DATE OF ISSUANCE: 05/09/11

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION **RESOLUTION G-3453**
May 5, 2011

R E S O L U T I O N

Resolution G-3453. Pacific Gas and Electric Company (PG&E) seeks authorization to establish the Natural Gas Transmission Pipeline Safety Memorandum Account to track costs associated with: 1) programs to implement new governmental regulatory mandates and requirements related to gas transmission pipeline safety, and 2) gas transmission pipeline safety programs undertaken on its own initiative.

PROPOSED OUTCOME: PG&E's request is denied without prejudice. The utility may seek approval of its proposed memorandum account in Commission Rulemaking (R.) 11-02-019.

ESTIMATED COST: None.

By PG&E Advice Letter (AL) 3171-G, filed December 1, 2010.

SUMMARY

PG&E's request to record costs it incurs implementing new transmission pipeline safety regulations and utility initiatives such as its Pipeline 2020 Program in a memorandum account is denied without prejudice. The utility may seek approval of its proposed memorandum account in R.11-02-019.

In R.11-02-019, the Commission will consider how to better incorporate pipeline safety considerations in its ratemaking practices and policies as well as evaluate utility programs such as PG&E's Pipeline 2020 Program. PG&E's proposed memorandum account involves a subject matter that is best addressed in the rulemaking proceeding.

The protest of the Division of Ratepayer Advocates (DRA) and the joint protest of The Utility Reform Network (TURN) and Disability Rights Advocates (DisRA) are moot.

BACKGROUND

On February 24, 2011, the Commission adopted R. 11-02-019. The rulemaking was opened to establish a new model of natural gas pipeline safety regulation applicable to California pipelines.

R.11-02-019 is categorized as ratesetting and it will consolidate and coordinate the Commission's efforts regarding new rules and policies related to pipeline safety. One primary rulemaking objective is to:

> "Consider available options for the Commission to better align ratemaking policies, practices, and incentives to elevate safety considerations, and maintain utility management focus on the "nuts and bolts" details of prudent utility operations." (R.11-02-019, p. 4)

The rulemaking also acknowledged that PG&E has proposed to implement a program called the "Pipeline 2020 Program" and that it as well as any other similar programs will be evaluated in the proceeding. [1]

Before R.11-02-019 was opened, PG&E filed AL 3171-G requesting approval of a memorandum account to record costs of implementing new governmental transmission pipeline requirements and utility pipeline safety initiatives such as its Pipeline 2020 Program.[2]

[1] For more information about PG&E's Pipeline 2020 Program go to: http://www.pge.com/about/newsroom/newsreleases/20101012/pge_announces_pipeline_2020_program_for_enhancing_natural_gas_pipeline_safety_and_reliability.shtml

[2] "A memorandum account allows a utility to track costs arising from events that were not reasonably foreseen in the utility's last general rate case. By tracking these costs in a memorandum account, a utility preserves the opportunity to seek recovery of these costs at a later date without raising retroactive ratemaking issues. However, when the Commission authorizes a memorandum account, it has not yet determined whether recovery of booked costs is appropriate, unless so specified." (D.10-04-031, mimeo, pp. 43-4)

PG&E filed the AL in anticipation of new government requirements prompted by the San Bruno pipeline rupture and for safety programs undertaken by the utility. The utility said in the AL that recovery of the costs recorded to the memorandum account would be considered in a future Commission proceeding.

NOTICE

Notice of AL 3171-G was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

PROTESTS

On December 21, 2010, DRA protested the AL and recommended that it be denied. DRA claimed that none of the functions PG&E indentified in the AL should require any additional funding and that the utility is seeking to track costs for activities that it is already required to perform. It also asserted that the memorandum account lacks details about the costs to be tracked and is unnecessary for PG&E to implement its Pipeline 2020 Program. The protest takes issue with recording R&D program costs in the memorandum account and said it should be fully funded by PG&E shareholders. Furthermore, DRA believed it is prudent to postpone any large-scale spending until the cause of the San Bruno pipeline rupture is known.

