

Decision 09-10-046 October 29, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
to Recover Costs Related to the 2008 Wildland
Fires Recorded in the Catastrophic Event
Memorandum Account Pursuant to Public Utility
Code Section 454.9. (U 39 E)

Application 09-02-020
(Filed February 27, 2009)

DECISION APPROVING SETTLEMENT

1. Summary

This decision approves a settlement between Pacific Gas and Electric Company and Division of Ratepayer Advocates in this Catastrophic Event Memorandum Account Application to allow recovery of \$11.09 million, consisting of \$8.01 million in capital costs and \$3.08 million in expenses related to wildland fires in 2008. The revenue requirement resulting from these costs is \$5.92 million in electric revenue requirements, including interest through December 31, 2010, franchise fees, and uncollectibles, to be recovered in rates in 2010, with any under or over collections of these amounts accruing to the associated balancing accounts.

2. Background

Following the October 17, 1989 Loma Prieta earthquake, the Commission adopted Resolution E-3238, dated July 24, 1991, which ordered that any utility, as defined by Pub. Util. Code § 216, was authorized to establish a "Catastrophic Event Memorandum Account (CEMA)." The resolution described the conditions for invoking CEMA and its general operation.

Resolution E-3238 described the purpose of CEMA as:

... to record costs of: (a) restoring utility service to its customers; (b) repairing, replacing or restoring damaged utility facilities; and (c) complying with government agency orders resulting from declared disasters. (*Mimeo.*, p. 1.)

The resolution discussed the need for an established account which would ensure there was no issue of retroactive ratemaking – that an in-place mechanism would provide a legitimate vehicle to recover eligible costs.

In 1994, after the Commission first adopted CEMA tariffs for the energy utilities, the California Legislature enacted Senate Bill (SB) 1456 (1994 Legislative Session (Chapter 1156)), which added § 454.9 to the Pub. Util. Code:¹

- (a) The commission shall authorize public utilities to establish catastrophic event memorandum accounts and to record in those accounts the costs of the following: (1) Restoring utility services to customers. (2) Repairing, replacing, or restoring damaged utility facilities. (3) Complying with governmental agency orders in connection with events declared disasters by competent state or federal authorities.
- (b) The costs, including capital costs, recorded in the accounts set forth in subdivision (a) shall be recoverable in rates following a request by the affected utility, a commission finding of their reasonableness, and approval by the commission. The commission shall hold expedited proceedings in response to utility applications to recover costs associated with catastrophic events.

Decision (D.) 07-07-041 held that CEMA recovery is limited to costs incurred in jurisdictions declared disasters by competent state or federal authorities.

¹ All statutory references are to the Pub. Util. Code, unless otherwise stated.

3. Procedural History

Pacific Gas and Electric Company (PG&E) filed its application on February 27, 2009. Division of Ratepayer Advocates (DRA) filed a protest on April 1, 2009. A prehearing conference was held on April 28, 2009. A Scoping Memo was issued on May 1, 2009. DRA served testimony on July 29, 2009. PG&E served rebuttal testimony on August 13, 2009.

4. Positions of Parties

In its application, PG&E claims a series of Wildland Fires from May 22 through October 2008 caused \$12.97 million in restoration and repair costs to PG&E's electric distribution system. On June 11 and June 30, 2008, Governor Schwarzenegger issued State of Emergency Proclamations for 10 counties in northern and central California in response to the Wildland Fires. On June 28, 2008, President Bush issued a Presidential declaration of emergency, proclaiming a state of emergency in several counties in PG&E's service territory. PG&E states that it sustained damage in nine of the 10 counties covered by one or both of these declarations.

Pursuant to D.07-07-041, PG&E requests review of and authorization to recover \$11.72 million of costs arising from the 2008 Wildland Fires in the counties that PG&E contends had disaster declarations by competent state or federal authorities. These represent nine of the 13 counties where 2008 Wildland Fires occurred and PG&E sustained damages. PG&E's request for recovery of costs included \$3.68 million in expense and \$8.04 million in capital costs arising from the restoration of service and repairs following the 2008 Wildland Fires. The \$11.72 million of costs included in the Application translate to a total revenue requirement of \$6.56 million to be recovered in 2010.

In its testimony, DRA recommends disallowances of \$599,090 in expense and \$60,000 in capital from the original costs requested by PG&E because of lack of evidence of a disaster declaration for one county. DRA argues that \$588,000 in straight-time labor and \$11,090 in employee appreciation gifts are not CEMA-eligible expenses. DRA also argues that \$60,000 in capital costs incurred in Solano County are not CEMA-eligible. PG&E in its rebuttal testimony argues that the costs in its Application are justified.

