Decision 08-04-026 April 10, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Expedited Application of Pacific Gas and Electric Company Under The Energy Resource Recovery Account (ERRA) Trigger Mechanism. (U 39 E)	Application 08-01-014 (Filed January 23, 2008)

INTERIM OPINION ON THE ENERGY RESOURCE RECOVERY ACCOUNT TRIGGER APPLICATION

1. Summary

Pacific Gas and Electric Company (PG&E) filed the above-captioned application on January 23, 2008 pursuant to the Energy Resource Recovery Account (ERRA) trigger mechanism. PG&E's application requests that its 2008 ERRA forecast of procurement costs be increased by an additional $531 million[1] due to the December 7, 2007 decision of the California Department of Water Resources (DWR) to restructure its 1000 megawatt (MW) baseload power contract with Calpine Energy Services, L.P. (Calpine 2 contract) and to replace it with a 180 MW peaking contract.

Today's decision authorizes PG&E to recover on an interim basis an additional $531 million in power procurement costs through its ERRA, subject to any adjustment that may result from the evidentiary hearings into these costs.

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[1] PG&E seeks to recover the $531 million over the eight-month period of May to December of 2008, which together with franchise fees and uncollectibles results in an accelerated 2008 ERRA incremental revenue requirement of $779.871 million.

PG&E is also authorized to amortize these additional procurement costs over the eight-month period of May 2008 through December 2008, effective on May 1, 2008.

We note that the action we have taken today in a related proceeding involving the Calpine 2 contract will help to partially offset the increase in the additional ERRA procurement costs.

2. Procedural Background

In Decision (D.) 02-10-062, we authorized the establishment of the ERRA balancing account for PG&E and two other utilities. In addition, that decision established an expedited application process for adjustments when the overcollection or undercollection in the ERRA balance reaches 4 percent.[2] The 4 percent amount and the expedited application process are referred to as the trigger or trigger mechanism. Under the trigger mechanism, a decision on the request is to be adopted within 60 days of the filing of the trigger application.[3]

PG&E filed its ERRA trigger application on January 23, 2008. PG&E requests in its application that a decision be expedited in accordance with the process set forth in D.02-10-062, with a slight extension, so that a decision on the related PG&E petition to modify D.05-06-060 can be issued at the same time.

PG&E also filed a motion on January 23, 2008 to shorten the time for parties to protest or respond to the ERRA trigger application. In the January 25,

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[2] The Commission adopted the 4 percent trigger, instead of the 5 percent trigger as referenced in Pub. Util. Code § 454.5(d)(3), to allow time for processing the ERRA adjustment. (See D.02-10-062, p. 64, fn. 39.)

[3] This trigger mechanism was extended for an additional ten years or the length of the long-term contracts, whichever is longer, in Finding of Fact 70 in D.04-12-048.

2008 ruling of the Chief Administrative Law Judge, the time for filing a protest or response to PG&E's application was shortened to February 14, 2008, and the time for PG&E's reply was shortened to February 19, 2008. The ruling also noticed a prehearing conference (PHC) for February 19, 2008.

Timely protests were filed by the California Large Energy Consumers Association (CLECA), the California Manufacturers and Technology Association (CMTA), and the Division of Ratepayer Advocates (DRA).

The PHC was held on February 19, 2008 to discuss the scope of issues to be addressed in this proceeding, to determine whether any evidentiary hearings are needed, and the procedural schedule for resolving the issues in this proceeding. At the PHC, PG&E was given until February 22, 2008 to file its reply to the protests. The additional time was granted to allow PG&E to incorporate into its reply the effect of the reduction in DWR's energy costs that DWR submitted to the Commission in its February 15, 2008 Supplemental Determination of Revenue Requirements (2008 supplemental determination). PG&E filed its reply to the protests on February 22, 2008.

To allow the protesting parties time to request evidentiary hearings, the PHC established a process for submitting data requests to PG&E about the cost of the replacement power that PG&E will have to procure as a result of the restructured Calpine 2 contract. Those data requests were submitted to PG&E, and PG&E responded to those data requests by February 29, 2008.

