

Decision 09-04-033 April 16, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Recovery of Costs Deemed Reasonable in Generation Divestiture Transaction Costs Memorandum Account Pursuant to D.03-02-028.

(U39E)

Application 08-04-022
(Filed April 14, 2008)

DECISION GRANTING APPLICATION TO RECOVER TRANSITION COSTS PREVIOUSLY DEEMED REASONABLE

1. Summary

This decision grants Pacific Gas and Electric Company's (PG&E) application to recover \$34.8 million in transition costs plus accrued interest that were incurred in 1999 and 2000 to prepare for the appraisal, sale or divestiture of its hydroelectric facilities pursuant to Pub. Util. Code § 367(b).¹

Specifically, this decision authorizes PG&E to transfer this balance from the Costs Deemed Reasonable subaccount of the Generation Divestiture Transaction Cost Memorandum Account (including interest at the 90-day commercial paper rate calculated from the date of this Application to the date of transfer plus franchise fees and uncollectibles) to the Modified Transition Cost Balancing Account for recovery in rates as part of PG&E's next Annual Electric

¹ Decision 03-02-028 deemed these costs reasonable.

True-up advice letter. This decision finds this ratemaking approach reasonable and consistent with previous Commission actions.

This decision also grants the Division of Ratepayer Advocates' (DRA) unopposed request to incorporate Point 3 of the Stipulation of Facts and other Matters (Stipulation)² into this decision. Point 3 provides that if, subsequent to a Commission decision approving PG&E's application, facts developed indicate that PG&E has previously collected some or all of the \$46.9 million in rates prior to this application, any of the signing parties may seek to modify a Commission decision approving Application (A.) 08-04-022, and each of the signing parties would be free to support such a request for modification. DRA's request is reasonable and consistent with the Commission's Rules of Practice and Procedure.

This decision also finds that approval of A.08-04-022 imposes no unacceptable risk that PG&E will "double recover" these costs in the event of a future sale of hydroelectric facilities. Not only is such a future sale unlikely, but procedures for the review of all sales of utility generation facilities ensure that the Commission will be able to prevent any "double recovery" of costs incurred to prepare for a sale.

This proceeding is closed.

2. Background

This proceeding has its roots in the legislative and regulatory effort to deregulate electricity generation in California that was known as Assembly Bill (AB) 1890, which became law in 1996. This legislation added § 367(b) to the

² Stipulation of Facts and Other Matters, August 14, 2008.

Public Utilities Code, which required that the Commission “identify and determine those costs ... of generation facilities...” and that the valuation of those facilities “shall be determined no later than December 31, 2001 and shall be based on appraisal, sale, or other divestiture.”

PG&E incurred expenses of \$34.8 million in preparing for this sale, appraisal, or divestiture of its hydroelectric generation facilities in 1999 and 2000.

Following the collapse of California electricity markets in 2000, ABX1 6, which became effective on January 18, 2001, amended § 377 to require that “no facility for the generation of electricity owned by a public utility may be disposed of prior to January 1, 2006.”³ Thus, the passage of ABX1 6 ended the efforts to dispose of PG&E’s hydroelectric generation facilities.

In September of 2001, PG&E filed A.01-09-003 seeking recovery of the costs it incurred in preparing for the sale, appraisal, or divestiture of its hydroelectric facilities. In 2003, Decision (D.) 03-02-028 found the \$34.8 million in costs that PG&E incurred to be reasonable. D.03-02-028 states:

17. Given the size and physical location of PG&E’s hydroelectric system, the level of professional expertise necessary to complete the necessary activities associated with preparing PG&E’s hydroelectric generating facilities for market valuation, PG&E’s \$34.8 million costs were reasonable, and should be held in a memorandum account to be allocated at the disposition of the hydro facilities. Such disposition cannot occur earlier than January 1, 2006 and must be authorized by the Commission.⁴

³ Assembly Bill 6 from the 2001-2002 First Extraordinary Session repealed Pub. Util. Code § 216(h) and modified § 377.

