

Decision 09-09-020 September 10, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company to Establish a Retirement Plan Funding Mechanism and to Increase Gas and Electric Revenue Requirements, Rates and Charges for a Retirement Plan Contribution, Effective January 1, 2011. (U39M)

Application 09-03-003
(Filed March 2, 2009)

Pacific Gas and Electric Company, by Deborah S. Shefler, Attorney at Law, applicant.
Adams, Bradwell, Joseph & Cardozo, by Marc D. Joseph, Attorney at Law, for Coalition for California Utility Employees; and, Laura J. Tudisco, Attorney at Law, for Division of Ratepayer Advocates, interested parties.

**DECISION APPROVING ALL PARTY SETTLEMENT AGREEMENT
ON A PENSION COST RECOVERY MECHANISM**

1. Summary

This decision approves an All-Party Settlement Agreement on a pension cost recovery mechanism between Pacific Gas and Electric Company (PG&E), the Coalition of California Utility Employees, and the Division of Ratepayer Advocates that sets a 100% pension funding goal over a reasonable period of years and retains PG&E's Pension Contribution Balancing Account. The revenue requirement impact in 2011 is \$140.5 million, 2012 is \$177.2 million, and 2013 is \$215.7 million with the 2013 pension contribution level continuing in subsequent years until a new General Rate Case or application is resolved.

2. Background

Since 2003, the cost and recovery of PG&E's (PG&E) retirement plan has traditionally been addressed in its General Rate Case (GRC) proceedings with a forecasted 100% funded goal at the end of a three-year GRC cycle.¹

The Commission found in PG&E's 2003 test-year GRC's decision that the need for ratepayer contributions to PG&E's Retirement Plan Trust should be determined based on the funding status of its Retirement Plan Trust.² Consistent with that finding, there was no allowance for 2003 test-year pension costs because PG&E's Retirement Plan Trust was funded 110%, a 10% overfunding. From 1994 through 2005, customer rates did not include any funding for retirement plan contributions. Other than a PG&E contribution to the retirement plan for a voluntary retirement incentive, PG&E made no pension contributions during that time period.

Subsequently, on July 13, 2005, PG&E filed a petition to modify Decision (D.) 04-05-055 for authority to (1) resume pension contributions beginning on January 1, 2006 for four years because its Retirement Plan Trust was estimated to be approximately 98.1% funded on January 1, 2005 and projected to further decline to 86.0% in 2010 unless contributions resumed, and (2) file an application separate from its 2007 test-year GRC to justify annual-pension contributions for the years 2006 through 2009. By D.05-12-046, dated December 15, 2005, PG&E was authorized to file an application seeking authority to fund its estimated

¹ An exception to the three-year GRC cycle occurred in PG&E's 2007 test year GRC. A D.07-03-044 adopted settlement agreement extended that GRC proceeding an additional year to four years thereby moving its next test year GRC to 2011 from 2010.

² D.04-05-055 (2004), mimeo. at pp. 83 - 86.

pension costs for the 2006 year only. Its request to file an application to recover pension contributions separate from its 2007 test-year GRC was denied on the basis that pension contributions are expense line items normally evaluated in GRC proceedings and PG&E has not made a compelling case otherwise.³

On December 2, 2005, PG&E filed its 2007 test-year GRC and 18 days later on December 20, 2005 filed its separate application for authorization to fund and recover 2006 pension contributions. Interested parties to those proceedings negotiated a settlement agreement pertaining to pension contribution issues in both applications that resulted in a March 21, 2006 consolidation of both applications for the limited purpose of considering the proposed pension contribution settlement agreement.

Subsequently, D.06-06-014 was issued on June 15, 2006 approving the uncontested pension contribution settlement agreement that provided for PG&E to make and recover pension contributions from 2006 to year-end 2009 on a projected basis to bring the funded status of PG&E's Pension Plan to 100% by January 1, 2010. The 2007 test-year GRC decision (D.07-03-044) further extended the pension-contribution settlement approved by D.06-06-014 through year end 2010 because that GRC decision added 2010 as an additional attrition year thereby extending that GRC to a four-year cycle.

3. Request

PG&E seeks authority to change the method by which it funds and recovers its pension contributions to an annual Tier II Advice Letter filing based

³ D.05-12-046, mimeo. p. 11, Conclusion of Law # 2.

on a rolling seven-year forecast approach from the three-year GRC process.⁴ It seeks this change because of the year-to-year volatility in the financial market impacts the market value of its Retirement Plan Trust and the GRC-based funding method does not allow for responses to that volatility without large swings in Retirement Plan contributions from one GRC cycle to the next.⁵ Specifically, the decline in the 2008 financial markets from 2007 has substantially reduced the value of PG&E's Retirement Plan Trust assets. PG&E forecasts that the 2008 financial market decline will preclude it from reaching the 100% funding goal. As of December 31, 2008, PG&E forecasts that the funding status of its pension Retirement Plan Trust will be only 95.5% as of January 1, 2010 and 87.9% as of January 1, 2011.