5. Settlement

DRA and PG&E, the only two active parties in this proceeding, entered into a Settlement to resolve all issues in the proceeding. The Settlement was filed as a Joint Motion on August 28, 2009.

The Settlement consists of the following key agreements:

1. The reasonable total costs recoverable from this CEMA Application is \$11.09 million, consisting of \$8.01 million in capital costs and \$3.08 million in expenses. The revenue requirement resulting from these costs is \$5.92 million in electric revenue requirements, including interest through December 31, 2010, franchise fees, and uncollectibles, to be recovered in rates in 2010,² with any under or over collections of these amounts accruing to the associated balancing accounts. Upon approval of this Settlement by the Commission, PG&E will record commensurate amounts for the CEMA revenue requirement into the Distribution Revenue Adjustment Mechanism (DRAM) for rate recovery through its next available electric rate change

² The revenue requirement numbers include interest calculated at the actual 90-day commercial paper rate through August 2009, and at the August 2009 90-day commercial paper rate thereafter on the unamortized balanced through 2010. The numbers will change slightly over time as the forecasted 90-day commercial paper rate is replaced by the actual 90-day commercial paper rate in each month following August 2009.

in 2010 and through the Annual Electric True-up (AET) advice letter.

2. The Settling Parties agree that the Commission should find that it is reasonable for PG&E to recover \$5.92 million as PG&E's total authorized revenue requirement in this Application. The final Settlement amount reflects litigation uncertainty assessed by one or both parties.

6. Discussion

6.1. Preconditions for Approval of All-Party Settlements

In D.88-12-083, 30 CPUC2d 189, 221-223, the Commission established a standard for review of settlements.³ Rule 12.1(d) of the Commission's Rules states:

The Commission will not approve stipulations or settlements, whether contested or uncontested, unless the stipulation or settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

In D.92-12-019, 46 CPUC2d 538, 550-551, the Commission amended the standard to adopt a policy on "all-party" settlements. As a "precondition" to approval of all-party settlements, the Commission must be satisfied that:

1. The settlement commands the unanimous sponsorship of all active parties to the proceeding;
2. The sponsoring parties are fairly representative of the affected interests;
3. No term of the settlement contravenes statutory provisions or prior Commission decisions; and
4. The settlement conveys to the Commission sufficient information to permit it to discharge its future

³ The decision was revised by D.89-03-062, but the revisions did not affect the standard.

regulatory obligations with respect to the parties and their interests.

We find that the Settling Parties comprise all active parties. No other party submitted testimony or indicated it would participate in the hearings.

We find that the Settling Parties represent all affected interests. PG&E represents the interests of its shareholders and DRA represents the interests of customers.

We agree with the Settling Parties that no statutory provision or prior Commission decision would be contravened or compromised by the Settlement. In particular, we are satisfied that the Settlement does not allow recovery of costs for any counties that were not part of a disaster as declared by a competent authority.

The precondition regarding sufficient information has been applied principally to settlements that establish revenue requirements, rates, rules or conditions of service. This Settlement sets PG&E's total revenue requirement resulting from the CEMA Application and specifies that PG&E may include the authorized revenue requirement in its DRAM for inclusion in rates as part of its next AET advice letter.

In sum, we find that the Settlement meets all four preconditions for Commission approval of an all-party settlement.

6.2. Reasonableness of the Settlement

The four factors discussed above are preconditions for Commission approval of this Settlement, but not a substitute for requirements that a settlement also be reasonable, consistent with law and in the public interest. (D.95-05-042, 59 CPUC2d 779, 788.) In D.88-12-083, the Commission discussed many factors that might be balanced in determining whether a proposed settlement is reasonable.

First, an element in determining the fairness of a settlement is the relationship of the settled amount to the risk that a given party will obtain its desired result. (D.88-12-083, 30 CPUC2d 189, 267.) PG&E requested a revenue requirement of \$6.56 million. Discovery, which consisted of an audit of PG&E's showing as well as several data requests, allowed DRA to gauge the strengths and weaknesses of PG&E's request. The settled amount of \$5.92 million represents roughly 90% of PG&E's request and based on the facts and circumstances of the instant Application, represents a fair outcome, from the Settling Parties' perspective, which meets the Commission's criterion.

Second, the Settlement is a reasonable compromise of strongly held views.

Third, the Settlement will spare the Commission and the parties the effort required to litigate disputed issues, particularly given the relatively small range of disputes raised in this proceeding, and the importance of the Commission allocating its resources effectively. The Commission has a history of favoring settlements. Commission approval of the Settlement will provide speedy resolution of contested issues and will promote amicable working relations among the parties.