⁴ D.03-02-028 (February 13, 2003), Finding of Fact 17 at 34.

In 2006, PG&E filed for recovery of the costs by advice letter. The Energy Division rejected the advice letter without prejudice in 2007, ruling that the recovery of the costs should be sought by either petition or application.⁵

On April 14, 2008, PG&E filed A.08-04-022 seeking recovery of “\$34.8 million in principal transaction costs already deemed reasonable by the CPUC plus ongoing interest and franchise fees and uncollectibles totaling \$46.9 million ...”⁶

Resolution ALJ 176-3212 (April 24, 2008) categorized this proceeding as ratesetting and reached a preliminary determination that no hearings would prove necessary to the resolution of this matter.

On May 19, 2008, the DRA and Merced Irrigation District and Modesto Irrigation District, filing jointly (the Districts), protested the application of PG&E.

DRA argued that PG&E has “failed to meet its burden of proof that, even if the costs were reasonable to charge to ratepayers, it has not already collected some or all of these costs”⁷ DRA concluded that “[h]earings will be necessary

⁵ PG&E Advice Letter 2883-E (August 15, 2006), Advice Letter 2883-E-A (September 8, 2006), Energy Division Letter, “Rejection without prejudice of Advice Letters 2883-E and 2883-E-A,” February 28, 2007. Due to a calculation error, PG&E’s advice filing incorrectly requested recovery of \$11.45 million instead of the actual \$34.8 million. The error was due to an incorrect assumption that \$23.5 million in principal (\$27.9 million including interest) was recovered in PG&E’s 2004 crediting of headroom revenues under its Chapter 11 bankruptcy settlement. In fact, the \$27.9 million was not recovered in the headroom filing because it was offset by a countervailing change to the amounts in PG&E’s Transition Cost Balancing Account used to calculate headroom. See PG&E Advice Filing 2521-E, June 14, 2004.

⁶ A.08-04-022 at 1, footnotes omitted.

⁷ *Id.* at 2.

to determine whether PG&E should recover any of its claim, and if so, the correct amount. Hearings will also be necessary for the appropriate rate allocation.”⁸

The Districts argued that “PG&E’s hydroelectric transaction costs do not qualify as CTC [Competition Transition Charges].”⁹ In addition, the Districts argue that “PG&E’s proposed disposition of the remaining hydroelectric costs creates a substantial risk of inappropriate double recovery.”¹⁰

On June 6, 2008, PG&E served a prehearing conference statement in response to the protests. PG&E responds that “[c]ontrary to DRA and the Districts, the Commission already has determined that the costs sought to be recovered in this application were mandated by law and thus were incurred on behalf of customers, not PG&E shareholders.”¹¹ PG&E also states “[c]ontrary to DRA and the Districts, the costs sought to be recovered in this application have not been previously recovered and are not precluded from recovery by PG&E’s prior advice filing.”¹² In addition, PG&E responds that “[c]ontrary to the Districts, PG&E’s proposed allocation of costs to be recovered among customer classes as ongoing Competitive [sic] Transition Costs (CTCs) is appropriate and consistent with Commission decisions allocating similar categories of costs for

⁸ *Id.* at 4.

⁹ Protest of Merced Irrigation District and Modesto Irrigation District to Application of Pacific Gas and Electric Company for Recovery of Costs Deemed Reasonable in Generation Divestiture Transaction Costs Memorandum Account Pursuant to D.03-02-028 (Districts’ Protest), May 19, 2008, at 2.

¹⁰ *Id.* at 4.

¹¹ Prehearing Conference State of Pacific Gas and Electric (Prehearing Statement), June 6, 2008, at 1.

¹² *Id.* at 4.

recovery as ongoing CTC.”¹³ Concerning the issue of whether there may be “double recovery” of these costs, PG&E stated that it “appreciates that DRA has raised a factual issue that can and should be subject to discovery and review in this proceeding.”¹⁴ Still, PG&E contended that “DRA and the Districts have raised no issues requiring evidentiary hearings.”¹⁵

On June 11, 2008, a prehearing conference was held in San Francisco to address issues concerning the management of this proceeding. In addition, Hercules Municipal Utility District (Hercules) put in an appearance as an interested party.

