

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (E 338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.	Application 00-11-038 (Filed November 16, 2000)
Emergency Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan. (U 39 E)	Application 00-11-056 (Filed November 22, 2000)
Petition of THE UTILITY REFORM NETWORK for Modification of Resolution E-3527.	Application 00-10-028 (Filed October 17, 2000)

**ADMINISTRATIVE LAW JUDGE'S RULING
SOLICITING COMMENTS ON WORKSHOP REPORT**

This ruling is issued to provide notice and opportunity for comment concerning the issues addressed in the Workshop Report that is attached hereto. In Decision (D.) 03-02-032, the Commission granted Pacific Gas and Electric Company's (PG&E) request for a workshop to discuss technical issues regarding the calculation of proper remittances of surcharges to municipalities for electric power sales by the California Department of Water Resources (DWR). The workshop was held on April 15, 2003. PG&E filed and served a written status report of the workshop on May 2, 2003.

PG&E states that D.03-02-032 ordered utilities to treat DWR like other third-party suppliers and use the municipal surcharge approach specified in Pub.

Util. Code §§ 6352-6354.1 for calculating the fees to be collected and remitted to municipalities. As prescribed in Pub. Util. Code § 6353(d),¹ PG&E proposes to calculate the municipal surcharge relating to DWR power by multiplying the franchise fee percentage factor adopted from its last General Rate Case by DWR revenues. During the workshop process, it was discovered that there might be inconsistencies between PG&E's proposed remittance calculation and that implemented by Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E) based on differing interpretations of the applicable statutory provisions.

While SDG&E and SCE use this same prescribed methodology to collect municipal surcharges from customers' bills, they believe Pub. Util. Code §§ 6352(d)² and 6354(b)³ require them to remit surcharges to municipalities per the rate prescribed for each individual municipality in their respective franchise agreement. The SCE/SDG&E methodology includes DWR revenues in the

¹ Section 6353(d) states, "Determine the surcharge applicable to each transportation customer by multiplying the product determined pursuant to subdivision (c) by the sum of the franchise fee factor plus any franchise fee surcharge authorized for the energy transporter as approved by the commission in the energy transporter's most recent proceeding in which those factors and surcharges were set. An energy transporter not regulated by the commission shall multiply the product determined in subdivision (c) by the franchise fee rate contained in its individual franchise agreement in effect in each municipality."

² Section 6352(d) states, "Nothing in this chapter shall in any way affect the rights of the parties to existing franchise agreements executed pursuant to this division that are in force on the effective date of this chapter."

³ Section 6354(b) states in part, "Surcharges collected from the transportation customer shall be remitted to the municipality granting a franchise pursuant to this division in the manner and at the time prescribed for payment of franchise fees in the energy transporter's franchise agreement."

calculation of franchise fees as if the DWR charges were part of the utility's gross revenues. Prior to D.03-02-032, PG&E also remitted fees to the municipality using the franchise fee rate in effect for each municipality.

The purpose of this ruling is to allow parties notice and opportunity to comment on the workshop report (attached to this ruling for reference). In addition to parties of record on the service list, this ruling shall be mailed to municipalities that were previously notified regarding the workshop for their review and comment as well.

Comments in response to the ruling should specifically focus on any areas where there is disagreement with PG&E's proposed treatment for determining and remitting municipal fees relating to DWR revenues, as set forth in the workshop report. Any party that disagrees with PG&E's proposed approach should specify what their alternative proposal is, and the basis for any alternative proposal. In particular, comments are solicited on what obligations, if any, PG&E has to determine and remit and/or refund additional municipal fees for periods prior to 2003 based upon the use of the prospective 2003 methodology. To the extent any parties believe that additional information is needed to resolve outstanding issues, they should specify what additional information is needed and what process they would propose to produce that information.

In addition, parties shall address the issue of uniformity and consistency among the utilities in the methodology and process for applying the applicable statutes for calculating and remitting municipal surcharge fees. To the extent there are differences in calculation or remittance methodologies among the utilities, or differences in interpretation of the statutes as to collection and remittance of fees, parties should address what revisions are warranted in order to bring each of the utilities into uniform compliance with applicable statutory provisions as discussed in D.03-02-032. Parties should address whether the

utilities should be required to recalculate prior remittances to municipalities based upon a determination of the adopted prospective remittance methodology prescribed in D.03-02-032.