The parties were to notify the assigned Administrative Law Judge (ALJ) by March 4, 2008 as to whether evidentiary hearings would be needed on the cost of the replacement power, and on the issue about the role of PG&E or DWR in the renegotiation or termination of the Calpine 2 contract. On March 4, 2008, CLECA, CMTA, DRA, and the Energy Producers & Users Coalition (EPUC) requested that evidentiary hearings be held.

Due to the time in which the Commission is to issue a decision on an ERRA trigger application, the ALJ stated at the PHC that if evidentiary hearings are to be held, an interim decision on the ERRA trigger application could be issued, subject to any adjustment that may occur as a result of the hearings.

In the March 10, 2008 scoping memo and ruling (scoping memo) in this proceeding, the assigned Commissioner and ALJ ruled that only the issue about the cost of PG&E's replacement power was within the scope of this proceeding and would be litigated. The scoping memo ruled that the issue about the role of PG&E or DWR in the renegotiation or termination of the Calpine 2 contract was outside the scope of the ERRA and would not be considered in this proceeding. We affirm the actions taken in that scoping memo.

3. Discussion

3.1. Introduction

PG&E filed the ERRA trigger application because it began to purchase replacement power on behalf of its customers beginning January 1, 2008, as a result of the action taken by DWR to restructure the Calpine 2 contract. PG&E contends that the Calpine 2 contract had provided 1000 MW of baseload power at below-market cost. PG&E had expected the Calpine 2 contract to provide 8784 gigawatt-hour of power in 2008, all of which was dedicated to PG&E. PG&E expects that it will incur an additional $531 million in ERRA procurement costs,[4] over its previous 2008 ERRA forecast that was requested in Application (A.) 07-06-006, to purchase the replacement power that it lost when the Calpine 2 contract was restructured. Had the Calpine 2 contract not been restructured, PG&E states that the end of 2008 ERRA balance would have resulted in a $24 million overcollection.

PG&E filed this trigger application because its ERRA undercollection will exceed 4 percent by the end of January 2008, and the undercollection will exceed 5 percent by the end of March 2008. Without an increase, PG&E states that its ERRA undercollection will increase every month, and by December 2008, the undercollection will grow to over $520 million. PG&E requests that it be authorized to recover an additional $531 million in power procurement costs, and that this amount be amortized over the remaining eight months of 2008, effective on May 1, 2008.[5]

This application is related to two other proceedings in which the Calpine 2 contract has been raised.[6] The first related proceeding is PG&E's petition to modify D.05-06-060, which was filed on January 18, 2008 in A.00-11-038 and related proceedings. PG&E requests that D.05-06-060 be modified in two ways.

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[4] With franchise fees and uncollectibles, the $531 million equates to an incremental revenue increase of $536.393 million.

[5] According to PG&E, if the 5 percent undercollection were amortized over a 12-month period, the ERRA undercollection would remain above the 5 percent trigger amount. PG&E contends that such a result would violate Pub. Util. Code § 454.5(d)(3) and D.02-10-062.

[6] In addition to these two other proceedings, this ERRA trigger request is related to PG&E's 2008 ERRA forecast revenue requirement in A.07-06-006, as updated by PG&E on November 7, 2007.

First, the reduction in DWR's energy costs, as a result of the restructured Calpine 2 contract, should be allocated 100 percent to PG&E. PG&E asserts that such an allocation will mitigate the increase in the ERRA procurement costs that are at issue in this proceeding. PG&E's second request in its petition to modify is that a proceeding should be opened to revise the permanent allocation methodology adopted in D.05-06-060. PG&E requests that a decision on the ERRA trigger application be considered concurrently with a decision on PG&E's petition to modify D.05-06-060.

The second proceeding in which the Calpine 2 contract is discussed is in DWR's 2008 supplemental determination. In D.07-12-030, the decision which allocated DWR's 2008 revenue requirement to the electric utilities, we recognized that the restructuring of the Calpine 2 contract would have an effect on DWR's 2008 revenue requirement. As anticipated by D.07-12-030, DWR circulated a proposed 2008 revenue requirement for comment on December 27, 2007 in accordance with its procedures. The proposed 2008 supplemental revenue requirement addressed the effect of restructuring the Calpine 2 contract and replacing it with the peaking contract, as well as other changes to DWR's 2008 revenue requirement. DWR considered the comments it received and then submitted its 2008 supplemental determination to us on February 15, 2008. Under the 2008 supplemental determination, DWR's 2008 revenue requirement has been reduced by $630 million. DWR's 2008 supplemental determination requests that we calculate, revise, and impose the Power Charges on the utilities in accordance with the Rate Agreement adopted in D.02-02-051. This 2008 supplemental determination is being addressed by us in Rulemaking (R.) 06-07-010.

3.2. The Need for an Interim Decision

The establishment of the ERRA mechanism can be traced back to Assembly Bill (AB) 57, which was enacted into law by Chapter 835 of the Statutes of 2002. AB 57 added Pub. Util. Code § 454.5.[7] Subdivision (d) of that code section provides that the Commission-approved procurement plan shall accomplish five objectives, including the following:

> "Ensure timely recovery of prospective procurement costs incurred pursuant to an approved procurement plan. The commission shall establish rates based on forecasts of procurement costs adopted by the commission, actual procurement costs incurred, or combination thereof, as determined by the commission. The commission shall establish power procurement balancing accounts to track the differences between recorded revenues and costs incurred pursuant to an approved procurement plan. The commission shall review the power procurement balancing accounts, not less than semiannually, and shall adjust rates or order refunds, as necessary, to promptly amortize a balancing account, according to a schedule determined by the commission. Until January 1, 2006, the commission shall ensure that any overcollection or undercollection in the power procurement balancing account does not exceed 5 percent of the electrical corporation's actual recorded generation revenues for the prior calendar year excluding revenues collected for the Department of Water Resources. The commission shall determine the schedule for amortizing the overcollection or undercollection in the balancing account to ensure that the 5 percent threshold is not exceeded. After January 1, 2006, this adjustment shall occur when deemed appropriate by the commission consistent with the objectives of this section." (Pub. Util. Code § 454.5(d)(3).)

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[7] This code section was also simultaneously enacted into law by Chapter 850 of the Statutes of 2002. Although this code section was later amended by Chapter 366 of the Statutes of 2005, and by Chapter 685 of the Statutes of 2007, subdivision (d)(3) remained unchanged.

Although evidentiary hearings are to be held on the issue of how much PG&E is expected to spend to procure the replacement power, we are obligated under Pub. Util. Code § 454.5(d)(3) and D.02-10-062 to ensure that the utility receives timely recovery of its procurement costs. D.02-10-062 established the trigger mechanism so that a decision can be adopted within 60 days from when an ERRA trigger application is filed. As noted earlier, PG&E agreed in its application to extend the 60 days to 77 days. An interim decision is needed to comply with Pub. Util. Code § 454.5(d)(3) and to ensure that PG&E recovers its additional ERRA procurement costs so that it can purchase the replacement power that it needs as a result of the restructured Calpine 2 contract.

3.3. PG&E's Request

PG&E requests in its application that the Commission authorize PG&E to recover $531 million in additional power procurement costs, which are to be amortized over the eight-month period of May 2008 through December 2008, effective on May 1, 2008. By amortizing the additional $531 million over the eight months, and together with franchise fees and uncollectibles, PG&E estimates that the 2008 ERRA incremental revenue requirement will be $779.871 million.

PG&E's forecast of the additional $531 million in procurement costs was derived from two hourly simulations of PG&E's resource portfolio. The first simulation assumed that the Calpine 2 contract was still in existence, and the second simulation assumed the restructuring of the Calpine 2 contract.

