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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

I.D. # 9047

ENERGY DIVISION RESOLUTION E-4301

DECEMBER 17, 2009

R E S O L U T I O N

Resolution E-4301. San Joaquin Local Agency Formation Commission (LAFCo) request for a California Public Utilities Commission (CPUC) opinion on the effect of South San Joaquin Irrigation District's (SSJID's) proposal to provide retail electric service within Pacific Gas and Electric Company's (PG&E's) service territory.

PROPOSED OUTCOME: This Resolution determines that SSJID's proposed service could raise rates for PG&E's remaining ratepayers but the magnitude of the estimated increase is small relative to PG&E's current system average rates, and thus does not substantially impair PG&E's ability to provide adequate service at reasonable rates.

ESTIMATED COST: PG&E estimates a 30-year net present value loss of $303.9 million, and resultant higher rates of $0.00040 per kilowatt-hour or 0.25% of the system average rate.

By San Joaquin LAFCo letter dated September 18, 2009.

SUMMARY

SSJID's proposal to provide retail electrical service to existing PG&E customers could raise rates for PG&E's remaining customers; the magnitude of the estimated increase, however, is small relative to PG&E's current system average rates, and thus does not substantially impair PG&E's ability to provide adequate service at reasonable rates within the remainder of its service territory.

- Some customers in SSJID's proposed service area would be exempt from payment of certain non-bypassable charges (NBCs) which would require remaining PG&E customers to cover these costs.

- SSJID's severance proposal potentially could idle existing PG&E distribution and transmission (T&D) facilities requiring PG&E customers to cover the costs, however, the amount of the impact depends on SSJID's precise plans which are unknown at this time.
- PG&E's remaining ratepayers could be affected by lost T&D revenue that PG&E would have collected from customers in the proposed SSJID service area. PG&E could avoid some T&D costs should the SSJID's proposal move forward, however, the lost revenue is expected to exceed the avoided costs, so that the contribution to margin would decrease.
- Relying on PG&E's estimates, the total overall rate impact of SSJID's proposed service on PG&E's remaining ratepayers is an increase of $0.00040 per kilowatt-hour (kWh), which is approximately ¼ of a percent of PG&E's current system average rate.

BACKGROUND

SSJID proposes to expand the scope of the services it offers to provide retail electrical service to approximately 38,000 existing PG&E customers in 2011. SSJID previously sought approval for a similar plan in June 2005.

SSJID currently provides irrigation water service and wholesale domestic water service to customers within southern San Joaquin County, and also provides wholesale electric generation and electricity marketing services through its ownership interest in three hydroelectric generating facilities. SSJID proposes to acquire existing electric distribution facilities owned and operated by PG&E, and construct certain new facilities to physically and operationally separate facilities, in order to begin providing retail electric service to approximately 38,000 customers in 2011. Because SSJID does not currently provide retail electric service, SSJID is seeking approval from the San Joaquin LAFCo. SSJID previously sought LAFCo approval in June 2005 but, according to SSJID, the application was denied in June 2006 on the grounds that SSJID had provided insufficient information.

In the current application to San Joaquin LAFCo, SSJID has updated and revised the information that was submitted in 2005. Key differences between its prior plan and this new plan include:

- SSJID has significantly increased its cash reserves, thereby, minimizing financial uncertainties related to its proposed Plan of Service;

- SSJID has reduced the scope and cost of new construction required;
- SSJID has increased the number of permanent jobs that its Plan of Service will provide in local communities;
- SSJID has expanded its commitment to public purpose programs;
- SSJID has more thoroughly analyzed the financial feasibility and economic benefits of its proposed Plan of Service; and,
- SSJID has included additional information and analysis in support of its application.

The CPUC is responsible for investigating SSJID's proposal and issuing an advisory report to the LAFCo on whether it will have a substantial impact upon PG&E's remaining customers.

Government Code § 56131 requires that when a district, such as SSJID, applies to the LAFCo for approval to provide gas or electric service, the CPUC shall investigate and report to the LAFCo its opinion whether the proposed service will substantially impair the ability of the public utility to provide adequate service at reasonable rates within the remainder of its service area. The report shall be made within 90 days after the CPUC's receipt from the LAFCo of a certified copy of the district's proposal. On September 25, 2009, the CPUC's Energy Division received a letter, dated September 18, 2009, from the San Joaquin LAFCo requesting the opinion of the CPUC regarding SSJID's proposal. This proposal is similar to the one considered by the CPUC in Resolution E-3974 in April 2006.