By testimony, PG&E explained that its proposal is a direct result of changes in the computation of pension contributions under the Pension Protection Act of 1996 (PPA). PPA established new rules concerning the calculation of minimum required contribution levels for tax-qualified retirement plans. Under PPA, unfunded target liabilities must be amortized over seven years. PPA also limited the period for smoothing deviations from expected asset returns to determine the actual value of assets. Under PPA, asset changes in the period not more than

⁴ A Tier II Advice Letter filing concern matters generally not expected to require a commission resolution and is deemed approved if, after a 30-day initial review period has ended, there is no timely protest, and it has not been suspended by Commission staff.

⁵ Application, p. 4.

24 months before the beginning of the plan year are included in the smoothing process.⁶

PG&E's Retirement Plan funding mechanism would maintain its 100% funding goal. Rather than setting the full funding goal three years out, equal to the three-year GRC cycle, the 100% full funding goal would be targeted seven years into the future, consistent with the amortization period established in the Pension Protection Act of 2006.

Beginning with October 2010, PG&E would file an Advice Letter that shows the funding status of its Retirement Plan as of January 1, 2010 with the goal to achieve full funding by January 1, 2017, seven years into the future. PG&E forecasted that its required annual retirement Plan contribution would decrease to \$448 million from \$634 million under its seven-year amortization proposal.

Thereafter, PG&E would file an annual Advice Letter beginning in October 2010 showing the funding status as of January 1 of that year and the annual retirement Plan contribution required to meet a 100% funding status goal seven years into the future. The Advice Letter would also provide the computation of the revenue requirement based on the required contribution. Any required revenue change would be incorporated into the Annual Electric true up and Annual Gas true up filings.

4. Protest

This application was protested by the Division of Ratepayer Advocates (DRA). The Coalition for California Utility Employees (CCUE) was an interested

⁶ Exhibit 1, p. 3-5.

party. On June 5, 2009, and prior to an evidentiary hearing, DRA distributed prepared testimony summarizing its opposition to the application and recommendations. CCUE did not distribute any prepared testimony.

In its prepared testimony, DRA concurred with PG&E that a three-year target to reach a 100% funding goal creates significant rate shock.⁷ To mitigate rate shock, DRA proposed a nine-year rolling funding amortization period over PG&E's proposed seven-year period which would reduce PG&E's revenue requirement by an additional \$28.4 million to an annual \$286.4 million revenue requirement from \$314.8 million.⁸ DRA also recommended that PG&E use its Pension Plan credit balance to satisfy 50% of its minimum required contribution for the next three years.⁹

DRA opposed PG&E's annual Advice Letter proposal because the Advice Letter process allows for only a 30-day period to protest, insufficient time to scrutinize PG&E's request. However, DRA does not oppose allowing the Advice Letter process over the next three years as a safeguard to prevent underfunding if the funded ratio falls below 80%.

DRA concluded that the GRC process is the appropriate place to scrutinize pension costs including changes in current and future pension law; periodic reevaluation of actuarial assumptions; and consistency in payroll increases, revenue requirement factors, and related issues.

⁷ Exhibit 4, p. 3.

⁸ Id., p. 2.

⁹ Credit balance consists of money contributed to the pension plan and earned interest on plan assets that is over and above the minimum required contribution in any given year.

5. Evidentiary Hearing

An evidentiary hearing was held on July 6, 2009. The prepared direct testimony of PG&E and DRA were identified and received into the record after their witnesses' responded to clarifying questions of the Administrative Law Judge (ALJ).

At the evidentiary hearing, PG&E informed the ALJ that all parties to the proceeding have come to a settlement in principle. The parties requested and received additional time so that the final terms of the settlement could be reduced to a written agreement for review and approval of each party's management prior to filing in this proceeding. The parties also requested and received a waiver of Rule 12.1 of the Commission's Rules of Practice and Procedure (Rules), which requires at least one noticed-settlement conference prior to signing any settlement.

6. All-Party Settlement Agreement

An All-Party Settlement Agreement (Settlement), attached as Attachment A to this decision, was filed on July 31, 2009. The Settlement provides for:

- A 100% pension funded goal over a reasonable period of years.
- Retaining the Pension Contribution Balancing Account.
- Tier 2 Advice letter filing for additional contributions and revenue requirement when the funded status falls below 85%.
- Cash contributions of \$245.2 million in 2011, \$286.1 million in 2012, and \$327.0 million in 2013. Related revenue requirement forecast effect is \$140.5 million in 2011, \$177.2 million in 2012, and \$215.7 million in 2013.
- 2013 annual cash contribution level continues until a new GRC or application is resolved.
- Excludes non-GRC rate impacts, such as nuclear decommissioning.
- Annual pension contribution report.

6.1. Discussion of All-Party Settlement Agreement

We review the settlement under the requirements set forth in Rule 12.1(d). The rule provides that prior to approval the Commission must find a settlement reasonable in light of the whole record, consistent with law, and in the public interest. The parties believe that their Settlement satisfies each of those criteria.

6.1.1. Reasonable in Light of the Whole Record

The parties have developed a factual record, contained in the application, the transcripts of the prehearing conference and evidentiary hearing, prepared testimony introduced and received into evidence, and the joint statement of facts agreed to in the Settlement. After carefully reviewing the Settlement, we concur that the Settlement is reasonable in light of the whole record.