On June 20, 2008, an Assigned Commissioner’s Ruling and Scoping Memo set a schedule for resolving this proceeding.

On August 14, 2008, DRA, PG&E and the Districts (Signing Parties) filed a “Stipulation of Facts and other Matters” (Stipulation). The Stipulation, which does not include Hercules,¹⁶ states that:

1. The [Signing Parties] agree that evidentiary hearings are not necessary in this proceeding.
2. The [Signing Parties] agree that PG&E has supported its application request with appropriate and reasonable evidence, and that no reason appears in the record to question the accuracy of PG&E’s statement that it has not collected in rates any of the \$46.0 million in costs that are the subject of this application.

¹³ *Id.* at 5.

¹⁴ *Id.* at 4.

¹⁵ *Id.* at 6-7.

¹⁶ Hercules, a party to the proceeding, did not sign the stipulation and has not been active in the proceeding.

3. Notwithstanding paragraphs 1 and 2, the [Signing Parties] agree that, if subsequent to a Commission decision approving PG&E's application, facts developed that indicate that PG&E has previously collected some or all of the \$46.9 million in rates prior to this application, any of the [Signing Parties] may seek to modify the Commission's decision approving the application, and each of the [Signing Parties] is free to support such request for modification.¹⁷

The Signing Parties noted that they continue to dispute whether PG&E's proposed allocation of costs is reasonable.¹⁸ The Stipulation also adopted a revised schedule for briefs.¹⁹

On August 29, 2008, an Administrative Law Judge's (ALJ) Ruling determined that no hearings were necessary to resolve the issues in dispute and adopted the revisions to the briefing schedule proposed in the Stipulation.²⁰

Consistent with the revised schedule, on September 10, 2008, the Districts, DRA and PG&E filed Opening Briefs. On September 24, 2008, the Districts, DRA and PG&E filed Reply Briefs.

3. Issues Before the Commission

The issues before the Commission and addressed in the briefs include:

1. Whether the language in Point 3 of the Stipulation, cited above, should be included in the decision resolving this matter.²¹

¹⁷ Stipulation of Facts and Other Matters (August 14, 2008).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ ALJ Ruling Modifying the Procedural Schedule, August 29, 2008.

²¹ DRA Opening Brief at 3.

2. What is the appropriate ratemaking treatment for the recovery of the costs deemed reasonable in D.03-02-028?²² or, more specifically:
 - a. Are the costs associated with preparing for the sale, appraisal or divestiture of hydroelectric facilities competition transition costs?²³
 - b. Are these costs recoverable from all customers on a non-bypassable basis?²⁴
3. Does PG&E's recovery of these costs at this time impose an unacceptable future risk of double recovery?²⁵

We will present the position of parties on each of these issues and resolve each issue in turn.

3.1. Should this Decision Include Language Permitting the Parties to Petition to Modify the Decision in the Event of New Facts?

As noted above, Point 3 of the Stipulation preserves the right of each party "to seek to modify the decision ..." in the event that "facts are developed that indicate that PG&E has previously collected some or all of the \$46.9 million in rates prior to this application ..."²⁶

DRA specifically "requests that the Commission adopt this provision in its decision."²⁷ DRA argues that:

²² DRA Opening Brief at 4. PG&E Opening Brief at 3.

²³ Districts Opening Brief at 4.

²⁴ Districts Opening Brief at 2; PG&E Opening Brief at 2.

²⁵ Districts Opening Brief at 6.

²⁶ Stipulation of Facts and Other Matters (August 14, 2008).

²⁷ DRA Opening Brief at 3.