The CPUC relies on certain criteria to evaluate and make its determination concerning substantial impairment to PG&E's remaining ratepayers.

Resolution E-3952 addressed an annexation proposal by the Sacramento Municipal Utility District (SMUD) as requested by the Sacramento LAFCO. In that resolution, the CPUC determined that the following criteria were reasonable for evaluating a district's service proposal:

a) whether the customers of the proposed district will be able to bypass payment of transition costs, which would require the remaining PG&E customers to cover these costs,
b) whether any aspect of the district's proposal will potentially idle PG&E facilities requiring remaining PG&E customers to cover the costs of these idled facilities,

c) whether there are any other quantifiable costs and/or offsetting benefits that would affect remaining PG&E customers, and
d) whether the resulting cost impact, if any, would have a significant rate impact on remaining PG&E customers.

Due to the passage of time, NBCs imposed on customers leaving bundled service now mostly reflect costs other than "transition costs" as defined in Public Utilities (PU) Code § 840(f). Accordingly, for purposes of our discussion here, we will update criteria (a) to refer generally to avoidance of NBCs rather than just "transition costs".

SSJID addressed the CPUC criteria in its proposal and concluded that its acquisition of PG&E's distribution facilities and its provision of electric service will not adversely impact PG&E's remaining electric customers, and will result in reduced costs for PG&E that will likely be in excess of PG&E's lost revenues from those customers.

SSJID states that PG&E's ratepayers will not suffer any significant adverse impacts as a result of its plan because 1) SSJID's financial projections provide for the payment of NBCs, 2) no PG&E facilities will be idled as a result of SSJID's purchase of PG&E's existing electric distribution facilities and/or the construction of new facilities, and 3) any lost revenues for PG&E will be offset by cost savings.[1] These include:

- the transfer of load to SSJID will reduce PG&E's need to procure new resources to serve load in the near and long term;
- because the load to be transferred to SSJID includes a substantial contribution to "summer peaking" relative to PG&E's system average, PG&E's additional future generation capacity needs in the summer will be reduced;
- the transfer of load to SSJID removes load that is currently paying less than full cost of service standards as measured by PG&E;
- the transfer of load to SSJID reduces the need for PG&E investment in additional transmission capacity to ensure reliable delivery of power during the peak load (summer) season; and,

[1] See 9/3/09 SSJID Application to San Joaquin LAFCo, pp. 6-7, 6-8, and 6-9.

- PG&E's distribution facilities will be taken out of PG&E's rate base and will no longer pay a rate-of-return, depreciation, and income taxes on these assets.

To perform its review, the CPUC's Energy Division asked for and received additional information from PG&E concerning SSJID's proposal to provide retail electrical service.

On October 5, 2009, the CPUC's Energy Division requested that PG&E 1) address each of the criteria considered in Resolution E-3952, 2) respond to SSJID's assessment of impacts to PG&E's remaining ratepayers, 3) provide quantitative impact estimates for each response with explanations of the calculations of such estimates, 4) provide supporting workpapers with its estimate of the rate impacts, and 5) explain whether/how the estimates provided in response to this letter differ in any substantial way from the estimates PG&E provided in 2006 . PG&E responded to this inquiry on October 26, 2009.

NOTICE

The San Joaquin LAFCO's letter was noticed in the Daily Calendar.

San Joaquin LAFCO's letter, dated September 18, 2009, was received by the Energy Division on September 25, 2009 and noticed by publication in the Commission's Daily Calendar on October 2, 2009.

PROTESTS

PG&E urges the CPUC to issue a determination that SSJID's proposal would substantially impair PG&E's ability to provide adequate service at reasonable rates within the remainder of its service area. If the CPUC does not reach this conclusion, PG&E recommends that this Resolution include a clarifying finding.

