

Decision 10-12-026 December 16, 2010

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

Application of Pacific Gas and Electric Company (U39M) San Diego Gas & Electric Company (U902M), Southern California Edison Company (U338M), and Southern California Gas Company (U904G) for Authority to Increase Electric and Natural Gas Rates and Charges to Recover California Air Resources Board Assembly Bill 32 Cost of Implementation Fee.

Application 10-08-002  
(Filed August 2, 2010)

**INTERIM DECISION ON JOINT APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY, SAN DIEGO GAS & ELECTRIC COMPANY, SOUTHERN CALIFORNIA EDISON COMPANY, AND SOUTHERN CALIFORNIA GAS COMPANY TO ESTABLISH MEMORANDUM ACCOUNTS TO RECORD CALIFORNIA AIR RESOURCES BOARD ASSEMBLY BILL 32 COST OF IMPLEMENTATION FEE**

**Summary**

On September 27, 2006, Governor Schwarzenegger signed Assembly Bill (AB) 32, the California Global Warming Solutions Act (Nuñez, Chapter 488, Statutes of 2006), which authorized the Air Resources Board (ARB) to adopt measures necessary to reduce California's statewide greenhouse gas (GHG) emissions to the 1990 level by 2020. AB 32 provides that ARB may adopt a schedule of fees on GHG emissions to recover its administrative costs associated with the implementation of AB 32. ARB adopted the AB 32 Cost of Implementation Fee (AB 32 Fee) on September 25, 2009, with instructions to

ARB's Executive Officer to make certain changes before approving the final version. The final version the AB 32 Fee regulation was approved by the Office of Administrative Law on June 17, 2010. The AB 32 Fee regulation instructs ARB staff to issue invoices for the first annual AB 32 Fee obligation within 30 days of the passage of the state budget, which was signed by Governor Schwarzenegger on October 8, 2010. Payment of the fee is due within sixty days of receipt of the invoice.

Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company (collectively, the Joint IOUs) filed a joint application on August 2, 2010, requesting that the Commission authorize the establishment of memorandum accounts to record the expenses incurred to pay the AB 32 Fee. In addition, the application sought approval for the recovery of AB 32 Fees levied in the interim period until each of the Joint IOUs includes the fee in its next general rate case.

This decision authorizes the establishment of the AB 32 Fee memorandum accounts proposed by the Joint IOUs. We defer to a subsequent phase of this proceeding determination of whether costs incurred and recorded in the memorandum accounts prior to each of the Joint IOUs' next general rate case will be recoverable in rates, and the appropriate manner in which any approved costs will be recovered. This decision does not prejudice any decision in the subsequent phase regarding cost recovery of the AB 32 Fee.

### **Procedural History**

On September 27, 2006, Governor Schwarzenegger signed Assembly Bill (AB) 32, which authorized the Air Resources Board (ARB) to adopt measures necessary to reduce California's greenhouse gas (GHG) emissions to the 1990 level by 2020. AB 32 provides that ARB may adopt a fee on GHG emissions to

recover its administrative costs associated with the implementation of AB 32. ARB adopted the AB 32 Fee on September 25, 2009, and the final version was approved by the Office of Administrative Law on June 17, 2010. The AB 32 Fee regulation instructs ARB staff to issue invoices for the first annual AB 32 Fee obligation within 30 days of the passage of the state budget, which was signed by Governor Schwarzenegger on October 8, 2010. Payment of the fee is due within sixty days of receipt of the invoice.

Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (SCE), and Southern California Gas Company (SoCalGas) (collectively, the Joint IOUs) filed advice letters<sup>1</sup> in January and February of 2010 requesting that the Commission authorize recovery in existing balancing accounts payment of AB 32 Fees. In Resolution G-3447, we dismissed the advice letters without prejudice on procedural grounds. We based the dismissal of the advice letters on the Joint IOUs' lack of authorization, pursuant to Rule 5.1 of General Order (G.O.) 96-B, to file proposals that would result in rate increases via advice letter unless specifically authorized by statute or a previous decision of the Commission. We instructed the Joint IOUs to either file applications requesting rate recovery pursuant to Rule 5.2 of G.O. 96-B or consider whether the AB 32 Fee expenses should be recovered under their Z-factor mechanisms.<sup>2</sup>

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<sup>1</sup> PG&E filed AL 3094-G/3618-E, SCE filed AL 2434-E, SDG&E filed AL 2137-E/1917-G, and SoCalGas filed ALs 4060 and 4060A.

<sup>2</sup> The Z-factor is a mechanism for utilities to recover unforeseen and uncontrollable costs that occur after the most recent test year. Recovery of costs under the Z-factor must meet eight criteria and is subject to a \$5 million deductible per event. As an example, see Decision 08-07-046 for information on SDG&E's Z-factor.

In a joint application dated August 2, 2010, the Joint IOUs requested that the Commission authorize the establishment of memorandum accounts to record the expenses incurred to pay the AB 32 Fee. The Joint IOUs also requested that the Commission approve the proposed requests for recovery of fees in rates during the interim period between the assessment of the first AB 32 Fee and each of the utilities' next general rate case.<sup>3</sup>

### **Discussion**

In their joint application, the Joint IOUs request two specific orders from the Commission. One request is that we authorize each of the Joint IOUs to establish memorandum accounts to record the costs of any AB 32 Fees levied by ARB, subject to our disposition of the Joint IOUs' request for cost recovery. The other request is that we find that the revenue requirements requested in the application are just and reasonable and may be recovered in rates.

This proceeding will be divided into two phases. Phase I will address only the Joint IOUs' request for an order authorizing the establishment of the memorandum accounts. In Phase II, we will determine whether the Joint IOUs may recover expenses incurred prior to the inclusion of estimated AB 32 Fees in each of the Joint IOUs' next general rate case and, if approved, the appropriate mechanism for recovery. Subsequent rulings of the assigned Administrative Law Judge and/or assigned Commissioner will determine the precise scope of Phase II, the need for a prehearing conference, and a proposed schedule for Phase II of the proceeding.

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<sup>3</sup> These will be the Test Year 2012 rate cases for SCE, SDG&E, and SoCalGas and the Test Year 2014 rate case for PG&E.

Two protests were received in response to the joint application. The Utility Consumers Action Network (UCAN) protested on three grounds. First, UCAN asserts that SDG&E lacks an authoritative basis for filing the application. Second, UCAN suggests that SDG&E should seek to recover costs using its Z-factor mechanism. Third, UCAN objects to the timing of the application since it is not certain that SDG&E will actually incur the costs.<sup>4</sup> The protest of the Energy Producers and Users Coalition and the Cogeneration Association of California (jointly, EPUC/CAC) concerns issues related to the Joint IOUs' proposals for cost recovery. Because consideration of whether and how AB 32 Fee expenses should be recovered is deferred to Phase II of this proceeding, we consider only UCAN's first and third objections in this decision.

The Joint IOUs address the objections raised by UCAN in a joint reply. To the first objection, the Joint IOUs respond that Section IX of their application cited Resolution G-3447, which suggested that the Joint IOUs could file applications to recover AB 32 Fee costs, as well as Rule 5.2 of G.O. 96-B, Sections 451 and 454 of the Public Utilities Code, and a general reference to our Rules of Practice and Procedure and prior decisions and resolutions.<sup>5</sup> We reject UCAN's objection on this point because the Joint IOUs have demonstrated ample authoritative basis for filing their joint application.

UCAN also objects to the timing of the application, citing various factors that affect whether and when the AB 32 Fee cost will be incurred. We find this objection similarly unfounded. As the Joint IOUs state in their reply, "If for

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<sup>4</sup> UCAN protest at 2.

<sup>5</sup> Joint IOUs reply to UCAN's protest at 2.

whatever reason... the ARB does not invoice the utilities with such fees in 2010 as anticipated, then there will not be any costs to be recovered by any of the joint utilities beginning January 1, 2011 and thus the balancing [sic] accounts proposed by the joint utilities for recovery of the fees will be adjusted accordingly.”<sup>6</sup> We agree with the Joint IOUs. Simply because there is some uncertainty concerning whether and when the fees will be assessed should not prevent a utility from establishing a memorandum account to record such costs in the event they are incurred. This is particularly true given the short amount of time that the Joint IOUs will have to pay the AB 32 Fee once the invoice is received. We therefore find that the timing of the application is appropriate. We reiterate, however, that our decision in Phase I does not prejudge the outcome of any decision that we will make in Phase II.

### **Categorization and Need for Hearing**

The preliminary categorization of this proceeding is ratesetting. In this decision we affirm the preliminary categorization. We find that evidentiary hearings are not needed for Phase I of the proceeding. It has not been determined whether evidentiary hearing will be necessary for Phase II of the proceeding.

### **Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner and Douglas Long is the assigned Administrative Law Judge in this proceeding.

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<sup>6</sup> Joint IOUs reply to UCAN’s protest at 4.

### **Comments of Proposed Decision**

The proposed decision of Commissioner Peevey 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. No comments were filed.

### **Findings of Fact**

1. AB 32, the California Global Warming Solutions Act (Nuñez, Chapter 488, Statutes of 2006), authorized ARB to adopt measures necessary to reduce California's statewide GHG emissions to the 1990 level by 2020.

2. AB 32 provides that ARB may adopt a schedule of fees on GHG emissions to recover its administrative costs associated with the implementation of AB 32.

3. ARB adopted the AB 32 Fee on September 25, 2009 with instructions to ARB's Executive Officer to make certain changes before adopting the final version. The final version the AB 32 Fee regulation was approved by the Office of Administrative Law on June 17, 2010.

4. PG&E, SCE, SDG&E, and SoCalGas filed advice letters (respectively, 3094-G/3618-E, 2434-E, 2137-E/1917-G, and 4060/4060A) in January and February of 2010 requesting recovery in existing balancing accounts of AB 32 Fees.

5. Resolution G-3447 dismissed the advice letters on the grounds that Rule 5.1 of G.O. 96-B does not permit utilities to file proposals that would result in rate increases via advice letter, unless specifically authorized by statute or a previous decision of the Commission.

6. Resolution G-3447 stated that PG&E, SDG&E, SoCalGas and SCE "may file their request by application as provided for in Rule 5.2 of G.O. 96-B."

7. The AB 32 Fee regulation states that ARB will issue invoices for the AB 32 Fee within thirty days after the governor approves the state budget. Governor Schwarzenegger signed the fiscal year 2010-2011 budget on October 8, 2010. Payment of the AB 32 Fee is due sixty days after the invoice is issued by ARB.

**Conclusions of Law**

1. PG&E, SDG&E, SCE, and SoCalGas are generally authorized by Rule 5.2 of G.O. 96-B to file applications for approval of rate increases and are specifically authorized by resolution G-3447 to file the instant application.

2. Given the short time frame the Joint IOUs have to pay the AB 32 Fee after issuance of the invoice by ARB, it is reasonable to allow each of the Joint IOUs to establish a memorandum account to record its expenditures for complying with the AB 32 Fee before receipt of the first AB 32 Fee invoice.

3. This decision does not address whether cost recovery of the AB 32 Fee prior to each of the Joint IOUs' next general rate case is warranted and does not prejudge the outcome of any subsequent decision on that matter in this or any other proceeding.

**INTERIM ORDER**

**IT IS ORDERED** that Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company may each file a Tier 1 advice letter to establish a memorandum account to record its actual expenditures to comply with the

A.10-08-002 COM/MP1/tcg

Assembly Bill 32 Cost of Implementation Fee in accordance with Exhibits B-1, B-2 and B-3 of Application 10-08-002.

This order is effective today.

Dated December 16, 2010, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
TIMOTHY ALAN SIMON  
NANCY E. RYAN  
Commissioners