recovery. Just because the heat wave resulted in local emergencies does not, likewise, qualify such costs for CEMA purposes. PG&E, as always, can repair and replace transformers and add those to rate base; it just cannot change its approved revenue requirement until after the next rate case review of the reasonableness of its capital additions. (TURN Reply, p. 12.)

TURN also argues (Reply, p. 10.) that PG&E did not have Commission approval of the pending Advice Letter 2771-G/2918-E and therefore it would constitute retroactive ratemaking to allow PG&E to invoke CEMA without a competent declaration of an emergency.

5. Discussion

PG&E must prove that the costs incurred in responding to the hot weather in July 2006 are eligible for CEMA recovery. The record for this application is

composed of all filed documents and pleading and the exhibits identified at the prehearing conference.¹⁰

5.1. Ineligibility Under Resolution E-3238 and PG&E's Tariff

Our regulatory threshold for CEMA has been that in order to depart from general ratemaking, a disaster causing great and pervasive damage must occur, i.e., many people must be severely affected. Emergency declarations by the Governor or the President are typically issued in these circumstances.

In this instance, neither the Governor nor the President declared a disaster or state of emergency for July 2006. By contrast, for the other event included in this proceeding, the 2005-2006 new year's storms, there were three disaster declarations by the governor. (Ex. PG&E-2, pp. 1-6 - 1-8.) Therefore, the hot weather of July 2006 does not meet a threshold requirement under Resolution E-3238, and the PG&E current tariff, for CEMA treatment and should be denied.

5.2. Section 454.9 Did Not Supersede Resolution E3248

The legislative intent of SB 1456 was primarily to address the concern expressed by regulated water utilities that the Commission's process was untimely: The California State Assembly's floor bill analysis for SB 1456, dated August 13, 1994, stated:

¹⁰ On January 4, 2007 at the prehearing conference, the assigned ALJ identified five documents as exhibits: Ex. PG&E-1, Prepared Testimony; Ex. PG&E-2, Workpapers Supporting Chapter 1; Ex. PG&E-3, Workpapers Supporting Chapters 2 through 6; Ex. 4, Resolution E-3238; and, Ex. 5, September 12, 2006 letter, Commission Executive Director to PG&E. PG&E's CEMA Tariff is included in Ex. PG&E-2 at pp. 1-2 and 1-2. Resolution E-3238 was marked as Ex. 4.

This bill seeks to make the CPUC procedures for rate recovery of expenses incurred by water utilities during disasters more predictable and certain. Sponsored by the California Water Association, this bill responds to uncertainty and inconsistency in the CPUC decisions about cost recovery expenses incurred during and after the Loma Prieta and Northridge earthquakes. Since the bill's initial introduction, the CPUC has adopted regulations which are not in conflict with the bill's current provisions. (<http://www.leginfo.ca.gov>)

The identical language above was in the Senate's analysis dated August 16, 1994. The Senate analysis further noted:

Following the 1989 Loma Prieta earthquake, the PUC issued a resolution authorizing public utilities to establish special accounts to record the costs of restoring utility service, repairing or replacing damaged facilities, and complying with government agency emergency response orders. Almost all utilities adversely affected by the 1994 Northridge earthquake will be establishing these special accounts. A number of utilities have indicated that the PUC's special disaster account system may not be sufficiently flexible to address utility emergency response concerns, and does not ensure expeditious approval action on the part of the PUC. (Ibid.)

Indeed, all the bill analyses emphasize the issue of speedy review. The Senate's analysis differs slightly on speedy review: The Assembly analysis said: "(SB 1456) Provides for immediate recovery of those utility costs upon a request and a finding of reasonableness..." The Senate's analysis stated: "The bill would allow utilities, on an expedited basis, to recover catastrophic event costs, including capital costs, in rates upon a commission finding of their reasonableness, and approval by the PUC".

The Legislature was aware of the Commission's existing ratemaking mechanism, Resolution E-3248 was effective at the time the Legislature enacted

SB 1456 and added § 454.9 to the Pub. Util. Code. If the Legislature had intended to specifically prohibit or modify the Commission's threshold requirement of a disaster declaration by a competent state or federal authority, it could have done so in the text of the bill and could have disclosed the intention in the various analyses. Instead, the analyses indicate that the Commission had already adopted regulations which were not in conflict with the bill's provisions, i.e., there was nothing in the current provisions (Resolution E-3248) to eliminate or modify.