Fourth, counsel and advocates for the Settling Parties are experienced in public utility litigation.

Fifth, settlement negotiations were accomplished at arm's length and without collusion.

Sixth, the Settlement is uncontested. No other party opposes the Settlement. The absence of adverse reaction from affected interests favors approval.

Seventh, the Settlement addresses all major issues that were raised within the proceeding, and within the authority of the Settling Parties to settle. The Settlement approves rate recovery of a level of costs acceptable to both PG&E and DRA.

We have reviewed the Settlement as a unified, comprehensive resolution of the issues at hand. It would be unfair to the Settling Parties to try to match individual Settlement elements against the specific costs identified in the Application and PG&E testimony, and then determine whether each match-up meets the standards for review of settlements. The willingness of the Settling Parties to cease their efforts to prove or disprove their cases is a key element of the Settlement.

For all of these reasons, we conclude that the Settlement is reasonable in light of the whole record.

6.3. Consistency With Law

As discussed above in the context of preconditions for approval of all party settlements, no statutory provision or prior Commission decisions would be contravened or compromised by the Settlement. In particular, there is sufficient information to meet the requirement of D.07-07-041 that CEMA recovery is limited to costs incurred in jurisdictions declared disasters by competent state or federal authorities.

6.4. Public Interest

There is a strong public policy favoring the settlement of disputes to avoid costly and protracted litigation. (D.88-12-083, 30 CPUC2d 189, 221.) Absent opposition and absent identification of any serious defect in the Settlement, the Commission should approve it.

Nonetheless, the Commission has long held that settlements submitted for review and approval are not simply the resolution of private disputes like those heard in civil court. The public interest and the interests of customers must be considered, and it is the Commission's duty to protect those interests.

The principal public interest affected by this proceeding is delivery of safe, reliable electric service at reasonable rates. The Settlement advances this interest because it permits PG&E to recover most of the asserted, and Commission-staff scrutinized, CEMA costs. Taken as a whole, we conclude that the Settlement is in the public interest.

7. Comments on Proposed Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Pub. Util. Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

8. Assignment of Proceeding

John A. Bohn is the assigned Commissioner and David M. Gamson is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. PG&E incurred capital costs and expenses from Wildland Fires in northern California between May and October 2008.
2. The Governor of California and/or the President of the United States declared disasters related to Wildland Fires in nine counties in PG&E's service territory in 2008.
3. PG&E and DRA entered into a Settlement on August 29, 2009 to allow total costs recoverable of \$11.09 million, consisting of \$8.01 million in capital costs and \$3.08 million in expenses. The revenue requirement resulting from these costs is

\$5.92 million in electric revenue requirements, including interest through December 31, 2010, franchise fees, and uncollectibles, to be recovered in rates in 2010, with any under or over collections of these amounts accruing to the associated balancing accounts.

4. The Settling Parties comprise all active parties. The Settling Parties represent all affected interests.

5. The settlement conveys to the Commission sufficient information to permit it to discharge its future regulatory obligations with respect to the parties and their interests.

Conclusions of Law

1. Some or all of the capital costs and expenses incurred by PG&E from Wildland Fires in northern California between May and October 2008 are eligible for recovery through the Catastrophic Events Memorandum Account mechanism, consistent with § 454.9 of the Pub. Util. Code.

2. No statutory provision or prior Commission decision would be contravened or compromised by the Settlement. The Settlement does not allow recovery of costs for any counties that were not part of a disaster as declared by a competent State or Federal authority.

3. The Settlement is reasonable in light of the whole record, consistent with applicable statutes and Commission precedents, and in the public interest. The Settlement should be approved.

O R D E R

IT IS ORDERED that:

1. The Joint Motion of Pacific Gas and Electric Company and the Division of Ratepayer Advocates for approval of the Settlement Agreement (attached as Appendix A of this decision) is approved.

2. Pacific Gas and Electric Company is authorized to recover \$5.92 million in electric revenue requirements, including interest through December 21, 2010, franchise fees, and uncollectibles, to be recovered in rates in 2010, with any over-or under-collections of these amounts accruing to the associated balancing accounts. Pacific Gas and Electric Company is authorized to record these amounts for the Catastrophic Event Memorandum Account revenue requirement into the Distribution Revenue Adjustment Mechanism for rate recovery through its next available electric rate change in 2010 and through the Annual Electric True-up advice letter.

3. Application 09-02-020 is closed.

This order is effective today.

Dated October 29, 2009, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners

APPENDIX A

[D0910046/A0902020 Appendix A Gamson](#)