Decision 06-10-044 October 19, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Recovery of Franchise Fee Remittances Associated with Revenues for Repayment of the Rate Reduction Bonds. (U 39 E)	Application 05-09-009 (Filed September 8, 2005)

OPINION ON RECOVERY OF FRANCHISE FEES

Summary

This decision grants the request of Pacific Gas and Electric Company (PG&E) that it be allowed to recover in rates the cost of franchise fees it pays to cities and counties in conjunction with the revenues it collects to repay Rate Reduction Bonds (RRBs), authorized by Decision (D.) 97-09-055.

Currently, PG&E does not recover the cost of franchise fees paid to local governments in conjunction with RRB revenues it collects and forwards to the bond holders. According to PG&E, it failed to include the necessary ratemaking mechanisms in the tariffs it filed to implement D.97-09-055. PG&E now seeks to correct this oversight and requests recovery, on a prospective basis, of the associated franchise fee costs, about $2 million per year, through an entry in its tariff Preliminary Statement Part CZ - *Distribution Revenue Adjustment Mechanism (DRAM).* Today's decision authorizes PG&E to modify the Preliminary Statement in its tariffs to allow recovery of these costs on a prospective basis. This proceeding is closed.

Procedural Schedule

On September 8, 2005, PG&E filed the instant application. On October 13, 2005, the Division of Ratepayer Advocates (DRA) filed a protest to the application. On October 24, 2005, PG&E filed a response to the protest. On November 9, 2005, a prehearing conference (PHC) was held. On February 2, 2006, an Assigned Commissioner and Administrative Law Judge (ALJ) Scoping Memo and Ruling was issued. It confirmed that the category of this proceeding is ratesetting and evidentiary hearings were not needed and set forth the issues to be addressed in briefs to be filed by the parties. Opening briefs were filed by DRA and PG&E on February 24, 2006, and Reply Briefs were filed on March 10, 2006, and this matter was submitted for decision.

Background

Consistent with the restructuring of the state's electricity industry ordered by Assembly Bill (AB) 1890, the Commission authorized PG&E to issue up to $3.5 billion in RRBs to allow PG&E to recover its transition costs[1] and provide a 10% reduction in electric bills to residential and small commercial customers. These customers repay the RRBs through an additional charge[2] on their bills. Under the terms of the RRB transaction, PG&E collects and remits all RRB revenues directly to the bond holders. (D.97-09-055.)

In exchange for the right to use public streets and roads, city and county governments require public utilities to pay franchise fees. Generally, the fees are ½% or 1%, but in some instances are 2% of the utility's gross receipts, depending

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[1] AB 1890 generally defines transition costs as the costs of generation-related assets and obligations.

[2] These charges are called fixed transition amount (FTA) charges (Pub. Util. Code § 841(a)).

on the contract. Therefore, PG&E is required to pay franchise fees on the RRB revenues it transmits to the bond holders.

PG&E's Request

PG&E requests authorization to recover, on a prospective basis, the cost of franchise fees it pays to cities and counties in conjunction with the revenues it collects under electric Preliminary Statement Part AS – *Fixed Transition Amount Charge,* to repay the RRBs authorized by D.97-09-055. PG&E states that it does not currently recover the cost of franchise fees paid to local governments in conjunction with the revenues collected to repay RRBs because PG&E failed to include the necessary ratemaking mechanisms in the tariffs it filed to implement D.97-09-055. PG&E seeks to correct this oversight through an entry in the Preliminary Statement Part CZ –*DRAM* of its tariff.

In support of its argument that the Commission intended that PG&E should recover the cost of these franchise fees, PG&E states that when it modeled the ratepayer savings calculations in its prepared testimony (chapter 4) in the RRB proceeding related franchise fees were included in the revenue requirement calculations for both the asset amortization table (Table 4-A, pp. 4-8, line 22) and the bond repayment alternatives (Table 4-A, pp 4-9 through 4-11, line 31). Also, the Financing Order (D.97-09-055, p. 16) discusses ratepayer benefits ". . . calculated in accordance with the bond sizing model described in PG&E's prepared testimony . . ." and Finding of Fact 3 states, "Residential and small commercial customers will benefit from the issuance of rate reductions bonds and the reduction of rates provided that the net present value of fixed transition amounts and rate reductions is positive when calculated in accordance with methodology set forth by PG&E in its application and related testimony." PG&E

says it was the Commission's (as well as PG&E's) intention to include related franchise fees in both the costs and benefits of the RRB transaction.