The Commission first adopted a CEMA procedure for water utilities in Resolution W-3474 dated November 22, 1989 after the 1989 Loma Prieta earthquake. This resolution predates Resolution E-3248. Then, in 1992 the Legislature enacted § 325 (Stats 1992 ch 752 § 1 (AB 2919)) directing the Commission to "...review existing rules, regulations, and orders and develop and adopt new rules, regulations, or orders, as may be appropriate or necessary to establish expedited procedures to be followed in the event that a determination is made by the President of the United States that an emergency exists ..." Section 325 also directed the Commission to consider expeditious treatment. As a result, the Commission adopted D. 93-11-071 (52 CPUC 2d 223) finding: "[b]ased upon the comments received, we determine that existing authority, regulations, and procedures already permit and encourage the Commission and affected utilities to respond in the most expeditious fashion to emergency situations, whether or not declared by the President of the United States. We therefore do not modify our existing regulations or procedures." And finally, in 1994 while SB 1456 was pending, the Commission adopted

D.94-06-033¹¹ that found the water utilities were protected from financial risk as a result of the CEMA tariff (Finding 25, (55 CPUC 2d 158,193)). Thus, by 1994 the legislature was assured that the water utilities were protected from financial risk by the Commission's existing practices which were not in conflict with the SB 1456 provisions, except for the need for expeditious treatment, which was included in § 454.9(b), discussed below.

The most important plain language impact of the enactment of SB 1456 and the addition of § 454.9 to the Code is found in this provision of § 454.9(b): "The commission shall hold expedited proceedings in response to utility applications to recover costs associated with catastrophic events."

PG&E argues that the "plain language" of § 454.9, enacted after the Commission adopted Resolution E-3248, supersedes the resolution and its provisions: specifically, according to PG&E, § 454.9 eliminates the requirement of a disaster declaration by a competent state or federal authority. (PG&E Brief pp. 5-6.) But the statute is silent on this point. We find the statute did not mandate that we eliminate anything in the Commission's existing CEMA process.

We note PG&E did not seek authority to modify its CEMA tariff upon the 1994 enactment of SB 1456. PG&E only proposed to change its tariff when it filed Advice Letter 2771-G/2918-E on October 18, 2006. This was 12 years after the enactment of SB 1456, one month before it filed this application, and three months after the hot weather of July 2006. Because we reject PG&E's argument

¹¹ Investigation on the Commission's own motion into the financial and operational risks of Commission regulated water utilities, and whether current ratemaking procedures and policies require revisions.

that SB 1456 superseded Resolution E-3248 to eliminate the disaster declaration requirement, we will direct the Commission's Energy Division to reject Advice Letter 2771-G/2918-E. As discussed herein, we find no merit to eliminating this trigger mechanism for CEMA. A minimum requirement of a disaster declaration by a competent state or federal authority (the Governor or President) ensures that independent discretionary judgment finds there was a disaster which caused great and pervasive damage.

In the years following the adoption of Resolution E-3248, the Commission has rendered many decisions pursuant to the CEMA tariffs of several jurisdictional utilities, including several by PG&E. Catastrophic event costs are recoverable only after the Commission makes a finding of their reasonableness and approves them following an expedited proceeding in response to the utility's filed application (Code § 454.9(b)).

All of the approved CEMA applications have two common features: a disaster declaration by a competent state or federal authority; and citations to both Resolution E-3238 and § 454.9 for authority to recover reasonable costs on an expedited basis. (See a partial list of CEMA applications in Appendix A.) PG&E, for example, recovered CEMA costs for seven separate declared disasters in D.00-04-050, all of which had a declared disaster, for events between 1991 and 1998.¹² Thus, while several occurred after the enactment of § 454.9, PG&E relied on both its original tariff and the declarations. Two other examples include the responses by San Diego Gas & Electric Company (SDG&E) and Edison to

¹² PG&E's qualified CEMA events included: (1) the February 1998 Storms, (2) the 1997 New Year's Flood, (3) the March 1995 Storms, (4) January 1995 Storms, (5) January 17,

Footnote continued on next page

declared disasters where the Governor's disaster declaration requested that the Commission direct the utilities to remove dead, dying, and diseased trees due to a catastrophic infestation of bark beetles and thereby invoke § 454.9(a)(3), to comply with a governmental order. In these cases the Commission directed the utilities to respond and allowed them to invoke the CEMA. (D.06-10-032 and D.06-10-038.)