The Commission should protect ratepayer [sic] if later facts come to light which demonstrate that PG&E has indeed collected or [sic] all of the \$34.8 million for hydro valuation expenses. If PG&E is wrong and has collected such funds in rates, no finality doctrine should preclude the Commission from modifying its decision accordingly and directing a refund to ratepayers.²⁸

PG&E, in response, states that it “agrees with DRA’s conclusions, including DRA’s recommendation that the Commission’s decision adopt the ‘newly discovered facts’ portion of the parties’ August 14, 2008, stipulation of facts and other matters.”²⁹

We note that the Commission’s Rules of Practice and Procedure (Rules) permit the filing of a petition to modify a decision when new facts come to light.³⁰ Our rules, however, state:

(d) Except as provided in this subsection, a petition for modification must be filed and served within one year of the effective date of the decision proposed to be modified. If more than one year has elapsed, the petition must also explain why the petition could not have been presented within one year of the effective date of the decision. If the Commission determines that the late submission has not been justified, it may on that ground issue a summary denial of the petition.³¹

This section of the Rules indicates that the Commission’s longstanding process permits the reopening of a proceeding when new facts come to light – even after the passage of a year – as long as the petitioner explains why the petition “could

²⁸ *Id.*

²⁹ PG&E Reply Brief at 1.

³⁰ Rules of Practice and Procedure, Section 16.4.

³¹ *Id.* at Section 16.4(d).

not have been presented within one year..."³² Thus, we see the request for inclusion of the language contained in Point 3 of the Stipulation in this decision as broadly consistent with Commission rules and practices.

We do not, however, waive the requirement that a petition explain "why the petition could not have been presented within one year of the effective date of the decision."³³ We believe that this requirement will ensure timely action by concerned parties whenever a new fact does come to light while still enabling the Commission to protect the interests of ratepayers.

Finally, we note that the stipulation makes it clear that no evidence has been uncovered that leads us to question D.03-02-028's determination that the costs preparing for sale, appraisal or divestiture of the hydroelectric facilities are reasonable. Moreover, there is no evidence indicating that PG&E has already collected any portion of these funds.

3.2. What is the appropriate ratemaking treatment for the recovery of the costs deemed reasonable in D.03-02-028?

Since the costs incurred by PG&E in preparing for the sale, appraisal or divestiture of the hydroelectric generation facilities were deemed reasonable in D.03-02-028, then the Commission must determine whether the ratemaking treatment proposed for the recovery of these costs is also reasonable and consistent with the law. Specifically:

PG&E requests that it be authorized to transfer the balance from the Costs Deemed Reasonable subaccount of the Generation Divestiture Transaction Cost Memorandum Account (GDTCMA) (including

³² *Id.*

³³ *Id.*

interest at the 90-day commercial paper rate calculated from the date of this Application to the date of transfer plus franchise fees and uncollectibles) to the Modified Transition Cost Balancing Account (MTCBA) for recovery in rates as part of PG&E's 2009 Annual Electric True-up advice letter.³⁴

This action would enable PG&E to recover the costs incurred by PG&E through a non-bypassable surcharge imposed on all electricity customers.

In support of this request, PG&E argues that the Commission has already decided this matter in D.03-02-028. PG&E states:

This issue has been decided previously by the Commission, in D.03-02-028 and other Annual Transition Cost Proceedings authorizing recovery of AB 1890-related restructuring and market valuation costs incurred under the mandates of AB 1890 in general and Public Utilities Code section 367 specifically. The Commission stated in D.03-02-028, "PG&E requests authority to recover \$34.8 million costs associated with the planned divestiture/market valuation of PG&E's hydroelectric generation facilities. Pub. Util. Code Section 367(b) requires the Commission to market value the utilities' generation assets not later than December 31, 2001, and directs that the Commission determine the market value 'based on appraisal, sale, or other divestiture.'" (D.03-02-028, pp. 8-9.) The Commission went on to conclude that "We find that PG&E's transition cost expense of \$34.8 million is reasonable. It represents the cost of preparing for sale, appraisal or divestiture properties which include 110 generating units, 99 reservoirs, 174 dams, 184 miles of canals, 44 miles of flumes, 19 miles of pipe, 5 miles of natural waterways, and 136,000 acres of land owned in fee." (*Id.*, p. 19.)³⁵

Therefore, PG&E argues that these costs are "competitive (sic) transition costs."