In its October 26, 2009 response to the Energy Division's request for information, PG&E asserts SSJID's proposal would substantially impair PG&E's ability to provide adequate service at reasonable rates within the remainder of its service area because it would 1) harm PG&E's remaining ratepayers by a 30-year Net

Present Value (NPV) amount of $303.9 million, increasing their rates by an estimated $0.00040 per kWh, 2) result in the construction of additional facilities not otherwise needed, and 3) continue to remove customers from the CPUC's jurisdiction - continuing a trend that it believes promises to progressively hamper the ability of the state to achieve its energy policy objectives.

If, consistent with Resolution E-3974, the CPUC finds that the harm to remaining customers does not rise to the level of "significance" per Government Code Section 56131, PG&E urges the CPUC to at a minimum issue the following additional finding in order to avoid having its position misrepresented:

> "Our finding of no 'significant' impact on PG&E's ability to provide adequate service at reasonable rates is not a finding of no impact. In fact, we find SSJID's proposal would have a negative impact on PG&E's ability to provide adequate service at reasonable rates in the remainder of its service territory, including in San Joaquin County. The negative impact is only not 'significant' because it is small relative to the size of PG&E's entire system. SSJID's proposal will raise rates for remaining PG&E customers, including remaining customers in San Joaquin County, just not by a 'significant' amount."

SSJID responds that PG&E's analysis appears to be flawed. SSJID maintains that its current proposal will have no significant adverse effect on PG&E's remaining ratepayers.

On November 2, 2009, SSJID submitted comments regarding PG&E's October 26, 2009 response to the Energy Division's request for information[2]. Based on its initial review, SSJID states that PG&E's response appears to be incomplete, inconsistent, inaccurate, and misleading in a number of respects. SSJID believes that PG&E's response also fails to adequately consider a number of benefits that PG&E's ratepayers will receive as a result of SSJID's proposed plan. As a result, SSJID asserts PG&E's analysis overstates the revenues it claims it will lose,

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[2] SSJID states that these comments were filed prior to the receipt of PG&E's response to its October 28, 2009 data request. SSJID supplemented these comments on November 13, 2009 after it received and evaluated PG&E's response to its discovery request. Time did not permit incorporating SSJID's supplemental comments in the draft resolution that was mailed to parties for comment pursuant to PU Code Section 311(g)(1).

understates the costs that it will avoid, and significantly overstates the potential impact of SSJID's proposal on the rates of PG&E's remaining customers.

Although SSJID's current proposal is different in a number of respects from its 2005 application, SSJID maintains that the impact is essentially unchanged (i.e. that SSJID's current plan of service will not substantially impair PG&E's ability to provide adequate service at reasonable rates within the remainder of its service territory). SSJID asserts that there is no basis or justification for the CPUC finding otherwise.

The Division of Ratepayer Advocates (DRA) is not opposed to SSJID's proposal because it believes that it will have a negligible rate impact on remaining PG&E ratepayers, is viable, and does not create any irresolvable jurisdictional issues.

On November 2, 2009, DRA submitted comments regarding PG&E's October 26, 2009 response to the Energy Division's request for information. DRA considered the range of rate impacts from PG&E's estimate of an increase of $0.00040 per kWh (over affected customers only) to SSJID's estimate of a rate reduction of $0.00017 per kWh. DRA asserts that PG&E's estimate may be high because it assumes a 100% loss of transmission sales on departing load despite claiming that SSJID is vague regarding transmission.

DRA also considered the stability of SSJID's proposal and considered it to be viable because 1) SSJID has been in the wholesale electric business for 65 years, 2) its resource mix (primarily hydro) is less volatile in price than PG&E's, 3) SSJID is a long standing irrigation district that has fully developed billing and customer service departments, 4) from its irrigation business, it has substantial and rapidly growing assets, 5) its wholesale electric service has already led SSJID to create and oversee Demand Response, Energy Efficiency, and Renewables programs, and 6) there is precedent for irrigation districts in California providing retail electricity service.

Finally, DRA considered territory erosion should there be a cascade of municipalizations, and the effect of jurisdictional issues if not clarified. DRA concludes that any concerns are counterbalanced by the observation that the opportunities for other irrigation districts to municipalize are not numerous and their potential impacts would not be substantial, and that it is confident that jurisdictional issues can be worked out.

DISCUSSION

Previous criteria, as clarified above, are used to evaluate the effects of SSJID's proposal on PG&E's ability to provide adequate service at reasonable rates within the remainder of its service territory.

