

Decision 08-12-060

December 18, 2008

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

Order Instituting Investigation into the ratemaking implications for Pacific Gas and Electric (PG&E) pursuant to the Commission's Alternative Plan of Reorganization under Chapter 11 of the Bankruptcy Code for PG&E, in the United States Bankruptcy Court, Northern District of California, San Francisco Division, In re Pacific Gas and Electric Company, Case No. 01-30923 DM.

Investigation 02-04-026  
(Filed April 22, 2002 )

**ORDER DENYING REHEARING  
OF DECISION (D.) 04-02-062, AS MOOT**

**I. INTRODUCTION**

This decision disposes of the application for rehearing of Decision (D.) 04-02-062 (or "Decision"), filed by Modesto Irrigation District ("MID"). In reviewing the rehearing application, we believe that the allegations raised therein have been made moot for the reasons discussed below. Accordingly, we deny the application for rehearing of D. 04-02-062, as moot.

**II. FACTS**

Decision (D.) 04-02-062 (or "Decision") is an opinion approving a Rate Design Settlement, which involved a reduction in costs for Pacific Gas & Electric Company ("PG&E") customers. The reduction was the result of the Commission's alternative plan of reorganization for PG&E under Chapter 11 of the Bankruptcy Code. The Rate Design Settlement was supported by numerous parties representing a wide spectrum of interests. The purpose of the settlement was to expedite the electric rate reduction to customers, on an equitable basis. The settlement provided that the

regulatory asset charge, or its successor, Energy Charge Recovery Amount (“ECRA”),<sup>1</sup> would be allocated to all PG&E customers on a nonbypassable basis, with the limited exception of Customer Generated Departing Load (“CGDL”) who are exempted from such charges to the extent that they are exempted from DWR Power Charges. (Rate Design Settlement, §§7 & 9.)<sup>2</sup>

Although it supported the Rate Design Settlement, Modesto Irrigation District (“MID”) argued that municipal departing load (“MDL”) should not have to pay the regulatory asset surcharge.<sup>3</sup> (See D.04-02-062, pp. 22.) MID interpreted Paragraph 9 of the settlement to exclude MDL from the regulatory asset charge. (D.04-02-062, p. 22.) In the Decision, we rejected MID’s interpretation and determined that pursuant to Paragraph 9 of the Rate Design Settlement,

“the revenue requirement associated with the Regulatory Asset is nonbypassable, with one noted exception . . . [CGDL] . . . MDL does not fall within this excluded group. Therefore, MDL is not within Paragraph 9’s exception, and is consequently subject to the nonbypassable charge under the Rate Design Settlement.”

(D.04-02-062, p. 22.)

Further, we noted in the Decision that making the MDL responsible for the regulatory asset charge was consistent with the reasoning for subjecting MDL to the CRS

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<sup>1</sup> *Decision on Non-bypassable Charges for New World Generation and Related Issues* [D.08-09-012] (2008) \_\_\_ Cal.P.U.C.3d \_\_\_, p. 3, fn. 7.

<sup>2</sup> A copy of the rate design settlement can be found in D.04-02-062, as Attachment A.

<sup>3</sup> MDL refers to departing load served by a publicly owned utility (“POU”) as that term is defined in Public Utilities Code Section 9604(d), including municipalities or irrigation districts. For purposes of this decision, MDL also includes new MDL, which is load that has never been served by an IOU but is located in an area that had previously been in the IOU’s service territory (as that territory existed on February 1, 2001) and was annexed or otherwise expanded into by a POU. (*Decision on Non-bypassable Charges for New World Generation and Related Issues* [D.08-09-012], *supra*, at p. 2, fn. 5 (slip op.))

as set forth in D.03-07-028 and D.03-08-076.<sup>4</sup> (D.04-02-062, p. 22.) Because there was a pending limited rehearing of D.03-08-076 on the liability of new MDL for the DWR cost responsibility surcharges, we observed that the Commission may choose to reexamine the regulatory asset charge as to new MDL, depending on the outcome of the limited rehearing. Accordingly, we observed that parties could file of a petition for modification of D.04-02-062 if there were exceptions made for new MDL. (D.04-02-062, pp. 22-23.)

MID timely filed an application for rehearing of D.04-02-062. In its rehearing application, MID challenged the Decision on the following grounds: (1) The adoption of the charge was outside the scope of the proceeding, which was modified without notice or opportunity to be heard; (2) MDL parties had no notice or opportunity to participate in the settlement negotiations, and that the cost responsibility of MDL for the charge allegedly was not at issue in the settlement, until PG&E proffered a new interpretation of the settlement agreement; and (3) the MDL parties were not provided with legally adequate notice and opportunity to be heard on the imposition of the new regulatory asset charge on MDL, and thus, we violated Public Utilities Code Section 454; and (4) the Commission lack's the authority to impose fees on persons having no relationship with PG&E, and thus, it argues that the charge is a special tax or "exit fee" that we have no authority to levy or assess.

For the reasons discussed below, we believe that the issues raised in the rehearing application have been rendered moot by the passage of Senate Bill ("SB") 772, Stats. 2004, ch. 46.)<sup>5</sup> and subsequent Commission decisions. Accordingly, we are denying MID's application for rehearing as moot.