PG&E then asserts that:

³⁴ Application at 2.

³⁵ PG&E Opening Brief at 2.

Public Utilities Code section 367 expressly requires and authorizes CTCs to be recovered from “all customers...on a non-bypassable basis,” (emphasis added), and PG&E’s proposed allocation is fully consistent with that statutory requirement. Said another way, to do otherwise as the Districts recommend would violate the statutory requirements of the Public Utilities Code that all customers share responsibility for CTCs.³⁶

DRA views these costs as transition costs and supports the recovery of these costs as proposed by PG&E. DRA argues:

... parties for whom transition costs were used must pay these costs, regardless of their current status as utility customers. DRA suggests that it is both fundamentally fair and meets with the intent of California law.³⁷

The Districts, however, argue that the costs incurred by PG&E do not qualify as transition costs and should not be collected as proposed by PG&E.

The Districts argue:

Transaction costs incurred in *preparation* for the sale, appraisal, or divestiture of generating facilities are not among the costs listed in section 367(a) [of the Cal. Pub. Util. Code] and PG&E’s Preliminary Statement Part CQ. [Emphasis in original.]

The Districts argue further that these costs are not eligible for recovery through the non-bypassable surcharges used to recover CTC. In support of this argument, the Districts further argue that D.03-02-028 did not determine that the costs “incurred in *preparation* for the sale, appraisal, or divestiture of generating facilities are eligible for recovery as CTC.”³⁸ In particular, the Districts state:

³⁶ PG&E Opening Brief at 4.

³⁷ DRA Opening Brief at 4.

³⁸ Districts Opening Brief at 4.

If the Commission had previously authorized the recovery of the costs at issue here as CTC, there would be no need for the Application.³⁹

Furthermore, the Districts argue that § 367(a) “specifies only six categories of transition costs that can be collected after December 31, 2001.”⁴⁰ The Districts review the statute and argue that these costs “are not among the costs listed in section 367 (a) ...”⁴¹ In addition, the Districts also argue that these costs “may not be recovered as pre- ... December 31, 2001 CTC.” Finally, the Districts argue that PG&E’s use of the cost allocation methodology adopted as part of settlement approved in D.07-05-026 “is not a precedent.”⁴²

PG&E replies that the costs in this proceeding are clearly transition costs, arguing that “[a]s the Commission’s earlier decision in this proceeding recognized, the transaction costs associated with the sale, appraisal or divestiture of PG&E’s generation assets have always been recognized as ‘transition costs’ to be recovered from any proceeds of the sale or divestiture and the net gain or loss credited or debited to the Transition Cost Balancing Account.”⁴³ PG&E argues that “[t]he only reason that D.03-02-028 deferred authorizing rate recover for the

³⁹ *Id.*

⁴⁰ *Id.* at 3.

⁴¹ *Id.* In footnote 15, the Districts state that they “are concerned that CTC, as conceived by PG&E, will continue well past the period the Legislature authorized to recover stranded costs that might result from the transition to a competitive generation market.” The Districts note that they have raised this issue in PG&E’s A.08-06-011, commonly known as the 2009 ERRA proceeding.

⁴² *Id.* at 5.

⁴³ PG&E Reply Brief at 2.

costs was because of the Commission's concern about the effects of future divestiture of the hydroelectric plants after ABX1 6 expired in 2006."⁴⁴

We find that the costs deemed reasonable in D.03-02-028 are indeed transition costs. First, we note that although D.03-02-028 did not include a finding of fact on this issue, the dicta demonstrate that the Commission viewed these costs to be transition costs. Specifically, D.03-02-028 states "[w]e find that PG&E's transition cost expense of \$34.8 million is reasonable."⁴⁵

Second, even if there were no dicta indicating that D.03-02-028 determined that these costs were transition costs, they clearly are. Specifically, these costs were incurred pursuant to § 367(a), which orders the Commission to calculate and determine the uneconomic costs associated with generation facilities "that may become uneconomic as a result of a competitive generation market."⁴⁶ This determination by the Commission required that PG&E take the steps to prepare for a sale of its hydroelectric facilities, and these actions were deemed reasonable in D.03-02-028.