Our evaluation of SSJID's proposal to provide retail electric service relies on the criteria used in Resolution E-3952, as updated above. Specifically, we consider a) whether SSJID's customers will be able to avoid payment of NBCs, which would require the remaining PG&E customers to cover these costs, b) whether any aspect SSJID's proposal will potentially idle PG&E facilities requiring remaining PG&E customers to cover the costs of these idled facilities, c) whether there are any other quantifiable costs and/or offsetting benefits that would affect remaining PG&E customers, and d)whether the resulting cost impact, if any, would have a significant rate impact on remaining PG&E customers.

Some customers in SSJID's proposed service area would be exempt from payment of certain NBCs which would require remaining PG&E customers to cover these costs.

PG&E customers located in SSJID's proposed service area currently pay a variety of NBCs as part of their standard electric rates. The ongoing competition transition charge (CTC), public purpose program (PPP) charge, nuclear decommissioning charge (NDC), and fixed transition amount/transition trust amount (FTA/TTA) were implemented to recover costs arising from electric industry restructuring. The Department of Water Resources bond charge (DWRBC) and the Power Charge Indifference Adjustment (PCIA)[3] were established to ensure recovery of costs associated with power procurement during and after the energy crisis. Costs associated with the energy bonds issued to finance PG&E's bankruptcy-related costs are captured in the energy cost recovery amount (ECRA) charge. Above-market costs associated with

[3] On July 1, 2006, the PCIA superseded and replaced the Department of Water Resources power charge (DWRPC).

generation commitments undertaken by PG&E subsequent to January 1, 2003 are collected through the "new world generation" charge.

The applicability of these charges to Municipal Departing Load (MDL) (e.g. PG&E retail electric customers who depart to be served by SSJID) is governed by legislation and CPUC decisions[4]. In general, exemptions and exceptions were granted if certain loads did not contribute to the need to incur costs for which NBCs were established. The net result with respect to SSJID's proposal is that all MDL customers served by SSJID would continue to be responsible for the ongoing CTC, NDC, FTA/TTA charge, and DWRBC but would be exempt from the PPP charge; some MDL customers served by SSJID would be exempt from the DWRPC and the ECRA charge; and PG&E must file an application with the CPUC to determine whether MDL customers served by SSJID owe the "new world generation" charge[5].

As stated in Resolution E-3974, PG&E and SSJID agree that some load to be served by SSJID may be exempt from certain charges but they disagree as to whether PG&E's remaining customers would have to cover any costs associated with the exemptions. SSJID states that there would be no cost shifting to PG&E's remaining customers because legislative and administrative exemptions were granted on the basis that certain loads did not contribute to the costs for which the charges were established. PG&E states that since customers who depart for SSJID service would have paid all of these charges in their entirety had they continued PG&E service, there is a loss of revenue associated with exemptions that adversely affects PG&E's remaining customers. PG&E estimates a $46.0 million NPV adverse impact would result from these lost revenues[6].

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[4] See Assembly Bill (AB) 1890 and CPUC Decision (D.) 97-08-056, D.03-07-028, D. 03-08-076, D.04-11-014, D.04-12-059, D.05-07-038, D.05-08-035, and D.08-09-012.

[5] For purposes of this analysis, PG&E assumed SSJID MDL customers would owe the "new world generation" charge.

[6] PG&E asserts that this estimate would be larger if recovery of the new world generation costs ultimately is not permitted by the CPUC.

In Resolution E-3952 regarding our evaluation of SMUD's annexation proposal, we concluded that PG&E's remaining ratepayers must cover the costs resulting from NBC payment exemptions. This conclusion was discussed and confirmed in Resolution E-3974 regarding SSJID's 2005 proposal. As we stated there, we understand SSJID's position that some exemptions were justified in recognition of the fact that PG&E did not incur costs associated with certain departing loads, however, we reached the above conclusion on the basis that the overall cost obligation is a fixed amount and that any portion of this amount not paid as a result of an exemption creates a revenue shortfall that must be paid by the remaining customers. Although this revenue shortfall represents a cost impact, it does not constitute cost-shifting as prohibited by PU Code § 366.2(d).

There is a possibility that SSJID's severance proposal may idle some existing PG&E T&D facilities requiring PG&E customers to cover the costs. PG&E did not quantify the impact, however, because it claims such an estimate depends on SSJID's precise plans which are unknown at this time.