On December 21, 2010, TURN and DisRA jointly protested the AL and recommended that it be denied. TURN/DisRA said that the memorandum account does not clearly show what costs would be recorded and that some Pipeline 2020 Program costs should already be funded through existing rates. They also assert that PG&E's request is premature and is more appropriate if and when any new regulatory requirements are known. TURN/DisRA also noted that the Pipeline 2020 Program may prove costly and that it should be considered through an application. As a compromise to approving the AL in full, TURN/DisRA suggested that the Commission only approve the tracking of new governmental safety regulations incremental to the activities included in the rates adopted in Application (A.)09-09-013.[3]

On December 28, 2010, PG&E responded to the protests. PG&E stated that it will only record costs for activities not already included in rates. For clarification, the utility said that the memorandum account is mostly for transmission pipeline related costs, although emergency response plan enhancements may also be applicable to gas distribution pipeline incidents. On DRA's R&D issue, PG&E stated that the non-profit R&D institute will be funded by $10 million in shareholder funds and it did not propose in AL 3171-G to track these program costs in the memorandum account. The utility cautioned that rejecting the memorandum account would impact its efforts to comply with new pipeline safety regulations and essentially be a ruling on the merits of its Pipeline 2020 Program.

DISCUSSION

PG&E's proposal in AL 3171-G to establish a memorandum account is denied without prejudice. The utility may seek approval of the proposed memorandum account in R.11-02-019.

In R.11-02-019, the Commission will explore ways to better align its ratemaking policies with pipeline safety considerations and also evaluate utility safety initiatives such as PG&E's Pipeline 2020 Program.

PG&E's proposed memorandum account to record costs to implement new pipeline safety regulations and its Pipeline 2020 Program involves subject matter under consideration in R.11-02-019. Additionally, the protestants raised issues that are more suited to be examined within the framework of the comprehensive policy review being undertaken in the rulemaking. Therefore, R.11-02-019 is the appropriate venue to consider PG&E's proposed memorandum account filed in AL 3171-G. Accordingly, we deny PG&E AL 3171-G without prejudice. If PG&E

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[3] Decision (D.) 11-04-031, issued April 14, 2011, approved a proposed settlement agreement filed in A.09-09-013 setting PG&E's gas transmission and storage rates and revenue requirement for the period of 2011 through 2014. A.09-09-013 remains open to address the safety phase of the proceeding.

wants to pursue our approval of the memorandum account denied herein, the utility should do so in R.11-02-019.

Although we deny PG&E's memorandum account request without prejudice, the utility is bound by Public Utilities Code section 451 to maintain safe operations.

PG&E said that the memorandum account will allow it to comply with new government safety mandates and that rejecting it "would thwart and delay [its] efforts to comply with new pipeline safety requirements and implement new and enhanced safety programs on its transmission system."[4]

Pursuant to Public Utilities (P.U.) Code section 451, PG&E is required to maintain and operate its gas system safely. This P.U. Code section states, in part:

> "Every public utility shall furnish and maintain such adequate, efficient, just and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public."

The provisions of P.U. Code section 451 are clear and unconditional. PG&E is bound by this statute to keep its gas system safe regardless of our decision on the proposed memorandum account. We also note that PG&E said that it is already making expenditures to implement its Pipeline 2020 Program.[5]

The protests of DRA and TURN/DisRA are moot.

The issues raised in the protests may be raised in R.11-02-019 as appropriate.

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[4] *Response of Pacific Gas and Electric Company to the protest of Division of Ratepayer Advocates and the Joint Protest of The Utility Reform Network and Disability Rights Advocates to PG&E Advice 3171-G,* dated December 28, 2010, p. 4.

[5] *Ibid.*

COMMENTS

Public Utilities Code section 311(g)(1) generally provides that resolutions must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Accordingly, this draft resolution was mailed to parties for comment, and will be placed on the Commission's agenda no earlier than 30 days from April 4, 2011.

On April 28, 2011, PG&E commented on the draft resolution urging the Commission to approve its proposed memorandum account.