Further, PG&E states that it normally deducts the cost of franchise fees from any revenue stream it receives before those revenues are applied against other costs. However, because legally no restrictions can be placed on the revenues collected to repay RRBs, PG&E does not remove RRB revenue franchise fee costs from the amounts collected under Preliminary Statement Past AS – *Fixed Transition Amount Charge*. PG&E states that all additional benefits from the RRB financing were, and are, returned to customers through the Rate Reduction Bond Memorandum Account.

Also, PG&E points out that Southern California Edison Company (SCE) recovers the cost of RRB revenue franchise fees in its electric rates. PG&E submits that, consistent with its financing order and the treatment SCE is receiving under its financing order, PG&E should be authorized to recover these franchise fee costs on a prospective basis.

Discussion

DRA opposes PG&E's request on several grounds.

A. Issue: Consistent with the general ratemaking approach for franchise fees, should PG&E be authorized to recover amounts for the franchise fees associated with revenues collected to repay RRBs

DRA states that since franchise fee factors are updated in GRCs, the Commission's general ratemaking approach is not to update GRC assumptions, forecasts and adopted values in between rate cases. The rationale is that utility shareholders benefit if costs turn out lower than authorized in GRCs and shareholders bear the burden if costs turn out higher than authorized.

DRA argues that what PG&E is requesting in this proceeding is to modify the authorized approach to recovering its franchise fees that was addressed and considered in its last GRC. Further, DRA argues that, PG&E has not shown a compelling need for the Commission to modify its practice of not updating specific cost items between GRCs. DRA points out that the amounts of money involved in PG&E's request are relatively small, approximately $2 million per year, and DRA believes that this amount is well within the level of risk that shareholders are exposed to under standard GRC rate setting.

PG&E responds that it is not seeking modification of the adopted GRC franchise fee approach. Under that approach, the GRC-adopted franchise fee factor is applied to all of PG&E's revenues, whether those revenues are adopted in PG&E's GRC or some other proceeding. PG&E points out that, for example, the franchise fee factor is applied to its: (1) Energy Resource Recovery Account (ERRA) and Modified Transition Cost Revenue Account (MTCBA) revenues; (2) Biennial Cost Allocation Proceeding (BCAP) – adopted revenues; and, (3) Energy Recovery Bond (ERB) revenues established in D.04-11-015 and associated advice letters, all matters outside of GRC proceedings.

We do not find DRA's argument persuasive. PG&E is not seeking to modify the Commission's GRC ratemaking approach to recovery of franchise fee costs. PG&E is simply asking that current ratemaking practice be followed whereby the GRC adopted franchise fee factor be applied to its RRB revenue related franchise fee payments to local governments, so that PG&E can be compensated for these costs on a prospective basis.

B. Issue: Whether the Terms of the PG&E – CPUC Bankruptcy Settlement Preclude the Relief Sought by PG&E

DRA argues that when PG&E signed the bankruptcy settlement agreement (Settlement Agreement), PG&E agreed that the " . . . Agreement and the Settlement Plan, upon becoming effective… shall be irrevocable and binding upon the Parties…" (D.03-12-035, Appendix C, Approved Settlement Agreement, Paragraph 21.) Therefore, DRA contends that even assuming PG&E could show that it has not recovered these franchise fee costs from its customers, it is too late to try to attempt to recover them now, since PG&E agreed in the Settlement Agreement to an amount that would settle "all unrecovered costs of utility service from retail electric ratepayers." DRA argues that PG&E is bound by the Settlement Agreement which precludes this attempt to increase the RRB costs to retail electric ratepayers.

