

Decision 07-05-026 May 3, 2007

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

Application of Pacific Gas and Electric Company (U 39 E) for Review of and Authorization to Recover Unreviewed Transaction Costs Associated with the Planned Divestiture/Market Valuation of Generation Assets.

Application 06-08-004  
(Filed August 1, 2006)

**OPINION APPROVING SETTLEMENT AGREEMENT  
BETWEEN PACIFIC GAS AND ELECTRIC COMPANY  
AND THE DIVISION OF RATEPAYER ADVOCATES**

**Summary**

This decision grants the Joint Motion of Pacific Gas and Electric Company (PG&E) and the Division of Ratepayer Advocates (DRA) for approval of a settlement agreement. The settlement agreement allows PG&E to collect \$1.255 million to recover costs related to divestiture and/or market valuation of generation assets in the Generation Divestiture Transition Cost Memorandum Account (GDTCMA) proceeding.

**Background**

PG&E filed its application on August 1, 2006. DRA protested the application. A prehearing conference was held on September 8, 2006 at which time the assigned Administrative Law Judge (ALJ) set a schedule for testimony and evidentiary hearings, and urged the parties to consider a settlement. On November 29, 2006, the PG&E and DRA filed a Joint Motion for approval of a settlement agreement, as discussed below. The settlement agreement can be

found as Attachment A. A settlement conference was noticed by the parties. No comments were received on the settlement.

**PG&E's Application and DRA's Protest**

PG&E's application asks for review of and authorization to recover \$2.5 million of previously unreviewed incremental transaction costs (including ongoing interest through June 30, 2006) recorded in the "Unreviewed Costs" subaccount of the GDTCMA. PG&E claims these costs were incurred as part of the planning for divestiture and market valuation of PG&E's generation assets, in compliance with Pub. Util. Code § 367(b).

According to PG&E, these divestiture/market valuation costs are "unreviewed" in that they represent, a) divestiture/market valuation costs similar to costs deemed reasonable in PG&E's 1999 and 2001<sup>1</sup> Annual Transition Cost Proceedings, but which were incurred after the record period for those Annual Transition Cost Proceedings, and/or b) divestiture/market valuation costs associated with generation assets recorded in the Unreviewed Costs

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<sup>1</sup> Approved in D.01-01-020 and D.03-02-028, respectively.

subaccount of the GDTCMA, that were held in abeyance by the enactment of Assembly Bill 6 (“AB1X-6”).<sup>2</sup>

PG&E claims it incurred these costs in order to comply with the requirements of § 367(b),<sup>3</sup> enacted as part of Assembly Bill 1890, which restructured the electric industry. Section 367(b) required a valuation of utility non-nuclear generation assets no later than December 31, 2001, based on

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<sup>2</sup> Assembly Bill 6 from the 2001- 2002 First Extraordinary Session repealed Pub. Util. Code § 216(h) and modified § 377. In particular, § 377, as modified, prohibits PG&E from selling any of its “facilities for the generation of electricity” until at least January 1, 2006, and requires that those facilities be dedicated for the benefit of California ratepayers.

<sup>3</sup> “The Commission shall identify and determine those costs and categories of costs for generation-related assets and obligations, consisting of generation facilities, generation-related regulatory assets, nuclear settlements, and power purchase contracts, including, but not limited to, restructurings, renegotiations or terminations thereof approved by the commission, that were being collected in commission-approved rates on December 20, 1995, and that may become uneconomic as a result of a competitive generation market, and appropriate costs incurred after December 20, 1995, for capital additions to generating facilities existing as of December 20, 1995, that the commission determines are reasonable and should be recovered, provided that these additions are necessary to maintain the facilities through December 31, 2001. These uneconomic costs shall include transition costs as defined in subdivision (f) of Section 840, and shall be recovered from all customers or in the case of fixed transition amounts, from the customers specified in subdivision (a) of Section 841, on a nonbypassable basis and shall:...(b) Be based on a calculation mechanism that nets the negative value of all above market utility-owned generation-related assets against the positive value of all below market utility-owned generation related assets. For those assets subject to valuations, the valuation used for the calculation of the uneconomic portion of the net book value shall be determined not later than December 31, 2001, and shall be based on appraisal, sale, or other divestiture. The commission’s determination of the costs eligible for recovery and of the valuation of those assets at the time the assets are exposed to market risk or retired, in a proceeding under Section 455.5, 851, or otherwise, shall be final, and notwithstanding Section 1708 or any other provision of law, may not be rescinded, altered or amended.”  
- Pub. Util. Code § 367(b).

appraisal, sale or other divestiture, and required the Commission to market value the utilities' generation assets. In D.03-02-028 (p. 16), the Commission noted that it could not have performed the task of market valuation absent input from the utilities and other interested parties about how the market valuation should be performed.

PG&E claims the costs recorded in the Unreviewed Costs subaccount of the GDTCMA represent the same category of costs found reasonable in PG&E's 1999 Annual Transition Cost Proceeding (D.01-01-020) for the sale of several of PG&E's power plants. PG&E also claims these costs represent the same category of costs found reasonable in PG&E's 2001 Annual Transition Cost Proceeding (D.03-02-028) for the market valuation of PG&E's hydroelectric generation facilities and its Humboldt Bay Power Plant.

D.03-02-028 provided for the recovery of PG&E's hydroelectric generation facilities-related divestiture/market valuation costs, stating that should the hydroelectric generation facilities remain with PG&E after 2006, the Commission would entertain a petition to dispose of the GDTCMA.<sup>4</sup> Similar to the recovery of PG&E's hydroelectric generation facilities-related divestiture/market valuation costs that were found reasonable and approved in D.03-02-028, PG&E in this application requested recovery of all similarly-situated divestiture/market valuation costs that were held in abeyance by the enactment of AB 1X-6.

PG&E claims it recorded its divestiture/market valuation costs to the Unreviewed Costs subaccount of the GDTCMA in compliance with Commission directives, and its Application requested that the Commission review and

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<sup>4</sup> D.03-02-028, p. 22.

approve \$2.5 million in divestiture/market valuation costs recorded in the Unreviewed Costs subaccount of the GDTCMA and that these costs be transferred to the Modified Transition Cost Balancing Account for recovery.

DRA states that it was prepared to argue that PG&E's approved bankruptcy settlement (Appendix C to D.03-12-035) precludes recovery of some or all of PG&E's request in this proceeding. DRA expected to claim the bankruptcy settlement established a regulatory asset, to be collected in rates, that was designed to allow PG&E to emerge from bankruptcy and provide PG&E with the rate recovery necessary to return to creditworthiness status, and was not based on individual assets in PG&E's rate base or PG&E's unrecovered costs. DRA states it was prepared to argue that approval of the regulatory asset was in lieu of any other claims for recovery of costs that were outstanding at that time other than those specifically preserved by the bankruptcy settlement itself.

PG&E states that it was prepared to argue that the bankruptcy settlement did not preclude recovery of the costs requested in this application; that the costs identified in this application are identical, though incurred later in time, to the costs in the 2001 Annual Transition Cost Proceeding that were specifically identified in Appendix B of the settlement agreement, as outside the confines of the bankruptcy settlement agreement; that D.03-02-028 (p. 21) specifically authorized PG&E to file for recovery of its hydroelectric generation divestiture costs in 2006; and that a substantial portion of PG&E's request was for reimbursement of costs paid to consultants hired by the Commission to conduct environmental reviews, and therefore reasonable to recover in rates.

## **Settlement Agreement**

The settlement agreement, attached as Appendix A, consists of the following agreements by the Settling Parties:

1. The reasonable total revenue requirement resulting from this GDTICMA application is \$1.255 million in electric revenue requirements, including interest through June 30, 2006 , to be collected in rates effective January 1, 2008, by including the \$1.255 million (plus interest at the 90-day commercial paper rate calculated from June 30, 2006 to the date of transfer) in the Modified Transition Cost Balancing Account for eventual recovery in rates as part of the Annual Electric True Up advice letter.
2. The Settling Parties agree that the Commission should find that it is reasonable for PG&E to recover \$1.255 million, which is (approximately) one-half of PG&E's requested GDTICMA revenue requirements in this application, plus interest from June 30, 2006.

The Settling Parties state that, although the final settlement amount cannot be tied to specific outcomes for individual issues, the fact that the final settlement amount is also equal to most of PG&E's hydroelectric generation valuation costs that were deferred to 2006 by D.03-02-028 and costs paid to Commission consultants for the environmental reviews of the Humboldt Bay Power Plant and the McArthur Swamp/Burney Falls projects was a factor in both PG&E and DRA's compromises.

## Discussion

In D.88-12-083 regarding PG&E's Diablo Canyon Nuclear Power Plant, the Commission established a standard for review of settlements. (That decision was revised by D.89-03-062, but the revisions did not affect the standard.)

