

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Division of Water and Audits  
Utility, Audit, Finance & Compliance Branch

San Francisco, California  
Date: January 13, 2011  
Resolution No. W-4867

**RESOLUTION**

**RESOLUTION ON THE COMMISSION’S OWN MOTION  
MAKING THE RATES OF ALL COST-OF-SERVICE RATE-  
REGULATED UTILITIES SUBJECT TO REFUND FOR THE  
LIMITED PURPOSE OF ALLOWING WHATEVER  
CHANGES, IF ANY, SHOULD BE MADE TO THE RATES  
OF THOSE UTILITIES TO REFLECT THE BENEFITS OF  
THE TAX RELIEF, UNEMPLOYMENT INSURANCE  
REAUTHORIZATION, AND JOB CREATION ACT OF 2010**

**BACKGROUND**

On December 17, 2010, President Obama signed the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act Of 2010 (“New Tax Law”). It has come to the attention of the Commission that this law may provide tax relief to the utilities regulated by this Commission. Among, other provisions, this law provides for 100% accelerated bonus depreciation on certain business property put into service after September 8, 2010. Provisions in the New Tax Law may reduce the utilities’ costs of providing service. Many of the utilities regulated by this Commission have their rates set on a cost-of-service basis. These utilities include, without limitation: water and sewer system corporations, small local exchange carrier telephone corporations, gas and electrical corporations, pipeline corporations, and heat corporations. However, the general rates of those utilities are typically reviewed only once every three years.

**DISCUSSION**

While existing ratemaking mechanisms likely will result in ratepayers benefiting from a portion of the tax benefits utilities receive under the New Tax Law, it is not clear that all of the tax benefits resulting from this new law will have an impact on rates under current mechanisms.<sup>1</sup> Accordingly, it may be desirable to adjust the rates of cost-of-service rate-

<sup>1</sup> For example, many utilities have a deferred tax account that may capture, for ratepayers, benefits of the new tax law. However, if there is a lag in incorporating the actual amount of this account into rates, there may be some portion of the benefits that do not go to ratepayers. .

regulated utilities to more fully reflect the tax benefits, if any, that these utilities realize from the New Tax Law. In order to allow for that possibility, while minimizing any issue of retroactive ratemaking, we will make the rates of all cost-of-service rate-regulated utilities subject to refund from and after the date of this resolution for the limited purpose of allowing ratepayers to benefit, to the extent, if any, the Commission finds reasonable, from tax benefits resulting from the New Tax Law.

The Commission, or Commissioners assigned to particular proceedings, will determine, at a later date, once more information is available, the appropriate forum or forums in which this issue may be reviewed. However, nothing in this resolution prevents a party to a utility General Rate Case (GRC) from raising issues relating to the New Tax Law in a GRC.

To assist the Commission in determining what further steps, if any, should be taken to deal with this issue, the Utility, Audit, Finance & Compliance Branch of the Division of Water and Audits should conduct one or more workshops. The workshop(s) should consider: what impact the New Tax Law is likely to have on the various classes of cost-of-service rate-regulated utilities; the extent to which the benefits of the New Tax Law will accrue to ratepayers under existing ratemaking mechanisms; and what, if anything, the Commission should do to further address the impact of the New Tax Law on utilities' cost of service and their rates. However, the Utility, Audit, Finance & Compliance Branch need not conduct the workshop(s) if it determines that it has sufficient information to recommend to the Commission how to resolve these issues.

### **COMMENTS ON DRAFT RESOLUTION**

Public Utilities Code section 311(g)(1) generally requires draft resolutions to be issued for comment at least 30 days before being voted on by the Commission. However, pursuant to Public Utilities Code section 311(g)(3), the Commission has adopted Rule 14.6(c)(9) of its Rules of Practice and Procedure which permits a reduction in the comment period here. More specifically, Rule 14.6(c)(9) permits the Commission to reduce the 30-day period for public review and comment in circumstances where the public interest in the Commission adopting a resolution before expiration of the 30-day review and comment period clearly outweighs the public interest in having the full 30-day period for review and comment. This resolution does not change utility rates, nor determine that utility rates ought to be changed. It only permits the Commission to consider those issues at a future date, while minimizing retroactive ratemaking concerns. On the other hand, delaying issuance of this resolution to allow for the full 30-day comment period might extend the period of time during which retroactive ratemaking could be a concern. Accordingly, the public interest in adopting this resolution before expiration of a 30 day public comment period clearly outweighs the public interest in allowing for the full 30 day comment period. Accordingly, the draft resolution was