SSJID states that it plans to purchase PG&E's existing electric distribution facilities to avoid duplicating and stranding PG&E facilities. As part of its acquisition plans, SSJID claims that some construction of facilities will be required to physically and operationally "separate" the facilities it intends to acquire from PG&E's remaining electric distribution system and to ensure that PG&E's remaining customers do not experience any degradation in service[7]. SSJID states that it also plans other facility construction in order to improve reliability. SSJID asserts that the construction and installation of its proposed facilities will not result in the idling of any PG&E distribution facilities.

PG&E, on the other hand, asserts that associated distribution and/or transmission facilities throughout SSJID's proposed service area would become idle or altered in the process of completing necessary severance work. The specifics, PG&E claims, depends upon SSJID's precise plans which are not known at this time. As an example, PG&E notes SSJID's plans require modifications of PG&E's Manteca substation (at SSJID's expense).

[7] SSJID anticipates constructing a least one new substation, installing new transformers in certain substations, and installing new distribution lines and feeders in certain areas.

As stated in Resolution E-3974, our relevant criterion is whether any aspect of the district's proposal will *potentially* idle PG&E facilities requiring remaining PG&E customers to cover the costs of these idled facilities. Because the specifics of the proposal have not yet been determined, there is the *potential* that some PG&E facilities may be idled. Unfortunately, due to this uncertainty, PG&E did not quantify any impact and thus we cannot rely upon any such estimate in our evaluation.

PG&E's remaining ratepayers could be affected by lost T&D revenue that PG&E would have collected from customers in the proposed SSJID service area. PG&E would avoid some T&D costs should the SSJID's proposal move forward, however, the lost revenue may exceed the avoided costs, so that the contribution to margin would decrease.

In addition to the lost NBCs revenues discussed above, PG&E states that its remaining ratepayers would be adversely affected by lost T&D revenues of $299.8 million (NPV over the 30-year analysis period) that PG&E would have collected from the customers in the proposed SSJID service area. PG&E states that it would avoid some T&D costs should the SSJID's proposal move forward, however, it expects the lost revenue to exceed the avoided costs[8], so that contribution to margin would decrease and its remaining ratepayer's rates would increase as a result. These lost revenues would be offset partly by the compensation ultimately provided by SSJID for the T&D assets. Using SSJID's asset valuation figure of $41.9 million, PG&E estimates the total losses in T&D contribution to margin to be $257.9 million (NPV over the 30-year analysis period).

In Resolution E-3974, there was debate about the amount of transmission service SSJID was going to take from PG&E, and therefore whether there would be transmission-related costs shifted to PG&E's remaining customers. PG&E assumed that it would lose all transmission related revenues associated with

[8] PG&E states that SSJID's takeover will produce lost economies of scale: PG&E now provides both gas and electric service in this area, and would continue to provide gas service even if its electric facilities are condemned. Thus, PG&E asserts that the avoided costs will be less than PG&E's average cost to serve this area, since many functions (such as service centers) will need to remain.

customers SSJID intended to serve, SSJID, on the other hand, stated that it planned to take the majority of its transmission service from PG&E. Given this uncertainty, we reduced PG&E's lost T&D contribution to margin estimate. Here, the lost contribution to margin estimates presented by PG&E again assume that none of the transmission service would be supplied by PG&E. PG&E asserts that this assumption remains reasonable because SSJID's new Application is even less definitive stating that "Transmission service will come from the California Independent System Operator ("CAISO") and/or SMUD/WAPA control areas."[9] Also, PG&E asserts that SSJID's new Application says elsewhere that it has or will have various agreements with Modesto Irrigation District to facilitate its provision of electric service. And, SSJID has not applied for interconnection with PG&E, or for an interconnection study. PG&E states that for these reasons, and because of its belief that in general public agencies avoid the CAISO when they can, it asserts that it is fair and conservative for PG&E to assume here that SSJID will take *all* transmission service from SMUD/WAPA (if that is physically feasible for SSJID to do).

DRA asserts that PG&E's estimate may be high because of the assumption of a 100% loss of transmission sales. SSJID did not respond to PG&E's analysis on this issue. Given SSJID's wording modifications presented in its current application and the fact that it did not comment on PG&E's discussion on this assumption, it is reasonable to assume that PG&E is correct that SSJID will not be taking any of its transmission service from PG&E. Accordingly, PG&E's lost T&D contribution to margin estimate of $257.9 million NPV is reasonable.