PG&E responds that, while the bankruptcy Settlement Agreement resolves any disagreement over the recovery of electric costs incurred prior to the beginning of 2004, it does not set limits on PG&E's rates for electric costs incurred in 2004 and beyond. PG&E points out that the Settlement Agreement explicitly provides that "Nothing in this Agreement shall be construed to create a rate freeze or rate cap for PG&E's electric or gas business." (D.03-12-035, Appendix C, Approved Settlement Agreement.) And, as the Commission explained in approving the Settlement Agreement, "the PSA did not address the ratemaking treatment or amounts going forward for the other 95% of PG&E's electric revenue requirements [not including the revenue requirement associated with the "Regulatory Asset"] or what PG&E's overall retail electric rates should be during the next nine years [beginning in 2004]." (D.03-12-035, p. 28.)

We are not persuaded by DRA's argument that the bankruptcy Settlement Agreement precludes PG&E from recovering RRB revenue franchise fee costs for 2006 and beyond. PG&E has emerged from bankruptcy and is not seeking to recover franchise fee costs incurred during the bankruptcy. Furthermore, D.97-09-055 anticipated that several ratemaking adjustments may be needed to residential and small commercial customer rates after the end of the rate-freeze period due to the RRB transaction (p. 23).

C. Issue: Whether Granting PG&E's Request Would Violate any of the Provisions of § 840 *et. seq.* of the Public Utilities Code and/or D.97-09-055, the Rate Reduction Bond Decision

DRA argues that granting PG&E's request would be contrary to D.97-09-055 and would violate § 840 *et. seq.* of the Public Utilities Code. DRA notes that in September 1997, the Commission issued D.97-09-055 authorizing PG&E to finance a portion of the rate reduction mandated by Assembly Bill (AB) 1890 through RRBs. Specifically, D.97-09-055 authorized PG&E to:

> …recover an aggregate total principal amount of three billion, five hundred million dollars ($3.5 billion) in transition costs, as defined by PU Code Section 840(f), which may be recovered through fixed transition amounts (FTA) as defined by PU Code Section 840(d), to the extent of the sum of the principal amount of (i) related rate reduction bonds, as defined by PU Code Section 840(e), issued by a financing entity, as defined by PU Code Section 840(b) and (ii) the transition property, as defined in PU Code Section 840(g), pledged as overcollateralization for the issuance of such rate reduction bonds. (D.97-09-055, Ordering Paragraph 2.)

DRA finds no justification for PG&E's claim, eight years after the fact, that the Commission intended that PG&E also recover the cost of franchise fees related to RRB revenues. In regard to PG&E's reference to various tables in

Chapter 4 of testimony PG&E submitted with its 1997 RRB application, DRA points out that D.97-09-055 does not include these tables, nor does it include any reference to a right of PG&E to collect additional franchise fees. According to DRA, D.97-09-055 authorizes PG&E to recover transition costs from the proceeds of debt securities and rate reduction bonds in an aggregate principal amount of up to $3.5 billion, and no more. DRA argues that D.97-09-055 is, thus, a financing order within the meaning of Pub. Util. Code § 841(c), which states:

> Notwithstanding Section 455.5, Section 1708, or any other provision of law, except as otherwise provided in this subdivision with respect to transition property that has been made the basis for the issuance of rate reduction bonds, the financing orders and the fixed transition amounts *shall be irrevocable* and the commission shall not have authority either by rescinding , altering, or amending the financing order or otherwise, to revalue or *revise for ratemaking purposes, the transition costs, or the costs or providing, recovering, financing or refinancing the transition costs* …. (§ 841(c), emphasis added.)

PG&E does not take issue with DRA's conclusion that D.97-09-055 is a financing order within the meaning of § 841(c). However, PG&E contends that § 841(c) does not bar PG&E's request to recover franchise fee costs associated with RRB revenues on a prospective basis. According to PG&E, it is not seeking any modification of D.97-09-055, but is seeking to modify its tariff ratemaking mechanisms to more closely align them with the dictates of D.97-09-055.