issued for comment on December 30, 2010, served on all persons on the attached service list, and placed on the Commission's Agenda for January 13, 2011. Consistent with Rule 14.6(c)(9), there was a reduced comment period with comments due on January 7, 2011.

### **FINDINGS AND CONCLUSIONS**

1. President Obama signed the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act Of 2010 ("New Tax Law") on December 17, 2010.
2. The New Tax Law may provide tax relief to the utilities regulated by this Commission; among other provisions, this law provides for 100% accelerated bonus depreciation on certain business property put into service after September 8, 2010.
3. The general rates of utilities are typically reviewed only once every three years.
4. While existing ratemaking mechanisms likely will result in ratepayers benefiting from a portion of the tax benefits utilities receive under the New Tax Law, it is not clear that all of the tax benefits resulting from this new law will have an impact on rates under current mechanisms.
5. The Commission should allow for the possibility of revising the rates of these utilities so that more of the benefits of the New Tax Law accrue to ratepayers, while minimizing issues of retroactive ratemaking.
6. The rates of all cost-of-service rate-regulated utilities should be made subject to refund from and after the date of this resolution for the limited purpose of allowing the Commission to determine whether, and if so, to what extent, any tax benefits resulting from New Tax Law that would not otherwise be reflected in rates should benefit ratepayers.
7. The Utility, Audit, Finance & Compliance Branch of the Division of Water and Audits should conduct one or more workshops to consider: what impact the New Tax Law is likely to have on the various classes of cost-of-service rate-regulated utilities; the extent to which the benefits of the New Tax Law will accrue to ratepayers under existing ratemaking mechanisms; and what, if anything, the Commission should do to further address the impact of the New Tax Law on utilities' cost of service and their rates. However, the Utility, Audit, Finance & Compliance Branch need not conduct such workshop(s) if it determines that it has sufficient information to recommend to the Commission how to resolve these issues.
8. This resolution does not change utility rates, nor determine that utility rates ought to be changed. It only permits the Commission to consider, at a future date, the issue of whether utility rates should be changed as a result of the New Tax Law, while minimizing retroactive ratemaking concerns.
9. Delaying issuance of this resolution to allow for a full 30-day comment period might extend the time during which retroactive ratemaking could be a concern.

10. The public interest in adopting this resolution before expiration of a 30 day public comment period clearly outweighs the public interest in allowing for the full 30 day comment period.

## **ORDER**

1. From and after the date of this resolution, the rates of all cost-of-service rate-regulated utilities shall be subject to refund for the limited purpose of allowing the Commission to determine whether, and if so, to what extent, any tax benefits resulting from the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act Of 2010 (“The New Tax Law”) that would not otherwise be reflected in rates should benefit ratepayers.
2. The Utility, Audit, Finance & Compliance Branch of the Division of Water and Audits shall conduct one or more workshops to consider: what impact the New Tax Law is likely to have on the various classes of cost-of-service rate-regulated utilities; the extent to which the benefits of the New Tax Law will accrue to ratepayers under existing ratemaking mechanisms; and what, if anything, the Commission should do to further address the impact of the New Tax Law on utilities' cost of service and their rates. However, the Utility, Audit, Finance & Compliance Branch need not conduct the workshop(s) if it determines that it has sufficient information to recommend to the Commission how to resolve these issues.
3. The Division of Water and Audits shall serve a copy of this resolution, by mail or e-mail, on all cost-of-service rate-regulated utilities and any additional persons who submitted comments on the draft resolution.
4. The effective date of this order is today.

I certify that this Resolution was adopted by the California Public Utilities Commission at its regular meeting of January 13, 2011, and that the following Commissioners approved it:

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PAUL CLANON  
Executive Director