The estimated total overall rate impact of SSJID's proposed service on PG&E's remaining ratepayers is $0.00040 per kWh, which is small relative to PG&E's current system average rates, and thus does not substantially impair PG&E's ability to provide adequate service at reasonable rates within the remainder of its service territory.

To estimate the total effect on remaining PG&E customers, PG&E added together the $46.0 million NPV estimate of lost NBC revenues and the $257.9 million lost T&D contribution to margin, for a total adverse impact of $303.9 million NPV

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[9] See 9/3/09 SSJID Application to San Joaquin LAFCo, p. 1-7.

over the 30-year study period. PG&E then converted the 30-year NPV impacts to an annualized basis (so that the shifted costs are in units of dollars per year). On an annualized basis, PG&E estimates that its remaining ratepayers would be harmed by $25.9 million per year. This figure was then divided by the 2011 annual sales of PG&E's remaining customers to obtain an estimated rate increase to remaining customers of $0.00040 per kWh. PG&E did not include in this estimated rate impact calculation those rates that are frozen (residential Tiers 1 and 2 rates for usage up to 130% of baseline), plus rates for customers participating in the low income rate discount program (CARE). DRA asserts that a true average rate impact should consider all kWh, frozen or not. Therefore, DRA prefers PG&E's estimate of $0.0003 per kWh that divides all kWhs including those frozen. DRA states that this is the rate impact if it could be spread over all ratepayers. While DRA's suggestion may make sense in theory, up until recently statutes prevented any such increase in residential Tier 1 and 2 rates (see former CA Water Code Section 80110). Under recent legislation (see PU Code Sections 739.9 and 2851(d)(2)), the CPUC may authorize limited increases in rates for residential Tiers 1 and 2 effective January 1, 2010, however, we have not yet authorized such increases. Thus, given our practice of looking at the highest quantifiable number when determining whether there is a possibility of substantial impairment, we will not rely on DRA's preferred scenario that spreads the total impact over all kWh.

SSJID did not offer any revised rate impact estimates. SSJID merely comments that PG&E's estimate of $0.00040 per kWh is exactly the same net impact that PG&E claimed in response to its 2005 plan for service and which PG&E claimed would constitute a substantial impairment. SSJID asserts that the CPUC rejected PG&E's position on SSJID's prior plan and concluded that it would not substantially impair PG&E's ability to provide adequate service at reasonable rates within the remainder of its service territory. SSJID believes that there is no basis or justification for the CPUC to find otherwise.

As we stated in Resolution E-3974, when evaluating possible scenarios, it is reasonable to use the highest quantifiable number when determining whether there is the possibility that the proposed service will substantially impair PG&E's ability to provide adequate service at reasonable rates within the remainder of its service territory. The highest estimate relied upon in Resolution E-3974 was

PG&E's estimate of $0.00035 kWh. Its updated estimate for SSJID's re-submitted proposal is $0.00040, which is still approximately only ¼ percent of PG&E's current system average rates[10]. Since the area, customer base, and overall rate impacts of SSJID's current proposal is essentially the same as that claimed in response to the 2005 proposal, we agree with SSJID that there is no basis for us to reach a different conclusion. Thus, we affirm that a rate impact of this magnitude is small compared to PG&E's current system average rates, and thus does not substantially impair PG&E's ability to provide adequate service at reasonable rates within the remainder of its service territory.

In anticipation of this outcome, PG&E requests that we include a finding in this Resolution acknowledging that the rates of PG&E's ratepayers would nevertheless increase (even if not at the level of a "substantial impairment") and have a negative impact. PG&E believes that this is important because SSJID and the media publicly characterized Resolution E-3974 as saying that SSJID's action will have no adverse impacts at all on PG&E's remaining customers. Notwithstanding the fact that we cannot control how entities characterize or represent our decisions, we do not believe our conclusion needs clarification. Relying on PG&E's estimate, we do state that SSJID's proposed service could "raise rates" of PG&E's remaining ratepayers, however, it is not appropriate to conclude that this is a "negative" impact because the magnitude of the estimated "increase" (i.e. impact) is small compared to PG&E's current system average rates, and thus does not substantially (i.e. "negatively") impair PG&E's ability to provide adequate service at reasonable rates.

