

Decision 09-07-032 July 30, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U338E) for Authorized Cost of Capital for Utility Operations for 2008.

Application 07-05-003
(Petition For Modification
filed March 26, 2009)

And Related Matters.

Application 07-05-007
Application 07-05-008

**DECISION DENYING PETITION FOR MODIFICATION
OF DECISION 08-05-035**

1. Summary

This decision denies Southwest Gas Company's (Southwest) petition to add Southwest as a named energy utility subject to the major energy utilities multi-year cost of capital mechanism adopted by Decision 08-05-035.

2. Request

Southwest seeks to be subject to the multi-year (three year) cost of capital mechanism adopted for the major energy utilities Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E),

and San Diego Gas & Electric Company (SDG&E). Southwest also seeks to file its first full cost of capital application under this mechanism for its 2014 test year.¹

3. Background

Prior to 1989, changes in California energy utilities' cost of capital were addressed as part of their respective general rate case (GRC) applications. Subsequently, in 1989 cost of capital was removed from the GRC process of seven energy utilities to separate annual cost of capital proceedings, pursuant to Decision (D.) 89-01-040. This change was made to reduce the complexities involved in the energy utilities' GRC and to even out the flow of rate proceedings before the Commission. The seven energy utilities were SCE, PG&E, SDG&E, Southern California Gas Company (SoCalGas), PacificCorp formerly named Pacific Power & Light Company, Sierra Pacific Power Company (Sierra), and Southwest Gas Company (Southwest). Each of these utilities filed individual applications which were consolidated into one proceeding pursuant to Rule 7.4 of the Commission's Rules of Practice and Procedure.

Five of these seven energy utilities were subsequently exempted from filing annual cost of capital applications upon establishment of alternative ratemaking mechanisms. Pacific Corp was exempted from its annual cost of capital filing in 1993 pursuant to D.93-12-016, Southwest in 1994 pursuant to

¹ Southwest's recent general rate case proceeding resulted in a 2009 test year adopted settlement providing for it to undergo a formal cost of capital review every five years. Therefore, Southwest's next full cost of capital proceeding is scheduled for a 2014 test year, which coincides with the major energy utilities second cost of capital applications under the new multi-year (three year) cost of capital mechanism. It also coincides with Southwest's next general rate case proceeding.

D.94-12-022, SDG&E in 1996 pursuant to D.96-06-055, SoCalGas in 1997 pursuant to D.97-07-054, and Sierra in 2000 pursuant to D.00-12-062.

3.1. Southwest's Cost of Capital Process

Southwest's ratemaking mechanism adopted in 1994 was replaced by an automatic trigger mechanism (ATM) by D.04-03-034 and last modified by D.08-11-048. Under the ATM, Southwest is required to submit a cost of capital case every five years.²

3.2. Major Energy Utilities Traditional Process

SCE and PG&E have been required to file annual cost of capital applications through their 2007 test years. SDG&E filed annual cost of capital applications until 1996 when it became exempt upon the adoption of an alternative ratemaking mechanism, the Market-Indexed Capital Adjustment Mechanism. SDG&E returned to filing annual cost of capital applications beginning with its 2006 test year. That proceeding was consolidated with SCE and PG&E's annual cost of capital applications. SCE, PG&E and SDG&E were granted waivers from filing 2007 test year cost of capital applications.³ However, the three major energy utilities were instructed to file 2008 test year applications and notified that the appropriateness and relevance of financial models being used to set the major utilities cost of capital would be reviewed in the near future.

3.3. Multi-Year Cost of Capital Process

The major energy utilities subsequently filed 2008 test year cost of capital applications which were consolidated into one proceeding. Although

² Petition at p. 2.

³ See D.06-08-026, dated August 24, 2006 and D.06-10-031, dated October 19, 2006.

D.07-12-049 authorized 2008 test year cost of capitals for SCE, PG&E, and SDG&E, that decision kept the proceeding open to consider replacing the annual cost of capital filing requirement with a cost of capital mechanism.

A cost of capital mechanism was subsequently adopted for the major energy utilities, pursuant to D.08-05-035. This mechanism requires the major energy utilities to file complete cost of capital applications every third year for the following test year beginning with a 2011 test year. That first cost of capital mechanism filing would also consider whether modifications to the mechanism are appropriate.

4. Protest

The Division of Ratepayer Advocates (DRA) protested Southwest's petition on April 27, 2009. The major reasons cited by DRA for opposing the petition were that the petition had procedural defects and that the requested mechanism is applicable to only major energy utilities.

4.1. Procedural Defects

Procedural defects cited by DRA included Southwest's failure to comply with Rule 16.4 of the Commission's Rules of Practice and Procedure by not affirmatively demonstrating how Southwest is affected by the decision and failure to identify any factual allegations from the record that support the petition.

However, as explained by Southwest in its response to DRA's protest, Commission rules require petitioner to state, not affirmatively demonstrate, how it is affected by the decision. Although Southwest is not directly impacted by the decision, Southwest seeks to prospectively file a cost of capital application in the second three-year cycle of the multi-year cost of capital mechanism. Factual

allegations from the record to support its position were not presented because Southwest does not allege any new or changed facts.