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<sup>4</sup> Order Adopting Cost Responsibility Surcharge Mechanisms for Municipal Departing Load [D.03-07-028] (2003) \_\_\_ Cal.P.U.C.3d \_\_\_; Order Granting Limited Rehearing on issue of the allocation of the Exception for New Municipal Load, Modifying Decision (D.) 03-07-028 for Purposes of Clarification, and Denying Rehearing of Decision, as modified, in All Other Respects [D.03-08-076] (2003) \_\_\_ Cal.P.U.C.3d \_\_\_\_.

<sup>5</sup> SB 772 was enacted by the Legislature and signed into law by the Governor on June 7, 2004. (Stats. 2004, ch. 46.)

### III. DISCUSSION

After MID filed its application for rehearing, the Legislature passed Senate SB 772. The statute was enacted in part to authorize the Commission “to issue financing orders, to support the issuing of recovery bonds ... to finance the unamortized balance of the regulatory asset awarded [PG&E] in [C]ommission Decision 03-12-035.” (Stats. 2004, ch. 46, Legis. Counsel Digest (1), p. 1.) SB 772 authorized the energy cost recovery amount (“ECRA”), the successor to the regulatory asset charge. The relevant parts of SB 772 were codified as Public Utilities Code section 848.1. (Stats. 2004, ch. 46, §5, pp. 8-9.) SB 772 “establish an effective mechanism that ensures recovery of recovery costs through fixed recovery amounts and any associated fixed recovery tax amounts from existing and future consumers in the service territory.” (Pub. Util. Code, §848.1, subd. (b).) Therefore, SB 772 expressly made all customers and/or load responsible for paying the regulatory asset charge, except those that were specifically exempted. (See Pub. Util. Code, §848.1, subd. (b).) Accordingly, MDL was made liable for paying the surcharge.

However, SB 772 created a possible exemption for new MDL, depending on the outcome of the limited rehearing of D.03-08-076, by providing, in relevant part:

“[T]he [C]ommission shall determine the extent to which fixed recovery amounts and any associated fixed recovery tax amounts are recoverable from new municipal load, consistent with the [C]ommission’s determination in the limited rehearing granted in Decision 03-08-076. . . .”

(Pub. Util. Code, §848.1, subd. (c).) In *Opinion Regarding Municipal Departing Load Rehearing and Related Issues* [D.04-11-014,] (2004) \_\_\_ Cal.P.U.C.3d \_\_\_, pp. 1, 9-14 (slip op.), we resolved the limited rehearing granted in D.03-08-076. The Commission

provided new MDL with a limited exception to the cost responsibility surcharge. (*Id.* at pp. 57-58 [Ordering Paragraph Nos. 1 & 2] (slip op.))<sup>6</sup>

In *Financing Order Authorizing the Issuance of Energy Recovery Bonds Pursuant to Senate Bill 772* [D.04-11-015] (2004) \_\_\_ Cal.P.U.C.3d \_\_\_, the Commission implemented the provision of Senate Bill 772. We concluded:

Decision 04-02-062 requires the Regulatory Asset charge and its successor, which is the DRC and the ERBBA charge taken together, to be allocated to consumers on an equal cents per kWh basis. The only exception is certain “customer generation departing load,” which is not required by D.04-02-062 to bear any cost responsibility for the Regulatory Asset charge and its successor.

(*Id.* at p. 96 [Conclusion of Law No. 89] (slip op.)) The Commission also concluded:

Based on the guidance provided by D.04-02-062, Bond Charges should apply to all DL except certain customer generation DL and any other exemptions provided for in SB 772.

(*Id.* at p. 96 [Conclusion of Law No. 90] (slip op.))

On February 25, 2005, MID filed a petition to modify D.04-02-062. One issue raised in this petition was an exemption for new MDL from the regulatory asset charge and energy recovery bond charges. The Commission disposed of this petition in *Decision Granting in Part and Denying in Part Petitions to Modify Decision 04-02-062 and D.04-11-015* [D.05-08-035] (2005) \_\_\_ Cal.P.U.C.3d \_\_\_, pp. 8-9 (slip op.). We stated:

“[A]ll the parties agree that the Commission intended in D.04-02-062 that new MDL should be exempted from the regulatory asset charge to the same extent new MDL is exempted from the DWR Power Charge.”

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<sup>6</sup> D.04-11-014, as modified and affirmed in *Order Modifying Decision (D.) 04-11-014 for Purposes of Clarification and Denying Rehearing of the Decision, As Modified* [D.04-12-059] (2004) \_\_\_ Cal. P.U.C.3d \_\_\_.

(*Id.*)

Accordingly, D.05-08-035 modified “D.04-02-062 to exempt new MDL from the [regulatory asset charge] to the same extent that new MDL is exempted from the DWR Power Charge element of the CRS by D.04-11-014 and D.04-012-059.” (*Id.* at p. 8 (slip op).)

#### **IV. CONCLUSION**

As discussed above, the issues raised in MID’s application for rehearing of D.04-02-062 have been rendered moot by the passage of SB 772 and subsequent Commission decisions. Accordingly, the rehearing application should be denied, as moot.

**THEREFORE, IT IS ORDERED** that:

1. Application for rehearing of D.04-02-062, filed by MID, is hereby denied as moot.
2. Investigation (I.) 02-04-026 is hereby closed.

This order is effective today.

Dated December 18, 2008, at San Francisco, California.

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