

Decision 20-09-005 September 10, 2020

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

Order Instituting Rulemaking to Consider  
the Annual Revenue Requirement  
Determination of the California  
Department of Water Resources and  
Related Issues.

Rulemaking 15-02-012

**DECISION GRANTING REQUEST OF THE CALIFORNIA DEPARTMENT OF  
WATER RESOURCES TO CEASE IMPOSITION OF BOND CHARGES**

**Summary**

In accordance with the Rate Agreement between the California Department of Water Resources (DWR) and the California Public Utilities Commission, this decision grants the request of DWR that the Commission order Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company (collectively, the Utilities) to cease collection of the Bond-Charge related revenue requirement from electric customers in their respective territories. The final month in which a Bond Charge-related revenue requirement will be imposed to collect revenue from electric customers of the Utilities will be September 2020. Charges will not be collected after September 30, 2020, as DWR estimates that the Bond Charge bond financing costs will be fully recovered by that date. This decision also identifies certain issues that must be addressed to enable the closure of this proceeding in 2021.

This proceeding remains open.

## **1. Background**

This decision addresses the request of the California Department of Water Resources (DWR) to cease imposition of the Bond Charge-related revenue requirement drawn from the electric customers in the service territories of Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) (collectively, the Utilities).

Due to the 2000-2001 energy crisis, DWR engaged in bond financing in order to purchase electrical power to supply the needs of retail electricity consumers. Since 2001, pursuant to Water Code §§ 80110 and 80134 and Decision (D.) 02-02-051 and the Rate Agreement between DWR and the Commission, DWR has submitted its annual revenue requirement determination to the Commission, to pay for the Power Charges and the Bond Charges that paid for electricity and financed the bonds DWR employed to purchase electric power.<sup>1</sup> Since that time, the Commission's primary obligation has been to calculate, revise, and impose corresponding DWR Power Charges and Bond Charges and ensure the collection of these costs from the electric customers of PG&E, SCE, and SDG&E.

In 2015, DWR determined that all Power Charges had been collected. DWR requested that the Commission cease the imposition of the Power Charges upon the Utilities' electric customers. The Commission directed the Utilities accordingly in D.15-12-003.

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<sup>1</sup> Among other subjects it addresses and controls, the terms "Power Charges" and "Bond Charges" are defined in the Rate Agreement that was adopted in D.02-02-051.

Now, DWR has determined that all needed Bond Charges monies will be collected on or about September 30, 2020. DWR has requested that the Commission notify the Utilities to cease the imposition of Bond Charges costs from the Utilities' electric customers. This year's proceeding is primarily focused on directing the Utilities to take action in that regard.

On July 16, 2020, the assigned Administrative Law Judge (ALJ) issued a Ruling providing notice of a July 30, 2020, Prehearing Conference (PHC), and requiring parties serve and file either separate or a joint PHC Statement in response to specific questions, and also requiring parties to meet and confer to resolve any apparent conflicts.<sup>2</sup> On July 23, 2020, the Utilities timely filed a Joint PHC Statement. Parties also reported engaging in a fruitful meet and confer discussion prior to the PHC.

At the PHC, there was discussion to determine issues of law and fact, to decide the need for hearing, to consider a schedule, and to mull the issues necessary to resolve in order to enable closure of this proceeding. Also, there was discussion of the most feasible date to cease the imposition of the Bond Charges. Further, there was discussion of the timeline for the Utilities' remittance to DWR of all monies related to the Bond Charges, which at least one Utility stated would necessarily take a number of months, into 2021.

On July 31, 2020, DWR submitted to the Commission its 60-Day Notice in which it requested the Commission to "adopt a mechanism to direct the

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<sup>2</sup> The Utilities are the primary parties to the proceeding. DWR is not a party to the proceeding.

[Utilities] to ‘shut off’ Bond Charges (which secure the Power Supply Revenue Bonds) on or before September 30, 2020,” as DWR forecasts that enough monies will be collected by that date to retire the underlying bonds and that the Bond Charges will no longer need to be collected.