Procedural compliance does not provide sufficient reason to grant a petition. Hence, we move on to consider the appropriateness of placing Southwest under the major utilities multi-year cost of capital process.

4.2. Applicability of a Multi-Year Mechanism

DRA opposes Southwest filing cost of capital applications under the major energy utilities newly adopted cost of capital mechanism on the basis that it was established to deal specifically with the major energy utilities cost of capital. In addition, an extension of the cost of capital mechanism to Southwest conflicts with the identified scope of the proceeding to determine a cost of capital mechanism for SCE, PGE, and SDG&E.

DRA considers Southwest different from the major energy utilities because Southwest is a multi-jurisdictional energy utility. While the service territory of the major energy utilities are located 100% in California, more than 90% of Southwest's service territory is located out-of-state in Arizona and Nevada. Less than 10% of Southwest's service territory is located within California. DRA concludes that Southwest's cost of capital should continue to be analyzed in general rate case proceedings like similarly situated multi-jurisdictional energy utilities such as PacifiCorp and Sierra.

4.3. Discussion

There are several concerns regarding Southwest's petition. Among our more important concerns is that the major energy utilities' adopted cost of capital mechanism was based solely on the major utilities' operations and needs. While the mechanism may be applicable for multijurisdictional utilities, such as

Southwest, there was no input or consideration as to its operations, needs, or out-of-state regulatory impacts in establishing the mechanism.

Southwest also seeks to be subject to a mechanism effective in 2009 that will be scrutinized for modifications as part of the major energy utilities 2011 test year cost of capital filings without considering how its operations would be impacted by changes that may be made to the mechanism and four years prior to the 2014 test year Southwest seeks to implement the mechanism. Approval of its petition would require the Commission to deviate from the process used for California multijurisdictional utilities by bifurcating into separate proceedings Southwest's 2014 test year cost of capital from its 2014 test year GRC. It would also result in Southwest filing more frequent cost of capital proceedings, every three years. Finally, Southwest's petition would deviate from the process being used for other similarly situated multijurisdictional utilities.

Although Southwest has been subject to a cost of capital mechanism since 1995, it has not demonstrated that the mechanism adopted by D.08-05-035, subject to modifications as part of the major energy utilities' 2011 test year cost of capital applications, should be applicable to Southwest beginning its 2014 test year.

Southwest has not demonstrated that the major energy utilities cost of capital mechanism should be applicable to Southwest at this time. Southwest should include a cost of capital request as part of its 2014 test year GRC.

5. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to 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 July 1, 2009, by Southwest, and reply comments were

filed July 6, 2009, by DRA. The comments and reply comments did not result in any changes to the ALJ's proposed decision.

6. Assignment of Proceeding

John A. Bohn is the assigned Commissioner and Michael J. Galvin is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Southwest seeks to modify D.08-05-035 to make its subject to the multi-year (three year) cost of capital mechanism adopted for the major energy utilities.

2. Southwest seeks to file its first full cost of capital application under the major utilities cost of capital mechanism for its 2014 test year.

3. Prior to 1989, changes in California energy utilities' cost of capital were addressed as part of their respective GRC applications.

4. In 1989 cost of capital was removed from the GRC process of seven energy utilities to separate annual cost of capital proceedings to reduce the complexities involved in the energy utilities' GRCs and to even out the flow of rate proceedings before the Commission.

5. Southwest, along with other multijurisdictional energy utilities, was subsequently exempted from filing annual cost of capital applications upon establishment of alternative ratemaking mechanisms.

6. A cost of capital mechanism was adopted for the major energy utilities SCE, PG&E and SDG&E, by D.08-05-035.

7. The major energy utilities are to file complete cost of capital applications every three years beginning with their 2011 test year.

8. Southwest's ATM requires it to submit a cost of capital case every five years.

9. Southwest's petition is opposed by DRA.

10. While the major energy utilities' service territory are located 100% in California, more than 90% of Southwest's service territories are located out-of-state in Arizona and Nevada.

11. Other multijurisdictional energy utilities such as PacifiCorp and Sierra address cost of capital as part of their GRC applications.

12. Southwest's next cost of capital and GRC proceeding is scheduled for a 2014 test year.

13. The major energy utilities' cost of capital mechanism was adopted based solely on the major energy utilities' operations and needs.

14. The major energy utilities' cost of capital mechanism will be scrutinized for modifications as part of the major energy utilities 2011 test year cost of capital applications.

Conclusions of Law

1. Southwest's petition to modify D.08-05-035 should be denied.
2. This decision should be effective today.

O R D E R

IT IS ORDERED that:

1. Southwest Gas Corporation's petition to modify Decision 08-05-035 is denied.
2. Application (A.) 07-05-003, A.07-05-007, and A.07-05-008 are closed.

This order is effective today.

Dated July 30, 2009, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN

RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners

