

Decision 06-08-033

August 24, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338 E) for Approval of Economic Development Rates.

A.04-04-008
(Filed on April 5, 2004)

Application of Pacific Gas and Electric Company to Modify the Experimental Economic Development Rate (Schedule ED). (U 39 E)

A.04-06-018
(Filed on June 14, 2004)

ORDER DISMISSING APPLICATION FOR REHEARING OF DECISION 06-05-042

I. INTRODUCTION

In this Order we dispose of the joint application for rehearing of Decision (D.) 06-05-042 filed by Pacific Gas and Electric Company (“PG&E”) and Southern California Edison Company (“SCE”).

In D.05-09-018, we approved a uniform economic development rate (“EDR”) program for PG&E and SCE. The utilities’ Joint Proposal in the proceeding included a floor price to be used for purposes of calculating the charges against which the EDR discount can be applied. The floor price represents the utility’s minimum revenue from the EDR customer.

Under the utilities’ proposed floor price, the EDR incentive would be calculated based on the customer’s otherwise applicable tariff (“OAT”). The discounted amount, however, would not be applied to certain components of the OAT. These “non-discounted” components would constitute the floor price and consisted of nonbypassable charges including: [FERC jurisdictional] transmission charges; public purpose program (“PPP”) charges; DWR Bond Charges; nuclear decommissioning (“ND”) charges; [tail]

Competition Transition Charges (“CTC”); marginal costs for distribution; and, if bundled customer, marginal costs for generation.

Decision 05-09-018 modified the proposed floor price to exclude the nonbypassable charges, so that the EDR discount could be applied to those charges. Collection of many of the nonbypassable charges is mandated by statute.¹ Thus, in effect, D.05-09-018 granted exceptions from the various statutory requirements to collect the nonbypassable charges.

Aglet Consumer Alliance challenged D.05-09-018 claiming in pertinent part that: (1) the Decision violated Rule 77.3 by modifying the floor price based on evidence outside the record; and (2) the Commission excluded DWR Bond Charges from the floor price contrary to the legislative intent and purpose of Public Utilities Code section 366.2(d)(1).²

In D.06-05-042 (“Rehearing Decision”), we determined that good cause had been shown to grant a limited rehearing of D.05-09-018. Finding that the record in D.05-09-018 was not sufficient to grant the exclusion of nonbypassable charges from the floor price, we granted limited rehearing to examine the effect of applicable statutes and related Commission policies to any desired exception from nonbypassable charges for EDR customers. The outcome of the limited rehearing is still pending. However, as required by D.06-05-042, the Administrative Law Judge (“ALJ”) has issued a ruling defining the scope of the proceeding, including a number of specified issues for consideration.³

PG&E and SCE timely filed a joint application for rehearing of D.06-05-042. The utilities challenge D.06-05-042 on the grounds that: (1) it violates section 1757

¹ See e.g., Public Utilities Code section 366.2(d) (concerning DWR Bond Charges), section 381 et seq. (concerning PPP charges), section 379 (concerning ND charges), and section 367 (concerning CTC charges).

² All section references are to the Public Utilities Code, unless otherwise stated.

³ See Administrative Law Judge’s Ruling Regarding Order Granting Limited Rehearing of Decision (D.) 05-09-018 Regarding the Floor Price for EDR (“*ALJ Ruling*”), dated June 22, 2006.

by providing that the issue of shareholder benefits may be considered in the limited rehearing; and (2) the Commission abused its discretion by providing that EDR charges under D.05-09-018 are subject to adjustment pending conclusion of the limited rehearing.

We have carefully considered each and every argument raised in the joint application for rehearing and are of the opinion that good cause does not exist to grant rehearing. As briefly explained below, the joint application for rehearing is dismissed because it does not satisfy the criteria for accepting an application for rehearing of a decision on rehearing. Moreover, the issues PG&E and SCE raise were properly determined to fall within the scope of limited rehearing and are best addressed in that forum.

II. DISCUSSION

A. Application for Rehearing of a Rehearing Decision

A threshold issue is whether PG&E and SCE properly filed an application for rehearing of D.06-05-042. As a general rule, parties may not file an application for rehearing of a decision on rehearing. The California Supreme Court has determined that section 1756 appears to implicitly foreclose an application for rehearing of a prior decision on rehearing.⁴ On occasion, we have granted exceptions to the general rule when “it is the first opportunity that a party has had to appeal this issue.”⁵

Circumstances warranting an exception would arise if a rehearing decision adopted new findings or conclusions to a contested issue. However, that is not the circumstance here. The Rehearing Decision does not adopt any new finding, conclusion,

⁴ See *Order Instituting Rulemaking into Implementation of Public Utilities Code Section 390 (“Order Denying Rehearing of D.02-02-028”)* [D.02-04-065] (2002) __ Cal.P.U.C.3d __; 2002 Cal.PUC LEXIS 261, * 2, citing to *Toward Utility Rate Normalization v. Public Utilities Commission (“TURN v. PUC”)* (1978) 22 Cal.3d 529, 536-537.

⁵ See *Order Denying Rehearing of D.02-02-028, supra*, 2002 Cal.PUC LEXIS 261, * 2, citing to *Ortega v. AT&T Communications* [D.97-12-052] (1997) 77 Cal.P.U.C.2d 297, 298.

or resolution of a contested issue in the underlying proceeding. It merely finds that there was an insufficient record to support the original conclusion in D.05-09-018, to exclude nonbypassable charges from the floor price. Accordingly, D.06-05-042 grants a limited rehearing to conduct further inquiry and analysis before the Commission reaches any ultimate finding or conclusion which may alter the conclusions in D.05-09-018.

Because the joint application for rehearing of D.06-05-042 does not qualify for an exception to the general rule, we dismiss the joint application. However, as briefly discussed below, the issues raised by PG&E and SCE also warrant dismissal because they are best addressed in the limited rehearing.

B. Shareholder Benefit Issue

PG&E and SCE argue that D.06-05-042 errs by including inquiry regarding shareholder benefits in the limited rehearing. According to PG&E and SCE, Aglet Consumer Alliance (“Aglet”) did not raise that issue in its application for rehearing of D.05-09-018, and thus we have no authority to raise the issue in the limited rehearing. Further, they argue that we did not adequately explain why it was included along with other issues they believe are more appropriately connected to consideration of the floor price and exclusion of nonbypassable charges. Thus, PG&E and SCE claim the Commission failed to proceed in a manner required by law pursuant to section 1757(a)(2), and abused its discretion pursuant to section 1757(a)(5).⁶ (PG&E/SCE Rhg. App., pp. 5-6.)

⁶ Section 1757 governs judicial review of Commission decisions. Section 1757(a) provides in pertinent part that: [T]he review by the court shall not extend further than to determine, on the basis of the entire record...whether any of the following occurred:

- (1) The commission acted without, or in excess of, its powers and jurisdiction.
- (2) The commission has not proceeded in the manner required by law.
- (3) The decision of the commission is not supported by the findings.
- (4) The findings in the decision of the commission are not supported by substantial evidence in light of the whole record.
- (5) The order or decision of the commission was procured by fraud or was an abuse of discretion.
- (6) The order or decision of the commission violates any right of the petitioner under the Constitution of the United States of California Constitution.

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PG&E and SCE are wrong that the issue was not raised by Aglet's stated challenges. In challenging D.05-09-018, Aglet claimed that modification of the floor price to exclude DWR Bond Charges contravenes section 366.2(d)(1). Section 366.2(d)(1) states:

It is the intention of the Legislature that each retail end-use customer that has purchased power from an electrical corporation on or after February 1, 2001, should bear a fair share of the Department of Water Resources' electricity purchase costs, as well as electricity purchase contract obligations...that are recoverable from electrical corporation customers in commission-approved rates. It is further the intent of the Legislature **to prevent any shifting of recoverable costs between customers.** (Pub. Util. Code, § 366.2, subd (d)(1) (emphasis added).)⁷

Section 366.2 is clear regarding the Legislature's intent to prevent cost shifting in ensuring these nonbypassable charges are collected. Our review of Aglet's challenge led us to identify the need for a cost shifting evaluation to prior to granting an exception from the requirement to pay these charges. Consideration of benefits which would accrue to both customers and shareholders is inherent and integral to a meaningful cost shifting analysis. To forego such consideration would contravene our statutory responsibility under section 366.2.

There is no legal requirement that we provide a detailed explanation to justify the inclusion of this or any other issue for further inquiry, simply because PG&E and SCE say so, or because they would prefer not to address the question that was posed. The issue of shareholder benefits was reasonably and properly included for consideration on limited rehearing and PG&E and SCE's objections to any potential shareholder contribution are best raised in that forum.

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⁷ See Aglet application for rehearing of D.05-09-018, dated October 11, 2005, p. 4.

C. Charges Subject to Adjustment Pending Conclusion of the Limited Rehearing

PG&E and SCE contend that D.06-05-042 errs by providing that “EDR charges under D.05-09-018 shall continue, subject to adjustment, pending conclusion of the limited rehearing.” PG&E and SCE argue that under section 728,⁸ any rates found to be unjust or unreasonable may only be fixed prospectively. They claim any adjustment of charges based on the date of the original decision (D.05-09-018) is an abuse of the Commission’s discretion under section 1757(a)(5). (PG&E/SCE Rhg. App., pp. 7-8.)

PG&E and SCE’s reliance on section 728 is misplaced. It is permissible for the Commission to provide for rates subject to adjustment pending the outcome of a limited rehearing, and to then correct those rates as of the date of an underlying decision.⁹ PG&E and SCE have the opportunity to raise issues regarding the timing of any potential rate adjustments in the limited rehearing.

⁸ Section 728 provides in pertinent part:

Whenever the commission, after a hearing, finds that the rates or classifications, demanded, observed, charged, or collected by any public utility...are insufficient, unlawful, unjust, or unreasonable...the commission shall determine and fix, by order, the just, reasonable, or sufficient rates, classifications, rules, practices, or contracts to be thereafter observed and enforced.

⁹ See *Application of Southern California Edison Company for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs; Emergency Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan; Petition of THE UTILITY REFORM NETWORK for Modification of Resolution E-3527* [D.05-01-036] (2005) __ Cal.P.U.C.3d __; 2005 Cal.PUC LEXIS 26, **2-5; *Application of Southern California Edison Company for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs; Emergency Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan; Petition of THE UTILITY REFORM NETWORK for Modification of Resolution E-3527* [D.05-02-024] (2005) __ Cal.P.U.C.3d __; 2005 Cal.PUC LEXIS 91, *1; and *In the Matter of the Application of Southern California Gas Company for Authority to Review its Rates Effective January 1, 1997, in its Biennial Cost Allocation Proceeding; In the Matter of the Application of San Diego Gas and Electric Company for Authority to Revise its Rates Effective January 1, 1997, in its Biennial Cost Allocation Proceeding* [D.98-07-100] (1998) 81 Cal.P.U.C. 451; 1998 Cal.PUC LEXIS 1013, ** 11-12.

III. CONCLUSION

For the reasons stated above, the application for rehearing of D.06-05-042 filed by PG&E and SCE (jointly) is dismissed.

Therefore **IT IS ORDERED** that:

1. The application for rehearing of D.06-05-042 is dismissed.

This order is effective today.

Dated August 24, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY R. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE CHONG
Commissioners