5.3. Competent State or Federal Authorities

As we noted earlier, neither the Governor nor the President declared a disaster or state of emergency for July 2006. A review of the Commission's decisions¹³ reveals that the Commission has relied on only two sources for a declaration of a state of emergency by a competent state or federal authority: the Governor of California and the President of the United States. PG&E contends (although it does not believe a declaration is necessary to invoke CEMA), that officials at the US Department of Agriculture (USDA) and the various California Counties constitute competent state or federal authorities.¹⁴

For July 2006, PG&E maintains that we should accept the USDA September 7, 2006 disaster declaration (Ex. PG&E-2, p. 1-14), and the eight county declarations included in Ex. PG&E-2. All of these declarations deal solely with the agricultural impacts of the heat wave. For example, Merced County waived various rules to expedite removal and burial of animal carcasses. (Ex. PG&E-2 pp. 1-54 & 1-55.) The USDA declaration states, "This designation

1994 Northridge Earthquake, (6) the 1992 Calaveras and Shasta County Fires, and (7) the October 20, 1991 Oakland/Berkeley Hills Fire. (5CPUC 3d, 663, 665-667.)

¹³ See as specific examples the decisions cited Appendix A.

¹⁴ PG&E Brief, p. 7.

makes farm operators in both primary and contiguous counties eligible to be considered for low-interest emergency loans. ..." (Ex. PG&E-2 p. 1-15.)

Our regulatory threshold for CEMA has been that in order to depart from general ratemaking there must be a disaster causing great and pervasive damage. Here, we need to decide whether the USDA or county governments constitute a competent state or federal authority to declare a state of emergency in response to a disaster causing such damage.

Governor Schwarzenegger sought the USDA relief by letter dated August 1, 2006. (Ex. PG&E-2 p. 1-12.) He cited the "record setting heat wave that caused severe damage and tragedy to our state's agricultural industry." The governor did not issue a declaration of emergency that could have included the impacts to the PG&E distribution system – either directly identified or generally included as catastrophic damage to the state.

The USDA has no specific role, knowledge, or responsibility regarding California's energy infrastructure. Still less does the USDA have general authority to take action regarding California's public health, safety, or welfare. Thus, we cannot accept a USDA declaration as a reasonable trigger to invoke CEMA because the assessment of a true energy infrastructure catastrophe is not within its expertise or authority. The USDA has its own mechanisms to provide narrowly focused assistance to farmers and other agricultural enterprises.

The counties exercised discretionary judgment within their jurisdictions, for example, to temporarily exempt livestock producers from required carcass disposal practices. We cannot accept county declarations as a reasonable trigger to invoke CEMA because the assessment of a true energy infrastructure catastrophe is not within their authority.

When the Commission has accepted declarations of a disaster of the Governor or President, it has done so only after considering whether that general disaster (i.e., earthquakes, floods or storms, etc.) also damaged utility property. We do not consider every earthquake, storm, or flood to be a catastrophic event.

We therefore reject PG&E's argument that for July 2006 there was a declaration by a competent state or federal authority, the USDA and/or the affected counties, to invoke CEMA as prescribed in PG&E's tariff and Resolution E-3248.

5.3.1. Contents of a Competent Declaration

PG&E also contends that prior declarations accepted by the Commission to invoke CEMA did not specifically reference damage to utility property. (PG&E Brief, p. 7.) We agree that there were instances when these prior declarations did not cite utility property damage. The declaration regarding the bark beetles infestation referenced the need to remove trees from utility rights-of-way but did not identify immediate catastrophic damage to utility property (see, e.g., D.06-10-038). In all other instances of CEMA recovery, the Commission determined on the factual evidence presented in the various CEMA applications whether or not the utility suffered damage because of a wild fire or a flood, etc. (e.g., D.05-08-039 and D.06-01-036.) What these declarations have in common is that they have demonstrated the occurrence of a catastrophe affecting many people, many industries, and in some ways whole regions. The Commission then exercised its discretion, interpreted the record, and determined that in certain instances some jurisdictional utilities suffered damage as a part of the broader catastrophe.

PG&E's final issue involves the distinction between "primary" and "contiguous" counties. The distinction is moot because we do not find the USDA or county declarations to be applicable to CEMA.

5.4. Conclusion

PG&E has not met the eligibility tests to recover any incremental costs for the hot weather impacts it experienced in July 2006. First and foremost, no competent state or federal authority, which the Commission has previously found to only include the Governor of California and the President of the United States, issued an emergency declaration. PG&E therefore fails to satisfy the threshold eligibility requirements of its own tariff (Ex. PG&E-2, pp. 1-1 - 1-2.) and the Commission's Resolution E-3238 (Ex. 4.). PG&E also did not persuade us that the declarations of the USDA or several counties have adequate jurisdiction to be considered as competent state or federal authority for purposes of CEMA. Finally, PG&E did not persuade us that § 454.9 superseded the procedures and requirements adopted in Resolution E-3238. Therefore we deny the application to recover under the CEMA procedures the costs associated with the hot weather in July 2006. This proceeding remains open to consider PG&E's request to recover any incremental costs for the 2005-2006 new year's storms pursuant to its CEMA tariff.

6. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with § 311 of the Pub. Util. Code and Rule 14.2(a) of the Commission's Rules of Practice and Procedure. Comments were filed on _____ and reply comments were filed on _____ by _____.

7. Assignment of Proceeding

John A. Bohn is the assigned Commissioner and Douglas M. Long is the assigned ALJ in this proceeding.

Findings of Fact

1. The Commission adopted Resolution E-3238 following the Loma Prieta earthquake to provide jurisdictional utilities a ratemaking mechanism to recover the reasonable costs incurred to (a) restore utility service to customers; (b) repair, replace or restore damaged utility facilities; and (c) comply with government agency orders resulting from declared disasters. The jurisdictional utilities were authorized to include a CEMA in their tariffs.
2. The California Legislature enacted SB 1456 (1994 Legislative Session (Chapter 1156)) which added § 454.9 to the Pub. Util. Code. Section 454.9(b) added the requirement for the Commission to hold expedited proceedings for cost recovery.
3. The Commission's practice is to only recognize declarations of a state of emergency or disaster by either the Governor of California or the President of the United States, as competent state or federal authority, as a necessary condition to invoke CEMA.
4. PG&E's currently effective CEMA tariff includes the requirement that there be a declaration of emergency by a competent state or federal authority.
5. There were no relevant disaster declarations by either the Governor of California or the President of the United States.
6. PG&E's proposed Advice Letter 2771-G/2918-E would eliminate the need for a disaster declaration by a competent state or federal authority.
7. A disaster declaration by a competent state or federal authority denotes that an event caused great and pervasive damage.

Conclusions of Law

1. The Commission has broad discretion to set the terms and conditions included in PG&E's tariffs, including the CEMA.
2. The Commission's practice and requirements for CEMA, as adopted in Resolution E-3248, conform to the requirements of § 454.9.
3. The Commission has the discretion to adopt and require a disaster declaration by a competent state or federal authority as a trigger mechanism to invoke the CEMA.
4. The part of this application that pertains to recovery of costs under CEMA related to the hot weather of July 2006 should be denied as PG&E has failed to satisfy the standards for eligibility set forth in the PG&E tariff and resolution E-3248.
5. This order should be effective as soon as possible.

O R D E R**IT IS ORDERED** that:

1. Pacific Gas and Electric Company's (PG&E) request to recover incremental costs incurred due to the alleged "July 2006 heat storm" is dismissed.
2. This proceeding remains open to consider PG&E's request to recover any incremental costs for the "2005-2006 new year's storms" pursuant to its Catastrophic Event Memorandum Account tariff.
3. PG&E's proposed tariff modification in Advice Letter 277-G/2918-E are denied. The Energy Division shall reject PG&E's proposed Advice Letter 2771-G/2918-E.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A

Table 1 Recent CEMA Proceedings		
Decision	Application	Proceeding
D.06-10-038	A.05-12-018	Southern California Edison Company, for authorization to recover costs incurred in 2004 and recorded in the Bark Beetle Catastrophic Event Memorandum Account.
D.06-10-034	A.06-06-020	Southern California Edison Company, for Authorization to Recover Costs Incurred in 2005 and recorded in the Rainstorm Catastrophic Event Memorandum Account.
D.06-10-032	A.06-07-012	San Diego Gas & Electric Company for Recovery of Costs related to the California Bark Beetle Infestation Under the Catastrophic Event Memorandum Account (CEMA).
D.06-01-036	A.05-09-001	Pacific Gas and Electric Company, to recover additional costs related to the 1997 New Year's Flood and 1998 February Storms recorded in the Catastrophic Event Memorandum Account (CEMA) pursuant to Ordering Paragraph 1 of Decision 04-09-020.
D.05-08-039	A.04-12-003	Southern California Edison Company, for authorization to Recover Costs Recorded in the Catastrophic Events Memorandum Account. (2003 Firestorms.)
D.05-08-037	A.04-06-035	San Diego Gas & Electric Company, under the Catastrophic Event Memorandum Account (CEMA) for recovery of costs related to the 2003 Southern California Wildfires.
D.00-04-050	A.99-01-011	Pacific Gas and Electric Company, to recover costs recorded in the Catastrophic Event Memorandum Account effective January 1, 2000.