As we noted in the Procedural Background section, the only issue that evidentiary hearings are to be held on is the anticipated cost of PG&E's replacement power. Depending on the outcome of these hearings, the incremental amount that PG&E is requesting could change.

In accordance with Pub. Util. Code § 454.5 and the trigger mechanism process established in D.02-10-062, we authorize PG&E to recover on an interim basis an additional $531 million in power procurement costs through its ERRA, subject to any adjustment that may result from the evidentiary hearings into these costs. We further authorize PG&E to amortize these additional procurement costs over the eight-month period of May 2008 through December 2008, effective on May 1, 2008.

Our action today, and in the related proceeding regarding PG&E's petition to modify D.05-06-060 in A.00-11-038, helps to address the issues caused by the restructuring of the Calpine 2 contract. The interim increase in PG&E's ERRA procurement costs is needed so that PG&E has the funds necessary to purchase the replacement power that has been lost due to the restructuring of the Calpine 2 contract. The additional ERRA power procurement costs will be mitigated, in part, by allocating 100 percent of the reduction in DWR's unavoidable costs related to the Calpine 2 contract to PG&E in our decision regarding PG&E's petition to modify D.05-06-060. As noted in PG&E's reply to the protests, if the relief being requested by PG&E in the related ERRA proceeding unrelated to the Calpine 2 contract and the other proceedings involving the Calpine 2 contract is granted, the $531 million in additional procurement costs will be entirely offset.

4. Comments on Proposed Decision

The proposed decision of ALJ John S. Wong in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and comments were allowed pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure. Opening and reply comments were filed, and appropriate changes have been made to the decision.

5. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner, and John S. Wong is the assigned ALJ in this proceeding.

Findings of Fact

1. PG&E filed its application on January 23, 2008 pursuant to the ERRA trigger mechanism.

2. Under the ERRA trigger mechanism, a decision on the request is to be adopted within 60 days of the filing of the application, which has been extended slightly at PG&E's request.

3. PG&E has begun to purchase replacement power on behalf of its customers as a result of DWR's action to restructure the Calpine 2 contract, and estimates that it will incur an additional $531 million in ERRA procurement costs.

4. PG&E's ERRA undercollection will exceed 4 percent by the end of January 2008, and will exceed 5 percent by the end of March 2008.

5. This application is related to PG&E's 2008 ERRA forecast proceeding, and to other proceedings in which the restructured Calpine 2 contract has been raised.

6. Due to the time in which the Commission is to issue a decision on the ERRA trigger application, and because evidentiary hearings are to be held, an interim decision is needed.

7. Today's interim decision, and the decision in the related proceeding regarding PG&E's petition to modify D.05-06-060, help to address the issues caused by the restructuring of the Calpine 2 contract.

Conclusions of Law

1. An interim decision is needed to comply with Pub. Util. Code § 454.5(d)(3) and D.02-10-062 to ensure that PG&E receives timely recovery of its procurement costs.

2. PG&E should be authorized to recover on an interim basis an additional $531 million in power procurement costs through its ERRA, subject to any adjustment that may result from the evidentiary hearings into these costs, and that these costs be amortized over the eight-month period of May 2008 through December 2008, effective on May 1, 2008.

INTERIM ORDER

IT IS ORDERED that:

1. On an interim basis, Pacific Gas and Electric Company (PG&E) is authorized to recover $531 million in additional power procurement costs under its Energy Resource Recovery Account (ERRA), to be amortized over the eight-month period of May 2008 through December 2008, effective May 1, 2008. The additional $531 million in costs, when combined with franchise fees and uncollectibles and amortized over eight months, results in a 2008 ERRA incremental revenue requirement of $779.871 million, which shall be recovered in rates consistent with PG&E's revenue allocation and rate design proposals.

    a. PG&E's authorization to recover the additional power procurement costs may be subject to adjustment depending on the outcome in the evidentiary hearings in this proceeding.

2. Application 08-01-014 shall remain open.

This interim order is effective today.

Dated April 10, 2008, at San Francisco, California.

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