Broader energy policy implications are beyond the scope of the analysis required in this Resolution.

PG&E claims that SSJID's project will result in the loss of CPUC jurisdiction that will undermine State energy policy objectives. In response to this assertion in Resolution E-3974, SSJID stated that PG&E's claim is incorrect and that it is irrelevant to the issues the CPUC must address under Government Code § 56131. SSJID stated that it has been subject to public policy initiatives adopted by the

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10 PG&E's current system average rate for bundled service customers is 15.228 cents per kWh for rates effective October 1, 2009 as shown in PG&E's Advice Letter 3534-E.

Legislature and will continue to be subject to such initiatives, including state energy policies. SSJID further noted that it owns qualifying renewable resources which as a percentage of its load exceeds current CPUC renewable portfolio standard requirements.

In Resolution E-3952, dated November 18, 2005, we determined that the consideration of broader energy policy issues related to the formation or expansion of public power within a public utilities' service territory is beyond the scope of the CPUC's inquiry under Government Code § 56131 but could be the subject of a separate CPUC proceeding. In Resolution E-3959, dated December 15, 2005, we further elaborated that municipal utilities, municipal districts, and irrigation districts are not subject to the same requirements as utilities regulated by the CPUC regarding implementation of the state's energy policies, such as the greenhouse gas adder, the Renewables Portfolio Standard, the California Solar Initiative, and other activities related to climate change. We specifically noted that Government Code § 56131 is narrowly drawn and does not provide for us to conduct an analysis of whether public power expansion proposals are consistent with the state's energy policies. Nor does the statute provide for us to conduct an analysis of whether and to what extent the economic feasibility of providing utility service pursuant to an expansion proposal is driven by the ability of a non-regulated utility to escape the cost of implementing Energy Action Plan II policies. With the goal of adopting a general policy statement, we stated that we might consider such issues in PG&E's test year 2007 General Rate Case (GRC), A.05-12-002. On February 3, 2006, an Assigned Commissioner's Ruling and Scoping Memo for that proceeding was issued which found that these issues are better suited to be considered for all utilities generically rather than in PG&E's 2007 GRC. In Resolution E-3974, we stated that the initiation of a generic proceeding, such as an Order Instituting Rulemaking, was pending. However, to date, no such proceeding has been initiated.

In Resolution E-3974, we also stated that we endorsed and were seeking a statutory change to expand Government Code § 56131 to require the CPUC to consider the cumulative impacts of public power expansion proposals. We further stated that we were seeking changes to consider the effect multiple proposals may have on the efficiency of the public utilities' programs to implement state energy policy goals and priorities on energy efficiency, renewable portfolio standards, the use of solar energy, and resource adequacy,

among others. Notwithstanding these efforts, no modifications have materialized.
However, we do note with the passage of AB 32, the California Air Resources Board is considering the imposition of renewable requirements on all electric utilities including government districts (see D.08-03-018).

COMMENTS

Per statutory requirement, a draft resolution was mailed to parties for comment at least 30 days prior to consideration by the CPUC.

PU Code § 311(g)(1) generally provides that draft resolutions must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the CPUC. Accordingly, a draft resolution was mailed to parties for comment.

FINDINGS AND CONCLUSIONS

1. SSJID submitted an application to the San Joaquin LAFCo proposing to provide retail electric service to approximately 38,000 existing PG&E customers.

2. Under Government Code § 56131, the CPUC must investigate and submit a report to the LAFCo within 90 days stating whether, in its opinion, SSJID's proposal within PG&E's service territory will substantially impair PG&E's ability to provide adequate service at reasonable rates within the remainder of its service area. This report must be submitted within 90 days after the CPUC's receipt from the LAFCo of a certified copy of the district's proposal.

3. On September 25, 2009, the CPUC's Energy Division received a letter, dated September 18, 2009, from the San Joaquin LAFCo requesting the opinion of the CPUC regarding SSJID's proposal.