(END OF APPENDIX A)

APPENDIX B
LIST OF APPEARANCES
A0611005 LIST Last Update on 23-FEB-2007 by: LIL

***** APPEARANCES *****

Evelyn Kahl, Attorney At Law
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, SUITE 2200
SAN FRANCISCO CA 94104
(415) 421-4143
ek@a-klaw.com
For: Energy Producers & Users Coalition

Seema Srinivasan, Attorney At Law
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, SUITE 2200
SAN FRANCISCO CA 94104
(415) 421-4143
sls@a-klaw.com
For: Cogeneration Association of California

Bill Marcus
JBS ENERGY
311 D STREET, STE. A
WEST SACRAMENTO CA 95605
(916) 372-0534
bill@jbsenergy.com
For: TURN

Ed Moldavsky
Legal Division
505 VAN NESS AVE, RM. 5130
San Francisco CA 94102 3298
(415) 703-5134
edm@cpuc.ca.gov
For: DRA

Robert B. McLennan, Attorney At Law
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET
SAN FRANCISCO CA 94105
(415) 973-2069
rbm4@pge.com
For: Pacific Gas and Electric

Maricruz Prado
DANIEL MARSH
Attorney At Law
SOUTHERN CALIFORNIA EDISON CO.
2244 WALNUT GROVE AVE.
ROSEMEAD CA 91770
(626) 302-6943
maricruz.prado@sce.com
For: Southern California Edison

Marcel Hawiger, Attorney At Law
THE UTILITY REFORM NETWORK
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO CA 94102
(415) 929-8876
marcel@turn.org
For: The Utility Reform Network

Nina Suetake, Attorney At Law
THE UTILITY REFORM NETWORK
711 VAN NESS AVE., STE 350
SAN FRANCISCO CA 94102
(415) 929-8876
nsuetake@turn.org
For: TURN

***** STATE EMPLOYEE *****

Donald J. Lafrenz
Energy Division
505 VAN NESS AVE, AREA 4-A
San Francisco CA 94102 3298
(415) 703-1063
dlf@cpuc.ca.gov
For: Energy Division

Douglas M. Long
Administrative Law Judge Division
505 VAN NESS AVE, RM. 5023
San Francisco CA 94102 3298
(415) 703-3200
dug@cpuc.ca.gov

Robert M. Pocta
Division of Ratepayer Advocates
505 VAN NESS AVE, RM. 4205
San Francisco CA 94102 3298
(415) 703-2871
rmp@cpuc.ca.gov
For: DRA

Anne W. Premo
Energy Division
770 L STREET, SUITE 1050
Sacramento CA 95814
(916) 324-8683
awp@cpuc.ca.gov
For: Energy Division

Mark Waterworth
Division of Ratepayer Advocates
770 L STREET, SUITE 1050
Sacramento CA 95814
(415) 703-2385
lmw@cpuc.ca.gov
For: DRA

James R. Wuehler
Division of Ratepayer Advocates
505 VAN NESS AVE, RM. 4208
San Francisco CA 94102 3298
(415) 703-1667
jr@cpuc.ca.gov
For: DRA

***** INFORMATION ONLY *****

Karen Terranova
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, STE 2200
SAN FRANCISCO CA 94104
(415) 421-4143
filings@a-klaw.com

Nora Sheriff, Attorney At Law
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, SUITE 2200
SAN FRANCISCO CA 94104
(415) 421-4143
nes@a-klaw.com

Office Of Buildings & Grounds
DEPARTMENT OF GENERAL SERVICES
505 VAN NESS AVENUE, ROOM 2012
SAN FRANCISCO CA 94102

Dionne Adams
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST., MAIL CODE B10A
SAN FRANCISCO CA 94105
(415) 973-6157
DNG6@pge.com

Frances Yee
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B10A
SAN FRANCISCO CA 94105
(415) 973-6057
FSC2@pge.com

Larry Nixon
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B10A
SAN FRANCISCO CA 94105
(415) 973-5450
lrx3@pge.com

James Ross
RCS, INC.
500 CHESTERFIELD CENTER, SUITE 320
CHESTERFIELD MO 63017
(636) 530-9544
jimross@r-c-s-inc.com

Gina M. Dixon
SAN DIEGO GAS & ELECTRIC COMPANY
8330 CENTURY PARK COURT, MS CP32D
SAN DIEGO CA 92123
(858) 654-1782
gdixon@semprautilities.com

Bruce Foster, Vice President
SOUTHERN CALIFORNIA EDISON COMPANY
601 VAN NESS AVENUE, STE. 2040
SAN FRANCISCO CA 94102
(415) 775-1856
bruce.foster@sce.com

Case Administration
SOUTHERN CALIFORNIA EDISON COMPANY
LAW DEPARTMENT
2244 WALNUT GROVE AVENUE
ROSEMead CA 91770
(626) 302-4875
case.admin@sce.com

(END OF APPENDIX B)