IT IS RULED that:

1. Parties (including affected municipalities) are hereby provided notice and opportunity to comment on the workshop report (attached to this ruling) on issues regarding the calculation of proper remittances of surcharges to municipalities for electric power sales by the California Department of Water Resources (DWR), as specified above.

2. Opening comments shall be due on June 26, 2003, and reply comments shall be due on July 11, 2003.

3. As part of their comments, parties shall address whether there should be uniformity and consistency among the utilities for remitting municipal surcharge fees, and whether utilities should be required to recalculate pre-2003 remittance obligations to municipalities based upon use of the prospective 2003 remittance methodology.

4. The Energy Division shall mail a copy of this ruling to the municipalities that were previously served notice of the April 15, 2003 workshop.

Dated May 29, 2003, at San Francisco, California.

/s/ THOMAS R. PULSIFER

Thomas R. Pulsifer
Administrative Law Judge

ATTACHMENT A

FINAL STATUS REPORT FROM PG&E WORKSHOP HELD APRIL 15, 2003 RE: MUNICIPAL SURCHARGES FOR ELECTRICITY SALES BY DWR

The Attendance Record is attached.

Discussion:

The Energy Division explained that the purpose of the workshop was to discuss technical issues identified in the Workshop Notice regarding the calculation of proper remittances of surcharges to municipalities for DWR power sales. The Energy Division stated that, per Ordering Paragraph 7 of Decision (D.) 03-02-032, PG&E will file a written status report indicating the disposition of the issues.

The attendees introduced themselves.

PG&E presented the agenda.

PG&E presented a brief background of Franchise Fees and Municipal Surcharges:

1. Franchise Fees are intended only for PG&E provided power (self-generation or contracts), as concluded in D. 03-02-032.
2. ESP supplied electricity is already subject to a Municipal Surcharge, which is administered by PG&E.
3. DWR, who began providing power in 2001, is not one of the typical providers – neither PG&E nor a typical ESP.
4. D. 02-02-052, for the interim, directed PG&E to maintain the status quo until the Franchise Fee issue is resolved. Therefore, PG&E included DWR sales revenues with PG&E revenues for calculating Franchise Fees, which were paid April 2002 and 2003 for the calendar revenue years 2001 and 2002, respectively.
Note: This is a correction of the dates (2000 & 2001) listed in the Notification of PG&E Workshop.
5. Per D. 03-02-032, IOUs were ordered to treat DWR like an ESP and use a Municipal Surcharge approach for calculating fees for the municipalities.
6. PG&E's proposal includes:
 - Use the actual DWR revenue (not a proxy for "market rate"),
 - Use the proposed formula (which is shown in the Workshop Notification, and is described below), and
 - Do not use the revised methodology for 2002 and 2001.
7. In response to a question, PG&E clarified that 2003 Municipal Surcharges are not impacted by bankruptcy because they are post-petition obligations.

8. In response to a question, PG&E clarified that some municipalities may gain due to adopting the Municipal Surcharge rate and others may receive less than what the normal franchise fee formulas would have provided. However, going back to the previous methodology is not an option because D. 03-02-032 ordered this Municipal Surcharge approach.
9. Municipal Surcharge payments for ESPs use a market proxy to estimate the revenues received by ESPs. However, PG&E proposes, since the information is available, to use the actual DWR remittances to calculate the Municipal Surcharge. This has an impact because the 2003 rate for DWR provided power is approximately 10 cents per kWh, whereas a market proxy would be closer to 5 cents per kWh.
10. PG&E collects funds from its customers to provide revenues to DWR for the power supplied.
11. With Municipal Surcharges, PG&E collects funds based on the statutory surcharge formula from the ESP's customers to remit to municipalities. PG&E believes that the Commission ordered the IOUs to treat DWR like other ESPs.
12. PG&E believes there is no reason to recalculate payments made for 2001 and 2002 because those payments were based on PG&E's interpretation of D.02-02-052, which was to add DWR Sales revenues to PG&E's gross receipts and use the normal franchise fee formulas as an interim approach to calculate payments to the municipalities.

PG&E described the calculation for the Municipal Surcharge, for which a formula was provided in the Workshop Notice:

1. Uses latest adopted fee factor – currently from 1999 General Rate Case (GRC).
2. Uses net metered sales for customers within the boundaries of each municipality.
3. Uses ratio of DWR power portion of total sales – approximately 25% – because each customer is assumed to receive the same percentage of DWR power.
4. DWR does not include Franchise Fees or Municipal Surcharges in its revenue requirement (RRQ).
5. In response to a question, PG&E confirmed that the average fee factor adopted from the 1999 GRC (\$0.006368 per kWh) will be applied to DWR 2003 sales to calculate the Municipal Surcharge. When the 2003 GRC is adopted, the new fee factor will be used for the 2003 Municipal Surcharge calculation, but the change in the fee factor should be insignificant.
During 2002, the franchise fee factors stated in the individual franchise agreements were applied to the combination of PG&E revenues and DWR sales.
6. In response to a question, PG&E confirmed that Schedule EC is used for ESPs.
7. In response to a question, PG&E confirmed that PG&E's own gross receipts will again be used for 2003 fee payments; however, the individual franchise fee factors stated in the individual franchise agreements will continue to be applied to only the PG&E portion, and the latest adopted average fee factor (\$0.006368) will be applied to DWR's revenues to calculate the Municipal Surcharges – same rate for every municipality. No revenue escapes either Franchise Fees or Municipal Surcharges.

The following information was provided in responses to questions from those attending:

1. Cities and counties receiving an interim payment during 2003 (primarily the City of San Jose) may be significantly overpaid when compared with the Municipal Surcharge rate. PG&E offered to meet with affected municipalities to modify the necessary documents to revise PG&E's interim payments to avoid significant overpayments.
2. In response to a request by Contra Costa County that PG&E use actual 2002 figures to calculate the difference between (i) the amount of franchise fee revenue Contra Costa County received from the DWR component of PG&E gross receipts for 2002, and (ii) the amount Contra Costa County would have received in 2002 had PG&E's proposed method of calculating surcharges been used, PG&E offered to provide an estimate of the 2003 fees to be paid for those municipalities attending the Workshop to compare the difference between the Franchise Fees approach versus the Municipal Surcharge for DWR Sales. Contra Costa County restated its preference for using known 2002 figures versus using projected 2003 numbers.
3. PG&E speculated that following the Workshop the Commission could issue a Decision or Ruling to address issues discussed at the Workshop.
4. The Energy Division stated that, although uncertain about SCE, SDG&E has been using the Municipal Surcharge approach since September 2001.
5. PG&E believes that D. 03-02-032 intended that the Municipal Surcharge approach be effective as of January 1, 2003, but the final ruling should clarify the effective date. Energy Division requested workshop participants to state their position regarding whether or not PG&E's interpretation is correct. City of San Francisco believes that the Commission needs a record on why past years will not be recalculated. City of San Francisco requests PG&E to indicate the impact on cities and counties based on a sampling of representative municipalities. Should the Commission order a recalculation, City of San Francisco requests PG&E to indicate how a true-up would work. For example, would those cities and counties who were overpaid receive less in future payments or would they be required to refund.

ACTIONS:

1. PG&E will provide a Workshop Status Report (this document) indicating the disposition of the issues discussed. PG&E will provide a draft of the Report by April 21, 2003, to the parties participating in the Workshop, who will be provided an opportunity to comment on the Report by April 25, 2003. PG&E will serve the final Report by May 2, 2003, to all parties on the Proceeding Service List and all municipalities paid fees or surcharges by PG&E.
2. A Decision or Ruling will likely be issued by the Commission to request comments on the PG&E workshop report and to address issues.
3. PG&E offered to meet with affected municipalities to modify the necessary documents to revise PG&E's interim payments to avoid significant overpayments.

4. PG&E offered to provide by approximately mid-May 2003 an estimate of the 2003 fees to be paid for those municipalities attending the Workshop to compare the difference between the Franchise Fees approach versus the Municipal Surcharge for DWR Sales for use in future budgets for the Municipalities. Supporting this action, PG&E will confirm the percentage of DWR Sales compared to the total PG&E revenues and DWR sales revenues, which was used as the based for calculating the 2002 Franchise Fees – PG&E estimated this at approximately 25%, based on GWh usage, during the Workshop (see “PG&E described the calculation for the Municipal Surcharge,” item 3 above.)
5. PG&E believes that D. 03-02-032 intended that the Municipal Surcharge approach be effective as of January 1, 2003, but the final ruling should clarify the effective date.
6. City of San Francisco believes that the Commission needs a record on why past years will not be recalculated.
7. Parties may contact Roger Russell at PG&E (415-973-9979) for further questions re: this Workshop.

**PG&E Workshop Regarding
Municipal Surcharges for Electricity Sales by DWR
April 15, 2003
Attendance Record**

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Rich Meiss	PG&E		
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Dick R. Awenius	Contra Costa County	925.313.2227	rawenius@pw.co.contra- costa.ca.us

**Notice of PG&E Workshop Regarding
Municipal Surcharges for Electricity Sales by DWR**

**April 15, 2003
10:00 a.m.**

**California Public Utilities Commission
505 Van Ness Avenue, Training Room
San Francisco**

**Please contact Laura Martin of the CPUC's Energy Division
(e-mail LRA@CPUC.CA.GOV or call (415) 703-2149)
by April 10th if you are planning to attend**

In Decision (D.) 03-02-032, the Commission granted PG&E's request for a workshop to discuss technical issues regarding the calculation of proper remittances of surcharges to municipalities for DWR power sales. In compliance with the decision, PG&E submitted a proposed workshop agenda on March 5th identifying more specifically what technical issues need to be addressed through the workshop, and identified the municipalities that should be notified of the workshop. Following receipt of the proposed agenda, the Energy Division coordinated with PG&E representatives to establish the workshop date and finalize the agenda. The following will be discussed at the workshop:

How did PG&E calculate remittances prior to D.03-02-032?

Prior to D.03-02-032, PG&E paid "franchise fees" on its gross receipts from the sale of electricity. For the years 2000 and 2001, PG&E added the DWR electric power sales to its gross receipts and calculated the amount due to the municipality using the franchise fee rates in effect for each individual municipality. Depending on the legal requirements specified in Public Utilities (PU) Code Sections 6000-6302, franchise fees vary from 0.5% to 2%. The formula was:

Payment to Municipalities = (PG&E Gross Receipts + DWR power sales receipts) x
Applicable Franchise Fee (ranging from 0.5 to 2%)

How should remittances to municipalities be calculated?

D.03-02-032 concluded that utilities should continue to remit funds to the municipalities for DWR sales but clarified that such remittances are properly classified as “municipal surcharges” under the provision of PU Code Sections 6350-6354.1 rather than “franchise fees” under PU Code Sections 6000-6302. In its comments leading up to D.03-02-032, PG&E identified the components needed to make the calculation per PU Code Section 6353 as (1) the amount of power provided by the DWR to customers of each municipality, (2) the assumed cost of power, and (3) the appropriate factor to be applied to resulting revenues. PG&E proposes the following formulas to calculate the surcharges to be remitted to municipalities:

$$\text{Payment to Municipalities} = \text{DWR Revenues} \times \text{Franchise Fee Factor of } 0.006368$$

$$\text{DWR Revenues} = (\text{Net Metered sales} \times \text{DWR Ratio} \times \text{Power charge}) + \text{DWR Bond Charges}$$

PG&E is able to identify the following:

- Franchise Fees Factor: 0.006368 adopted in 1999 GRC.
- Net Metered Sales for each municipality (kilowatt-Hours.)
- DWR Ratio of total power sales.
- Power charge per kilowatt-Hour *
- DWR Bond Charges.

*As the PX no longer exists, PG&E proposes to apply the power charge used by PG&E to make remittances to DWR in lieu of Market prices.

Should PG&E recalculate past remittances based on prospective methodology?

In D.03-02-032, the Commission agreed that where a utility has properly remitted municipal surcharge revenues to municipalities in accordance with applicable statutory provisions, there is no need to recalculate past remittances relating to DWR power. PG&E states that it made the proper remittances for its past obligations to each municipality according to the methodology adopted in D.02-02-052. If PG&E recalculated fees paid to date according to the new methodology adopted in D.03-02-032, this could result in some municipalities having been overpaid. Those municipalities would either receive less over time to make up difference or owe PG&E a refund. Therefore, PG&E recommends that the Commission make clear that the methodology adopted in the final decision be prospective and that amounts already remitted to cities and counties should not be recalculated.

(END OF ATTACHMENT A)