4. In considering SSJID's proposal, the CPUC relies on the following criteria for evaluating the statutory provision: a) whether the customers of the proposed district will be able to avoid payment of NBCs, which would require the remaining PG&E customers to cover these costs, b) whether any aspect of the

district's proposal will potentially idle PG&E facilities requiring remaining PG&E customers to cover the costs of these idled facilities, c) whether there are any other quantifiable costs and/or offsetting benefits that would affect remaining PG&E customers, and d) whether the resulting cost impact, if any, would have a significant rate impact on remaining PG&E customers.

5. SSJID asserts that its acquisition of PG&E's distribution facilities and its provision of electric service will not adversely impact PG&E's remaining electric customers, and will result in reduced costs for PG&E that will likely be in excess of PG&E's lost revenues from those customers.

6. PG&E asserts that SSJID's proposal will adversely harm PG&E's remaining ratepayers by increasing their rates, and will substantially impair its ability to provide adequate service at reasonable rates within the remainder of its service territory.

7. Some customers in SSJID's proposed service area may be exempt from payment NBCs which would require remaining PG&E customers to cover these costs.

8. SSJID's severance proposal may potentially idle some existing PG&E facilities requiring remaining PG&E customers to cover the costs, however, the dollar impact depends on SSJID's precise plans which are not known at this time.

9. There could be costs resulting from lost T&D revenues that could affect remaining PG&E customers.

10. PG&E estimates that SSJID's proposal would result in a 30-year NPV loss of $303.9 million, and resultant higher rates of $0.00040 per kWh, which is approximately ¼ percent of PG&E's current system average rates

11. Although SSJID's proposed service could raise rates for PG&E's remaining ratepayers, the magnitude of the estimated increase is small relative to PG&E's current system average rates, and thus does not substantially impair PG&E's ability to provide adequate service at reasonable rates.

12. Broader energy policy implications are beyond the scope of the analysis required in this Resolution; such implications should be considered in a

generic CPUC proceeding and a statutory change should be made to expand the scope of future CPUC reviews under Government Code § 56131.

THEREFORE IT IS ORDERED THAT:

1. A certified copy of this Resolution shall be mailed to the Executive Officer of the San Joaquin Local Agency Formation Commission.

2. This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on December 17, 2009; the following Commissioners voting favorably thereon:

____
Paul Clanon
Executive Director

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

I.D.# 9047

November 16, 2009 **Resolution E-4301**

Commission Meeting Date: December 17, 2009

TO: PARTIES TO DRAFT RESOLUTION E-4301

Enclosed is draft Resolution E-4301 prepared by the Energy Division. It will be on the agenda at the December 17, 2009 Commission meeting. The Commission may then vote on this Resolution or it may postpone a vote until later.

When the Commission votes on a draft Resolution, it may adopt all or part of it as written, amend, modify or set it aside and prepare a different Resolution. Only when the Commission acts does the Resolution become binding on the parties.

Parties may submit comments on the draft Resolution no later than December 7, 2009.

Comments should be submitted to:

Honesto Gatchalian and Maria Salinas
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
jnj@cpuc.ca.gov; mas@cpuc.ca.gov

A copy of the comments should also be submitted to:

Laura Martin
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Fax: 415-703-5621
Email: lra@cpuc.ca.gov

Comments may be served by email. Any comments on the draft Resolution must be received by the Energy Division by December 7, 2009. Those submitting comments must serve a copy of their comments on 1) the entire service list attached to the draft Resolution, 2) all Commissioners, and 3) the Director of the Energy Division, the Chief Administrative Law Judge and the General Counsel, on the same date that the comments are submitted to the Energy Division.

Comments shall be limited to fifteen pages in length plus a subject index listing the recommended changes to the draft Resolution, a table of authorities and an appendix setting forth the proposed findings and ordering paragraphs.

Comments shall focus on factual, legal or technical errors in the proposed draft Resolution. Comments that merely reargue positions taken in the advice letter or protests will be accorded no weight and are not to be submitted.

Late submitted comments will not be considered.

Gurbux Kahlon
Program Manager
Energy Division

Enclosure: Service List
Certificate of Service

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of Draft Resolution E-4301 on all parties in these filings or their attorneys as shown on the attached list.

Dated November 16, 2009 at San Francisco, California.

____

Honesto Gatchalian

NOTICE

Parties should notify the Energy Division, Public Utilities Commission, 505 Van Ness Avenue, Room 4002 San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the Resolution number on the service list on which your name appears.

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