Rule 12.1(d) of the Commission's Rules of Practice and Procedure recites the standard:

"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, a San Diego Gas & Electric Company general rate case, 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:

- a. the settlement commands the unanimous sponsorship of all active parties to the instant proceeding;
- b. the sponsoring parties are fairly representative of the affected interests;
- c. no term of the settlement contravenes statutory provisions or prior Commission decisions; and
- d. 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.

The Settling Parties comprise all active parties. No other party protested the Application. The Settling Parties represent all affected interests. PG&E represents the interests of its shareholders and provides necessary energy services to its customers. DRA represents the interests of all consumers of electricity in PG&E's service territory. Taken together, the Settling Parties represent the pecuniary interests of both shareholders and ratepayers.

The Settling Parties state that they are aware of no statutory provision or prior Commission decision that would be contravened or compromised by the Settlement Agreement.

The precondition regarding sufficient information applies principally to settlements that establish revenue requirements, rates, rules or conditions of service. For example, a revenue requirement settlement might need to convey information sufficient to determine electric transition costs or to allocate costs to customer classes. The Settlement Agreement sets PG&E's total revenue requirement resulting from the instant GDTCMA application and specifies that PG&E may include the authorized revenue requirement in its Modified Transition Cost Balancing Account for inclusion in rates as part of its next Annual Electric True Up advice submission.

We find that the Settlement Agreement meets all four preconditions for Commission approval of an all party settlement. These factors are not a substitute for requirements that a settlement be reasonable, consistent with law and in the public interest.

The most important element in determining the fairness of a settlement is the relationship of the settled amount to the risk that each party will obtain its desired result. The settled total revenue requirement is reasonable. PG&E's total request was for \$2.5 million, plus interest from June 30, 2006. DRA was prepared to argue that PG&E should be authorized \$0. The settled amount essentially splits the difference. The Settlement Agreement resolves all disputed issues.

At the prehearing conference, ALJ Gamson recommended that the parties attempt to settle the proceeding, particularly in light of the amounts requested to be authorized in the application. Commission approval of the Settlement will

provide speedy resolution of contested issues and will spare the Commission and the parties the effort required to litigate disputed issues.

The settlement negotiations appear to have been accomplished at arm's length and without collusion. No other party opposes the Settlement Agreement.

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 ratepayers 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 Agreement advances this interest because it permits PG&E to recover reasonable costs of complying with legislative and Commission requirements. Allowing PG&E to recover reasonable costs paid by it to comply with Commission and legislative requirement is fair and just. Because the settled revenue requirement is lower than the total revenue requirement sought by PG&E, the Settlement Agreement promotes reasonable rates. The benefits of the Settlement Agreement will flow directly to customers and other citizens within PG&E's service territory. Taken as a whole, the Settlement Agreement is in the public interest.

We will adopt this Settlement Agreement in its entirety as reasonable in light of the whole record, consistent with law and in the public interest.

### **Categorization and Need for Hearings**

In Resolution ALJ 176-317 dated August 24, 2006, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were necessary. Ultimately, no hearings were held in this matter.

### **Waiver of Comment Period**

This is an uncontested matter in which the opinion grants the relief requested. Therefore, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is waived.

### **Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner and David Gamson is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. PG&E and DRA settled their dispute on November 29, 2006.
2. The reasonable total GDTCMA revenue requirement in this proceeding is \$1.255 million, including interest through June 30, 2006, to be collected in rates effective January 1, 2008, by including the \$1.255 million (plus interest at the 90-day commercial paper rate calculated from June 30, 2006 to the date of transfer) in the Modified Transition Cost Balancing Account for eventual recovery in rates as part of the Annual Electric True Up advice letter.

### **Conclusions of Law**

1. The settlement agreement between PG&E and DRA is reasonable in light of the whole record, consistent with law and in the public interest.
2. No hearings were necessary in this proceeding.

## **O R D E R**

**IT IS ORDERED** that:

1. The settlement agreement between Pacific Gas and Electric Company (PG&E) and Division of Ratepayer Advocates is approved.
2. PG&E is authorized to transfer \$1.255 million (plus interest at the 90-day commercial paper rate calculated from June 30, 2006 to the date of transfer) from

the Generation Divestiture Transition Cost Memorandum Account to the Modified Transition Cost Balancing Account for eventual recovery in rates as part of the Annual Electric True Up advice letter.

3. No hearings are necessary in this proceeding.
4. Application 06-08-004 is closed.

This order is effective today.

Dated May 3, 2007, at San Francisco, California.

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

[D0705026 Attachment A](#)