PG&E argues that, to determine whether D.97-09-055 contemplates that PG&E's customers or PG&E's shareholders are to bear the burden of the franchise fees associated with FTA revenues, one must examine the decision. PG&E notes that at p. 16, the decision discusses ratepayer benefits to be provided from the RRB transaction, and states that they will be based on a "*. . . calculation in accordance with the bond sizing model described in PG&E's prepared testimony . . .*"

(Emphasis added.) In other words, according to PG&E, the burdens and benefits to be received by PG&E's customers are as presented in PG&E's bond sizing model presented in PG&E's prepared testimony in that proceeding. Also, Finding of Fact 3 of the decision similarly indicates that PG&E's customers should receive benefits associated with the RRBs consistent with PG&E's modeling of these benefits in its prepared testimony in the RRB proceeding. Finding of Fact 3 states, "Residential and small commercial customers will benefit from the issuance of RRBs and the reduction of rates provided that the *net present value of fixed transition amounts and rate reduction is positive when calculated in accordance with the methodology set forth by PG&E in its application and related testimony.*" (*Id.* Finding of Fact 3 (emphasis added).) PG&E contends that thus, the clear intent of the RRB decision is that the burdens and benefits imposed on PG&E's customers in connection with RRBs are to be consistent with how these were modeled in PG&E's testimony.

We disagree with DRA. PG&E is not seeking a modification of its RRB financing order, D.97-09-055, in this proceeding. That decision anticipated that PG&E would recover costs as shown in its modeling of benefits and burdens of the RRBs, and included in the modeling are franchise fee amounts associated with RRB revenues. Furthermore, PG&E is not seeking modification of its RRB financing order D.97-09-055; therefore, § 841 of the Pub. Util. Code does not prohibit the Commission from granting the relief PG&E is requesting here.

Conclusion

As discussed above, PG&E is asking that it be allowed to recover franchise fee costs associated with revenues collected to repay RRBs, on a prospective basis, consistent with the GRC-adopted factor for franchise fees generally. This is fair to both PG&E's customers and PG&E's shareholders, as the analysis in the

record supporting the decision authorizing PG&E to move forward with the RRB transaction anticipated that PG&E's customers would bear these costs. Furthermore, the bankruptcy Settlement Agreement does not bar PG&E from requesting recovery of ongoing RRB revenue franchise fee costs for 2006 and thereafter. Accordingly, PG&E's request should be granted.

Waiver of Comment Period

Pursuant to Rule 14.6(b) of the Commission's Rules of Practice and Procedure, all parties stipulated to waive the 30-day public review and comment period required by § 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.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Bertram D. Patrick is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. PG&E pays franchise fees to local governments on revenues PG&E collects to repay RRBs.

2. Currently, PG&E does not recover the cost of franchise fee payments related to RRB revenues because its tariffs lack a provision allowing it to recover these costs in rates.

3. PG&E requests that it be authorized to include a provision in the Preliminary Statement of its tariffs allowing it to recover the cost of RRB revenue franchise fee payments in rates. PG&E requests such recovery on a prospective basis only.

Conclusions of Law

1. The analysis in the record of the RRB proceeding supporting the decision (D.97-09-055) authorizing PG&E to move forward with the RRB transaction anticipated that PG&E's customers would bear the costs of related franchise fees.

2. Since PG&E has emerged from bankruptcy, the bankruptcy Settlement Agreement does not bar PG&E from requesting recovery of ongoing RRB revenue franchise fee costs.

3. PG&E should be authorized to recover in rates RRB revenue franchise fee costs, on a prospective basis, through the appropriate addition to the Preliminary Statement in its tariffs.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) is authorized to recover in rates the cost of Rate Reduction Bond revenue franchise fees through an entry in its tariff Preliminary Statement Part CZ-Distribution Revenue Adjustment Mechanism. Recovery shall be for costs incurred effective the date of this decision and thereafter.

2. Within 10 days PG&E shall file an advice letter to revise its tariffs to comply with the provisions of this decision. The tariff charges shall become effective on today's date subject to Energy Division determining that they are in compliance with this decision.

3. Application 05-09-009 is closed.

This order is effective today.

Dated October 19, 2006, at Fresno, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners

Commissioner Dian M. Grueneich, being necessarily absent, did not participate.