We also find it reasonable to recover these costs through a non-bypassable surcharge as proposed by PG&E. D.07-05-026 adopted an identical method for recovering the revenue requirement that resulted from a settlement agreement. We note that the Commission, in approving the settlement, found that the recovery of the settlement amounts through a CTC surcharge was "consistent with law."⁴⁷ If there were merits to the Districts' argument that there is no

⁴⁴ *Id.*

⁴⁵ D.03-02-028 at 19, emphasis added.

⁴⁶ Pub. Util. Code § 367(a).

⁴⁷ D.07-05-026, Conclusion of Law 1, at 10.

statutory basis to permit recovery of this transition cost through a non-bypassable surcharge, then this previous Commission action would not be “consistent with the law.”

The Districts are right to point out that a settlement agreement is non-precedential. Our decision today does not use the settlement terms as a precedent to guide our action. We do, however, note that the approval of the settlement by the Commission necessitates that the Commission find the terms of the settlement, including the collection of the costs through a CTC surcharge, “consistent with the law.” Our decision today repeats that finding – the surcharge mechanism proposed by PG&E is consistent with the law.

As a result, we find it is reasonable and consistent with the law for PG&E to transfer the balance from the Costs Deemed Reasonable subaccount of the GDTTCMA (including interest at the 90-day commercial paper rate calculated from the date of this Application to the date of transfer plus franchise fees and uncollectibles) to the MTCBA for recovery in rates as part of PG&E’s next Annual Electric True-up advice letter.

3.3. Will PG&E’s Recovery of these Costs at this Time Pose an Unacceptable Risk of Future Double Recovery?

The Districts argue that “PG&E’s proposed disposition of the remaining hydroelectric costs creates a substantial risk of inappropriate double recovery.”⁴⁸ The Districts note that its argument “relates to the potential for future double recovery and not to the type of past recovery issues addressed in Paragraphs 2 and 3 of the Stipulation.”⁴⁹

⁴⁸ Districts Opening Brief at 6.

⁴⁹ *Id.* at 7, footnote 26.

In response, DRA argues that:

Nothing in the record shows that such a sale is likely to occur soon. If and when that occurs the Commission can take into account any double recovery in allocation of gains on sale between shareholders and ratepayers.⁵⁰

PG&E notes that the “CPUC ‘gain on sale’ ratemaking and accounting criteria would preclude double recovery.”⁵¹

We do not see an unacceptable risk of the double recovery of these costs in the event that PG&E, at some future date, disposes of its hydroelectric generation assets through a sale. Like DRA, we believe that such a future sale is unlikely. Moreover, given current research technologies, a participant in such a future Commission proceeding promoting the interests of ratepayers would surely bring to the attention of the Commission this decision and the fact that PG&E has already recovered from ratepayers some of the costs that preparing for such a sale would require.

4. Conclusion

In summary, we find it reasonable to grant PG&E’s application to recover the costs of preparing for the sale, appraisal or divestiture of its hydroelectric generation facilities that were deemed reasonable in D.03-02-028. We find that these costs are transition costs. It is also reasonable and lawful for PG&E to recover these costs through the MTCBA, a practice previously used in D.07-05-026.

⁵⁰ DRA Reply Brief at 2-3.

⁵¹ PG&E Reply Brief at 1, footnote 1.

This decision protects consumers by incorporating language that makes it clear that it is reasonable for parties to petition to modify this decision should new facts come to light that indicate that PG&E has already collected a portion of these costs. The decision further finds that gain on sale regulatory proceedings avoid any unacceptable risk of a future double recovery of sale-related costs.