PG&E asserted that the draft resolution erroneously denied its requested memorandum account for these reasons: 1) the denial may prevent PG&E from recovering costs it incurs prior to the approval of the memorandum account in R.11-02-019; 2) the Commission routinely approves memorandum accounts between rate cases and that its request fully complied with General Order 96-B; and 3) R.11-02-019 will address ratemaking mechanisms for cost recovery and that the rulemaking implicitly assumes that PG&E and the other gas utilities will already have established memorandum accounts.

We are not persuaded by PG&E's arguments. We will not change the draft resolution and will deny the proposed memorandum account without prejudice. Under our general ratemaking policy, a utility's adopted revenue requirement is based on expected future costs and is not adjusted between rate cases unless a mechanism to do so exists. While we sometimes grant requests to establish memorandum accounts, we also sometimes deny them. Each request must be considered on its own merits.

In D.11-04-031, we approved a settlement and adopted PG&E's gas transmission requirement for 2011 through 2014. That decision did not authorize the memorandum account that PG&E seeks here. However, that decision continued in effect a z-factor Mechanism,[6] described, in part as follows: "The guaranteed rates may be adjusted by a z-factor to reflect extraordinary costs or savings. The

[6] D.11-04-031, Appendix A, Gas Accord V Settlement Agreement, section 10.2.1 *Continuation of Previously Established Mechanisms*

z-factor is limited to known changes due to governmental action."[7] Here, PG&E seeks a memorandum account in which to record the costs of anticipated new safety requirements and its Pipeline 2020 program. The new safety requirements are presumably those required by governmental action. PG&E has not, in this advice letter process, demonstrated why those costs should not be recovered through use of a z-factor, rather than the memorandum account it requests. More generally, PG&E has not shown why we should depart from our forecast ratemaking policy and provide it with any additional authority beyond the adopted z-factor Mechanism at this time.

In analyzing a request for a memorandum account it is appropriate to consider whether there is a reason for the utility to make a large expenditure that was unforeseen at the time of its most recent rate case. Here, PG&E has not demonstrated that it has an immediate need to make any significant expenditures unforeseen since its last rate case in advance of R.11-02-019. Indeed, it is likely that in that rulemaking we will be adopting many of the "new governmental and regulatory mandates and requirements applicable to natural gas transmission pipeline safety" whose costs PG&E proposes to record in this memorandum account. Therefore it is unclear why PG&E needs a memorandum account in advance of the adoption of those regulations. Because regulations whose costs PG&E seeks to record in the memorandum account will be considered in the rulemaking, it makes sense to review the proposed memorandum account in R.11-02-019 (if PG&E chooses to pursue its proposal) as the Commission could then determine which, if any, specific types of costs should be recorded in a memorandum account in concert with the adoption of new safety regulations. In short, PG&E's advice letter filing has not demonstrated an immediate need to incur costs, nor large expenditures prior to adoption of new safety regulations and Commission consideration of its Pipeline 2020 program in the rulemaking.

Additionally, protestants have pointed out a number of troubling ambiguities in PG&E's proposed tariff language for the memorandum account. If this issue were considered in the rulemaking, there would be a better opportunity to craft more precise language. We also note that, in comments filed in R.11-02-019, PG&E recommended that the "… Commission in this proceeding [referring to

[7] D.97-08-055, 73 CPUC 2d, p. 822

R.11-02-019] should authorize each of the gas utilities to establish a memorandum account to track such costs …” [8] Thus, even PG&E agrees that R.11-02-019 is a proper proceeding for considering its memo account request.

As noted above, the Commission does not routinely approve every memorandum account request.[9] In its advice letter and comments, PG&E cited Resolution G-3432 as a precedent for granting the requested memorandum account here. However, there are distinct differences between the memorandum account we approved there and the situation here. The memorandum account approved in Resolution G-3432 was for a specific activity (energy efficiency database project), had an estimated cost, and PG&E asserted that it needed to begin construction quickly in order to complete the project within the 3-year budget cycle, (which would enable PG&E to begin collecting timely information about the energy efficiency program.) In contrast, the proposed memorandum account here would track costs of unspecified safety regulations and most of PG&E’s Pipeline 2020 Program,[10] which has only been described in broad terms, is anticipated to take years to fully implement, and whose cost estimates vary widely.[11] Furthermore, as pointed above, PG&E’s filings to date have not established any need to incur these costs immediately.

Finally, we note that PG&E’s Pipeline 2020 is the kind of major program that generally should have advance Commission review, if ratepayer recovery is going to be requested. In sum, PG&E’s submissions to date have not shown why we should depart from forecast ratemaking by authorizing the requested memorandum account at this time.

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[8] *Comments of Pacific Gas and Electric Company on Order Instituting Rulemaking*, dated April 13, 2011, filed in R.11-02-019, pp. 25-6.

[9] For an example of a resolution disapproving a request for a memorandum account, see Resolution G-3441 (Natural Gas Appliance Testing Memorandum Account), dated February 25, 2010.

[10] *Response of Pacific Gas and Electric Company to the Protest of Division of Ratepayer Advocates and the Joint Protest of The Utility Reform Network and Disability Rights Advocates to PG&E Advice 3171-G*, “In fact, PG&E did not propose a sub-account to track costs associated with this program element [pipeline inspection research and development] in the NGTPSMA.”, p. 3

[11] TURN/DisRA Protest, PG&E AL 3171-G, p. 4.

FINDINGS AND CONCLUSIONS

1. In AL 3171-G, PG&E seeks approval of a memorandum account to record its costs of implementing new government transmission pipeline safety requirements and utility sponsored initiatives such as its Pipeline 2020 Program.
2. R.11-02-019 was opened after PG&E filed AL 3171-G and is categorized as ratesetting.
3. Under our general ratemaking policy, a utility's adopted revenue requirement is based on future expected costs and is not adjusted between rate cases unless a mechanism to do so exists.
4. D.11-04-031 did not authorize PG&E to establish a memorandum account to record costs proposed in AL 3171-G, but did extend continuation of a z-factor Mechanism.
5. The z-factor Mechanism authorized in D.11-04-031 allows for the adjustment of the rates adopted in the decision due to known changes caused by government action.
6. The z-factor Mechanism adopted in D.11-04-031 might be applicable for new government safety regulations and mandates.
7. PG&E did not demonstrate why the costs of new government safety regulations should not be recovered through use of the z-factor Mechanism adopted in D.11-04-031.
8. Analysis of a memorandum account request should consider whether there is a reason for a utility to make a large expenditure that was unforeseen at the time of its most recent rate case.
9. PG&E has not demonstrated that it has an immediate need to make any significant expenditures unforeseen since its last rate case and in advance of R.11-02-019.
10. It is unclear why PG&E needs a memorandum account now and in advance of regulations that may be adopted in R.11-02-019.
11. PG&E's proposed memorandum account would track costs of unspecified safety regulations and most Pipeline 2020 Program costs.
12. PG&E's Pipeline 2020 Program has been described in broad terms, is anticipated to take many years to complete and program cost estimates vary widely.
13. PG&E's proposed memorandum account filed in AL 3171-G should be considered in R.11-02-019 because in that proceeding the Commission will address ways to better align its ratemaking practices and policies with

pipeline safety considerations as well as consider PG&E's Pipeline 2020 Program and similar utility programs.

14. Considering PG&E's proposed memorandum account in R.11-02-019 is appropriate because the Commission can determine which costs, if any, should be recorded in a memorandum account in the same venue as it adopts new safety regulations and evaluates the Pipeline 2020 Program.

THEREFORE IT IS ORDERED THAT:

1. PG&E AL 3171-G is denied without prejudice.

2. PG&E may seek approval of the memorandum account it proposed in AL 3171-G in R.11-02-019.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on May 5, 2011; the following Commissioners voting favorably thereon:

/s/ Paul Clanon
Paul Clanon
Executive Director

MICHAEL R. PEEVEY
PRESIDENT
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J. K. SANDOVAL
MARK FERRON
Commissioners