6.1.2. Consistent With Law

The parties assert that the Settlement Agreement is consistent with existing law. The Settlement Agreement meets the standard set in PG&E's 2003 GRC decision regarding pension contributions: "The need for ratepayer contributions to the Retirement Plan Trust should be based on the funding status of the Retirement Plan Trust. It is also consistent with D.05-12-046, in which the Commission recognized the possibility that PG&E's pension Plan had fallen below 100% funded status and provided PG&E the opportunity to file an application to include a Plan contribution in the 2006 revenue requirement. It is further consistent with D.06-06-014, adopting a 2006 Settlement among PG&E, DRA and CCUE to allow PG&E to include Plan contributions in its revenue requirement through 2009 projected to result in the Retirement Plan Trust being fully funded on January 1, 2010.

6.1.3. Public Interest

The Settlement is in the public interest because it allows PG&E to make pension contributions in 2001 through 2013 with the objective of PG&E's Retirement Plan Trust being fully funded by the beginning of 2019, assuming the trust earns 7.5% annually. By PG&E making contributions to its Retirement Plan Trust now, ratepayers may be saved from having to pay larger sums in the future to meet minimum contributions required by the Employee Retirement Income Security Act. Further, the Settlement retains PG&E's two-way Pension Contribution Balancing Account for differences between authorized contributions to the trust and (1) lower contributions for any reason and (2) federally mandated higher contributions.

6.1.4. Summary

The pension funding issue identified in this proceeding has been equitably resolved with substantial support in the record by way of the application, prepared testimony and the Settlement. It also reasonable protects ratepayer interest by retaining PG&E's two-way Pension Contribution Balancing Account. Further, the sponsoring parties are fairly reflective of the affected interests.

The Settlement meets the Commission's requirement for adoption of a settlement agreement. When reviewed as a total product, each component is reasonable in light of the record, consistent with law, and in the public interest. The Settlement should be approved.

Pursuant to Rule 12.5, the adoption of this all-party settlement does not constitute approval of any principle or issue in this proceeding and should not be cited as precedent in any future proceeding.

7. Waiver of Comment Period

Pursuant to Rule 14.6(b), all parties stipulated to wave the 30-day public review and comment period required by Section 311 of the Public Utilities Code and the opportunity to file comments on the proposed decision. Accordingly, this matter was placed on the Commission's agenda directly for prompt action.

8. Assignment of Proceeding

John A. Bohn is the assigned Commissioner and Michael J. Galvin is the assigned ALJ in this proceeding.

Findings of Fact

1. PG&E entered into a Settlement with CCUE and DRA which resolves every issue in this proceeding.
2. The Settlement commands the sponsorship of all active parties in this proceeding.
3. The active parties with respect to the Settlement are fairly reflective of the affected interests in this proceeding.
4. No term of the Settlement contravenes statutory provisions or prior Commission decisions.
5. The Settlement conveys sufficient information to permit the Commission to discharge its future regulatory obligation with respect to the parties and their interests.
6. There is no opposition to the proposed Settlement.

Conclusions of Law

1. The Settlement is uncontested.
2. The Settlement is reasonable in light of the whole record, consistent with law, and in the public interest.
3. The Settlement should be adopted.

4. PG&E should be authorized to implement changes in its revenue requirements and rates in accordance with the terms of the Settlement.

5. This decision should be made effective immediately to enable PG&E to implement the Settlement without delay.

O R D E R

IT IS ORDERED that:

1. The All-Party Settlement Agreement set forth in Attachment A between Pacific Gas and Electric Company, the Coalition for California Utility Employees, and the Division of Ratepayer Advocates is adopted.

2. Pacific Gas and Electric Company is authorized to implement the revenue requirement changes resulting from the All-Party settlement Agreement for 2011 into its year-end 2010 Annual Electric True-up and Annual Gas True-up advice filings. Annual adjustments under the adopted All-Party Settlement Agreement thereafter shall be incorporated into the Annual Electric True-up and Annual Gas True-up filings to be effective January 1 of the subsequent year.

3. Pacific Gas and Electric Company shall retain its Pension Contribution Balancing Account for differences between authorized contributions to its retirement Plan Trust and (1) lower contributions for any reason and (2) federally mandated higher contributions.

4. Pacific Gas and Electric Company may file a Tier 2 Advice letter to recalculate its Retirement Plan Trust contribution and revenue requirements if and when the actual funded status of the trust falls below 85%.

5. Pacific Gas and Electric Company shall apply its 2013 annual Retirement Plan cash-contribution level in subsequent years until Retirement Plan Trust

funding is resolved for the subsequent years in a new general rate case or application.

6. Pacific Gas and Electric Company shall direct the Commission's copy of its annual retirement contribution report set forth in the All-Party Settlement Agreement to the Energy Division Director.

7. Application 09-03-003 is closed.

This order is effective today.

Dated September 10, 2009, at San Francisco, California.

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

[D0909020 Attachment for
Final Dec](#)