## **2. Issues**

Based upon the totality of all factors to be considered in this year’s proceeding, as identified in the Commissioner’s Scoping Ruling issued on August 6, 2020, the following issues shall be addressed:

1. On what date should the Commission direct the Utilities to terminate the collection of Bond Charges in each Utility service area?
2. What issues need to be addressed once the collection of Bond Charges is terminated, and when should the Commission close this proceeding?
3. Whether any safety considerations are raised by the proceeding that affect the ability of PG&E, SCE, and SDG&E to comply with the safety requirements of Pub. Util. Code § 451 in their administration, management, and dispatch of fuel and purchased power related to this proceeding.

## **3. Discussion**

### **3.3. Imposition of the Bond Charge Should Cease on September 30, 2020**

One of the Commission’s obligations regarding this proceeding is to construe, apply, implement, and interpret the provisions of AB 1X (Chapter 4 of the Statutes of 2001-2002 First Extraordinary Session), and more specifically the implementation of DWR’s revenue requirement and the establishment and implementation of the Power Charges and Bond Charges necessary to recover

that revenue requirement. Water Code §§ 80110 and 80134 empower DWR to submit an annual revenue requirement to the Commission to pay for specifically identified items such as the Power Charges for electricity costs and Bonds Charges for bonds DWR has issued pursuant to statutorily authorized procurement of electric power. Implied in those statutes is DWR's authority to submit a notification that it no longer seeks to impose a revenue requirement at such time as there is no longer a need to collect monies to fund the identified items such as Power Charges and Bond Charges.

Part of the Commission's obligations under the Rate Agreement is to calculate, revise, and impose the DWR Bond Charges through revenue requirement collection of such costs from the electric customers of PG&E, SCE, and SDG&E. Implied in the Commission's obligation is the authority to cease the imposition of the Bond Charges when there is no longer a need to collect monies to satisfy the Bond Charges revenue requirement. Moreover, Public Utilities (Pub. Util.) Code § 3298(a)(2) clearly contemplates that there will be a final imposition of charges for DWR bonds, and Wildfire Fund Charges will be imposed going forward.

In the prior proceeding, DWR's revenue requirement requested for 2020's cash-basis Bond Charge Account was \$902 million (D.19-12-007). In D.19-12-007, the Commission requested that DWR provide notice to the Commission, Utilities, and this proceeding's Service List if and when it determines that it has amounts sufficient to satisfy its future obligations so that the Commission can direct the Utilities to shut off Bond Charges. In its July 31, 2020, 60-Day Notice, DWR explained that it was soon to collect sufficient monies in its Bond Charge

Account, and requested the Commission to “adopt a mechanism to direct the [Utilities] to ‘shut off’ Bond Charges (which secure the Power Supply Revenue Bonds) on or before September 30, 2020.” At the PHC, none of the Utilities opposed DWR’s notice to cease the imposition of the Bond Charges on or before September 30, 2020, and each of the Utilities asserted that cessation of the imposition of the Bond Charges was feasible on September 30, 2020.

We have previously ordered the final imposition of the Power Charges in D.15-12-003 as such charges were no longer required. The primary issue to be determined in this year’s proceeding is the date on which the Commission should direct the Utilities to cease the imposition of Bond Charges in each Utility service area.

Based upon the request of DWR, and noting the assertions of the Utilities, it is deemed appropriate to cease the imposition the Bond Charges to satisfy DWR’s revenue requirement on September 30, 2020.<sup>3</sup> As such, this marks the final imposition of the Bond Charges.<sup>4</sup>

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<sup>3</sup> It is understood by the Commission that there are various steps that must be functionally undertaken to square the accounting of the collection of the DWR Bond Charge by each Utility from their electric customers, taking into consideration the nature of billing cycles, collection cycles, and reconciliation of monies remitted by the Utilities to DWR. The Utilities and DWR have, in this long process, thus far worked in admirable cooperation to ensure the sufficiency of such steps. For purposes of the completion of the tasks set forth herein, the Utilities and DWR, along with such engagement as may be appropriate by Commission staff, are encouraged to maintain their cooperation in ensuring the completion of all steps to fulfill this decision.

<sup>4</sup> Pub. Util. Code § 3289(a)(2).

### **3.2. Issues to Be Addressed to Enable Closure of This Proceeding In 2021**

It is the intention of the Commission to close this proceeding in 2021. This is because all monies required to be collected pursuant to the DWR Power Charges and Bond Charges will soon be fully collected by the Utilities and remitted to DWR. What will then remain to be determined is the best means to close this proceeding.

In order to close this proceeding, it is the Commission's present determination that the following issues will need to be addressed:

1. What form of financial accounting reconciliation, if any, is required between DWR and the Utilities when determining the status of the Power Charge Accounts and the Bond Charge Accounts and the status of any over-collection amounts that must be refunded to the Utilities' electric customers.
2. What should be the mechanism and appropriate considerations for the Utilities' electric customers to receive refunding of over-collections.<sup>5</sup>
3. What form of transparency is appropriate for the Utilities' electric customers to receive refunding of over-collections.
4. What processes would best address refunding to the Utilities' electric customers such future settlements or awards that may result from litigation in which DWR is a party pursuant to its purchase of electricity on behalf of the State's electric customers.
5. What additional administrative costs, if any, are reasonable regarding each of the above subjects.

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<sup>5</sup> We note that, specific to Power Charge over-collections and refunding to the Utilities' electric customers, DWR, in its 2020 Revenue Requirement (identified in D.19-12-007), wrote as follows: "Excess amounts in the Power Charge Accounts have from time to time been returned to ratepayers through a negative Power Charge (negative revenue requirement). Through the CPUC allocation of the revenue requirement, these amounts have been applied to satisfy the obligation of the same class of customers as received DWR power. This preserves the underlying premise of the statute and financing structure, that DWR revenues are both derived from the public and applied for the benefit of the public customers, as opposed to the [Utilities]. In a sense, crediting can be viewed as analogous to a rebate to the customers who initially paid the Power Charges." In past decisions (including D.10-12-006, D.11-12-005, D.12-11-040, D.15-12-003, D.18-11-040, and D.19-12-007), we authorized methods for allocating and returning a Power Charge negative revenue requirement to the Utilities' customers in accordance with formulas identified in those decisions.



The Commission also requests parties to raise any additional subjects that may impact the closure of this proceeding.

The Commission anticipates that DWR will present a Memorandum to the Commission in early 2021, and that such a Memorandum will seek to refund monies to ratepayers from over-collected Power Charges, from over-collected Bond Charges, and possibly from monies received from resolved litigation.<sup>6</sup> Moreover, the Memorandum will provide the Commission with DWR's position on the aforementioned issues to be addressed in order to close this proceeding (as well as possibly identifying and taking into consideration the positions of all parties to this proceeding and any other interested stakeholders).

### **3.3. Safety Matters**

We examine whether there are any safety considerations raised in this proceeding that affect the ability of either PG&E, SCE, or SDG&E to comply with the safety requirements of Pub. Util. Code § 451 in their administration, management, and dispatch of fuel and purchased power.<sup>7</sup> DWR ceased purchasing power for sale to electric customers in the Utilities' service areas in 2015 (D.14-12-012). Therefore, DWR's requested relief in this proceeding does not raise any safety considerations that must be addressed.

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<sup>6</sup> See DWR Memo at 7 (July 31, 2020); see also Water Code §§ 80104, 80110, 80134.

<sup>7</sup> Pub. Util. Code § 451 provides in relevant part that "Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities ... as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public."

#### **4. Rehearing and Judicial Review**

This decision construes, applies, implements, and interprets the provisions of Assembly Bill (AB) 1X (Chapter 4 of the Statutes of 2001-2002 First Extraordinary Session), and relates to the implementation of DWR's revenue requirement and the establishment and implementation of the Power Charges and Bond Charges necessary to recover that revenue requirement. Therefore, pursuant to Pub. Util. Code § 1731(c), any application for rehearing of this decision is due within 10 days after the date of issuance of this decision. The procedures contained in Pub. Util. Code § 1768 apply to the judicial review of a Commission order or decision that interprets, implements, or applies the provisions of AB 1X.

#### **5. Comments on Proposed Decision**

The proposed decision in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure, albeit on a moderately compressed schedule pursuant to Rule 14.6(c)(10) as there were no hearings, all active parties stipulated to shortened time, and all other parties had multiple opportunities to weigh in on the shortening of time.<sup>8</sup> On

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<sup>8</sup> The shortened comment schedule was set forth in the July 16 ALJ Ruling: that schedule called for the Proposed Decision to be mailed by August 20, with the statutory 20-day comment period and 5-day reply period shortened to 11 days (August 31) and 3 days (September 3), respectively. That shortened comment period was stipulated to by those parties who jointly filed a PHC Statement, which was done in express compliance with the July 16 Ruling. The shortened comment period was stipulated to by those parties who attended the July 30 PHC. The shortened comment period was set forth in the August 6 Scoping Memo. The shortened comment period allows for the cessation of imposition of the Bond Charges to be voted on at

*Footnote continued on next page*

August 31, 2020, the Utilities filed joint comments agreeing with and supportive of the Proposed Decision. No reply comments were received.

## **6. Assignment of Proceeding**

Clifford Rechtschaffen is the assigned Commissioner, and Jason Jungreis is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. This decision construes, applies, implements, and interprets the provisions of AB 1X (Chapter 4 of the Statutes of 2001-2002 First Extraordinary Session), and relates to the implementation of DWR's revenue requirement and the establishment and implementation of the Power Charges and Bond Charges necessary to recover that revenue requirement.

2. Water Code §§ 80110 and 80134 empower DWR to submit an annual revenue requirement to the Commission to pay for specifically identified items such as the Power Charges for electricity costs and Bond Charges for bonds DWR has issued pursuant to statutorily-authorized procurement of electric power, and implied in those statutes is the inherent need to cease imposition of that revenue requirement when enough funds have been collected so that the Power Charges and Bond Charges costs have been fully satisfied.

3. Part of the Commission's obligations under the Rate Agreement is to calculate, revise, and impose the DWR Bond Charges through revenue requirement collection of such costs from the electric customers of PG&E, SCE,

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the September 10, 2020 Commission Meeting and the imposition of the Wildfire Fund Charge to be voted on at the September 24, 2020 Commission Meeting, thereby complying with requirements of Pub. Util. Code § 3289(a)(2).

and SDG&E, and implied in the Commission's obligation is the authority to cease the imposition of the Bond Charges when there is no longer a need to collect monies to satisfy the Bond Charges revenue requirement.

4. Pub. Util. Code § 1731(c) (applications for rehearing are due within 10 days after the date of issuance of this order) and Pub. Util. Code § 1768 (procedures applicable to judicial review) are applicable to this decision.

5. The DWR Bond Charges are designed to recover DWR's costs associated with its bond financing activities related to DWR's purchase of electric power on behalf of the Utilities' electric customers.

6. On July 31, 2020, DWR submitted its request that the Commission order the Utilities to cease collection of the Bond Charges on or before September 30, 2020.

7. The Utilities asserted that it was most feasible to cease the imposition of the Bond Charges on September 30, 2020.

8. There are a series of issues identified in the discussion section of this decision that are required to be considered and determined prior to the Commission's closure of this proceeding.

9. DWR's request for cessation of the imposition of the Bond Charges does not raise any safety considerations.

### **Conclusions of Law**

1. The Utilities should be directed such that the effect will be cessation of the imposition of the Bond Charges in each of the Utility service areas on September 30, 2020.

2. Rule 14.6(c)(10) allows for the moderate compression of the comment period as there were no hearings, all active parties stipulated to shortened time, and all other parties had multiple opportunities to weigh in on the shortening of time.

**O R D E R**

**IT IS ORDERED** that:

1. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company (the Utilities) are directed to make the final imposition of the California Department of Water Resources Bond Charges in each of the Utilities' service areas on September 30, 2020.

2. Public Utilities Code Section 1731(c) (applications for rehearing are due within 10 days after the date of issuance of the order or decision) and Public Utilities Code Section 1768 (procedures applicable to judicial review) are applicable to this decision.

3. Rulemaking 15-02-012 remains open.

This order is effective today.

Dated September 10, 2020, at San Francisco, California.

MARYBEL BATJER

President

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

GENEVIEVE SHIROMA

Commissioners