Finally, having resolved all outstanding issues, we close this proceeding.

5. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on March 10, 2009 by the Districts⁵² and by PG&E.⁵³ There were no reply comments filed.

The Districts' Comments renew their arguments that these costs are not CTC and not eligible for recovery through the GDTCMA and MTCBA. The Districts add no argument that we have not already discussed above.

PG&E's Comments ask the Commission to adopt the proposed decision as written.

6. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Timothy J. Sullivan is the assigned Administrative Law Judge in this proceeding.

⁵² Comments of Merced Irrigation District and Modesto Irrigation District regarding Proposed Decision Granting Application to Recover Transition Costs Previously Deemed Reasonable, March 10, 2009 (Districts' Comments)

⁵³ Opening Comments of Pacific Gas and Electric Company on Proposed Decision, March 10, 2009 (PG&E's Comments).

Findings of Fact

1. The \$34.8 million in costs that PG&E incurred to prepare for the appraisal, sale, or divestiture of its hydroelectric facilities are transition costs.
2. It is reasonable to authorize PG&E to transfer the balance from the Costs Deemed Reasonable subaccount of the GDTCMA (including interest at the 90-day commercial paper rate calculated from the date of this Application to the date of transfer plus franchise fees and uncollectibles) to the MTCBA for recovery in rates as part of PG&E's next Annual Electric True-up advice letter.
3. It is reasonable to include Point 3 of the Stipulation in this decision.
4. Authorizing recovery of these costs does not carry an unacceptable risk of "double recovery" by PG&E of these costs.

Conclusions of Law

1. D.03-02-028 deemed the \$34.8 million in costs that PG&E incurred to prepare for the appraisal, sale, or divestiture of its hydroelectric facilities reasonable.
2. D.03-02-028 deemed the \$34.8 million in costs that PG&E incurred to prepare for the appraisal, sale, or divestiture of its hydroelectric facilities to be transition costs pursuant to Pub. Util. Code § 367(a).
3. D.07-95-026 deemed it consistent with the law to permit the recovery of transition costs arising from preparation for a planned divestiture or market valuation of generation facilities by transferring these costs to the MTCBA.
4. It is consistent with the law to authorize PG&E to transfer the balance from the Costs Deemed Reasonable subaccount of the GDTCMA (including interest at the 90-day commercial paper rate calculated from the date of this Application to the date of transfer plus franchise fees and uncollectibles) to the MTCBA for recovery in rates as part of PG&E's next Annual Electric True-up advice letter.

5. It is consistent with the law and the Commission's Rules of Practice and Procedure to permit any party to petition to modify this decision approving PG&E's application if, subsequent to today's decision approving PG&E's application, facts develop that indicate that PG&E has previously collected some or all of the \$46.9 million in rates prior to this application. In the event of such a petition, any party signing the Stipulation is free to support or oppose such a petition for modification.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) is authorized to transfer the balance deemed reasonable in Decision 03-02-028 attributed to preparing for the sale, appraisal, or divestiture of hydroelectric generation facilities from the Costs Deemed Reasonable subaccount of the Generation Divestiture Transaction Cost Memorandum Account (including interest at the 90-day commercial paper rate calculated from the date of this Application to the date of transfer plus franchise fees and uncollectibles) to the Modified Transition Cost Balancing Account for recovery in rates as part of PG&E's next Annual Electric True-up advice letter.

2. Any party is authorized to petition to modify this decision approving PG&E's application if, subsequent to today's decision approving PG&E's application, facts develop that indicate that PG&E has previously collected some or all of the \$46.9 million in rates prior to this application. If more than one year has elapsed from the time of this decision to the filing of a petition, the petition must also explain why the petition could not have been presented within one year of the effective date of the decision. In the event of such a petition, any

party, including those signing the Stipulation, is free to support or oppose such a petition for modification.

3. Application 08-04-022 is closed.

This order is effective today.

Dated April 16, 2009, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners